UNIVERSIDAD DE GRANADA

Doctorate in Legal Sciences

"Legal Code for Contemporary Islamic Commercial Transactions Practiced in the Global Market: Proposed Legal Framework for the International Islamic Finance Market"

By

Khalid Abdulaziz Janahi

27th October 2023

Supervisor: Prof. Dr. Guillermo Orozco Pardo

Co Supervisor: Prof. Dr. Professor Cátia Sofia Marques Cebola

Editor: Universidad de Granada. Tesis Doctorales
Autor: Khalid Abdulaziz Janahi
ISBN: 978-84-1195-799-1
URI: https://hdl.handle.net/10481/104844

Acknowledgements

I would like to express my deepest gratitude to my both supervisors, Professor Guillermo Orozco Pardo and Professor Cátia Sofia Marques Cebola for their invaluable patience and feedback. I also could not have undertaken this journey without the law school of University of Granada, who generously provided me the opportunity to achieve my thesis goals. Additionally, this endeavor would not have been possible without the substantial support from the Polytechnic of Leiria for giving me the opportunity to extand my research on a larger scope.

My inquiries about the subject of this research started twenty years ago. These inquiries developed gradually until I started handling them in a scholarly way. Then, my journey for accomplishing the first modern legal framework for Islamic sales and commercial transaction began and the raised challenges were answered. I display these answers and conclusions.

Lastly, I would be remiss in not mentioning my family, especially my parents, spouse, and children. Their belief in me has kept my spirits and motivation high during this process. I would also like to thank all of those who supported, encouraged, and stood by me throughout this work. To them, I present this research.

October 27, 2023

Abstract

Islamic finance is the fastest growing sector in the global financial segment. This research addresses a critical issue: the need for a legal framework for modern Islamic financial and commercial transactions widely applicable in international markets.

The research presented an innovative mechanism for measuring the new financial and commercial transaction compatibility with the Islamic Sharia rules by codifying the occasioning Factors of the prohibited Islamic financial transactions.

This thesis was able to codify modern Islamic financial and commercial transactions through the application of authentic jurisprudential provisions derived from all Islamic jurisprudence schools without exception.

Finally, the legal framework achieved in this research could be the foundation of an international convention to standardize the laws related to Islamic financial and commercial transactions.

Keywords: Islamic finance codification, occasioning factors in Islamic finance, Prohibited Islamic transactions, Islamic transaction legal framework.

Table of Contents

Legal Code for Contemporary Islamic Commercial Transactions Practiced in the Global Market: Proposed Legal Framework for the International Islamic Finance Market

Introduction

A market is an essential urban infrastructure and a public place where people meet in person to buy and sell goods. However, the concept of the traditional local market has undergone rapid development over the last century.

Today, “global markets” are a common topic of discussion. These markets are set up “virtually” through modern online interactive technology, which means that markets are no longer geographically restricted. Moreover, they are managed mainly by governments and international regulating bodies.

The world economy has experienced many ups and downs in the last fifty years. Many theories have been applied to address inflation and poverty, all of which have failed to stabilize the market and have ultimately led to economic disasters.

Recently, Islamic finance has been adopted around the globe as an alternative to conventional financing. Islamic financial transactions depend on buying and selling actual existing assets and avoiding fictitious sales. The *Sharia*-based financial instruments being implemented are a less risky way to do business than those of conventional financing due to their significant focus on providing an ethical element that has otherwise been lacking, which was the main reason for the 2008 recession.

Accordingly, the global market has become more solid and stable by embracing unique Islamic sales and finance solutions. Islamic finance instruments demonstrate profitability by securing equal market opportunities, reducing wealth management risk factors, and stabilizing the market’s ups and downs. Islamic financial instruments such as *salam*, *murabaha*, partnership (*musharaka*), and Islamic speculation (*mudaraba*) have found significant success in Western markets.

Furthermore, Islamic sales and finance transactions have been developed to suit new market structures and global consumer needs. However, these Islamic commercial transactions require new laws to accommodate their novel structures and compliance with *Sharia* requirements, such as waiving interest and taxation.

Due to the imperative to create a legal framework governing Islamic financial transactions, several international legal institutes are eager to play a central role in enhancing their country's commercial and banking laws by adopting Islamic financial systems. These financial institutes work closely with their governments to customize new laws allowing Islamic commercial and financial transactions and establish a legal framework for these new financial instruments in Western markets.

A report published by the official journal of the European Union commenting on Rule 29/(2) of the European Economic and Social Committee (EESC), "Financing structures for SMEs in the context of the current financial situation," highly encouraged the commission to strengthen Islamic finance instruments:

> "A new phenomenon is emerging across Europe in the form of what is known as participatory and ethical banking, also known as Islamic finance. The way it works is interesting and probably appropriate for SMEs[1] and their requirements within the current context. It offers various instruments, many of which are not new to European countries.
>
> However, certain legislation, particularly tax legislation, is hindering the evolvement of this type of financing. Unfortunately, various EU countries (like the UK, France, Luxembourg, Germany, Malta, and Italy) are taking individual measures with the risk of creating passport issues within the internal market. There may be a phenomenon whereby participatory financial institutions may be finding alternative legislative instruments to penetrate the EU market.
>
> This finance method may be undoubtedly beneficial to (SMEs) as it is based on risk and profit-sharing, stable financing, avoiding speculation, and certain types of investments" (Darmanin).

[1] SMEs refers to small and medium-sized enterprises.

However, it is critical to know that even though many governments and financial institutes worldwide are adopting Islamic financing methods, there is no codified Islamic commercial law that can be used as a reference for modern Islamic sales implementations.

Currently, local and international commercial laws are the only references for Islamic commercial transactions. However, these laws do not cover all Islamic finance instruments, especially modern Islamic finance transactions. In their final verdicts, judges and arbitrators depend on their diligence and understanding of the principal Islamic doctrines of the Holy Quran and the *Sunnah* of the Prophet Mohammed (peace be upon him). Therefore, current laws are insufficient for settling Islamic commercial disputes.

Furthermore, in judicial courtrooms and international commercial arbitration centers, the judges/arbitrators use, in addition to general commercial laws, Islamic jurisprudence books (*fiqh* books) to determine their judicial rulings on related Islamic commercial cases. They must extrapolate from the books of different Islamic jurisprudence schools to produce their rulings. Since most Islamic jurisprudence resources do not have examples of modern sales transactions, this makes it even more challenging to understand the issue clearly.

Many high-level authorities have raised the idea of developing a dedicated, worldwide Islamic commercial law. For example, the previous governor of Bank Negara Malaysia, Tan Sri Dr. Zeti Akhtar Aziz, stated,

> "Islamic finance has embedded financial stability elements with strong linkages to the real sector, while there are checks and balances through profit sharing and sharing of risks. However, challenges remain in the adoption of standards to safeguard the financial stability of Islamic finance, and these were due to the different stages of development by the practitioners of Islamic finance" (Damodaran).

Additionally, His Excellency Sultan bin Saeed Al Mansouri, Minister of Economy, said,

> "After conducting multiple studies in collaboration with major consultancies, we have concluded that the differences in the legislation and laws governing business practices in Islamic finance continue to slow down the growth of the Islamic

> economy sector while expending more time, effort, and cost. Today, there is an urgent need in the Islamic finance sector to accelerate growth and reduce discrepancies in practices across the globe. As part of this priority, developing a general framework that standardizes rules and regulations will be a major achievement for Islamic finance and the Islamic economy" (Business Bureau).

He added,

> "The legislative framework for Islamic economy will lead to a vertical and horizontal expansion of the sector globally due to the number of member countries in the Islamic Development Bank. This will serve as a crucial factor in triggering Islamic finance's steady and rapid growth. Enabling and standardizing legislation provides the guarantees and trust needed to build smoother and stronger business relations. According to the new unified legislative framework, new courts are expected to be established worldwide to settle Islamic financial disputes" (ibid).

The importance of this thesis project is apparent given that the $2.2 trillion "global Islamic finance industry is expected to grow 10%-12% over 2021-2022" (Reuters). This growing international financial market demand includes both primary and secondary markets.

It has become necessary to develop a codified international commercial law to set a legal framework governing modern Islamic financial transactions for corporate/individual practices and to refer to this codified Islamic sales law in case of commercial legal disputes.

It is expected that the proposed Islamic commercial law, once completed, will simplify the terms and conditions for different types of traditional and modern Islamic commercial structures and present them in clear codified articles, supporting the widespread international use of Islamic finance products.

The project of codifying contemporary Islamic commercial transactions is primarily based on Islamic *Sharia*, specifically Islamic jurisprudence. However, the potential capacity of Islamic legislation to support global financing solutions faces skepticism from some Western law scholars. Some orientalists who do not accurately understand the components and merits of Islamic jurisprudence claim that Roman law leaked into Islamic law by employing unauthentic *hadiths* of the Prophet Mohammad (peace be upon him).

These false claims indicate flagrant ignorance of Islam and its legislation. Weak *hadiths* are not evidence, and Muslim scholars can differentiate between authentic and weak *hadiths*. These false claims go even further by arguing that Islamic jurisprudence is inflexible, cannot be revised, and cannot keep up with' modern developments (Goldziher 75–76).

Moreover, the orientalist Joseph Schacht (d. 1969) argued that codifying the concept of Islamic jurisprudence is impossible, stating that "the current Islamic jurisprudence, which consists of fundamentalist theories and principles, is not conducive to the codification of nature, and every attempt to legislate necessarily changes its nature" (Schacht).

Some orientalists, such as Professors Goldziher and Schacht, believe that Islamic law principles are static and do not change because they were not developed by legal judges. They view those who developed Islamic law as historians, not jurists. Legal scholars who have studied Islamic law disagree with this orientalist view.

It is appropriate here to refer to the great German jurist Kohler and the Italian professor Del Vecchio, Dean of the Faculty of Law in Rome. Mr. Wigmore, an American, and many other jurists have testified to the flexibility and permeability of Islamic law and placed it alongside Roman and English law as one of the three main legal systems that have permeated and continue to prevail throughout the world (Al-Sanhuri, Wujoob Tanqeen Al-Qanoon Al-Madani Al-Masri 114).

Moreover, it is essential to understand the extent of the confidence that Western jurists and scholars have in Islamic legislation. Specifically, assessments of the amplitude of Islamic jurisprudence to find appropriate solutions for globally implemented contemporary financial transactions and other emerging modern matters can be seen in some legal scholars' and specialists' comments about the outstanding potential of Islamic law. For example, David Santillana[2] (d. 1931) said, “For Muslims, there are enough provisions in Islamic jurisprudence for their civil legislation, and it can be said that these legislations are completely sufficient for all humanity” (Santillana 62: 1).

In 1951, the Oriental Law Department at the Faculty of Law of the University of Paris held a conference titled “Islamic Jurisprudence Week.” The conference was attended by many professors from all over the world. At the end of the conference, the attendees drafted a unanimous report, the summary of which is translated as follows:

> “Dear delegates, given the interest aroused by the issues raised during the Muslim Law Week and the discussions…without a doubt, Muslim law principles have absolute value. The variety of schools of thought within this great legal system involves a wealth of legal concepts and remarkable technique, which allows this law to meet all the adaptation needs modern life demands” (La Semaine de Droit Musulman).

This thesis is expected to face several core challenges. In fact, for many scholars and legal researchers, codifying Islamic jurisprudence is almost a “mission impossible.” They believe that such a project can never reach the level of actual implementation because of the many difficulties involved in the idea itself.

For example, “experts [feel] that it would be challenging to agree on most issues in Islamic finance. However, they [have] argued that arriving at common standards is paramount, as the current differences across jurisdictions lead to inefficiencies in Islamic finance” (Mohamad and Kashi).

Briefly, these scholars’ concerns can be summarized as follows.

1. Many scholars believe that codifying Islamic jurisprudence is a forbidden task, claiming that doing so will force judges to make judgments in only one direction. They believe that such a project will eliminate judges’ room for discretion (Al-Shithri 50).

---

[2] David Santillana was born in 1855 in Tunisia, where he grew up. He was from a Jewish family of Spanish ancestry. He finished his higher education in Italy. Later, he was chosen to preside over the Tunisian codification (Stigall 57).

2. They also see enormous challenges in overcoming different opinions of the four primary Islamic jurisprudence schools of thought, Hanafi, Maleki, Shafie, and Hanbali. Rudolph Peters wrote,

> "As I said before, the *fiqh* doctrine is jurists' law, and the *fiqh* texts are discursive and include various, often conflicting opinions on the issue. They are open texts because they do not offer final solutions. Provisions of a law code, on the other hand, must be authoritative, clear, and unequivocal. There is no room for contradictory opinions or argumentation in a law code, and its provisions must be definitive and final. Therefore, choices must be made when codifying the *Sharia*" (Peters).

3. There are challenges in unifying the various Islamic jurisprudences as codified articles and legally enforcing them in Islamic commercial contracts.

These are the main reasons that some Islamic scholars believe that codifying Islamic jurisprudence is an impossible dream.

This thesis examines the possibility of codifying Islamic jurisprudence, specifically Islamic commercial transactions. The thesis provides a detailed analysis of the problem and presents guidelines and steps to overcome difficulties in codifying the Islamic transactions jurisprudence named in Arabic (*Fiqh Al-Mua'malat*).

Previous work

There have been few previous attempts to codify the provisions of Islamic financial transactions. The most extensive attempt to codify Islamic sales and trade transactions was the project of the Ottoman Empire in the nineteenth century, titled "Majallata l-Ahkam-al-Adliya" (1876).

It is essential to shed light on the "Al-Majallah" project since this thesis takes lessons from previous attempts and endeavors to avoid replicating their weaknesses. The Al-Majallah project can be briefly described as follows.

The Ottoman Empire made the first attempts to codify Islamic jurisprudence in response to the long-term call for widespread reorganization known as Tanzimat. This reform period started in 1839 and ended with the First Constitutional Era in 1876 (Cleveland and Bunton 84).

> "In order to better administer the Sublime Empire (Devlet-i `Aliyye) and the Well-Protected Dominions (Memalik-i Mahruse), it is deemed necessary and vital to enact some new laws. The essential provisions of these indispensable laws consist of more personal safety, better protection of honor, decency, and property, fixing the taxes, and specifying the way of drafting the required soldiers and the period of their service" (Dustur, vol. 4).

Among the areas the empire wanted to reform was civil law. It wanted to modernize Islamic laws and simulate Western civil laws. As a result, two views arose among the legal scholars: "While *Ali Pasha* wanted to have French Civil Law translated and enforced in the country, *Ahmet Cevdet Pasha* asserted that the Muslim population could not comply with such a law and proposed a systemized compilation of Islamic law rules. After prolonged deliberations, *Ahmet Cevdet Pasha's* view prevailed" (Bozkurt 126). Therefore,

> "Islamic jurisprudence, then, is an immense ocean, and in order to find solutions for problems by bringing to its surface, the pearls of the topics required [for solving the problems] needs an enormous skill and mastery. And especially for the Hanafi madhhab, there were, in subsequent generations, very many independent interpreters (mujtahid), and there emerged many controversies so that Hanafi jurisprudence, like Shafai jurisprudence, has branched out and become diverse to the extent that it cannot anymore be examined carefully. Therefore, it is tremendously difficult to distinguish the correct opinion among the various views and apply it to the cases. Therefore, if a book on legal transactions (mu'amalat) were to be composed that is easy to consult being, free from controversies, and

> containing only the preferred opinions, then everybody could read it easily and apply it to his transactions” (Kaşıkçı 6–75: 16).[3]

Cevdet Pasha, presiding over a committee of top scholars, started the project to form a new civil law code in 1869 and completed this work in 1876. It was called “Majallat al Ahkam al Adliyah,” widely known as “Al-Majallah,” and came into enforcement a year later.

a) The content of “Al-Majallah”

The content of “Majallah,” or as some call it, “Mecella,” included 1751 articles derived strictly from the Hanafi jurisprudence school of thought, including one article for the introduction and 99 articles for the general jurisprudential rules. The rest were distributed across sixteen books[4].

Each book was divided into chapters, each chapter was divided into sections, and each section included a series of numbered articles in the form of modern Western civil laws.

---

[3] From the explanatory memorandum of the first book of the “Majallah” (1868), quoted in Kaşıkçı, 1997, 75-6.

[4] “Book 1: Sale (from: Article 1 to 403).
Book 2: Hire (from: Article 404 to 611).
Book 3: Guarantee (from: Article 612 to 672).
Book 4: Transfer of Debt (from: Article 673 to 700).
Book 5: Pledges (from: Article 701 to 761).
Book 6: Trust and Trusteeship (from: Article 762 to 832).
Book 7: Gift (from: Article 833 to 880).
Book 8: Wrongful Appropriation and Destructions (from Article 881 to 940).
Book 9: Interdiction, Constraint and Pre-emption (from: Article 941 to 1044).
Book 10: Joint Ownership (from: Article 1045 to 1448).
Book 11: Agency (from: Article 1449 to 1530).
Book 12: Settlement and Release (from: Article 1531 to 1571).
Book 13: Admissions (from: Article 1572 to 1612)
Book 14: Actions (from: Article 1613 to 1675).
Book 15: Evidence and Administration of an Oath (from: Article 1676 to 1783).
Book 16: Administration of Justice by the Courts (from: Article 1784 to 1851) (“Shaheen” 39).”

b) Pros and cons of the "Al-Majallah"

Every project has its pros and cons. The Al-Majallah project was innovative, being the first formal experiment with general civil law. As the Al-Majallah was taken from Islamic law, scholars and jurists had various opinions regarding its advantages and disadvantages.

Therefore, it is important to briefly review these opinions to benefit from them and avoid repeating past mistakes when drafting the current codification of Islamic commercial transactions.

We note the following advantages of "Al-Majallah":

1. Its legal phrases are easy to understand, even for someone who does not have a legal background (Abu Al-Aynain 108).
2. After being collected in one book, the Majallah facilitated the search for legal provisions, where the researcher had to search for the legal ruling in several references (Al-Sanhuri 195).
3. The Majallah brought together scattered Islamic transaction issues in the different jurisprudence books, and multiple advisory opinions on one topic were organized and appeared together in the Al-Majallah (Shaheen 24).

In contrast, the disadvantages of the "Majallah" are as follows:

1. The Majallah included excessive clarification of some of the article's principles and provisions by giving extended practical examples. For clarity, it also included unnecessary definitions, such as "Article 160: The seller is the one who sells", "Article 161: The buyer is who buys", and "Article 410: The renter is the one who rents" (Al Zarqa 25).

2. The Majallah adhered to one Islamic jurisprudence law based on the Hanafi school of thought. It did not consider incorporating the views of the other jurisprudence schools. The main reason that only Hanafi jurisprudence was consulted was that the Ottoman Empire adopted Hanafi Islamic law, which the judges used to issue *Sharia* opinions.

3. The Majallah should have determined the correct opinion by consulting all Islamic jurisprudence schools, consistent with trade developments.
4. The Majallah did not cover all Islamic sales types, specifically modern financing transactions.

Thesis work plan:

This thesis will specifically focus on codifying contemporary Islamic commercial transactions derived from the full range of rich Islamic jurisprudence. The research will show the importance of codifying modern Islamic commercial transactions for global market practices.

The expected challenges relate to analyzing the sales transaction chapters from approved books from the four leading Islamic jurisprudence schools (Hanafi, Maliki, Shafie, and Hanbali), comparing the details with the primary doctrines of Islam (the Holy Quran and Authentic *Sunnah* of the Prophet Mohammed, peace be upon him), and then choosing the correct provisions.

These terms will be established as *Sharia*-based legal articles covering all aspects of modern Islamic commercial transactions. A detailed explanation will be provided for every article. Moreover, the thesis will clearly define each modern Islamic sales transaction. There will be an analysis of how each section's articles help facilitate modern Islamic commercial sales.

Furthermore, the thesis aims to introduce a legal framework for modern Islamic commercial transactions with the potential plan of introducing the codification project as an "international treaty" for Islamic finance. Therefore, it is essential to study European commercial laws and Islamic commercial jurisprudence and develop a codified law that provides a unified legal framework for the newly introduced Islamic commercial transactions.

Finally, since modern legal texts are written in simple language, this thesis, particularly the commercial transaction articles, will also be written in clear and straightforward legal language. The intention is to use the original Arabic *Sharia* terminologies in the thesis, but the index also defines the terminologies used at the beginning of every chapter.

Thesis methodology:

The main goal of the thesis, codifying modern Islamic commercial transactions, will be achieved by applying a qualitative method to analyze what Islamic jurisprudence says about commercial transactions and harmonize its provisions with modern market implementations.

Additionally, throughout the thesis, brief comparisons between Islamic commercial jurisdiction and EU member countries' commercial laws will build natural common ground between both jurisdictions to facilitate synchronization and horizontal practices.

Thesis structure and works cited:

The thesis will be developed in six primary chapters and a conclusion.

The introduction will illustrate the importance of codifying Islamic financial transactions and outline the desired objectives. A brief history of the most significant attempts to codify Islamic transactions will be presented. The most critical challenges facing the project will also be mentioned.

Chapter one will introduce detailed policies and procedures as guidelines for writing *Sharia* legal articles. These parameters will help reconcile the conflicting opinions among the different Islamic jurisprudence schools. The chapter will present the roadmap to be used as a methodology for codifying modern Islamic financial transactions.

In chapter two, the focus will be on the acts that are ethically forbidden by *Sharia* that result in prohibiting financial transactions, i.e., usury (*al-riba*), aleatory elements (*al-gharar*), fraud (*al-taghreer*), injustice *(al-dhulm*), harm (*al-dharar*), and stratagems (*al-hiyal*).

Knowledge of the factors that affect transactions is imperative and can inform a checklist for judging the validity of any newly endorsed Islamic financial transaction structures. The chapter will also highlight comparisons of the ethical values in EU member countries' commercial laws and impermissible commercial transactions in Islam.

Consequently, the chapter will show that by legally emphasizing these ethical considerations through the proposed codified law, contemporary Islamic commercial transactions will be made more trustworthy and secure, resulting in the economy's stability and growth on the macro and micro levels.

Chapter three will present articles written with business law terminology describing the provisions, terms, and conditions of legitimate Islamic sale transactions. Each article will be explained in detail, and its derivation from the primary Islamic doctrines, the Holy Quran and authentic *Sunnah* of the Prophet Mohammed, peace be upon him, will be authenticated. Moreover, there will be clear examples of the provided articles and the advantages of including such articles in sales contracts.

Chapter four will introduce the main types of contemporary Islamic commercial transactions. Terms and conditions related to commercial transactions will be analyzed, compared, and authenticated by primary sources (the Quran and *Sunnah*). The chapter will show the importance of these legal articles for implementing *Sharia*-compliant commercial transactions.

Chapter five will highlight all types of sales that *Sharia* forbids. The prohibited transactions will be presented in the form of articles. This chapter will define the types of sales, provide evidence of prohibition from the Quran and *Sunnah*, explain why *Sharia* prohibits these types of sales, and give examples of prohibited sales in the modern commercial market. The chapter will highlight some individual and international uses of the prohibited sale types and demonstrate the damage that these prohibited transactions might cause to the local or international economy.

Chapter six will focus on the most common Islamic commercial partnership contracts (*musharaka* contracts). It will define different partnership contracts and authenticate the contracts with evidence from the Quran and the *Sunnah*. Furthermore, a detailed explanation of partnerships according to Islamic jurisprudence will be presented. An example of the correct legal implementation of various Islamic commercial transactions will be presented.

The concluding chapter will answer the central questions of the thesis: Can Islamic commercial jurisprudence be codified? How can codified Islamic commercial transactions benefit the global market?

Furthermore, the importance of codifying Islamic commercial law will be highlighted. The codified Islamic commercial articles will drastically improve the ability of the international system to arbitrate Islamic finance industry cases.

Finally, the thesis will include recommendations for the commercial and governmental sectors to activate and implement Islamic commercial law articles in their sales contracts.

Scarce resources are available for Islamic commercial jurisprudence in languages other than Arabic, and resources for Islamic sales law are even rarer. Thus, these issues form two of the main challenges this project might face.

Ultimately, on a larger scale, this thesis will enrich the international commercial market with legal codes extracted from Islamic jurisprudence heritage. The aim is to introduce a new legal framework for the highly demanded Islamic finance instruments and address the lack of dedicated Islamic commercial laws.

Islamic jurisprudence is rich and can be synchronized with EU laws and standards. However, at the beginning of the last century, many voices called for the need to simplify the details and provisions in Islamic jurisprudence to make it accessible to the public sector.

Therefore, many scholars have worked to legalize Islamic jurisprudence and codify its terms. However, many courts in the Islamic world have instead adapted family jurisprudence law (*Fiqh al-Usra*), which was codified and written into articles. There are many benefits of this practice, including that it 1) facilitates judgment by referring to jurisprudence, 2) determines the correct opinion adopted in Islamic jurisprudence, and 3) unifies the provisions of the judges.

Codifying contemporary Islamic commercial transactions is significant. It may be the best path toward globalizing Islamic finance and helping judges/arbiters in this task. The codified Islamic finance articles are expected to have an enormous impact on international market transactions due to the extensive use of Islamic finance instruments.

Additionally, this project is expected to help stabilize modern markets that deal with Islamic commercial transactions, strengthen Islamic finance methods and ensure more legality in the practical implementation of sales.

Finally, the expectations for this project are very high. There is great potential to present this project as the "first Islamic transactions convention." It will help with regulating Islamic commercial transactions in local and global markets. The business industry urgently requires a legal framework for day-to-day business implementation.

Chapter 1

Policies and Steps Required for Codifying Contemporary Islamic Commercial Transactions

1.1 Framework

Today's practical reality is based on legislation regulating dealings between two end parties, individuals, institutions, or countries. Such legislation, in a way, guarantees the exchange of interests in a framework that preserves rights and establishes justice. Continuous demands from governments and financial institutions worldwide to codify modern Islamic financial transactions makes this an urgent necessity for Islamic financial instruments.

Moreover, if Islamic financial and commercial transaction jurisprudence is to keep pace with current legal framework development, it must be reformulated according to legal formulas that enable synchronization within contemporary civil, commercial, and banking legal systems. This condition will allow jurists to better comprehend modern Islamic financial operation formulas.

This chapter will introduce the definitions of contemporary Islamic financial transactions, framework methodologies, and mechanisms for codifying modern Islamic financial transactions.

1.2 Definition of contemporary Islamic financial transactions

Contemporary Islamic financial transactions have become a specialized science for which no books, sources, or references suffice. The concept is a modern term with no consistent and agreed-upon definition in Islamic jurisprudential references. Therefore, it is essential to analyze the title of this thesis to clearly understand its meanings and goals.

The thesis title refers to commercial and financial transactions based on the Islamic jurisprudence law that is now practiced in the modern global business era.

Furthermore, contemporary Islamic financial transactions have been newly categorized and are therefore not found in earlier Islamic jurisprudence resources. These newly structured transactions must be backed by *Sharia fatwa*[5] issued by reputed *Sharia* scholars. However, changing the transaction's name does not make it *Sharia* compliant unless the transaction itself is compatible with the *Sharia* provisions.[6]

Current Islamic finance transactions mainly consist of complex classical Islamic finance transaction structures. As a result, new Islamic financial instruments have recently been endorsed in the global market.[7]

1.3 Standards to help categorize Islamic commercial transactions as contemporary transactions and facilitate their codification

Before the process of codifying Islamic commercial transactions can begin, it is essential to determine the types of transactions and whether the given commercial process is new and contemporary and therefore requires a new definition and a clarification of relevant *Sharia* rulings.

However, a transaction that receives a new title but is already a well-known Islamic transaction mentioned in previous books whose legal provisions have already been explained will be excluded from this discussion on codification because Islamic jurisprudence books have already explained the terms and the related *Sharia* framework.

Therefore, it is necessary to establish standards to determine the origin of the evaluated commercial transactions and to categorize them as contemporary Islamic financial transactions.

---

[5] The definition of a *fatwa* is "a legal opinion or decree handed down by an Islamic religious leader" ("*Fatwa*").

[6] An example is interest in commercial banks, which Islamic *Sharia* forbids because it is considered usury (*riba*). As another example, commercial bonds are forbidden by Islamic *Sharia* because they are also labeled *riba*.

[7] One example of a modern complex transaction is leasing that ends with full ownership. Such a contract is based on a combination of two classical contracts. The first is the classical leasing contract between the lessor and lessee, while the second is a promise to transfer ownership by any method agreed upon by the two parties.

a) First standard: Contracts that are newly established commercial transactions

This standard means that the transaction was not known during the time the Prophet Mohammad (peace be upon him) lived or during the age when Islamic jurisprudence was first being developed.[8] These new transactions have given rise to the need to establish *Sharia* legal frameworks for certain everyday transactions.

A similar standard was endorsed by the codifiers of the Ottoman Empire's "Majallah":

> "The hopes are set to write a book on financial transactions that is accurate and easy to take; following the scientific will, we gathered in the Department of the Court of Rulings and took the initiative to arrange a magazine consisting of the many issues and matters that are very necessary from the Islamic transactions, collection of reliable statements collected by Hanafi scholars, in which they were divided into multiple books that were titled Al-Majallah" (Haydar 7, 8: one).

b) Second standard: Commercial transactions whose Islamic Sharia provisions have changed due to changing circumstances and conditions

Studying contemporary commercial transactions can reveal how such transactions have changed over time. The structures of the modern transactions discussed here are derived from well-known original transactions in Islamic commercial jurisprudence books.

For example, *murabaha* transactions are one of the banking industry's most common financial transactions. However, the structure of the *murabaha* transaction in Islamic jurisprudence books is limited to the seller declaring the actual price of the commodity and his or her profit from the sale.

However, the modern application of banking *murabaha* (so called because of the promise to purchase) involves an individual who wants to buy a commodity and comes to the bank because he or she does not have enough money to pay for the commodity in cash and the seller refuses to sell it in installments. Thus, the bank buys the commodity at a cash price

[8] Examples include paper money, documentary credits, bank transfers, stocks, financial bonds, letters of guarantee, and other transactions between people.

and sells it back to the customer, who signed a promissory note to pay for the commodity at a higher, deferred price (Al Masri 90,91).

These transactions must be classified as contemporary transactions, new transaction-structuring studies must be established, and appropriate *Sharia* judgments must be issued to accommodate new variables. In this way, the new Islamic commercial transaction can be codified.

c) Third standard: Transactions with new labels

There are two main types of contracts in Islamic commercial and finance jurisprudence.

The first type includes "nominate contracts," which Islamic *Sharia* approves of under specific names and with certain provisions (Al Zarqa 605: One).[9]

The second type includes "innominate contracts," which do not have a unique known name or provisions but are considered newly labeled titles (ibid).[10]

Professor Nicholas Foster, a renowned Western researcher of Islamic finance and comparative law, describes the types of Islamic financial transaction categories thusly:

> "One can picture the nominate contracts as different types of electric light, determined in advance as providing an acceptable type of illumination. Parties are 'free' to turn on any of the light switches, but they cannot change the bulb or the wiring, nor can they construct new types. In other words, the nature and the essential terms of the particular contract are laid down in advance in order to ensure compliance with the *Sharia*" (Foster).

Such transaction types can be classified as contemporary Islamic commercial transactions.

---

[9] For example, sales, leases, loans, and other transitions mentioned earlier in standard number one.

[10] For example, investment certificates, electronic transactions, and hierarchical marketing.

d) Fourth standard: Complex commercial transactions composed of more than one "nominate transaction"

Due to the rapid development of the Islamic banking and finance industry, many complex transactions have been introduced as novel financing instruments. Complex transactions reflect the "composition of multiple Islamic financial contracts being included in one complex contract so that all the obligations and rights arising from them are considered an effect of one contract" (Al Omrani 46).[11]

Contracts that meet the mentioned criteria and do not have a precedent with the same structure in Islamic jurisprudence can be classified as contemporary Islamic transactions.

1.4 Main criteria to be considered when codifying Islamic commercial transactions

Islamic commercial transactions are derived from authentic Islamic jurisprudence. Four sources form the foundation of such jurisprudence: the Holy Qur'an, the *Sunnah* of the Prophet Mohammad (peace be upon him), consensus (Ijmaa)[12], and analogical deduction (Qiyas).[13] All reputed scholars from the four leading jurisprudence schools accept these four foundations.

As the first source of Islamic provisions, the Holy Qur'an is an excellent reference for economic and financial affairs; above all else, it calls for respect for private (individual) property. The Almighty said, "32. And wish not for the things in which Allâh has made some of you to excel others. For men, there is reward for what they have earned, (and likewise) for women; there is reward for what they have earned" ("Taqi Al-Din Hilali and Muhammad Muhsin Khan" 5:32).

Moreover, the Almighty said in the Holy Qu'ran about a person who takes someone else's money by theft, "38. And (as for) the male thief and the female thief, cut off (from the wrist

---

[11] Examples include a lease ending with ownership, a diminishing partnership, and complex *Murabaha*.

[12] The term "consensus" (Ijmaa) means "an agreement of all the mujtahids (senior Muslim scholars) from the community of Muhammad, may Allah's peace and blessings be upon him, in a certain era after his death on a particular Islamic ruling" (Al Dhohayan Endowments).

[13] The term "analogical deduction" (Qiyas) means the action of "associat[ing] something known with another for the purpose of establishing or denying a common ruling, due to the commonality between them" (ibid).

joint) their (right) hands as a recompense for that which they committed, a punishment by way of example from Allâh. And Allâh is All-Powerful, All-Wise" (ibid 6:38).

The Qur'an prohibits all aspects of unethical economic activity, including exploitation, monopoly, or *riba*, so Almighty Allah said, "188. And eat up not one another's property unjustly (in any illegal way, e.g., stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully" (ibid 1:188).

Furthermore, the *Sunnah* (the sayings, actions, and approvals) of the Prophet Mohammad (peace be upon him) are considered the second main source in Islamic provisions, although they may be considered the first source for many provisions. Almighty Allah handed the Holy Qur'an and *Sunnah* down to his Prophet. The Almighty said, "3. Nor does he speak of (his own) desire. 4. It is only a Revelation revealed" (ibid 53:3,4).

Almighty Allah commanded us to obey and follow his messenger: "And whatsoever the Messenger Muhammad (peace be upon him) gives you, take it; and whatsoever he forbids you, abstain [from it]" (ibid 59:7).

Thus, using these main pillars in the codification process is imperative. The principles provided by these pillars will ensure that codification involves well-drafted legal articles to protect and benefit the contracting parties' rights, the public interest, and dealers. It will also guarantee the quality of codification and facilitate its integration with modern legal systems. These criteria will be analyzed as follows.

a) First, to indicate the most developed legal opinions among the four primary Islamic jurisprudence schools and align them with modern commercial developments

The Ottoman Empire adopted Hanafizim as its guiding Islamic jurisprudence school. Therefore, it is unsurprising that the team of scholars assigned to the Al-Majallah project to codify Islamic commercial transactions limited their codification framework to only the provisions of the Hanafi jurisprudence school (Al-Majallah 20).

As a result, many scholars see this method as having a significant disadvantage. Adherence to a specific school narrows the scope of jurisprudence and does not benefit from the rich Islamic jurisprudence informed by various opinions and provisions. Therefore, using only one jurisprudence school excludes issues that do not have a clear opinion in that jurisprudential source. Consulting other jurisprudence schools can provide additional capacity and solutions. This feature distinguishes Islamic law from Western law (Shahata 90).

It was not long after the publication of Al-Majallah that its insufficiency began to appear when attempting to meet the new needs arising from modern economic methods in trade, work, and all other aspects of production, which called for remedies by numerous successive laws, each of which corrected part of the Al-Majallah (Al Zarqa 243: One).

Accordingly, there is almost a consensus among Islamic jurisprudence scholars regarding the need to incorporate the opinions of more than one school of thought. Adherence to specific schools of thought narrows the scope of Islamic jurisprudence, and these theories do not benefit from the wealth of various Islamic jurisprudence opinions.[14]

Thus, this thesis will adopt the most common *Sharia* opinion across all Islamic jurisprudence schools. These are the steps that will be followed when codifying Islamic commercial transactions:

1. Conduct a detailed and careful analysis of the financial jurisprudence transactions from the perspective of the four leading Islamic schools (Hanafi, Maliki, Shafie, and Hanbali).
2. Choose from the various Islamic jurisprudence opinions supported by proofs taken from the Holy Qur’an or authentic *Sunnah* and aligned with the understandings of leading Islamic scholars.
3. Ensure that the selected Islamic jurisprudential opinion is simple, easy to apply and implement, and compatible with contemporary commercial dealings.

[14] Examples include a doctrine with an opinion based not on specific jurisprudential sources but on another doctrine with capacity and treatment. These features are distinguished in Islamic legislation.

b) Second, to consider Islamic *Sharia* objectives (*maqasid al-Sharia*)[15] when codifying modern Islamic transactions

It is essential when codifying contemporary Islamic financial transactions and choosing a provision related to the codified transaction to bear in mind the *Sharia* objectives and meanings related to the issue. In Islamic *Sharia*, objectives (*maqasid al-Sharia*) are the goals of the *Sharia* provisions. It is important to highlight the benefits of adopting Islamic *Sharia* objectives (*maqasid al-Sharia*).

One of the known dualities in *maqasid al-Sharia* is that between a word's structure and its meaning. This type of duality is frequently discussed in chapters on Islamic jurisprudence doctrines related to contracts in which the intentions of a responsible adult are considered.

The great Islamic scholar Ibn Taymiyah (d. 1263) said, "The purposes and intentions are highly considered in contracts and actions" (Ibn Taimiyah 72: 6). The value of intention here lies in, as he said in another book, "the consideration of intentions and action" (Ibn Taymiyah 535: 30).

Dr. Ahmad Al-Raysuni, a renowned Moroccan Islamist jurist, summarized the steps in considering Islamic *Sharia* objectives as follows:

- Verify the intent of the *Sharia* provision by checking the intended meaning in the text and whether it is evident in the word's literal meaning or refers to deeper understandings.
- Distinguish between the *Sharia* provisions to be applied based on specific circumstances and the provisions prepared to prevent forbidden transactions.
- Observe *Sharia*'s general objectives when partially applied to be compatible with the main ruling.
- Consider the consequences and outcomes (Al-Raysuni 46).

[15] Muslim scholars have defined the objectives of *Sharia* (*maqasid al-Sharia*) thusly: The goals that *Sharia* was set up to achieve are in the interest of the people. The scholars observed the meaning of the law in all or most cases of legislation to ensure that their observations on a special type of *Sharia* provision do not pertain to the whole universe (Sano 431).

Islamic *Sharia* provisions are based on considering what causes the issue; therefore, the codified articles of financial transactions should be aimed at blocking anything that leads to an impermissible act (*haram*).

c) Third, to clarify what constitutes a forbidden Islamic commercial transaction

Islam is open to all forms of financial transactions used in global markets. Labeling a transaction as newly applied in international markets is not enough to prohibit it based on *Sharia*.

Moreover, Islam is closely concerned with unethical behaviors. Acts such as betrayal, monopolization, exploitation, lying, gambling, and rights infringement lead to forbidden (*Sharia*) commercial transactions (Al-Qaisi 309–310). Any act that leads to unfairness, harm, fraud, aleatory elements, *riba*, or stratagems is considered forbidden.

It is vital to track the prohibited aspects of new market-endorsed financial transactions. The formula for doing so is straightforward; if the transaction occurs under prohibited conditions, then it is forbidden. Additionally, if the transaction includes an aspect that is prohibited, it is an illegal transaction based on *Sharia*.

For Muslims to take a stance on transactions that include impermissible conditions based on *Sharia*, they must be aware of the prohibitions, correct the transaction as much as possible, and reformulate the transaction to ensure its alignment with *Sharia* guidance. Islamic financial jurisprudence is therefore characterized by justice and provides solutions. Additionally, Islamic jurisprudence is flexible and sophisticated.

Thus, the codified articles must be transparent regarding what is forbidden according to Islamic *Sharia*. The next chapter introduces the main Islamic jurisprudential maxims and presents them as codified legal articles that serve as indicators to help identify illicit Islamic transactions.

Furthermore, codifying the core forbidden acts mentioned above and addressing the Islamic jurisprudential maxims related to prohibitive financial transactions will provide clear Islamic indicators to help identify the correct *Sharia* provisions regarding modern commercial transactions.

d) Fourth, to apply an essential rule related to contemporary Islamic financial transaction jurisprudence: “Originally, the initial *Sharia* provision of any innovative structured commercial transactions was permissibility” (*Mu’bah*).

In this era of rapid development, business transactions are being innovatively developed, and their methods are updated very quickly to keep pace with the purchasing power requirements of merchants and consumers.

The field of financial transactions is experiencing rapid development. Due to the innovation in many financial products and the speedy fintech developments that have taken over, traditional financial transactions are experiencing significant changes, particularly in classical commercial trading. This swift development involves all countries across the globe without exception.

The world has become one village, and Islamic financial transactions are responsible for a large share of this change. Islamic financial transactions are governed by *Sharia* rules, which have specific characteristics and principles. Sometimes these principles and foundations are consistent, and other times they conflict with what is happening in international financial industries.

Furthermore, it is necessary to carefully study the modern and classical contracts circulating in international financial and commercial markets and evaluate them according to the principles and purposes of Islamic finance provisions.

Islamic *Sharia* laws regarding financial transactions set specific rules and controls, leaving the field open for innovation and creating new contracts that can contribute to the prosperity of societies and nations. *Sharia* laws can benefit people in realizing their legitimate desires for ownership, development, and investment within the framework of certain rules.

Nevertheless, in Islamic law, the basic principles of conditions and contracts that people introduce in their dealings must be permissible (*Mu'bah*). Nothing is forbidden except what is explicitly mentioned as forbidden in the Holy Qur'an or authentic *Sunnah*. Additionally, every condition, contract, or transaction that *Sharia* does not forbid is automatically considered permissible.

Imam Muhammad Ibn Idris Al-Shafi'i (d. 820) said, "The origin of all the sales is permissible, providing it is with the consent of the two parties involved. Except what the Messenger of Allah (peace be upon him) forbade, and what was in the meaning of what he forbade" (Al-Shafi'i 5: 4).

A famous scholar from Cordoba, Andalusia, Imam Yusuf Ibn Abdul-Barr al-Qurtubi (d. 978), said, "The basic principle regarding sales is that it is permissible, if it is by mutual consent, except for what Almighty Allah has forbidden" (Ibn Abdul Bar 91: 20). Furthermore, Sheikh al-Islam Ibn Taymiyah (d. 1263) said, "The basic principle concerning transactions is that people are not deprived of the transactions they need, except as indicated by the Holy Qu'ran and the *Sunnah* that it is forbidden" (Ibn Taymiyah 535: 30).

Therefore, it is not problematic for Islamic *Sharia* to be applied to modern transactions or for traditional transactions to be revised according to the *Sharia* rules and laws that govern financial transactions. Islamic commercial transactions are governed by flexible rules that prepare specialists to be creative and innovative for financial and economic benefit.

Thus, when codifying modern financial transactions, it is essential to build Islam-related provisions based on a fundamental maxim taken from *Sharia* guidance that says, "The basic principle in all transactions is that it is permissible, so there is nothing forbidden except for what Almighty Allah and His Messenger forbade" (Al-Uthaimeen 183: 9).

e) Fifth, to write drafts of Islamic jurisprudential theories in the form of legal clauses.

Formulating Islamic jurisprudential theories in legal articles is essential for presenting jurisprudential considerations related to new transaction issues. Therefore, codification must begin with the formulation of general *Sharia* theories and rules governing the laws that apply to individuals and institutes.

Its failure to add Islamic jurisprudence theories was one of the main criticisms of the Ottoman Empire's "Al-Majallah" Project. Scholars such as Qadri Pasha (d. 1888), in his book "Murshid Al-Hiyran," rectified the lack of Islamic jurisprudential theories, as did D. Sentillana (d. 1931) through the Tunisian codification project "Code des obligations et des contrats (Tunisie)."

However, it is essential to know that Islamic jurisprudential theory is a *Sharia* term that is not found in historical Islamic jurisprudence. According to Arabic language scholars, it is a new term. It is used by contemporary scholars and researchers who have combined their studies of Islamic jurisprudence and law, classified jurisprudence research in this new pattern and unified their books according to it (Juma 414).

Dr. Al-Sinhori said,

> "Islamic jurisprudence does not, in its early references, have a contract's general theory, but rather reviews named contracts. The researcher has to extract the general theory of the contract from among the various provisions of these named contracts. The researcher stands on the common foundations that apply to most of these contracts. So, the researcher understands the comprehensive theory of such contracts" (Al-Sanduri 19–20: 6).

Contemporary Islamic scholars established the following definition of jurisprudential theory: "A set of principles, rules, and jurisprudential rulings, with thematic relevance, and multiple relationships that explain in general what is part of its subject matter" (Al-Rumi 518). Dr. Al-Duriyni (d. 2013) defined jurisprudence theory as "a holistic concept consisting of principles, conditions and general provisions related to a specific topic. A binding legislative system is formed from all mentioned details and includes in its provisions everything that achieves its subject matter" (Al-Durayni 140).[16]

Thus, many contemporary researchers have devoted books to these jurisprudential theories and extensive related details. It is imperative to pay attention to these jurisprudential theories when codifying contemporary commercial transactions. These theories facilitate the understanding of the jurisprudential rulings and help make *Sharia* rulings appropriate for new financial and commercial operations.

f) Sixth, to codify the ethical attributes of the articles regarding Islamic financial transactions.

Islamic law (*Sharia*) is a divine law designed to teach people about their relationship with their Lord and with each other.

Sharia encourages people to adhere to good morals and treatment. It is imperative to consider ethical issues in codifying Islamic financial transactions because *Sharia* is inseparable from morality.

Consequently, we cannot separate morality and law and consider them two separate things. As Professor Al-Ashqar noted, "the rulings of law and religion are mixed, and the reason for law and religion separation belongs to Aristotle and the Roman jurists influenced by his views. Aristotle viewed the law as a separate system from religion and ethics. After that, based on this theory, Roman jurists formulated their society laws" (Al-Ashqar 137).

Sharia idealism requires not separating rules of law from religious and moral laws. Thus, ethics must be closely considered in Islamic codification through the inclusion of behavioral maxims and attention to the ethical aspects of transactional codes.

[16] Examples of Islamic jurisprudential theories include property, ownership, rights, contract, contingent matters, and rights abuse theories.

This link is based on wide-ranging jurisprudential theories, such as the necessity theory.[17] This theory was formulated from the Qur'an and the prophetic *hadiths* presented in the form of Islamic jurisprudential maxims:

i) Harm should be eliminated.
ii) Hardship brings ease.
iii) Necessity permits prohibitions.
iv) Harm should be limited as much as possible.

Among the most critical applications of "necessity theory" is in determining the permissibility of canceling a lease contract with a valid excuse. The ethical rules and theories in Islamic jurisprudence are core concepts; thus, reflecting both in codified Islamic contemporary transactions is essential. A codification is not an inventory of legal rules with a fixed and unchanging face. Instead, it arranges the special provisions of a branch of law to facilitate understanding between specialists and nonspecialists.

Accordingly, codification becomes key to understanding *Sharia* legal provisions supplemented with references to other legal sources, mainly the judiciary and jurisprudence. The codification is intended to facilitate the practical implementation of theoretical jurisprudence maxims.

One example of successful codification is the Napoleonic codes; although more than two centuries have passed since they were issued, they are still keeping pace with modern developments and enhancements thanks to the judiciary and jurisprudence.

1.5 Drafting style suggested for codified articles on Islamic commercial transactions:

Undoubtedly, the technical formulation of legal articles is essential to facilitate understanding of the law's provisions. Nevertheless, a codification of Islamic *Sharia* will differ from civil codes influenced by Roman law. *Sharia* law brings the causes ahead to

[17] Chapter two will provide detailed explanations of the theory of necessity and maxims related to this theory.

the causative party. Germany is one European country that has adopted the Islamic method of legislation.

Furthermore, most contemporary Islamic legal experts prefer writing *Sharia* legal articles to avoid contradiction and repetition and use the appropriate phrases for *Sharia* rules without going into detail. Using explicit phrasing, coherent sentences, and an accessible style is the preferred legal drafting method (Abduljawad 38).

This section is not intended to compare different methods; the intent is to highlight what distinguishes the Islamic legal articles taken from *Sharia* from other laws.

