

Dr. Sami: Tawarruq

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***TAWARRUQ* BANKING PRODUCTS**

by

Dr. Sāmī ibn Ibrāhīm al-Suwaylim
Vice President of the Islamic Research and Training Institute
The Islamic Development Bank, Jeddah

In the Name of Allah, the Most Beneficent, the Most Merciful

All praise is for Allah; may peace and blessings be upon the Messenger of Allah, his household, his Companions and those who follow and support him.

To proceed: Allah has perfected His favors upon mankind by perfecting this religion and explaining its rulings, fundamentals and precepts. As He said: “We have neglected nothing in the Book.”¹ He also called it “a clarification of all things.”²

Allah’s Messenger (peace be upon him) said, “I have left you on the shining path; its night is like its day; none will deviate from it except that he perishes.”

Among the most important rulings that were explained in the Qur’an and the Sunnah are those concerning *ribā*, which the Prophet (may the peace and blessing of Allah be upon him) regarded as one of the worst of the major sins. The Islamic legislation for the restriction and elimination of *ribā* cannot possibly be limited or partial; rather, it will be comprehensive and complete, based on the completion and perfection of the Sharī‘ah itself.

If *tawarruq* banking products are studied in this framework it will be possible to arrive at conclusions congruent with the opinion of the majority of jurists of the past and present and with the objectives and principles of the Sharī‘ah.

The author has already published a number of studies on this topic; among them a paper: “*Tawarruq* and Organized *Tawarruq*: A Study to Establish Fundamental Principles,” presented to the Islamic Fiqh Academy at Makkah in 1424 AH; also a study entitled “The Position of Early Scholars Regarding Organized *Tawarruq*,” which was published shortly after that on the webpage Islam Today (الإسلام اليوم); another study was “An Alternative Product to Fixed-Term Deposits: Reverse *Tawarruq*,” presented to the Islamic Fiqh Academy at Makkah in 1428 AH.

When the Islamic Fiqh Academy at Jeddah requested a paper on *tawarruq* products, I undertook a review and summary of the most important previous studies, in addition

¹ Al-Qur’an, 6:38.

² Al-Qur’an, 16:89.

to other papers related to the topic, organizing them and clarifying what needed clarification.

This paper will look at the topic via four sections, other than this introduction:

- First: the methodology of legislation vis-à-vis *ribā*
- Second: Shari‘ah evidence and legal principles indicating the prohibition of *‘īnah*
- Third: organized *tawarruq*
- Fourth: reverse *tawarruq*

The concluding chapter contains a discussion about alternatives to *‘īnah* and ways to do away with ruses that provide a cover for usury. I ask Allah to make this work sincerely for Him and consistent with the guidance of His Prophet. He is Benevolent and Generous.

(1) The Methodology of Legalization Vis-a-Vis *Ribā*

It is confirmed that the Prophet (may the peace and blessing of Allah be upon him) cursed the person who consumes *ribā*, the one who pays it, the scribe who writes the contract, and those who witness it, and he said: “They are the same.” He also said, “The taker and the giver are the same in *ribā*.”¹

The Prophet (may the peace and blessing of Allah be upon him) explained that *ribā* requires two parties: a taker and a giver, the one who consumes it and the one who authorizes it. The first party is the creditor and second party is the debtor. Usually, the creditor has more power than the debtor, for the debtor borrows due to a need, which is why he will pay to borrow. Despite that, the Prophet (may the peace and blessing of Allah be upon him) did not differentiate between the two. The fact that the borrower is in need does not mean that he is excused for borrowing by *ribā*; rather, he and the usurious creditor are the same in deserving the threat mentioned in the *ḥadīth*. That is because the borrower is the one who permits this injustice and encourages the creditor to establish dominance over him. A Muslim is not permitted to let another person treat him unjustly, for to do so is to help the wrongdoer to do wrong.

¹ Reported by Muslim and Aḥmad; see *Ṣaḥīḥ al-Jāmi‘*, nos. 2751 and 5090.

When the Sharī‘ah prohibited *ribā*, it did not prohibit it on the usurious lender only; rather, it has prohibited it on both parties: the creditor and the debtor, for *ribā* is the result of their mutual consent. That is the reason why the Prophet (may the peace and blessing of Allah be upon him) said the taker and the giver are the same. This means that, as it is not allowed for the usurious lender to strive to earn by *ribā*, so it is not allowed for the debtor to seek a usurious loan. It is compulsory for each of them to avoid it on his part.

Because of this, the Sharī‘ah closed all the ways to *ribā* on both parties. As for the one seeking a gain by *ribā*, the Prophet (may the peace and blessing of Allah be upon him) prohibited him from taking a profit without assuming responsibility for any loss; from selling a commodity before taking possession of it; from selling what one does not possess; and the sale of credit with credit, for all these transactions lead to *ribā* from the side of the creditor.

As for taking a profit without assuming responsibility for any loss, its prohibition is stipulated in a *ḥadīth* from the Prophet (may the peace and blessing of Allah be upon him),¹ and it is a matter agreed upon among the leading scholars in general. The wisdom for prohibiting that was mentioned by ‘Abd al-Raḥmān ibn Abī Laylā in response to a request put to him by Imām Mujāhid: “Tell me something that will give me a comprehensive understanding of all the issues related to *ribā*.” Ibn Abī Laylā said, “Do not consume the slightest bit of that for which you bear no responsibility [of loss].”² Whoever buys a commodity for one hundred—as an example—then sells it for one hundred and twenty without ever being responsible for the commodity, he has paid one hundred and received one hundred and twenty for a commodity without having assumed any responsibility for the commodity or for any risk associated with it. The result is similar to what the *ribā* practitioner does in lending one hundred and receiving one hundred and twenty. This prohibition is, then, to close the door of *ribā* from the side of the creditor.

¹ Reported by Aḥmad, Abū Dāwūd, al-Tirmidhī, al-Nasā’ī, and Ibn Mājah; see *Ṣaḥīḥ al-Jāmi‘*, no. 7644.

² *Muṣannaḥ ‘Abd al-Razzāq*, 7:525; *Muṣannaḥ Ibn Abī Shaybah*, 5:238.

A related issue is the prohibition of selling a commodity before taking possession of it. When Ibn ‘Abbās was asked about the wisdom of its prohibition, he said, “That is paying *dirhams* for *dirhams* and for food on credit.” In one report he said, “Have you not seen them conducting transactions for gold and food on credit?”¹ Lack of legal possession turns the transaction into an exchange of cash for cash, so it becomes *ribā* with regard to the transaction’s consequence and inner reality.

This is the reason the majority of jurists prohibited substitution of a staple food in lieu of the cash payment in a sale of staple food. Whoever possesses a commodity subject to the rules of *ribā* in barter² and then sells it on credit should not accept, in lieu of cash before the payment is received, payment in the form of a commodity subject to the rules of *ribā* in barter; i.e., something which it would not be lawful to exchange for his commodity on a deferred-payment basis. “It is as if one has sold wheat or barley for an unequal amount of wheat or barley on a delayed-payment basis, which is not allowed by the consensus of all the Muslims.”³ A group of scholars consider the prohibition to apply even if the sale is not by the buyer [i.e., by the entry of a third party into the transaction, paying on behalf of the buyer, for instance].⁴ They took that stance in consideration of the result of the two transactions, which is the exchange of one commodity subject to the rules of *ribā* in barter for another, which is why they prohibited it. Shaykh al-Islam [Ibn Taymiyyah] permitted it on the condition that the value of the payment be set at the price of the commodity on the day of payment, so that no profit is taken without assuming responsibility. This is in accord with the *ḥadīth* of Ibn Umar (may Allah be pleased with him and his father), who reported that the Prophet (may the peace and blessing of Allah be upon him) said, “There is no problem to take a commodity at its price that day, as long as the two of you have not separated with something [unsettled] between you.”⁵

¹ *Ṣaḥīḥ Muslim*.

² Allah’s Messenger peace be upon him forbade the sale of gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, except like for like and equal for equal. *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*, no. 3852 and 3853. In one narration: “Payment is to be made hand-to-hand, but if these classes differ, then sell as you wish, if payment is made on the spot.” *Ṣaḥīḥ Muslim*, trans. Siddiqi, no. 3853.

³ *Majmū‘ al-Fatāwā*, 29:449. The Seven Jurists of Madīnah among the Tābi‘īn all prohibited it; but Abū Ḥanīfah and al-Shāfi‘ī allowed it.

⁴ *Al-Mawsū‘ah al-Fiqhiyyah*, 22:131; this is the viewpoint of Shaykh ‘Uthaymīn. See Rāshid Āl Ḥafīz, “Sale of a Debt for a Debt,” pp.12 and 21.

⁵ Reported by Aḥmad, Abū Dāwūd and al-Nasā‘ī.

Related issues are the prohibition of selling what the seller does not possess, and transacting a sale of credit with credit. These prevent *ribā* from the side of the creditor. Contemporary scholars have thoroughly comprehended that in their investigation of the rules pertaining to *murābahah* for one who orders a purchase. [This is reflected in their stipulations] that the bank must possess the commodity and be responsible for it before it can be sold on credit to the client. If it is sold before that, it will mean either that the bank is selling what it does not possess or executing a sale on credit for credit, if the customer enters into the obligation to pay solely on the basis of stipulated specifications. These rulings have, with precision, closed the door to *ribā* from the side of creditor. That does not preclude the existence of other objectives behind these prohibitions, for the wisdom of Allah is too vast to be encompassed by any creature. However, the effect of these prohibitions in closing the door to *ribā* is very obvious, and the aim of the Lawgiver in that is very clear for one who contemplates it.

Ribā from the Debtor's Side

Since the Prophet (may the peace and blessing of Allah be upon him) condemned and warned both the receiver and giver of *ribā* equally, it is not possible that he would differentiate between them in legislation and rulings, closing the door upon the taker and leaving it open for the giver. The wisdom of legislation and the perfection of the Sharī'ah preclude that.

If the Sharī'ah has thoroughly sealed the door of *ribā* from the creditor's side, there is greater reason for it to close the door from the debtor's side. That is because the fundamental reason for which *ribā* was prohibited was that it subjects the debtor to injustice. As Allah said, "Wrong not, and you will not be wronged."¹ If the creditor is prohibited from doing injustice to the debtor, it is more fitting that the debtor be prohibited from seeking injustice to be done to himself. If the creditor is prohibited from taking an increase, it is more fitting that the debtor be prohibited from giving it. If one of them is more deserving of severity, it should be the debtor.

¹ Al-Qur'an, 2:279.

If it is disallowed for the creditor to take an increase in an exchange, even if it is from a third party, as in taking profit when one has taken no responsibility for loss or selling something before taking receipt, it would also be disliked for the debtor to give the increase on an exchange, even if it is to the third party. The Sharī‘ah treats the giver and the taker equally with regard to the prohibition. Whoever would try to make a distinction between them has gone against the text [of the *ḥadīth*] and departed from the outlook of the Sharī‘ah.

Actually, the closing of the door of *ribā* from the debtor’s side occurs in the Sharī‘ah in two ways: specific and generic. The specific way is by the prohibition of *‘īnah*, and the generic way is by the principles of the Sharī‘ah related to the preservation of property, which will be treated in the next chapter.

Establishing the Concept of *‘īnah*

It is established in a *ḥadīth* that the Prophet (may the peace and blessing of Allah be upon him) said, “When you transact sales by *‘īnah* [in one version: on the basis of *al-‘ayn*], take hold of the tails of cows, become content with cultivating crops, and abandon striving in the cause of Allah, Allah will impose humiliation upon you, and He will not remove it until you return to your religion.”¹

The Linguistic Meaning of *‘īnah*

Ibn Fāris said, “A related term is *‘ayn*, which is property present and at hand. It is said [something is] *‘ayn* not *dayn*, that is: property at hand, seen by the eye [*‘ayn*].” Then he reported Khalīl [ibn Aḥmad] to have said, “*‘īnah* is a loan; it is said someone *ta‘yyana* from another, or that he *‘ayyanahu*; that is, he is involved in *‘īnah* or *‘aynah* with him.” Ibn Fāris said, “*‘īnah* is used for a loan because it is a means for getting ready cash.”²

Ibn al-Qayyim said, “*‘īnah* is on the linguistic pattern of *fi‘lah*, and is derived from *‘ayn*, which is cash.” He quoted al-Jawzajānī as saying, “I think *‘īnah* is derived from someone’s need for gold or silver; he buys a commodity and sells it to get the cash

¹ Reported by Aḥmad, Abū Dāwūd and others. Shaykh al-Islām classified it as strong in *al-Fatāwā*, 29:30, as did Ibn al-Qayyim in *Tahdhīb as-Sunan*, 5:104; and Aḥmad Shākir authenticated it in *Musnad Aḥmad*, nos. 4825 and 5007, as did al-Albānī in *Majmū‘ al-Silsilah al-Ṣaḥīḥah*, no. 11.

² *Mu‘jam Maqāyīs al-Lughah ‘ayn-yā-nūn*.

(*‘ayn*) that he needs without having any need for the commodity.”¹ Ibn Ruslān said, “This transaction is called *‘īnah* because the *‘īnah* dealer uses it to get cash; and *‘ayn* is ready, available wealth. The buyer buys a commodity to sell it for cash which he can attain quickly to achieve his [actual] aim.”²

According to *al-Miṣbāḥ al-Munīr*, “This sale is termed *‘īnah* because the buyer of the commodity on credit takes cash in exchange for it.”³

It is clear from these texts that *‘īnah* is described as a loan with the focus on the borrower’s side, not the lender’s side. The statement of the Prophet (may the peace and blessing of Allah be upon him), “When you transact sales by *‘īnah*,” is evidence that the objective is to get a loan through a sale. However, sales usually yield a profit, whereas the result here is that the debtor ends up with cash in hand in exchange for an obligation to pay a greater amount of cash at a later date, which is the same result as *ribā*. That is why Khalīl said that the term *‘īnah* is derived from the *‘ayn* of a scale, which is its increase. Ibn Fāris said, “What Khalīl mentioned is true because *‘īnah* must result in an increase.”⁴

The Juristic Meaning of *‘īnah*

It is clear from what has been mentioned that *‘īnah* is not restricted to simple two-way (binary) transactions in which the commodity returns to the seller. It encompasses all formats by which the debtor acquires ready cash in exchange for an obligation to pay a larger amount later by buying a commodity for which he has no need on credit and then selling it for cash. This is the meaning Ibn Taymiyyah pinpointed when he said, “Whenever the seeker [of cash] says, ‘I want *dirhams*,’ any means he uses to get them that incurs an obligation upon him to pay *dirhams* at a later date is an invalid transaction that is truly *ribā*.”⁵ He also said, “Whenever the aim of the dealer is [an exchange of] *dirhams* for *dirhams* on credit—all deeds are based on intentions, and every person will have the reward of what he intends.”⁶

¹ *Tahdhīb as-Sunan*, 5:108.

² *Nayl al-Awtār*, 5:234.

³ In the definition of *‘ayn*; it was relied upon by Ibn Muflīḥ in *al-Mubdi‘*, 4:49, and other latter-day Ḥanbalīs, as well as Ibn ‘Ābidīn in *al-Ḥāshiyah*, 5:325.

⁴ *Mu‘jam Maqāyīs al-Lughah*, (*‘ayn-yā-nūn*).

⁵ *Jāmi‘ al-Masāil*, 1:223- 224.

⁶ *Majmū‘ al-Fatāwā*, 29:432.

This meaning includes *tawarruq*, which is to get cash by buying a commodity on credit then reselling it for cash to another party, not the (first) seller. The majority of the scholars include *tawarruq* within the category of *‘īnah* transactions, as is mentioned in *The Juristic Encyclopedia (al-Mawsū‘ah al-Fiqhiyyah)*.¹ It is also the indication of the following texts of the *fiqh madhhabs* that prohibit *‘īnah* sales.²

The Ḥanafī School of Thought

Al-Nasafī (537 AH), in *Ṭalabat al-Ṭalabah*, mentioned the various explanations for the meaning of *‘īnah*:

Some say it is to buy what one has sold for less than the price for which one sold it, before receiving the payment. Some say, correctly, that it is to buy, for example, cloth worth eight *dirhams* from someone for ten *dirhams*, with payment to be made after one month; then to sell it to a person for a cash payment of eight *dirhams*. So the [buyer/seller] gets eight, and he is indebted to pay ten *dirhams*. It is called that because it is used to get cash for a debt.³

His statement, “then to sell it to a person,” clearly encompasses more than just the first person. The first format that he mentioned is binary *‘īnah* because buying a commodity for less than one sold it causes the commodity to return to the seller.

Al-Zayla‘ī (743) said, regarding the *‘īnah* sale:

Its format is that someone goes to a trader seeking from him a loan; the trader would like a profit, but he fears *ribā*; therefore, the trader sells him cloth worth ten, for example, at a price of fifteen on deferred payment, for him to sell in the market for a price of ten; so [the seeker of liquidity] gets ten, and he owes the seller fifteen at a later date.

Then he mentioned the detestability and condemnation of *‘īnah*.⁴

His mention of its detestability is taken from al-Marghīnānī, who said, “It is *makrūh* because it involves avoidance of magnanimity in lending due to blameworthy stinginess.”¹ Al-Sarkhasī had also mentioned that previously.²

¹ *Al-Mawsū‘ah al-Fiqhiyyah*, “Tawarruq”.

² Al-Shāfi‘ī did not invalidate *‘īnah*. The strongest view is that the *ḥadīth* of Ibn ‘Umar did not reach him. Al-Shāfi‘ī’s opinion will be mentioned in the following section.

³ *Ṭalabat al-Ṭalabah*, p. 242

⁴ *Tabyīn al-Ḥaqā‘iq, Sharḥ Kanz al-Daqā‘iq*, 4:163, c.f. al-Karlānī, *al-Kifāyah Sharḥ al-Hidāyah*, on the margins of *Faṭḥ al-Qadīr*, 6:323.

It seems that the understanding of *‘īnah* underwent a change among latter-day Ḥanafī scholars. Kamāl ibn al-Hammām (861) mentioned that the format of disliked *‘īnah* is what is called ‘tripartite *‘īnah*’, which is when the buyer sells the commodity to a third party, who then returns it to the first seller. After mentioning other formats of *‘īnah*, not including *tawarruq*, he said:

What lodges in my heart regarding the format in which the seller sells something, part or all of which will return to him—like the return of a garment or silk in the first example—is that it is detestable. If not, then it is allowed; it merely falls short of the most exemplary conduct in certain possible cases; for instance, when the debtor is in need and the one he asks refuses to give him a loan, selling to him, instead, something worth ten at a price of fifteen on deferred payment, which makes the debtor to buy and sell in the market for a cash payment of ten. There is nothing wrong in this, for the deferral is offset by a portion of the [final] price. He is not obliged to give a loan on all occasions; it is something praiseworthy...and as long as the property he sold does not return to him, it cannot be called an *‘īnah* sale.³

When Ibn ‘Ābidīn (1252 AH) explained the meaning of *‘īnah*, he said, “It is when the merchant sells a garment worth ten, for example, for fifteen on credit, and [the buyer] then sells it in the market for ten in cash.” This is a format of *tawarruq*. Then he said, “Among its formats is when the garment returns to him.” He differentiated between the two formats, but he classified both of them as part of *‘īnah*. Then he said, “It is *makrūh*, that is, according to Muḥammad [ibn al-Ḥasan], as was asserted in *al-Hidāyah*.” Ibn ‘Ābidīn reported the previously mentioned statement of Kamāl and then added, “[The authors of] *al-Baḥr* and *al-Sharnablāliyyah* agreed with him...and this is obvious.”⁴

Thus you can see that the scholars of the *madhhab* before Kamāl ibn al-Hammām considered *tawarruq* among the formats of *‘īnah*. In fact, al-Nasafī considered it to be its correct meaning. They also explicitly declared it to be *makrūh*. Then Ibn al-Hammām excluded *tawarruq* from the concept of *‘īnah* and denied that it is *makrūh*, ruling that it, at the very worst, merely falls short of the most commendable conduct. He was followed by those who came after him like the authors of *al-Baḥr al-Rā’iq*

¹ Al-Marghīnānī, *al-Hidāyah*, 3:94.

² Al-Sarkhasī, *al-Mabsūṭ*, 14:36.

³ *Fatḥ al-Qadīr*, 6:224.

⁴ *Radd al-Muḥtār*, 5:325-326; see also: 5:275.

and *al-Sharnablāliyyah*. Ibn ‘Ābidīn’s statement seems to reflect a certain amount of indecision, as he reported the disagreement of the scholars of the *madhhab* regarding the meaning of ‘*īnah*, mentioning *tawarruq* as one explanation and then tripartite ‘*īnah*, without giving preference to one view over the other. In another place he classified *tawarruq* as among the formats of ‘*īnah*. Then when he quoted the statement of Ibn al-Hammām, he affirmed it by saying, “This is obvious.”

This indicates that jurists’ stances regarding the concept of ‘*īnah* developed over time, until the established meaning among latter-day scholars became that ‘*īnah* is a transaction in which the commodity returns to the seller, while *tawarruq* is a transaction in which that does not occur. This is explanation of a text according to a meaning it took on in latter-day terminology, a mistake that is frequently repeated in jurisprudential issues.¹ It also indicates the tendency toward formalism in Islamic jurisprudence of later eras. This is similar to a shift over time in the Ḥanafī *madhhab* regarding *bay‘ al-wafā’* (fulfillment sales), which were prohibited by early scholars because they considered them a ruse to provide legal cover for *ribā*, while latter-day scholars eased the restrictions upon them on the basis of need.²

The Mālikī School of Thought

The format of *tawarruq* is mentioned in *Mukhtaṣar Khalīl* as one of the types of ‘*īnah*. He said about it, “It is disliked to say, ‘Take, for one hundred, this for eighty.’” The commentators said, “If someone goes to another and says to him, ‘Lend me eighty; I will return a hundred to you,’ and he says to him, ‘This is not lawful, but I will sell you a commodity that costs eighty for a hundred;’ This is part of the ‘*īnah* that is disliked.”³

However, the early scholars among the Mālikīs were more cautious about this issue, and they mentioned forms of *tawarruq* which they stipulated are not allowed. In *al-Nawādir wa al-Ziyādāt*:

Mālik said, “If someone known for engaging in ‘*īnah* sells [someone] a case of oil for twenty, on the condition that he pay ten in cash and the

¹ See Ibn Qayyim al-Jawziyyah. *I‘lām al-muwaqqi‘īn ‘an Rabb al-‘Ālamīn*, 2:168-169.

² *Al-Mawsū‘ah al-Fiqhiyyah*, “Bay’”; See *I‘lām al-muwaqqi‘īn*, 2:75.

³ *Sharḥ al-Kharshī*, 5:106; al-Dardīr, *al-Sharḥ al-Kabir ma‘ Ḥāshiyat al-Dasūqī*, 3:89.

other ten at a later date, **there is no good in it if its buyer intends to sell it.**” *Al-Utbiyyah* reported a narration on the authority of Ibn al-Qāsim from Mālik: “Likewise, when he stipulates that he will pay one *dīnār* of the price in cash, it is *makrūh*.” *Al-Wāḍiḥah* quoted Mālik as saying, “This is with regard to what he buys in order to sell out of need for its price. Whoever buys a garment because he needs to wear it or an animal in order to ride it or a bondsman to serve him, there is no problem with any of those.” He said in *Kitāb al-Mawāz*: “If he intends to eat the commodity or wear it, there is no problem with that.” Ibn al-Qāsim said, “Also, there is no good in selling commercial items or animals for a cash payment of part of their price. Mālik said it about those who deal with *‘īnah*. There is no problem if it is done by other people.”¹

These quotations clearly state that it is not a condition of *‘īnah* that the commodity be returned to the seller and that this prohibition is specifically when the seller is known to deal with *‘īnah* and the buyer wants to sell the commodity for cash. However, this format is allowed for whoever wants to benefit from the commodity, not to sell it. This is in agreement with the principle laid down by the Mālikī jurist Ibn Shāsh. After mentioning different types of *‘īnah*, he said:

In summary, these people knew the invalidity of a loan that entails an added benefit and the *gharar* (uncertainty) and *ribā* that attend it, so they used a ruse to make it seem lawful by bringing in a commodity to give it the appearance of legality while their aim was to achieve what is *ḥarām* (prohibited). We have already mentioned that our principle is to prevent the means [to the unlawful] and to approach with skepticism all those engaged in transactions whenever their [evil] intent becomes apparent or [even if it is] hidden but it is possible that the transacting parties do intend [evil].²

The Ḥanbalī School of Thought

Imām Aḥmad ibn Ḥanbal was perhaps one of the strictest of the *imāms* in rejecting *‘īnah*. He said about its meaning, “*‘īnah*, according to us, is when someone has a commodity which he only sells on credit. If he sells it by cash as well as on credit, there is no problem.” In one report he was asked about the nature of *‘īnah*? He said, “It is selling on credit.” He added, “If he sells by cash and on credit, there is no problem, but I dislike for someone to sell only on credit.” He was asked about a man

¹ *Al-Nawādir wa al-Ziyādāt*, 6:92. See also: Ibn Rusḥd, *al-Muqaaddimāt wa al-mummaḥhidāt*, 2:42; and *Minaḥ al-Jalīl*, 5:104. For more about these formats and their explanations, see: “Al-Tawarruq and Organized Tawarruq,” by the author.

² *‘Aqd al-Jawāhir al-Thamīnah*, 2:453.

who prepares something to sell on credit for a deferred payment. He replied, “If he prepares it to be sold on credit and not for cash, I dislike it, as that is *‘īnah*.”¹

Thus his view was that the cause of *‘īnah* is someone who sells for deferred payment. Whoever does so exclusively will be sought out by those who want cash, whether the source of cash is the seller or someone else. For that reason Abū Dāwūd asked him, “Can it be called *‘īnah* even if the commodity does not return to him?” He answered yes.² This clearly indicates that *‘īnah* has a general meaning, according to Imām Aḥmad; and that is consistent with the sayings of the scholars and the linguists that were previously mentioned.