One of the most admired works by the famous Egyptian jurist and scholar Dr. Abdulrazzaq Al-Sanhuri (d. 1971) argued that the following standards be considered when writing legal articles. These standards were later widely adopted by many Islamic law researchers.

1. Use the appropriate phrasing for each ruling: The commands and prohibitions of *Sharia* must be categorical and authoritative. Moreover, permissibility is to be expressed broadly and flexibly. As Al-Sanhuri said, "The Law commands, it is not made to instruct, it does not need to convince."

2. Avoid ambiguous phrases and strange words because one of the purposes of codification is to simplify *Sharia* verdicts for the public.

3. Avoid repetition and contradiction because they conflict with the purpose of codification and its practical spirit.

4. Maintain the terminology's exact meaning throughout all codified legal articles. Unify the meaning of terms and clearly convey different *Sharia* provision scenarios.

5. Present and prefer Islamic jurisprudence terminologies over other legal terms because a term in Islamic jurisprudence may have a different meaning in other legal situations.

6. Avoid mentioning the reasons that led to a specific Islamic ruling or examples that clarify the chosen ruling; the explanatory note will cover all these details.

7. Avoid using many references to outside texts, except when necessary, due to the confusion involved in tracing references. Having too many references contradicts the purpose of codification, that is, to facilitate the reader's understanding.

8. Avoid going into detail and rely on general rules. Keeping legalized Islamic jurisprudence articles flexible means that judiciaries and jurisprudence can keep pace with modern financial transactions.

9. Avoid including all related issues when codifying Islamic financial transactions because the legislator cannot address solutions and provisions for all actions and facts. No provisions can be valid for every time and place. Therefore, the legislature must leave the details to jurisprudence and the judiciary (Al-Sanhuri, Wujub Tanqeeh Al-Qanoon Al-Madani Al-Masri 69-73).

1.6 Chapter outcomes:

The chapter's outcome is essential to highlight the fundamental points in establishing the required legalization. However, one question should be asked: Are the standards described in the chapter sufficient to codify all possibilities in Islamic financial transactions?

The answer is as follows: It is a mistake to try to codify everything.

Ultimately, any attempt to account for all possibilities is doomed to failure. Regardless of his or her self-ingenuity and good understanding of the codified issues, the codifier cannot conceive of all matters related to a given issue, as these are subject to the influences of time and place.

The codifier is a legislator who must be judicious, leaving ample room for continuous legal developments. Codified texts should not be made stagnant by restricting them to narrow words and forms of judgment. It is therefore best to leave complicated matters to jurisprudence and the judiciary. Thus, codifiers should refrain from passing specific judgements on most major underdeveloped or nascent issues as long as the practical need does not require a specific decision to be made at the time of codification.

The wise codifier is the one who makes his or her statements flexible so that they can be interpreted based on the changing circumstances without ambiguity or a lack of clarity.

Accordingly, it is highly recommended that the legislature combines flexibility and accuracy in the legalization process when codifying contemporary Islamic commercial transactions and selects broad, flexible standards instead of narrow, rigid rules. These standards will help guide judges and arbitrators without restricting them, leading to solutions that differ between cases and allow for a consideration of the circumstances of different cases.

Among the examples of legal codes that combine accuracy and flexibility is Swiss legislation, which uses flexible standards and leaves a wide field for the judiciary and jurisprudence to interpret the law according to changing circumstances.

In short, codification is not intended to produce legal rules limited to a fixed and unchanging state. Legal provisions can provide a foundation for identifying legal rulings that refer to the sources of legal precedent, mainly the judiciary and jurisprudence.

Although nearly two centuries have passed since they were established, the Napoleonic codes are a good example of flexible legal codes, thanks to France's judiciary and jurisprudence. The articles remain in force to the present day despite recent developments based on new interpretations.

In general, codified texts are invaluable to researchers and legal professionals. Codified legislation makes it easier to identify unregulated rulings, which must be examined in terms of judicial precedents, in the broad jurisprudential literature, or in dispersed legislation.

As for the current work's citation style, this thesis precisely follows the MLA 8 style requirements for the works cited and in-text citations, which are the latest version commonly used in legal papers.

Chapter 2

A Systematic Method for Identifying the Leading Causes of Illegal Islamic Financial Transactions

2.1 Framework

Islamic jurisprudence mainly touches on four categories: a) acts of worship (e.g., prayer, fasting, alms, and pilgrimage to Mecca); b) commercial and financial transactions; c) family issues (e.g., marriage, divorce, inheritance); and d) crimes and punishable acts. In this article, the focus will be on modern commercial and financial transactions.

Sharia university students and researchers commonly discuss the difficulty of understanding Islamic jurisprudence science (*al-fiqh*) in regard to sales. Anyone who studies jurisprudence of Islamic transactions (*fiqh al-mua'malat*) is familiar with this complexity. Especially when studying new transactions, scholars seek to understand Islamic *Sharia* compliance through scientific research and recent commercial transaction studies.

Even before an individual knows the jurisprudential provisions, gaining knowledge of contemporary Islamic commercial dealing is challenging. One might read studies of specific modern jurisprudential transactions but remain confused, with only a vague understanding of the matter. Moreover, a vital legal maxim of Islamic jurisprudence (*al-fiqh*) is applicable when studying new transactions: The principle *Sharia* ruling of any commercial and financial transaction is permissibility, and the relevant prohibition must be reasonable in its meaning and logic[18]. This means that *Sharia* forbids only a small number of transactions. Any transaction that is not expressly prohibited and does not include any of the elements that cause prohibition of the transaction is automatically *Sharia* permissible.

Furthermore, it is essential to know that the source of Islamic jurisprudence is not derived from human beings' understanding and implementation but rather is a divine law derived from the revealed words of God (the Holy Qur'an) and the way (*Sunnah*) of the Prophet Muhammad (peace be upon him).

[18] See Chapter 1, section 1.3, fourth overall point.

Consequently, the rulings on Islamic financial and commercial transactions that God has put forth for the general public to work with in their markets and stores have not been revealed so as to be the monopoly of intelligent scholars and specialists.

It is not fair for God to impose obligatory *Sharia* rulings on His servants and forbid them from doing actions that constitute sin if these rules are too difficult for them to understand and implement. This issue is worth studying, and the proper methodology for studying the *Sharia* compliance of new types of transactions must be addressed, particularly for contemporary transactions with very complex structures.

It is necessary to establish maxims that serve as critical guidelines and filters to determine the legal condition of contemporary commercial transactions and understand the *Sharia* provisions for such transactions.

This article presents a mechanism to simplify the understanding of the jurisprudence regarding contemporary Islamic commercial and financial transactions and to avoid factors that make a transaction forbidden in *Sharia*. Accordingly, all the factors that affect a transaction from a *Sharia* perspective will be presented in this article as codified material for the first time.

2.2 Identifying the Fundamental Occasioning Factors (*Illah Shariya*[19]) of Prohibited Islamic Financial Transactions and How to Benefit from These Restrictions

To develop a comprehensive methodology to determine the correct provisions related to newly structured Islamic financial and commercial transactions, it is necessary to enumerate the fundamental factors that affect transactions that make them prohibited by Islamic law.

The basis is, as previously mentioned, the following maxim: In principle, any financial transactions are *Sharia* permissible. Nevertheless, this is conditional on ensuring that no *Sharia* prohibitions are involved. Thus, an important question arises: What are the main factors of these legal prohibitions? Knowing what these prohibition-triggering factors are

[19] "It is the interests that the Sharia intended to bring to humans, and the evils that it intended to repel. The mentioned meaning indicates that the Islamic law is justified in its entirety, by consider[ing] the essence [of the] purpose of things and the interests of people. Thus, this essence is subject to consensus among all Islamic jurisprudence schools" (Basa et al.).

can help verify the absence of evidence, which leads to a change in the central maxim: In principle, any financial transactions may be permissible.

2.3 The Efforts of Sharia Scholars to Highlight the Main Factors that Lead to the Prohibition of Financial Transactions

Several Muslim jurists have attempted to identify the main factors that lead to the prohibition of a financial or commercial transaction. For example, Abū al-Walid al-Bājī (d. 1081 CE), a famous Andalusian scholar of the Maliki school, said,

> "Corrupt sales are of three types: First, *riba* and what a pretext is for *riba*. Second, deceit and similar acts. The third aspect is buying an unseen commodity, the details of which are unknown. Furthermore, these sales have similar aspects and are classified under these three mentioned classifications. Jurisprudence scholars assess new sales based on these criteria" (Al-Baji 215).

Another Andalusian scholar, Ibn al-Arabī al-Mālikī (d. 1148 CE), also tried to determine what makes a sale forbidden in Islamic *Sharia*. When discussing forbidden components of sales, he decided that incorrect sales

> "do not depart from three categories: ribā, void, and aleatory (*gharar*). By careful analysis, we find that *gharar* is due to invalidity. These legal prohibitions overlap, although their meanings differ" (Ibn al-Arabī 324:1).

He also said,

> "The corruption of the sale is due to three things: *Riba*, deception, from buying something with an unknown detail (i.e., buying uncaught fish in the ocean, or a bird flying in the sky and not being able to catch); or deceiving people and taking their money unjustly" (Ibn Al-Arabi 787: 2).

Abu al-Walīd Ibn Rushd (d. 1198 CE), born in Cordoba and known in the West as Averroes, also attempted to identify the leading causes of sales being prohibited in *Sharia*. He concluded,

> "The main reasons for the legal prohibition of sales in *sharia* are the same as the general causes of corruption, and they are: First, the items being sold are already prohibited in *sharia* (i.e., selling alcohol). Second: *riba*. Or a combination of both.

> These mentioned factors that affect sales are the origins of corruption. Moreover, *sharia* forbids other sales for similar reasons, such as fraud and harm.
>
> Furthermore, some sales are forbidden by *sharia* due to the sale timing (i.e., if the sale took place during Friday prayer time). Additionally, some sales are forbidden by *sharia* law because the content is already forbidden in *sharia* (for example: selling alcohol)” (Ibn Rushd 237: 3).

Imam Ibn Taimiyah (d. 1328 CE) briefly described the matters that affect the validity of a contract: “The acquisition of another’s money in illicit transactions falls into two types, which Almighty mentioned in Holy Qur’an; they are *riba* and gambling” (Ibn Taimiyah 22: 29).

He elaborated by saying,

> “The basic principle in all contracts is justice, for [this declaration] was sent by the messengers and revealed in the Holy books. God Almighty said, ‘Indeed, We have sent Our Messengers with clear proofs and revealed with them the Scripture and the Balance (justice) so that mankind may keep up justice’ (57:25).
>
> *Sharia* forbids *riba* because of its unjust character. Additionally, it forbids gambling because of the injustice it involves. Likewise, the Qur’an prohibits both transactions because they involve the wrongful acquisition of another person’s money.
>
> Moreover, all that the Prophet Mohammad, (peace be upon him) forbade in transactions, such as ambiguity and selling fruits before they seem edible, is included either in *riba* or gambling” (Ibn Taimiyah 385: 28).

Shaikh Abdulrahman al-Saadi (d. 1957 CE), a well-known contemporary scholar, said, “The greatest prohibitions affecting the validity of transactions are *riba*, deception, and injustice” (Al-Saadi, Taysir Al-Latif Al-Mnan Fi Khulasat Tafsir Al-Quran 117).

He also said, “The greatest among them are the maxim of interest, the maxim of ambiguity and gambling, and the maxim of deception” (Al-Saadi, Irshad Uwli Al-Basayir Wal’albab Linil Al-Faqih Bi’aqrab Al-Turuq Wa Aysar Al-Asbab 168).

Shaikh Muhammad al-Uthaimeen (d. 2000 CE), one of the most famous contemporary scholars from Saudi Arabia, said, "The conditions revolve around three things: injustice, *riba*, and deception" (Al-Uthaimeen 184: 8).

He also said, "The basic principle in all transactions is that they must be permissible. The prohibition of transactions comes only in the presence of the following: *riba*, injustice, or deception" (Al-Uthaimeen 140: 6).

Shaikh Abdullah Al-Bassam (d. 2002 CE), a reputed Saudi scholar from the Hanbali Islamic jurisprudence school, said,

> "To sum up, forbidden transactions are due to *sharia*, the most important of which are the following three:
>
> Firstly: *Riba*, in its three types. *Riba* in sale and exchange (*riba al-fadl*); *riba* that increases the debt period and leads to the increase in money being exchanged (*al-nāsiyāh*); and *riba* on every type of loan, conditional upon adding direct benefit by the lender.
>
> Second: Ignorance and uncertainty, which include many parts and multiple forms.
>
> Third: Deception. [This category] includes multiple types" (Al-Bassam 449).[20]

Shaikh Bakr Abu Zayd (d. 2008 CE), a Saudi *Sharia* scholar, said,

> "It is well known that every transaction that *sharia* forbids falls under one of the three prohibition rules, which are the prohibition of *riba*, prohibition of aleatory (*gharar*), and prohibition of deception (*tāghreer*).
>
> Corrupt Islamic transactions occur either because the product is unable to be delivered, such as in the case of a stray camel, or because the product did not exist initially at the time the contract was concluded, such as in the case of selling the fetus in a cow's belly or selling a fetus that will be in the stomach of the present fetus in the future. Additionally, if the buyer has no descriptive information of the product bought [the sale is false]. Moreover, ignorance of the quantity that will be bought will result in a false transaction" (Abu Zayd 2).

He also said in another book,

[20] A clear definition and detailed explanation of the different types of *riba* is provided in section two in relation to codifying maxims related to *riba*.

> "Expressly, forbidden transactions are prohibited by *sharia* in cases of injustice. Usually, [this happens] when the buyer's money is acquired unlawfully. No matter how different the structures introduced, these forbidden transactions are forbidden due to three main reasons, as stated clearly in the Holy Qur'an and *Sunnah* of Prophet Mohammed (peace be upon him), which are *riba*, deception, and deceit" (Al-Mitrik Introductory-B).

The findings of previous scholars can be summarized as follows.

First, most scholars have agreed on three reasons for a transaction being forbidden: injustice, *riba*, and deception. Some scholars have added harm, others have added deception (the meaning of fraud), and Ibn Taimiyah mentioned redundant transactions.

Second, scholars have mentioned six causes of prohibition, all of which relate to contracts and are common reasons financial transactions are prohibited according to *Sharia*. These causes are injustice (*dhulm*), harm (*dharar*), *riba*, aleatory elements (*gharar*), fraud (*taghreer*), and stratagems in transactions (*ḥiyal*).

2.4 Advantages of Stating the Main Occasioning Factors of Forbidden Islamic Financial Transactions

One of the essential benefits of acknowledging the occasioning factors (*illah*) is that doing so helps to apply *Sharia* legal provisions to new financial and commercial transactions. It provides a systematic method for examining new structural transactions and analyzing them for legal prohibitions.

The study of any contemporary financial transaction is based on two crucial stages: first, understanding the new transaction's nature, knowing its details, and ensuring that it is not fraudulent; and second, the jurisprudential adjustment of this new financial transaction. This adjustment includes two steps:

a) Studying possible similarities between the modern transaction and a nominate contract in Islamic sales jurisprudence (*fiqh*). Consequently, this new structure transaction will be subject to the provisions of the nominate contract known in Islamic *Sharia*. Alternatively, we may conclude that a given contract is not based on an example of a previous contract.

b) Ensuring that all new transaction procedures are free of legal prohibitions.

However, to ensure that the second step is based on a disciplined methodology, we subject the new contemporary financial transaction to the following crosscheck:

a) The new transaction is tested to determine whether it is free of any of the following three characteristics: *riba*, aleatory elements (*gharar*), and fraud.
b) Next, if the transaction is free from all three illicit characteristics, the basis of the transaction is tested for any cause of injustice.
c) Next, the transaction is assessed for harmfulness. The contract should be free of any condition that causes harm to either of the contractors or to external things.
d) Last, a final check is conducted to ensure that a transaction is an actual contract with no signs of illegal stratagems, redundancy, or virtual contracts aiming to bypass the *Sharia* prohibition of *riba*.

Provided that all tests of the transaction are accurately conducted, one can generally conclude whether the transaction is permissible according to Islamic *Sharia* law.

As mentioned earlier, to adapt this reasoning into a framework for determining the legitimacy of any sales with a new financial structure, it is necessary to determine how to identify evidence of these six occasioning factors that scholars understand and that are derived from the texts of the Holy Qur'an and the authentic *Sunnah* of the Prophet (peace be upon him).

It is also imperative to know the *Sharia* objectives that prohibit transactions involving any of the mentioned occasioning factors. These factors can be described in terms of legal codified articles so that contracting parties, sellers, and buyers will be aware of them.

a) First: Codifying the Different Types of *riba* as Influencing Factors in Transactions

Islamic *Sharia* is not alone in prohibiting *riba*; all monotheistic religions agree on the impermissibility of the factors that constitute *riba*. Moreover, in "approximately 1800 B.C., Hammurabi, a king of the first dynasty of ancient Babylonia, gave his people their earliest known formal code of laws. A number of the chief provisions of this code regulated the relation of a debtor to a creditor" (Homer and Sylla 3).

Furthermore, most human-made laws place multiple restrictions on interest by, for example, setting a ceiling or limit on compound interest. According to the well-known jurist Abd al-Razzaq al-Sanhuri, there is "a traditional hatred of *riba*, not only in Egypt, nor in Islamic countries alone, but in most of the world's legislation. *Riba* is hated in all countries and eras" (Al-Sanhuri 882: 2).

Moreover, it is essential to mention that the Western concept of "usury" is the same as *riba*. Adding interest to a loan or debt was a forbidden act until the sixteenth century, when Western culture altered the definition of "usury":

> "Usury, in modern law, is the practice of charging an illegal rate of interest for the loan of money. In Old English law, the taking of any compensation whatsoever was termed usury. With the expansion of trade in the 13th century, however, the demand for credit increased, necessitating a modification in the definition of the term. Usury was then applied to exorbitant or unconscionable interest rates. In 1545, England fixed a legal maximum interest, and any amount in excess of the maximum was usury. The practice of setting a legal maximum on interest rates later was followed by most States of the United States, and most other Western nations. (The Editors of Encyclopedia Britannica).

One of the most important objectives of prohibiting *riba* is to prevent injustice from befalling a debtor due to a *riba* practice. Of course, the material harm that practicing *riba* inflicts on the individual harms society as a whole because societies are groups of individuals. Among the manifestations of injustice toward debtors is a wise person paying interest without material compensation. Except when necessary, exploiting a person's need is a form of injustice.

Those with money can exploit people's cash needs by providing cash at high with interest. This interest may appear small but accumulates until it is too great a burden for the needy borrower, who does not receive any additional compensation for the extra interest payments except for a delay in the repayment terms. This only delays the resolution of the problem. However, by making the solution more complicated, this “solution” also increases the injustice in the situation.

Moreover, one of society’s grievances is that *riba* helps money holders make money without investing it in economic projects that benefit society. This act separates money from actual value, a situation represented by the economic circumstances that have generated money crises across human history. As a result, financial crises have frequently arisen and have harmed national economies. In these cases, decision-makers have been forced to forgive large amounts of debt and create new investment opportunities to revive the economy and ease the debt gap.

In this thesis, the original *Sharia* term *riba* is used, as neither of the other terms (usury and interest) explains the exact Islamic *Sharia* meaning of *riba*, even though the linguistic meaning of *riba* is “increase”. Nevertheless, the ambit of *riba* in *Sharia* is much broader than forbidden interest on a conditional loan or deferring repayment.

Thus, codifying the different types of *riba* and their details is essential to avoid forbidden Islamic *Sharia* transactions.

i. *Methodology for Codifying Different Types of Riba as They Appear in Modern Transactions*

The purpose of presenting *riba* conditions in codified articles is to determine the best systematic method for assessing whether a transaction involves a prohibited type of *riba* according to Islamic law. Thus, it will be easier to judge the validity of new types of transactions.

A clear definition of the concept and types of *riba* are introduced. Then, detailed codified articles of the jurisprudential maxims related to the types of *riba* are presented. This is done because it is vital to provide clear codifications showing the conditions that lead to a transaction being judged invalid (*riba*).

Finally, a set of codified articles regarding transaction conditions that fall under the umbrella of *riba* are addressed, and codified articles defining the effect of the *riba* condition on the validity of transactions are described.

b) Second: Codifying Aleatory[21] Elements (Gharar)[22] as an Influencing Factor in a Transaction

In the proposed methodology to evaluate new commercial/financial transactions and their *Sharia* compliance, a second systematic examination is made to scan for possible aleatory (*gharar*) transactions.

Islamic *Sharia* prohibits aleatory transactions in contracts primarily based on what the Prophet Mohammad (peace be upon him) stated in various authentic sayings (*hadiths*): "The Prophet forbade transactions involving aleatory elements (*gharar*) and ambiguity" (Al-Sajestani, "Sunan Abi Dawud (3504) - Wages (Kitab Al-Ijarah)" 83: 4).

Muslim scholars from different jurisprudence schools present various definitions of the *Sharia* term *gharar* in relation to contracts: 1) An unknown consequence or what the person is unable to deliver when sold, and 2) what is not known about the quantity or amount of exchanged material or the concealment of information (Al-Dharir 51).

The closest equivalent to the meaning of *gharar* in relation to new forms of contemporary contracts in English is the adjective aleatory, which the Merriam-Webster dictionary defines as follows: "depending on an uncertain event, or contingency as to profit and loss. Additionally, relating to luck, and especially to bad luck" ("Aleatory").

Therefore, the term "aleatory elements" is used in this thesis as the English translation of the Islamic legal term *gharar*. Aleatory contracts are prevalent in the insurance industry and are defined as follows: "An agreement that is connected with an event that is not under someone's control, that may or may not happen, and of which the result is uncertain. Most insurance agreements and derivatives (financial products based on the value of another asset) are aleatory contracts" (Cambridge Dictionary).

In French civil law, according to article 1104 paragraph 2, a *contrat aleatoire* is a "random contract [that] is a reciprocal agreement whose effects, in terms of advantages and losses,

---

[21] Some researchers refer to the translation of *gharar* as excessive uncertainty. From my perspective, this is inaccurate. Uncertainty in trade (trade risk) is permissible in Islamic *Sharia* even if it is excessive. However, the higher the risk is, the greater the expected profit.

As for *gharar* in selling, it is permissible if it is minor and cannot be avoided. However, it is not permissible if it is exorbitant or if its avoidance is possible but might cause many difficulties and high costs.

[22] The Arabic meaning of the word *gharar* is "originally derived from the word *taghreer*, which means exposing oneself, or one's money to perdition, without knowing" (Al-Dharir 48).

either for all the parties, or for one or more of them depend on an uncertain event (Juris Pedia)".[23]

Islamic law scholars have a more specific definition of aleatory elements (*gharar*). Professor Al-Sanhuri defines a probabilistic contract as a "contract in which neither contracting party can determine when the contract is completed, how much is taken, or how much is given" (Al-Sanhuri, Nadhariyat Al-Haq 140).

Islamic *Sharia* mentions many reasons for prohibiting sales based on aleatory (*gharar*) elements:

a) A certain level of ambiguity in contracts.
b) A lack of information that leads to *riba*.
c) Disputes that occur between the contracting parties.

As a result, aleatory (*gharar*) transactions involve an aspect of gambling or are accompanied by vagueness and greed, which are prohibited in Islamic law because they involve an unjust obsession with people's money. However, describing something as aleatory has a broader meaning than just indicating that gambling is occurring. Consequently, all gambling is *gharar*, but not every aleatory (*gharar*) transaction involves gambling.

However, even if the two parties accept the conditions of the aleatory (*gharar*) contract, the acceptance of the two parties does not make the transaction permissible under Islamic *Sharia*. *Gharar* in contracts has been mentioned in some civil laws. However, past scholars have not detailed such circumstances or given examples. Thus, it is essential to codify the status of aleatory contracts since doing so is the second method in our proposed methodology for assessing the *Sharia* legality of new commercial and financial transactions.

[23] Such as an insurance contract, games or bets, and lifetime annuity contracts. A random contract is a contract regarding value in which the existence of an obligation depends on an uncertain future event, the hazard.

ii. *Methodology of Codifying Aleatory Elements (Gharar) Contracts as They Appear in Modern Transactions*

The concept of aleatory (*gharar*) contracts is studied in Islamic jurisprudence (*fiqh*) books. Accordingly, a clear Islamic *Sharia* definition of the meaning of aleatory elements (*gharar*) will be codified and written in modern legal language herein. Different types of aleatory (*gharar*) contracts will be explained in detail. An example of standard *gharar* contracts is given with reference to the codification developed in this chapter. However, not every type of contractual ambiguity is considered *gharar*. Thus, the presented articles clarify the amount of ambiguity permissible in a contract and what is considered an excessive level of aleatory (*gharar*) attributes and is thus prohibited by *Sharia*.

c) Third: Codifying Fraud (*Taghreer*)[24] as an Influencing Factor in Transactions

Checking for fraud is the third stage in the systematic examination that this chapter introduces. When detecting fraud in contemporary Islamic finance contracts, it is essential to know the extent of the contract's compliance with the *Sharia* laws that naturally govern financial and commercial transactions.

Moreover, the act of fraud (*taghreer*) is forbidden in all religions. It is also prohibited if the fraud is proven according to civil laws.[25] Likewise, in Islamic law, many penal provisions for fraud or deception lead to the acceptance of the contract by one of the parties. Therefore, contracting parties who engage in fraud to convince the other party to accept the contract are deceiving the other party, who would not accept the contract if he or she knew the truth. Furthermore, fraud may be perpetrated by either of the two contracting

[24] The Arabic linguistic translation of fraud is *taghreer*, which means pushing others to fall into a fraudulent scheme.

[25] For example, the Spanish civil code Article 1269 states, "Fraudulent misrepresentation exists where, with insidious words or machinations on the part of one of the contracting parties, the other is induced to enter into a contract which he would not have done without them" (Ministry of Justice).

For another example, see French Civil Law, Article 1137: "Le dol est le fait pour un contractant d'obtenir le consentement de l'autre par des manœuvres ou des mensonges. Constitue également un dol la dissimulation intentionnelle par l'un des contractants d'une information dont il sait le caractère déterminant pour l'autre partie. Néanmoins, ne constitue pas un dol le fait pour une partie de ne pas révéler à son cocontractant son estimation de la valeur de la prestation "Article 1137 - Code Civil - Légifrance."

parties or by a third party at the request of one of the two parties. Fraud may take the form of speech[26] or action[27].

Islamic law has many reasons for prohibiting contracts that involve fraud, including considering the interests of the general public, preventing the unlawful acquisition of wealth, protecting parties from fraudulent contracts, and protecting contractors from harm. Islamic law makes strict provisions for rulings regarding deception due to the significant amount of damage that can occur to individuals and society from fraud. If fraud were tolerated, impure commodities would spread, and the damage would extend to people's food, clothes, and all of their other needs. People would be exposed to risk. Additionally, companies produce lower-quality products and rely on fraud in marketing.

Thus, examples of recent financial transactions that may involve fraud will be given below in the section focusing on prohibited Islamic commercial contracts.

iii. *Methodology of Codifying Fraud (Taghreer) as it Appears in Modern Transactions*

Western civil laws include codifications and provisions related to fraud in commercial transactions. France is considered to have developed the first codified modern legal system in Europe. French law includes articles on fraud in contracts.

These codified articles will be highlighted and compared with Islamic *Sharia*-related provisions. The codified materials are described to reveal the effect of the fraud occasioning factor (*illah Sharia*) in modern financial and commercial contracts. Additionally, the *Sharia* provisions resulting from fraud and its impact on the contract are codified in simple legal terms.

[26] Examples of fraudulent words (sayings) include transmitting false information about the contracted person, making claims that the commodity was bought at a higher cost, or having a third party promise to purchase the commodities at a higher price to tempt the other party to sign the contract.

[27] Examples of fraudulent actions include changing the country, company, or date of manufacturing to give the impression that the merchandise is of high quality.

d) Fourth: Codifying Injustice (*Dhulm*) as an Influencing Factor in Transactions

The divine laws dictate that justice should be done in everything and for everyone. Thus, Islam requires justice and forbids injustice, oppression, aggression, plunder, and theft.

The Almighty Allah sent Messengers and revealed the divine laws through them so that the people could do justice to God's rights over them and in servants' rights with each other. As God said in the Holy Qur'an, "Indeed We have sent Our Messengers with clear proofs, and revealed with them the Scripture and the Balance (justice) that mankind may keep up justice" ("Taqī Al-Dīn Hilālī and Muhammad Muhsin Khan" 57:25).

Moreover, to emphasize the necessity of justice and the prohibition of injustice, God said, as narrated in the divine *hadith*, "My servants, I have made oppression unlawful for Me and unlawful for you, so do not commit oppression against one another" (Al-Naysaburi 1548).

Justice is the duty of all human beings. Thus, it is not permissible for anyone to oppress another. God says, "O you who believe! Stand out firmly for Allah and be just witnesses and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety, and fear Allah. Verily, Allah is Well-Acquainted with what you do" ("Taqī Al-Dīn Hilālī and Muhammad Muhsin Khan" 5:8).

This passage confirms that all transactions described in the Holy Qur'an and by the *Sunnah* of the Prophet Mohamed (peace be upon him) as forbidden are forbitten because of the requirement that justice prevail and unfairness be eliminated.

For example, Islamic *Sharia* forbids *riba* and gambling because of the injustice inherent in these acts and the unlawful acquisition of wealth. Likewise, many types of sales are forbidden because of their injustice and oppression. Moreover, injustice has numerous disadvantages and can cause societal ruin. The famous Arab philosopher and historian Ibn Khaldun (d. 1406 CE) said,

> "It should be known that forcibly acquiring people's property removes the incentive to purchase and gain property. People then become of the opinion that the purpose and ultimate destiny of (acquiring property) are to have it taken away from them.
>
> When the incentive to acquire and obtain property is gone, people no longer make efforts to acquire any. The extent to which property rights are infringed upon

> determines the extent and degree to which the subjects' efforts to acquire property slackens.
>
> When intensive demand [for property] is extensive and general, extending to all means of making a livelihood, business inactivity also becomes [general] because the general extent of [such a high demand upon property] means the general destruction of the incentive [to do business].
>
> If the demands upon a property are but light, the stoppage of gainful activity is correspondingly slight. Civilization and its well-being and business prosperity depend on productivity and people's efforts in all directions in their interest and profit.
>
> When people no longer do business to make a living, and when they cease all gainful activity, the business of civilization slumps, and everything decays" (Ibn Khaldun 272).

This chapter focuses on types of injustice in contracts. At the same time, injustice is an influential factor in judging new forms of contemporary financial transactions and the extent of their alignment with *Sharia* provisions.

iv. *Methodology of Codifying Injustice (Dhulm) as it Appears in Modern Transactions*

There is a question that deserves attention and research: If the exact reasons for the prohibitions mentioned above, namely, *riba*, aleatory (*gharar*) contracts, and fraud (*taghreer*), are all included in the general meaning of injustice, then what is the purpose behind highlighting the occasioning factor of injustice?

The answer to this question is as follows: Some types of contemporary transactions are not easily discovered. However, once identified, the injustice-causing factor is apparent. Thus, the leading indicator of injustice can be examined: The unlawful appropriation of things by one party to the contract.

If the indicators of injustice in the transaction contract are examined and no other occasioning factor appears, there is no reason to prohibit the transaction. However, if another cause appears alongside the injustice, such as aleatory elements or *riba*, then the transaction is prohibited for both reasons: aleatory elements or *riba* and injustice.

To codify the cases in which injustice affects either contracting party, it is imperative to establish means to detect such injustice. Thus, professionals can systematically judge the compliance of a financial transaction with *Sharia* standards accordingly.

e) Fifth: Codifying Harm (*Dharar*) as an Influencing Factor in Transactions

The sixth stage of the proposed methodology is verifying the compatibility of new financial and commercial transactions with the provisions of Islamic law. This involves investigating the possibility of harmfulness (*dharar*) as an occasioning factor affecting the legality of the transaction.

One of the essential legal intentions of all divine laws is to prevent people from being harmed. Indeed, the primary goal of Islamic *Sharia* obligations is to meet people's needs in this world and the hereafter. It is narrated in an authentic *hadith* that the Prophet Mohamed (peace be upon him) said, "There should be neither harm (*dharar*) nor the reciprocation of harm (*Dhirar*)" (Ibn Majah Al-Qazwini 338: 3).

In this chapter, the focus is on harm or damage in commercial and financial transactions. In other words, the focus is on a particular type of harm that makes transactions *Sharia* unlawful. In commercial and financial exchanges, it is not *Sharia* lawful for a seller, buyer, or any other party to harm someone.

Islamic *Sharia* urges that rights (e.g., ownership) are not restricted only to avoiding harm; it is not acceptable for anyone to benefit if all or part of society loses. It was said by the Prophet Mohamed (peace be upon him) that "whoever causes harm, Allah harms him, and whoever is harsh, Allah will be harsh with him" (At-Tirmidhi 52: 3).

Harm theory in Islamic jurisprudence differs distinctly from the definition of "harm" in Western jurisprudence, where any materialistic or moralistic harm may be subject to compensation by the offender. Materialistic harm causes losses or lost profit for one of the parties. However, in Islamic jurisprudence, to receive a guarantee, it is required that the commodity have commercial value. The equivalent value of guaranteed commodities and compensation, without considering the extra benefits and work attached to acquiring the commodity, is a condition for the validity of the transaction (Al-Sanhuri 168: 6).

Furthermore, legal professionals have a term similar to the occasioning factor of harm (*dharar*) caused by a transaction that indicates inadequate validity of the financial transaction according to Islamic *Sharia*. This legal term is labeled a wrongful act[28], which means, as stated in U.A.E. transaction civil law, that "any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm" (Ministry of State for Federal National Council Affairs Article 282: Article 282).

Nevertheless, the legal term (wrongful act) is not the focus of our research paper because law specialists use this term to mean that the damage, if achieved, results in an obligation to compensate and guarantee the injured. In this research, this type of harm in contracts is a reason for prohibiting a proposed new type of financial transaction between two contractors. Therefore, it is imperative to develop a methodology to determine the damage resulting from a proposed contract.

v. *Methodology of Codifying Harm (Dharar) as it Appears in Modern Transactions*

As in the previous section, the same question regarding the occasioning factor of injustice (*dhulm*) can be asked concerning the harm factor. Moreover, all previous legal prohibitions (usury, deception, deceit, and injustice) are combined with the occasioning factor of harm, bearing in mind the extent of the harm inflicted. Moreover, *Sharia* prohibitions have an essential purpose: to clarify people's interests and prevent unjust acts. Included in these prohibitions are forbidden financial and commercial transactions.

Nevertheless, it must be determined when the harm caused affects the validity of a contract. Are the other factors mentioned above that cause the transaction to be prohibited included in the current understanding of the harm occasioning factor? Are there examples of contemporary financial transactions where harm being caused is the sole reason for forbidding the transaction? These questions concerning illegal transactions are answered below.

[28] According to TransLegal, a reputed web-based law dictionary, the term "wrongful act" means "any action, error, misstatement, or omission, etc., that is in violation of the law, especially the civil law" (TransLegal).

A clear *Sharia* definition of the harm occasioning factor is codified herein to differentiate between Islamic jurisprudence and legal meaning. Regulations concerning harm that warrants the prohibition of a transaction are codified below. Finally, important Islamic *Sharia* jurisdictional maxims concerning the harm caused by a transaction are codified.

f) Sixth: Codifying Stratagems[29] (*Ḥiyal*) as an Influencing Factor in Transactions

The last influential factor is stratagems. The most essential elements of this factor are as follows.

First, most recent financing transactions in Islamic finance institutions involve stratagems (*ḥiyal*) that affect the transaction's validity. This statement might not be acceptable to many Islamic finance industry professionals; however, the reality of the current transactions of Islamic banks, such as commodity *murabaha* (*al-tawarruq*) and financing through *salam* contracts set purely to bypass *riba* interest charges, requires that the actual sales transaction be considered.

Second, it is challenging to detect stratagems because they depend on fictitious contracts; stratagems make the contract appear valid and compatible with *Sharia* while occluding illegal actions.

In our systematic examinations, stratagems (*ḥiyal*) are the sixth and final occasioning factor (*illah*) that indicates whether a financial transaction conforms to Islamic legal provisions. Specifically, stratagems (*ḥiyal*) are used to circumvent fundamental Islamic prohibitions in the financial sector. Stratagems are mainly used to circumvent *riba,* which is expressly forbidden in all its forms under Islamic law. As a result, stratagems usually lead to fictitious contracts.

Thus, the opinions of Islamic jurisprudence scholars regarding financial contracts that involve stratagems (*ḥiyal*) are categorized as follows:

a) One opinion is related to judging the outward appearance of a fictitious contract. Conformity is apparent in contracts with Islamic *Sharia* provisions, and the internal purposes of the contract are treated with indifference.

---

[29] "Stratagems: Any artifice, ruse, or trick devised, or used to attain a goal, or to gain an advantage over an adversary, or competitor" (Dictionary.com).

b) The other opinion concerns the approval of fictitious contracts from a *Sharia* perspective. It is also concerned with contracts' content, purpose, results, and consequences.

This second opinion is adopted by several reputed scholars from various Islamic jurisprudence schools because it is positioned among the higher purposes of Islamic *Sharia*. Additionally, it is aligned with the statutory laws.

Imam Abu Isḥaq Al-Shatibi (d. 1388 CE), a famous Islamic scholar from Granada, Spain, described stratagems as follows: "Its well-known fact is that these stratagems introduce the apparent action of permissibility to nullify a *sharia* legal ruling, and convert it to another ruling" (Al-Shatibi 187: 5).

The famous Tunisian scholar al-Taher bin Ashour (d. 1973 CE) explained Al-Shatibi's definition of stratagems: "It is displaying the thing that is forbidden by *sharia* law, and presents it in a permissible form" (Ibn Ashur 317: 3).

Therefore, we specifically examine a new type of financial transaction that fulfills all the conditions for its legitimacy. However, it merely occludes what God Almighty has forbidden or omits what God Almighty has enjoined upon us.

Moreover, Islamic law jurists have stated that there are many subdivisions of stratagems (*ḥiyal*). Scholars' categorization of stratagems differs based on their analyses of the purposes of *Sharia* (*maqasid al-Sharia*) and its means (*waseela*).

It is essential to pay close attention when evaluating the causes of illicit Islamic financial transactions and determine the extent of stratagems and their conflict with higher *Sharia* purposes (*maqasid al-Sharia*).[30]

Based on the abovementioned analytical method, reputed Islamic jurisprudence scholars such as Ibn Taimiyah[31], Ibn Al-Qayyim[32], and Al-Shatibi[33] divided the use of stratagems (*ḥiyal*) into two categories.

---

[30] As mentioned in chapter 1, section 1.3, second overall point.

[31] See (Ibn Taimiyah 193: 3).

[32] See (Ibn Al-Qayyim 294: 5).

[33] See (Al-Shatibi 388: 2).

The first category[34] concerns the scope of stratagems' legitimacy compared to their means (*waseela*) and purposes. It contains two subcategories of stratagems:

First subcategory: Methods used for forbidden purposes, nullifying rights, or proving a transaction's invalidity. This subcategory is further divided into three subtypes:

a) The method has a forbidden origin and is intended to achieve something that is forbidden by *Sharia*.
b) The method has permissible origins but is intended to achieve something forbidden by *Sharia*.
c) The method is legitimate, and the implementation is legitimate. However, the act is used as a pathway to achieve the illegal, which is how *Sharia* scholars have made different rulings.

Second subcategory: Methods used for permissible purposes, such as proving the truth or uncovering a falsehood. This methods are identified as follows:

a) The method is unlawful; however, the purpose is to ensure one's rights.
b) The method is legitimate, and what it leads to is legitimate.
c) The method is used to ensure rights or acceptably prevent injustice. However, the method was created to achieve a different goal.

The second category[35] concerns the extent of the legitimacy of the stratagems in terms of Islamic law purposes (*maqasid al-Sharia*). It contains three subcategories:

First subcategory: Stratagems that are indisputably invalid (haram) because they contradict *Sharia*-permissible purposes.[36]

Second subcategory: Stratagems that are generally agreed to be *Sharia* permissible.[37]

---

[34] The first method for categorizing stratagems was initially designed by Ibn Taimiyah; this was then adapted by his well-known student, Ibn Al-Qayyam. Subsequently, many jurists followed this methodology.

[35] The second method for categorizing stratagems was initially designed by Imam al-Shatībī, after which many jurists began following this methodology.

[36] For example, engaging in *riba* deals with non-Muslim clients is not permitted by *Sharia* because Islamic law prohibits *riba* deals among all people, not just between Muslims.

[37] For example, when one wants to exchange a gold ring for a gold necklace of the same caliber and pay the price difference between them, this act is not permissible in Islamic law. However, the ring may be sold for cash, and the money can then be used to buy the necklace.

Third subcategory: Stratagems that are a topic of discussion among *Sharia* scholars.[38]

This chapter focuses on the different subcategories and subtypes of the first category, which limit the legitimacy of the financial transaction according to *Sharia*. However, there is a convergence in the relationship between stratagems and fictitious contracts. Because of the purpose of these fictitious contracts, which appear to be legitimate, these fictitious contracts are used to circumvent *Sharia* rulings and achieve a forbidden goal, such as collecting interest.

Thus, judgments regarding these fictitious contracts are based on the intended aim of the contract. If this fictitious contract, which is, in reality, a type of stratagem, does not contradict Islamic law principles or legitimate interests or if the contract is made to prevent a forbidden act, such as to deal with *riba* (interest loans) or restore rights, then the fictitious contract is permissible based on previous stratagem categorizations by Islamic *Sharia* scholars.

However, suppose that these fictitious contracts originally contradict the principles of *Sharia* or legitimate interests, such as signing fictitious contracts as a trick to achieve forbidden aims, revoke rights, or disguise falsehood. In such cases, the fictitious contract is considered a forbidden stratagem under *Sharia*.[39]

vi. *Methodology of Codifying Stratagems (Ḥiyal) as They Appear in Modern Transactions*

It is always challenging to spot stratagems in new financial transactions. Most modern contracts are complex. Nevertheless, these contracts still have apparent goals and hidden intentions. However, intent plays a vital role in judging contract compliance in this case when the contracting parties choose to involve *riba* through fictitious contracts.

---

[38] The great Andalusian jurist from Granada, Imam al-Shatībī (d. 1388 CE), explained the reasons behind the dispute among jurists regarding stratagem categorization: "Because there was no clear and definitive evidence for attaching this specific stratagem segment to the first or second type. In a sense, no purpose was found in this type that is consistent with or clearly contradicts the objectives of Islamic law" (Al-Shatibi 388: 2).

[39] Examples of fictitious contracts will be given in chapter five.

In Islamic *Sharia*, transactions are judged according to the intentions and motives involved. The intention and motives for any behavior, including making contracts, are considered. If they are acceptable, the behavior is permitted; otherwise, the behavior is prohibited. Therefore, a transparent codification methodology should include a mechanism for identifying suspicious transactions to determine the types of stratagems that affect new financial transaction structures.

Consequently, the following well-known maxim in Islamic jurisprudence is adopted for identifying stratagems: "The consideration of contracts is based on their purposes and meanings, not their phrasing. In other words, the consideration of *Sharia* compliance is based on the contract's reality and its purposes" (Al-Qahtani 357: 2).

This section focuses on codifying only the stratagem (*ḥiyal*) types that are indisputably forbidden (*haram*). This specific influential factor (*illah*) of the different types of stratagems determines the validity of a transaction.

2.5 The Proposed Codified Articles

The Main Occasioning Factors of Forbidden Islamic Financial Transactions

Codifying the Different Types of *riba* as Influencing Factors in Transactions:

Article 1: *Riba* is a conditional increase in return for deferring a loan. In addition, each subsequent postponement of the debt after its settlement is *riba*, whether due as a loan, sale, or exchange of fungible commodities/goods of the same homogeneous type.

Article 2: *Riba* is forbidden, and a contract shall be void if *riba* is involved.

Article 3: If a sale based on *riba* is concluded, the trader must gain nothing additional but his or her rightful amount of capital. Whether a trader receives a *riba* or not, it must be returned if the trader seizes the additional *riba*.

Likewise, if a person deals with *riba* and then repents, he or she must have no extra return but his or her original capital. The trader must return the extra amount to the one from whom it was received as interest.

Article 4: *Riba* is divided into two types:

1. *Riba* in loans and debts (*riba al-quroodh wa duyun*): Every debt includes a conditional increase on the loan's principal or debt increase in exchange for delaying payment.[40]
   - *Riba* in loans (*riba al-quroodh*) has one of the following characteristics:
     a) A conditional increase in the loan's capital.
     b) The loan gives a conditional benefit to the borrower.
   - *Riba* in debts (*riba al-duyoon*) involves the conditional increase that the creditor takes from the debtor in exchange for deferment.
2. *Riba* in sales (*riba al-buyua*) is an exchange of fungible commodities (bartering) and is split into two types:
   - *Riba* in excess/surplus (*riba al-fadl*): An excess taken in exchange for specific homogeneous commodities sale (barter).[41]
   - *Riba* in delay (*riba al-nasa*): A deferral in exchange for a specific sale of homogeneous commodities (barter)[42], where the receipt of one of the two commodities is related to the *riba* causes mentioned above regarding excess/surplus and the *Sharia* criterion requires that the commodities be exchanged immediately and neither of the two exchanged commodities is cash.

Article 5: *riba* in sales (*riba al-buyua*) can be verified by two main maxims:

First, if the two exchanged commodities are of the same homogeneous type and share the same occasioning factor (*illah Sharia*), then both excess *riba* (*al-fadl*) and delayed *riba* (*al-nāsā*) are prohibited.

[40] Whether for financing, investment, risk management, legal interests or agreements, fixed or variable bases, or delayed interest and regardless of interest-based forms or designations such as time deposits, loans, and banking facilities of all kinds and purposes; furthermore, broker loans in financial markets, the issuance or trading of bonds, and the deduction of all kinds of debts and delay penalties on outstanding debts. All of the above are considered *riba*.

[41] The hadith narrated by Ubada bin Al-Samit (Allah be pleased with him) reported Allah's Messenger (may peace be upon him) as saying, "Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt; like should be exchanged like for like, and equal for equal. Moreover, payment is being made hand to hand. If these classes differ, then sell as you wish, if payment is made hand to hand" (Al-Naysaburi 646, Number: 1587).

[42] For example, gold for gold, silver for silver, gold for silver, wheat for wheat, wheat for barley, or anything else attached to that from the prophetic hadith narrated in the prohibition of *riba* or any commodity that is measured through the analogy method (Al-Qiyas) of Islamic jurisprudence.

Second, if the two exchange commodities share the same occasioning factor (*illah Sharia*) and are of different homogeneous types, then only delayed *riba* (*al-nasa*) is prohibited, and excess *riba* (*al-fadl*) does not apply.

Article 6: In an exchange sale contract (bartering) involving the same homogeneous commodities[43] and having an exact *riba* cause, the following conditions must be met, and a breach of one of these conditions invalidates the contract:

a) The exchange must be on the spot, and deferment is forbidden.
b) The exchanged commodities must be alike and equal.
c) An increase in the volume of the same homogeneous commodities is forbidden.

Article 7: The following condition must be met in an exchange sale contract (bartering) involving different homogeneous commodities[44] with an exact type of *riba* factor (*illah*). A breach of the following condition invalidates the contract: It is forbidden to defer the exchange of commodities, which must be exchanged on the spot.

Article 8: The quality of the same homogeneous commodities does not exempt an interchange from *riba* prohibitions.[45]

Article 9: Ignorance of an equal exchange of the same homogeneous commodity type has the same consequences as full awareness of excess-related *riba*.

Article 10: An exchange of different commodities that share the same *riba* occasioning factor (*illah*) is not permitted under any conditions or standards.[46]

Article 11: It is permissible to exchange two homogeneous commodities of different quantities with compensation added to the transaction,[47] provided that it is not a ploy to bypass excess *riba*.

---

[43] For example, an exchange between Italian 24-carat gold and Brazilian 24-carat gold, American silver and African silver, Saudi dates and UAE dates, Egyptian wheat and Mexican wheat, Jordanian salt and Algerian salt, and Chinese barley and French barley.
[44] For example, an exchange of gold for silver, wheat for barley, or dates for salt.
[45] For example, an exchange of grade-A Spanish corn for a lower quality of grade-A Spanish corn.
[46] For example, an exchange of wheat for barley, dates for sugar, rice for wheat, or milk for ghee.
[47] For example, a company offering its stock for trading where the assets are a mixture of productive projects and cash liquidities.