Summary

It is clear from what has been mentioned that *‘īnah*, linguistically and in *fiqh* terminology, is not limited to two-party *‘īnah*; rather, it is general for all the formats which result in *ribā* becoming due upon the debtor by the exchange of cash against a stipulated increased payment due at a later date, whether or not the commodity returns to the seller. This encompasses binary *‘īnah*, tripartite *‘īnah*, *tawarruq*, reverse *tawarruq*, the sale of fulfillment (*bay‘ al-wafā’*), an opportunistic sale (*bay‘ al-istighlāl*), and all the other formats that can be derived from it.

All these features end in the same result: cash in the hand of the debtor against a larger amount to be paid later. This is the reality of *‘īnah*. That is why the *ḥadīth* prohibiting *‘īnah* is an example of vast meaning compressed into a few words and, as such, is an example of prophetic inimitability, for he gathered all those various countless formats in a single word that summarizes the aim of the transaction and identifies the effective factor associated with the rule. Moreover, it manifests the comprehensiveness of the Sharī‘ah by tightly closing the doors of *ribā* from the debtor’s side, just as it has closed them tightly from the creditor’s side. The word of Allah is true when He says: **“He does not speak from his whims; it is nothing less than a revelation sent to him.”** (Sūrah al-Najm, 3-4).

¹ See: Ishāq ibn Maṣūūr, *Masāil al-Imām Aḥmad*, no. 28; the *Masāil* collected by his son Ṣāliḥ, no. 664, *Badā’i‘ al-Fawā’id*, 4:11, *Tahdhīb as-Sunan*, 5:109.

² *Masāil al-Imām Aḥmad*, no. 1257; it was mentioned in *Tahdhīb as-Sunan*, 5:108.

(2) Fundamentals and Principles of the Sharī‘ah that Prohibit *‘Īnah*

Evidence for the prohibition of *‘Īnah* is not limited to the *ḥadīth* that condemns it; it is also indicated by Sharī‘ah principles and fundamentals derived from a multitude of relevant texts and rulings:

Protection of Wealth

Firstly, the scholars agree that one of the aims of the Sharī‘ah is to protect property and prevent it from being squandered. As the *ḥadīth* says, “Allah is pleased when you do three things and displeased when you do three things. He is pleased when you worship Him without associating any partner with Him, when you all hold firmly to the rope of Allah, and when you have an active attitude of sincere concern for those whom Allah has made your leaders. He dislikes that you engage in hearsay, waste wealth, and ask many (unnecessary) questions.”¹ In fact, al-Shāṭibī counted this principle as one of the general principles agreed upon by all religions and one known to virtually every Muslim.²

In all forms of *‘Īnah*, without exception, the aim of the debtor is to buy the commodity at a higher price than the price at which he will sell it for cash, which means he will end up taking less cash than he will end up owing. This aim contradicts the aim of the Sharī‘ah that it is necessary to preserve wealth. No sane person would aim to buy at a high price and sell at a lower price; that would be a waste of money. The debtor tries to sell at a loss, which is prohibited according to innumerable texts, and that is a matter that the *‘ulamā’* agree is prohibited.

This makes the difference clear between a merchant and a practitioner of *‘Īnah*; the former’s aim is to make a profit, while the latter’s aim is a loss, which makes it impossible to claim that one is like the other. This does not mean that a merchant may not sell at a loss occasionally, if the price changes or the market shifts after he buys a commodity. The practitioner of *‘Īnah* may also occasionally sell at a profit; however, neither party has the aim of the other. The merchant’s aim is to earn a profit and increase his capital, and this is a permissible aim, as long as it is done by lawful

¹ Reported by Mālik in *al-Muwaṭṭa’* 1:990; c.f. *Musnad Aḥmad* and *Ṣaḥīḥ Muslim*. *Ṣaḥīḥ al-Jāmi’*, no. 1895.

² Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 1:31.

means, such that he possesses the commodity and is responsible for it before selling it. As for selling at a loss, it is an aim contrary to the aim of the Sharī‘ah, whether or not the *‘inah* practitioner assumes responsibility for the commodity.

That is why there is a specific prohibition of earning a profit without assuming responsibility for loss. A deposit cannot be sought initially, whether one guarantees it or not. As for profit and capital development, they are lawful aims in themselves; they just have to be pursued according to Allah’s legislation. If the enterprise is such, the profits are lawful; if not, they enter into the prohibited *ribā*.

The Principle of Subordination

The Sharī‘ah has acknowledged time-value in sales but denied it in loans. This indicates that the term can be given consideration pursuant to a sale but not independently of it; and something may be considered lawful as an auxiliary when it cannot be considered lawful independently. This makes it clear that financing (a loan) must be an auxiliary to exchanges or transactions, while the opposite is not so. All transactions of *‘inah* involve the exchange of a commodity that is not intended for its own sake in order to attain cash in exchange for a sum greater than it, which remains a debt until it is paid. In other words, the result is the same as a loan with an increase, as was previously explained in the meaning of *‘inah*. The exchange has now become a means, while the financing has become the goal. This is contrary to the aims of the Sharī‘ah and to economic logic.

That is because sales have been legalized for the benefit of the two parties; the buyer benefits from the commodity either by consumption or investment, and the seller benefits by the profit. This benefit is what is referred to in the *ḥadīth* of the Prophet (may the peace and blessing of Allah be upon him): “The best a man can earn is from the labor of his hand and from every blessed sale.”¹ The blessed sale is one with great good, i.e., the benefit that both parties achieve from the exchange. This is the added value of exchange that is mentioned by economists.²

¹ *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*.

² The goodness in the *ḥadīth* is not the reward of the hereafter, as the *ḥadīth* explains the good earning of a man; that is, the best in the sight of Allah, which will also be a reward for him on the Day of Judgment. The answer explains that the best earning to Allah is the most plentiful for the two parties. The reward of the hereafter follows the worldly reward. If the goodness in the *ḥadīth* were the reward

In summary, the benefit of the sale or the added value of exchange is what justifies the increase in price as an offset to the delayed payment. This benefit is not found in a loan, so the increase remains without an offset, which makes it clear oppression of the debtor. The wisdom of the Sharī‘ah in prohibiting this increment becomes manifest when considering its inseparable attributes and effects. Permitting it leads to an increase of indebtedness without any attendant increase in real wealth. This leads to an ongoing expansion of indebtedness that paralyzes economic activity and exhausts wealth, as will be further explained later.

If this is affirmed, the increase in price for a deferred payment has only been legalized due to the presence of something which justifies it, which is the benefit of the commodity and the value added by exchange. In all forms of *‘īnah*, without exception, the commodity provides no benefit at all to the debtor, and the exchange does not secure any added value; it is only a means for getting a loan. If the benefit of exchange is nullified, there will be no legal justification for the increase in price corresponding to the deferred payment. This invalidates the increase legally, which is why the Prophet (may the peace and blessing of Allah be upon him) said, “Whoever contracts two sales in a single sale, he has a right [only] to the lesser price; otherwise, it is *ribā*.”¹ This text clearly invalidates the increase in an *‘īnah* sale. The increase in this case has become *ribā*, which makes it legally invalid.

This meaning differentiates Islamic finance from *ribā*-based finance. Financing is essentially intended to facilitate exchanges and to serve real productive activity; the return on financing becomes deserved when it is a cause of wealth creation. However, *‘īnah* inverts the relationship between financing and exchange, for exchange becomes a means and financing becomes the goal, and the sale becomes ancillary instead of primary. When the situation is turned upside-down, there will be no economic justification for the return on financing, and there will be no difference between *ribā* and the increase against the deferred payment.

of the hereafter, the *ḥadīth* would not mean anything; it would, rather, explain something in terms of itself, and this does not befit the words of the Prophet peace be upon him.

¹ Reported by Aḥmad, Abū Dāwūd, and al-Nasā’ī and authenticated by al-Tirmidhī and Ibn Ḥibbān. *Ṣaḥīḥ al-Jāmi‘*, no. 6116.

The Pyramid of Indebtedness

Any *ribā* transaction multiplies indebtedness; this is the reason made manifest by the Qur'an in the first verse revealed regarding the prohibition of *ribā*: "O you who believe, do not consume *ribā*, doubled and redoubled. Be mindful of Allah so that you may prosper" (Āl 'Imrān: 130). The natural result of *ribā* is that the amount of debt will become several times greater than the total wealth of the economy, and servicing those debts will become a continual drain on economic vigor that will lead to economic disasters: either to collapse or bankruptcy—while creditors gain mastery over the wealth of debtors without any return, which makes it one of the most repulsive forms of unlawfully consuming the wealth of others.

As for Islamic economics, the profit from financing is limited to activities that generate wealth (the various forms of sales), due to the previously explained stipulation that financing is an auxiliary of exchange. Therefore, the proportion of debts to the real wealth in an Islamic economy is limited, and it is not possible for debts to become a multiple of the real wealth. In most cases they are less than it, or in the worst case, they will not exceed the wealth by more than the markup included in the deferred payment. But, in *ribā*-based economics, the proportion is not regulated by any limitation, which leads to what is called an inverted pyramid. That is because real wealth is the base for indebtedness, and in a natural situation the base should be wider than the pinnacle, so wealth should exceed debts. However, in *ribā*-based economies the base of the pyramid is far smaller than the debts based upon it, so it takes the form of an inverted pyramid.

ʿInah with its different formats allows the development of indebtedness without any added value, as previously mentioned, which leads to the appearance of the inverted pyramid. One commodity can be used to get cash hundreds of thousands of times, as is the situation with organized *tawarruq* and other forms of *ʿinah*. The customer buys the commodity on advanced payment, then resells it for cash (to the seller or someone else), and then another customer can buy the same commodity to resell it for cash, and so on. One single commodity generates debts in the society worth many times its value. This inescapably leads to disruption of the proportion of indebtedness to wealth and thereupon to the inverted pyramid that is a distinguishing characteristic of *ribā*-based economies. The economic effect of *ʿinah* does not differ from the economic

effect of *ribā*; in fact, it may be worse, if the procedural expenses of exchanging a commodity that fails to realize any added value are considered.

Benefits Recognized by the Sharī‘ah

The scholars of *maqāṣid* categorize the types of benefits acknowledged by the Sharī‘ah into three types: namely, essentials (*ḍarūrāt*), needs (*ḥājāt*) and embellishments (*taḥsīniyyāt*). If the commodity is an essential (*ḍarūrah*), buying it is obligatory, if the buyer has the ability to do so. If the commodity fulfils a need (*ḥājah*) it is legally desirable in proportion to the extent of the need for it. If it secures a benefit on the level of embellishment, it is allowed in general. But, if the commodity does not fulfill any benefit, neither a pressing necessity, a need, nor an embellishment, buying it in this case is waste and extravagancy, which are forbidden in the Sharī‘ah.

If extravagancy is prohibited when a person buys a commodity of little benefit with his money, how can an individual borrow from another to buy a commodity which has no benefit at all? Taking a loan is basically *makrūh* except for a real legal need,¹ so when waste is combined with debt the prohibition is applicable without any doubt. In all formats of *‘īnah*, the person borrows to buy a commodity that will not secure him any benefit or usefulness, which is contrary to the Sharī‘ah objectives of prohibiting waste and severely discouraging the seeking of loans. It is not strange then that the Prophet (may the peace and blessing of Allah be upon him) prohibited it.

Clarity

Clarity in financial dealings is one of the objectives of the Sharī‘ah, as was clearly stated by Tāhir ibn ‘Āshūr (may Allah have mercy upon him).² The basis for that is the *ḥadīth* of the Prophet (may the peace and blessing of Allah be upon him): “The two parties have the choice [to annul] as they long as they have not separated. If they are truthful and make all matters clear, there will be blessing in their sale; but if they lie and conceal, the blessing will be deleted from their contract.”³

¹ See “The Stance of the Islamic Sharī‘ah Regarding Debts,” by the author.

² *Maqāṣid al-Sharī‘ah*, ed. Ḥabīb Balkhojah, p. 483.

³ *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*.