Article 12: It is permissible to sell a *riba*-based commodity alongside another *riba*-based commodity of the same homogeneous type when handicrafts are involved.[48]

The two exchanged commodities are not required to be equal or identical, and the circumstances of exchanges can vary.[49]

There are two primary conditions for this type of transaction:

a) The sale should not be made for insider trading reasons.
b) The crafted item should not be used to circumvent excess *riba*.

Article 13: It is not permissible to agree on a sale involving a fixed cash price that will decrease if there is a delay in payment. It is also not permissible to agree that the sale price will increase if there is a delay in payment.

Article 14: Every loan that benefits the lender is considered *riba*.

Article 15: Every loan in which the lender stipulates an increase in any form added to the loan is forbidden.

Article 16: Trading in currencies is permitted provided that the following criteria are met:

a) The parties take possession of the exchanged materials before leaving one another, whether the received material is tangible or virtual, or the status of the received material must be stipulated.
b) There should be no conditional option or deferment regarding the delivery by either party.
c) It is forbidden to deal in the forward/futures exchange market.

Possession must be taken off the total exchanged amount. Taking possession of only part of the exchanged amount makes the received amount valid and voids the remaining amount.

Codifying Aleatory Elements (Gharar) as an Influencing Factor in a Transaction

---

[48] For example, 24-carat gold jewelry in exchange for less-weighted 24-carat gold, bread in exchange for wheat, olive oil in exchange for olives, and all crafted *riba* items exchanged for their raw material.

[49] The jurisprudential opinions differ on this issue. This opinion was chosen based on market need and because the excess *riba* does not apply between the traded items. Additionally, this chosen Sharia provision aligns with the maxim, "The origin of new commercial transactions is permissibility (Mu'bah)". Moreover, the chosen opinion was favored by two reputed Islamic scholars, Ibn Taimiyah and Ibn al-Qayyim. See (Ibn Taimiyah 632: 2), and (Ibn Al-Qayyim 407: 3).

Article 17: An aleatory (*gharar*) contract happens when neither contracting party can determine when a contract is considered complete or what amount is taken or given in the transaction.

Article 18: A contract is considered aleatory (*gharar*) if it meets the following four conditions; however, if one of these conditions fails, then the *gharar* does not have an effect on the contract, and the contract remains valid:

a) The contract is so aleatory that the transaction can be described as ambiguous selling.
b) The contract is not necessary.
c) Aleatory elements are part of the contract, but the contract is not intended to be aleatory itself.
d) Aleatory elements are present in at least one of the financial contract's transactions.

Article 19: Aleatory (*gharar*) contracts are unlawful in four conditions:

First type: The terms of the contract cannot be met.

Second type: The costs or description of the evaluated materials are unclear.

Third type: The materials sold are not in the trader's possession.

Fourth type: There is *gharar* related to deferment that is not clearly defined, whether concerning the price or a commodity sale.

Article 20: Consent between the contracting parties in a contract known to involve aleatory elements, risk, or gambling does not make the contract valid.

Article 21: A contract whose type is not specified before the exchange is invalid. For example, this may occur when two contracts are combined into one contract, sale, or lease.

Article 22: Any obscurity or vagueness in the sales contract can lead to a dispute and thus invalidates the contract.

Article 23: Sales that include a condition of a nonrefundable down payment wherein the advance is forfeited if the buyer does not end up purchasing the commodity are *Sharia* permissible.

Article 24: Any agreement/contract based on gambling or betting is unlawful and considered void.

Article 25: Any commitment to a debt due to gambling or betting is legally void, and the person who agreed to the commitment is not required to act upon his or her obligation.[50]

Article 26: Whoever loses in gambling or a wager may recover what has been paid within a period to be determined by the judge, even if there is a different agreement between the parties.[51]

Article 27: The preceding provisions are excluded from prizes won for specific achievements in sports. It is permissible for the prize to be offered by one contestant or by a third party to the winner.

Article 28: Before fruit ripens, selling the fruit separately from the trees is not permissible. Additionally, plants may not be sold before they are ripe. Unless the purchaser can benefit from the goods as they are, they must be harvested immediately.[52]

Codifying Fraud (*Taghreer*) as an Influencing Factor in Transactions

[50] The Spanish Civil Code does not encourage gambling and does not endorse such activities; however, in the event that the gambler falls into debt due to gambling, unlike under Islamic law, he or she is responsible for paying that debt, as indicated in the following clauses:

"Article 1798: The law does not provide any action to claim what has been won in a game of luck, gambling or chance; but the person who has lost money therein cannot recover what he has voluntarily paid, unless it should have been obtained pursuant to fraudulent misrepresentation, or such person should be a minor or should have been incapacitated to administer his own property.

Article 1799: The provisions of the preceding article regarding gambling shall apply to betting" (Ministry of Justice and Clusen).

[51] The Spanish Civil Code does not give legal authority to recover money lost in gambling, as indicated in the following articles:

"Article 1800: A person who loses in any gambling or betting in respect of non-prohibited games shall be liable under civil law.

Article 1801: The judicial authority may, however, find against a claim where the amount exchange in the gamble or wager should have been excessive, or reduce the obligation to the extent that it exceeds the custom of an orderly paterfamilias" (ibid).

[52] Delayed harvesting after a contract is signed is not *Sharia* permissible because it may lead to aleatory elements and increase the likelihood that fruit is damaged or rotten, which will cause the buyer harm. Therefore, harvesting must be done immediately after the contract is signed.

Portuguese civil law Article 880 conveys a similar requirement:

"1. In the sale of future goods, of pending fruits or of component or integral parts of a thing, the seller is obliged to exercise the necessary diligence so that the buyer acquires the goods sold, according to what is stipulated or results from the circumstances of the contract.

2. If the parties attribute a random nature to the contract, the price is due, even if the transfer of the goods does not take place" (Ministry of Justices - Portugal).

Article 29: It is not permissible for one of the two contracting parties to deceive the other using fraud, whether by word or by action, to influence the other party to conclude a contract that he or she would not have concluded otherwise.

Article 30: Fraud makes the contract void if the following four conditions are met:

a) Fraudulent methods are used.
b) The fraudulent aspect influences the other party to accept and conclude the contract.
c) The fraud was propagated by one of the contractors or by a third party.[53]
d) The fraud is hidden and not visible to one of the parties. Moreover, that party cannot easily detect the fraud.

Article 31: The party perpetrating the fraud loses the right of recourse if the sale is cancelled after the other party becomes aware of the fraud.

Article 32: The contracting party who discovers that the sale is fraudulent and that the commodity sold was defective may return the sold commodity in exchange for the original amount paid.

Codifying Injustice (*Dhulm*) as an Influencing Factor in Transactions

Article 33: Unjust financial and commercial transactions are defined as financial or commercial transactions that result in unlawful appropriation by one of the contracting parties.

Article 34: Injustice between the contracting parties is forbidden. Accordingly, the contract is void if evidence indicates the occurrence of an injustice against the affected contractor.

Article 35: A contract is considered void if the following three conditions are proven:

a) One contractor has obtained wealth from the contract without the knowledge of the other contracting party.[54]

[53] French law explicitly states that fraud must be conducted by the other contracting party (Article 1137), and if fraud is perpetuated by a third party, it does not affect the validity of the contract.
According to Islamic law, fraud affects the satisfaction of the person or entity that accepted the contract. This is an important psychological criterion that affects the contract's validity; therefore, there is no difference between fraud committed by one of the contracting parties and fraud committed by a third party if it happens with the knowledge of one of the contracting parties. (Al-Sanhuri, Nadhariyat Al-Haq 404).

[54] For example, wealth obtained through deception or fraud.

b) One contractor is aware of the infringement upon the other contracting party's rights, but this infringement is not acknowledged in the contract.[55]

c) One contractor knows of the infringement upon the other contracting party's rights; however, the first contractor still agrees to the contract out of need.[56]

Article 36: A sale that leads to a monopoly over a commodity is prohibited.[57]

Article 37: A trader who buys a commodity to monopolize the market and control its price when consumers are in serious need of this commodity is legally obligated to sell that commodity at the market price.

Article 38: A contract assisting with something prohibited by *Sharia* is not permissible.[58]

Article 39: All contracting parties deserve potential profit from a commercial transaction but must also bear potential losses.

Codifying Harm (*Dharar*) as an Influencing Factor in Transactions

Article 40: Harm in Islamic financial and commercial dealings means that either of the contracting parties inflicts harm on themselves or others; as a result, the harm neither exceeds the benefit nor is equivalent to it.

Article 41: Insignificant harmfulness is tolerable in all contract types, even though harm is still done to one of the contracting parties or others.[59]

Article 42: Harm that warrants the prohibition of a financial or commercial transaction is determined by the following conditions:

a) The harm must outweigh the corresponding benefit or be equal to it.[60]

b) The harm occurs immediately or is thought to likely occur in the future.

Article 43: For contractual liability to be fulfilled, there must be harm to the creditor/contractor due to the debtor's/contractor's failure to meet his or her contractual

---

[55] For example, the party is forced to surrender his or her wealth.

[56] For example, the concluded contract involves *riba*.

[57] Because it leads to price control and harms consumers.

[58] For example, selling grapes to wineries. Even though selling grapes is permissible, selling grapes to make into alcohol is *Sharia* unlawful. This sale causes injustice to the self through sin. Additionally, there is an injustice to society because the sale helps spread a prohibited commodity.

[59] Logically speaking, there is no transaction between two parties without at least partial harm for one of the contractors. Thus, insignificant harm is permissible.

[60] In another meaning, *Sharia* law prohibits every sale wherein the harm exceeds the main benefit.

obligations. Thus, if there is no harm, then there is no liability. However, if the harm is probable, liability is not realized until the harm occurs.

Article 44: Definition of stratagems (*ḥiyal*): Engaging in unlawful artifice so as to appear to be engaged in a legitimate act, bypass a *Sharia* legal provision, or turn attention to another ruling. Additionally, the provision is not changed or dropped if such a stratagem is not employed.

Article 45: Every stratagem that includes a prohibited act is considered forbidden.

Article 46: Every stratagem used to achieve something forbidden is forbidden; the original ruling does not change simply by changing its shape, form, or name.

Article 47: Every stratagem involving trespassing upon a right or premised upon something forbidden is considered a forbidden ploy.

Article 48: Every stratagem involved in an indebtedness process is a ploy or *riba*.

Article 49: Every fictitious transaction intended to access money is *riba*.

Article 50: Any contract with the same effects as those mentioned as having *Sharia* forbidden purposes, such as riba damages, is *riba*, and changes in the contract do not change its real essence.

Article 51: Every sales contract not truly intended for its stated purposes but rather to achieve a loan with interest is *Sharia* invalid.

Article 52: If a third party, such as a financier of the sale, enters into a sales contract between two parties, the sale is a *riba* ploy in the form of a sales contract that leads to a loan with excess interest, thus invalidating the contract.

Article 53: Commodities obtained on credit are prohibited from being resold at a price lower than the original purchase price, except if the characteristics of the purchased commodity have changed.

2.6 Chapter outcomes

Listing the main occasioning factors (*illah*) that affect financial transactions clarifies the extent to which Islam tolerates innovative financial transactions based on Islamic *Sharia* permissibility. Strictly speaking, *Sharia* forbids very specific types of transactions.

However, these forbidden transactions have alternatives that are permissible in Islamic *Sharia*.

Thus, this research builds a comprehensive view of illegal financial transactions in Islamic *Sharia* and explains the fundamental factors that affect a transaction's validity and why these factors lead to the prohibition of a transaction.

Additionally, by discussing why prohibitions are made based on occasioning factors, this research provides consistent reassurance that there is great wisdom behind Almighty Allah's prohibition of certain transactions. Moreover, moving away from these forbidden causes will benefit humanity—both individuals and society as a whole.

Thus, in this chapter, six (6) fundamental occasioning factors (*illah*) are presented, and they all affect the validity of transactions: *riba*, aleatory elements (*gharar*), fraud (*taghreer*), injustice (*dhulm*), harms (*dharar*), and stratagems (*ḥiyal*).[61]

Through a careful analysis of these main occasioning factors (*illah*) that affect financial and commercial transactions, it is evident that a common factor among them is the appropriation of people's money in unjust and impermissible ways.

The first occasioning factor (*illah*) is categorized into two types of *riba*:

a) *Riba* in loans and debts (*riba al-quroodh* and *al-duyun*). The majority of *riba* cases in banking transactions involve loans.
b) *Riba* in sales (*riba al-buyua*) is further classified into two types:
   - *Riba* in excess/surplus (*riba al-fadl*).
   - *Riba* in delay (*riba al-nasa*).

There should be no problem with *riba* in sales if the commodity is categorized under *riba* categories as a direct cash purchase. However, two things must be considered when exchange trading (bartering) occurs involving these commodities.

> First condition: If the commodities are of the same *riba* type (i.e., gold or silver), which means that the exchanged commodities have the same attributes and characteristics as money, then the exchange must involve the same type and quantity of a commodity and must be exchanged on the spot.

[61] See Appendix diagram 1.

> Second condition: If the commodities are of unlike *riba* types (i.e., gold and sugar), which means that the exchanged commodities have different attributes and characteristics from money, then the exchange must be made on the spot, but the commodities can differ in quantity.

The second occasioning factor (*illah*) is aleatory elements (*gharar*) in contracts. Knowing that the presence of aleatory elements are an adequate condition for invalidating the transaction only in financial or commercial contracts is essential. However, if the aleatory contract is a charity contract, the aleatory elements do not affect the contract.

Furthermore, most contemporary financial contracts that involve aleatory factors and are found to be invalid relate to commodities that are not under the seller's full ownership. Additionally, aleatory contracts are those through which commodities with unknown specifications and characteristics are sold. Moreover, if the aleatory element is slight and unintentional, this does not affect the transaction's validity according to Islamic law since hardly any transactions have no aleatory aspects whatsoever.

The third occasioning factor (*illah*) is fraud (*taghreer*). Islamic law and civil law forbid fraud in all its forms. Fraud can be perpetrated by one of the contracting parties or by a third party in the contract under the direction of one of the contracting parties to deceive the counterparty. Fraud is a diabolical way to obtain people's money. Thus, it is necessary to tighten the laws that deter fraud.

The fourth occasioning factor (*illah*) is injustice (*dhulm*). It is imperative to know that all judgments of the legitimacy of transaction factors are related to injustice. However, the main reason for singling out injustice as an occasioning factor is to simplify the assessment process. Additionally, injustice is a factor that affects transactions themselves. One of the most evident signs of injustice in contracts is when a contract exploits people's need for money by involving high interest rates, thus binding the needy person and making him or her a prisoner of the creditor.

The fifth occasioning factor is harm (*dharar*). All transactions may involve some level of harm being inflicted upon one of the parties. However, this rises to an unacceptable level when the harm outweighs the desired benefit or at least equals it.

The sixth occasioning factor is stratagems (*ḥiyal*). It is essential to note that this factor is challenging to detect when examining new types of financial transactions because it is occluded in fictitious transactions. Moreover, Islamic jurisprudence scholars' classifications of stratagems differ according to their *Sharia* purposes (*maqasid al-Sharia*), analyses, and means (*waseela*).

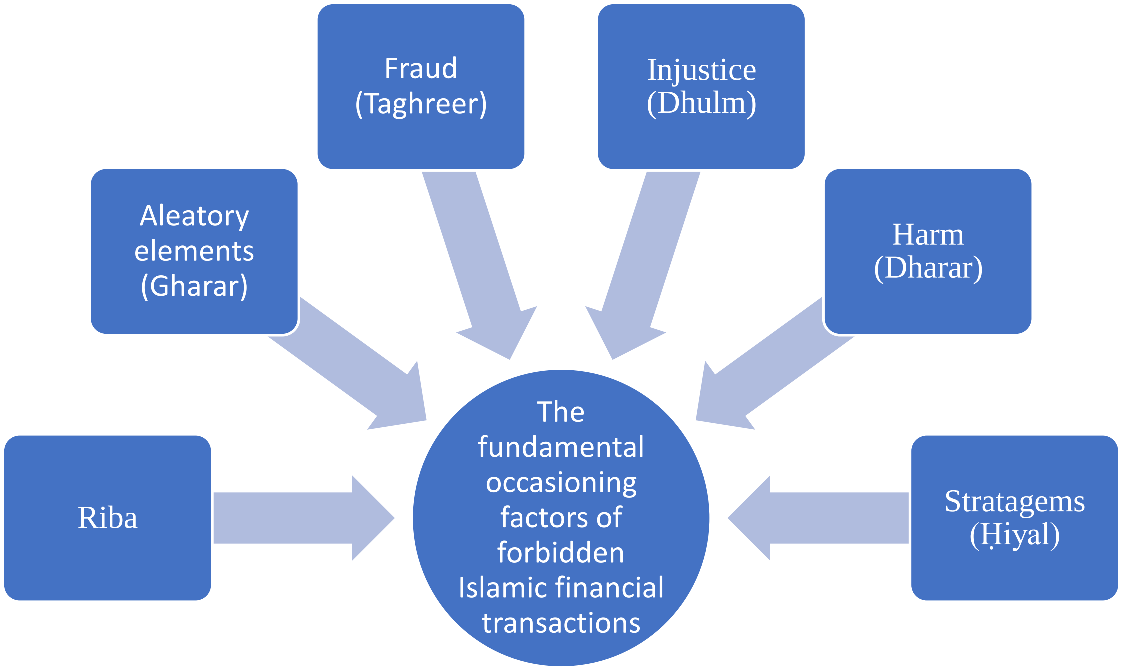
As a summary of the presented methodology for examining new types of financial transactions to determine the legitimacy of these transactions under *Sharia*, scholars take two different approaches to evaluate the essence of a contract and its legitimacy:

- The first approach focuses on inspecting the outward appearance of the transaction. The provisions are based on the appearance of the contract, such as the contract's main pillars, conditions, and other apparent matters. The contract's content is not examined to determine its true essence and identify the desired result.
- The second approach examines the actual essence of the transaction. This is the primary approach adopted in this chapter. It is an investigation into the true essence of contracts, not just judgments based on the contract's apparent validity.
- Ultimately, this chapter contains fifty-three (53) codified articles, divided as shown in Table 1.

	Occasioning Factor Type (*illah*)	Codified Articles
A	*Riba*	16
B	Aleatory (*gharar*)	12
C	Fraud (*taghreer*)	4
D	Injustice (*dhulm*)	7
E	Harm (*dharar*)	4
F	Stratagems (*ḥiyal*)	10
	Total	**53**

Table 1

Appendices



Appendix 1

Chapter 3

Main Forbidden Islamic Sales Transactions

3.1 Framework

The previous chapter introduced the main occasioning factors that affect transaction legitimacy, and the causes of these factors can now be identified. Accordingly, a judgment can be made regarding whether the transaction conforms to Islamic law provisions. This chapter will introduce the transactions that Islamic *Sharia* stipulates are forbidden. These transactions will be analyzed to determine the occasioning factors that cause this prohibition.

Islamic jurists have categorized forbidden sales into seven types:

- First, sales that are prohibited due to deception and a lack of information about the sale, such as selling a nonexistent item, selling something that cannot be delivered, or selling what the seller does not own (Ibn Al-Munthir 50: 10).

- Second, sales that are prohibited because of the sold item, such as pork, alcohol, drugs, a dead animal, or a nonslaughtered animal (Al-Hijjawi 103).

- Third, sales that are prohibited due to suspicion of *riba*, such as selling a debt for a debt, selling the *Al-Enah*, or combining two sales in one sales contract (Al-Zuhaili 3510: 5).

- Fourth, sales that are prohibited due to the lack of eligibility of the contracting parties, such as a sale by an person with a mental disability or by a boy who has not reached puberty or the age of discernment (Al-Kasani 135: 5).

- Fifth, sales that are prohibited because of unfairness and harm, such as a compulsion to sell, a lack of consent to sell, monopoly for the sake of price increase, price reduction to harm other merchants, or the concealment of sales defects (Ibn Al-Jallab 111: 2).

- Sixth, sales that are prohibited because they distract from Muslims' obligatory acts of worship, such as selling at the time of Friday prayer or selling anything that promotes vice or obscenity (Al-Jassas 114: 2).
- Seventh, sales that *Sharia* prohibits because of invalid contract wording (for example, the offer and acceptance do not match) or because one of the contract parties is absent and does not have a representative authorized to sell or buy (Juraidan 221).

Moreover, this chapter will discuss the most prohibited contemporary financial and commercial transactions in Islamic *Sharia* and present the proper codification for these illicit transactions. Knowledge of the forbidden transactions stipulated in Islamic law is essential to avoid committing illegal transactions. It is important for a contractor to know the factors that affect the transaction and understand the reasons these transactions are illegal according to Islamic law. This makes it easier to avoid participating in *Sharia* illegal transactions.

Moreover, financial transactions in Islamic law are based on adherence to virtuous morals, which are the most important characteristic of Islamic transactions. Therefore, morality is considered a feature associated with transactions and merchants, and breaching it is considered a breach of an essential pillar of the transaction.

Financial and sales transactions are strictly governed by *Sharia* law, derived from the Holy Qur'an and the Prophet's *Sunnah*. Hence, Islamic commercial transactions are also described as ethical transactions. Therefore, Islamic finance transactions are not limited to providing financing to wealthy people and experts; Islamic finance also provides financial instruments to those who do not have wealth and securities. This is because Almighty God says, "In order that it may not become a fortune used by the rich among you" (Taqi Al-Din Hilali and Muhammad Muhsin Khan 59:7).

Furthermore, it is unnecessary to be concerned with the suggestions and demands from positivists and businesspeople to exclude religion, morals, and the state. Such people do not want any control or restriction from any side, and they do not want anyone to monitor them or hold them accountable. Instead, such people prefer to collaborate with politicians and clerics to pursue their interests as much as possible. The few who adhere to religious ethics and morals in their dealings and behaviors with others are the exception.

Before detailing the prohibited transactions stipulated in Islamic *Sharia*, it is worth noting that this chapter presents what most Islamic jurisprudence books used to start with at the beginning of the sales chapter, the definition of a legitimate sale. Then, it introduces the pillars of a legitimate sale, following the possible conditions attached to the sale and its related Islamic *Sharia* provisions. The thesis then explores the legitimacy of the novel financial transactions described in this research by examining innovative transactions, checking for defects that affect these transactions, and then comparing the merits of these transactions with the illegal transactions stipulated in Islamic law.

As a result, there is assurance that the transaction is free from any *Sharia* violation. Additionally, financing instruments compatible with Islamic law provisions can be developed in cooperation with lawyers and financial experts. Thus, the following section introduces the first step in avoiding illegal *Sharia* transactions.

3.2 Essential maxims related to illegal transactions in Islamic law

This section presents the essential maxims that must not be overlooked in the sales process. All Islamic jurisprudence scholars unanimously agree upon these maxims.

An example of contemporary transactions that are similarly forbidden will be highlighted. The branches of the jurisprudential maxim will be codified to make them easier to identify.

a) First maxim: Selling without actual possession is illegal in Islamic Sharia

All Islamic jurisprudence schools agree upon this maxim since the original guidance for it was derived and understood from an authentic *hadith* that Imam Abu Dawud (d. 889 CE) narrated: "It is narrated that Hakim bin Hizam[62] said: 'O Messenger of Allah, people come

[62] Hakim bin Hizam was a companion of Prophet Muhammad, peace be upon him, and is the nephew of the Prophet's first wife, Khadeeja bint Khuwaylid. Hakim died in the city of Madina in the year 674 AD at the age of 120 (Al-Asqalani 605: 2).

to me wanting to buy something that I do not possess; should I buy it for them from the marketplace?' He said, 'Do not sell that which you do not possess'" (Al-Sajestani 140: 4).

The overall meaning of this maxim is that "the seller may not sell something that he or she cannot deliver to the buyer and enable full possession on the sale because one of the sale validity conditions is for the sold item or service to be fully able to be delivered and transfer ownership to the new buyer" (Al-Idliby 63, 64: 21).

A famous scholar from the Hanafi jurisprudence school, Imam Al-Sarakhsi (d. 1090 CE), who was originally from Iran, elaborated on the *hadith*:

> "Initially, the reason for the sale contract's existence is the possession of the contracted person; thus, the sale contract requires the ability to deliver the possessed item. Therefore, it is not permissible to sell until full possession by the seller's 'owner,' and the seller can fully deliver the sold item" (Al-Sarkhsi 3: 8).

A well-known scholar originally from the city of Damascus, Imam Ibn Al-Qayyim (d. 1350), explained the *hadith* thusly:

> "The obligation to sell is to deliver the sold item, so if the seller cannot deliver it, then it is deception, risk, and gambling. Therefore, mostly it is not sold except at a loss, and if the buyer were able to receive the item, the seller would have gambled; however, if the buyer cannot receive the sold item, then the seller would gamble the buyer" (Ibn Al-Qayyim 207: 3).

Iman Al-Bahuti (d. 1641), a reputed Egyptian scholar from the Hanbali jurisprudence school, explained this *hadith* by saying, "Because what the seller cannot deliver to the buyer is like the item being sold not existing at the beginning" (Al-Bahuti 332: 7).

b) Second maxim: The sale of debt for a debt (*Bai' Al Dain bid Dayn*) is illegal according to *Sharia*.

People may be indebted and may need to sell their debt. The debt may be represented by a bond, such as those issued by companies or governments, and are often interest-based bonds. Thus, the *Sharia* provision for this bond type is the same as that for interest-based loans, which are illegal transactions.

In commercial finance, the instruments of sale for debts, such as debt securities, debt certificates, and bonds, are the leading financing instruments used in the commercial finance world. However, it is entirely different in Islamic *Sharia*, where selling debts is unlawful because it leads to *riba*.

Accordingly, debt jurisprudence is vital, whether in the field of debts and bond selling, share selling, or establishment selling, where the balance sheets include offers and receivables or debts.

All Islamic jurisprudence schools unanimously agree that the sale of deferred debts between the buyer and the seller is forbidden in Islamic *Sharia* based on a *hadith* narrated by Imam Al-Bayhaqi[63] (d. 1066) in which the Prophet Mohammed, peace be upon him, said: “Forbid selling *kali* (delayed) for a *kali* (delayed)” is *Riba*[64] (Al-Bayhaqi 474: 5).

Although the above prophetic saying (*hadith*) is not authentic to the Prophet Mohammad, peace be upon him, all jurisprudence schools unanimously agreed to act upon this *hadith* concept; trading a delayed counter value for another delayed counter value means that both transactions are deferments. Additionally, selling debts may, in many cases, lead to one of the foremost Islamic principles, the prohibition of *riba*.

Imam Ahmad bin Hanbal (d. 855 CE), one of the most renowned scholars the Hanbali school of thought and in Islam in general, said, “All Islamic scholars unanimously consensus agreed upon forbidding selling debts for debts” (Ibn Qudamah 106: 6).

Mohammed Umer Chopra, a reputed Islamic scholar, stated, “All Islamic schools of thought unanimously agree that selling debts for an equal value is acceptable so long as it is paid in full without any benefit to the purchaser. The rationale is that debt trading that is not spontaneous may involve elements of *Riba* or (*Bay’ al-kali bi al-kali*) trading a counter value for a delayed counter value, which is prohibited” (Chapra 72).

---

[63] Imam Abu Bakr Al-Bayhaqi was born in Bayhaq, a city in the northern area of today’s Islamic Republic of Iran.

[64] The hadith science scholars studied the chain of narrators, authenticated them according to the narrators’ reputed strengths of memory and behavior, and decided that the hadith is weak and not authentic according to the prophet. See Al-Albani 220: 5.

Moreover, the International Islamic Fiqh Academy permits specific forms of debt sales:

“First: [The] selling [of] the debt by the debtor to a third party in one of the following forms:

a. Selling an outstanding debt for a different present currency at its day-price value.
b. Selling the debt for a specific commodity.
c. Selling the debt for a usufruct of a specific asset.

Second: Selling debts within a mix where properties and benefits are predominant, given that these are the object of the sale” (International Islamic Fiqh Academy, “Sale of Debts”).

c) **Third maxim: Combining two sales transactions in one contract is unlawful**.

Islamic scholars have discussed various scenarios related to this maxim. This maxim originates from the noble *hadith* in which the Prophet, peace and blessings be upon him, forbade two allegiance pledges linked and combined into one sale.[65]

Moreover, Muslim scholars have given many examples in interpreting the *hadith*; however, the differences have been related only to various transaction forms. One of the most forbidden forms mentioned by scholars was the sale of the *Al-Enah*, described as the sale of a commodity for a deferred price and then the repurchase of the same commodity from the buyer at an expedited price that is less than the first price.

3.3 Types of forbidden sales

Islam permits selling to achieve human goals and obtain demands through consent and agreement between sellers and buyers. Therefore, no one takes someone else’s money by force, but there can be an exchange of goods or services for their value based on mutual consent and tolerance between the seller and the buyer.

[65] Imam Al-Tirmithi narrated the following hadith (1231): “The Messenger of Allah prohibited two sales in one.”

Therefore, Islamic *Sharia* names some forbidden sales and explains their details to warn people against falling into such sales and of being aware of the tricks that lead to prohibited sales.

Moreover, observance of the higher purposes of *Sharia* requires a dimension of stratagems (*hiyal*). Therefore, Almighty Allah prohibited *riba* and blocked all steps that led to *riba*. Only moneylenders resort to *riba* stratagems, and their best trick is pretending to sell, benefiting from the fact that *Sharia* permits selling. Almighty Allah said, “That is because they say, ‘Trade is just like interest.’ But Allah has permitted trade and has forbidden interest” (“Taqī Al-Dīn Hilālī and Muhammad Muhsin Khan” 2:275).

Therefore, most *riba* ploys are done through selling, either by circumventing the principle of *riba* prohibitions or by circumventing the commercial legal laws related to interest rates, seeking higher rates prohibited by law.

This chapter focuses on the contemporary modern financial and commercial transactions *Sharia* prohibits. The six occasioning factors discussed and highlighted in the previous chapter are all reasons for considering a transaction *Sharia* illegal.

Finally, clearly codified articles will be presented for each illegal transaction because it is essential to know which sales are illegal according to *Sharia* to avoid participating in forbidden sales.

a) First: Sale with an immediate repurchase (*al-enah* sale)[66]

Islamic *Sharia* scholars have defined an *al-enah* sale as a prior agreement in which the seller immediately buys back from the customer what was sold between them at a lower price before the buyer cashes out the price (Al-Bahuti 162–163: 3).

A sale with an immediate repurchase (*al-enah* sale) is a recurring issue. It has emerged as a *riba* ploy by many merchants to obtain financial gains. It also appears in banks’ financing instruments under many names and in many forms.

---

[66] The Sharia proof forbidding the *Al-Enah* sale is taken from the hadith of Prophet Mohammad, peace be upon him, that was narrated by his companion Abdullah bin Omar, as narrated by Abu Dawud in his book “Al-Sunan” (Al-Sajestani 3462).

An *al-enah* sale is a loan endorsed in sale form where the reality of the selling process is a stratagem to bypass *riba*. Moreover, this fictitious sale is used to circumvent lending with interest.

The *al-enah* sale is usually circumvented in one of three ways:

1. Purposely adding another good to the contract.[67]
2. Introducing a third party as an intermediary.[68]
3. Creating a defect in the commodity to justify its lower price when selling it back for cash.[69]

b) Second: Monetization sale transaction (*al-tawarruq*[70])

Monetization sales (*tawarruq*) are one of the most common transactions in Islamic banks. Therefore, an important debate among *Sharia* scholars has been determining the permissible and forbidden types of *tawarruq*.

Sharia jurists have mentioned three *tawarruq* transaction forms. They unanimously agreed that two of the three *tawarruq* forms are prohibited, but they differ on one of the forms. Numerous fatwas have been issued in this regard. The most famous among these fatwas is the International Islamic Fiqh Academy's "Decision Regarding *Tawarruq*: Its Reality and Its Types (the Well-Known Jurisprudence and Organized Banking)".

---

[67] For example, the two parties agree to add another item to the sold commodity, then the buyer resells the purchased commodity to the seller at a lower price without the other added item, pretending that the value of the commodity being sold has decreased (Al-Khassaf 12).

[68] For example, the bank agrees with the client to introduce a third party in the financing process, so the bank finances the required amount to the client by purchasing a commodity from the London Metal Exchange and then sells it to the client with an added profit on a different basis. Then, the bank agrees with the third party to buy the commodity at the price requested by the customer. After the third party purchases the commodity, the commodity is resold back to the bank in a fictitious sale. This is a ploy (*enah* sale) because it introduces a third party into the transaction.

[69] For example, the client deliberately causes a defect in the commodity as a kind of trick in order to reduce the commodity price when returning it to the seller. However, the customer does not initially search for a defect in the commodity because the intention is to purchase the commodity for the sake of reselling it back to the seller or a third party in a prefixed deal to obtain financing and to circumvent the need for an interest-based loan.

[70] The word *tawarruq* is linguistically derived from the Arabic word *wariq*, which means silver or silver coins. Therefore, the word *mustawriq* is used for the person who is looking for cash (Ibn Mandhour 375: 10).

The *al-enah* sale process occurs between two parties, the seller and the buyer, while the *tawarruq* sale involves three parties (the seller, the buyer, and a third party). The latter type of sale can even involve four or more parties, but the *al-enah* ploy in the transaction is still built into the sale's fictitious form to allow the sale to circle back to the first seller.

Some may think that *al-enah* sales and *tawarruq* transactions differ because of the number of parties. This confusion arises because the *al-enah* transaction occurs between two parties, and the *tawarruq* transaction occurs among three or more parties. However, the difference between the two transactions is that *al-enah* sales involve a party who looks like the lender and another who looks like the borrower in its contracts, unlike *tawarruq*, which involves only the borrower.

Therefore, Imam Ibn Taimiyah said, "However, if the buyer sold the commodity to someone other than the seller, on an actual sale basis, and the commodity did not circle back to the first seller intentionally, the jurist title this transaction *Tawarruq*" (Ibn Taimiyah 137: 3).

Tawarruq transactions arose due to the belief that *al-enah* sales are forbidden, and it was thought that introducing a third party would take the transaction out of the *al-enah* category of forbidden sales. However, if the judgment were limited to the overall form of the transaction without considering the real essence of the transaction, then an *al-enah* sales transaction itself would have been permissible.

However, the essence of any deal comprises its actuality and its outcome. Therefore, a transaction is considered forbidden even if it involves three or more parties, provided that one party gives a certain amount of money at one period of time in order to take more on credit, and another party immediately gains an amount of money to spend with more credit.

It should be noted here that the term *tawarruq* is not found in Hanafi, Maliki, or Shafi'i jurisprudence books. Hanbali jurisprudence books are unique in using this terminology. Hanbalis define *tawarruq* as buying a commodity for a deferred period and then selling it to a nonseller for cash to increase its price (Ibn Muflih 316: 6). Therefore, it is a term solely found in the Hanbali jurisprudence school. Other jurists know of this transaction type;

however, they refer to its provisions in the context of *al-enah* sales, forbidden sales, and *riba*.

Imam al-Bahuti, a famous Hanbali scholar (d. 1641 CE), said, "Whoever needs cash and buys something worth a hundred and pays more in order to expand with its cash price, then this is permissible: it is called the *Tawarruq* transaction" (Al-Bahuti 555).

Likewise, Imam Ibn Taimiyah said, "If the buyer takes the commodity and sells it in another place, where the buyer buys it for one hundred and sells it for ninety because of the need for dirhams, then it is well-known as a *Tawarruq* transaction" (Ibn Taimiyah 500: 29).

Furthermore, the *tawarruq* sales transactions are known in the Shafi'i jurisprudence school (Zarnaqa). Muhamad Al-Azhari (d. 981 CE), a well-known jurist from the Shafi'a school, said, "As for the Zarnaqa, it is for a buyer to buy a commodity for a price on a deferred payment, then sell it to someone other than the seller for cash; it is the permissible type of *Al-Enah*" (Al-Azhari 216).

Perhaps the lack of use of the term *tawarruq* in the works of scholars from the other jurisprudence schools except for the Hanbalis' is due to the similarities between *al-enah* and *tawarruq* sales, which confused them. Most likely, their equality in *Sharia* provisions was the origin of this confusion. Imam Ibn Al-Atheer (d. 1233 CE), a famous scholar from the Shafi'i jurisprudence school, said, "*Al-Zarnaqa*: also called *Al-Enah*, which is buying something for more than its price for a term, then selling it to the buyer or someone else for less than what is being bought" (Ibn Al-Atheer 397).

c) Third: A sale with a condition to possibly repurchase, also called redemption sale (*Al-Wafa*[71] sale)

The *al-wafa* sale is a modern and widespread form of sale used mainly by financers in complex financing instruments. An *al-wafa* sale is also called a "fulfillment sale" because the buyer is obligated to fulfill the resale condition. 'Ibn A'bideen (d. 1836 CE), a great scholar from the Hanafi jurisprudence school who lived in Damascus, said, "The reason

[71] *Al-wafa* means fulfillment or the act of fulfilling a promise.

for calling it the *Al-Wafa* sale is that it contains a pledge of fulfillment from the buyer to return the thing sold; to the seller when the price is refunded to the seller" (Ibn A'bideen 545: 7).

In examining the *Sharia* compliance of an *al-wafa* sale transaction, one might believe that the transaction is a standard sale. However, it is a sale that does not include the sale's description because the truth is a circumvention of *riba*. Unfortunately, these fictitious sales are not as common as in our time because fraud has become common and even permissible according to some laws.[72]

It should be noted that *al-wafa* sales were known to earlier Islamic jurists and mentioned in their books. For example, the scholar Ibn A'bideen said, "A sale that the people of our time commonly knew fraudulently, they titled it *Al-Wafa* sale. Whereas, in reality, it is a sale in the shape of a guarantee where the buyer does not own or benefit from the sell, except with the permission of the real owner (the seller)" (Ibn A'bideen 546: 7).

The majority of Islamic jurisprudence scholars have prohibited this transaction. Additionally, the Islamic Fiqh Academy prohibited *al-wafa* sales.[73] The Hanafis are the only ones who permitted it with conditional approval, as mentioned in the Al-Majallah (Article 118).[74]

---

[72] French civil law legalized the sale with a condition of repurchase, as in article 1659: "The repurchase option is a pact by which the seller reserves the right to take back the item sold, subject to the return of the principal price and the reimbursement referred to in (article 1673)" ("The Option of Redemption" - Articles 1659 to 1673).

[73] The Islamic Fiqh Council's decision regarding *al-wafa* sales is as follows:

> "The Council of the Islamic Fiqh Academy held during its seventh conference session in Jeddah in the Kingdom of Saudi Arabia from May 9-14, 1992. After listening to the discussions that took place about [*al-wafa* sales], where its reality appears to be: 'The sale of an item with a condition that whenever the seller refunds the price, the buyer returns the item purchased.' The council decided:
>
> 1. The fact that this sale is a 'loan conditioned with an added benefit to the loan' which is a circumvention of *riba*, and the majority of scholars judge this transaction as invalid.
> 2. The Council considers this contract not legally permissible" (International Islamic Fiqh Academy).

[74] The article (118) of Al-Majallah says:

> "A sale subject to a right of redemption is a sale in which one person sells property to another for a certain sum of money, subject to the right of redeeming such property, upon the price thereof being

d) Fourth: Bond issuance and trading

Bonds,[75] widely traded securities, are known by several names, the most famous of which are "investment certificates." They have many forms, all of which depend on lending with interest. Therefore, issuing bonds to obtain liquidity has become very common among countries and companies because it provides the bond issuer with the benefit of using the borrowed money with these bonds in various aspects of its financing and investment activities during the bond term.

In common practice, bond issuers, such as companies and banks, prefer the borrowing policy of issuing bonds over increasing their capital by issuing new shares to finance new projects. Moreover, bond issuance allows the company's original shareholders to solely manage and control the company without interferences from the bondholders from a legal point of view.

For example, some banks issue bonds on an interest basis and then lend them to customers at a higher interest rate; thus, the bank's profit is generated by obtaining the difference between the two interests. The bondholder obtains fixed interest above the bond value regardless of whether the bond issuer makes a profit. Furthermore, the bondholder receives this interest on the agreed-upon date, and the interest rates increase the further out the bond maturity date is (Al-Omrani 8).

Additionally, in some bond types, the bondholder obtains an issue premium plus the fixed interest, represented in the difference between the bondholder's nominal value and paid value. In other bond types, the bondholder may receive a boon in addition to the fixed interest.

---

returned. Such a sale is considered to be permissible in view of the fact that the purchaser has a right to enjoyment of the property sold. It is also in the nature of a voidable sale inasmuch as the two parties have the right of cancelling the sale. Again, it is in the nature of pledge, in view of the fact that the purchaser cannot sell the property sold to any third party" (Al-Majallah Article 118).

[75] A bond is "a financial paper issued by trading establishment and governments in order to raise long-term loans (wealth) in lieu of interest that is paid to the bearer of bond after periods. They are sometimes issued at a discount with respect to their face value" (Accounting and Auditing Organization for Islamic Financial Institutions 581).

Many traders have coasted using the bond proposition from these financial and governmental institutions. They have bought bonds of varying values and may make a profit without knowing the reality of these bonds and their *Sharia* legitimacy.

Moreover, to determine the correct *Sharia* provision regarding bond trading, it is essential to understand the Islamic jurisprudential adaptation of these bonds. Current *Sharia* scholars and jurisprudence councils unanimously agree that issuing, selling, buying, and trading these commercial bonds are forbidden acts because interest-bearing loans lead to outright *riba* in loans.[76]

Additionally, the Accounting and Auditing Organization for Islamic Finance Institutions (AAOIFI) clearly state in their standards that issuing and trading with bonds is forbidden by *Sharia*:

> "The issuance of all kinds of bonds is prohibited when these bonds include stipulations for the return of the amount of loan and excess in any form, whether such excess is paid at the time of the satisfaction of the principal amount of loan, is paid in monthly or yearly installments or another manner whether this excess represents a percentage of the value or the bond, as in the case with most types of bonds, or a part of it, as the case with zero-coupon bonds. Likewise, prize bonds are also prohibited irrespective of the bonds being private, public or government" (Accounting and Auditing Organization for Islamic Financial Institutions 567).

Thus, it is essential to codify bonds because they are a modern financial instrument used by governments to raise capital for infrastructural projects. Companies also use bonds to finance new projects and solve financial problems.

[76] The Council of the International Islamic Fiqh Academy, which met for its sixth session in Jeddah in the Kingdom of Saudi Arabia on 14–20 March 1990 CE, reviewed the bond as a certificate according to which the issuer is obligated to pay the bearer the nominal value upon maturity with the payment of agreed-upon interest attributed to the face value of the bond or to arrange conditional interest, whether prizes are distributed by lot or a lump sum or discount. It was decided to prohibit all types of bonds because they are, in fact, a loan with interest added to the loan, which is outright *riba* (International Islamic Fiqh Academy, "Resolution No. 60 (11/6) [1] Concerning Bonds").

e) Fifth: Lease ending with ownership (*Ijarah Muntahia Bittamleek*)

A lease contract ending with ownership is one of the most common contemporary deals and is not found among the classical Islamic jurisprudence contracts. This contract type started in the West and spread globally, including in Islamic countries. In the past, people knew only about installment sales, where the ownership of the sold item would pass to the buyer, and the value would remain as a debit on the buyer's part. When the property's ownership does not pass to a tenant in a lease, the property remains owned by the lessor (Al-Sanhuri 149: 4).

Moreover, a lease ending with ownership, or a lease-to-own arrangement, is similar in its structure to an installment sales contract in terms of the particular purpose of the contracting parties of composition. However, a lease ending with an ownership contract is not found among the classical Islamic jurisprudence contracts, and the terms and conditions of such a lease, as defined by European laws such as French civil law, violate *Sharia* legal regulations.[77]

Sharia says that two tentative sales agreements (i.e., rent and purchase) cannot be included in one sales contract.[78] Moreover, the contract should be transparent and state whether it is a sale or a rental. However, some researchers have introduced what they believe are *Sharia* legal amendments to make such contracts compatible with Islamic law provisions.[79] These attempts to legalize the contract according to *Sharia* have generated debate among *Sharia* scholars; some permit this new contract, and others prohibit it.

Before clarifying this debate on correct *Sharia* provision for this contract, it is necessary to understand the concepts behind the contract and highlight the specific conditions that the

---

[77] As indicated in French Civil law number 84-595 (Defining Rental-Purchase of Real Estate).

[78] The companion Abdulla bin Masoud (may Allah be pleased with him) narrated that Prophet Mohammed (peace be upon him) "forbade concluding two merger deals into one without specifying the type of transaction concluded at the time of the contract" (Hanbal 324 (3783): 6). The hadith was authenticated by Imam Albani (Al-Albani 148: 5).

[79] Accordingly, many Arab countries have included in their civil laws leases ending with ownership contracts as legal contracts, such as Article 430 in Egyptian civil law, Article 398 in Syrian civil law, Article 419 in Libyan civil law, Article 534 in Iraqi civil law, and Article 140 in Kuwaiti civil law. However, this does not necessarily mean that the *Sharia* provision approves of this concept.

contract endorses. It is a composite contract of either a lease and sale or a lease and grant/gift.

The reason this contract type emerged is the significant expansion of financial transactions. Commercial exchanges have created many disputes among dealers, prompting each contracting party to find sufficient guarantees for their profits. Therefore, many traders think that a lease ending with an ownership contract is a perfect solution to solve all guarantee issues. The seller sells the commodity under the cover of a lease-to-own contract through an installment price where the seller's ownership is transferred to the buyer as soon as the sale is contracted, and the seller can take a mortgage or accept a personal guarantee to secure the payments (Al-Khathlan 144).

In a lease-to-own contract, the seller believes that if the commodity is leasable, as in the case of cars and machinery, then keeping ownership of the sold commodity until the last installment is paid is much better and more secure for the seller than taking a guarantee because the commodity remains in the seller's ownership during this period.

To achieve this purpose, sellers tend to resort to commodity leasing rather than selling since a lease does not transfer ownership of the commodity, unlike an installment sale. Nevertheless, after all, installments are fully paid and the seller transfers ownership, the sale is finalized at a symbolic price (1 euro) or given as a grant. A lease ending with ownership has other commercial names, such as a rent-to-own arrangement or a sale by renting. It is explicitly a lease and implicitly a sale.

Due to the novelty of such a contract, Islamic jurisprudence researchers' perceptions of this contract differ in terms of its form. Some researchers associate this contract with a modern contract structure that other researchers oppose. For this reason, *Sharia* scholars assert that *Sharia* provisions are not based on common names or titles of transactions but rather on their actions and causes (*maqasid al-Sharia*).[80]

Thus, discussing the *Sharia* endorsement of this unique type of contract and its legal issues is necessary. It can be said that the contract is composed of two contracts, a lease and a

[80] As discussed in chapter one (1.3.2).

sale. There is no conflict between these transactions because a lease is a type of sale, but it is a benefit sale.

Sharia forbids combining any two undecided deals, be they loans or sales.[81] The reason for this is that the seller may participate in *riba* by increasing the sale's price or adding profit generated from the sale. Therefore, this contract involves more than just combining two types of transactions.

Moreover, to analyze the *Sharia* permissibility of lease-to-own contracts and identify the issues that may occur with implementing them, it is necessary to imagine possible scenarios that might involve such contracts and the *Sharia* ruling for each contract structure.

Accordingly, possible scenarios for this contract have been developed after reflecting on the contract's essence to obtain the correct *Sharia* ruling for this transaction. The scenarios are as follows.[82]

In the first example, suppose that the sold commodity was damaged during the lease term. Who is responsible for ensuring the damage, the seller (the lessor) or the buyer (the lessee)?

The apparent meaning in the contract is that the owner bears responsibility, assuming that the damage occurred without infringement or negligence on the tenant's part, since the lessor is the owner. From the perspective of *Sharia* and state law, owners should be responsible for property risks. However, the underlying implication of such a contract is that the tenant is responsible because the lessee is the purchaser. Controlling the lease-to-own transaction in *Sharia* jurisprudence and law has conflicting effects on both contracting parties.

---

[81] Imam Abu Dawud narrated a hadith by the Prophet Mohammad (peace be upon him): "The proviso of a loan combined with a sale is not allowable, nor are two conditions relating to one transaction, nor profit arising from something which is not in one's charge, nor selling what is not in your possession" (Al-Sajestani 3504). The hadith was authenticated by Imam Albani (Al-Albani 374: 2).