The effect of this objective is clear in the scholars' position on *'inah* and other ruses that provide a cover for *ribā*. An example that makes that clear is the position of Imām al-Shāfi'ī (may Allah have mercy upon him). He does not render the contract of (binary) *'inah* invalid.¹ Despite that, he said:

The basis for my position is that if a contract fulfills the Sharī'ah's manifest criteria for validity I will not invalidate it on the basis of a presumption or a customary practice between sellers and buyers. I approve it by virtue of its apparent validity, **but I detest that the two of them should have an intention which, if it were made manifest, would spoil the transaction.**²

Imām al-Shāfi'ī (may Allah have mercy upon him), who declares the contract of *'inah* to be valid, invalidates it if the [evil] intention of the contracting parties becomes apparent and they stipulate it in their contract. Other scholars who disallow binary *'inah* from the get-go would have greater reason to prohibit this manifestation. So, if *'inah* is practiced publicly and with the intention of the contractors [made clear], it is invalid, according to the majority. This is what makes those who practice *'inah* resort to a lack of transparency in their dealings. This is done by separating the contracts from one another and avoiding mention of the objectives for them in them, even though these sales are incomplete without being coupled, and even though the objective is known by all parties, that is: cash on the spot for a deferred payment with an increase. *'Inah* thus contradicts the aim of the Sharī'ah to promote clarity, explanation and transparency. Concealment and lack of clarity lead to the loss of blessing, as the Prophet (may the peace and blessing of Allah be upon him) said. This indicates the dilemma faced by *ribā* ruses, which are between two fires: either concealment or invalidation. *'Inah* does not provide a healthy environment for financial transactions, and it cannot be a basis for the growth of the Islamic finance industry.

Lifting Hardship

The aim of *'inah* for the debtor is to get cash in exchange for a greater amount of money owed, which is the same result as *ribā*. However, *'inah* contains charges, procedures and contracts which do not secure any benefit, as mentioned. Those who allow *'inah* make these procedures prerequisites for allowing the dealing, although

¹ *Al-Umm*, 3:38-39.

² *Al-Umm*, 3:74.

they are devoid of any benefit for the debtor. This shows that the extra expenses are intended for their own sake, not for the benefit of the two parties. This is inconsistent with the principle of the Sharī‘ah that hardship is not intended for its own sake; in fact, the Sharī‘ah affirms the opposite: ease and the lifting of hardship.¹ Shaykh al-Islām said, “The effective cause for the prohibition of *ribā* is found in *‘īnah* along with the increased costs of buying the commodity and selling it at a loss. The Sharī‘ah does not prohibit a lesser harm and then legalize what is more harmful than it.”²

He also said:

Because of that, a person of sound nature will not bother to fulfill those stipulations, due to his recognition that the stipulations are only to fulfill the ruling for which they were stipulated and to prevent something else; whereas he only intended that something else, not what was intended by the stipulations. That is why to openly do what is prohibited is of greater benefit and less harm to them than going through the format of the legal ruse if their intentions had been lawful. Thus it is known that their aim is unlawful. For example, if someone’s aim is to take 1000 in exchange for 1200, taking it on the basis of open *ribā* is of more benefit for him than *ribā*-based transactions, for he takes 1000 and merely assumes the obligation to pay 1200. If he buys from [the lender] a commodity and sells it to a third person, whether or not he returns it to the first person, he usually has to do more work, get more tired, and pay some money out. Some money goes to the broker, and some goes to the third party or for storage [of the commodity] when it is sold. He will not get the full 1000 he intended by the *ribā* transaction as he would have if he had openly agreed to a *ribā* loan, so *ribā* is more beneficial to [such people] than the legal ruse. The Lawmaker is Most Wise and Most Merciful; He does not prohibit the beneficial and allow what is of less benefit. He also does not prohibit something harmful and allow something more harmful than it. If He has prohibited *ribā*, His prohibition for these transactions is more severe. If it is supposed that He allowed them, it would have been more fitting that He legalize open and blatant *ribā*.³

If there are two transactions that are equal in result, aim and goal, and one of them is harder and costlier than the other, allowing the more difficult one logically requires that the less difficult one should also be allowed; and prohibiting the less difficult one logically requires prohibiting the more difficult. To uphold the opposite view conflicts with the whole system of the Sharī‘ah.

¹ See *Majmū‘ al-Fatāwā*, 10:620-622; *Raf‘ al-Ḥaraj fī al-Sharī‘ah al-Islāmiyyah*, Ya‘qūb Bā Ḥusain, pp. 131-140.

² *I‘lām al-Muwaqqi‘īn*, 5:86-87.

³ *Bayān al-Dalīl*, p. 268.

For this reason, allowing the seeker of a loan to initiate *‘īnah* naturally leads to economic activity that results in binary *‘īnah*, which will eventually lead to outright *ribā*. That is because procedures devoid of benefit will come under pressure from competition and considerations of profitability that will lead in the end to *ribā*. Blocking the means (*sadd al-dhari‘ah*) calls for prevention of *ribā* from the loan-seeker’s side, even if, for the sake of argument, we were to accept that it is in-and-of-itself lawful.

Summary

Prohibition of *‘īnah* is consistent with the principles and objectives of the Sharī‘ah. The prohibition is not opposed to analogy; rather, it is congruent with sound analogy, testified to by the texts of the Sharī‘ah and the consensus of the scholars. If it were assumed, for the sake of argument, that the *ḥadīth* prohibiting *‘īnah* is not authentic, the text of the Qur’an and its principles would have been enough to prohibit it. Since the *ḥadīth* is authentic, the completeness of Sharī‘ah and perfection of its wisdom is apparent, for it was sent from the Wise, the Aware.

(3) Organized *Tawarruq*

Organized *tawarruq* is when the seller makes all the arrangements for providing cash for the *mutawarrīq* (the seeker of cash) by selling a commodity to him on delayed payment then reselling it on his behalf for cash, taking the price from the buyer and giving it to the *mutawarrīq*. The difference between (classical) *tawarruq* and organized *tawarruq* is as follows:

1- In organized *tawarruq* the original seller acts as an intermediary by selling the commodity for cash on behalf of the *mutawarrīq*, whereas the original seller in individual *tawarruq* takes absolutely no role in the resale of the commodity and has no relation with the final buyer.

2- In organized *tawarruq* the *mutawarrīq* receives the cash from the seller after becoming a debtor to him by a deferred payment, whereas in individual *tawarruq* the

price is taken by the *mutawarriq* from the last buyer immediately without any intervention from the seller.

3- In organized *tawarruq* the original seller might agree beforehand with the final buyer that he will purchase the commodity. This agreement will occur by the commitment of the final buyer to the purchase so as to avoid fluctuation of the price.

The Emergence of Organized *Tawarruq*

The spread of *tawarruq* in contemporary financial transactions is a natural extension of the development of means and tools which reduce the procedural costs of *tawarruq* and raise the level of profit and the capability to realize benefits for the buyer (*mutawarriq*) and the seller.

This development is exemplified in the seller undertaking to sell the commodity on behalf of the buyer for cash, so that the buyer will not bear the burden of expenses associated with its receipt, storage, transportation and marketing. This is its benefit to the *mutawarriq*; but it also realizes benefit for the seller, as it earns a bigger market share of those interested in securing financing, and it also realizes larger profits.

This development is not strange; it is in line with innate impulses and a result of the natural laws that govern financial and economic activities, i.e., striving to reduce costs in order to increase profits as much as possible. That is, the *mutawarriq* is totally uninterested in the commodity; it is of no benefit to him to take and sell the commodity; all that is an extra burden beyond the financing charges. That is why he accepts any suitable means that will free him from all those other requirements. If the seller is the bank, it too has no interest in the commodity, so it will take the same attitude. This is the nature of economic life. Whoever thinks that matters are different from that knows very little about the norms and motivations that direct economic activity.

A rational person will not take a path which he knows will lead to inescapable annihilation. He will leave that path from the beginning and search for a safe path that will lead to his desired goal. Those who tread the path of *'inah* with its various forms understand that they are proceeding on the path that leads to destruction by *ribā*.

Despite that, they still claim that they will be able to stop completely along the way or just before reaching the brink of the pit.

In reality this is a major delusion, for the path is not level, it slants downward towards the pit, and the incline is gradual so that it cannot be clearly seen at the beginning; but it increases rapidly at the end, making it extremely difficult to get back to level ground and return to the start of the path.

The Scholars' Positions on Organized *Tawarruq*

The scholars [of the past] did not mention the term “organized *tawarruq*” per se, but they mentioned the form itself, and they laid down sufficient criteria and regulatory details that their stance can be known about this type of dealing.

The position of the Mālikī School has been very clear from the beginning in differentiating between those who practice *ʿinah* and others. In a great many situations they prohibit dealing with those who deal with *ʿinah*, while they permit it with others. Some of the clearest examples of that are the formats that were mentioned earlier. We have seen that Imām Mālik and his companions detested someone buying a commodity for which he pays part of the price in cash and defers the payment of the rest. This prohibition, as Ibn Shāsh said, is particularly for those under a cloud of suspicion [due to their known practice]. Ibn Rushd declared that the form is allowed for those who do not practice *ʿinah*, as [previous practice] is considered an indicator of collusion between the two parties to sell the commodity in order to get cash.

This is clear in two matters:

1- Differentiating between those who practice *ʿinah* and those who do not, for those who practice *ʿinah* will be treated differently than other people. This differentiation affirms the distinction made by Mālikī scholars between an organized activity and a spontaneous one. This is clear, for when an activity changes from a spontaneous, individual form to an organized form, it takes on another dimension which was not given consideration before.

2- Taking into consideration any extra relationship between the *mutawarriq* and seller, like when the buyer returns to the seller to relieve him or to pay him some of the price in cash and part of it on credit, in order to facilitate the buyer's getting the cash in both situations. Factors like these are not found in individual *tawarruq*, which does not imply any extra relationship between the seller and the *mutawarriq*. The existence of an extra relationship between the seller and the *mutawarriq* definitely has an effect on the ruling.

If these two matters combine together, i.e., the seller having a track record of dealing with *'īnah* and the existence of an extra relationship between him and the *mutawarriq*, the rule is prohibition, as is clear from the previously quoted texts, as well as the following texts.

The stance of Imām Aḥmad is even clearer regarding his opinion on *'īnah* and its meaning. His opinion has already been mentioned, that he defines it in terms of a person who sells only on credit. He said, “*'Īnah* to us is when a seller has commodities which he does not sell except on credit. If he sells by cash and credit, there is no problem.” In one report he was asked about the nature of *'īnah*? He said, “It is selling on credit.” He added, “If he sells by cash and on credit, there is no problem, but I dislike for someone to sell only on credit.”

His statement is very clear that to specialize in selling on credit is *'īnah*, and that he dislikes it. The dislike here means he considers it *ḥarām* because the reason he gives for disliking it is that it is *'īnah*, and *'īnah* is condemned by the Sharī'ah. It is clear that specialization in selling on deferred payment alters the dealing from spontaneity to a structured specialty, which transfers the ruling from allowance to prohibition.

Further support for that is Imām Aḥmad's absolute prohibition of binary *'īnah*, whether the party to the transaction specializes in selling on credit or not. If that is so, there must be another meaning prohibiting specialization in selling on credit. It has already been mentioned that he classified *tawarruq* as a type of *'īnah*, as Abū Dāwūd reported, and that he compared it with a sale on credit, just as he called specialization in selling on credit *'īnah*. This indicates that the reason for prohibiting specialization in credit sales is to prohibit the alteration of *tawarruq* to a systematic procedure

because it is a strong indicator of collusion between the seller and buyer to exchange cash for cash.

Based on the previous discussion we can harmonize the reports from Imām Aḥmad regarding *tawarruq*. In one report, he said that it is ok, and in another report he said that is *ḥarām*.¹ We can interpret the report of its prohibition as referring to it when done by those with a track record of *ʿīnah*, the same as Imām Mālik’s position. The report of its allowance can be understood to refer to situations other than that, in case of pressing necessity (*ḍarūrah*). The report of dislike can be understood to refer to cases below the level of pressing necessity. This interpretation harmonizes the reports.

Fatwās of the Early Scholars on Organized Tawarruq

The following are texts from the scholars from the era of the Tābiʿīn till the era of the *imāms* of the *madhhabs* on organized *tawarruq*. All of them explicitly declare it to be prohibited and illegal.

(1) Imam Saʿīd ibn al-Musayyib (d. 94 AH) was the most knowledgeable among the Tābiʿīn, especially in matters of transactions.² He delivered legal verdicts in the presence of the Ṣaḥābah. If ʿAbd Allāh ibn ʿUmar was asked about anything unclear to him, he would say, “Ask Saʿīd ibn al-Musayyib, for he has sat at length with the righteous.”³

ʿAbd al-Razzāq and Ibn Abī Shaybah reported from Dāwūd ibn Abī ʿĀṣim al-Thaqafī that his sister said to him: “I want to buy a commodity by *ʿīnah*, so order it for me.” He told her, “I have some grain in my possession.” He related, “I sold the grain to her for a price in gold till a fixed time, and she took possession of it. She then said, ‘Find someone who will buy it from me.’ I told her I would sell it on her behalf, and I did so. Then I had some misgivings about that action which prompted me to consult Saʿīd ibn al-Musayyib. He asked me, “Consider [this]; aren’t you the original owner?” I

¹ *Al-Inṣāf*, 4/337. See: *al-Furūʿ*, 4/171.

² See: Ibn Taymiyyah, *al-Fatāwā al-Kubrā*, 6:614, and *al-Qawāʿid al-Nūrāniyyah*, p. 173.

³ *Ṭabaqāt Ibn Saʿd*, 5:141.

said, 'I am.' He said: '**That is absolutely *ribā*, so take your capital and return the excess back to her.**'"¹ This is the version reported by 'Abd al-Razzāq.