[82] Through these examples, I invite researchers and scholars to contemplate these challenges resulting from this complex fictitious contract in which the interests of the contracting parties are in conflict and which leads to the loss of ownership rights.

In the second example, suppose that the sold commodity's estimated life is ten years, and the lease stipulates that there will be ten annual installments, but the lessee does not pay the sixth installment. What should the lessor do?

The lessor will take back the commodity because it is his or her asset, although the commodity value may be roughly equal to the present value of the remaining debt to the lessor. Because the use of the commodity varies from one lessee to another, one lessee may consume the item (i.e., a car) in ten years, while another may consume it in five years.

In the third example, let us assume that there are five installments instead of ten, and the contract case is the same as the previous one. The estimated life of the commodity is ten years.

In this scenario, if the lessee does not pay the third installment, then the lessor, by recovering his or her commodity, will likely recover more than double what is rightfully his or hers. The installments are sale installments, which are usually higher than lease installments, especially in this case, where the estimated item age is ten years, and there are five installments.

Moreover, from an assumption perspective, if the lessor becomes bankrupt, is the commodity considered owned by the lessor (i.e., considering the transaction a lease) or the lessee (i.e., considering the transaction a sale)?

It is in the interest of the bankrupt party's creditors that the commodity be owned by the bankrupt party (the lessor), so how should we judge this situation? Do we rule that the commodity is included in the bankruptcy and the creditors divide it, or is it not included and instead considered owned by the other party? Alternately, what if we assume that the lessor is the creditor and the commodity owner simultaneously? If this happens, the lessor's ownership is double: through the debt and as the commodity's owner. For example, if the commodity price is USD 1000, then it means that he or she owns USD 2000.

On the other hand, can the lessee be considered a debtor and, at the same time, not the commodity owner? If that is the case, then this means that the lessee's balance sheet shows on the liabilities side a debt of USD 1000, while on the assets side, it does not show ownership of a commodity worth USD 1000.

Moreover, ownership has other consequences. For example, according to Islamic *Sharia*, the owner must bear the risks, burdens, and expenses of ownership, such as maintenance, repair, insurance, fees, and taxes (Accounting and Auditing Organization for Islamic Financial Institutions 265).

It may also be said that a lease ending with ownership is weighted in the seller's interest at the expense of the consumer. It is often whispered that statutory laws (human-made laws), in which these types of leases are found, are made by the powerful and the wealthy, unlike Islamic laws that are derived from divine revelation (the Holy Qu'ran and *Sunnah* of the Prophet Mohammed, peace be upon him) and protect the weak from the powerful.

Legal and jurisprudential stratagems cause these problems and difficulties. Therefore, it has been suggested that this type of contract is not permissible in financial and commercial transactions.

Although some *Sharia* boards have issued *Sharia* fatwa permitting this type of transaction, for all the above scenarios and the jurisprudential legal issues related to the lease-to-own contract, a jurisprudence provision that favors a lease-to-own contract is not *Sharia* permissible.

Accordingly, this contract is listed herein as a forbidden *Sharia* transaction. Codified articles will be presented that address the different leases ending with ownership contracts currently implemented in the market.

f) Sixth: Diminishing partnership ending with ownership[83]

A diminishing partnership contract ending with ownership is a modern contract type invented by Islamic banks to finance their clients. The transaction combines multiple

[83] This contract also known in the financial market by several names, including decreasing partnership, diminishing partnership ending with ownership, and speculation ending with ownership.

financial contracts in one contract, such as partnership and sale or a partnership, sale, and lease.

Like the rest of the newly developed financial transactions, there are many definitions of this transaction, and they are all similar in meaning. However, the central concept behind the transaction is similar to the purpose of a lease ending with an ownership contract to finance clients through mocked-up *Sharia*-compliant transactions.

Among these definitions is a partnership contract, in which the bank enters into a partnership with the financing applicant by granting the applicant the right to full ownership after one payment or through installments, as required by the agreed-upon terms, and the nature of the transaction, such as property ownership, on an agreed-upon payment arrangement to set aside part of the income obtained as a premium to pay the installment (Shabeer 333).

For example, the bank may share property ownership with a customer with the agreement that the customer will pay the bank in a specified number of periodic installments, at the end of which the bank will transmit its property shares to the customer, who eventually becomes the sole property owner.

Indeed, this transaction is similar to the previous contract discussed (the lease ending with ownership), so the installments appear to be rentals; in reality, however, they are sales installments. In the previous contract, where a lease was used instead of direct selling, the bank desired to retain its property until the sale amount was received in full. The diminishing partnership has the same purpose: to keep the bank's property share until the total payment installments are fulfilled.

Undoubtedly, if two parties share real estate ownership, as happens from time to time, one of the parties may sell his or her shareholding to the other. The share price is determined at the time of sale, and one of the parties continues to sell his or her share at different intervals until all shares are sold, and the other party becomes the exclusive property owner, providing that there was no prior arrangement between the parties or duplicity in the sale.

There is no doubt about the validity of this process, even though it is a sale promise without any obligation.

Likewise, if the two parties share property ownership, one can rent his or her share to the other and occasionally sell part of his or her shares, and after each sale, the parties may agree to determine the rent for the remaining shares. According to *Sharia*, such a transaction is permissible despite a promise to lease and sell without legal obligation.

Suppose these two parties, who had joint property ownership, initially agreed on the partnership and set up a payment mechanism in specific installments. In that case, the property ownership would be transferred in full after paying the agreed-upon amount, regardless of whether one party is a tenant of the other during this period. This is considered a stratagem and is not *Sharia* permissible.

Likewise, before entering into a real estate partnership, if both parties agree that one will sell his or her share in installments, this is not *Sharia* permissible because one of the parties created this partnership as a stratagem to finance a real estate purchase with interest. The party's intention is not to engage in a partnership, sale, or lease but instead to finance and use the sale and rent as a cover to circumvent *riba*.[84]

To further clarify and confirm the *Sharia* ruling on a diminishing partnership ending with an ownership transaction, it is noted that the sale or rent installments must be determined at the start of the partnership and apply throughout the period until the entirety of the ownership is transferred to the customer on a fictitious gift basis or in return for a symbolic payment amount.

Islamic banks mainly use such transactions as an alternative to conventional loans to finance real estate. However, banks' application of diminishing partnership transactions varies in terms of whether the transactions involve a binding or nonbinding promise,

[84] Spanish civil law (Article 1875) has a similar legal opinion to Islamic law: "It is indispensable, for the mortgage to be validly constituted that the document of its constitution be registered in the Property Registry" (Ministry of Justice - Spain and Clusen).
Portuguese civil law (Article 694) has a similar opinion as well: "The agreement by which the creditor will make the mortgaged property his own in the event that the debtor fails to perform shall be null and void, even if prior or subsequent to the constitution of the mortgage" (Ministry of Justices - Portugal).

whether they have a nominal decreasing or market value, and whether the transfer of ownership occurs once the installments are complete or gradually with each installment. *Sharia* approves of this when the promise is not binding, the market value diminishes, and each installment gradually changes who has ownership of the asset.

Nevertheless, Islamic banks use diminishing partnerships ending with ownership contracts to provide financing for their customers. There is no actual will to participate on the part of the bank, and the bank's participation in the contract does not bear any risk, making the contract just a financing process covered by a partnership contract. This kind of contract is an apparent stratagem contrary to the requirements of *Sharia* (*maqasid al-Sharia*), which dictate that the means (*wasela*) must be correct and transparent.

Even though the fatwas of some Islamic banks' *Sharia* boards lead them to approve this kind of transaction, the correct ruling is that it is not *Sharia* compliant. It is necessary to bear in mind the purposes of *Sharia* and to judge the essence of the actual transaction, not only its appearance. Thus, it is essential to codify diminishing partnerships ending with an ownership transfer to avoid falling into such an arrangement.

g) Seventh: Financial derivatives (*al-mushtaqqat al-maliyyah*)

Financial derivatives are modern contracts that have spread widely among local and international financial institutions in the past twenty years. Since derivatives emerged on the financial scene, the financial sector has been split between supporters and opponents.

Warren Buffett (2003), as noted by Simon (2008), described derivatives in the Berkshire Hathaway Inc. 2002 Annual Report as "financial weapons of mass destruction" and contracts devised by "madmen" (Grima).

Definitions of derivatives abound, but all are similar in meaning. For example, one definition of derivatives is as follows:

> "A derivative is a contract between two or more parties whose value is based on an agreed-upon underlying financial asset (like a security) or set of assets (like an index). Common underlying instruments include bonds, commodities, currencies, interest rates, market indexes, and stocks" (Chen).

Another author defined derivatives as:

> "a financial contract that requires an obligation to own or sell a security, or an asset specified in its value and description, or to exchange financial obligations that may not be owned at the time of contracting, provided that the rest of the price and the appraised asset are received, at the time agreed upon in future, and often ends with the settlement of the contract, based on the difference between the price agreed upon at the time of the contract and the present price at the time of ownership" (Al-Muhanna 22).

Moreover, the European Market Infrastructure Regulation (EMIR) notes that "a derivative is a financial contract linked to the fluctuation in the price of an underlying asset or a basket of assets. Common examples of assets on which a derivative contract can be written are interest rates instruments, equities, or commodities" (The European Market Infrastructure Regulation (EMIR)).

However, none of these definitions of derivatives transparently convey the contract's actuality, as they merely indicate why the financial instrument is labeled the way it is. Perhaps this is due to the numerous types of derivatives, including futures, options, swaps, and forward contracts.

Therefore, establishing a clear definition of derivatives that includes all derivative types is complicated. Knowing these types and definitions is essential to understanding their actuality.

The general concept of derivatives can be described as contracts that respond to financial and material assets or to the right to sell or buy those assets without those assets being intended for the contracting parties; rather, the profit is intended to be achieved through the difference between the agreed-upon value of the assets and the market value at the specified time.

Derivatives are zero-interest, where one side gains what the other loses. Alan Greenspan, the former chairman of the US Federal Reserve and a prominent derivatives proponent, states, “Overall, derivatives, are mainly a zero-sum game: one counterparty's market loss is the other counterparty's market gain” (Greenspan).

For this reason, derivatives are not an actual swap since they are not intended to transfer the ownership of the asset subject to the derivation. Instead, the matter is mainly limited to settling price differences at the end of the contract. For example, in the futures market, 99% of contracts are settled before maturity (Pilbeam 334). Therefore, the Financial Conduct Authority in the United Kingdom defines derivatives as “contracts for difference” (Financial Conduct Authority).

Moreover, these derivatives are mainly used for two purposes: speculation and hedging against the risks of changing exchange rates, interest rates, commodity prices, and stock prices. The core financial model of derivatives is based on gambling and speculation; therefore, all Islamic jurists agree that this type of contract is not *Sharia*-compliant.

Thus, codifying the leading derivatives and understanding the *Sharia* ruling on these financial instruments is essential. Three of the most popular derivative instruments are highlighted: futures contracts, options contracts, and swap contracts.

h) Eighth: Currency trading

In the last thirty years, it has become common to engage in currency exchange, although currency exchange was previously conducted only for travel or money transfer. However, today, there are many forms of currency trading. Currency exchange trading has recently developed a great deal, especially since the emergence of the internet, electronic commerce, and international currency trading, or the so-called Forex. In the past few years, many unique foreign currency exchange markets have been established, where currencies are treated as commodities and traded on the spot and on credit.

Widely held currency exchange trades in the foreign exchange market (Forex)[85] are becoming increasingly popular. According to the latest (Forex) statistics, “the worldwide

[85] The Foreign Exchange Market (Forex) is defined as follows: “A market for the trading of currencies. For example, one may buy dollars or sell pounds on a forex market. Foreign exchange is one the largest and most

2021 Forex market is worth $2,409,000,000 ($2.409 quadrillion). $6.6 trillion on average every day is traded on foreign exchange markets" (Grossbard).

Currency exchange sales are a type of financial contract closely related to *riba*. Compared with commodity trading, money exchange is more likely to fall into the *Sharia*-forbidden *riba* zone due to the lack of *Sharia* standards and guidelines for implementing currency exchange.

Money is subject to the same controls applied to the sale and exchange of gold and silver in terms of the *Sharia* policy requiring the same homogeneous types of assets and on-the-spot receipt. Thus, currency has the same exchange conditions. Because money changes hands, the characteristics of gold and silver, the flow of *riba* in excess/surplus (*riba al-fadl*), and riba in delay (*riba al-nasa*) are applied to currency as well.

Therefore, Muslim jurists from different jurisprudence schools have devoted special attention to currency exchange trading, known in Arabic as *al-sarf*. They explain permissible currency transactions and indicate the issues that should be avoided in currency exchange transactions (forbidden transactions). Due to the need for and importance of currency trading, Islamic jurists have dedicated multiple chapters in their jurisprudence books to describing the conditions required by *Sharia* for currency exchange to be permissible (*al-sarf*) and the provisions related to current currency trading mechanisms.

Islamic jurisprudence scholars have summarized the conditions that must be met in the process of currency exchange as follows:

- First condition: There must be equal quantities when the homogenized currency types are identical.[86]

---

liquid markets in the world. Trading occurs over-the-counter, and most of the major players are governments, banks, and speculators. Forex markets are often used in hedging strategies" (Foreign Exchange Market").

[86] The content of this condition is the prohibition of excess/surplus of the same homogenous type of commodities and minerals involved in a *riba* transaction, such as selling one euro for two euros or one dollar for two dollars. The consideration of symmetry decreases when the types differ.

- Second condition: The receipt and delivery of the two currencies circulating in the contract must occur before the two parties separate.[87]
- Third condition: The currency exchange contract must not include an option to terminate the contract within an agreed-upon period.
- Fourth condition: The currency exchange contract must be free of delays in receipt and delivery (Al-Baz 41, 60, 73, 74).

Consequently, the focus of this codification effort will be on non-*Sharia*-compliant currency trading. Some well-known and frequently traded currency contracts will be highlighted, and their legality will be analyzed according to Islamic *Sharia* regulations.

i. *Currency margin trading*[88]

Margin trading can be applied to many financial sectors, including currency, commodities, bonds, and securities. The focus of this section is currency margin trading. The process of carrying out a currency margin trading contract is as follows:

> "The process involves making a good-faith deposit with a broker to open and maintain positions in one or more currencies. The margin is not a cost or a fee; it is a portion of the customer's account balance set aside to trade. The amount of margin required can vary depending on the brokerage firm, and several consequences are associated with the practice" (Balasubramaniam).

Muslim scholars have studied the process of margin trading applied to Forex and other platforms by brokers and found it to include several clear violations. A fatwa issued by the Islamic Fiqh Academy prohibiting this type of trading and can be summarized as follows:

---

[87] Abu Sa`id Al-Khudri narrated the following: Allah's Messenger (peace be upon him) said: "Do not sell gold for gold unless equivalent in weight, and do not sell a lesser amount for greater amount or vice versa; and do not sell silver for silver unless equivalent in weight, and do not sell a lesser amount for a greater amount or vice versa and do not sell gold or silver that is not present at the moment of exchange for gold or silver that is present" (Al-Bukhari 491: 3).

[88] Like any new financial transaction, margin trading has many definitions, most of which are similar in meaning.

- First, the process of margin trading includes explicit *riba*, that is, an increase in the loan amount called good-faith fees.
- Second: The condition upon the client that his or her trade must be through the broker leads to the combination of a loan and brokerage, which is considered *Sharia* forbidden in a contract; *Sharia* forbids combining advances and sales. Additionally, the intermediary benefits from the loan.[89]
- Third, the margin transaction trading that takes place in international markets includes many complex types of contracts that *Sharia* forbids, including the following:
    1- The sale and purchase of currencies are made without a legal receipt that permits disposal.
    2- The intermediary, in some cases, sells what is not in his or her full possession; *Sharia* forbids this.
- Fourth, this transaction involves economic damages to the transacting parties, especially the client (the investor) and the economy. Because it is based on the expansion of debt and risk, it often includes deception, misleading rumors, monopoly, fraud, and rapid fluctuations in prices to rapidly increase one party's wealth and obtain the money of others through illegal methods. These risks are not economically fruitful and may lead to heavy economic shocks that damage society (First decision: Margin Trading).

3.4 The Proposed Codified Articles

First maxim: Selling without actual possession is illegal in Islamic Sharia

Article 54: Selling what is not in the seller's possession is not valid.[90]

---

[89] As mentioned previously in Article 14, every loan that brings extra interest to the lender is considered *riba*.
[90] As an example, for a trade transaction in the global commodity markets, such as the London Metal Exchange (LME), if a trade takes place for specific commodities before the seller owns them, and they enter into the seller's actual or judgmental seizure ownership, then they are considered not legally permissible

Article 55: Selling someone else's possession without the owner's permission is not valid.

Article 56: A commodity or a service that cannot be delivered or fully enabled to the buyer may not be sold.

Second maxim: The sale of debt for a debt (Bai' Al Dain bid Dayn) is illegal according to Sharia

Article 57: A debt or receivables trade is a sales contract in which the creditor sells his or her payable right upon the debtor either to the debtor him or herself or to a third party at a discounted price or cost price on a spot value payment basis.

Article 58: The exchange of a delayed counter value for another delayed counter value is forbidden under Islamic law.

Article 59: The selling of debt comes in different forms, including the following:

First: Selling the debt to the one who owes the debt (i.e., the debtor) at a spot payment price. This sale is legally permissible.[91]

Second: Selling the debt to the debtor for another debt. This sale is legally permissible.[92]

---

because they are included under the mentioned maxim's guidelines of selling what is not in the seller's possession, which is prohibited by the text of the hadith as well as the consensus of *Sharia* scholars.

[91] For example, the seller sells 1000 tons of wheat at a price deferred to a month, and the buyer accepts the delivery of the commodity. After one month, when the payment comes, the buyer proposes that he sells the seller rice for the price the former owes. The seller agrees to immediately collect 1000 tons of rice.
This is permissible according to most Muslim scholars. If the two swapped commodities fall under the delay category *riba* (*riba an-nasee'ah*), then a direct exchange must be made.
Two distinguished scholars, Ibn Taymiyyah and Ibn al-Qayyim, and a stream of the Hanbali school of thought supported the permissibility of selling this type of debt and agreed that it is not among the debt sales that *Sharia* forbids (Mohammad Ibn Al-Qayyim 172: 3).

[92] For example, the seller sells the commodity to the buyer for 1000 dollars deferred for one year, and upon the payment due date, the buyer pays the seller back by selling him a commodity at the same price owed deferred to one year. The AAOIFI permits this type of debt sale (Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), "Standard No. (59) Debt Sale").

Third: Selling debt to the third party at a spot payment price. This sale is also legally permissible.[93]

Fourth: Selling debts to a third party at a deferred price. This sale is also legally permissible.[94]

Fifth: The sale of a delayed debt not fixed in the liability for a delayed debt, which is the "sale of the debt for the debt" initially or principally, is considered an illegal debt sale in *Sharia*.[95]

Article 60: Deferred debt not received in exchange for a deferred debt that has not been received is forbidden in Islamic law.

Article 61: Debt cancellation between two parties that leads to a debt increase owed by the debtor in exchange for postponing the debtor's payables is not permissible in *Sharia*.[96]

Third maxim: Combining two sales transactions in one contract is unlawful

Article 62: It is not permissible to combine two transactions into one contract transaction.[97]

---

[93] For example, a seller owes a buyer 100,000 dollars. The seller sells his or her receivable debt to a third party in return for a car to be possessed. The AAOIFI permits this type of debt sale (ibid.)

[94] For example, the producer owes the buyer 1000 tons of grain to be delivered in three months, so the buyer sells the future commodity to a third party for one million dollars in deferred payment. The "International Islamic Fiqh Academy" permits this type of debt sale (International Islamic Fiqh Academy, "Sale of Debts").

[95] For example, the buyer enters into a contract with a farmer to purchase of 1000 tons of sugar, which will be produced in a specific manner and will be delivered after one year, provided that the farmer receives the payable amount after one year. All *Sharia* scholars unanimously agree that this type of debt sale is not permitted by *Sharia* due to the abovementioned hadith related to the sale of *Al-kali'a*.

[96] For example, canceling a debt for another debt through a new transaction between the creditor and the debtor, according to which a new debt is established for the debtor in order to pay off the first debt in whole or in part, such as the debtor buying a commodity from the creditor at a deferred price and then selling it at a spot price in order to pay off the first debt in whole or in part.

[97] For example, one party sells a commodity for $10 cash and for $20 on a year deferred. The buyer accepts without specifying which of these two prices he or she will pay. This is prohibited because it involves *riba*. As another example, a customer pays a farmer an expedited price for 100 kg of deferred wheat, and when the deadline comes, the farmer says, "Sell me the wheat that you have on me for (110 kg) deferred to a year." This is prohibited because it involves *riba*.

Article 63: It is not *Sharia* permissible to combine a sale and an advance in one contract transaction.[98]

Types of forbidden sales

Sale with an immediate repurchase (*al-enah* sale)

Article 64: A sale with an immediate repurchase (*al-enah* sale) in which a seller sells a commodity for a deferred price and then repurchases it from the same buyer for less than the selling price is *Sharia* impermissible.[99]

Article 65: *Al-enah* sales have different forms and structures mentioned by jurists in Islamic jurisprudence references:

- First form: Selling a commodity at a deferred price to a buyer and then repurchasing it from the same buyer at a lower price in cash with a stipulation in the contract for the first sale that the seller will repurchase the commodity from the buyer.[100]
- Second form: Selling a commodity at a deferred price to a buyer, then repurchasing it from the buyer at a lower price in cash even with no stipulation in the contract, or conducting a mutual agreement before the contract, even if that act is seen as an

[98] It was narrated by 'Amr bin Shu'aib from his father that his grandfather said that the Messenger of Allah said, "It is not permissible to lend on the condition of a sale" (Al-Nasa'i 288: 7).
If the seller says to the customer, "I am selling this commodity to you on the condition that you lend me such an amount" or the buyer lends the seller an amount and then buys something from the same seller for more than its price, both sales involve into *riba* because they would be profitable loans.
[99] For example, some financial institutions use the *al-enah* sales ploy to provide finance services to their customers. The steps are as follows:
- The bank sells assets to the customer on the basis of a deferred payment at the real cost plus a known amount of profit. The total amount represents what the customer will pay the bank.
- Then, the customer resells the same assets to the bank on a cash basis equivalent to the limit set for the card.
- The bank credits the amount in the customer's bank account.
- The customer pays the amount in installments or as a single payment to the bank.

[100] Scholars unanimously agree that this type of sale is prohibited.

acceptable behavior among society members or it is common practice for the seller to repurchase the commodity, all are not permissible.[101]

- Third form: Selling the commodity first for received cash and then repurchasing it from its purchaser for more than the standard market sale price value of a homogenous commodity type or unreceived value amount. *Sharia* jurists title this sale structure a reverse *al-enah*, which is also not permissible.[102]

Article 66: Stratagems are forbidden in all transactions. Therefore, if the second contractor in an *al-enah* sale and a *reverse al-enah sale* has any relation to the first contractor and is used as a mediator to bypass *riba* through a fictitious transaction, the contract is void.

Article 67: Any means that lead to a forbidden sale are also forbidden.[103]

Monetization sale transaction (*al-tawarruq)*

Article 68: *Tawarruq* involves buying a commodity at a deferred price and selling it to a nonseller at a lower expedited price to obtain the cash. This transaction is not *Sharia* permissible because it circumvents *riba*.[104]

---

[101] The reason for prohibiting this type of transaction is because this sale is a stratagem for *riba*, as mentioned by *Sharia* scholars (Al-Qortubi 270: 6). The *Sharia* jurists explained the reason for prohibiting this type of transaction, mentioning that this sale is a pretext for *riba* even though it appears to be a sale. Imam Ibn al-Qayyim said, "This contract includes showing a permissible sale, and concealing one of the major prohibitions (*riba*). Furthermore, the forbidden act does not become permissible just by taking it out in the form of sale, which was not intended to transfer ownership originally but rather intended to circumvent *riba*" (Ibn Al-Qayyim, Tahtheeb Al-Sunan 1631: 3).

[102] Scholars have inferred that it is a forbidden (reverse *al-enah*) sale because it is a means to *riba* in loans (*al-enah* sale) (Al-Mirdawi 194: 11).

[103] For example, if the seller sells an interest-based commodity on credit and then buys at its cash price before receiving the price of a *riba* commodity of the same type as the first sale or buys something that is not permissible to sell using the first sale money, the sale is not valid.

[104] The goods were not bought to be benefitted from, but the commodity is just a stratagem to make the transaction look like a normal sale transaction. However, the real essence of the transaction is a loan with interest, which is prohibited by *Sharia*.

This transaction is forbidden by Imam Omar bin Abdul Aziz (d. 720), Sheikh Al-Islam Ibn Taymiyah and Ibn Al-Qayyim. Among their contemporaries were Imam Al-Albani (d. 1999) and Imam Ibn Al-Uthaymeen (d. 2001) (Juraidan 144).

Article 69: Organized *tawarruq* involves the seller (financier) arranging to obtain cash for the buyer (in need of cash) by selling the buyer a commodity at a deferred price. The seller (financier) sells it on behalf of the buyer, or the buyer sells the commodity to a third party for a cash price less than the first purchased price. The received cash price is handed over to the buyer. This transaction is not permissible according to *Sharia*.[105]

Article 70: Reverse *tawarruq* takes the same form as organized *tawarruq* transactions, except the applicant for *tawarruq* is the institution, and the financier is the customer. This transaction has other names, such as reverse *murabaha*, inverted *tawarruq*, direct investment, and *murabaha* investment. This transaction is not permissible according to *Sharia*.[106]

A sale with a condition to possibly repurchase, also called redemption sale (*Al-Wafa*) sale

Article 71: An *al-wafa* sale involves the seller selling a commodity at an agreed-upon price for cash or debt, provided that when the seller returns the price to the buyer or pays the debt within an agreed period, the seller has the right to take back the sold commodity from the buyer.[107]

Article 72: An *al-wafa* sale can occur in two cases:

First, the *al-wafa* sales transaction is stipulated in the contract, where the debtor (seller) inserts a condition to resell the commodity after the creditor (buyer) refunds the price or

[105] The term organized *tawarruq* is a modern term; it is also called institutional *tawarruq* or banking *tawarruq*. It describes a transaction provided by most Islamic banks within an interconnected contractual mechanism that facilitates the customer's access to cash through a *tawarruq* process. The bank usually deals in commodities purchased from the London Metal Exchange (LME).
In the organized monetization sale (*tawarruq*) process, the bank is in charge of the whole sales process, and the transaction takes place in a fictitious way. Thus, most Islamic jurists give fatwa that this transaction type is prohibited because it is a circumvention of *riba*.

[106] For example, the client authorizes the bank to purchase a specific commodity and pays the bank the price in cash. The bank buys the same purchased commodity from the client on credit with an added profit margin to be agreed upon.

[107] This condition prevents the sold item from actually being owned and makes the sale void.

repays the debt. Accordingly, the creditor (buyer) will return the commodity. This sale is not *Sharia* permissible.[108]

Second, the *al-wafa* sale takes place based on an agreement between the parties that preceded the contract that when the debtor returns the debt, the creditor returns the commodity. This sale is also not permissible according to *Sharia*.[109]

Bond issuance and trading

Article 73: A bond is a loan document; the issuer undertakes to pay the total loan value to the document holder on a specified date at a specified interest rate. *Sharia* forbids bonds.

Article 74: *Sharia* does not permit the trading, purchase, sale, or pledging of interest-bearing bonds.[110]

Article 75: Bonds representing a commitment to pay their amount with interest attributed to the original purchase price or conditional interest are impermissible by *Sharia* for issuance, purchase, or circulation because they are considered a *riba* loan type regardless of whether the issuer is private or public and linked to the state. Moreover, naming these bonds investments, savings, or bond certificates or naming the *riba* interest profit, revenue, a commission, or a return does not change its impermissibility in *Sharia*.

Article 76: Zero-coupon bonds are also prohibited, as they are loans sold at less than their nominal value, and their owners benefit from the differences as a discount to these bonds.

---

[108] Scholars have unanimously agreed on the invalidity of this type of sale. Ibn Taimiyah said, "The scholars are in unanimous agreement that if this type of condition is associated with the contract; the sale is *Sharia* prohibited" (Ibn Taimiyah 36: 30).

[109] The intent of the contracting parties is influential in the contract even if it is not indicated in the contract. This is because a condition is included in the contract that spoils its reality as an actual sale. Moreover, the corrupt intent of the contracting parties invalidates the contract, whereas in this contract, the parties' intentions are clear; thus, its invalidity is clear.

[110] One of the alternatives to forbidden bonds – their issuance, purchase, or circulation – is bonds or *sukuk* based on speculation for a specific project or investment activity. Their owners receive no interest or lump sum benefit, but they do gain a percentage of the profit of the project equal to the proportion of the bonds they own, and they do not obtain this profit unless it is actually achieved.

Article 77: Bonds linked with prizes are also prohibited, as they are loans in which a benefit or an increase is stipulated for all or some lenders, not by appointment or as gambling**.**

Lease ending with ownership (*Ijarah Muntahia Bittamleek*)

Article 78: A lease ending with ownership is an agreement between two parties to lease a specific thing (item/service) for a specific period and a known rent that may exceed the usual rent, provided that it ends with the ownership of the leased (item/service) to the lessee.[111] This compound contract is not legally permissible in any form.

Article 79: A single lease contract allows the lessee to own the lease by paying rental installments. This contract type is not *Sharia* permissible.[112]

Article 80: A lease associated with a sales contract, subject to the payment of all agreed-upon rentals within the agreed period, is not *Sharia* permissible. [113]

[111] It is notable that in some definitions of a lease ending with ownership, the process is defined according to the proposed formula in order for it to be a *Sharia*-permissible process, while others define the transaction according to the process that is often implemented in the financial markets. Nevertheless, it is supposed to be defined according to the real purpose of the contract; for this reason, such a definition is used.

[112] For example, the two parties sign a contract that includes the lessee's ownership of the leased asset at the end of the lease term in accordance with the rental installments that have been paid. The ownership transfers directly after the last installment payment to the lessee, who becomes the owner of the leased property or commodity. The vast majority of contemporary Muslim jurists have stated that, in fact, it is a sale and not a lease [International Islamic Fiqh Academy, "Decision Number 110 (4/12) about the *Sharia* Ruling of (Lease to Own Financing)"]. Accordingly, such transactions are clear stratagems. It was agreed that such a contract is a lease contract and some of the legal provisions of the lease can be applied, such as the nontransfer of ownership; however, it is still an installment sale in which it is stipulated that ownership will not be transferred until after all installments are paid.

[113] For example, the contract is formulated in conjunction with the lease and sale together as follows. The lessor rents the commodity to the lessee for a specific and known period in return for a specific and known rent. The commodity will be sold to the lessee upon paying all of the rent conditions; accordingly, the sale will take place based on the offer issued by the lessor to the lessee at the beginning of the lease term.

Article 81: Pairing the lease with a donation/gift in a contract or a promise to give the leased asset as a gift with the condition of completing the lease payments, ending with a separate donation/gift contract, is not *Sharia* permissible.[114]

Article 82: The conjugation of a lease giving the lessee the right to own the leased asset upon the completion of payment installments in return for a nominal or actual price paid by the lessee at the end is not *Sharia* permissible. [115]

Article 83: There are two forms of transactions in which the buyer buys the commodity and leases it back to the seller, ending with an ownership contract:

- First, the seller stipulates in the contract that the buyer will lease back the commodity with a lease ending with an ownership contract. This process is not *Sharia* permissible.
- Second, an undisclosed understanding between the seller and the buyer before signing the contract is to lease back the sold asset to the seller on a lease ending with ownership without stipulating it in the contract. This complicity makes the transaction forbidden by *Sharia*.

Diminishing partnership ending with ownership

Article 83: A diminishing partnership ending with ownership is a partnership contract between two parties for a specific commodity/service whereby the two parties initially agree in the same contract that one of them will gradually sell back his or her share to the

---

[114] This transaction is permitted by some contemporary jurists, who adhere to the statement that it is permissible to stipulate conditions in donation contracts, unlike in compensation-based contracts. However, the correct view is that this transaction is not permissible, as the Council of Senior Scholars has stated (The Council of Senior Scholars).

The justification for the ruling prohibiting this transaction is that justifying the contract with a donation or a gift is not correct because making a gift at the end of a transaction is merely meant to circumvent the reasoning for the impermissibility of a contract.

[115] One example is a contract to lease the commodity for a specified period and at a (nominal) specified fee. If the lessee fulfills the rental installments within the specified period, the owner sells the commodity if the lessee wishes to purchase the commodity at a (nominal) price, specified in the initial contract. The tenant accepts.

other. This is often accompanied during the partnership contract by an agreement to lease the commodity/service to one of them or to a third party, where the lease income is divided between the two partners according to their shareholding.

Article 84: A diminishing partnership agreement comes in the form of a contract clause dictating that one partner will sell back his or her total capital share and the agreed-upon profits to the other. These conditions make the contract not *Sharia* permissible.[116]

Article 85: The stipulation of selling the share in the diminishing partnership contract, whether the share price is predetermined or calculated according to the market value at the time of sale, makes the transaction *Sharia* impermissible and makes it a type of prohibited (*Enah*) sale.

Article 86: If the diminishing partnership contract includes a binding promise by one of the contract parties to buy back the other's share, the contract is not *Sharia* permissible.[117]

Article 87: The bank may not be a party in a diminishing partnership ending with an ownership contract.[118]

Financial derivatives (*al-mushtaqqat al-maliyyah*)

Article 88: Derivatives are subcontracts based on original contracts or other investment tools, such as commodities, bonds, stocks, or currencies, also called derivative securities, and agreements between the parties that access derivatives. The *Sharia* ruling on

---

[116] For example, a financial institution and a client agree to participate in property ownership provided that the client buys back the financial institution shares after a specified period at a set price and profit. This contract is not permissible according to *Sharia* because it leads to a capital and profit guarantee. It is a stratagem to obtain *riba* (Al-A'yidi 126).

[117] A binding promise in this type of contract is like a condition. This condition reveals that this contract is a ploy on an interest-based debt, and the diminishing partnership here is just a fictitious contract.

[118] Because the bank is considered a financial intermediary and not a merchant, if the bank enters as a party to the transaction, it becomes a financial intermediary and a merchant at the same time; this stratagem spoils the contract.

derivatives is based on the types of contracts used within the derivatives mentioned in the following articles.[119]

Article 89: Derivatives are forward contracts conducted through futures exchange trading halls[120] to buy and sell a commodity or a financial instrument in a future period, where the seller does not intend to deliver the item, sold nor does the buyer deliver the price. Instead, the parties intend to bet on the rise and fall of prices.[121] The futures contract is stereotyped and arranged according to quantity, quality, and delivery details. The price is the only variable in the contract and is ascertained on the trading floor. It is not *Sharia* permissible to deal with futures contracts by formatting or trading.[122]

Article 90: An options contract is a contract that bestows upon its holder the right to buy or sell an identified item (securities, commodities, currencies, or debts) at a determined price within an agreed-upon timeframe or terminate the contract for a predetermined consideration or penalty. There are no obligations in this contract except upon the seller's rights. This option is not *Sharia* permissible in terms of either formation or trading[123].

---

[119] It is important to emphasize that contracts that actually aim to transfer ownership and deliver the underlying asset at term do not fall within this definition of derivatives. It should also be noted that spot exchange in financial markets, such as stocks, does not, in principle, fall under the definition of a zero swap because the relationship of the two parties ends once the contract is completed, unlike with derivatives, where the relationship between the two parties continues throughout the contract term.

[120] The motive for the existence of the futures exchange market is price fluctuations and the inability to accurately predict future prices. If the traders knew the contracted commodity price for the next six months, for example, there would be no benefit of or need for futures markets. Therefore, most futures dealings are in commodities with seasonal fluctuations, such as agricultural commodities that are affected by many factors, unlike manufactured commodities, where the prices are stable. However, the futures market is not limited to commodities. It includes everything that can be traded, such as stocks, bonds, and currencies.

[121] To take advantage of the price differences without any exchange of the sale or the price.

[122] For example, on March 1, two people contracted to buy one thousand shares at a price of $5 to be delivered on April 1 and paid the initial margin of $500. If the share drops to $4, the seller will profit ($1,000), and the buyer either owns the shares on the date of liquidation and loses $1,000 or sells and loses $1000, which is most likely to happen. However, if it rises to $6, the buyer will gain $1000. This fictitious sale contract is just a guarantee of the risks of the other party, while the real commodities are not intended to be transferred.

[123] For example, if the share value equals $50, the option value is $3, and the share value then increases to $55, the purchaser will gain two dollars; if it does not increase, then the purchaser will not have the option to buy. This is known as a "call option." If this scenario is reversed, it is known as a "put option." If the party has an option to both buy and sell, it is known as a "double option."

Article 91: A swap contract is a contractual agreement between two or more parties to temporarily exchange obligations[124] or rights. The parties agree to either exchange payments resulting from obligations they made to another party without preference to either original obligation toward a third party not included in the contract or by exchanging the receipts that each accrues on the owned assets. *Sharia* does not permit this contract because the swap is fictitious, interest is applied, and no actual exchange is involved.

Article 92: Commodity swaps occur in the commodity market when a contracting party purchases a determined commodity quantity at the market price from the other party and pays on a spot basis. The commodity is simultaneously sold back to the seller as a forward sale at a preagreed price, and the payment is made at intervals according to the agreement.[125] This contract is not *Sharia*[126] permissible

Article 93: A stock dividend swap is an agreement between two parties to exchange a specific share's return rate at a fixed future date or a group of shares or another financial asset at a return share rate.[127] This contract is not *Sharia* permissible.[128]

[124] Obligations mean debts owed by each of the parties to the contract, such as debts arising from the issuance of bonds.
[125] The use of commodity swaps has become common, especially in the energy field; its most important source is petroleum oil.
[126] Because the commodity is merely fictitious and not intended for sale, it is considered a reverse *enah* meant to circumvent *riba*.
[127] For example, two parties agree that one of them will pay the other after three months a return rate on the shares traded in the Dubai Stock Exchange, which is shown by the market index, for an agreed-upon amount in return for the other party paying the return rate on the shares traded in the Saudi Stock Market.
[128] Because it includes *riba*, selling a deferred debt for a deferred debt and gambling are not permissible.

Article 94: A currency swap is a contract between two parties to buy specified amounts of foreign currency on a spot-price basis and sell back the exact specified amounts on the forwarding prices.[129] This contract is not *Sharia* permissible.[130]

Article 95: An interest rate swap is a forward contract whereby two or more parties agree to exchange (variable or fixed) return rates for (variable or fixed) return rates on a fixed amount in a determined currency without necessarily being associated with the exchange of that amount.[131] This contract is not *Sharia* permissible.[132]

Currency trading

Article 96: A currency sale on a deferment basis or a binding future promise to exchange currencies is not *Sharia* permissible.[133]

---

[129] One example is an agreement that consists of dual contracts. The first contract is for selling a currency (i.e., euro) for another currency (i.e., dollars) on a spot-sale basis. The second contract is for repurchasing the currency bought in the first contract (i.e., the euro) with the same currency used to make the first sale (i.e., the dollar) provided that the delivery and receipt take place at an agreed upon later date. In most cases, the future contract price rate is different from the price rate of the first contract.

"The second type is similar to an intercountered loan from both parties in which one of the parties lends to the other (i.e., riyals) for a determined period of time, in exchange for the other lending to the other party (i.e., pounds) for the same period, and that is why each of the parties pays the other interest on the amount borrowed in the loan currency" (Al-Sulaiman 1106: 2).

[130] Because the transaction includes many *Sharia* errors, such as no actual countervalues exchange, aleatory (gharar) elements are involved. It consists of an interest-based loan and is *enah*.

[131] One example is as follows:

> "Company ABC has a $1 million loan with a fixed interest rate, but because the company has predicted a drop in interest rates, it wants to switch to a floating rate. Company XYZ has a $1 million loan with a floating rate, but it would prefer the predictability of a fixed rate.
>
> These companies can swap their interest rates without affecting their loans – and without involving their loan principals. They do this by entering into a contract to exchange their interest rates.
>
> Both companies continue making their usual interest payments to their lenders. Company ABC (which swapped its fixed rate for a floating rate) owes Company XYZ the agreed-upon floating rate. Company XYZ (which exchanged its floating rate for a fixed rate) owes Company ABC the agreed-upon fixed rate. In practice, parties only pay the difference between the fixed and variable interest amounts" (Uhlig).

[132] Because it combines *riba* and gambling.

[133] Modern Muslim scholars have agreed upon the prohibition of such types of currency trading because they lead to *riba*. The Islamic Fiqh Academy issued a fatwa on this (International Islamic Fiqh Academy, "Decision 102 (5/11) [1] on Currency Trading").

Article 97: *Sharia* permits exchanging what is due in cash under the condition that the currency exchange happens immediately and at the present-day rate and the exchange handover is performed immediately.[134]

Article 98: It is permissible to exchange the two parties' debt currency subject to the presence of the contracting parties or whoever represents them physically in the location where the exchange is taking place.

Article 99: In currency margin trading, the buyer (customer) pays a small part of what he or she intends to buy, called the margin. The intermediary pays the client the remaining loan, provided that the purchase remains pledged in the loan amount. This kind of Forex trading is not *Sharia* permissible.[135]

Article 100: Currency trading on regulated exchange markets (the stock exchange) with the condition that exchanges are delayed for either currency being exchanged, although the contract ends with actual delivery, is not *Sharia* permissible.[136]

Article 101: Trading currencies in the organized exchange markets (the stock exchange) with the condition that one or both exchanges are delayed, that the contract should not end with actual receipt and delivery, and that a counter contract can instead liquidate the contract is not *Sharia* permissible.[137]

---

[134] For example, Bank (A) owes dollars to Bank (B), and Bank (A) decides to pay back its debt to Bank (B) in euros at the day price with the received the currency exchanged immediately after the contract is signed.

[135] For example, first, the client must open a margin account with the broker (bank). Second, the customer deposits a portion ($1000) of the currency exchange contract. Third, based on the leverage unit, the amount is doubled (i.e., $1,500). The broker then lends $500,000, which is five hundred times the seed money. Fourth, the broker starts making trades for the client with a value of $500,000.

This transaction is prohibited by the consensus of Muslim scholars because it includes explicit *riba*.

[136] The postponement of the two exchanges and the nonhandling of currency exchange are among the main reasons contracts become fictitious rather than real.

[137] This transaction involves prohibited betting on price differences, as most futures contracts end with counter contracts when actual delivery is not stipulated with the guarantee of the market authorities, where the outcome is the settlement of price differences.

Article 102: A bilateral promise to exchange currency trading contracts by one or both parties is forbidden by *Sharia*.[138]

Article 103: Parallel purchasing and currency sales are not *Sharia* permissible.[139]

Article 104: It is not permissible for one of the parties to guarantee the other party to protect the other partner from currency-trading risks. However, it is permissible for a third party to voluntarily provide a guarantee for the deal under no stated written condition for the guarantee in the contract.

3.5 Chapter outcomes

- This chapter focuses on financial and commercial transactions prohibited by Islamic *Sharia*. These transactions are widely applied in daily business transactions. As stipulated by *Sharia*, forbidden sales practically apply the occasioning factors and causes mentioned in chapter two that affect sales and financial transactions.
- Muslim scholars have clarified why a specific sale or financial transaction is forbidden by *Sharia* and have explained the details of prohibited sales in their jurisprudence books. Their explanations were written with classic *Sharia* sentence structures, which produce

---

[138] One example of a two-sided binding promise to trade currency is as follows: the two parties agree to exchange two currencies at a specific or absolute later time, and this bilateral agreement is binding on both parties. This transaction is forbidden by *Sharia*: "The reality of this contract is stratagems around the receipt and spot delivery currency exchange contract between two parties, by hedging of currency fluctuations, which is forbidden by *Sharia* as is well known" (Al-Dosari 223).
An example of a one-sided binding promise to trade currency is as follows: one party signs a binding promise to exchange currency at a specific or absolute later time. The famous Islamic jurist Dr. Rafiq Al-Masry said, "If the promise is binding, then the transaction is not permissible, because the binding promise is equivalent in *Sharia* to the contract ruling as it entails a *Sharia* prohibition, which is the deferred exchange. The fact is that the promise that is obligated to exchange is considered to be deferred exchange, and *Sharia* forbids it" (Al-Masri, Buhuth Fi Al-Iaqtisad Al-Islami 180).

[139] The AAOIFI *Sharia* Standards Board issued a ruling on this type of transaction if it incorporates one of the following invalidating factors:

a) "There is no delivery and receipt of the two currencies bought and sold, and thus the contract amounts to a deferred sale of currency.
b) Making a contract of currency exchange conditional on another contract of currency exchange.
c) A bilateral promise that is binding on both parties to the contract of currency exchange, and this is not permissible" (Accounting and Auditing Organization for Islamic Financial Institutions, *Sharia* Standard (1) 56).

difficulties for legal industries in understanding their provisions and applying them in commercial contracts.

- This chapter is the first researched attempt to codify impermissible contemporary transactions. The results will help contracting parties using Islamic financing instruments understand what they must avoid for their transactions to be *Sharia* compliant.
- The main maxims related to Islamic financial transactions and forbidden sales are presented in this chapter. These maxims are written as codified articles to facilitate readers' understanding and help them determine the extent of the application of such maxims to a given transaction.
- The codified articles for the three maxims are ten coded articles (see table index 1).
- Different types of forbidden sales are introduced, focusing on modern financial transactions.
- Eight forbidden sales are introduced in this chapter as follows:
  a) The first type of forbidden sale is *al-enah* sales. The Prophet Mohammad (peace be upon him) forbids this type of sale, as it is a *riba* ploy. It is a fictitious sale meant to circumvent the prohibitions on an interest-based loan. Some financial institutions offer *al-enah* sales with different structures and templates.
  b) The second type of forbidden sale is monetization sales (*al-tawarruq*). Such transactions are one of the most frequently used transactions in Islamic banks. In the beginning, *Sharia* scholars frequently disputed the *Sharia* compliance of *al-tawarruq* contracts. Recently, fiqh councils have issued a unanimous fatwa prohibiting such transactions and stating that they are a type of *al-enah* sale with the addition of a third party. An *al-tawarruq* transaction is a stratagem to obtain interest-based debts.
  c) The third type of forbidden sale is sales with a condition to possibly repurchase, also called a redemption sale (*al-wafa* sale). Islamic banks use such sales as a new type of financing instrument. This type of fictitious sale involves a preagreement between the seller and the buyer, where the seller is the client, and the buyer is the financier (bank). They both agree that once the seller refunds the price to the

buyer, the buyer will return the purchased commodity. This contract is a clear stratagem to obtain an interest-based loan, which is *riba* and, therefore, impermissible.

d) The fourth type of forbidden sales contract is bond issuance and trading. Bonds are investment certificates based on lending with interest. Financing institutes (banks) issue bonds on an interest basis and then lend them to customers with higher interest. Most modern *Sharia* scholars and jurisprudence councils unanimously agree that issuing, selling, buying, and trading bonds is forbidden because interest-bearing loans lead to outright *riba*.

e) The fifth type of forbidden sales contract is leases ending with ownership (*ijarah muntahia bittamleek*). This type of contract does not appear in classical Islamic jurisprudence books but has been copied from Western market practices. The primary purpose of such a contract is to finance the lessee through a fictitious leasing contract where the leased commodity is used by the financier (the lessor) as a guarantee. Therefore, many traders believe that a lease ending with an ownership contract would create a perfect solution to solve all guarantee issues. However, most contemporary Muslim jurists have stated that a lease ending with ownership is a clear stratagem to circumvent interest-based financing (*riba* financing).

f) The sixth type of forbidden sales contract is one outlining a diminishing partnership ending with ownership. This type of contract is structured similarly to the lease ending with ownership. However, the contract structure is based on partnership; the bank enters into a partnership with the financing applicant by giving the right to full ownership upon an agreed-upon single payment or the completion of installments. Thus, if this contract is a preagreement between the financier (bank) and the client, then a stratagem makes the contract impermissible, according to *Sharia*.

g) The seventh type of forbidden sales contract is financial derivatives. These derivatives include futures, options, swaps, and forward contracts. Derivatives are mainly used for two purposes: speculation and hedging against the risks of changing exchange rates, interest rates, commodity prices, and stock prices. The core financial model of derivatives is based on gambling and speculation; therefore, all Islamic jurists unanimously agree that derivatives are not *Sharia*-compliant.

h) The eighth type of forbidden contract is currency trading. Currency exchange sales are closely related to financial contracts with *riba*. Compared with commodity trading, money exchange is more likely to fall into the *Sharia*-forbidden zone of *riba* due to the lack of implementation of *Sharia* currency exchange guidelines. However, currency exchange markets, such as Forex, do not follow the *Sharia* rules and regulations regarding currency exchange procedures. Such markets are based on future speculations and non-spot currency trading. Therefore, all *Sharia* fatwa boards are forbidden from engaging in the current market practice of currency exchange.

- Chapter three contains 53 codified articles (see table 2).

	Maxims	**Articles numbers**
A	Selling without actual possession is illegal in Islamic *Sharia*.	3
B	The sale of debt for a debt (*bai' al dain bid dayn*) is illegal, according to *Sharia*.	5
C	It is unlawful to combine two sales transactions into one sales contract.	2
	Total	10

Table 1

	Forbidden Sales	**Codified Articles**
A	Sale with an immediate repurchase (*al-enah* sale)	4
B	Monetization sale transaction (*al-tawarruq*)	3
C	A sale with a condition to possibly repurchase, also called a redemption sale (*al-wafa*)	2

D	Bond issuance and trading	5
E	Lease ending with ownership (*ijarah muntahia bittamleek*)	6
F	Diminishing partnership ending with ownership	5
G	Financial derivatives	8
H	Future and speculated currency trading	9
	Total	42

Table 2

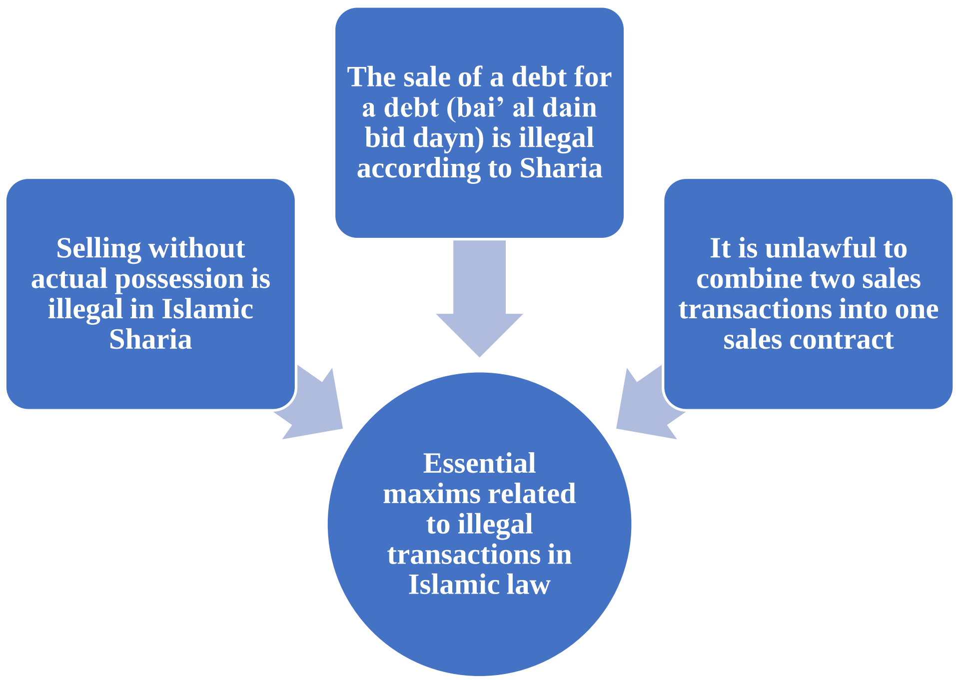
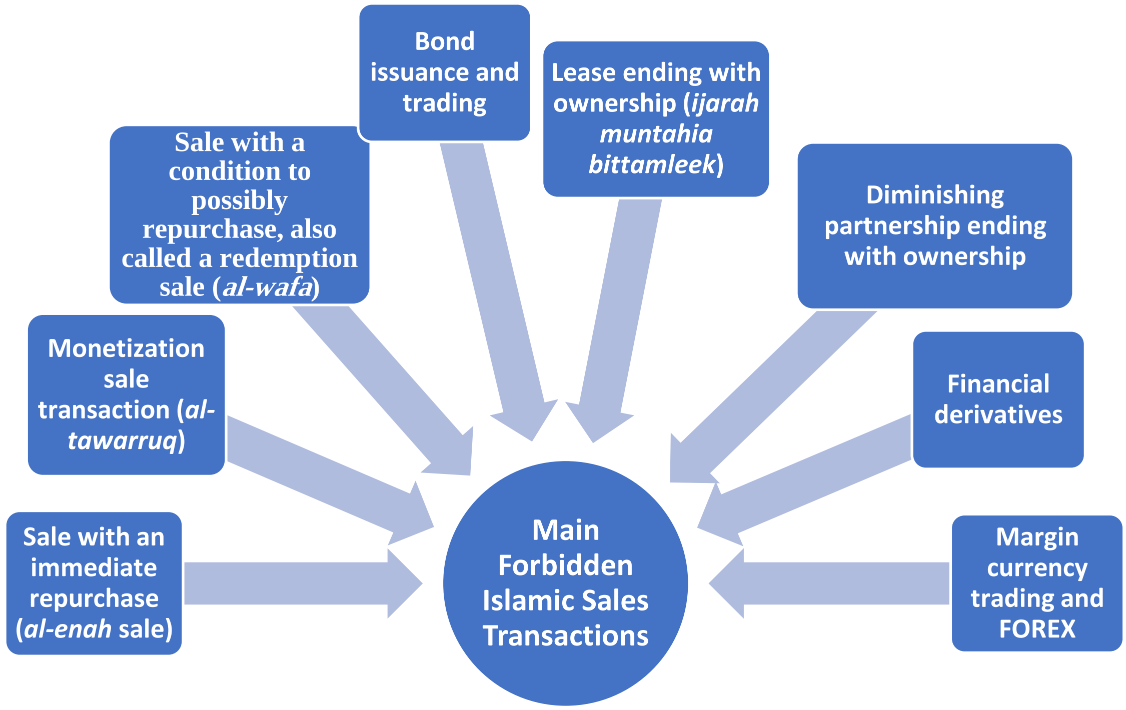


Diagram 1



Index diagram 2

Chapter 4

Codifying Legitimate Islamic Sales Transactions

4.1 Framework

The sales contract is one of the oldest contracts in human history. Because it is the most common and widely used contract, scholars say that it is the first and, therefore, the father of all contracts. In fact, it is the contract from which many others branch out because it is a necessary contract for humans; therefore, divine law reveals the correct form of this transaction so that contracts can meet people's needs, respect everyone's rights, and clarify the duty of each of the parties (Hashim 41).

It is essential to be familiar with common practices regarding contracts indicated in Islamic jurisprudence books to develop a formal definition of sales contracts, introduce the pillars of a sale, and discuss the sale's terms and conditions. Only after defining these components of sales do Islamic jurists mention known and valid contracts (i.e., leases, agency contracts, mortgages, company contracts).

Furthermore, the *Majallat Al-Ahkam-Al-Adliya* matches the structure of *Sharia* scholars' jurisprudence books in terms of how contracts are arranged and classified, with some minor changes from the latter.

Sharia jurists have followed a particular method of arranging and categorizing contract types based on relevant links among contracts. Sometimes, these books start by discussing a sales contract because it is the most important and general of all contracts. A discussion of the leasing contract follows because leases are the most similar type of contract; in fact, they are a service sale.

A guaranteed contract is always discussed next due to the need for the sale and the lease to document the price or the rent as debts. Thus, similar examples between single and homogenous contract types are sought.

However, several reputed *Sharia* scholars have organized chapters on sales contracts differently, sometimes structuring the sales and purchase contracts chapter according to topics related to the type of sale. Professor Al-Zarqa said:

> "The method followed by the *Al-Majallah* is not the best scientific method for the sales type; instead, the ideal method is that to which the modern legal view has been directed in drafting civil laws. It is based on objective contract classification, not related links" (Al-Zarqa, Aqd Al-Ba'ia 10).

Furthermore, the structure of this thesis is derived from an innovative idea to help evaluate modern financial transactions and commercial sales to test contracts' *Sharia* compliance by understanding the factors that cause financial transactions to be *Sharia* prohibited.

It is essential to know that the sales contract has evolved with the development of human needs, as without sales transactions, individuals would not be able to meet their needs except through force or conquest. Thus, the concept of the sale has gone through four stages of development.

a) First - Bartering: In this first stage, humans lived a simple, basic life, satisfying their needs from what they found in the bosom of nature, hunting, and storing what they feared would run out. As civilization developed, humans' needs increased, and they started to need things that were not readily available or easy for individuals to obtain. Therefore, a form of sales appeared that is today called bartering. Under this system, one carries the bare minimum of what one needs and seeks to make exchanges with others to meet both parties' needs. The parties exchange things as a result of each needing what the other has. Barter is the oldest form of selling between humans (Stern).

b) Second - Absolute Sales: Undoubtedly, bartering involves some challenges because it depends on two difficult conditions:

- Each party has something to offer other parties through barter.
- Both parties find another person who has what they need, as it is not always easy to find two parties whose needs and resources match.

For this reason, humans invented a second method for obtaining what they needed: they invented cash, which has a certain value that is valid for exchanging goods or services to meet their other needs. Therefore, the buyer can exchange his or her cash for everything he or she needs, and the seller likewise benefits. Cash sales widened the methods of acquisition and became the most common means of transacting sales (Jones and Shaw).

a) **Third - Coin exchange**: When money became widespread, it was necessary to make large and small coins with varying values so that a person could limit his or her acquisition and compensation to the extent of his or her need. This necessitated that people resort to new means to access the required coins, whether large or small, when needed (Bellis).

Moreover, cash exchange was later established as a sale method (currency exchange). Currency exchange is a method of bartering based on a complex idea that arose later than barter and is different from usual sales because the cash exchange process is not the desired end but rather a means to another exchange.

b) **Fourth - Salam sales:** When people's needs increased, their civil and business activities expanded, and their dependence on agriculture, industry, and commerce increased, so humans needed another type of compensation.

Often, a person needs capital that he or she alone cannot produce: the farmer needs money to buy seeds and plow the land to produce a crop, the manufacturer needs money to bring his or her products to market, and the merchant needs money to travel and distribute the desired goods.

Accordingly, a new transaction originated in Islamic jurisprudence: *salam*, or the sale of something on a deferred basis by paying the value in advance. This type of sale will be discussed in detail in the next chapter. However, the important thing here is that it indicates that humans created a new type of sale in which one sells something one does not have and collects the cost in advance in order to use the money to manufacture the desired thing.

This summary of the history of sales reveals that civil factors and general needs have generated various types of sales, of which bartering is the oldest form of exchange.

4.2 Sale types arising from fixing the sale price

The absolute sale arose from several different transaction types defined by the actual sale price. Sellers frequently build their sales contracts based on the goods' original cost and related value according to the current market price, supply, and demand. The need to make a certain amount of profit or, barring that, breaking even is preferable to a loss, and this mandate is the main economic driver of price fluctuation movements.

Sometimes, the seller does not wish to make the original cost known, preferring to conceal it and sell the commodity based on agreed-upon terms. The modern term for such a transaction is a “bargaining sale.”

Looking at the development of commercial transactions, it appears that sales based on knowledge of the seller’s costs preceded bargaining sales. Nevertheless, bargaining has become the main form of sales, as the commodity’s cost and the merchant’s profit are considered business secrets.

Capital disclosure has become a unique method employed in sales during economic recessions to entice buyers who consistently seek to know the seller’s costs to be assured of the appropriateness of the price that they themselves are asked to pay.

All Islamic jurisprudence schools have given significant attention to defining which sales processes are compatible with the provisions and rules of Islamic law and to clarifying the pillars of sales and the legal *Sharia* conditions that may be present in the sales contract.

Therefore, this chapter will do the following:

- Define property (*al-mal*) in *Sharia*;
- Define *Sharia*-legitimate sales contracts and compare the differences in sales contracts between statuary laws and *Sharia* provisions;
- Define the components of a legitimate sales contract;
- Define the conditions that may apply to the sales contract; and
- Define the options (*al-khiyar*) in sales contracts.

a) Defining Property (*Al-Mal*) in Sharia

Selling is a necessity for exchanging goods and services among people and facilitating the satisfaction of their needs. *Sharia* jurists from well-known jurisprudence schools have similar definitions of sales contracts based on the broader meaning of sales transactions.

Moreover, legal scholars define sales based on the desired result of the sales contract, which is the transfer of ownership of the thing being sold. In this chapter, the *Sharia* definition of a sales contract will be discussed, and the definitions of sales in the civil laws of some Arab countries will be compared.

However, before defining *Sharia* sales contracts, it is imperative to understand and define what can be sold, that is, what is considered *al-mal* in *Sharia* jurisprudence, because legitimate sales contracts include only *Sharia*-permissible properties and the exchange of one owned property *(al-mal*) for another owned property *(al-mal*).

According to Ibn Al-Atheer (d. 1210), "the term property *(Al-Mal*) originally referred to gold and silver, but this term was later changed to refer to everything acquired and owned" (Ibn Al-Atheer 372: 4).

Another reputed *Sharia* scholar from the Hanbali jurisprudence school of thought, named Ibn-Qudamah (d. 1223), defined property *(Al-Mal*) as "anything that has a beneficial nature that is permissible by *Sharia* provided that such permission does not come under the circumstances of Necessity" (Ibn Qudamah 23: 11).

Therefore, what appears preponderant is that *al-mal* is everything that has value among people, including services, because society deems it to have value. In light of that, *al-mal* can be comprehensively and strictly defined as every property or service with material value or a *Sharia*-permissible benefit.

This definition of property *(al-Mal*) in *Sharia* includes all that has a benefit in our time, such as moral rights, solar energy, air, atomic energy, poisons used in medicines, and everything else that has a benefit in modern society, as these things are considered properties (*Amwal*) that have value and are not forbidden.

b) Defining a *Sharia*-legitimate sales contract: the definition of a sales contract in statuary laws and *Sharia* provisions

According to Ibn Qudamah Al-Hanbali (d. 1223), a *Sharia*-legitimate sales contract is defined as "the exchange of property *(Al-Mal*) for another property *(Al-Mal*) in full possession and ownership" of the parties (Ibn Qudamah 5, 106: 6).

Mohammad Qadri Basha (d. 1889)[140] defined sales contracts as "the seller's transfer of ownership of a property (*Mal*) to the buyer for another property (*Mal*) that is the price of the sale" (Basha 103).

Egyptian civil law Article 418 states that a "sale is a contract whereby the vendor binds himself to transfer to the purchaser the ownership of a thing or any other proprietary right in consideration of a price in currency" (Egyptian Civil Law).[141]

In a draft presented to the Egyptian People's Assembly to codify Islamic law, a group of scholars criticized this legal definition of the contract of sale:

> "One of the drawbacks to the legalization mentioned above is that it defines the sale with its effect, which is the seller's obligation to transfer ownership. Although the definition must address constituent elements of the contract, which are focused in the direction of the two parties' desire to achieve a certain legal process, which is the subject of the contract, the legal process intended by the sale is the transfer of ownership of something or the transfer of another money right from the seller to the buyer. Where the sales contract entails obligations on each of the parties, and these obligations collectively aim to achieve the intended legal process of the contract" (Group of *Sharia*, Politicians, and legal Scholars 119).

---

[140] A reputed Egyptian judge from the Hanafi Islamic jurisprudence school of thought living at the end of last century wrote a very important book trying to codify Islamic sale jurisprudence based on the Hanafi jurisprudence school.

[141] It is clear that this definition of legal sales was influenced by Roman law, which considered the sale itself not to convey property but to create an obligation to do so. Whereas in Islamic law, the transfer of ownership automatically results from the sales contract, it is a requirement or an obligation of the contract.

It is also noted that the legal sale definition stipulates that the sale's payment price be in cash, whereas this condition is not present in the sale definition according to *Sharia* jurists. Instead, they stipulate that the property (*al-mal*) of the exchangers is what the word property means in the various jurisprudence schools of thought.

As another example of a legal definition of a sales contract, the United Arab Emirates defines a sale as “the exchange of nonmonetary property for a monetary property” (Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates).[142]

c) Defining the components of a legitimate sales contract

A contract goes through two main stages: the first stage is the conclusion of the contract, which includes its conception, development, and revision. The next stage is the execution of the sales contract. For the primary contracting stage to be completed, the essential circumstances and conditions of the contract must be fulfilled, and the conditions for the validity and effectiveness of the sale must be met so that the sales contract has legitimate results.

Muslim jurist scholars have stated that a *Sharia* sales contract has three pillars.

The first pillar is the contracted objects/subjects, that is, the commodity/service for sale and its price. Among the essential conditions that must be met in relation to the contracted object or subject are the following:

- The sales contract must be of a common contract type[143].
- The subject of the contract must be known and clear[144].

Some civil laws mention this element, for example, Jordanian Civil Code Article (158) and Article (161), which indicates agreement between Islamic *Sharia* and civil laws regarding this element of the sale (Jordanian Ministry of Justice).

The second pillar is the contracting parties. The two contracting parties, the buyer and the seller, are required to meet two primary conditions:

[142] It is noted in the definition that a sale includes a temporary exchange, whereas the said condition related to the lease contract, if it were restricted to be based on ownership, would have been closer to the general meaning of inclusion.

[143] For example, the sales contract cannot be concluded on endowment purchases because by nature, endowments are not subject to ownership, and according to *Sharia* law, endowments may not be sold in the first place.

[144] The contract’s subject matter is required to be clearly identified in order to avoid disputes that may arise due to a failure to state the sale property specifications.

- Eligibility: The contract must be undertaken by parties with sufficient capacity, and the contracting parties must be sane and mature. Thus, the contract is not valid for a minor ("premature") person or someone with a mental disability who cannot fully comprehend the act[145].
- Satisfaction: The person who undertakes the sales contract must act from his or her own will and not under unjustified coercion[146].

The third pillar is the contract form. Every word, action, or sign issued by one contracting party must indicate his or her consent and be matched by what is issued by the other contracting party to indicate approval. Three required conditions of the contract form are as follows:

- Clarity in meaning: The offer and acceptance from both contract parties must be clear, understandable, and not subject to interpretation so as to prevent future issues, and the contract must also accurately express the will of both contracting parties.
- Agreement of all parties to the entire contract: The parties must accept the offer in all respects; otherwise, there are insufficient grounds to conclude the contract[147].
- Explicit and assertive assent: The consent given by both parties must not convey any hesitation or delay. The contract between the two parties can be verbal, which is the most straightforward form; it may also be written, or it may occur through bartering, which indicates the consent of the two parties.

[145] The United Arab Emirates civil code's "Article 168" describes minor persons and people with mental disabilities as follows: "(1) Minors, insane persons and imbeciles shall be ipso facto under a restriction. (2) With regard to idiots and persons under a mental disability, the judge shall impose restrictions upon them and lift such restrictions in accordance with the rules and procedures laid down by law" (Ministry of Justice - United Arab Emirates, "CIVIL TRANSACTIONS LAW (Civil Code) Article 168").

[146] This condition is very important to validate the sale contract, as almighty Allah said in the Holy Quran: "O you who have believed, do not consume one another's wealth unjustly [unlawfully or under false pretenses] but only [in lawful] business by mutual consent. In addition, do not kill yourselves [or one another]" (The Quran 74).

[147] As an example, if the seller says to the buyer, "I'm selling you this house for $100,000", and the buyer says, "I bought it for $80,000", the contract cannot be made due to the inconsistency between the two contracting parties.

d) The terms and conditions of a *Sharia* valid sales contract

Sharia scholars have derived conditions for the validity of sales contracts from the Qur'an and *Sunnah*. Jurists have mentioned seven conditions for any sales contract to be considered *Sharia* valid. Therefore, dropping any of these conditions is not permissible if one still seeks to create a valid contract.

The seven conditions are as follows.

- The first condition is that the contracting parties must give their mutual consent.

The Prophet Mohammad, peace be upon him, said in clear *hadith* that a sales contract cannot be valid if either of the two parties does not consent: "Transactions may only be done by mutual consent" (Ibn Majah Al-Qazwini 249: 3).

The parties must voluntarily and mutually consent to the sales contract and must not be coerced into it unjustly or undeservedly[148]; however, if the coercion is just and deserved, this condition does not apply[149].

In current practice, there are several examples of sales that are not conducted with the consent of the contracting parties, such as:

- Forced sales (*bai al-taljia'h*) are those in which the parties "pretend to sell to a third person to escape an oppressor [or] assault on the thing [being] sold" (Al-Zuhaili 40). This type of sales contract is invalid because one of the two contracting parties does not intend to follow through with the actual sale and therefore does not consent to the sale.
- Mocking and ridiculing sales (*bai al-ha'zil*)[150] are those in which the "sale [is] done by the one who speaks the words of the sale, not according to the will of his truth"

[148] For example, to force a person to sell his or her house under threat of death.
[149] For example, as if there is a court ruling that must be implemented.
[150] For example, someone jokingly says, "Who will buy my car for $1,000", but its value is $100,000, and another person says, "I accept this sale".

(Group of *Sharia* Scholars 63: 9). This type of sales contract is invalid because one of the two contracting parties does not have a genuine intention to sell.

- The second condition is that the contracting parties must have permission to dispose of the assets involved in the sale.

  For disposal to be permissible, it must be done by a person who is not interdicted, such as a child, who generally does not spend money well and does not appreciate its value; a person who is not aware of what he or she does or says, such as a person with a mental disability; or a bankrupt debtor interdicted by the court from disposing of his or her property.
- The third condition is that it must be permissible to benefit from the contracted subject.

  A *Sharia*-permissible subject is one whose absolute usufruct is permissible without restriction under any circumstances, whose usufruct is restricted in some ways but not others, or whose usufruct is restricted for a specific period of time[151].

  It is not permissible to buy commodities that are useless because they would be a waste of money, and Islamic law forbids wasting money. Commodities that are proven helpful for a specific need are permissible to buy in certain quantities[152].
- The fourth condition is that the contracting parties must have the full right to dispose of the contracted subject.

  The evidence for this condition, as mentioned above, is what was proven to be stated by Messenger Muhammad, peace be upon him: “Do not sell that which you do not possess” (Al-Sajestani, The Book of Employment - Regarding a Man Selling What He Does Not Possess (3503) 140: 4).

  As mentioned above, the inference from the *hadith* is that a person is forbidden to sell what he or she does not possess. Therefore, the existence of the contracting party’s property is necessary for the contract’s validity.

  Moreover, an authorized party acting as an agent in the sale and purchase must have the same behavioral affect as the property’s owner. Furthermore, if the agent sells or buys

[151] Examples of permissible things that can be purchased are quite numerous and cannot be counted. The important thing is whether the thing is not forbidden to use according to Islamic *Sharia* teachings.

[152] For example, it is permissible to buy and sell the poison of snakes and scorpions if it is proven that it is beneficial in the manufacture of medicines. Other than that, it is not permissible to use such substances.

without the principal's permission, the validity of the agent's sale depends on the principal's permission. If the principal accepts the contract, the sale is valid; otherwise, the sale is considered null.

- The fifth condition is the ability to deliver the contracted property[153].

As mentioned in the second chapter of the research, one of the factors affecting the validity of the contract is a high amount of aleatory (*gharar*) content in the contract, which influences the transaction, while minor or ineffective aleatory (*gharar*) content does not affect its validity. Therefore, the prohibition requires that the contracting parties' damages be paid to resolve the dispute (Al-Shithri 560: 2).

Moreover, the prohibition on selling things that the seller cannot deliver is *a fortiori* to prevent harm to the contracting parties and prevent parties from possible disputes.

Furthermore, if the seller cannot deliver the sold property to the buyer, this is comparable to selling a nonexistent thing; since a nonexistent thing cannot be sold, it also cannot be delivered. Likewise, it is not *Sharia* permissible to sell properties that the seller does not possess until he or she acquires full ownership. Otherwise, the buyer risks harm because he or she may not be able to collect the sold subject, and a dispute will arise.

On the other hand, another sale type exists wherein the seller can sell a commodity even if it is not present when the contract is concluded but will most likely be present at the time of delivery, if nothing prevents it from being delivered. The next chapter will present a sales contract type known as *salam* sales. In such sales, one party advances the price at the time the contract is concluded and the thing being sold is delivered at a future agreed-upon date.

- The sixth condition concerns information and facts about the contracted subject.

One of the conditions for the sale to be permissible to *Sharia* is for the sold subject to be known to the seller and the buyer at the time the contract is concluded or shortly beforehand, provided that the thing being sold does not change significantly before the

[153] Some scholars have made knowledge of the sale property and its price a condition, and others have made it two separate conditions for confirming the sale's validly (Khuqair Al-Hanbali 95).
However, the result is the same, and it is necessary to have knowledge of the thing sold and its price, as such knowledge prevents ignorance on the part of both parties.

contract is concluded (Al-Hanbali 382). However, the parties must have detailed knowledge of the thing being sold to avoid unknown elements in the contract, and this condition applies to both contracting partings.

This condition is important because it guards against a lack of knowledge about the sold subject, which may lead to conflict or disputes between parties. Therefore, Islamic *Sharia* aims to connect people, eliminate causes of division and disagreement, and insist on clarity in all deals.

Consequently, it is forbidden for the contracting parties to cheat, lie, or deceive. A lack of information on the subject of the contract causes disagreements. Islamic *Sharia* thus forbids such ignorance and requires that the sale be conducted in a way that specifically defines the parameters of the sale and eliminates obscurity regarding the thing being sold.

- The seventh condition concerns knowledge of the value of the thing being sold[154].

Knowing the value of the thing being sold is as important as knowing what the subject of the sale itself is. The sales contract is considered *Sharia* invalid if the price is undecided, as this could make either contracting party a winner or a loser and thus includes an element of gambling that makes it a forbidden contract.

Therefore, since it is known that awareness of the price of the thing being sold is an obligatory condition for the sale's validity, it is also necessary to know what causes this condition to be unmet; the following are just some examples:

- Selling without mentioning the price[155].
- Selling properties for two different currencies.[156]

---

154 "The Muslim jurists' method differed in determining the price value terms; some of them combined them with the terms of the sale itself, and others were concerned with the terms of the contract, then illustrated what is related to the price, and what is common between the price and the sale together" (Jab' Allah 137).

155 For example, the seller concludes a contract with the buyer in which he or she sells the goods, and the buyer takes them without specifying and agreeing on the price. This sale is not *Sharia* valid because it is considered aleatory (*gharar*), which is forbidden in Islamic *Sharia*.

156 For example, selling 1,000 tons of sugar for 500,000 US dollars, in addition to 100,000 Brazilian riyals. This is a valid sale even if the currencies are different, as long as the price is fixed and known by both contracting parties; in such cases, the issue of the lack of knowledge of the commodity's price or value that would cause the sale to be prohibited is negated.

- Selling at a cut price[157].
- Selling at the price at which the buyer will then sell the commodity him or herself[158].
- Determining the total sales price by adding different prices for specific parts of the sale[159].
- Selling the property parts individually for a known price without specifying what is being sold[160].

e) The terms and conditions in the sales contract

After identifying the conditions that must be met by both contracting parties to have a valid *Sharia* sales contract, it is essential to discuss the conditions that either of the contracting parties may require as part of the sales contract. Usually, a condition is added due to the obligation of one of the contracting parties regarding something that is not already obligated by the nature of the contract but is necessary for the requesting party. The condition may be related to the price, the commodity, or the contracting party.

There are three types of conditions that the seller may require:

[157] For example, there are two possible types of this sale. First, if the price is cut at the auction, this is a valid sale because the price is announced at the end of the auction.
Second, if the commodity owner sells without cutting the price at an auction, this is an impermissible sale because the price is unknown; the seller does not know how much the price will be cut, so the price may be high and the buyer unsatisfied, or the price may be low and the seller unsatisfied.

[158] For example, if the price at which the other party sells is known, then the sale is permissible, such as selling a ton of sugar at the price of the Chicago Commodity Market.
Another example is if the seller intends to sell to the buyer a ton of sugar at the price at which the sugar was sold to a certain company.
These are valid sales because each of the contracting parties knows the price at which the commodity was sold.

[159] For example, selling each square meter of a plot of land at a different price or selling 1000 cattle 50 at a time, each group at a different price.
These are all valid sales because both contracting parties know the total sales price.

[160] For example, selling an unspecified part of land at a fixed price per square meter or selling an unspecified 500 out of 1000 cattle at a fixed price per animal.
These sales are valid because the price is known by both parties, which is required for the sale, because this prevents aleatory (*gharar*) components and harm to either party.

- Certain conditions that the seller places on the buyer[161] (Al-Lahim 321: 1);
- Conditions required by the seller regarding the sale price[162]; and
- Conditions of the seller not related to the price or the buyer[163].

There are three types of conditions that the purchaser may require:

- Conditions that the purchaser places on the seller[164] (Al-Lahim 347: 1);
- Conditions required by the purchaser regarding the sale[165]; and
- Conditions of the purchaser not related to the buyer or the sale[166].

Furthermore, the terms and conditions in the sales contract may be divided into two sections.

Section one includes the sales contract's valid terms and conditions that do not contradict a contract requirement. These term types are as follows:

- First, a condition required by the contract[167] (Ibn Qudamah 57: 3).
- Second, a condition related to the interests of the contracting parties[168].
- Third, a condition related to how the contracted thing is described[169].

---

[161] For example, the seller requires the buyer to do a specific job for him or her in addition to paying the sale price.
[162] For example, the price is in a certain currency, or the price may be immediately changed after the time of the contract.
[163] For example, a guarantee requirement, a requirement to deliver the price at a specific place, or the use of the thing sold for a certain period before handing it over to the buyer.
[164] For example, the buyer requires the seller to build him or her a house or perform a service for him or her outside the subject of the contract.
[165] For example, the buyer requires that the sold house has not been inhabited before or the buyer requires that the sold car be new.
[166] For example, the buyer requires that the goods be delivered to a specific place.
Another example would be the buyer requiring the seller to deliver the thing sold at a specific time.
[167] Such as an exchange between the contracting parties, i.e., the receipt of the commodity from the seller and the receipt of the price from the buyer, and the settlement of the price.
[168] For example, the seller's condition on the buyer as a mortgage, guarantee or guarantor of the deferred price.
Another example would be the homeowner stipulating that the building contractor is late in completing the work, and as a result, a fine will be imposed on contractor for each day of delay.
[169] For example, the buyer may require that the purchased commodity meet certain specifications, and if the seller fulfills the condition, the sale is made. Otherwise, the party with this condition will rescind the contract.

- Fourth, a condition placed by one of the contracting parties on the other for the former's known benefit[170] (Al-Mushaiqih 33).

Section two includes the invalid terms and conditions in the sales contract that are contrary to the contract's requirements. There are two types:

- First, invalid terms and conditions that void the contract[171] (Ibn Qasim 400: 4).
- Second, invalid terms and conditions that do not void the contract[172].

Additionally, it is necessary to discuss what occurs when one of the contracting parties is entitled to compensation for a condition set by the other contracting party. There are two types of compensation in relation to this issue:

- The first is compensation for not fulfilling the condition due to a legitimate excuse[173]. Because the contract requires an exchange, regardless of whether the condition concerns the price or the sale, if the condition cannot be fulfilled, it is *Sharia* permissible to provide compensation for it instead.

---

[170] For example, the seller's condition on the buyer that he or she reside in the house for a specified period of time.

[171] This means every condition related to the violation of one of the pillars or terms of the contract.
For example, the sold thing is unknown, or the price is not possible.
Another example would be the seller of the commodity requiring the purchaser to rent back the sold commodity. This condition invalidates the concept of a sales contract because it is in contrary to the requirement for a sale, which is the transfer of full ownership to the buyer.
Another example would be the buyer requiring that the seller buy something else from him or her. Such conditions from the buyer invalidate the contract because they may lead to *riba* and quarrels between the contracting parties, and the combination of such conditions leads to greed.

[172] This means that the conditions that violate Islamic law, however, are not related to the breach of one of pillar or terms of the contract.
For example, if the investor requires the investment entity to guarantee the loss or, in contrast, if the buyer requires the seller to return the thing sold in the event that it is not sold later, these are invalid conditions in *Sharia*, although they do not prohibit the sale itself.
Another example would be the seller requiring the buyer not to sell what he or she is buying. Additionally, the buyer might require the seller not to deliver the sale price until after the commodity has been sold without specifying a date.

[173] For example, if the seller dies or falls ill with a disease that prevents him or her from carrying out the contract after the contract has been signed, the buyer will be harmed. Alternatively, if the seller is imprisoned after signing the sales contract for a period in which the buyer misses the benefit of the thing sold because the thing sold is not transferred to him or her, the buyer may collect compensation equal to the extent of the damage inflicted on him or her.

- The second is compensation if the condition is not fulfilled and there is no legitimate excuse for this failure[174].

Furthermore, the option to pass the contract subject to a third party is another aspect of sales contract conditions that must be explored[175]. Moreover, conditions are permissible in *Sharia*, given that the one making the condition has, in addition to the normal rights of all parties involved, the right to compensation from the other contracting party or to award that compensation to a third party (Ibn Al-Najjar 253: 1).

Last, within the previous topic related to conditions in the sales contract is the subject of combined terms[176]. It is intended that only valid conditions can be combined; invalid conditions cannot be combined because they are invalid from the start. Therefore, the combination of valid conditions is permissible for *Sharia*, as long as this merger does not violate other Islamic *Sharia* provisions (Ibn Al-Najjar 61: 5).

f) The difference between the terms of valid sales contracts and the general terms and conditions included in sales contracts

It is essential to know the difference between the terms and conditions of a valid sales contract and the terms included in general sales contracts. Islamic *Sharia* has clarified these conditions to facilitate people's need to sell and buy commodities at various times and in various places.

---

[174] For example, the buyer concludes a deal to purchase iron and requires the seller to cut it to specific sizes, then the two contracting parties agree to compensate the buyer for not fulfilling the condition.
Another example would be the seller selling his or her villa and requiring the buyer to use the villa for a certain period, then agreeing to compensate the seller for not meeting the condition, which is to use the villa for the remaining specified period. It is permissible to take compensation for the condition even if it is not implemented due to a legitimate reason.

[175] For example, the seller's contract condition is that he or she be allowed to reside in the sold villa for a period of one year, but the seller then decides to rent the villa instead of living in it for the same period.
Another example would be that the purchaser stipulates a contract condition for purchasing iron that the seller must transport the iron to a specific place, but then the buyer then sells the iron to third party along with the abovementioned delivery condition.

[176] For example, the seller requires the use of the agricultural fields sold for a specified period, and the seller, during this period, mortgages the sold agricultural land.
Another example would be the purchaser requiring the seller to pack and wrap the goods and then transport them to a specific place.

It is appropriate here to provide a table to show the differences between these two types of conditions, which are as follows:

	Conditions of a valid sales contract	**Conditions included in sales contracts**
1	The conditions are set by *Sharia* (the Holy Qur'an and the *Sunnah* of the Prophet).	The conditions are set by humans, i.e., one of the contracting parties.
2	If a defect exists in one of the conditions, the sale is considered invalid and the contract void (Al-Ghufaili and Al-Nasir 23).	If one of the conditions is breached, the sale is not invalidated, because those who approved it failed to stipulate alternate options (Ibid).
3	The conditions are mandatory and cannot be waived or ignored because doing so would affect the contract's validity (Al-Fuzan 40: 3).	The conditions can be altered if the contracting parties agree and the one who originally stipulated the conditions decides to drop them (Ibid).
3	The sale conditions are valid because they are in line with Islamic *Sharia*.	The conditions may or may not be valid because the humans who dictate them may make mistakes.

4.3 Options (*al-khiyar*) in a sales contract

Sharia scholars have described the meaning of options (*al-khiyar*) as follows: "Both contracting parties have an option between signing the contract or not signing it" (Al-Bahuti 121: 6).

The Al-Majallah codified the definition of options in Article 116 as terms that grant "the power to choose" (Ottoman Empire 18).

There has been much insight generated regarding options for the contracting parties in a sales contract. Islamic law is characterized by wisdom, is attentive to the parties' benefits, and seeks to avert danger and harm. Therefore, contract options are intended to help accomplish business interests under Islamic *Sharia*. Options are used in Islamic financing to protect the rights of both the buyer and the seller.

Even when Islamic *Sharia* permits the transfer of ownership from one owner to another on the condition that the sale pillars are satisfactory and any legitimate conditions are fulfilled, the two contracting parties may regret their decisions or need to deliberate and think about what they have agreed to. Consequently, Islamic *Sharia* permits both contracting parties a second opportunity to be sure of their choice, deliberate about the sale, and gather advice.

Sharia scholars have inferred the legitimacy of options attached to sales contracts by examining evidence from the Holy Qur'an and the authentic *Sunnah* of the Prophet. Among the evidence translated from the Holy Qur'an is the following: "29. O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual goodwill" (Abdulla Yusuf Ali).

Moreover, Prophet Mohammad, peace be upon him, said, "The sale is [valid] only by mutual consent of the two parties" (Al-Albani, Sahih Sunan Ibn Majah 218: 2).

In another authentic *hadith* narrated by Imam Muslim, the Prophet Mohammad, peace be upon him, said:

> "When two persons enter into a transaction, each of them has the right to annul it so long as they are not separated and are together (at the place of transaction); or if one gives the other the right (to annul the transaction). However, if one gives the other the option, the transaction is made on this condition (i.e., one has the right to annul the transaction), and it becomes binding. In addition, if they are separated after they have made the bargain and none of them annulled it, even then the transaction is binding" (Siddiqui).

Commenting on the previous *hadith*, Imam Ali Al-Mawardi (d. 1058), one of the leading scholars of the Shafi'i jurisprudence school from the city of Baghdad, said, "The option of the buyer after the seller's making and before his acceptance is known unanimously, and there is no one to contravene that, for if the mere making of the seller forfeited his option, the sales would have been obligatory without the purchaser's choice" (Al-Mawardi 33: 5).

Moreover, if neither of the sales contract parties is satisfied by the sale, but the cause of their dissatisfaction was not apparent at the time of the contract, Islamic *Sharia* provides a way out of this contract without prejudice to one of the contracting parties via options.

There are numerous options associated with sales contracts; some scholars have counted more than thirty, while some Islamic jurisprudence books limit them to only seventeen (Abu Rukhayah et al. 121).

These options are valid only in binding contracts for both contracting parties, such as sales contracts, not in nonbinding contracts.

Extrapolating from Islamic jurisprudence books from various schools of thought, we can see that there is a general consensus regarding six main options (ibid). These six options will be discussed below, along with their details and the legal evidence that permits these options.

a) First: The option of withdrawal before parting (*khiyar al-majlis*)

Because of people's need to buy and sell, Islamic *Sharia* allows the conclusion of commercial contracts in any way that both parties agree upon as long as it does not conflict with *Sharia* provisions. Notably, the option of withdrawal before parting (or its equivalent) is not found in other civil laws. This is evidence of Islamic *Sharia*'s attention to the psychological state of both sales contract parties and to ensuring that they are satisfied with their decisions regarding the sales contract.

Therefore, many legitimate *Sharia* options are permitted throughout the steps that must be followed to complete the sales contract. The options' primary functions are to ensure the transaction's completion with the consent and acceptance of both parties and to protect their interests related to the contract.

One such option is withdrawal before parting (*khiyar al-majlis*). This option is strictly linked to the place and time when the contract is concluded, specifically after the contract is concluded but before either party's physical or virtual departure. Afterward, this option is no longer valid.

Article 181 of the Majallah[177] defines the location of the sale (*al-majlis*) thusly: “The place where the sale is concluded (*Majlis Al-Bay*) is the place where the parties meet together with a view to the conclusion of the sale” (Ottoman Empire 40).

Furthermore, in contemporary applications, the conclusion of the sales contract between contracting parties may take partly online or over the phone. The option of withdrawal before parting (*khiyar al-majlis*) is still applicable. However, it should be borne in mind that in such cases, the definition of this option depends on the meeting mechanism between the two contracting parties. If the meeting is online, the option continues from the time the deal is concluded until the meeting ends in whatever usual technical way these meetings end, i.e., logging out from the virtual conference room (Abdulmalik Al-Saadi 86).

However, several things may prevent contracting parties from utilizing the option of withdrawal before parting (*khiyar al-majlis*) as follows:

a. At the beginning of the contract, one or both contracting parties can stipulate that the option of withdrawal before parting (*khiyar al-majlis*) be dropped, and they both agree on that. However, if one of the contracting parties drops this option for him or herself, the option remains valid for the other (Al-Sharbeeni 60: 2).
b. If the purchaser damages the commodity after receiving it due to a mishap, the option is void because the risk lies with the buyer after he or she receives the commodity (Abdulrahman Ibn Qudamah 316: 11).
c. If one of the contracting parties dies at the place of the contract, the option is void because upon the death of one of the contracting parties, the sale is concluded, and the option is not transferable to the heirs of the deceased (Al-Uthaimeen 601: 1).

Finally, it should be noted that the option of withdrawal before parting (*khiyar al-majlis*) has no effect on transferring the ownership of the thing sold to the buyer or the payment to the seller. Ownership transfer applies as soon as the contract is completed, without waiting for the parties to depart from the contract place (Ibrahim 153).

[177] The full name is “*Majallat Al-Ahkam Al-Adliyyah*”, the Ottoman *Sharia* Courts Manual.

b) **Second: Option by stipulation, or a conditional option (*khiyar al-shart*)**

The conditional option is related to the previous option. By assumption, after the two contracting parties separate, their right to annul the sale is voided unless they stipulate otherwise, which is why this option is called a "conditional option."

The Institute of Islamic Banking and Insurance[178] defines the conditional option as "an option to cancel a previously agreed sale within a specific number of days" (The Institute of Islamic Banking and Insurance).

Islamic *Sharia* permits this conditional option, which *Sharia* scholars have inferred from the proven statement of the Prophet Mohammad, peace and blessings be upon him: "Muslims are bound by their conditions, except for a condition that makes what is forbidden permissible or forbids what is permitted" (Al-Bayhaqi 529: 14).

The logic behind the conditional option is that either of the sales contracting parties may feel remorse, but if the conditional option is not stipulated, the sale occurs and cannot be withdrawn.

Article 300 of the Majallah states that "the vendor, or the purchaser, or both, may insert a condition in the contract of sale giving them an option, within a fixed period, to cancel the sale or to ratify it by carrying out the term thereof" (Ottoman Empire 57).

Sharia scholars have mentioned that the conditional option can apply in three cases:

a. A condition is stipulated before the time the contract is concluded[179].
b. A condition is stipulated at the time the contract is concluded[180].

---

[178] A well-reputed research center for Islamic finance studies located in the United Kingdom.

[179] For example, the contract details are negotiated, and the condition option is stipulated during this negotiation, yet the contract is not completed. Subsequently, the contract is concluded based on this negotiation without being subjected to the condition option and without denying it based on the previous negotiation.

[180] For example, the contract is negotiated on the condition option, and the contract is concluded accordingly at the same time.

c. A condition is stipulated after the contract is concluded[181].

However, the duration of the applicability of the conditional option is determined by the contracting parties through estimation and agreement. Regardless of the details, this option is permissible if it does not lead to harm[182].

Moreover, it should be noted that according to *Sharia* jurisprudence provisions, the conditional option cannot be included in certain sales contracts, such as currency exchange contracts, *salam* contracts, and bartering involving commodities in which *riba* may occur if the exchange does not involve homogeneous commodities of the same quantity or weight or if the exchange must occur on-site in the same location where the contract is concluded.

The reason for forbidding the conditional option in these types of sales is that the sale must be direct and match the contract to prevent the use of *riba* stratagems. For the conditional option to be established for both contracting parties, the deal must not contain any form of stratagem; otherwise, the conditional option is void[183].

Furthermore, since the conditional option does not affect the transfer of the sold commodity and its ownership to the buyer or the ownership of the value paid to the seller, it is necessary to discuss a related issue, which is the rule of the growth and multiplication that can occur with some types of sales during the term of the conditional option[184].

[181] For example, the conditional option can be at the place of the contract and before the contracting parties separate.

[182] An example of estimating the term of the condition option that leads to damage would be that if the period of the option is estimated at a time when the sale is damaged, such as if the sale is of fruits or vegetables, the period of the option is estimated for a whole month, with nothing to preserve the sold goods from damage.
Thus, the term of the conditional option must be specified as one particular day or hour, or any specified time frame.

[183] For example, a person needs money and does not find someone to lend it to him or her. Therefore, he or she agrees with another to sell his or her house for a price received on the condition option, and he or she hands over the house on the condition that when he or she returns the price, the house is returned to him or her.

[184] An example of a separate growth to the sale is if agricultural land is sold, then the trees bear fruit and ripen within the condition option term period.
Another example would be if a herd of livestock is purchased and increases trhough breeding during the conditional option period.

Increases in the thing being sold during the period covered by the conditional option manifest in two ways: this increase is either separate from the thing being sold or connected and attached to the thing being sold. However, the buyer is entitled to all growth and multiplications from the sold item that occur during the conditional option period (Al-Bulaihi 53: 2).

The buyer's entitlement to the increase and multiplication of the sold commodity comes with an obligation to guarantee the sold commodity in case of damage during the period of the conditional option. Either way, the buyer will still have the increase and growth of the thing being sold.

This directive is proven by the authentic *hadith* on the authority of the Prophet Muhammad, peace be upon him, when he said, "The produce is for the responsible one" (Al-Tirmidhi 561: 2).

One of the essential issues that must be addressed is if any of the contracting parties dispose of the sold asset during the conditional option period. This issue has two manifestations:

- First, the sale proceeds with promises. One of the authorized parties promises that the other can use the sold item during the conditional period, which makes the usage of the buyer permissible and does not cause the forfeiture of the conditional option.
- Second, one of the parties does not authorize such use, and the other party does not permit disposal of the thing being sold during the term of the conditional option. Accordingly, it is prohibited to dispose of the thing being sold during the time the option is valid, except to test and experiment with the purchased thing.

Finally, it is necessary to know when the duration of the conditional option ends, which may be based on the following:

a. The expiry of the option for the conditional term (Al-Sawi 49: 2).
b. The termination of the sales contract during the option's term or the completion of the sales contract and termination of the option by both parties[185].

[185] Jordanian civil law mentions this point in article (181) (Jordanian Ministry of Justice).

c. The use of the subject of the contract for a test or experiment (Al-Lahim 466: 1).
d. The death of the party with the conditional option[186].

c) Third: An option in case of discovering a gross deception in the sales contract (*khiyar al-ghabn*)

The correctness and comprehensiveness of Islamic *Sharia* is evident in that it has corrected people's mistakes regarding what can be rectified. Some mistakes may occur during the sale that spoil the sale deal and cannot be rectified. However, some errors do not spoil the deal and can be rectified by giving the deserving party the right to choose whether to proceed with the sale, ask for compensation, or terminate the contract.

There is a clear understanding that one of the options is to compensate for contracting parties' damages. One of the harms that *Sharia* law attempts to prevent is the presence of deception in the contract. It is possible that deception can occur through the price the seller sets or the purchaser's assessment of the commodity's condition, far beyond what is ordinary, which prevents the parties from truly consenting to the sale.

Sharia jurists have mentioned scenarios in which this choice is possible, and they have set controls and standards to protect people's rights and eliminate conflicts between contracting parties. Therefore, it is imperative to describe the details and related provisions of the third option.

Islamic jurists have defined deception (*al-guban*) as a deficiency in buying and selling outside the usual market prices (Al-Hattab 469: 4).

Their opinions have differed, however, regarding what level of deception warrants the option to void the contract. Some scholars have said that deception that affects one-third of the value of the sale warrants the option to annul the contract. Others have said that this figure needs only be one-fourth.

[186] Most of Arabian civil laws, such as article (183) in the Jordanian civil law, adopt the *Sharia* provision that inheritors do not inherit the conditional option (Ibid).

However, these scholars' provisions arbitrarily define the level of deception. All scholars who have limited the deception according to a certain percentage have done so according to their own opinions, which are likely based on common practice in determining what limit is considered fair (Al-Lahim 475: 1).