In Ibn Abī Shaybah's version: Dāwūd ibn Abī 'Āṣim reported that he sold something to his sister on credit and that she employed him to help her sell it, which he did. He said, "I asked Sa'īd ibn al-Musayyib, and he said, 'Consider [this]; aren't you him [i.e., the original owner]?' I said, 'I am he.' He said, '**That is *ribā*, do not take anything from it other than your capital.**'"²

This report contains various important indications:

(a) This dealing done by Dāwūd and his sister is organized *tawarruq* because Dāwūd is the one who sold the commodity on credit to his sister, and he then sold it for cash on her behalf to a third party. The indications that the cash sale was to the third party are as follows:

- The explicit wording that she commanded him to sell it; this makes it clear that he acted on her behalf in the sale, not that he was the buyer.
- His statement: "I will sell it for you," means that he would sell it on her behalf, not that he would buy it from her. This usage was well known among the early Arabs. If someone said, "*Abī'uhu laka*," it meant, "I will sell it for your benefit on your behalf."³ If he had been the buyer he would have said, "*Abtā'uhu minka*."
- Her statement, "Help me find someone who will buy it from me," indicates that she started looking for a buyer after having bought it from her brother on credit. If her intent had been that he buy it himself, there would have been no need to search for a buyer.
- 'Abd al-Razzāq and Ibn Abī Shaybah both mentioned this report in chapters other than the chapters on binary *'īnah*.⁴

¹ *Muṣannaf 'Abd al-Razzāq*, 8:294-295.

² *Muṣannaf 'Abd al-Razzāq*, 8:294-295, *Muṣannaf Ibn Abī Shaybah*, 7:275-276; its chain of transmission is authentic. According to 'Abd al-Razzāq he is 'Abd al-Malik Ibn Abī 'Āṣim instead of Dāwūd Ibn Abī 'Āṣim, but Ibn Abī Shaybah determined that the latter is more correct. I thank Shaykh 'Abd Allāh al-Wakīl for reviewing the *isnād* of the *ḥadīth*.

³ See, for example: *al-Mudawwanah*, 4:244-248; and al-Bājī, *al-Muntaqā: Sharḥ al-Muwaṭṭa'*, 5:80.

⁴ 'Abd al-Razzāq mentioned binary *'īnah* in the chapter: "A Man Sells a Commodity and then Decides to Buy it Back," 8:184. Ibn Abī Shaybah mentioned binary *'īnah* in the chapter: "A Man Sells a Commodity for Cash and then Decides to Buy it Back," 6:593. He also mentioned *'īnah* in 6:47 and 573. As for the report of Sa'īd, it is in the chapter: "A man sells a debt to a deferred date."

Therefore, this transaction was an example of organized *tawarruq*, not of binary *ʿinah* in which the commodity returns to the seller.

(b) The *fatwā* of Saʿīd ibn al-Musayyib (may the mercy of Allah be upon him) prohibited this dealing because he considered it *ribā*; he even described it as pure *ribā* and stated that Dāwūd had no right upon his sister beside his capital, i.e., the cash price, and he invalidated the increment above that. The invalidation of the increment is indicated in the previously mentioned *ḥadīth* of the Prophet (may the peace and blessing of Allah be upon him) “Whoever contracts two sales in a single sale, he has a right [only] to the lesser price; otherwise, it is *ribā*.”

(c) His *fatwā* was decisive and clear, which indicates that this dealing was not new to Saʿīd; he had already encountered it and learned its ruling before that. Saʿīd ibn al-Musayyib met a large number of the Ṣaḥābah, he was the son-in-law of Abū Hurayrah, he stayed in Madīnah where so many of the companions of the Prophet (may the peace and blessing of Allah be upon him) lived, and he was the most knowledgeable of people about the verdicts of the Prophet (peace be upon him), Abū Bakr and ʿUmar. It is unlikely that this *fatwā*, expressed by such firm, positive wording, was his personal decision, purely the result of his own *ijtihād*. It is, in fact, more likely that he had a precedent from the verdicts of the companions of the Prophet (may the peace and blessing of Allah be upon him), regarding this issue.

(d) The sister of Dāwūd called her dealing *ʿinah*. She said, “I want to buy a commodity by *ʿinah*,” while her aim was not binary *ʿinah* but, rather *tawarruq*. This indicates that *tawarruq* was called *ʿinah*. This is supported by what Ibn Abī Shaybah reported in the *Muṣannaḥ* from Sulaymān al-Taymī that Iyās ibn Muʿāwiyah considered *tawarruq* to mean *ʿinah*.¹ We will—God willing—see further support for that in the statements of the scholars.

(2) Al-Ḥasan ibn Yasār al-Baṣrī (d. 110 AH) was one of the leaders of the Tābiʿīn in knowledge and practice. He was the leading jurist of Baṣrah and its *muftī*. Abū Qatādah said, “I have not seen anyone more similar to ʿUmar bin al-Khaṭṭāb in his

¹ *Muṣannaḥ Ibn Abī Shaybah*, 6:47.

views than Ḥasan.” Qatādah said, “Whenever I have compared Ḥasan’s knowledge to that of any other scholar I have found Ḥasan to be more knowledgeable than him, except that when something is unclear to him he will write to Sa‘īd ibn al-Musayyib about it.”¹

‘Abd al-Razzāq reported from Abū Ka‘b ‘Abd Rabbih ibn Ubayd al-Azdī, that he asked Ḥasan, “I sell silk, and a woman or a Bedouin may buy from me and say to me, ‘Sell it for us, for you know more about the market.’” Ḥasan said, **“Don’t sell it, and don’t buy it, and don’t direct him, other than directing him to the market.”**

‘Abd al-Razzāq also reported from Ibn Abī Salamah that he asked Ḥasan about selling silk. He said, “You can sell it, but fear Allah.” He asked if he should sell it only for himself. He replied, **“If you sell it, don’t direct anyone to him and don’t get involved in it in any way; give him his commodity and leave him be.”**²

This report contains a number of indications:

(a) His statement: “I sell silk”: the most common practice in those days in order to get cash was to buy silk on credit and then sell it for cash, which is why Ibn ‘Abbās said about *‘īnah*: “It is *dirhams* for *dirhams* with silk in between them.” *‘īnah* is sometimes even called “a sale of silk.”³ Further evidence of that will come in the statements of other scholars. It is understood that Abu Ka‘b would sometimes sell on credit to those who wanted *‘īnah*, which is why Ḥasan said in the second narration, “Sell it and fear Allah,” due to the frequency with which the sale of silk involved *‘īnah* in one of its various forms.

(b) Ḥasan’s answer was clear in prohibiting the seller on credit from becoming involved in any procedure to get cash for the buyer, which is why he said, “Don’t get involved in it in any way; give him his commodity and leave him be.” This requires that a seller on credit is prohibited from acting as an intermediary for one who wants

¹ *Siyar al-A‘lām al-Nubalā*, 4:573, 577.

² *Muṣannaf Ibn Abī Shaybah*, 8:295; the first narration has an authentic *isnād*. The second narration has Zurayq ibn Abī Salamah in the *isnād*. Ibn Abī Ḥātim mentioned him in *al-Jarh wa al-Ta‘dīl*, 3:505, without appraising him.

³ See: *Muṣannaf Ibn Abī Shaybah*, 6:48, Ibn Taymiyyah, *Bayān al-Dalīl*, al-Maktab al-Islāmī, p. 73.

cash, even if it is merely to direct him to someone who will buy it for cash. This is explicit in indicating that he prohibited organized *tawarruq*.

(c) Ḥasan's statement, "Don't sell it," i.e. "Do not sell silk on behalf of one who bought it from you on credit," is a rejection of organized *tawarruq*. His statement, "...and don't buy it," i.e., "Do not buy it from him," is a rejection of binary *'īnah*. His statement, "and don't direct him," means "do not direct him to someone who will buy it from him for cash." In the other narration he said, "If you sell it, don't direct anyone to him," that is, "If you sell silk, and a *mutawarriq* buys it from you, don't direct anyone to him who will buy it from him for cash."

The two narrations together indicate prohibition in two ways. Either way, it is a prohibition from entering into *tawarruq* dealings, which is why he said, "Give him his commodity and leave him be."

(d) The seller's involvement is rejected even if the buyer does not know how to deal in the market, for he said, "A woman or a Bedouin may buy from me and say to me, 'Sell it for us, for you know more about the market.'" Despite that, Ḥasan prohibited him from getting involved in it, because he knew that the aim of those people is getting cash. If this aim were good and permissible, helping to achieve it would have been legally sanctioned and encouraged; but when it is prohibited to help get cash by this means, it means the aim is doubtful, to say the least.

(3) Imām Mālik ibn Anas (169 AH)

Imām Mālik ibn Anas was the leading scholar of Dār al-Hijrah (Madīnah). People would travel long distances to seek his knowledge, for they found no one to be as learned as he, as was predicted in the Prophetic *ḥadīth*.¹

Ibn al-Qāsim stated that he asked Mālik about a man selling a commodity for a hundred dinars till a fixed time. Once the transaction is completed between the two

¹ *Siyar al-A'lam al-Nubalā*, 8:55-56.

parties, the buyer says to the seller: “Sell it on my behalf to any man for cash, for I am not proficient at trade.” Imām Mālik said, “There is no good in it,” and he forbade it.¹

It will be observed from this text that:

(a) the transaction that Ibn al-Qāsim asked Mālik about is the central element in organized *tawarruq* because the one who buys on credit wants the seller to sell the commodity for cash on his behalf to another person. His statement, “to a man” means someone other the seller himself, as is apparent.

(2) Imām Mālik prohibited this dealing with his statement: “There is no good in it,” as well as by his forbidding it. Similar to this is Mālik’s statement in *al-Nawādir wa al-Ziyādāt*: “And he should not sell it on behalf of the buyer who asks for that.” Ash-hab said, “There is no good in it.”²

This is consistent with the *fatwā* of Sa‘īd ibn al-Musayyib on this issue. There is no doubt that Imām Mālik inherited the knowledge of the people of Madīnah before him, and Sa‘īd ibn al-Musayyib was among the most prominent of them.

(3) The statement of the buyer, “...for I am not proficient at trade,” is the same reason given in the question posed to Ḥasan. Despite that, the answer was an unequivocal prohibition. This supports the observation that if this aim were good and permissible, helping to achieve it would have been legally sanctioned and praiseworthy; but when helping out is condemned, it indicates that the means of achieving it is not praiseworthy.

(4) This statement of Imām Mālik accords with the views his companions attributed to him about the various issues of *tawarruq*. They all agree that any involvement by the seller to facilitate *tawarruq* for the *mutawarriq* will reveal the true nature of the transaction and make it unlawful, as was previously mentioned.

¹ *Al-Mudawwanah*, 4:125; Abdullāh al-Sa‘īdī, “Al-Tawarruq Kamā Tajrīhi al-Maṣārif.” p. 18.

² *Al-Nawādir wa al-Ziyādāt*, 6:94; see also: *al-Dhakhīrah*, 5:15.

(4) Imām Muḥammad Ibn Ḥasan al-Shaybānī (189 H)

Imām Muḥammad ibn al-Ḥasan al-Shaybanī was a major scholar of *fiqh* and *ḥadīth*. He was a *mujtahid* and one of the leading scholars of the Ḥanafī school of thought.

A number of statements have been mentioned from him on this subject:

(A) In *Kitāb al-Aṣl*: **“If he sells it for a man, it is not appropriate for him to buy it for less than that before payment is received, for himself or for another. And the one who sells it should not buy it for less than that, for himself or another, because he is the seller.”**¹

(a) Muḥammad ibn al-Ḥasan made this statement after mentioning the format of binary *‘īnah*; it is when someone sells a commodity for a delayed payment then buys it in cash. The Ḥanafī scholars call it “buying what one has sold at a lower price than one sold it for, before receiving the payment.” He explained that this purchase is rejected. Then, after discussing a few details, he moved on to the issue that concerns us, that is, when the buying is original or by proxy.

(b) Regarding his statement, “If he sells it for a man,” it was mentioned earlier that the expression *bā‘a lahu* means he sold it for his benefit and on his behalf. His statement *bā‘ahu li rajul* means he sold the commodity for the benefit of another man. The person who directly handles the sale is an agent and representative of the owner of the commodity. Then he said, “...it is not appropriate for him to buy it for less than that before payment is received.” The meaning of the expression is: if the owner of the commodity delegates someone to sell it on his behalf, the owner cannot buy the commodity at a lower price before receiving the cash payment. His statement, “for himself or for another,” means he should not buy it either for himself or for another. It is clear from that that the commodity would not necessarily return to the original owner; despite that, Imām Muḥammad prohibits this purchase.

(c) Then he says, “And the one who sells it should not buy it for less than that, for himself or another, because he is the seller.” His statement “the one who sells it” refers to the agent who conducts the sale on behalf of the owner. The meaning of the

¹ *Kitāb al-Aṣl*, ‘Ālam al-Kutub, 5:192. The editor added some words for explanation, but they have been omitted here.

statement is then: it is not allowed for the agent who conducts the sale to buy the commodity for a lower price than what he sold it for before the buyer has paid for it. His statement: “for himself or another” means the purchase is not valid, whether the purchase is for the benefit of the agent himself or for the benefit of another. It is clear once again that the prohibition is not conditioned by the commodity returning to the original owner; it may be sold to a third party. That makes the transaction one of the forms of *tawarruq*, not binary *‘īnah*. All of this is emphasis of the previous expression. Other statements of Ḥanafī scholars will be mentioned later which support this conclusion.

(d) This ruling is not a view limited to Imām Muḥammad only; it is the position of the *imāms* of the *madhhab*, Abū Ḥanīfah (150 H) and Qāḍī Abū Yūsuf (182 H), in addition to Muḥammad ibn al-Ḥasan. That is why *Kitāb al-Aṣl* is one of the books accorded the status of *zāhir al-riwāyah*, that is, one of the most reliable books in the Ḥanafī school of thought. For this reason, the same ruling is found in the books of the scholars after them.

In *Tabyīn al-Ḥaqā’iq*, al-Zayla‘ī, after mentioning the prohibition of buying what one has sold for a lower price than one sold it, said, “If he delegates a man to sell his slave for one thousand *dirhams*, and he sells him, then the agent wants to buy the slave for himself or for another at a lower price than he sold him before receiving the payment, it is also not allowed.”¹

Ibn ‘Ābidīn affirms this concept in his *Ḥāshiyah*, saying, “It means that if someone sells something by himself or through his agent, or as an agent for someone else, he cannot buy it for less, for himself or for another.”²

(e) These expressions from the scholars of the *madhhab* across the centuries are clear in prohibiting this transaction, whether one undertakes it personally or by proxy, in either capacity: as a seller or a buyer. Their explanation of the reason for this prohibition reflects their zeal for closing the door from the very start. Al-Zayla‘ī explains the reason the agent is prohibited from buying for himself by saying,

¹ *Tabyīn al-Ḥaqā’iq*, *Sharḥ Kanz al-Daqā’iq*, Būlāq printing, 4:54.

² *Radd al-Muḥtār*, Būlāq printing, 4:114.

As for buying it for himself, it is because one who sells as an agent sells for himself by a certain right, so it would be a purchase by the seller, in a way; **and that which is established from a certain aspect is like that which is established from all aspects when it comes to forbidden matters.**

Then he gives a reason for the prohibition of buying for another: “As for doing so for another, it is because the purchase of one who is commanded to do so occurs with respect to him as far as rights, **which makes it, from a certain angle, a purchase for one’s own benefit of what one has sold.**” Ibn ‘Ābidīn mentioned al-Zayla‘ī’s explanation and affirmed it.

(f) These texts confirm that whoever sells a commodity on credit is not allowed to buy the commodity either for himself or for another, not even if he was an agent acting for the benefit of another in the first sale, and even if the commodity does not return to its first owner. This firmly shuts the door on every type of intermediacy in this topic, which encompasses all the forms of organized *tawarruq*.

(B) The other text is in the book *al-Jāmi‘ al-Şaghīr*: “**A man guarantees [the debt] of another upon his request. The other instructs him to conduct an ‘īnah transaction with silk. The purchase is for the guarantor, and the profit earned by the seller is [the guarantor’s] responsibility.**”¹

The points for consideration in this text are:

(a) The commentators say that his statement *yata‘ayyin* means ‘to deal with ‘īnah’, as in the linguistic meaning. The Ḥanafī scholars understanding of the meaning of ‘īnah, that it encompasses *tawarruq*, has already been explained.

(b) His statement, “instructs him to conduct an ‘īnah transaction,” is like the statement of Dāwūd ibn Abī ‘Āṣim’s sister in the previously mentioned narration about Sa‘īd ibn al-Musayyib, when she said, “I want to buy a commodity by ‘īnah.” Both are instructions to perform ‘īnah.

¹ *al-Jāmi‘ al-Şaghīr*, ‘Ālam al-Kutub, p. 373. I thank Shaykh ‘Alī al-Nadwī for reviewing the topic.

(c) The meaning of this form is that the instructor needs cash, so he requests the person he approaches to buy silk for the benefit of the requester on credit; then the one he requested to do that will sell the silk for cash at a lower price than the first sale, which is the normal way these matters work. He then pays the cash to the requestor or pays the debt that he had guaranteed on his behalf. The basic rule that should govern this arrangement is that the guarantor will go to the requestor for the deferred payment because he is the one who bought the commodity initially.

But Muḥammad ibn al-Ḥasan takes the view that the guarantor cannot ask the requestor to pay the deferred price, which is why he said, “The purchase is by the guarantor, and he agrees to pay the profit earned for the seller.” That is, the deferred price is established as the responsibility of the guarantor as far as the seller is concerned, while it is not established as the responsibility of the requestor vis-à-vis the guarantor, for the purchase is not for the requestor, rather, it is for the guarantor. The guarantor cannot demand of the requestor more than the amount of cash which he gave to him or which he paid on his behalf, without any increment.

This logically requires that the increment is prohibited, for the basic rule is that the guarantor acting on behalf of the requestor should be able to demand the deferred payment from the requestor in full, as the purchase was initially for the requestor, since he is the one who needed the cash. If the purchase being for him is negated, the guarantor is not allowed to demand the requestor to pay the increment above the amount of cash he gave him. This logically requires prohibition of establishing the increment as the responsibility of the requestor. If that were not the case, he would not have ruled it invalid.

This is consistent with the *fatwā* of Sa‘īd ibn al-Musayyib when he commanded Dāwūd ibn Abī ‘Āṣim to return the increase to his sister and not to take more than his capital equivalent to the cash price, as previously mentioned. The statements of Muḥammad ibn al-Ḥasan and Sa‘īd ibn al-Musayyib agreed that the increment above the cash price is invalid and is not established as the legal responsibility of the requestor of *‘īnah*.

(d) This ruling is not the opinion of Muḥammad ibn al-Ḥasan alone; it is the position of the scholars of the *madhhab*; because *al-Jāmi' al-Ṣaghīr* is among the authoritative (*zāhir al-riwāyah*) books relied upon in the Ḥanafī school of thought. Although the scholars of the *madhhab* agreed on the ruling, they made *ijtihād* to identify the reason for it. Some of them said the reason is that the requestor guarantees any loss incurred by the guarantor due to a difference between the delayed price and the cash price, and they said that to guarantee against a loss is not valid. Some of them gave as a reason that it involves appointing an agent when the amount of the commodity and the price are unknown, and this is an invalid agency.

But they agreed that what is being requested in this format is the *'inah* that encompasses *tawarruq*, that it is objectionable, and that the requestor does not become responsible for the increase. There is no need for giving a reason for the prohibition more than that the dealing is a form of *'inah*, which has been prohibited by the *ḥadīth*. The increase is not established as the responsibility of the requestor because it is *ribā*, so it has to be borne by the guarantor, as he is the one who undertakes the purchase. If the guarantor knows that he does not have the right to demand the requestor to pay the increment, he will refrain from this transaction from the beginning.

(e) The stance of Muḥammad ibn al-Ḥasan affirms his famous statement about *'inah*: “This sale is like mountains in my heart; it is a reprehensible innovation by those who consume *ribā*.”¹ This condemnation is not limited to binary *'inah*, as some have interpreted it; rather, it the use of *tawarruq* as an intermediary, as was previously mentioned.

Summary

(1) The agreement of the scholars that this transaction is prohibited—despite the differences in their methodologies, between Ahl al-Ra'y (the People of Opinion) and Ahl al-Ḥadīth (the People of Ḥadīth), and their numerous schools of thought, between Madīnah, Baṣrah and Kūfah—indicates that the prohibition is based on an authentic proof unanimously agreed upon by all: the prohibition and condemnation of *'inah*,

¹ *Fatḥ al-Qadīr*, Dār Iḥyā' al-Turāth, 6:224.

which requires that the door be closed on the use of sales as a cover for getting ready cash in exchange for a responsibility to pay a greater amount later.

It was previously mentioned that acting as an agent for *tawarruq* is a way of assisting and helping a seeker of cash. If that is prohibited, it indicates that getting cash by means of *ʿīnah* is reprehensible in the Sharīʿah.

(2) The previous *fatwās* prohibit the seller from acting as an intermediary for getting cash, even if there was no previous agreement between the *mutawarrīq* and the seller, as is apparent from the context of the quoted texts. If this is prohibited with the absence of agreement, then the presence of such an agreement means there is more reason to prohibit it. The agreement in organized *tawarruq* as it is practiced nowadays could not be any clearer, so to prohibit it is more appropriate and obligatory.

(3) The decision of the Islamic Fiqh Academy to prohibit organized *tawarruq* (see the appendix), apparently without its members being fully cognizant of the views of the early scholars specifically about it, testifies to the completeness of the Sharīʿah and Allah's protection of it. All of it issues from one lamp; it protects whoever adheres to it from deviation and guides them to the right path tread by the Righteous Predecessors (al-Salaf al-Ṣāliḥ), no matter how many centuries separate them.

(4) The fact that this dealing was known since the first century AH and the firm and clear stance of early scholars about it are indicators that the direction in which Islamic finance is proceeding today is in need of serious reappraisal. The spread of organized and banking *tawarruq* represent backward steps for Islamic finance in two ways: First, this form has been prohibited from an early date. Instead of creating Sharīʿah-compliant forms and instruments, Islamic institutions turn to dubious and prohibited forms. Second, it is an ancient form; there is nothing new about it, even if we turn a blind eye to the question of its legality.

The predominant methodology today for designing instruments and financial formats is in need of reform. We need to search for a more creative methodology that at the same time steers far clear of doubtful matters.

Appendix

The Resolution of the Islamic Fiqh Academy Regarding *Tawarruq* as It Is Currently Being Practiced by Banks

Praise be to Allah alone, and peace and blessings upon the Messenger of Allah, his household and his companions. To proceed: the Islamic Fiqh Academy of the Muslim World League in its seventeenth session held in Makkah, 19-23/10/1424 AH/13-17/12/2003, examined the topic of *tawarruq* as it is being practiced by some banks at present.

After listening to the research papers presented on the topic, and after discussions about it, it became apparent to the Academy that the *tawarruq* which is being executed by some banks nowadays is that, typically, the bank will undertake to sell a commodity (other than gold or silver) from the international commodity markets, or some other market, to the seeker of *tawarruq* (*mustawriq*) for a deferred payment, with the bank committing itself—either by a stipulation in the contract or in accord with customary practice—to represent the buyer in selling it to another buyer for cash and delivering the payment to the *mustawriq*.

After consideration and study, the Academy has decided the following:

First: Dealing with the form of *tawarruq* described in the introduction is not allowed, for the following reasons:

- 1) The commitment by the seller in the contract of *tawarruq* by proxy to sell the commodity to another buyer or to line up a buyer makes it similar to the prohibited *‘inah*, whether the commitment is explicitly stipulated or is merely customary practice.
- 2) This practice leads in many cases to violation of the Sharī‘ah requirement that a buyer must take possession of a commodity in order for any sale after that to be valid.
- 3) The reality of this transaction is based on the bank providing cash financing with an increase to the party called the *mustawriq* through purchase and sales transactions it conducts, which are in most cases pure formalities. The aim of bank from this procedure is to get an increase on what it gave in the way of financing. This dealing is not the real *tawarruq* known to the scholars, which the Academy previously ruled was

lawful in its fifteenth session, if the transactions are real and if certain conditions that the Academy explained in its resolution are fulfilled. The differences between the two have been made clear in the research papers presented on the topic. Real *tawarruq* consists of an actual purchase of a commodity for a deferred payment that brings it into the ownership of the buyer and which he takes actual possession of and becomes responsible for; after which he will sell it for cash to fulfill his need. He may be successful in achieving that goal or not. And the difference between the two prices, the spot price and the deferred price, does not enter into the ownership of the bank, which involves itself in the process in order to make acceptable the increase it obtains on the financing it provides to the person through what are in most cases only formal transactions. The features of real *tawarruq* are not present in the previously explained procedure practiced by some banks.

Second:

The Academy advises all banks to stay far away from forbidden dealings in obedience to the command of Allah, the Exalted. As the Academy appreciates the efforts of the Islamic banks to rescue the Ummah from the tribulation of *ribā*, it advises them to use real Islamic transactions, not purely formal transactions, which, in reality, are nothing but financing operations with an increase for the financier.

Allah is the One Who guides to the right path; may the peace and blessings of Allah be upon our Prophet, his household and companions.

(4) Reverse *Tawarruq*

Reverse *tawarruq* is when someone appoints another as his agent to buy a commodity on his behalf and give him its price in cash. When the agent initially buys the commodity, he purchases it on credit and then sells it after that for cash.

This form is used in bank dealings under various names, like “inverse *murābahah*” or “direct investment” or “proxy investment” or other marketing names. This form has become a widespread substitute for the term deposits offered by traditional banks.