Nevertheless, what amount of deception warrants this option differs for every situation, place, era, and context, including the factor of how much cash is available. People's limits used to be much smaller, but today, most ignore small fees that are less than five euros, for example.

Therefore, Islamic *Sharia* does not indicate a specific amount of deception that would prohibit a sale. However, most *Sharia* scholars have decided that the average level of deception in common sales price practices is the limit for giving either contracting party the right to rescind the contract (Ibn Illibban 166).

Moreover, in most Islamic countries, civil laws dictate common market prices so that parties are aware of what is considered a fair price. Modern civil laws cover gross deception, which requires the contract to be terminated and the sold commodity to be returned[187].

Furthermore, *Sharia* scholars have stated conditions regarding what types of deception dictate the applicability of the option for the deceived to cancel the contract:

a. If one party is excessively deceived, the option is valid. Thus, if the deception is minor, the option is not implemented[188].
b. If the deceived party is ignorant of the deception at the time of contract, the option is valid[189].

[187] See, for example, Article (99) of the Bahraini Civil Code (Minister of Justice and Islamic Affairs).
[188] Islamic Jurists depend on the considered assumption that gross deception is outside the common habits of merchants (Ibn Nujaym 169: 6).
[189] If it can be proved that the deceptive party is aware of the ruse and still accepts the contract, then his or her entitlement to the deception option is annulled because he or she party forfeits the option right and accepts the situation. The parties' actions may be derived out of goodwill, leniency, or tolerance in buying and selling. In the implementation of the saying of the Prophet Muhammad, may God bless him and grant him peace: "May Allah's mercy be on him who is lenient in his buying, selling, and in demanding back his money" (Al-Bukhari 2076).

c. If the deception is excessive, even if it does not occur due to one party's conscious deception, the occurrence of excess deception is enough to warrant the option[190].

Moreover, Islamic law does not specify a period of validity for the applicability of the deception option. Nevertheless, the deceived party can rescind the contract or continue it when the injustice is discovered.

Furthermore, deception can be uncovered only if fair prices are known. Such prices may vary according to different circumstances and in relation to the deceived party. Some deceived parties quickly protect themselves by asking about the price, and others do not pay attention until they are alerted to the existence of a deception. However, after a certain point, even if they are warned of the existence of unfairness, the option is no longer valid.

Finally, the deception option may be voided in two ways:

a. The deception option lapses with the consent of the deceived, whether verbal or written.
b. There is evidence that the deceived party accepts the deception, such as disposing of the commodity after becoming aware of the deception.

d) Fourth: An option in case of discovering the fraudulent concealment of defects in a sales contract (*khiyar al-tadlees*)

The fraudulent concealment option is another Islamic legal feature derived from *Sharia* and not found in other legal systems. Scholars have defined fraudulent concealment in a sale as “a seller’s act of making the buyer believe that the thing being sold has an attribute that necessitates a price increase or [as] defect concealment” (Al-Ansari 370).

[190] Some *Sharia* jurists, specifically from the Hanafi Islamic jurisprudence school, believe that if the deception is not a result of deceit by the other party, it does not qualify for the deception option. They justify this by noting that mere deception indicates the shortcomings of the fraught and a lack of consultation of the experts. It does not indicate the cunning of the other contracting party (Ibn A’bideen 143: 5).

Therefore, the concept of fraud includes concealing defects and falsely portraying the commodity as being flawless. The fraud concealment option is related to rectifying shortcomings in the sale.

Moreover, Islamic jurisprudence scholars have stated that fraud in sales is divided into two types of actions:

a. The first is the act of concealing the defect in the thing sold and depicting it as being sound and free of defects[191] (Al-Hijjawi 209: 2).
b. The second is an act by the seller that depicts the thing being sold in a complete form to increase the price[192] (ibid).

Most scholars have agreed that *Sharia* forbids the concealment of fraud in sales. Moreover, fraud affects the contract's validity, and the one committing fraud is guilty of sin[193]. Furthermore, as a result of the fraud, the one harmed by the fraud has the right to apply the fraud concealment option. He or she can either accept the fraud and approve the sale without asking for compensation or terminate or void the sale.

Moreover, in proving the applicability of the fraud concealment option, there are two relevant matters.

First, if the buyer is aware of fraud at the time of the contract, then the seller has no option to terminate the contract because the buyer knowingly entered into the contract. Therefore, the buyer does not have a valid excuse for annulling the contract.

Second, if the buyer is unaware of the fraud at the time of the contract and later learns of the fraud, the buyer is then given the option to terminate the contract because he or she has fallen victim to fraud and deception.

---

191 For example, some used car dealers manipulate the car meter to reduce the mileage and increase the car's value.
192 For example, some real estate brokers plaster the walls before selling the property to hide fractures and give the appearance of the building being solid and new.
193 The contract is not invalid because of fraud since the contract fulfills its terms and conditions. Fraud concealment is a defect in the conduct and ethics of the contracting party, not the party or contract itself.

Furthermore, the fraud concealment option has no specific validity period, so the buyer has the right to annul the contract unless there is evidence of his or her satisfaction with the sale[194].

Nevertheless, the fraud option granted to the buyer shall be voided if any of the following appears:

a. The buyer declares satisfaction with the sale.
b. The buyer otherwise indicates satisfaction with the sale[195].
c. The buyer is unable to return the item[196].

Finally, the fraud concealment option has many benefits for the buyer, as it preserves consumer rights, especially in online sales contracts, where the e-consumer entirely relies on the seller's description of the commodity. Thus, the fraud concealment option serves as a guarantee of consumer rights and a way to compensate for damages.

e) Fifth: An option in case of discovering a defect in the sale (*khiyar al-a'yb*)

One of the essential and useful options for preserving the buyer's right is the defect option (*khiyar al-a'yb*). *Sharia* jurists have defined the defect option (*khiyar al-a'yb*) thusly: "The option that is given to the buyer due to a defect found in the commodity that the seller did not inform the buyer about, or the seller did not know initially about the defect, but it was found that the defect exists in the commodity before the sale" (Al-Fuzan 27: 2).

The Majallah defined what defects trigger the right of the buyer to terminate the sale as "everything that reduces the price of the thing sold by merchants and experts" (Ottoman Empire Articles: 338).

Therefore, through the above definitions of the option stemming from defects discovered in the sale, it is clear that the apparent decrease in the sale's value or the price indicates the

---

[194] The reason for not giving a specific period for applying the fraud concealment option is that it is an option made to pay damages to the buyer whenever the harm is discovered.
[195] For example, using, disposing of, renting out, or lending the thing sold.
[196] For example, sale theft, sale damage, or the buyer's damaging of the sale item.

defect. A few minor defects do not give the buyer the right to return the sale or cancel the sales contract.

Moreover, similar to the previously mentioned options, the size of the defect in the sold commodity is determined based on the knowledge of experienced traders and dealers in the market.

It is necessary to consider the important issue of proving that the defect was discovered only after concluding the contract. In such cases, the buyer has the option of returning the thing being sold and rescinding the contract or possession of the sale with a request for compensation for the value of the defect as determined by the experts.

Regarding the period during which the defect option is valid, most *Sharia* scholars mention no specific period unless any further harm might come to the buyer or if he or she still appears satisfied with the sale (Al-Hanbali 541: 1).

Finally, if the buyer dies and the defect in the commodity is discovered after his or her death, the defect option remains valid for the buyer's heirs because it is a guarantee attached to the sale and preserves the buyer's right and is thus transferrable.

Since many may be confused about the different options available, the following table shows the essential differences among the three options:

Deception Option (*Khiyar Al-Ghubn*)	**Fraud Concealment Option (*Khiyar Al-Tadlees*)**	**Defect Option (*Khiyar Al-A'yb*)**
Deception occurs in the form of the commodity's price, either an increase or a decrease from its usual price, and the ignorance of the deceived party.	Fraud concealment occurs through changes to the commodity's character, making it more expensive than its actual price.	This option occurs when a defect in the commodity is discovered after the sale is concluded.

Deception may come from either the seller or the buyer.	Fraud concealment can be perpetuated only by the seller.	Applicable defects may appear only with the commodity purchased by the buyer.
The deceived party has the right to hold onto the commodity or terminate the sale.	The buyer has the right to hold onto the commodity or terminate the sale.	The buyer can hold onto the purchased commodity, ask for compensation for the defect, return the commodity, or terminate the sale.

f) Sixth: An option in the case of the seller notifying the buyer of different sales prices (*khiyar al-ikhbar bil thaman*)

This option is given to the purchaser in a specific scenario: if the seller notifies the buyer of the actual purchase price, then the buyer discovers a different valid price, whether higher or lower, meaning that the buyer is allowed to select which price to pay. This option often occurs in *murabaha* sales and partnership contracts.

The price notification option applies in sales where the seller must tell the buyer about the actual commodity price but does so untruthfully, whether stating a higher or a lower price; this practice often occurs in *murabaha* sales and partnership sales (Al-Zarkashi 398: 3).

Therefore, one of the conditions for implementing this option is that the other party knows the actual value of the commodity.

This requirement also affects the contract's validity, which will be studied in the next chapter through *murabaha* contracts.

Moreover, the buyer's lack of knowledge of the value leads to price ignorance, which leads to the presence of aleatory (*gharar*) content and thus invalidates the contract, as detailed in chapter two of this thesis.

Therefore, if it becomes clear to the buyer after the contract is completed that the true price of the sold commodity was different from what the seller stated, then based on the option of declaring the actual price, the seller is obligated to sell at the actual price, and the contract is not invalidated.

4.4 The Proposed Codified Articles

Definition of property *(al-mal)*

Article 105: Every property *(al-mal*), or right, has material value in dealings or has a benefit that *Sharia* permits.

Article 106: There are two types of property *(al-mal*):

Legitimate property *(al-mal al-mutaqawam*) is privately held and has commercial value if it perishes. This type of property is permissible for inclusion in commercial deals.

Nonlegitimate property (non-*mutaqawam*) is not Sharia permissible[197]. This type of property is not permissible for inclusion in commercial deals.

Article 107: Fungibles are things whose units or parts are homogenous and replaceable and can thus take the place of one another without a significant difference and are calculated in dealing with a number, measurement, capacity, or weight[198].

Nonfungibles are things whose individual units or parts vary significantly in terms of qualities or value or are rare in the market[199].

---

[197] For example, things that Islamic *Sharia* forbids Muslims to use or deal with, i.e., alcohol and pork. These things are not considered legitimate property.

[198] For example, of homogeneous things whose parts do not vary significantly, such as cotton, fabric, or money of the same kind.

[199] For example, nonfungible things, the units of which vary significantly, so that none of them can take the place of another, such as a specific house, specific plot of land, or specific animal, during the fulfillment phase.

These things are determined specifically by themselves only, and their estimation is not done according to number, size, measure, or weight.

Definition of a legitimate *Sharia* sale and the conditions for its validity

Article 108: A *Sharia*-permissible sale involves a contract for exchanging asset(s), even if it involves debt[200], or for a permissible service or services[201] for another of the same type in perpetuity but not done on a *riba* basis or as a loan.

Article 109: Sales are categorized into three types:

a) General sales involve selling things for an on-the-spot cash price or deferred payment.
b) Barter is the exchange of one material property *(al-mal*) for another material property *(al-mal*).
c) Exchange is the sale of one currency for another currency.

Article 110: A contemporary financial transaction is any financial transaction that has appeared in the modern era but has not been previously addressed in a *Sharia* ruling.

Article 111: There are three pillars of a sales contract: the contracted object, the contracting parties, and the form of the contract[202].

Article 112: The necessary elements for the conclusion of the sales contract are as follows:

- The two parties to the contract must agree on the fundamental elements.

---

[200] "The opposite of a (permissible debt) is a (specific) commodity/service. Therefore, in order for a (specific debt) to be used for an exchange, it must be controlled by description, whereas if it is not, it is not permissible to use it for an exchange, nor as a cost price; Because it leads to aleatory (*gharar*) elements, and dispute" (Al-Lahim 14: 1).

[201] A sale that includes impermissible things in Islamic *Sharia* such as alcohol or pigs is void.

[202] The contract form is the offer and acceptance and everything that represents both meanings.
For example, the offer and acceptance are valid in buying and selling words and everything that leads to the sale is valid if the seller says, "I owed you, I supported you, or I gave you this".
If the buyer says, "I accepted, I consented, I possessed, or I took the sales object", all of these methods are valid.
Additionally, if the buyer says, "Sell this to me, or I will buy this at such a price," and the seller says, anything that clearly indicates his or her approval of the offer, the sale is valid from a legal point of view.

- The thing being sold must be possible to be sold, specific, identifiable, and permissible to deal with.
- The obligations and commitments arising from the contract must have a legitimate cause.

Article 113: The conditions of a valid sales contract are as follows:

a) The first condition is the mutual consent of the contracting parties.

b) The second condition is the permissibility of the contracted subject's disposition by the contracting parties.

c) The third condition is the permissibility of benefitting from the contracted subject.

d) The fourth condition is the contracting parties having the full right to dispose of the contracted subject.

e) The fifth condition is the ability to deliver the contracted property.

f) The sixth condition is the availability of information and facts about the contracted subject.

g) The seventh condition is the awareness of the value of the contracted subject.

Article 114: The sale takes place following an offer and acceptance and in every sense that indicates ownership and possession, provided that it is not a farce or the result of coercion.

Article 115: The reciprocal sale delivery by mutual consent between the contracting parties replaces the offer and acceptance, whether the sale is small, large, or valuable, provided that it is carried out according to the in-force custom between the contracting parties[203].

Article 116: The transaction's conclusion is considered clear, not merely a conjecture[204].

---

[203] For example, if the buyer says, "Give me this bread for this dollar, or give me honey for this euro", and the seller silently gives him or her what he or she asked for, or the seller says, "Take this book for a dollar", and the buyer silently takes it or pays the price of the known commodity and takes it, even if the owner of the item was not present, these sales are all valid.

[204] For example, if a seller sells something and thinks that is nonexistent, that he or she does not own, that has attributes unknown to the buyer, or that he or she is not able to deliver the sold item, then it turns out that

Article 117: Everything sold transfers to the buyer's ownership from the time the contract is concluded. Any increase in or growth of the thing being sold before its receipt is considered the property of the buyer[205].

Article 118: Starting from the time of the contract's conclusion, it is not permissible for the seller to dispose of the sold thing or of what has grown or increased from it.

Sales involving an authorized third party (*wakeel fe al-bay'a*)

Article 119: Whenever a property is sold without the owner's authorization, the sale is paused, subject to the owner's permission. If the owner permits it, the sale will be executed; otherwise, the sale will be invalid[206].

Article 120: For the owner's authorization to be valid in the case of someone selling his or her property without permission, the seller, buyer, and owner of the goods being sold must still be alive. Moreover, the thing being sold should still exist and should not be changed in the meantime. Furthermore, the exchange price used in the sale (i.e., the commodity's price) remains the same, provided that the exchange did not involve cash[207].

Article 121: If the owner has issued a valid authorization for the sale by the person who was initially not authorized to make the sale, the owner's authorization is considered equivalent to the power of attorney for the unauthorized person to complete the sale.

---

the matter is different from what the seller thought and the sale takes place, the contract is valid, and what the contracting party mistakenly thought is not considered.

[205] For example, if the seller sells land on which there are no plants and then some trees grow on the land, sells a farm whose trees have no fruit and then these trees bear fruit, or sells a herd of cows and then some of the cows became pregnant, the purchaser owns everything that is in excess of the thing sold at the time of the contract, even if the thing sold was not transferred immediately to the purchaser.

[206] In Al Majallah, the Ottoman Empire's codified Islamic jurisprudence law presented the following definition of an unauthorized salesperson in article (112): "An unauthorized person is a person who, without any legal permission, deals with the Property of some other person" (Rustam 66).

Moreover, real estate brokers frequently engage in unauthorized selling. It is common practice for the brokers to sell a property, receive an advance, and only then convince the owner to accept the sale. This act by the brokers is not *Sharia* permissible for two reasons: first, the broker sold what he or she did not own or was not authorized to sell, and second, the broker sold real estate without the permission of its owner.

[207] Laws that provide similar legal articles are mentioned by the author of the book "Murshid Al-Hayran" (Article 395) (Basha 752: 2).

Moreover, the unauthorized person can retain the payment if already received from the buyer; otherwise, the buyer is not obliged to repay that amount to the owner. This is because if the buyer has paid the price, then the payment is valid, and the buyer's liability is clear.

Article 122: If the owner does not authorize the sale done by the unauthorized person, and the purchaser has paid the price to the unauthorized person, not knowing at the time of payment that the seller was unauthorized and sold the property of someone else without the owner's permission, then the original owner may return the payment if it still exists or pay back the equivalent if the payment no longer exists[208].

Article 123: If an unauthorized person handed over the property to the buyer without the owner's permission, and it then perished under the buyer's ownership, the original owner has the right to be compensated for its value in whatever form the owner wants from either the unauthorized person or the buyer and whomever the owner does not choose will be released from payment.

The provisions for sales related to minor, nonverbal, and visually impaired persons or people with a mental disability

Article 124:

a. Every person who has reached the age of maturity is in control of his or her mental capacity and has not been placed under restrictions shall be fully qualified to exercise his or her rights in buying and selling.
b. A person reaches the age of maturity once he or she completes twenty-one lunar years.
c. As determined by law, anyone who has reached the age of maturity but is foolish or mentally handicapped is considered to have a deficient capacity to engage in sales.

[208] The author of "Sharh Majallat Al-Ahkam Al-Adliyah" suggested a similar law (Al-Mahasni Article: 378).

Article 125: If a premature person enters into a sales contract, the contract shall not be executed unless the person's guardian authorizes the sale and the other conditions for the sale's validity are met.

Article 126: If a nonverbal person can be understood and indicates agreement with the "sale," then his or her offer and acceptance through signing or writing are valid.

Article 127: It is permissible for a visually impaired person to buy and sell, whether for him or herself or for others. The visually impaired person may return the purchased commodity if he or she was unaware of the description of the thing being sold.

However, the visually impaired person does not have the right to return the purchased thing after receiving a complete description; after touching, tasting, and smelling the thing; or after having his or her agent view the purchased thing.

Article 128: A sales contract involving someone proven to have a mental disability is considered null and does not apply.

Forbidden sales types and contract components

Article 129: Anything that cannot be delivered to the buyer based on the nature or condition of the item may not be sold[209].

Article 130: It is not *Sharia* permissible to sell nonexistent things[210].

Article 131: It is not permissible for Muslims to sell things that Islamic *Sharia* has prohibited, except for what has been licensed for trade due to a preponderance of interest in selling it[211].

---

[209] For example, selling fish in the ocean, unless the fish are visible and in bounded water such as small ponds so that it is easy to collect them once sold.

[210] For example, selling a good that has not emerged or whose emergence is doubtful, such as a seed that has not sprouted or the future offspring of a pregnant animal.

[211] For example, selling impurities such as manure to be used in agriculture.

Article 132: Any sales contract that is used to achieve an act that is forbidden in Islamic *Sharia* is an invalid contract[212].

Article 133: It is not permissible for the seller or buyer to dispose of what they received from a voided contract. What has been spent must be compensated for.

Article 134: Whatever is obtained by the seller or buyer through an invalid contract is mandatorily guaranteed by both parties, just as it is guaranteed in the case of a valid contract.

Article 135: A valid sales contract necessary for both contracting parties entails the following:

First, the buyer must pay the price if the thing being sold is present, and the price in money must be paid immediately or by the deadline if the deal involves deferred payment.

Second, the seller must deliver the item sold to the buyer after receiving the price. However, if both parties agree to defer the payment, the seller must deliver the sold item before receiving payment.

Third, the seller must guarantee the price to the buyer. If the thing being sold perishes while it is still under the seller's ownership or is consumed without the buyer's permission or by the action of another person, the buyer can demand to void the contract.

Fourth, the buyer must guarantee the price of the thing being sold if the buyer took possession of the thing before paying the price.

Terms and conditions in sales contracts

[212] For example, selling arms to incite violence between countries or selling grapes to those who squeeze them to make alcohol.

Article 136: The definition of the terms or conditions in a sales contract is as follows: A condition placed by one of the contracting parties on the other in which the conditioning party has an interest. The condition(s) can be related to the price, the sale, or the contractor.

Article 137: Conditions in the sales contract are categorized into two types:

First, valid condition types are as follows:

a) Conditions regarding what is required for the contract to become effective[213].
b) Conditions related to the documentation of the buyer's or purchaser's rights[214].
c) Conditions related to the description of the sale[215].
d) Conditions in which there is an acknowledged benefit in the sale, be it stipulated by the seller or the buyer[216].
e) Restrictive conditions that do not prevent the contract from becoming effective[217].
f) Penal conditions, provided that the compensation is granted in the form of work and not money, as the latter would be *riba*[218].

---

[213] For example, the buyer buys a car, and the seller is required to guarantee manufacturing defects in it, even though the seller guarantees by default all manufacturing defects whether or not there is a condition for this and mentioning this condition serves as confirmation.

[214] For example, the seller requires a guarantor or a mortgage, so that if the buyer's payment is delayed, the seller has the right to demand the price from the guarantor, or if the time for payment has come and the buyer has not fulfilled what is the seller's right, then the seller collects his or her right from the price of the mortgage after selling it.

[215] For example, the buyer requires a specific quality in the sale, or a specific coordination in paying the price, such as installments.

[216] For example, the seller sells a car to the buyer and stipulates that he or she still be allowed to use the car for a week.

The Hanbali scholar Ali al-Qari (d 1940) codified the above condition as follows: "Sale with the condition that the seller benefits from the thing sold in a manner that is known in terms of duration and method; is a valid and binding condition" (Al-Qari 68, Article: 248).

[217] For example, one of the contracting parties restricts the other in his or her disposal of the sale or the price, such as if one person has land near his or her home and sells it to his or her colleague on the condition that the latter does not sell it because the former does not want to live next to someone else.

[218] For example, a company agrees with a contractor to build a tower for ten million dollars. If the delivery is delayed, 1% will be deducted for each month of delay.

Nevertheless, if the subject of the obligation is money, it is not correct to collect compensation because it leads to *riba*, and this includes what are known as "delay fines", such as when a car dealer sells a car on credit, and it is stipulated that if the buyer delays payment, a fine for the delay in the amount of 1% per month will be applied. This condition is not permissible according to Islamic law because it is considered *riba*.

g) Conditions that are based on an action or the occurrence of a particular thing[219].

Second, there are three types of invalid conditions.

The first are conditions that make the contract void, including the following:

- Conditions that lead to *riba*[220].
- Conditions that often lead to disputes and litigation[221].
- Conditions that, when combined, lead to greed and cupidity[222].

The second are invalid conditions that do not affect the contract's validity.

- Conditions that conflict with the purpose of the contract but do not affect the contract's validity; the contract is not changed by an increase, a deficiency, ignorance, or deception[223].

The third are invalid conditions that prevent the contract from being concluded.

---

[219] For example, the property seller requires that the sale completion is subject to the relevant authorities' approval to register the property under the purchaser's name. A contract of sale is agreed upon and signed under the condition mentioned above.

[220] If there is a loan condition in the sale contract, whether from the seller or the buyer, then this condition is void because it may be a ploy leading to *riba*. The commodity's price will be reduced by the person requesting the loan, so the commodity's price will be saved if the loan applicant is the seller. If the buyer requests the loan, then the seller will increase the price of the commodity over the buyer.

[221] For example, the seller requires a particular benefit from the buyer, so the sale is linked to the condition of the benefit required by the seller. This condition may lead to quarrels between the two contracting parties. If the sold item is damaged, the buyer will ask for a guarantee and compensation that is linked the sale contract between them and the other lease contract, leading to litigation and dispute.

[222] These issues occur when the sales contract and the stipulation of the lease contract are combined. The buyer is subject to what the seller imposes on the price of the sold commodities, even though the price is more than its value, and thus the buyer is charged a greater amount than what the transaction warrants. It is an injustice that is not permissible. It is possible that a buyer who needs the thing sold and does not have enough money will be subject to the seller's greed, which is forbidden in Islamic *Sharia*.

[223] For example, the seller requires that the buyer not sell what he or she has bought.
Another example would be that the buyer stipulates that the seller cannot alter the price.
Such conditions are in contravention of the contract, which is that the ownership of the thing sold is transferred to the buyer, and the ownership of the price is transferred to the seller. Ownership is required by lawful disposition without condition or restriction.

- Conditions that cannot be fulfilled or achieved cause the contract not to be concluded in the first place[224].

Article 138: The price in a deferred sale may be more than the price in an immediate sale, provided that the seller agrees with the buyer on it being a deferred sale, on the price, and on the delivery date. It is not permissible to conclude the contract without indicating whether the sale is immediate or deferred.

Article 139: The seller may not increase the price if the buyer cannot pay the price at the end of the term, and it is not permissible to respite the buyer in return for financial or material consideration.

Options (*al-khiyar*) in the sales contract

Article 140: The definition of an option (*al-khiyar*) is as follows: Islamic options are a right, not an obligation, that commonly dictates whether one of the two parties, the seller or the buyer, can cancel a contract. Such options are valid for all sale types.

The option of withdrawal before parting (*khiyar al-majlis*)

Article 141: The definition of the contract place (*majlis al-aqd*) is as follows: a location where the seller and the buyer or their representatives are together, and the two parties are engaged in negotiating the contract. The contract place event begins with a proposal and ends with the parties leaving the contract place.

[224] For example, the seller tells the buyer, "I must get the price I ask for, otherwise there is no sale between us".
Another example would be the buyer saying to the seller, "I must get the price at which I want to buy the commodity, otherwise there is no sale between us".
The reason for the inadmissibility of stipulating the condition that the sale is not contracted is that it is aleatory (*gharar*). Because the condition may or may not be fulfilled, the sale involves aleatory (*Gharar*) elements, which are forbidden in Islamic *Sharia*.

Article 142: The option of withdrawal before parting (*khiyar al-majlis*) is a legal right under which each of the contracting parties has the choice to rescind or confirm the contract, as long as they are both physically or virtually located in the place where the sales contract is being concluded; however, once they depart from that location, the option becomes invalid.

Article 143: If the two contracting parties agree to the condition that they have no option to withdraw before parting or they forego this option; then, the sale is obligatory from the time the contract is concluded or from the time of the forfeiting of the option, and if one of the contracting parties foregoes his or her right, the option remains valid for the other party.

Article 144: The option to withdraw before parting is withdrawn by the death of one of the contracting parties or by reason of insanity or unconsciousness. However, the option remains valid if the party recovers before the contract is concluded.

Article 145: The buyer may not dispose of the purchased commodity, and the seller may not dispose of the payment as long as the option remains valid.

Article 146: The buyer's disposal of the thing being sold is considered an acknowledgment of the completion of the sale and the annulment of his or her option, even if his or her behavior is problematic. The seller's disposal of the payment is considered an acknowledgment of the completion of the sale and the cancellation of his or her option, even if his or her disposal action is not completed.

Article 147: Both seller and buyer forfeit the option to withdraw before parting and the sale becomes obligatory if there is damage to the sold item after the buyer takes possession of it.

Article 148: The option of both contracting parties is forfeited if the thing being sold is damaged, provided that the thing being sold is under the buyer's guarantee before the transfer of possession and the sale is valid. However, if the sold item is under the seller's guarantee, the sale and option are both voided.

Article 149: The option of withdrawal before parting is forfeited by both contracting parties if the purchaser damages the sold commodity before or after receipt, regardless of whether it was under the seller's or the purchaser's guarantee at the time.

Article 150: The sale is confirmed and moves ahead after verbal confirmation and action indicating consent, such as the disposal, leasing, or mortgaging of the sold commodity, not after only testing or experimenting with the commodity.

Article 151: The moment of separation after the conclusion of the sales contract is determined by what people traditionally consider separation by departing from the place where the contract is concluded, regardless of the form of that meeting, such as online, in person, or by phone.

Article 152: The forced separation of the seller and the buyer does not void this option. If one of the parties is forced to remain without the other, the forced party's option remains, and the other's is forfeited.

The option by stipulation, or conditional option (*khiyar al-shart*)

Article 153: The conditional option is defined as an option to cancel a previously agreed-upon sale within a specific, agreed-upon number of days.

Article 154: It is permissible for both the seller and the buyer, one of them without the other or their agents, to pursue the conditional option of halting the sale or permitting it to go forward for a specified period of time[225].

Article 155: The conditional option can be triggered before the sales contract is concluded, during the time the contract is active, or after the sale is concluded but before departure from the place the contract is concluded.

[225] If the contracting parties do not specify the conditional option period, the option is not valid.

Article 156: The conditional option is not valid in an exchange sale, *salam* contract, or commodity-bartering sale involving homogenous *riba* commodity types. If the condition is agreed upon, the contract is void, and the sale is invalid.

Article 157: The conditional option is invalid in a contract based on a stratagem that adds interest to a loan. The contract is thus invalidated.

Article 158: The conditional option does not prevent the transfer of the thing being sold to the buyer or the transfer of the payment to the seller.

Article 159: Everything that increases or expands separately or is connected to the sale becomes owned by the buyer and is added to the payment the seller receives.

Article 160: The provisions for the buyer's disposal of the sold item and the seller's disposal of the payment during the agreed upon period for the conditional option are the same as the provisions of the option of withdrawal before parting. See Article (144) and Article (145).

Article 161: The provisions regarding the damage or ravaging of the thing being sold within the conditional option period are the same as those regarding the option of withdrawal before parting.[226]

Article 162: The seller's disposal of the sold commodity does not void the contract, even if the choice is solely the seller's.

Article 163: Any action or behavior that confirms the sale or moves it ahead under the option of withdrawal before parting (*khiyar al-majlis*) is similarly considered with the conditional option. See Article (149).

Article 164: The termination of the sales contract does not depend on the consent of the other party or the other party's presence.

Article 165: The conditional option cannot be inherited, but if one of the contracting parties asks for it to be transferred before his or her death, the requester dies, and the annulment is

[226] See Article 146, Article 147, and Article 148.

not yet applied, then his or her heirs have the right to demand the application of the conditional option, provided that all the heirs agree. The lack of consent of one of the heirs forfeits the right of all heirs to the conditional option[227].

An option in case of discovering a gross deception in the sales contract (*khiyar al-ghabn*)

Article 166: The intention to buy or sell outside the usual market prices is a gross deception that triggers this option (*khiyar al-ghabn*).

Article 167: There is no way to void the sale unless gross deception by one party is discovered by the other. A slight deception does not permit the use of the deception option, which gives the deceived party the right to rescind the contract[228].

Article 168: The deception option becomes valid if it appears that one party entered into bidding to increase the sales price but had no intent to go forward with the actual sale.

Article 169: The deceived buyer can pursue the deception option if the seller falsely states that he or she received bids at other prices. Alternatively, the seller is misleading in the *murabaha* contract if he or she states that the price for the sale is higher than the actual purchase price.

Article 170: The deceived party can rescind or maintain the sales contract, and the option to continue with the sale does not allow indemnity entitlement.

Article 171: If the thing being sold through gross deception has a defect that is discovered only after the thing enters the purchaser's possession, this does not preclude the deception option, but an indemnity must be paid by the purchaser who decided to annul the sale.

Article 172: If the purchaser damages the sold thing, he or she must pay the cost of replacement to the seller if the contract is rescinded.

[227] However, if either of the contracting parties dies and did not already ask for the conditional option application, the option lapses from the heirs and the sale proceeds (Al-Qari - Article 406.)

[228] This is because there is hardly any sale that does not contain at least some unfairness.

Article 173: The option is forfeited if the deceived party becomes aware of the gross deception and still accepts or contentedly disposes of the sold thing.

Article 174: If the deceived party dies due to gross deception, the deception option does not pass to his or her heirs.

An option in case of discovering the fraudulent concealment of defects in the sales contract (*khiyar al-tadlees*)

Article 175: The fraudulent concealment option (*khiyar al-tadlees*) becomes possible if the seller's actions make the buyer believe that the thing being sold has an attribute that falsely necessitates a price increase or if the seller is concealing a defect.

Article 176: If the buyer becomes aware of the fraudulent concealment of defects in the sale, her or she can choose between terminating the sale and keeping possession of the commodity without requiring compensation for the fraud.

Article 177: The buyer does not have the option to rescind the sales contract, providing the following:

a. The buyer was aware of the fraudulent concealment when the contract was concluded.
b. The buyer accepted the sale after becoming aware of the fraudulent concealment.
c. The buyer disposed of the sold commodity, or the cost of the fraudulent concealment was not more than the sale price.

Article 178: The purchaser's heirs after his or her death have the right to pursue the fraud concealment option within the options' conditions.

An option in case of discovering a defect in the sale (*khiyar al-a'yb*)

Article 179: The defect option (*khiyar al-a'yb*) is possible when a defect is discovered after the sale's conclusion that the seller did not notify the buyer about or when the seller was not aware of the defect at first, but it turns out that the defect was initially present in the commodity before the sale. Furthermore, this defect reduces the value of the thing being sold or its price so that the seller cannot benefit from the sold thing as much as he or she could if it was free of the discovered defect.

Article 180: The defect option is guaranteed to the buyer, even if it is not established in the contract.

Article 181: The defect option applies if the defect was present in the thing being sold at the time of the contract or after the deal was concluded, but the thing being sold is still in the seller's possession because it has not been delivered yet.

Article 182: If the buyer becomes aware of an old defect in the sold thing, he or she can apply the option to return the thing being sold or keep it, plus compensation for damages.

Article 183: The buyer is prevented from applying the defect option under the following conditions:

a. The buyer shows any signs of satisfaction with the sale.
b. The buyer disposes of or uses the thing being sold, such as selling, leasing, mortgaging, or changing it; in such cases, the right to the defect option is lost due to the difficulty of returning the thing.
c. There is an apparent deficiency in the sale.
d. The sold commodity is lost.

Article 184: No defect option is possible if the defect occurred after the sale.

Article 185: The right to pursue the defect option does not lapse from the buyer even after a long time has passed since the sale was concluded.

Article 186: If the sale was made through barter and a defect is found in either of the commodities, the defect option is valid for the current owner of the damaged commodity, who can reclaim his or her original commodity if it is still available or be compensated for the value of the thing he or she sold if that thing is not possible to retrieve.

Article 187: If there are several contracting parties to the sale and a defect is found in the sale, it is permissible for some to retain their share of the sale and others to return their share.

Article 188: If different items are purchased in one transaction and some of the sold items appear defective, the buyer can choose among returning all of the purchased items; returning only the defective part of the sale, provided that the separation of the latter does not affect the sale; or accepting the whole sale, including additional compensation for the defective part.

Article 189: There are two conditions regarding any growth that has occurred in the thing being sold since the time the sale was concluded: If the growth was separate and not attached to the sold thing, this increase remains attached to the sale and can be retained by the buyer, but if the growth is attached to the sale, then it is returned to the seller.

Article 190: A price change is not a defect. If the buyer buys something and its price decreases, the buyer does not have the right to return the sale due to the price change.

Article 191: If the buyer's heirs, after his or her death, become aware of a sale defect, they have the right to pursue the option, but if one of them forfeits this right, the right will be forfeited by all heirs.

An option in the case of the seller notifying the buyer of different selling prices (*khiyar Al-ikhbar bil thaman*)

Article 192: The price notification option is defined as follows: This option is triggered in sales where the seller must tell the buyer about the actual commodity price but is untruthful and reports either a higher price or a lower price. This practice often takes place in *murabaha* sales and partnerships (*musharaka*).

Article 193: The actual cost must be declared when the seller declares the sale cost in *murabaha* and partnership sales. If it becomes clear to the buyer after the contract's conclusion that the price is less than what the seller stated, the seller is obligated to sell the commodity at the actual price, as there is no option given to the buyer to cancel the contract[229].

Article 194: If the seller mentions that the commodity was bought at a specific price and that the commodity was bought at a deferred price, the seller is obligated to sell at the actual cost of the commodity.

Article 195: The seller is obligated in sales in which he or she declares the cost to accurately indicate to the buyer the price paid in the contract. However, if the seller tells the buyer a different price, the buyer can choose between returning the thing being sold and voiding the contract or keeping the thing being sold without compensation[230].

4.5 Chapter outcomes

This chapter describes all aspects of a legitimate *Sharia* sales contract, expressed in 90 codified articles (see Table 1). The main conclusions to be drawn from this chapter are as follows:

- There is a known structure that Islamic jurisprudence books follow in their sections concerning sales contracts. The Ottoman Empire's Journal of Judicial Judgments (Al-Majallah) has defined a similar structure for sections on sales.
- This thesis aims to provide an innovative idea for evaluating modern financial and commercial sales transactions to test contract compliance with *Sharia* regulations by understanding what affects the financial transactions and business sales of *Sharia*-

[229] For example, if the seller buys the goods for one million dollars, then sells them by way of *murabaha* and says that the price of the goods is one million, one hundred thousand, then it turns out after the completion of the contract that the price of the goods is only one million dollars, the sale must be made at the actual price of one million dollars, and there is no option to cancel the contract.

[230] For example, if the seller buys the goods in dollars and states that the goods were bought in euros, the buyer is given the option between paying in euros or dollars.

prohibited transactions, as examining the internal parts of legitimate Islamic sales transactions is essential.

- The sale has gone through four stages of development:
  - First: Bartering
  - Second: Absolute sales
  - Third: Money exchange
  - Fourth: *Salam* sales
- The absolute sale arose due to several different transaction types requiring the declaration of the actual cost of the commodity.
- Cost disclosure has become a common practice in sales made during economic recessions to entice buyers who wish to know the commodity's actual cost in order to be comfortable with the price they will pay.
- According to *Sharia*, sales contracts apply only to material property *(al-mal)*.
- Material property *(al-mal)* is everything that has value among people, including services, because they have value.
- There is a difference between the *Sharia* definition of a sale and the definition of a sale in civil law.
- The *Sharia* sales contract consists of three pillars:
  - The contracted objects/subjects.
  - The contracting parties.
  - The contract form.
- Every valid *Sharia* sale must meet seven conditions:
  - There must be mutual consent between the contracting parties.
  - It must be permissible for the contracting parties to utilize the commodity.
  - It must be permissible for the contracting parties to benefit from the contracted subject.
  - The contracting parties must have the full right to dispose of the contracted subject.
  - The contracting parties must be able to deliver the contracted property.

- Information and facts about the contracted subject must be known by all contracting parties.
- The actual value of the sale subject must be known by all contracting parties.

- Sellers and buyers may apply the terms and conditions in the sales contract.
- Six options attached to the sales contract are discussed. See Diagram 1.

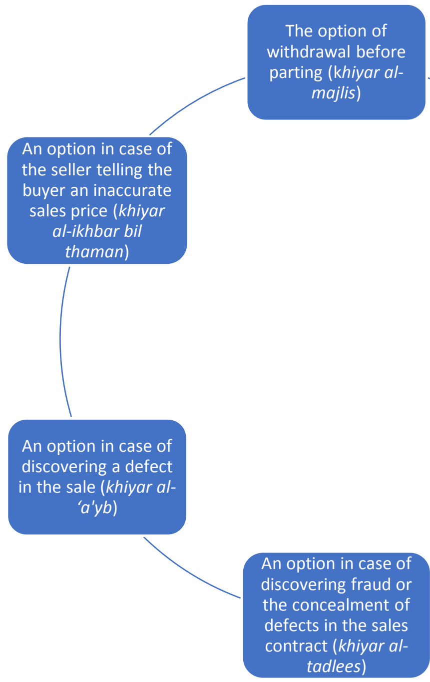


Diagram 1

		Codified Articles
A	The definition of property *(al-mal*)	3
B	Definition of a legitimate *Sharia* sale and the conditions for its validity	11
C	A sale by an authorized party (*wakeel fe al-bay'a*)	5
D	Sales act provisions for a premature, nonverbal, or visually impaired person or a person with a mental disability	5
E	Forbidden sale types and contract components	7
F	Terms and conditions in sales contracts	4
G	Options (*al-khiyar*) in sales contracts	1
H	The option of withdrawal before parting (*khiyar al-majlis*)	12
I	The option by stipulation, or a conditional option (*khiyar al-shart*)	13

J	An option in case of discovering a gross deception in the sales contract (*khiyar al-ghabn*)	9
K	An option in case of discovering fraud or the concealment of defects in the sales contract (*khiyar al-tadlees*)	4
L	An option in case of discovering a defect in the sale (*khiyar al-a'yb*)	13
M	An option in case the seller tells the buyer an inaccurate sales price (*khiyar al-ikhbar bil thaman*)	4
Total		90

Table 1

Chapter 5

Codifying Different Types of Islamic Sales Transactions

5.1 Framework

In the previous chapter, a detailed study was presented regarding sales components according to Islamic jurisprudence, which were compared with the components of sales contracts in the civil laws of Arab and European countries. This was presented to provide a general picture of the most widespread types of contemporary Islamic sales contracts.

This chapter will present three of the most commonly used Islamic sales contracts in the financial and commercial markets:

a) *Murabaha* contracts;

b) *Salam* contracts; and

c) Investment agency contracts (*al-wakala bi al-istithmar*).

However, it is imperative to be aware that when the first official Islamic bank was established in 1975, its essential work focused on realizing the higher *Sharia* purposes (*Al-maqasid al-Sharia*) of money. Therefore, these banks' business in their early stages of development was focused on partnership contracts, all kinds of speculation, and goods trading. In addition, banks used to offer charitable loan contracts to the needy with zero interest added to the principle.

The above era lasted from 1975 until 1980, and then a new phase in Islamic banking began in which banks focused on different sales formulas for providing financing to customers as an alternative to *riba* loans offered by commercial banks. Mainly, a new bank financing instrument named *murabaha*, used to purchase goods on behalf of an orderer, emerged. This type of arrangement once accounted for 90% of the financing operations of Islamic banks, to the point where it was said that the Islamic banks had entered a "*murabaha* prison" (Kamal 94).

Then came a third stage, starting in 2000 and continuing until the present, in which financing was introduced in the form of the *tawarruq* contract, which then came to account for more than 60% of Islamic banking transactions. Until recently, Islamic jurisprudence scholars conducted profound studies on and issued fatwas against the permissibility of *tawarruq* transactions[231] (Al-Saeedi).

The reasons Islamic banks expanded their use of different Islamic sales contracts for financing can be briefly summarized as follows:

a) The influence of interest-based banking on investments in Islamic banks.

b) The low risk of financing through banking *murabaha* or using *murabaha* to purchase ordered goods.

c) The ease of application of *murabaha* and *tawarruq* compared to that of participatory contract types.

Therefore, it is vital first to study the *Sharia* legitimacy of having a third party in various Islamic direct sales contracts, specifically the bank's participation in a sales contract between two parties. Additionally, the occasioning factors (*al-illah al-shariah*) check mentioned in chapter two should be conducted to ensure that the third party (bank) transactions do not involve fictitious sales-like transactions. The focus is on Islamic banking because it is the most common type of banking involved. Islamic banks usually use different sales contracts to provide financing for their clients.

Given the above, the first step should be to identify the difference between Islamic and conventional bank operations to understand the extent of the permissibility for the bank to act as a third party in *Sharia* sales contracts.

However, before discussing the functions of Islamic banks and their differences from conventional banks, it is necessary to recall the idiomatic meaning of a bank and its main tasks:

> "A financial institution licensed to receive deposits and make loans. Banks may also provide financial services such as wealth management, currency exchange, and safe deposit boxes. There are several different kinds of banks, including retail

[231] The sanctity of the *tawarruq* transaction was clarified in chapter three of this thesis.

banks, commercial or corporate banks, and investment banks. In most countries, banks are regulated by the national government or central bank" (Barone).

Furthermore, it is necessary to know how Islamic banks function and whether they are permitted to be commodities traders, in addition to their specialization as money traders.

In theory, a commercial bank's core business is based on loan transactions, and an Islamic bank is based on sales. A conventional bank deals with cash and debt (loans), not commodities. The commercial bank is a money and loan dealer. Such banks take cash loans as trade by borrowing money at a lower interest rate and lending it at a higher rate. Hence, trading commodities does not fall within the business scope of such banks, as stipulated in banking laws and regulations (Al-Suwailem 104).

Focusing on a single banking operation that relies on loans, money exchange, and complex interest-based activities has given rise to the call to return to "boring banking" (Elliott).

An Islamic bank's business practices are based on sales on deferred payments and on increasing the price during an agreed-upon period of time. Such transactions are permissible when they are a two-way relationship between the seller and buyer. It is not permissible for the bank to become involved as a third party in such a transaction because the transaction would be fictitious and lead the bank to act as a *riba* lender (Qala'wi 185).

Therefore, for an Islamic bank to act as an actual and legitimate trader, the bank must stand as a nonfictional commodities seller. In addition to providing traditional banking services, it must bear the same risks as traders.

An Islamic bank, due to the abovementioned added service activities, deviates from the core business scope of a traditional bank that focuses on money and loan dealings. As a result, Islamic banks find themselves outside the known definition of the scope of banking in an idiomatic sense.

However, in practice, Islamic banks try to avoid dealing with commodities by purchasing them upon the client's request under the condition that the client is then obligated to purchase the requested commodity from the bank. This obligation toward the bank leads to another *Sharia* problem, as no Islamic jurisprudence schools permit the customer to be required to make such a purchase.

Consequently, the above leads to a critical question: Can an Islamic bank engage in sales and leases as a financial intermediary?

Dr. Rafiq Al-Masri (d. 2021), a reputed *Sharia* scholar, explains in detail the *Sharia* provision on this matter:

> "It is not *Sharia* permissible for the Islamic bank to mediate between the seller and the buyer, separate the financing from the sales, or play the role of the financier under the selling guise, and in fact, it is not a financier.
>
> If the price of the thing is deferred, it is permissible to increase the original price in Islamic *Sharia*, provided that the seller and the financier are the same. This transaction is not permissible if the Islamic bank acts as a financier and leaves the sale to the merchant and the buyer's purchase because the transaction's reality becomes a hidden *Riba* loan. It is not *Sharia* permissible for the Islamic bank to pretend to sell while the bank is not a merchant, and if the bank did that, the bank would inevitably resort to Stratagems" (Al-Masri, Al-Tamweel Al-Islami 66).

In summary, Islamic banks are distinguished from commercial banks by their commitment to *Sharia* rules, but they are similar to other banks in other technical banking matters. If an Islamic bank wants to be a mediator, it must abandon commodities trading like any other bank, except that it still may not deal with *riba*.

Thus, an Islamic bank has two options:

- It may cling to the traditional banking services and gives up *Sharia* rules, so that if it insists on practicing commodities trading, it cannot escape falling into fictitious transactions.
- Alternatively, it can adhere to *Sharia* rules, giving up traditional commercial banking practices, so its commodities trading will be genuine.

5.2 *Murabaha* contract

As mentioned above, the *murabaha* contract is a typical transaction in Islamic banks. First, the *murabaha* sales contract contained in Islamic jurisprudence books will be discussed, and then, the modern banking contract of *murabaha* to purchase the orderer contract will be discussed.

a) The Jurisprudential Murabaha (*Al-Murabaha Al-Fiqhiyah*)

Tracking and extrapolating from Islamic jurisprudence books, *Sharia* scholars divide sales into two types based on price determination:

1) Negotiated sale: a commodity sale at an agreed-upon price between the seller and the buyer, without considering or relying on the initial price at which the seller purchased it (Al-Ansari 382).
2) Trust-based sale[232]: This is a commodity sale based on the price at which the seller bought the commodity. Accordingly, the seller must be trustworthy regarding the commodity's purchase cost, which is why this is called a trust-based sale (Al-Musa et al. 23: 6).

i. *The definition of jurisprudential murabaha*

The jurisprudential *murabaha* sales contract (*al-murabaha al-fiqhiyah*) is defined as a trust-based sales contract between the seller and buyer to sell the commodity at the same price the seller bought it[233] but with an additional known amount of profit (Al-Dusuqi 159: 3).

Moreover, the thinking behind *murabaha* sales is that the buyer may be unaware of the condition of the goods and their prices but at the same time have confidence in the seller's experience and honesty, thus preferring to buy based on the seller's honesty rather than his

---

[232] Among the most prominent trust-based sales type is the *Murabaha* sale.
[233] The purchase price can be declared by providing invoices and receipts.

or her bargaining. Additionally, the buyer may wish to purchase the commodity through bargaining but does not have the time for it, so the buyer resorts to a *murabaha* sale.

ii. *The conditions for a murabaha sale*[234]

For the *murabaha* contract to be valid, the following is needed:

a) Knowledge of the first price (actual cost): It is required that the initial cost be known to the second purchaser because wholesale depends on knowledge of this cost. The sale is invalid if the initial cost is unknown.

b) Knowledge of the profit: The amount of profit must be known, whether this profit is a specific amount or a percentage of the price, because it is part of the sale price (Meerah 129).

c) The capital value should be the same currency as the banknotes involved (US dollars for US dollars, euro for euro) and relevant weights (Al-Shubaili).

Moreover, failure to disclose the actual cost in the *murabaha* contract invalidates the contract, whether the cost is unknown by the seller, buyer, or both parties. The contract's invalidity stems from the lack of knowledge about the actual cost, which leads to price ignorance, invalidating the contract; it is an aleatory element (*gharar*), which is forbidden in Islamic sales.

Furthermore, the amount of profit must be declared in the contract. The nondetermination of the profit amount of the *murabaha* sales contract leads to the invalidity of the contract because it also leads to aleatory elements.

However, contemporary *Sharia* scholars differ regarding the ruling on variable profit in *murabaha* sales contracts, generally voicing one of two opinions:

- First opinion: *Murabaha* with variable profit is prohibited[235].

[234] See Diagram 1 at the end of this chapter.

[235] The AAOIFI clearly addressed this in *Sharia* standard No. 8: "It is not permitted under any circumstances to subject the determination of the price or the profit to unknown variations or variations that are determinable in future, such as by concluding the sale and making the profit dependent on the rate of LIBOR that will

The vast majority of *Sharia* scholars do not approve *murabaha* with variable profit. These scholars believe that selling at a variable profit contradicts Islamic legal principles because not knowing the price and profit from the beginning leads to *riba*, adds an aleatory element (*gharar*), and falls under the *Sharia* prohibition of making two sales deals in one contract (Suwailim).

- Second opinion: *Murabaha* with variable profit is permissible.

A minority of *Sharia* scholars think that having variable profit does not necessarily mean that the profit is not declared from the beginning. These scholars argue that this innovative solution for calculating profit will allow Islamic banks to compete with commercial banks.

Thus, scholars such as Dr. Al-Shubaili claim that *murabaha* can have variable profit:

> "Perhaps one of the most prominent problems faced by these banks is the method of calculating profit in long-term financing contracts. It has become impossible for the Islamic bank to provide long-term financing with a fixed profit margin in light of the inflation that societies suffer today from inflation and fluctuation in profit rates from time to time.
>
> The bank does not accept the risk of calculating a fixed profit throughout the repayment period for fear of a rise in prices later on; this compels Islamic banks to finance with a profit higher than the profit achieved from the previous financing, so the bank loses. Neither does the client accept that Islamic bank calculates a profit higher than the prevailing financing in the market" (Al-Shubaili).

iii. *The conditions for including variable profit in a murabaha sales contract*

Sharia scholars have authorized the calculation of the amount of variable profit permissible and suggested setting precise controls in the *murabaha* contract to prevent the possibility of *riba* and aleatory elements (*gharar*), as shown in the following:

a. The contract must be valid per all *murabaha* contract terms.

---

prevail in future" (Accounting and Auditing Organization for Islamic Financial Institutions, (*Sharia*h Standard No. (8): Murabahah 211).

b. A precise mechanism for determining the price installments and the dues must be included in the contract to avoid disputes.

c. When signing the contract, the two contracting parties must specify an exact and indisputable criterion or indicator. This criterion or indicator will be the reference for determining the deferred installments.

d. In the contract, both contracting parties must mention higher and lower ceilings for an acceptable amount of fluctuation in the timing of the installments.

e. Suppose that the deferred installments have been determined and the time for payment comes due. In this case, it is not permissible in any way to impose an increase in the debt on the debtor in return for a delay in the delivery of the commodity or the payment, regardless of whether the increase is a fixed or variable amount, whether it is stipulated in the contract, or whether both parties then agree upon it (Meerah 128-129).

Nevertheless, the issue of calculating the variable profit in *murabaha* is a matter worthy of serious research by *Sharia* researchers specializing in Islamic financial transactions because it opens new horizons and great opportunities for Islamic financial solutions. Likewise, *Fiqh* academies should issue research and fatwas on this modern issue and examine it in terms of all aspects of jurisprudence and economics.

b) The Banking *murabaha* or *murabaha* to purchase goods on behalf of an orderer (*al-murabaha lil a'mir bil shira'*)[236]

By the nature of their activities, Islamic banks do not own commodities and do not mainly trade in commodities or merchandise. In the early years of Islamic banking in the mid-nineteen seventies, *murabaha* was not applied except within narrow limits and minimally in line with the earlier definition of such a practice.

[236] Modern *murabaha* has several names in Islamic banks, including banking *murabaha*, *murabaha* to the one ordering or promising to buy, and combined *murabaha*.

Consequently, jurisprudence regarding *murabaha* contracts has been developed and restructured to suit contemporary banking activities, as the later forms of Islamic bank *murabaha* transactions have become widely practiced. Islamic banks have expanded their use of *murabaha* contracts as a financing instrument to the point that such transactions account for the majority of financing contracts available from Islamic banks.

The expanding volume of banking murabaha contracts is keeping pace with the developments in *murabaha* contract applications in terms of the quality and number of applications. *Murabaha* is no longer limited only to individual bank clients; rather, Islamic banks have widened its use to include financing institutions and companies with various needs for financing merchandise and purchasing from local and international markets. Islamic banks have even gone further by financing infrastructure projects through complex *murabaha* financing.

As a result of the increasing demand for Islamic banks' financing transactions and their desire to meet their customers' needs and requirements, they have developed complex modern banking transactions by relying on the simple *murabaha* sales contract mentioned in Islamic jurisprudence books.

It is also important to note that the term "*murabaha*" has expanded in Islamic banking practice to include all of a bank's forward-purchased commodity sales based on a client's promise or request to purchase commodities, whether through a forward sale such as a traditional *murabaha* contract or through a price-bargaining sale.

The bank does pay attention to whether the customer will actually use the commodity or use the virtuality of the *murabaha* commodity sale to obtain cash through a *tawarruq* transaction, which the highest board of *Sharia* scholars has issued *fatwas* against, as previously discussed in detail in Chapter Three.

Therefore, it is imperative to understand the structure of modern banking transactions. How do Islamic banks apply *murabaha* sales? What is the *Sharia* ruling for this type of transaction? These questions are discussed in the present chapter.

i. *History of Banking Murabaha or Murabaha to Purchase Order Contract*

In brief, Islamic banking developed gradually in the early 1970s and has shown remarkable growth over the last 30 years in particular. Researchers agree that the first person to use the complex term "*murabaha*" was Dr. Sami Hammoud in his 1976 doctoral thesis entitled "Developing Banking Business in Compliance with Islamic Law." Then, a group of banks adopted this type of transaction, including the Jordan Islamic Bank in 1978, of which Dr. Hammoud himself was a prominent founder (Iqbal and Molyneus 1, 36).

Furthermore, the new *murabaha* transaction spread quickly among Islamic banks and accounted for the largest share of bank financing transactions. As a result, the International Islamic Fiqh Academy issued recommendations to banks to reduce their use of *murabaha* for purchase order contracts and increase their use of other modes of investment, such as partnerships and investment agencies[237].

ii. *The definition of banking murabaha or murabaha to purchase orderer contracts*

The current *Sharia* literature provides a definition of contemporary *murabaha* to purchase orderer contracts and the many different names to describe this arrangement, such as banking *murabaha* (*al-murabaha lla'mir bil shira'*) and complex *murabaha*, as follows:

> "A *Murabaha* to the purchase orderer (MPO) is a form of *Murabaha* in which the potential buyer (purchaser orderer) instructs the seller (usually an Islamic bank, a

[237] Resolution Nos. 40–41 (2/5 and 3/5) concerning *murabaḥa* to the purchase orderer read as follows:

> "Having noted that most Islamic banks devote most of their business to financing through *Murābaḥah* to the purchase orderer, the Academy recommends:
> First: Activities of Islamic Banks shall be expanded to cover all the development mechanisms of economy particularly by sponsoring industrial and commercial projects, through individual initiatives or *Muḍārabah* or *Murābaḥa*, with other partners.
> Second: Practical aspects of Murābaḥah to the purchase orderer shall be studied by Islamic Banks with the aim of working out the basis for safeguarding against any pitfall in the application process and to help upholding general or private *Sharia*h rulings governing transactions of *Murābaḥa* to the purchase orderer" (International Islamic Fiqh Academy, "Resolution Nos. 40–41 (2/5 and 3/5) Keeping a Promise and Murābaḥah to the Purchase Orderer").

> financier) to purchase a given asset/commodity according to pre-defined specifications” (Fincyclopedia).

Dr. Hammoud defined the new *murabaha* structure as follows:

> “The customer [asks] the bank to purchase the required commodity with the description specified by the customer, and based on the customer’s promise to purchase that commodity by the *Murabaha* method, and the parties agree on the profit percentage, then the customer pays the price in installments according to his ability” (Hammoud 432).

iii. *Analysis of banking murabaha and its compliance with Islamic Sharia*

A banking *murabaha* transaction is carried out in two stages[238]:

- The first stage is promising to make a *murabaha* purchase. A client promises to purchase the requested commodity from the bank, and the bank promises to purchase the commodity for the client and sell it to the client for an agreed-upon profit.
- The second stage is the actual conclusion of the banking *murabaha* process.

First stage: Promising to make a *murabaha* purchase

Banking *murabaha* is based on a promise between the two parties (the bank and the client). In some banks, the promise is binding on both parties. In most banks, the promise to buy is binding only on the bank. Once the bank purchases the requested commodity, the customer becomes bound to purchase the requested commodity from the bank.

There may be banks that implement a noncompliance clause regarding such a contract and give the option to both parties, the bank and the customer, but none are known to this author. Banks that bind themselves are similar to banks that bind both parties because the bank is not obligated to buy the commodity, only to sell it once it is bought.

[238] See Diagram 2 at the end of this chapter.

However, most Muslim scholars of the four jurisprudence schools hold that a binding promise on both parties is not permissible, even though all Muslim scholars agree that fulfilling the promise is necessary.

Furthermore, the following provides details on the thinking of scholars from different Islamic jurisprudence schools related to binding promises by both parties:

- In the Hanafi jurisprudence school, scholars debated the decree of the promise in *Sharia*. A famous Hanafi scholar named Ibn Noujaim (d. 1563) said that a promise is not binding unless it is conditional (Ibn Noujaim 290).

  Ottoman law (Majallah) states that a promise attached to a condition becomes binding: “Any promise dependent upon a condition is irrevocable upon such condition being fulfilled. Example: A person tells A to sell a certain thing to B and informs A he will pay him in the event of B failing to do so, and B does, in fact, fail to do so. The person making the promise must pay the money” (Ottoman Empire Articles: 84).

- From the Maliki jurisprudence school, Ibn Rushd (d. 1126), often Latinized as Averroes, a well-known Muslim scholar from Cordoba in Andalusia, believed that the promise must be fulfilled if the promiser encounters trouble (Ibn Rushd 18: 8).

- From the Shafiee jurisprudence school, Imam Al-Nawawi (d. 1277) said, “The scholars have unanimously agreed that whoever promises a person something that is not forbidden must fulfill his promise, and is that obligatory or desirable? There is a dispute between them; Al-Shafi’i, Abu Hanifa, and the majority believe that it is desirable (mustahab), and if he leaves it, he misses the credit and commits the abomination” (Al-Nawawi 195).

- From the Hanbali jurisprudence school, Burhan Al-Din Ibn Muflih (d. 1362), a chief Hanbali scholar in his time, said that it is unnecessary to fulfill the promise, as was stipulated by Imam Ahmad, and most scholars have said the same because this is implied in the meaning of monetary exchange grants before possession is transferred (Ibn Muflih 345: 9).

On the other hand, legal scholars have decided that a promise to buy is like a promise to sell: It forms a binding contract for the side promising to make the purchase, as there is no obligation on the part of the promisee. As for the obligatory nature of the promise, it is an obligation to do something (obligation *de faire*). This is the obligation to conclude a final sale with the promisee showing a desire to sell within the specified period. This obligation is not dependent on a purely voluntary condition (Nasif 130: 1).

Civil laws in Arab countries align with Islamic jurisprudence in holding that a promise to conclude a contract is not meant as a conclusion but is a primary means to secure a contract. The point of disagreement is that the law considers a promise to conclude a contract to be a contract in and of itself, while the opposite is true in Islamic jurisprudence, as there is a difference between a contract and a promise.[239]

For example, the Civil Code of the Kingdom of Bahrain states the following in Article 50, related to the promise of a contract, as translated by the Bahrain economic development board:

> "An agreement by which the two parties, or one of them, promise to enter into a particular contract in the future is only binding if all the necessary points of the contract are envisaged and the time when the contract should be concluded is stated. When the law provides that a contract shall not be valid unless a certain form is observed, this form must also be observed in any agreement embodying a promise to enter into such a contract" (Bahrain Economic Development Board).

It is noted in the above code that the article considers the promise to conclude a contract to be itself a contract. Furthermore, the elements and conditions of the promise must be met to be binding, regardless of whether the promise comes from both parties or one party.

Second stage: Concluding the *murabaha* to purchase orderer or banking *murabaha* process

---

[239] In Spanish law, the promise to sell or purchase is considered a contract, as stated in Article 1451: "A promise to sell or purchase, if there is agreement as to the thing and the price, shall entitle the contracting parties to reciprocally claim the performance of the contract" (Ministry of Justice - Spain and Clusen). See also Article 1862.
Portuguese civil law is similar. See articles 411, 412, 413, 440, 441, 442.

This transaction consists of three parties: the customer or entity who ordered the purchase, the merchant or Islamic bank, and the seller.

The banking *murabaha* process is carried out as follows:

a. The customer asks the bank to purchase a specific commodity.

b. The bank agrees to purchase the specific commodity.

c. The customer signs a promissory contract to purchase the required commodity from the bank after the bank buys the commodity and owns it in full. The promise may or may not be binding on the client.

d. The bank promises to sell the described commodity to the customer. The promise may be binding or nonbinding.

e. The bank purchases the specific commodity for cash.

f. The bank sells the specified commodity to the customer on a deferred payment plan at the level of profit agreed upon between the bank and the customer[240].

Furthermore, *Sharia* scholars differ in their ruling on banking *murabaha* transactions due to their different opinions related to promises, as explained earlier: Is a promise binding on the promisee or not? It is necessary to discuss the opinions regarding whether the promise is binding on both parties or only one of them.

Some Islamic banks' *Sharia* board members agree on the permissibility of the bank being obligated but not the customer. Here, it can be understood that the bank has a choice because its obligation toward the customer does not begin until after purchasing the commodity. This statement brings this view closer to the opinion of those who argue that the promise binds both parties.

[240] For example, a customer wants to buy a villa for 500,000 euros but does not have the required amount in cash. The customer goes to a bank (generally an Islamic bank) and asks the bank to buy the villa, promising to buy it from the bank for an increase of 10% of its value, so the bank buys the commodity and owns it wholly. Then, the bank sells it back to the customer. The customer pays the bank the price for the villa plus the agreed-upon increase in the form of installments as part of a specified contract term.

Dr. Rafiq Al-Masry commented on the obligation behind the promise for both parties in a *murabaha* sale:

> "The *Sharia* ruling must revolve between the option to fulfill for the two parties together or obligating them together. Thus, both transaction parties are treated equally, sharing profit and loss risk. Just as the customer might have reasons that might force him not to fulfill his promise, the bank is also exposed to such reasons, such as the commodity price change between the promise to purchase and the contracting date, or an incurred expenses change from the expected, such as an increase in shipping costs, insurance, customs, and currency exchange rates" (Al-Masri, Al-Tamweel Al-Islami 94).

Accordingly, the majority of *Sharia* scholars have stated that the promise is not binding on both parties to the contract. The option for the *murabaha* contract to be binding for the customer ordering the purchase (banking *murabaha*) is valid if there is no such binding on both parties to the contract.

iv. *The difference between a murabaha contract and a murabaha promise*

Islamic banks' *Sharia* board members generally split banking *murabaha* transactions with customers who order commodities into two stages: the promise stage and the contract stage.

The splitting of transactions into stages raises an interesting question. If a promise is considered binding by the bank's *Sharia* board members, why did the transaction not occur from the beginning? As a result, there is a difference between a sale and a promise to sell if both parties are bound.

The answer is that the bank does not own the commodity when making the promise to the customer, and the bank may not be able to buy the commodity for some reason, such as a high price.

Thus, the bank may resort to relying on the promise between the bank and the customer. Even if it believes that the promise is binding, attention must be paid to the meaning of commitment according to the *Sharia* board members who adopted the *Sharia* opinion, leading to a clear understanding of the difference between a *murabaha* sales contract and a binding promise to sell.

It is essential to understand why the vast majority of Islamic banks' *Sharia* board members prefer the *Sharia* guidance of making the promise obligatory and making the promise agreement a preliminary step before the banking *murabaha* sale transaction can be concluded[241].

The main reason is to avoid going against the prophetic *hadiths* that forbid the sale of something that is not fully in the seller's possession. Therefore, banks prefer to add a step prior to the conclusion of the sale by adding a "promise contract" between the parties. The banking *murabaha* sales contract does not equate to selling unpossessed commodities and profiting from unguaranteed sales. Banks initially applied the "promise agreement" as a temporary avoidance of *murabaha* sales contracts; then, they made the promise binding to ensure the same binding qualities for both parties.

vii. *The difference between banking murabaha and jurisprudential murabaha*

The claim that banking *murabaha* transactions and jurisprudence *murabaha* sales transactions are the same is far from accurate and can be proven through the following comparison table:

Jurisprudence *Murabaha*	Banking *Murabaha*
The commodity is available and ready with the seller.	The commodity is not available to the seller.
The sale takes place in one stage at the conclusion of the contract.	The sale takes place in two stages: the promise stage and the contract stage.

[241] A companion of Prophet Mohammad (peace be upon him) named Hakim bin Hizam narrated an authentic hadeeth as follows: "I asked the Prophet, "O Messenger of Allah, a man may come to me and ask me to sell him something that I do not have. Can I sell it to him then go and buy it from the market? He said: Do not sell what you do not have" (Al-Nasa'i 238: 3).

The price is known at the time the contract is concluded.	The price is unknown, as the bank has not yet purchased the commodity and does not know what its original price will be before selling it to the customer at a profit.
There is two-way bilateral *murabaha* between the merchant and the customer.	There is three-way *murabaha* among the bank, the customer who requested that the bank purchase the commodity, and the merchant from whom the bank purchases the goods.
The seller receives the payment either immediately or on a deferred schedule.	The bank receives the payment mostly on a deferred schedule, so it buys the commodity at a cash price to resell it at a deferred price.

viii. *The engagement of Islamic banks as traders for financing purposes*

Many studies have been written on the banking *murabaha* sale, yet they have all neglected a significant issue related to the role of Islamic banks in the banking *murabaha* process.

Is the bank a financial intermediary dealing with money and loans and avoiding trading commodities such as merchandise and real estate, or is the bank a commodity merchant that avoids trading in money and loans?

Note that banking laws stipulate that banks are not allowed to buy real estate to sell it, and if the property is transferred to them, they must dispose of it within a short period of two or three years at most. It also prohibits banks from engaging in wholesale or retail trade or in import or export business[242].

[242] As mentioned in the Kingdom of Saudi Arabia Banking Control Law 10th article:

"It is prohibited for any bank to engage in the following business:

1. Working for bank's account or commission in wholesale or retail trade, including import or export.

Therefore, the integrity of the fatwa and scientific research depends on determining the role of the Islamic bank: Is it a commodity trader or a financial intermediary?

Seemingly, Islamic banks rotate among selling and other activities. Islamic banks want to take on a trader role without taking on its related profit and loss risk. Islamic banks try to avoid *riba* without entering into actual sales.

The more inclined the Islamic bank is toward the actual sale, the closer the work of the commodity trader is, in which case, the term "bank" seems inappropriate. The more inclined the bank is toward a simulated sale, the closer it is to loans and currency trading; thus, it agrees with the definition of a bank and its applications.

5.3 *Salam* sales contract

Salam sales are one of the most common contracts in the Islamic finance sector. Given the importance of *salam* sales and their prominent role in the financial dealings between producers and customers, this essential financial element is codified below according to the provisions of Islamic *Sharia*.

A *salam* sale is considered a kind of debt arising from a commutative contract, the purpose of which is profit and acquisition on the buyer's part; the buyer is motivated to urgently obtain capital as a price for a future sale with the liability falling only on the seller.

---

2. Owning or renting real estate, unless necessary for the management of the bank's business, for the accommodation of its employees, for their entertainment, or the fulfillment of a debt to the bank before third parties.

Suppose the bank owns real estate in fulfillment of a debt owed to it by a third party, and this real estate is not necessary to manage its business, house its employees, or entertain them. In that case, it must liquidate it within three years from the date of transfer of the real estate to it, or if exceptional circumstances exist that are justified within the period or periods that the institution approves it and on the terms it specifies.

Suppose the bank owns real estate prior to the effective date of this system in violation of the provisions of this paragraph. In that case, it must liquidate them gradually within seven years, or if exceptional circumstances are found that are justified within the period or periods approved by the institution and on the conditions it specifies" (Bureau of Experts at the Council of Ministers - Kingdom of Saudi Arabia).

Moreover, for this transaction's features, provisions, and purposes to become apparent, it is necessary to shed light on its essential elements, legal purposes, and related *Sharia* rulings.

a) *Salam* sales contract definition

Sharia scholars have defined the *salam* sale as “a sale contract of well-described future goods to be delivered for a price to be paid when concluding the contracting” (Ibn Dhuwayyan 296).

Another definition for a *salam* sale is a sale in which the price is accelerated, and the sale is postponed (Al-Mutee’i 145: 12).

While the civil laws in some Arabian countries define *salam* sales contracts and mention some of these contracts’ conditions, they do not detail the elements and conditions that must be present in the contract. For example, in article (532), Jordanian civil law defines a *salam* contract as the sale of goods for deferred delivery at an increased price.

Furthermore, the majority of *Sharia* jurists have defined the four pillars of *salam* sales as follows:

- The contract form (an offer and acceptance),
- The contracting parties (seller and buyer),
- The thing being contracted (a good or benefit), and
- The capital (price).

Accordingly, the *salam* sales contract must contain these four internal pillars, and a breach of any of these parts makes the contract *Sharia* invalid.

b) Legal *Sharia* evidence for the permissibility of the *salam* sales contract

Because of the importance of the *salam* sales contract and people’s need for it, Islamic *Sharia* makes an exception so that *salam* sales are permissible and exempt from the prohibition of the Prophet Muhammad, peace and blessings be upon him, regarding the sale of what does not already exist or is not already available to the seller.

Moreover, among the Qur'anic evidence for the permissibility of the *salam* sales contract is as follows: "O you who believe! When you contract a debt for a fixed period, write it down" (Taqi Al-Din Hilali and Muhammad Muhsin Khan 282: 2).

Furthermore, the companions of the Prophet Muhammad, peace be upon him, narrated many *hadiths* permitting *salam* sales. As the companion, Abdulla ibn Abbas narrated, "the Prophet Muhammad, peace be upon him, came to Medina, and the people used to pay in advance the price of dates to be delivered within two or three years. He said (to them): 'Whoever pays in advance the price of a thing to be delivered later should pay it for a specified measure at specified weight for a specified period'" (Al-Bukhari 503: 3, number: 2240).

Consequently, a well-reputed *Sharia* scholar named Ibn Al-Mundhir (d. 930 CE) mentioned the unanimous consensus among scholars that such a sales contract is permissible according to *Sharia*: "All of the scholars from whom we memorize are unanimously agreed that a contract between peace is permissible according to Islamic law" (Ibn Al-Munthir 134).

Salam sales contracts are vital to people's daily transactions, especially for farmers and manufacturers. A farmer may not have the capital needed for planting and caring for the land. Cultivating a crop may require money; otherwise, the farmer will miss the opportunity to invest in the land and fall into hardship and embarrassment, so a *salam* sales contract is permitted. Likewise, a manufacturer may need capital to purchase the materials necessary to manufacture the goods.

c) Terms of *salam* sales contracts

Salam sales contracts have unique conditions that differ from those of other sale types. The following terms are unanimously agreed upon among the four jurisprudence schools, Hanafi[243], Maliki[244], Shafi'ee[245], and Hanbali[246]:

i. A commodity purchased from the seller that is not currently available must be able to be accurately described in terms of, for example, its type, color, size, and country of origin, so that it does not lead to a dispute[247].

ii. The price must be declared and known to both parties.

iii. The payment shall be delivered immediately at the place and time when the contract is concluded. Some scholars have permitted delaying the payment for up to three days[248].

iv. The debt may not be equal to the cost of the *salam* sale, regardless of whether the buyer or a third party owns it. Instead, the total capital must be delivered at the time the contract is concluded or a maximum of three days afterward, depending upon the agreement between the two parties.

v. The sold commodity is a debt owed by the seller.

vi. The receipt of the thing being sold must be deferred to a specified and agreed-upon date.

---

[243] See (Al-Tahawi 7: 3).
[244] See (Ulaysh 332: 5).
[245] See (Al-Buwaiti 636–655).
[246] See (Al-Hijjawi, Zad Al-Mustaqni'a Fe Ikhtisar Al-Muqni'a 209–212).
[247] For example, the *salam* sale involving grapes is contracted; then, it must be for a term in which grapes' presence prevails in large quantities. While if the *salam* contract for grapes is for a period in which the harvest is sparse or impossible, the *salam* sale in grapes under such terms is useless because fulfilling the *salam* sales contract is not possible.
Moreover, scholars from the Hanafi school of jurisprudence are unique in stipulating that the product involved in the contracted *salam* sale should be available on the market at the time of the contract, and its existence should continue until the contract is fulfilled and delivered (Al-Uzjandi 180: 3).
However, the correct view is that voiced by the vast majority of scholars, namely, that it is permissible to make a *salam* contract regarding something not available at the time of the contract, which is aligned with the wisdom behind the legality of a *salam* contract.
[248] Only the Malikis permitted the postponement of the payment for a maximum three days (Ulaysh 332: 5).

vii. The thing being sold must be deliverable so that it will most likely be available at the specified delivery time, regardless of whether the delivery takes place at the seller's farm or in the market.

viii. Options in *salam* sales are prohibited, especially after the payment is received, because then, either of the contracting parties could use a *salam* sale as a pretext to benefit from the money and then return the commodity to the previous owner.

ix. It is not permissible to obligate the buyer to deliver the sold item before the due date because this may incur storage, refrigeration, and insurance costs and unnecessary risks, such as exposure to damage or theft, for the buyer.

x. It is permissible to deliver the sold commodity in acknowledged installments within known deadlines, provided that the amount of each installment (the specific value of each installment) is predetermined. In contrast, the rest of the installments are not affected if an installment is canceled.

xi. *Salam* products may not be sold at the market price upon delivery minus a known amount or percentage because this leads to a type of *riba* known as *riba* delay (*riba al-nasa*).

d) A buyer disposing of the *salam* sale product prior to its complete receipt

The majority of jurists are of the opinion that it is not valid for sold *salam* goods to be resold to the one who owes a *salam* sale delivery to a third party if the product will be received on a future fixed date or to exchange such a product because doing so is like selling something that is not in the seller's possession, which Islamic *Sharia* forbids.

Nevertheless, some famous *Sharia* scholars, such as Ibn Taimiyah, ibn Al-Qayyim, and Ibn Uthaimeen, permit the sale of the sold *salam* commodity to the one who owes the commodity at the same or a lower price than the initial *salam* selling price (Al-Dorar Al-Saniyyah).

e) Unavailability of the sold *salam* commodity at the appointed delivery time

If the *salam* commodity is not available at the time of delivery, such as if the buyer requires a specific type of apple but that apple tree is not bearing fruit in that year, plus the farmer cannot find the same product in the market to purchase it and deliver it to the buyer, the buyer has the option either to wait until the farmer provides the fruit or to terminate the contract and demand that the payment be refunded.

f) The parallel advanced *salam* sales contract

The parallel advanced *salam* sales contract is defined as a future sale contract, in which the seller of the first *salam* sale initiates another separate *salam* contract with a third party to secure goods matching the goods specified in the first *salam* sales contract. Thus, the seller can fulfill the commitment under the first contract, providing that there is no connection between the two *salam* sales contracts (Osoul Research Center).

For the above transaction to be valid, it is stipulated that the *salam* product purchaser should not sell what is bought but instead sell the same as what has already been bought so that the two contracts are separate from the other.

Once the first contract is delivered on time, the second contract shall be delivered at the agreed-upon time. However, if the delivery in the first contract is delayed, the commodity must be purchased from the market for delivery on the specified date.

g) Islamic banks offering *salam* sale financing

Islamic banks finance commercial and industrial activity by purchasing crops through *salam* sales contracts, especially in activities such as producing and exporting agricultural products.

As an example of current *salam* sale practices, Islamic banks deal with merchants through *salam* contracts by acting as the financier, and the merchant is the producer. The merchant has the right to dispose of the money received by purchasing the raw materials for the required products, provided that he or she demands payment for the required product and its delivery by the deadline.

Moreover, as explained in the *murabaha* transaction section, if the bank enters a *murabaha* transaction, doing so spoils the transaction because it is not within the bank's definition and specified tasks to be a commodities merchant. Therefore, if it becomes a commodity merchant and a financial intermediary simultaneously, it is clear that the transaction is fictitious and intended as a stratagem to circumvent *riba*.

Furthermore, the same issue arises with the *salam* sale and parallel *salam* contracts. Once the bank, as a third party, enters a *salam* sale, the sale is spoiled, and the *salam* sale transaction becomes just a stratagem to bypass *riba*.

5.4 Investment agency contracts (*al-wakala bi al-istithmar*)

An investment agency contract is essential in people's lives because of its relevance to all areas, including social and commercial areas. Therefore, Muslim jurists have devoted a particular chapter in their jurisprudence books to agency types, provisions, and conditions.

In this section, the details of investment agency contracts will not be discussed, as such details are presented in Islamic jurisprudence books and civil laws. Instead, the focus of this section will be on a specific type of contract, the "investment agency contract," as a newly widespread investment vehicle that connects the investor with an investment expert, selling the investor the service of utilizing the latter's investment expertise to manage and invest its client's wealth.

Moreover, the investment agency contract has recently gained wide approval in the Islamic financial sector, allowing this contract to compete with well-known contracts such as *murabaha* and *salam* contracts.

a) The definition of an investment agency contract

The Accounting and Auditing Organization for Islamic Financial Institutions defined investment agency contracts as follows: "appointing another person to invest and grow one's wealth, with or without a fee" (Accounting and Auditing Organization for Islamic

Financial Institutions, *Sharia*h Standard No. 46, *Al-Wakalah Bi Al-Istithmar* (Investment Agency) 1120).

Moreover, Professor Abdulsattar Abu Ghuddah (d. 2021), a reputed *Sharia* scholar and a member of many Islamic banks' *Sharia* boards, defined such contracts as follows: "A contract concluded for the investment and development of funds not based on partnerships or legitimate debts, in return for a fee" (Abu Ghuddah).

Legal scholars define this type of contract as one wherein the agent undertakes commercial business for his or her client in return for a certain fee. It is also called a commission or commercial agency contract (Karam 466).

b) The main pillars of an investment agency contract

Like all other commercial contracts, the investment agency contract consists of three main pillars: the offer and acceptance, the contract subject matter, and the two contracting parties (the principal and the agent).

Islamic jurisprudence books stipulate conditions that must be met by the principal, the agent, and the agency's subject. These conditions are summarized as the principal's validity to grant power of attorney, the agent's capacity in what has been authorized, and the absence of *Sharia* impediments to the core subject of the investment.

Moreover, an investment agency contract begins with the signing of the contract, and both parties may agree to halt the contract on a future date, after a specific event, or after investing in a specific geographical location. It is also possible to add clear conditions to the contract, provided that they do not contradict the requirements of the agency contract, such as restricting the use of agencies by referring to the client before each operation.

However, in an investment agency contract, the principal may amend the agency type and the restrictions placed in the contract, provided that these modifications do not affect the agent's rights or what the agent has previously disposed of prior to the modification. For example, the principal may transform the agency from a private agency for investment in a specific sector to a general agency for investment, or vice versa (Al-Sarkhsi 19, 61).

Additionally, the agency must not act in ways that contradict Islamic *Sharia*, so it is not permissible for an agency to participate in *riba* transactions or trade materials that are forbidden by *Sharia*, such as alcohol or pork (Accounting and Auditing Organization for Islamic Financial Institutions, *Sharia*h Standard No. 46, Al-Wakalah Bi Al-Istithmar (Investment Agency) 1120).

c) Investment agency fees

If the investment agency contract does not include remuneration, the agent would be a benefactor and would have no right to demand remuneration for the agency's work. Although the agency works for a fee, that fee must be specified so that it is known and is paid either as a lump sum or as a percentage of the invested money, and the fee may be linked to a disciplined indicator known to both parties; accordingly, acceptable fee forms are many and varied (Al-Dosiri).

The principal bears all the expenses related to the investment, such as transportation, storage, taxes, maintenance, and insurance, because the agent is merely a hired hand of the principal. Consequently, it is not *Sharia* permissible to stipulate that the agent bears the expenses, to postpone paying the agent's fee, or to link the fee to the investment results because the agency is considered to be selling a service, which falls under the category of renting.

Additionally, the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has issued a list of terms related to the contract's conditions between the agent and principal as follows:

i. "It is permissible for the agent, with the principal's consent, to set aside a portion of the profit to create a profit equalization reserve for the benefit of the principle.

ii. The agent acts in a fiduciary capacity in relation to the investment and therefore is not liable for any loss in cases other than willful misconduct, negligence, or breach of contract unless the breach happens to be advantageous to the principle, such as selling an asset for a price higher than the price required by the principle.

    In situations where the agent is held liable for capital loss, such liability is limited to the capital amount, and the agent is not liable for expected profit loss, whether the capital was invested immediately or delayed, or not invested at all" (Accounting and Auditing Organization for Islamic Financial Institutions, *Sharia*h Standard No. 46, Al-Wakalah Bi Al-Istithmar (Investment Agency) 1122).

Moreover, because the agent is a special appointee, the investment agent is not permitted to appoint a third-party agent for the core investment process, except for what the appointed agency does not do, the agent cannot do, or the principle authorizes to be delegated to someone else. Ultimately, the agent cannot dismiss the subagent unless the principal grants the agent permission to do so.

Additionally, the agent can restrict the agency's investment by referring to his or her principal client in every new investment transaction. The agent may also be required to invest in a particular type of investment with a specific percentage of the expected profit return, provided that the agent does not guarantee the percentage of profits. If the agent violates the conditions, he or she becomes a guarantor.

d) Termination of investment agency

Islamic jurisprudence books mention several things that will generally terminate an agency contract, and they also apply to the termination of the investment agency contract. The relevant information is as follows:

i. The principal's death, or the loss of eligibility for giving power of attorney, will terminate the contract because the agency's existence depends on the principal's valid authorization.

ii. Islamic jurists have excluded the selling agency from selling a mortgage upon the agent's death or loss of capacity when the term of the sale ends (Ibn Nujaym 37, 169: 6).

iii. The agent can dismiss him or herself from the agency without paying to avoid causing the principal any possible disadvantages.

iv. If the principal acts on behalf of the agent, this invalidates the agent's agency because it renders the agent unable to act, so his or her agency becomes invalid.

v. The agency's involvement may be terminated due to damage or losses caused by the agency.

vi. Temporary investment agency contracts must include an expiration date (Al-Sanhuri 224: 5).

5.5 The Proposed Codified Articles

Islamic jurisprudence *murabaha* (*al-murabaha al-fiqhiyah*)

Article 195: A trust-based sales contract is a type of sale that involves an agreement between the seller and buyer to sell the commodity at the same price the seller bought it, plus a known profit or percentage based on that initial cost[249].

Article 196: An Islamic jurisprudential *murabaha* sale contract (*al-murabaha al-fiqhiyah*) is defined as follows: The sale and purchase of goods or services where the acquisition cost and the markup must be disclosed to the purchaser. There are three requirements for the sale to be valid, and a lack of sufficient knowledge about any of them invalidates the contract:

a. Both parties should know the first price (actual cost);
b. Both parties should know the profit margin; and
c. The capital should be the same *riba*-based homogeneous commodity type.

Article 197: It is permissible for both parties to add the option to rescind the contract (*khiyar al-shart*) in the *murabaha* contract during the option-selection period between the two parties.

Article 198: It is not permissible to sell the commodity by *murabaha* before it comes under the seller's complete ownership.

[249] For example, someone buys merchandise for fifty thousand dollars, and another offers to buy it from him or her for a profit of ten thousand dollars.

Article 199: It is not permissible to hold a deferred *murabaha* contract in gold, silver, or other currencies.

Article 200: It is not permissible to issue negotiable instruments with *murabaha* debts or other receivables.

Article 201: The *murabaha* contract may not be renewed for the same commodity for which a previous *murabaha* sale contract was made with the same customer.

Article 202: Expenses added to the commodity price must be in line with the commercial practices of merchants, not other groups, and everything that increases in the sold thing or its value is attached to its price.

Article 203: The buyer can stick to the actual price and discount the increase if he or she finds that the seller's declaration of the commodity's purchase price is incorrect.

Article 204: The profit in the *murabaha* sale contract must be known, and the statement of the total price alone is insufficient. The profit may be based on a lump sum or a percentage of the purchase price only or the purchase price plus the expenses. This determination must be made by agreement and consent between the two parties.

Article 205: It is not permissible to agree upon the contract's conclusion that the profit shall not be fixed and instead be made variable by linking it to a variable rate of interest or the market rate; doing so leads to *riba* and aleatory elements (*gharar*).

Article 206: It is not permissible to combine contracts in a way that leads to *riba*, such as if a buyer buys a commodity from a seller through a *murabaha* sale at a deferred price and then sells it back to the seller at a lower price, or sells a commodity to a buyer at a spot price and then repurchases it from the buyer at a deferred price that is more than the spot price.

Article 207: It is permissible for the *murabaha* sale parties to agree to pay the commodity price in installments, but it is not permissible for the seller to impose an increase on the profit as a result of the buyer requesting an extended repayment term or installment delay, regardless of whether he or she has a valid excuse.

Article 208: The seller must guarantee any hidden defects that appear after completing the *murabaha* sales contract. Defects that occur after the *murabaha* contract's conclusion and the buyer's receipt of the commodity are under the buyer's guarantee.

Banking *murabaha* or *murabaha* to purchase orderer contract

Article 209: The definition of banking *murabaha* or *murabaha* to purchase orderer contract (*al-murabaha lla'mir bil shira'*) is as follows: A customer asks to buy a specific commodity, and its price is known, but the commodity is not available to the merchant. The customer offers to buy it from the merchant for an agreed-upon amount of profit. Usually, the price is paid in installments according to the agreement between the two parties[250].

Article 210: A *mura*baha to purchase orderer contract is a transaction consisting of three parties: the customer or entity who orders the purchase, the merchant or (Islamic bank), and the seller.

Article 211: The bank may not be a party to the *murabaha* contract between the seller and the buyer.

Article 212: The bank financing the customer may not be an agent for a fee in purchasing the goods from the seller through the *murabaha* contract.

Article 213: It is not permissible for the merchant to sell the ordered goods until after he or she actually possesses them.

Article 214: A promise of a *murabaha* transaction is not a contract, and a promise to purchase may not be made binding on either or both contracting parties.

Article 215: It is not permissible for the party who made the purchase to obligate the party that requested the purchase to buy the goods after their purchase, as the former made the purchase by choice.

[250] This is a complex process because it includes a promise to buy and a *murabaha* sale, as the seller does not carry out this sale until after he or she owns the commodity that is the subject of the transaction.

Article 216: The parties may agree to mortgage the *murabaha* sold commodity to the seller if the payment is deferred or completed in installments to guarantee the total price paid.

Article 217: It is not permissible to include a condition under which a specified sum of money or percentage is to be paid if the debtor delays payment, with or without an excuse.

Article 218: If the debtor proves his or her insolvency and inability to pay, he or she is entitled to postpone payment until the hardship is over, for a period determined by a judge, unless the creditor proves otherwise.

Article 219: It is not permissible to re-evaluate the sold commodity as *murabaha* with an increase in the new price due to the buyer's delay in paying the price.

Article 220: The seller may grant an early settlement reduction upon the buyer expediting the fulfillment of his or her financial obligations.

Article 221: The fictitiousness of the *murabaha* contract invalidates it as if the contract conceals a loan with interest or if the purpose behind the transaction is actually *tawarruq*.

***Salam* sales contracts**

Article 222: A *salam* sale is a sale contract of well-described goods to be delivered in the future for a price to be paid at the time and place the contract is concluded.

Article 223: *Salam* sales may involve only products whose qualities, size, and weight can be precisely controlled to prevent disputes upon delivery.

Article 224: The sold good is a debt owed by the seller.

Article 225: It is not *Sharia* permissible for the buyer to sell the *salam*-bought product before fully possessing it.

Article 226: The terms of the *salam* sales contract must consist of the following:

a. A commodity purchased from the seller that is not currently available must be of a type that can be clearly and accurately described in a way that will not lead to dispute.

b. Both parties must agree on and declare the price of the *salam* sale product.

c. The thing being sold must be of a type that can be delivered so that it is most likely that the thing will be available at the specified time of delivery, whether at the seller's property or in the market.

d. The debt may not be equivalent to the original cost of the commodity, whether the debt belongs to the buyer or a third party. Instead, the total cost must be paid at the time and place of the contract's conclusion or up to three days afterward.

e. The receipt of the sold commodity must be deferred to a specified agreed-upon date.

f. The thing being sold must be deliverable, so it is most likely that the product will be available at the time of delivery at the seller's farm or the market.

g. Options in *salam* sales are prohibited, especially after the payment is received.

h. It is not permissible to obligate the buyer to deliver the sold item before the due date.

i. It is permissible to deliver the sold commodity in acknowledged installments within known deadlines, provided that the original cost of the *salam* commodity is fully paid at the time of the contract's conclusion.

j. *Salam* sales products may not be sold at the market price upon delivery minus a known amount or percentage.

Article 227: If a seller cannot deliver the sold *salam* product under the agreed-upon terms because of a delay in production due to an emergency, the buyer is to be given a choice between waiting for the product to be delivered or rescinding the contract and recovering his or her payment.

Article 228: The buyer may exchange the required *salam* sale product for something other than currency after the delivery date passes without stipulating the exchange in the contract. This regulation applies regardless of whether the substitute is of the same homogeneous product type as the *salam* sale product. The substitute can be exchanged for the original cost of the *salam* commodity, and the substitute market value must not be greater than the agreed market value of the *salam* sales product on the due date.

Article 229: It is permissible to cancel the *salam* sales contract and return the total cost already paid upon both parties' agreement. It is also permissible to cancel part of the *salam* sale and recover the remaining part of the *salam* commodity's capital.

Article 230: Cancelling a *salam* sale after both parties agree and return the total paid capital is permissible. It is also permissible to cancel part of the *salam* sale to recover the corresponding part of the capital.

Article 231: Delivery may occur before the specified date, provided that the *salam* product is of the same quality and quantity agreed upon. If the buyer has an acceptable impediment to accepting the commodity, the buyer is not forced to receive it, and the purchaser is obliged to deliver the commodity as specified.

Article 232: If the seller is unable to deliver the sold thing due to bankruptcy, the seller must be given a grace period until it becomes possible for him or her to deliver to the buyer what they have agreed upon.

Article 233: It is not *Sharia* permissible to require a penalty stipulation for the seller's delay in delivering the product.

Article 234: It is not *Sharia* permissible to issue tradable Islamic bonds (*sukuk*) based on the debt from a *salam* sales contract.

Article 235: It is permissible to document a future product in a *salam* sale by a mortgage, guarantee, or other legitimate means of authentication.

Article 236: A bank may not be a party to a *salam* sales contract between a seller and a buyer.

Article 237: The bank financing the customer may not be an agent hired to purchase the goods from the seller through a *salam* contract.

Article 238: Fictitiousness in a *salam* sales contract invalidates it, such as if the contract conceals a loan with interest or the purpose behind the transaction is *tawarruq*.

The parallel advanced *salam* sales contract

Article 239: The definition of a parallel advanced *salam* sales contract is as follows: A future *salam* sales contract where the seller concludes an independent *salam* sales contract with a third party to obtain a commodity whose specifications are identical to the commodity contracted to be pledged in the first *salam* sales contract to be able to fulfill his or her first obligation. Therefore, the seller in the first *salam* sales contract becomes a buyer in the second *salam* sales contract.

An investment agency contract (*al-wakalah bi al-istithmar*)

Article 240: An investment agency contract is defined as follows: A particular contract for investment and development funds, not based on partnerships or legitimate debts, in exchange for fixed fees or percentages.

Article 241: An investment agency may only be involved in what does not violate Islamic *Sharia* provisions.

Article 242: For the agency's validity, it is required that both contracting parties (agent and principal) be *Sharia* authorized to act concerning the action with which they are entrusted.

Article 243: Both investment agency parties (principal and agent) may agree to halt the agency at a future date, based on a future event, or after investing in a specific geographical location.

Article 244: The principal may amend the agency type and the restrictions placed in the contract, provided that these modifications do not affect the agent's rights or what the agent has previously disposed of prior to the modification.

Article 245: It is not *Sharia* permissible to add a condition in an investment agency contract that makes the agent guarantee the investment even if there is no negligence on his or her part.

Article 246: Both contracting parties must acknowledge the investment agency's fees[251].

Article 247: The principal bears all the expenses related to the investment[252].

Article 248: The agent is not liable for any loss, except in cases on his or her intentional misconduct, negligence, or breach of contract, excluding breaches that happen to be advantageous to the principal[253].

Article 249: If the agent is held liable for capital loss, the liability is limited to the equivalent of the original cost of the commodity, and the agent is not accountable for expected profit loss.

Article 250: The investment agent cannot appoint a third-party agent for the core investment process without the principal's consent.

Article 251: For every investment action in which the agent violates the principal's investment conditions, the agent becomes a guarantor, but if the principal approves the investment activity, the action becomes valid.

Article 252: Islamic banks may not be investment agents for their clients, but they can contract an agent to invest their capital[254].

Termination of investment agency contract

Article 253: The investment agency's contract shall be terminated or canceled according to the following information:

a. The contract can be cancelled following the principal's death or loss of eligibility for granting power of attorney because the agency's existence depends on the principal's valid authorization.

---

[251] For example, as a lump sum or a percentage of the invested money, and it also may be linked to a disciplined indicator known to both parties.

[252] For example, such as transportation, storage, taxes, maintenance, and insurance.

[253] For example, such as selling an asset for a price higher than that required by the principle.

[254] As discussed in regard to previous transactions, to prevent stratagems, an Islamic bank may not engage in investment and other operations that do not fit the definition of the bank and its business, such as financial intermediation and other banking services.

b. Islamic jurists have excluded the selling agency from selling a mortgage upon the agent's death or loss of capacity when the term of the sale ends.

c. The agent can dismiss him or herself from the agency without paying to avoid causing the principal possible disadvantages.

d. If the principal acts on behalf of the agent, this invalidates the agent's agency.[255]

e. The agency's contract can be terminated due to damage or losses caused by the agency.

f. Temporary investment agency contracts must include an expiration date.

5.6 Chapter Outcome

Chapter five presents three of the most commonly applied Islamic sales contracts in the financial and commercial markets. They are the *al-murabaha* contract, *salam* contract, and investment agency contract (*al-wakala bi al-istithmar*).

- Chapter five contains 59 codified articles (see Table 1).
- Islamic banking has gone through three stages. It started with the establishment of Islamic banks between 1975 and 1980. These banks provided partnership contracts (*musharaka* contracts) and then moved to finance through *murabaha* contracts due to the lower risk of such contracts. After 2000, *tawarruq* contracts spread widely, eventually accounting for 60% of Islamic banks' financing contracts.
- A bank is a financial intermediary; therefore, Islamic banks cannot enter into transactions as both a trader and a financial intermediary simultaneously because this means that the transactions carried out by these banks would be merely fictitious sales, which is contrary to Islamic *Sharia*.

[255] Because when the principal acts, the agent becomes unable to act, so the latter's agency becomes invalid.