A term deposit is when the customer deposits an amount of money (100,000, for example) with a bank, and the bank commits to pay him a higher amount at an agreed-upon rate (110,000, for example) after the passing of a specified term (which is why it takes that name).

The aim of this [Islamic bank] product is to achieve the same outcome, which is for the customer to deposit a certain amount of money with the bank with the bank guaranteeing him a larger amount at an agreed-upon rate after a specified term. That is, the outcome is the same in both matters, which is that the bank acquires cash from the customer, in exchange for which the bank undertakes the responsibility of paying a larger amount at a deferred date to the customer.

The method being followed to attain this same outcome is “appointing the other party as an agent.” The customer gives an amount of cash to the bank and appoints it as his agent to purchase a commodity, of whatever type, on his behalf. After that the bank buys the commodity from the client for a deferred payment at an increased price agreed upon between the two parties.

This product is called inverse *murābahah* because it is customary in *murābahah* for the bank to act as the creditor/seller and the customer to be the indebted buyer. Here, the situation is reversed; the customer becomes the creditor and the bank on the other hand becomes the debtor. For this reason also it is called reverse *tawarruq* because the aim of the bank is to get the cash by a spot sale of the commodity.

The Status of the Product in the Operation of Islamic Banking

Before looking at the jurisprudential problems related to reverse *tawarruq*, it is important to point out the place this product has in the operation of Islamic banks. According to theory, an Islamic bank operates by attracting funds and then employing them; and in both matters it is supposed to use the recognized Islamic instruments.

In the beginning, the attraction and employment of funds were both done through partnership contracts of various formats. After failure in applying the partnership format to the employment of funds, *murābahah* emerged to occupy the largest share

of operations. The stage that followed that was the use of organized *tawarruq* for employment of funds and for managing the asset column of a bank's budget.

Organized *tawarruq* represents (more or less) the last link on this side because it changes the bank from being an element of a real operation to being a mere source of cash, as is the situation for *ribā*-based banks; and the presence of sham commodities does nothing to alter this reality. The resolution of the Islamic Fiqh Academy to prohibit organized *tawarruq* is a necessary milestone in judging this orientation to be mistaken.

However, the matter did not stop at this limit; the defect shifted from the asset side to the liability side and from the employment of funds to their attraction. If *tawarruq* has been the pillar of fund employment, logic requires that reverse *tawarruq* be the pillar of fund attraction, and this is exactly what has happened. If organized *tawarruq* is a source of cash for the customer, then reverse *tawarruq* becomes a source of cash for the bank itself. Cash financing (cash for cash) has become the base for the activities of many Islamic banks, in both assets and liabilities. This spells the end of the role of Islamic banks, which used to be based on real activities on both sides; the reason is these doubtful products.

The reader will see that this commodity

- was explicitly prohibited by the early jurists;
- and the contemporary juristic councils have declared the same;
- and that it is worse than the organized *tawarruq* that jurists of the past and present explicitly prohibited.
- As is the case with all ruses that provide cover for *ribā*, it is contrary to the aims of the Sharī'ah and the regulatory details for transactions.

The Position of Jurists Regarding Reverse *Tawarruq*

Imām Mālik explicitly prohibited this format, and the jurists of the Mālikī School declared the same. *Ḥāshiyat al-Dasūqī* states: "If the owner of money gives someone who wants to borrow money from him on interest [funds] to buy a commodity at the

expense of the owner of the money and then sell it to him, it is prohibited.”¹ In *Mawāhib al-Jalīl*:

Part of this topic is the practice by some people—and it is prohibited—of paying someone *dirhams* and saying to him, ‘Buy a commodity for me on credit, and as soon as you buy it I will sell it to you at a profit for deferred payment.’ There is no ambiguity about that being prohibited.”²

Ibn Rushd (the grandfather) explained that the prohibition is confirmed, even if the transfer of the commodity is real, due to the cause for suspicion about the motive. He said:

The agent in this issue is the buyer of the food with the cash that the one who appointed him gave him, so it is not allowed for [the agent] to buy it from him, even if [the provider of the cash] takes actual possession of it, for more than what he paid for it.³

This is no departure from the methodology of Imām Mālik, who looks to the goals and aims of dealings and who strongly emphasizes closing the door on tricks, particularly those which provide cover for *ribā*.

The Position of Contemporary Scholars

Various contemporary *fatwās* have expressly stated that the basic rule is that it is prohibited for the customer, the orderer of the purchase, to appoint [the bank] to be his agent in banking *murābahah*. The United Sharī‘ah Board of the Barakah Group decided: “The basic rule is that it is not allowed to appoint the bank to engage in buying and taking possession [of a commodity], as that deprives the process of *murābahah* of its meaning.” For the client to appoint an agent can be accepted in exceptional situations, for instance, if the commodity has an official agent, so that marketing the commodity cannot be done without him, or in cases of double taxation. “In such exceptional cases it is allowed to appoint someone who promises to buy.”⁴

These suggestions were confirmed by the Barakah Seminar on Islamic Economics (7/9) which decided that: “The view is adopted that it is not allowed for the person

¹ *Hāshiyat al-Dasūqī*, Dār al-Fikr, 3:89.

² *Mawāhib al-Jalīl*, Dār al-Fikr, 4:408.

³ *Al-Bayān wa al-Taḥṣīl*, Dār al-Gharb al-Islāmī, 8:132; see also: 7:137 and 12:335, and *al-Nawādir wa al-Ziyādāt*, Dār al-Gharb al-Islāmī, 7:204.

⁴ *Majmū‘ al-Fatāwā*, 10:3.

who requests the purchase to appoint [the bank] as an agent in a *murābahah* sale.” The same view was adopted by a number of other Sharī‘ah boards.¹ The Barakah Seminar also emphasized that the payment of the price to the seller should be made directly without intermediacy of the person who ordered the purchase (5/9).

The Sharī‘ah board for the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) in Bahrain also adopted the same position in standard number (8) about *murābahah* for the person who orders a purchase, in paragraph (3/1/3): “The standard rule is that the institution buys the commodity by itself immediately from the seller. It is allowed for it to execute that through an agent other than the purchase orderer, and it should not resort to being appointed by the client (the purchase orderer) as his agent unless there is a dire need.” Then they stated in paragraph (3/1/4-b) that in case the client is appointed as the agent, “it is compulsory for the institution to directly pay the price to the seller himself without depositing the cost of the commodity in the account of the client/agent.”

The Islamic Fiqh Academy stated in Resolution (1) of its third session that “The best [procedure] is for the purchasing agent to be someone other than the aforementioned client, if that is possible.”

It is clear that these resolutions require the prohibition of “direct investment” since they prohibit appointing the debtor as an agent permanently and as a matter of course, and that is the arrangement that actually comes into being by the end of the process. They also stipulate that in case there is agency it is prohibited to turn over the price to the agent. This interdicts the most important components of direct investment, which is based upon the investor turning over a cash amount to the bank.

Juristic Problems Surrounding the Product

In addition to what has already been mentioned, reverse *tawarruq* as it is practiced by the banks violates a number of Sharī‘ah prohibitions and raises other legal issues:

¹ See: ‘Izz al-Dīn Khojah,” “Al-Dalīl al-Shar‘ī li al-Murābahah,” Dallah Barakah, p. 147-149.

1. When the bank receives the cash amount from the customer, it receives it on the basis of assuming responsibility for it (*ḍamān*), not as a trust (*amānah*). That is because as soon as it receives it, the bank uses it as it sees fit for its own benefit, just the same as for any other funds that enter its vaults. If the receipt is on the basis of responsibility, it precludes the bank from acting as an agent for the customer; rather, it has the status of a money borrower because it is responsible for the money. In the end the bank bears responsibility for a debt to the client greater than the amount it received, which is *ribā*.

2. The difference between the action of the agent for his own benefit and for the benefit of the person who appoints him is according to the intention of the agent. That is well known among jurists and a matter of agreement among them. If the agent buys something with the intention of it being for himself, his action will not be for the person who appointed him; the commodity is his, and he will be responsible for it. The intention, as is well known, is pursuant to aims and goals in the dealings of rational people.

The aim of the bank is that the commodity become its own because it is the one that will buy it. This is what it promises the client from the very beginning. Buying it on behalf of the customer is limited actually and customarily by the fact that it will buy this exact commodity from the customer. This contradicts it being an agent for the customer because an agent must act for the benefit of the one who appointed him, whereas the bank is in reality acting for its own benefit.

For that reason it is impossible for the bank to act on behalf of the client in buying a commodity that the bank cannot possibly buy for itself after that. The bank is the one who determines the commodity, the broker or intermediary, and whatever is related to the purchase, as it is the one who will soon buy it and be responsible to it. The bank is not really acting as an agent; rather, it is acting like a buyer. The purchase of the commodity is in fact for its own benefit, not for the benefit of the customer. For this reason the majority of contemporary scholars agreed that it is prohibited for the client (the purchase orderer) in *murābahah* to appoint [the bank] as his agent, as will follow.

If the commodity is really the property of the bank, it is not valid for it to buy it from the customer after that, as it is the property of the bank initially. Likewise, the bank's receipt of cash from the customer is not considered a receipt of trust (*amānah*) as the bank is not considered a true agent in the purchasing. The receipt is actually one of guarantee (*ḍamān*) and not of trust, which affirms the previously mentioned angle [of objection]. Thus the contract becomes in reality exchange of cash and deferred payment for which the bank is responsible. That is the outcome as well as the initial aim.

3. The bank announces and markets this product to the customers as an investment in which the bank guarantees the deferred amount for the customer, so it has to commit itself to purchase the commodity from the customer after having bought it on his behalf (assuming the agency is valid). This is well established by the contextual factors and the explicitly announced aim of the product, and is known to all the parties.

This commitment is not valid because it happens before the bank assumes ownership of the commodity. It is like offering a guarantee in *murābaḥah* to the one who orders the purchase. If the guarantee is prohibited in *murābaḥah* while the essence of *murābaḥah* is a commodity in exchange for deferred cash, the guarantee in this format is more deserving of prohibition since the essence of the transaction is spot cash for deferred cash.

Prohibiting the binding promise in direct investment is impossible for it is the fundamental aim of the commodity, as previously mentioned. That is the feature used to market the product as an alternative to a term deposit. Without the binding promise, the product will lose its purpose and its value because there is no benefit for the customer in having the product remain his property if the bank does not buy it from him. Also the customer is exposed to risk from fluctuation in the price if he has to sell it on the open market, in case the bank does not wish to buy it. All of that would prevent the customer from accepting the product if the bank does not make a binding promise to buy. The prohibition of a binding promise to buy necessarily means prohibiting the product.

4. This commodity is worse than the organized *tawarruq* which the Islamic Fiqh Academy decided to prohibit. Banking *tawarruq* makes the seller (creditor) an agent in the cash sale, whereby he receives the cash from a third party (at least theoretically) and gives to the debtor. Here the cash is given by the creditor to the debtor, so the cash and the debt in direct investment are limited to the two parties: the creditor and the debtor, whereas in organized *tawarruq* the cash is from a third party, independent of them both. If getting the cash from a third party does not justify organized *tawarruq* and does not absolve it of the charge of being a cover for *ribā*, the confirmation of the suspicion is surer when the cash comes directly from the creditor.

The difference between them is further clarified in that organized *tawarruq* is agency to sell by proxy after the completion of the purchase of the commodity, but reverse *tawarruq* is agency to buy by proxy from the beginning. If appointing an agent is prohibited and grounds for suspicion after having become owner of the commodity, how about if it occurs before even becoming owner of the commodity?

5. The transaction in reality does not differ from a term deposit, and everybody knows that, from the customers to the banks. The minerals or commodities are just like the silk [of bygone eras] entering from here and going out from there, with neither of the two parties having any interest or objective related to them except to make lawful an exchange of cash for a deferred payment between the bank and the customer. This is the *ribā* of credit that is unanimously agreed to be prohibited.

The principle that is agreed upon—Shaykh al-Islam Ibn Taymiyyah even declared it a matter of consensus among the Ṣaḥābah and the Righteous Predecessors (al-Salaf al-Ṣāliḥ) may Allah have mercy upon them¹—is that the use of legal ruses is prohibited in Islam, for it is a mockery of the rulings of the Sharī‘ah and an attempt to make the unlawful lawful. For that reason it is more serious than openly doing something unlawful.

The Noble Qur’an reviles the Jews for their use of tricks to get around Allah’s laws. It mentions that they were punished by being changed into monkeys in retribution for

¹ *Bayān al-Dalīl ‘alā Buṭlān al-Taḥlīl*, pp. 27, 137, 146.

their acts. Allah, the Exalted, said in the Qur'an: "You know about those among you who broke the Sabbath, and so We said to them, 'Be like apes! Be outcasts!'" (al-Baqarah: 65). This is the justice of Allah and His wisdom, because apes resemble human beings yet they differ from them in reality, so when the Jews used a legal ruse to comply with the prohibition, as far as appearances go, while committing it in reality, the reward was similar to their deed. We ask Allah for safety. This is the reason the Prophet (peace be upon him) condemned the Jews by saying, "May Allah destroy the Jews; the fat was forbidden to them, so they melted it, sold it and consumed its price."¹ It is also confirmed that he said, "Do not commit what the Jews committed; they tried, by the lowest of tricks, to make lawful what Allah, the Highest, made unlawful."²

Scholars may differ on some transactions, whether they are prohibited legal ruses or not. However, this does not negate the general clear-cut principle that it is prohibited to use legal ruses to achieve forbidden aims. This is especially true for matters which are indisputably prohibited because they blatantly conflict with the aims and goals of the Sharī'ah, as in the case of *ribā* in credit transactions (*ribā al-nasī'ah*). That is an offense for which Allah has made a threat of war. As for *ribā al-faḍl* [the unequal exchange of the same type of commodity in barter], its prohibition is one of means; it is not a prohibition of aims. This is a point that scholars have made very clear. It is why *'arāyā*³ are allowed due to need (*ḥājah*), whereas as there is absolutely no case in which the prohibition of *ribā* in credit transactions has been relaxed. Therefore, it is

¹ *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*; *Ṣaḥīḥ al-Jāmi'*, no. 4291.

² Reported by Ibn Baṭṭāh in *Ibṭāl al-Ḥiyal*, p. 112, Shaykh al-Islām called it strong in *Bayān al-Dalīl*, p. 55, and *al-Qawā'id al-Nūrāniyyah*, p. 174.

³ *'Arāyā* is the plural of *'āriyah*, which was a common transaction in Madīnah before Islam. Although the Prophet peace be upon him made a general prohibition of the sale of dry fruits for fruit on the tree, he made an exception for this transaction. There are two conflicting explanations of how it works. According to Imām Mālik, the owner of an orchard would loan one or two date trees for one year to a needy person, who then had a right to the harvest of that tree. If the owner of the tree found the repeated visits of the loan recipient to his orchard burdensome, he could buy the harvest from him for dry dates. That was because the owners would usually take their families with them to the orchards at harvest time, and they may have disliked the presence of strange men around them. According to Mālik, the concession was thus for the convenience of the owner in order to make it easier for the rich to be charitable to the poor. According to Imām al-Shāfi'ī and Imām Aḥmad ibn Ḥanbal, the concession is to make it easy for the poor to eat fresh dates. A poor person who owns dried dates, but no money, may buy fresh dates, on the condition that there is no delay in payment and that the quantity of the transaction is less than five *wasqs* 825 liters. See Ibn Qudāmah, *al-Mughnī*, 6:127; and Wahbah al-Zuhaylī, *al-Fiqh al-Islami wa Adillatuh*, 1:142, 144.

not valid to build an analogy of the one upon the other due to the substantive and telling difference between the two.

Whatever the case may be, specific evidence and the differences among scholars about a particular matter do not mean negation of the comprehensive, agreed-upon principle. It is unacceptable to make exceptional cases or cases about which a difference of opinion exists the basis for an analogy to which every kind of trick is referred for justification, until nothing remains forbidden but binary *‘inah* or inversion of a debt, and everything else beside that is allowed. This would mean that the basic rule for legal ruses is that they are all allowed except for these two examples. This turns matters upside down, for it makes the basic rule an exception and an exception the basic rule. On top of that, it is the direct opposite of the consensus that the basic rule for legal ruses is that they are prohibited, a principle that is particularly stressed in the Ḥanbalī *madhhab*.

Ibn Qudāmah stated that one of Imām Aḥmad’s principles is the prohibition of all legal ruses.¹ Al-Zarkashī said in *Sharḥ al-Khiraqī*, “This is a principle, according to us: All legal ruses which lead to elimination of an obligation or committing a forbidden act are invalid.”²

Adherence to the principles of his *madhhab*, above and beyond adherence to the principles of the Shari‘ah, requires the prohibition of all legal ruses except one for which there is specific evidence or which the Imām stated is allowed. Anything other than that remains under the jurisdiction of the basic rule. Whenever there are conflicting opinions attributed to him, the nearest to his principles and methodology should be taken. The other opinion attributed to him should be interpreted as addressing cases of dire need or when there is no suspicion of evil intention and collusion to employ a trick.

¹ *Al-Mughnī*, ‘Ālam al-Kutub, 6:154.

² *Sharḥ al-Khiraqī*, Maktabat ‘Ubaykān, 2:459

Summary

These exposed tricks have a negative effect in defaming Islam and Islamic economics, which ends up diverting people away from the path of Allah. A clear example of that is a dispute between an Islamic bank and one of its customers regarding financing by appointing the other party as agent [i.e. reverse *tawarruq*]. The customer, in order to shirk his commitments, claimed that the agreement does not truly represent Islamic financing, and the case was brought before a British court. After studying it, the judge commented, “If the judgment on this issue were based on the Islamic Sharī‘ah, the defendant should probably win the case,” that is, the contract is probably invalid Islamically.¹

This is what led one Western lawyer, after becoming acquainted with the methodology of some Islamic banks, to say, “The Muslims can employ means to trick their God that we cannot use to trick our judges.”²

The scholars in the past have called attention to the negative effect of legal ruses in barring others from the path of Allah and creating an aversion to Islam. Ibn al-Qayyim, after mentioning examples of reprehensible tricks, said:

[Tricks] like this have prevented many of the People of the Book from entering into Islam. They said, “How could a prophet teach tricks like these?” They thought badly of him and his religion and advised one another to stick to their own religion, believing that [such tricks] were [in fact] the Sharī‘ah that he brought. They said, “How can a divine law teach such things; and how can it be beneficial; and how could it be from God? If any king were to rule his people using such means it would undermine his authority. How can the Wise make something lawful based upon the benefit it brings, yet at the same time prohibit it due to the harm it brings, and then allow the prohibition to be nullified by the most trifling of tricks?” You see one of them, when a Muslim debates with him about the validity of Islam, using these ruses as a counterargument. That is what they have written in their books, and that is what they say when they debate us.³

¹ See: www.hmcourts-service.gov.uk/judgmentsfiles/j2232/beximco-v-shamil.htm, no. 55. 17.07.2008

² Ṣāliḥ Āl Ḥusayn related it at the Barakah Seminar, Ramadhan, 1424 AH, Makkah.

³ *I‘lām al-Muwaqqi‘īn*, Dār Ibn al-Jawzī, 5:198 -199.

Those in charge of Islamic organizations and banks have an obligation to realize their responsibility before Allah and before people to present Islam and Islamic jurisprudence in the best form and to choose the best of the sayings of the scholars and that which is most consistent with the truth as the Prophet (peace be upon him) brought it. This is the way of the people of intellect whom Allah praised by saying: “Those who hear the word and follow what is best; those are the ones whom Allah has guided, and those are the people of understanding” (Zumar: 18).

Appendix

The Resolution of the Islamic Fiqh Academy Regarding the Alternative to Term Deposits

Praise be to Allah alone; may His peace and blessing be upon our Prophet Muḥammad, his household and his companions. To proceed:

The Council of the Islamic Fiqh Academy of the Muslim World League in its 19th session held in Makkah during 22-27 Shawwal, 1428/3-8 November, 2007, has examined the topic: “The Alternative to Term Deposits,” as currently operated by some banks under various names such as: “reverse *murābaḥah*,” “reverse *tawarruq*,” “direct investment,” “investing through *murābaḥah*,” etc. These are names that have been coined for it, and it is possible that other names could be coined for it in the future.

The most common form of this product has the following features:

1. The customer (depositor) appoints the bank as an agent to buy a specified commodity, and the customer hands over payment for it in advance to the bank.
2. The bank then buys the commodity from the customer for a deferred price with an added percentage of profit, as per the agreement [of the two parties].

After listening to the research papers, and after extensive discussions on the topic, the Council decided that this transaction is not allowed, due to the following:

1. This transaction is similar to *īmah*, which is prohibited in the Sharī‘ah, in that the commodity being sold is not intended in itself, so the transaction takes its ruling,

particularly since the bank commits itself to buying the commodity from the customer.

2. This transaction enters into the concept of organized *tawarruq*, which the Council has previously decided is prohibited, in the second resolution of its 17th session; and the same reasons for prohibiting [organized] banking *tawarruq* are present in this transaction.

3. This transaction negates the aim of Islamic finance, which is based on linking finance to real economic activity, in order to support development and economic welfare.

Since the Council appreciates the efforts of Islamic banks in alleviating the Ummah of the problem of *ribā*, it stresses the importance of correctly practicing lawful transactions and steering far clear of doubtful transactions or transactions that observe formal requirements yet lead to forbidden *ribā*. Therefore, it suggests the following:

1. Banks and financial organizations should be keen to totally avoid all kinds of *ribā*, in accordance with the word of Allah the Exalted, “O you who believe, fear Allah and give up any outstanding dues from *ribā* if you are believers” (al-Baqarah: 278).

2. *Fiqh* councils and independent scholastic bodies have a critical role to play in guiding and providing orientation for the progress and development of Islamic banks in order that the aims and goals of Islamic economics are achieved.

3. A high board, independent of the commercial banks and constituted of Sharī‘ah scholars and financial experts, should be set up in the central bank of every Islamic country to be a competent authority ensuring that the practices of Islamic banks are Sharī‘ah compliant.

Allah is the only One who guides; may the peace and blessing of Allah be upon our Prophet Muhammad, his household and companions.

Conclusion: Alternatives to *ʿĪnah*

Certainly, Allah does not forbid something unless the harm of it is predominant. The Shariʿah cannot possibly forbid things of benefit to humanity. People only resort to legal ruses due to their misunderstanding or due to deviation in their practical life. Shaykh al-Islam Ibn Taymiyyah said:

In contemplating what it is that leads most people to engage in legal ruses, I found that it is one of two things: either sins they have succumbed to due to some constriction in their affairs which they cannot fend off except by a ruse; but such ruses only increase them in tribulation, as happened to the transgressors of the Sabbath among the Jews. As Allah said, “For the wrongdoing of the Jews We forbade them certain good things that had been permitted to them before” (al-Nisā: 160). This sin is a practical one. Or [the cause may be] exaggeration in what they believe the Lawmaker to have prohibited. This belief forced them to make things lawful through tricks. This is due to mistakes in *ijtihād*. However, if someone fears Allah, takes what He allows, and performs what is compulsory on him, surely Allah will never put him in need of the tricks of innovators. He has not placed any hardship upon us in the religion, and He sent our Prophet Muḥammad with a naturally pure and generous religion.¹

Allah has made lawful for us sales with deferred payment, *salam*,² rental and other modes of financing that fulfill the real needs of mankind. Although *ribā* does fulfill a temporary need for cash, it puts the debtor into permanent indebtedness without end; in fact the debt keeps on increasing and multiplying until it destroys the lives of individuals and the society. It is like ocean water, which only increases the thirst of its drinker.

If the formats of Islamic investment were handled well and their application was perfected with suitable methods that fulfill the needs of society, it would remove the need for *ribā*-based tricks. The dealer of *tawarruq* uses his cash in exchange for commodities and services. If that is the case, what is there to prevent employing modern technological tools of buying and selling in order to facilitate the customer’s ownership of the commodities and services he is interested in by using *murābahah* instead of the intermediary of commodities or minerals thousands of miles away,

¹ *Al-Qawāʿid al-Nūrāniyyah*, p. 188.

² *Salam* is a sale with advance payment and delayed delivery of the commodity. It is lawful when the attributes and amount of the commodity and the delivery date have all been specified in the contract.

which cannot realize any benefit for the debtor? Sluggishness in employing technology and modern transactional instruments to fulfill real needs is a form of negligence that has led people to resort to legal ruses, as Shaykh al-Islam said.

Allah has commanded the Muslims to assist in kindness, piety and assistance to the needy. One form of that is the interest-free loan. The interest-free loan is one of the collective responsibilities in Islamic society. It is like other forms of benevolence and decency, which, if no one does them, will make everyone sinful. It is not allowed for the Muslim society to be devoid of this type of mutual aid and help. Worse than that are *fatwās* that, by allowing legal ruses, justify people's greed, their disinterest in doing good, and the lack of anyone ready to give a loan without interest. This justification combines poor understanding and poor judgment. The Prophet (peace be upon him) said, "Whoever says the people are ruined, he is the most ruined among them." Whoever thinks that the people in an Islamic society will all agree to abandon doing good has a bad opinion of the Ummah of the Prophet (peace be upon him). If, for the sake of argument, that were the case, it would be the duty of the scholars to urge the good people and the rich to undertake this communal obligation instead of providing justification for them to carry on as they have been doing. It is sad to find among international associations and non-Muslim countries greater concern for interest-free loans than what is found in the Islamic financial industry.

If the formats of Islamic finance practice are well implemented, and if scholars perform their obligation of encouraging interest-free loans and other good activities, the society will dispense with *ribā* tricks generally and in detail, and an Islamic economic model will be realized that we can be proud to present to the world to save it from the tribulations of capitalism.

Allah is the One to guide us and all Muslims to the best of words and deeds; and all praise is due to Allah, the Lord of the worlds.