- For an Islamic bank to be a financial mediator, it must abandon commodities trading and be like any other bank, except that it still cannot deal with interest-based loans (*riba* loans).
- In Islamic jurisprudence, there are two types of sales that require price determination: negotiated sales and trust-based sales.
- The jurisprudential *murabaha* sale contract is a trust-based sales contract, where the logic behind the sale is that the buyer may lack the expertise to evaluate the price of goods, or the buyer may purchase the commodity by bargaining about the price but does not have the time to search for the best deal; therefore, the buyer resorts to a *murabaha* sale.
- A *murabaha* sale is valid if the purchase price is known, and the profit is predetermined.
- It is not valid to sell *murabaha* with a variable profit because that leads to impermissible aleatory elements (*gharar*).
- Banking *murabaha* or *murabaha* for purchase order contracts is a *Sharia*-permissible sales transaction, provided that it is not a stratagem to use a commodity to cover an interest-based loan, which is forbidden (*riba*).
- Islamic banks' use of *murabaha* to purchase orderer contracts has spread widely to help them provide financing for their customers, thus making the transaction similar to the prohibited *tawarruq* transaction.
- It is not *Sharia* permissible for a promise to purchase to be binding on both parties of the *murabaha* contract and making the promise binding voids the *murabaha*.
- Arguments that the *murabaha* transaction process described in *Sharia* jurisprudence books is the same as the *murabaha* sales process in banks are not valid. The term *murabaha* was invented to allow banks to become involved as a third party by purchasing ordered goods.

- As stipulated in banking laws and regulations, commodities trading and dealing are not within the scope of banks. Therefore, an Islamic bank cannot be a financer through traditional banking methods because this means dealing with *riba*.
- From a *Sharia* point of view, a bank can be a merchant selling for cash and credit. The bank can finance commercially to deal with financing sales, where the payment is deferred, or *salam* sales, where the sale is deferred.
- A bank's business of buying and selling goods, whether in cash or installments, does not make it a bank in the idiomatic sense. Instead, it is a merchant like other merchants; however, it enjoys the privilege of access to others' capital where the law allows banks to receive deposits.
- Under banking laws, a bank has the right to receive the money of others to redistribute it to others but not to take exclusive possession of it for its own interests. As banks working in trade enjoy an advantage that other merchants do not enjoy, their competition will be disrupted. Nevertheless, a merchant's relationship with other merchants is competitive, while the merchant's relationship with the bank is complimentary.
- Islamic *Sharia* prohibits future sales because they involve selling what someone does not fully possess, although *salam* sales are expressly permitted due to the need for such sales in people's daily dealings.
- The reason for prohibiting the sale of something that it is agreed to produce in the future, that is, a *salam* sale, is that this is like selling a debt, which is considered *riba* and therefore prohibited in Islamic *Sharia*.
- If the sold *salam* commodity is unavailable at the time of delivery, the buyer can wait until the seller provides the commodity or can terminate the contract and demand that his or her payment be refunded.
- The parallel advanced *salam* sales contract involves two *salam* deals that are compatible but not linked.
- Similar to the *salam* sales contract, if a bank enters into a parallel advanced *salam* sale as a third party, then the contract is a stratagem to bypass *riba*.

- Investment agency contracts have become very popular in the Islamic banking sector due to capital owners' need for professional Islamic finance investors to expand their investments.
- The essential conditions in the investment agency contract must not contradict Islamic *Sharia*.
- The investment agent may not be considered an investor's partner but rather an agent hired for a flat-rate fee or a specified percentage of profit.
- The investment agency is hired based on a lease contract and not as a partner; therefore, the investment agent is not considered a guarantor unless negligence is proven.
- The investment owner can control the agent and obtain permission before each investment process because the agent works under the investor's control.
- If the agency is not remunerated, then the agency can provide services as a donated contribution.
- Many things can affect and void the investment agency contract, and it is advisable to mention these controls in the agency contract to prevent a dispute between the two parties.

	Contracts	Codified Articles
A	Jurisprudence *Murabaha* Sales	14
B	Banking *Murabaha* or *Murabaha* to Purchase Orderer Contracts	13
C	*Salam* Sales	17
D	Parallel Advanced *Salam* Sales	1
E	Investment Agencies	14
	Total	59

Table 1

Jurisprudence *Murabaha*:

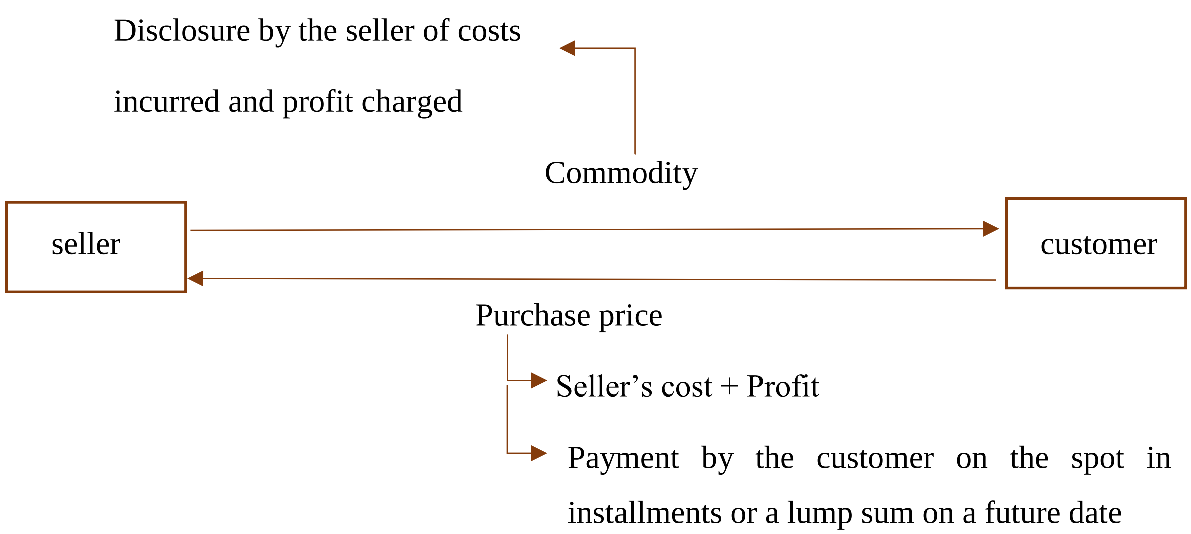


Diagram 1

***Murabaha* to the purchase orderer contracts:**

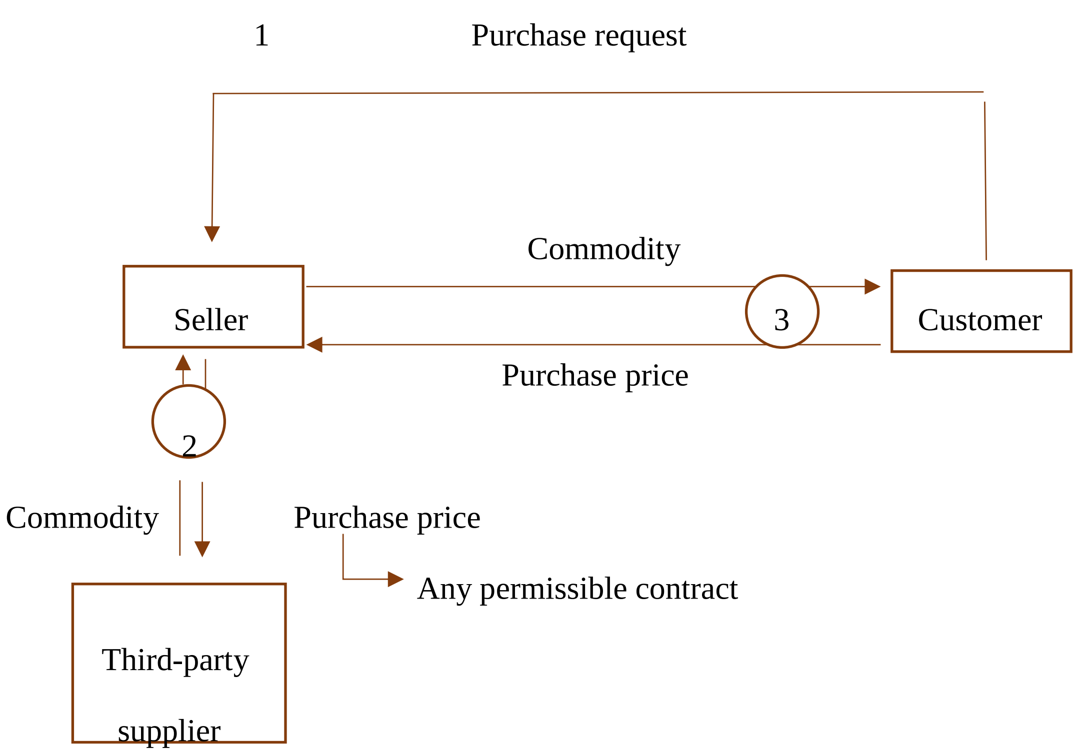


Diagram 2

Chapter 6

Articles of Modern Islamic Commercial Partnership Contracts

6.1 Framework

Human beings are cooperative by nature. Cooperation among people has developed various forms, including social and material cooperation. Because of people's need to work on large projects that require financial and executive cooperation to achieve them, a single individual cannot complete certain work by him or herself.

Accordingly, the need for a transaction called a partnership arose at some point in the past. The idea of a company has grown and developed over time and expanded with the growth of civilizations, the multiplicity of needs, and humankind's advancement. All nations across the ages have established laws regulating companies' commercial activities through partnerships.

Moreover, the corporate system in Islamic jurisprudence is an excellent example of a practical application of the teachings and directives of Islam to increase wealth and social prosperity. In addition, the exploitation of talent and competencies through cooperation and participation is a logical and rational goal, especially in this era of advanced industries and trade that cannot be managed by any single human being.

As a result, there is no choice but for individuals to cooperate within the framework of companies to facilitate this necessary practice and enable it to fulfill its urgent purpose and help the community make the desired progress.

Furthermore, the Holy Qur'an and the *Sunnah* of the Prophet confirm the legitimacy of partnerships. The Qur'an refers to the concept of participation and reminds partners that they should avoid oppression. Almighty Allah says, "And indeed, many associates oppress one another, except for those who believe and do righteous deeds, and few are they" (Translation of the Meaning of the Qur'an 450).

Sharia scholars have categorized partnerships between contracting parties based on how the capital and efforts are shared among the partners. However, this chapter will focus on modern company structures and their compatibility with Islamic *Sharia* provisions. It is essential to discuss modern partnerships originating from Islamic *Sharia*, identify various types of companies, and present new business solutions derived from the rich thinking and works of Islamic jurisprudence. Emphasis will be placed on the types of partnerships in which two or more parties agree to mix their capital, business, or obligations for joint investment and then share the risks and profits.

Furthermore, examples of these modern companies are selected based on their prevalence in the Islamic financial sector. Some of these modern companies were introduced into the Islamic finance industry because of their prominence in the global markets. Then, Islamic *Sharia* controls were added to company structures, with the result being financing partnerships by Islamic banks. These companies are as follows:

a. Investment management partnership (*al-mudharaba* contract).
b. *Sukuk* investment.

Before defining these modern Islamic commercial partnerships, it is necessary to start with the *Sharia* terminological and legal definition of a modern partnership and then derive the abovementioned company types from the modern definition of a partnership.

Finally, detailed codified articles will be introduced as legal material and reference standards for investors to establish *Sharia*-legitimate commercial partnership contracts and avoid mistakes and stratagems in establishing modern companies.

6.2 Modern Islamic Commercial Partnerships

Contemporary Islamic jurisprudence books define modern commercial partnerships between parties as an innovative financing method based on the financing party providing customers with financing by establishing company partnerships without calculating interest. The two parties share the potential output, be it profit or loss. The partnership is applied based on a distributive agreement between the parties to the contract before starting the transaction.

The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference issued resolution No. 130 (4/14) related to *Sharia* rulings on modern companies and defined modern partnership companies as follows:

> "Companies of capital are companies that depend, in their establishment and formation, on the capital funds of the partners, regardless of the independent personality of each of them, and their shares are tradable" (International Islamic Fiqh Academy, "*Sharia* Rulings on Modern Companies: Holding and Other Companies").

The council resolution continued with a description of modern company types, grouping them into three different categories, as follows:

> "Joint Stock Company: A company with its capital is divided into equal tradable shares, and a partner's liability is limited to his share in the capital.
>
> Shares Commended Company: A company whose capital is composed of tradable shares, while partners are two types: Partners who are guarantors and fully liable towards the company's debts and partners whose liabilities are limited to their shares.
>
> Limited Liability Company: A company whose capital is owned by a limited number of partners, which does not exceed a certain number (this differs by different laws); their liabilities are limited to the shares of each partner in the capital and are not" (Ibid).

6.3 Corporate Legal Entity

A legal entity is a modern legal term that includes corporate legal entities. Legal dictionaries define corporate legal entities as "a lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual [that has the] legal capacity to (1) enter into agreements or contracts, (2) assume obligations, (3) incur and pay debts, (4) sue and be sued in its own right, and (5) be accountable for illegal activities" (Black's Law Dictionary).

Scholars of Islamic jurisprudence have examined the general term “legal entity” and the specific term “companies” and decided that they are new legal terms; however, scholars’ opinions differ along two important lines.

Those of the first opinion deny the legitimacy of a company’s legal personality. The proponents of this doctrine base their opinion on the idea that a company’s legal personality is purely hypothetical. Therefore, it does not reflect an existing reality.

In his well-known research, the Islamic scholar Abdullah Ali Hussein, a brilliant scholar at Al-Azhar University in Cairo, states that Islamic *Sharia* considers moral personality to correspond to a real personality and makes provisions for it and related issues. Islamic jurisprudence recognizes that companies have an independent identity apart from those of the people who own the company; however, the owners’ permission must be given for loans and borrowing, or they should delegate such permission to the manager. Otherwise, the obligation of one of the partners is not passed on to the others (Hussein 117: 1).

Regarding the second opinion, several *Sharia* scholars view the bank as a speculator with unrestricted speculative powers and the capital providers as a whole comprising the owners. Then, the bank, as an agent of the capital providers, offers to invest in the investment project, provided that the profits are distributed according to an agreement among the three parties. Any loss not due to negligence on the speculator’s part is borne by the capital providers (Irsheed, p. 99).

However, Islamic jurisprudence defines a “legal entity” in terms of consequences and provisions. There are examples of the modern meaning of legal identity in Islamic jurisprudence, such as in the provisions of the treasury house (*Bait Al-Mal*) and the endowment system: “The legislator considered the *Bait Al-Mal* an entity with an independent entity, representing the nation's financial interests, and granted it the right of ownership and ownership, and the right to litigation, represented in this by the trustee of the treasury house” (Dhiyab, p. 37).

The same goes for endowment, as the one who manages the endowment has the right to accept gifts, make purchases, lend capital, and lease property to protect and ensure the continuity of the endowment. If the manager falls into debt due to his or her work with the endowment, then the endowment owes the debt. Similarly, the manager's wages are paid from the endowment's budget because his or her role is to supervise the endowment (Ibn Al-Humam 223: 6).

Furthermore, it should be noted that a company becomes a legal entity only after being commercially registered, as stipulated in the commercial laws of most Arab countries, such as Kuwaiti commercial law (Promulgation of the Companies Law - Memorandum of Incorporation and Articles of Association).

The civil laws in many Islamic countries define "legal entity" in a similar way to Western civil laws. The United Arab Emirates civil law (Article 655) defines a partnership as follows:

1. "*A partnership is deemed by the fact of its constitution to be a juristic person.*
2. *Such juristic personality shall not be opposed to third parties until completion of the formalities of registration and publication required by law.*
3. *Third parties may avail themselves of this juristic personality if the partnership has not completed the formalities referred to above" (Ministry of Justice - United Arab Emirates).*

Thus, economic development and commercial openness to global markets necessitate that capital providers and speculators frame the risk cycle by making speculative companies establish independent legal entities operating within a legal framework that does not exceed the company's capital.

6.4 Investment Management Partnership (*Al-Mudharaba* Contract)

The *mudharaba* contract is one of the most important contracts used by Islamic banks in the nineteen-sixties, and they immediately began relying on it as a legitimate alternative to replace the investment certificates of commercial banks. Such contracts prove the right to the amount deposited with the bank and are subject to the interest-based loan system and its regulations and laws.

a) The definition of *al-mudharaba* contracts

Sharia jurists agree upon the definition of the *mudharaba* contract. The Ottoman Court of Judicial Judgments (Al-Majallah) defines the *mudharaba* contract as "a partnership of capital and labor is a partnership where one party supplies the capital and the other the labor. The person who owns the capital is called the owner of the capital, and the person who performs the work is called the workman" (Ottoman Empire Articles: 1404).

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines *mudharaba* contracts similarly to the Al-Majallah project: "Partnership in profit whereby one party provides capital (*Rab Al-Mal*) and the other party provides labor (*Mudharib*)" (Accounting and Auditing Organization for Islamic Financial Institutions - AAOIFI, p. 367).

The *mudharaba* contract is a partnership agreement between two parties, one providing the capital and the other providing the trading or investment expertise and effort. The profits are distributed according to the parties' initial agreement. In the event of a loss, the party contributing the capital bears the financial loss, while the speculator loses his or her effort, provided that no negligence occurred.

b) Types of al-mudharaba

Islamic jurisprudence divides *al-mudharaba* contracts into types:

i. Unrestricted *mudharaba* contracts: This is a speculative contract in which the capital owner gives full permission to the speculator (*al-mudharib*) to administrate the fund, not specifying the work's type, place, time, or even the parties with whom the speculator can engage and trade (Hammad, p. 422).

ii. Restricted *mudharaba* contracts: The capital owner restricts the speculative worker and assigns the scope within which speculation can occur (Ibid).

c) *Al-mudharaba* contract terms and conditions

Islamic jurisprudence splits the conditions related to the *al-mudharaba* contract into three types, which must be specified.

The first type is conditions related to the contracting parties:

a. Both contracting parties must be legally qualified to contract, assign power of attorney, and delegate (Al-Nawawi, Rawdhat Al-Talibeen, p. 855).
b. The *mudharaba* contract is not binding on both parties. However, either party has the right to terminate the contract at any time, except in two cases:
   First, if the speculator (*mudharib*) begins his or her work, then the *al-mudharaba* contract is in force until the completion of the liquidation[256].
   Second, if the two parties agree to set a time frame for the speculation, neither party has the right to terminate the speculation before the agreed-upon period is over so as to prevent any damage to the speculator (ibid).
c. Several entities may create a speculative capital fund together, and governments may join the speculative capital.

The second type is conditions related to investment capital (*al-mudharaba* capital):

a. It is required that speculative capital be defined clearly and transparently to prevent any possible future disagreement in terms of capital quantity and quality.
b. The speculative capital shall be in cash or tradable commodities; however, it is stipulated when speculating on the tradable commodities or any tangible assets that bids be evaluated upon contracting by experts appointed by both parties. The asset's value shall be considered the speculation capital[257].

---

[256] The AAOIFI standards explain this point as follows: "The basis for making a *Mudharaba* contract binding once the work has commenced is that a unilateral termination of the contract at this stage might frustrate the objective of the parties to make profit and might cause damage to the *Mudharib* since he might not receive any compensation for him work" (Accounting and Auditing Organization for Islamic Financial Institutions - AAOIFI p. 384).

[257] Contemporary *Sharia* boards such as AAOIFI consider it permissible for the offers to include capital for speculation, provided that the offers are evaluated at the time of the contract's conclusion, contrary to the opinion of the majority of previous *Sharia* jurists; this permissibility is explained as follows: "The basis for it being permissible that the capital of *Mudharaba* may be constituted by the value of tangible assets

c. The speculation capital may not be a debt owed to the capital provider by the speculator or any third party, thus preventing *riba* stratagems (Al-Qari Article, p. 1857).
d. It is required that the speculator control the whole or part of the speculative capital; preventing the speculator from supervising the speculative capital invalidates the contract (Irsheed 99).
e. In restricted *mudharaba*, the speculator must abide by the conditions set by the capital provider. If the speculator diverges from what was authorized and violates the condition, the speculator shall be liable.

The third type is conditions related to profit.

The books of *Sharia* jurists that concern profit conditions, as the jurists' research revolves around clarifying the amount of profit for each party, reveal that profit requires the joint participation of both parties and that parties do not receive a specific numerical amount of profit. The following is a summary of the relevant conditions:

a. A clear profit share statement for each party is required when contracting so that a dispute does not arise between the parties, and the distribution of profits must be based on agreed-upon percentages rather than a lump sum or a percentage of the original capital (Al-Hijjawi 447: 2).
b. It is not permissible for the speculator to combine the wages paid for his or her work and earn a percentage of the speculation profit unless the fee is for work separate from the speculation business and following from a separate contract (Accounting and Auditing Organization for Islamic Financial Institutions - AAOIFI, p. 373).
c. After the contract's conclusion, the parties may agree to change the profit distribution ratio between them and define the period to which this new clause applies.

---

contributed is that the objective of *Mudharaba* is to make profit. This objective can be realised whether the capital is contributed in the form of tangible assets or cash" (Ibid, p. 385).

d. Neither of the *mudharaba* contract parties may stipulate a lump sum for themselves, and adding such a condition nullifies the contract. However, the two parties may agree that if the profits exceed a fixed ratio that they have agreed upon, one of the parties can take any profit above the prescribed ratio. Nevertheless, if the profits are lower than or up to the expected amount stated in the contract, then the distribution of profits shall be according to what they originally contracted (Irsheed, p. 95).
e. It is not permissible for the two parties to agree that the capital provider pays the speculator twice, such as paying on one part of the speculation operations separately and then paying the percentage agreed upon in the speculation contract.
f. The speculative profits are not divided according to what has been agreed upon until after the speculative operation's profits are combined with the other operations' losses, and the final result is considered. In case of a loss, the loss is deducted from the capital, and the speculator shall not bear any of the loss, provided that there is no negligence on his or her part. If the profits are equal to the expenses, the capital provider receives back the capital, and the speculator does not receive anything (Accounting and Auditing Organization for Islamic Financial Institutions - AAOIFI, p. 374).
g. The speculator may partner in providing speculative capital in addition to the speculation work. However, two separate contracts must be signed: a partnership contract for the speculative capital and another contract for the speculative work. The profit shall be distributed between the speculator as a partner and the other partners, with an additional share for his or her work as the speculator. In the case of a loss, the speculator bears the loss as a partner, not as a speculator, unless there is negligence (Abu Rukhayah et al., p. 124).
h. The speculator has the right to receive the profit share after dividing the profits, and the capital provider recovers the capital; therefore, it is not permissible to divide the profit before receiving the capital (Ibn Qudamah 57: 5).
i. The capital provider shall bear the loss alone and shall nullify any condition to the contrary. If part of the speculation capital deteriorates, it is calculated from the final

profit that exceeds the *mudharaba* capital and is not guaranteed by the speculator, barring any negligence.

d) Liquidation of *al-mudharaba* contracts

A famous Islamic scholar from Cordoba, Ali Ibn Hazm (d. 1064), mentioned that it is established among Islamic jurisprudence scholars that the *mudharaba* contract is a nonbinding contract for both parties (Ibn Hazm 249: 8).

Therefore, it is permissible for the capital provider and the speculator to rescind the contract, provided that the speculator has not yet started work. Regardless of the reason for the rescission, this does not cause a defect for the contracting parties (ibid).

However, under current economic conditions and due to the nature of commercial enterprises, these institutions need time to obtain results. Hence, the unilateral termination of the contract once the project has started may cause the *mudharaba* project to fail. To avoid difficulties in the future, the two parties can agree when they enter into the speculation project not to break the contract.

In addition to termination, the *mudharaba* contract can be liquidated in several cases, as indicated by the Accounting and Auditing Organization for Islamic Financial Institutions in Shari'a Standard No. 13, item 10/1, which are:

"10/1/2 With the agreement of both parties.

10/1/3 On the maturity date, if the two parties had earlier agreed to set a time limit for speculation.

10/1/4 When the *Modharada* funds contract has been exhausted or suffered losses.

10/1/5 The Speculator's death or the institution's liquidation that acts as a speculator" (Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 378).

e) *Al-mudharaba* investment certificates

After explaining the details of the *al-mudharaba* contract, including its pillars and conditions, and the legal controls for the speculative contract, it is necessary to identify the form of *al-mudharaba* contracts in modern markets.

In recent years, the *mudharaba* process has developed a more complex business structure, where the capital provider does not constitute an independent personality. However, the provider can be a group of institutions that constitute the capital owner, and the speculator is usually the bank that receives these funds, either unrestricted or restricted, according to various types of *mudharaba*. The bank pays the capital to invest in economic projects according to the contract's conditions signed by the *mudharaba* investor.

f) Issuance of *al-mudharaba* investment deposit certificates by Islamic banks

As with previous types of transactions, the *Sharia* ruling for the bank's entry as a party to these transactions is discussed. The Islamic bank provides various investment instruments, including *mudharaba* investment certificates of deposits, usually a significant component of *al-mudharaba* investments. The bank assigns an expert investment agency to invest the *al-mudharaba* fund capital following *Sharia* conditions and controls.

Moreover, considering the bank's definition and role as a financial intermediary and not as a commodity trader and the fact that the bank does not have the traders' experience with buying and selling, it is necessary to define the bank's role and relationship with each fund owner and speculator.

Many *Sharia* scholars believe that the Islamic bank's role is an essential intermediary in the *mudharaba* contract. The bank is neither the capital owner nor the speculator; it is focused on mediation between these two parties. The bank collects money from the depositors and helps them sign a direct agreement with the bank to successfully invest their capital. This mediation is considered a service provided by the bank to the capital owner, and the bank takes a percentage of the capital for providing the mediation service (Al-Masri, Buhuth Fi Al-Iaqtisad Al-Islami 38).

6.5 *Sukuk* Investments

With the increase in Islamic investment instruments in the banking and economic sectors, Islamic *Sukuk* investment has emerged as one of the most prominent instruments in global financial markets, particularly in Western countries such as the United Kingdom and Luxembourg. Islamic *Sukuk* attracts many investors from different countries in both the Islamic and non-Islamic worlds. The *Sukuk* became the equivalent of bonds issued by conventional banks. *Sukuks* are available to everyone, including individuals, companies, and governments.

Sukuk investment is one of the most essential and promising Islamic financing instruments. It has recently witnessed widespread and exceptional growth. It has become the fastest-growing segment in the Islamic finance market. One of the most recent *Sukuk* forecast studies, conducted by an American–British global provider of financial market data and infrastructure named Refinitiv, reported that "Global *Sukuk* issuance reached $147 billion in the first nine months of 2021, carrying over momentum from 2020 and on track to reach $180 billion by the end of the year" (Refinitiv).

a) Concept of *Sukuk* Investments

Financial markets have become one of the most important institutions in the modern economy, as they are a tool for effectively collecting and managing savings. An Islamic investment *sukuk* instrument is *Sharia*-compliant security. It is a savings repository that offers dealers an alternative to traditional interest-based deposits.

The Islamic Fiqh Academy defines *sukuk* as "an investment instrument based on dividing the capital by issuing ownership *Sukuk*, with the capital based on units of equal value, and registering them under the name of their owners, as owners of common shares in the capital, and what is to be transferred to it in proportion to each one's share therein" (International Islamic Fiqh Academy, "Resolution No. 30 (5/4) Muqāraḍah and Investment Certificates").

The definition of *sukuk* by the Accounting and Auditing Organization for Islamic Financial Institutions is as follows:

> "*Sukuk* are certificates of equal value representing an undivided share in the ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or unique investment activity; however, this is true after receipt of the *Sukuk* value, the subscription closing and the employment of funds received for the purpose for which the *Sukuk* was issued" (Accounting and Auditing Organization for Islamic Financial Institutions, *Sharia*h Standard No. (17) 468).

Sharia jurists use the term *sukuk* instead of bonds, describing it as investment tools representing asset or service ownership. The consideration of Islamic *Sharia* provisions, removal of *riba* elements, and distinguishment between *sukuk* and the bonds representing indebtedness from a loan differentiate *sukuk* from traditional *riba* bonds.

b) *Sukuk* process parties

The process for issuing *sukuk* is similar to that for any contract in which there are parties and obligations and mostly affects the main parties. In addition, there are other supporting parties involved in the issuance of *sukuk*; however, these parties have separate contracts. The parties are described as follows:

First, the primary (original) parties to the *sukuk* contract are those directly participating in the process of issuing *sukuk*:

a. The original source (originator): The entity in need of liquidity and wishing to sell its assets to obtain liquidity through capital subscription.
b. The issuance agent (issuer): The party authorized to create and sell securities (*sukuk*) to investors (*sukuk* holders) and manage the owned assets on their behalf; it is often a special purpose company known as a special purpose vehicle (SPV) that takes charge of the issuance process.
c. The investors or *sukuk* holders (*sukuk* holders): The parties wishing to purchase the securities (*sukuk*) offered for subscription. These *sukuks* represent assets, services, or a mixture of the two aimed at recovering the principal value and accruing future returns from the Sukuk portfolio's proceeds. *Sukuk* holders can be individuals, institutions, or governments wishing to invest in a *Sharia*-compliant investment.

d. The asset portfolio: An investment pool that includes various assets sold by the originator to obtain liquidity to finance a new investment project or expand the base of an existing project and develop it according to Islamic financing instruments.

Second: The parties assisting in the *sukuk*-issuance process are the ones with whom it is agreed to perform special services for *sukuk* issuance and are as follows:

a. The trustee: The intermediary financial institution entrusted with protecting the interests of the *sukuk* holders, controlling and supervising the issue manager, and determining the extent of compliance with the conditions regulating the investment process outlined in the prospectus. This entity also retains the documents and guarantees.
b. The *Sharia* supervisory body: A body of *Sharia* scholars specializing in Islamic financial transactions and studying the *sukuk* structure, the associated documents, and the method of the *sukuk* subscription and ensuring their compliance with Islamic jurisprudence provisions.
c. International rating agencies: Entities specializing in evaluating the credit and financial worthiness of the offered securities (*sukuk*) and determining their fair price and the risk percentage involved in the issued *sukuks*.

c) Characteristics of Islamic *sukuk*

The Islamic *sukuk*, an essential modern financial instrument, has gained the attention of investors due to its low level of risk. Moreover, this new financing instrument has attracted developers' attention because it allows them to increase their working capital. Moreover, the Islamic *sukuk* has many characteristics and advantages, the most important of which are as follows:

1. The *sukuk* is a document issued in the name of its owner or bearer in denominations of equal value to prove its owner's financial rights and related obligations.

2. The *sukuk* represents a common share in the ownership of assets designated for investment.

3. The *sukuk* is issued on a legal contract basis, such as *mudharaba* involving an investment agency.

4. *Sukuk* holders share the profits according to the agreement in the prospectus. Moreover, they bear the loss in proportion to their *sukuk* ownership.

d) Types of *sukuk* investments

There are many types of Islamic *sukuk*. The relevant issuance and management mechanisms are based on Islamic financing instruments characterized by diversity. Islamic *sukuk* can be classified as described below.

First, lease *sukuks*[258] "are securities of equal value, representing common shares in the ownership of properties, or usufructs that have income" (The International Islamic Fiqh Academy).

However, lease *sukuks* are similar to shares in terms of offering liquidity for a profit share, but they differ slightly from shares in that their profit is guaranteed. Because the return is based on a guaranteed fixed income, the return distributed on the *sukuk* is the net revenue after deducting maintenance and management expenses.

Therefore, it is required that the capital and the return not be guaranteed for the lease *sukuk* to be *Sharia* permissible. *Sukuks* are redeemed at their market value, not their nominal value; redeeming *sukuks* at their nominal value means guaranteeing capital.

Second, *salam sukuks*[259] are certificates of equal value issued based on a *salam* contract; the proceeds of their issuance are used to finance the purchase of a *salam* commodity. The

---

[258] As an example, a company owns a factory or rented real estate or has promised to lease the property; it wishes to sell that property through a *sukuk* lease instrument. The company estimates its price value with the assistance of experts, determines the price value of the *sukuks* lease equal to the estimated value, and offers the *sukuk* for subscription.
As another example, an institution that owns factories signs a promise to lease to a third party. A financial intermediary (the bank) issues a *sukuk* investment to benefit from its expected wages for a certain period, and the *sukuk* holders own the benefits of that property during a specific agreed-upon period.

[259] As an example, an oil-exporting country presells in January oil that is planned to be extracted in March. The state offers the *salam* oil *sukuk* for purchase at an agreed-upon price. This price considers the expected market value on the delivery date with the expected profit margin for the *sukuk* owner. Upon the *sukuk*'s

sukuk represents a common share in the ownership of the *salam* commodity before and after its receipt and a share in after-sale returns. The returns on these *sukuks* are the difference between the *salam* commodity purchase price and subsequent sale price (Fatwa and *Sharia* Supervisory Board).

A *salam sukuk* represents the sale of a deferred commodity delivery at an accelerated price. The commodity is considered a debt owed by the seller. Therefore, *salam sukuks* are not tradable by the seller or buyer, as they are classified as held investments until maturity.

Third, a manufacturing *sukuk* (*istisna'a sukuk*) is issued based on a manufacturing contract. The proceeds of their issuance are used to finance the manufacturing of goods sold in advance with a manufacturing request contract to be delivered to the buyer who requested their manufacture. The *sukuk* certificate represents a common share in the ownership of the manufactured goods and their sales price after the goods have been delivered to the buyer. The *sukuk* returns are calculated by comparing the merchandise manufacturing cost and price tag (Ibid).

Moreover, an *istisna sukuk*, like a *salam sukuk*, is not *Sharia* permissible in cases where it is traded by *sukuk* certificate holders before the goods are delivered to the buyer.

Fourth, *murabaha sukuks* "are certificates of equal value issued for the purpose of financing the purchase of goods through *Murabaha* so that the certificate holders become the owners of the *Murabaha* commodity" (Accounting and Auditing Organization for Islamic Financial Institutions, *Sharia*h Standard No. (17): Investment *Sukuk* 468).

Moreover, *murabaha sukuks* are based on the principle of *murabaha* sales, which result in a debt owed by the *sukuk* issuer. Therefore, when a *sukuk* becomes a debt, it may not be traded at a higher or lower value than that of its original certificate because, in *Sharia*, debts must be paid back at the same value.

Consequently, the issuer of these *sukuk*s is the intermediary institution that uses the subscription proceeds to purchase a *murabaha* commodity and then sell it in the markets.

---

maturity date, the state provides the preagreed quantity of oil to the authorized party to sell it in the global market. Then, the sale value is distributed to the *sukuk* owners in there is any profit.

The return on the *sukuk* is the difference between the commodity purchased price and its market sale.

Fifth, partnership *sukuks* (*musharakah sukuks*):

> "are certificates of equal value issued with the aim of using the mobilized funds for establishing a new project, developing an existing project, or financing a business activity on the basis of any partnership contracts so that the certificate holders become the owners of the project or the assets of the activity as per their respective shares, with the partnership (*Musharakah*) certificates being managed on the basis of participation or *Mudharaba*h or an investment agency" (Ibid 470).

The *sukuk* issuer may be a partner, and the subscribers are copartners intending to invest their liquidities to make a profit. Moreover, the *sukuk* proceeds are the entrants' participation shares.

The entity requesting funding, the *sukuk*'s participation issuer, announces to the public its intention to enter as a partner in a particular project. The subscription proceeds are that party's share of the new project capital, which is represented by assets equal to the entity's total share of the *sukuk* value for the project. According to the distributed ratios, the subscribers and the *sukuk* issuer share profit and loss.

Sixth, an investment speculation *sukuk* (*al-mudharaba sukuk*) has been defined by the International Islamic Fiqh Academy as "an investment instrument based on dividing the capital of Speculation (*Al-Mudharaba*) by issuing ownership *Sukuk* of Speculation capital, based on units of equal values, and registering them in the name of their owners, as owners of common shares in the Speculation capital and what is to be transferred to it in proportion to each one's share therein" (International Islamic Fiqh Academy, "Resolution No. 30 (5/4) Muqāraḍah and Investment Certificates").

Moreover, the issuer of these *sukuk*s is the speculative entity, the subscribers are the capital fund owners, and the subscription proceeds are the speculative capital; the former bear any losses that occur.

As with speculation contracts, in the case of speculative *sukuks*, the *sukuk* issuer (the speculator) is obligated to return the speculative capital and the profit that has been achieved unless it is proven that the speculative assets were destroyed, damaged, or lost because the speculator has no control over and cannot anticipate it or avoid the effects.

Speculation *sukuks* have many different forms, some of which are restricted to certain projects and limited to a specific period according to the project type. Among them is the general speculation *sukuk*, where investment restrictions do not bind *sukuk*'s issuer.

Furthermore, speculative *sukuks* may be traded and redeemed if they represent common ownership shares of tangible goods or service assets. According to AAOIFI, speculative *sukuks* can be redeemed prior to the commencement of the activity. However, *Sharia* currency exchange rules must be observed when liquidation is complete, and the assets are receivables or when the assets represented by the *sukuk* are sold for a deferred price (Accounting and Auditing Organization for Islamic Financial Institutions, *Sharia*h Standard No. (17): Investment *Sukuk* 479).

Last, *Sharia Fiqh* councils have permitted speculative *sukuk* issuers (the speculators), in the case of negotiable *sukuks*, to pledge in the *sukuk* issuance prospectus to purchase the offered *sukuk* after the completion of the issuance process, though strictly at the market price only, as it is not *Sharia* permissible to purchase at the nominal value of the *sukuk* in such cases.

e) Essential *sukuk* controls

As with other financial instruments, *sukuk* certificates must be issued and traded according to Islamic *Sharia* rules and guidance. Some *Sharia* councils have studied *sukuk* as a novel financial instrument and attempted to set *Sharia* standards to facilitate the structuring of *sukuks*. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)[260] has set the following standards to structure the essential *sukuk* types traded in local and global markets:

[260] See *Sharia*h Standard No. (17): Investment sukuk.

i. *Sukuk* certificates must be issued and traded per *Sharia* conditions and controls and invested in projects that comply with the provisions of Islamic *Sharia*.

ii. The *sukuk* must be based on *Sharia* contracts following Islamic financing formulas such as partnerships and speculation, with controls regulating their issuance and circulation.

iii. *Sukuk* certificates should be clear of any condition requiring the issuer or the agents to guarantee the profit or investment principal unless an infringement occurs due to their own negligence.

iv. *Sukuk* certificates may be issued for short, medium, or long terms.

v. The *sukuk* issuer may allow subscribers to pay the *sukuk* value in installments as a subscription.

vi. It is not permissible for the *sukuk* issuer (the speculator) to stipulate a lump sum in the *sukuk* prospectus; otherwise, the speculation is considered invalid.

6.6 The Proposed Codified Articles

Modern Types of Companies

Article 254: A modern company is defined as a capital-based company whose establishment and formation depend on the partners' capital funds, regardless of its independent identity, and its shares are tradable.

Article 255: A joint stock company is a company whose capital is divided into equal and tradable shares; a partner's liability is limited to his or her capital share.

Article 256: A shares commended company is a company whose capital is composed of tradable shares and whose partners are of two types: partners who are guarantors and fully liable for the company's debts and partners whose liabilities are limited to their shares.

Article 257: A limited liability company is a company whose capital is owned by a specific limited number of partners.

Corporate Legal Entity

Article 258: A corporate legal entity is a person or entity with an independent legal personality or an independent legal entity who may legally own and carry out a given economic activity and has the ability to engage in litigation and make decisions that achieve his or her own interests.

Investment Management Partnership (*Al-Mudharaba* Contract)

Article 259: An *al-mudharaba* contract is a partnership contract between two or more individuals or entities, one of whom provides the capital and the other the work; the profit is split between them according to the terms of their agreement, and the loss is borne solely by the capital provider, as long as the speculative partner is not negligent.

Article 260: There are two types of *al-mudharaba* contracts:

a. An unrestricted *mudharaba* contract: This is a speculative contract in which the capital owners or providers give full permission to the speculator (*al-mudharib*) to administrate the fund, not specifying the work's type, place, or time or even the parties that the speculator can work and trade with.
b. A restricted *mudharaba* contract: The capital owner restricts the speculative worker and assigns the applicable scope of speculation.

Speculation Contract (*Al-Mudharaba*) Terms and Conditions

Article 261: Any condition in a speculation contract (*al-mudharaba*) that leads to profit obscurity between the parties prevents the fulfilment of the contract's purposes and renders the contract void.

Article 262: Any condition in the speculation contract (*al-mudharaba*) that does not further the interests of the contract parties or help meet the contract's requirements leads to the invalidity of the condition, although the contract remains valid.

Article 263: If the *mudharaba* contract is invalid, then the speculator (*al-mudharib*) shall receive none of the shared profit. However, the capital provider must pay the speculator a wage for his or her speculation work evaluated based on common *mudharaba* practices.

Article 264: A speculation contract (*mudharaba*) must include conditions related to the contracting parties:

a. Both contractors must have the legal capacity to engage in a contract, assign the power of attorney, delegate responsibilities, and terminate deals.
b. The *mudharaba* contract is not binding on either party. Moreover, both parties have the right to terminate the contract at any time, except in two cases:
    - First, if the speculator (*mudharib*) begins his or her work, the *al-mudharaba* contract becomes compulsory until the liquidation is completed.
    - Second, if the two parties agree to set a time frame for speculation, neither party has the right to terminate the speculation before the agreed-upon period is over.
c. Multiple entities, including governments, may provide speculative capital funds.

Article 265: The speculation contract (*mudharaba*) must include conditions related to investment capital (*al-mudharaba* capital):

a. The definition of speculation capital (*al-mudharaba* capital) is as follows: The capital given to the speculator to speculate in the market. It can be cash, gold, silver, or anything tangible that can be traded.
b. Speculation capital must be clearly and transparently defined, and speculation between the two parties with undefined capital invalidates the contract.
c. Speculation is not limited to trade but is permissible in all businesses aiming to develop capital and profit.
d. Speculation capital may take the form of cash or tradable commodities. However, it is required when speculating on tradable commodities that independent experts appointed by both parties evaluate the bids, and the asset's value shall be considered the speculation's capital so that the speculator must return the value in cash at the end of the speculation activities.

e. It is not permissible to include the speculator's expenses in the speculation capital; instead, they are calculated as a separate fee.
f. It is not permissible for the speculator to borrow more than the speculation capital except with the capital provider's permission.
g. The speculation capital may not be a debt to the capital provider owed by the speculator (*al-mudharib*). However, if the speculation capital is a debt owed by a third party and the speculator actually or constructively receives it from the third party, the speculation contract is valid.
h. The speculator (a*l-mudharib*) shall be given the authority to control all or part of the *mudharaba* capital[261]. However, handing the capital to the speculator (*al-mudharib*) is not necessary. Prohibiting the speculator from supervising the speculative capital invalidates the contract.
i. The capital provider can restrict the speculation geographically, seasonally, or by project type.
j. In a restricted speculation contract, the speculator must adhere to the conditions set by the capital provider. The speculator is held responsible if any of the set *mudharaba* conditions are violated.
k. It is not permissible for the capital provider to obligate the speculator to guarantee the capital. Moreover, any condition in the contract that obliges the speculator to guarantee the capital is considered null, rendering the contract invalid.
l. If the speculator dies and the speculative funds are available and collectible, the capital must be returned to the provider of that capital. However, if the capital is unavailable and its condition is unclear, the capital is a debt on the part of the speculator (company) to the provider.

Article 266: The speculation contract (*mudharaba*) must include conditions related to profit distribution:

a. The speculation profit is the part of the capital excess to which the capital provider and the speculator are entitled.

[261] This is based upon both parties' agreement.

b. Each party's clear profit share statement shall be declared in the speculation contract, and the profit must be distributed according to an agreed-upon percentage of the profit and not a lump sum or a percentage of the capital share.
c. The profit must be distributed based on a percentage of shares between the capital owner and the speculator, and it is not permissible for one party to retain all of the profit.
d. It is not permissible for the speculator to combine the fee paid for the speculation work and a percentage earned of the speculation profit unless the fee is for a separate task from the speculation business and has a separate contract.
e. After the contract's conclusion, the parties may apply any modification to the profit distribution percentage and define the terms and applicable period of the new clause.
f. It is not permissible for both speculation contract parties to stipulate adding a lump sum to the initially agreed-upon percentage, and adding such conditions to the contract invalidates it. However, both parties can agree that if excess profits are achieved, one of the parties can take a higher percentage of the profit than was previously prescribed. However, if the profits are equal to or less than those predicted in the initial contract, the profits shall be distributed according to the original contract.
g. It is not permissible for the two parties to agree that the capital provider shall pay the speculator twice, paying one of the speculative operations separately and then paying the total agreed-upon speculation percentage listed in the contract.
h. The profit from the speculation activity shall be distributed based on the total profits and losses of the operation. Losses shall be deducted solely from the capital, provided that no negligence on the part of the speculator exists. If the profits are equal to the losses, the capital provider receives back his or her capital, and the speculator does not receive anything.
i. It is permissible for the speculator to pay a certain percentage of the profit during each specified period, provided that the final settlement is to take place at the end of the speculation contract, and the capital provider bears any losses that occur.

j. The speculator may provide the speculative capital for two separate contracts, one for the capital partnership and the other for speculation tasks. The profit shall be distributed to him or her as a partner plus an additional share as a speculator. In case of a loss, the speculator bears the loss as a partner and for his or her efforts as a speculator unless he or she was negligent in his or her speculation activities.
k. If the speculation contract is valid, the capital provider decides to sell a commodity, and the speculator (*mudharib*) refuses to sell, then the words of one do not prevail over the other. The best solution is to reach an agreement with the help of experts and specialists regarding the most appropriate action. Moreover, both parties can agree to liquidation, which is permissible.
l. It is not permissible to distribute the profit before the capital is recovered. The speculator has the right to receive the profit share only after completing the agreed-upon work and profit share distribution.
m. The capital provider shall solely bear the loss, and any conditions related to the contrary are invalid. If the value of the speculation capital deteriorates, the loss in value is deducted from the final profit, and the speculator shall not be responsible for guaranteeing the lost value, providing no negligence on his or her part has occurred.

Liquidation of Speculation Contracts

Article 267: The speculation contract can be liquidated for voluntary or compelling reasons, such as in the following cases:

a. The contract is terminated by one or both contracting parties before the speculation activities begin.
b. The maturity date predetermined by both contracting parties is reached.
c. The funds have been damaged or lost or if the speculator's capital is returned before the speculation activity starts, providing that no negligence has occurred.
d. The capital funds are exhausted.
e. The speculator's operations are liquidated.

f. The speculator dies, one of the contracting parties loses eligibility, or the capital provider is interdicted due to bankruptcy.

Sukuk Investments

Article 268: The definition of *sukuks* is as follows: Securities with a fixed term, representing equal values, that are tradable according to Islamic *Sharia* standards and that entitle their owner to benefits and responsibilities corresponding to the extent of ownership.

Article 269: The *sukuk* prospectus should mention that the *sukuk* certificates must be issued and traded per *Sharia* controls and invested in projects that comply with the provisions of Islamic *Sharia*.

Article 270: The *sukuk* structure must be based on *Sharia* contracts following Islamic financing formulas that regulate issuance, trading, and buyback.

Types of *Sukuk* Investments

Article 271: Lease *sukuks* are defined as follows: They are securities of equal value representing a common share of ownership of a leased object, usufruct, or services generating revenue.

Article 272: It is not *Sharia* permissible for the lease *sukuk* capital or the returns to be guaranteed.

Article 273: The lease *sukuk* should be redeemed at its market value, not its nominal value.

Article 274: *Salam sukuks* are defined as follows: Certificates of equal value issued for capital raised to purchase commodities through a *salam* contract; the *salam* commodity becomes owned by the *sukuk* holders.

Article275: It is not permissible for either the buyer or the seller to trade *salam sukuk* certificates.

Article 276: Manufacturing *sukuks* (*istisna'a sukuk*) are defined as follows: Certificates of equal value that are issued to raise capital to produce the goods, where the *sukuk* holders own the product.

Article 277: It is not permissible for either the buyer or the seller to trade manufacturing *sukuk* certificates.

Article 278: *Murabaha sukuks* are defined as follows: They are certificates of equal value issued to finance the purchase of a *murabaha* commodity. The *murabaha* goods become owned by the *sukuk* holders.

Article 279: It is not permissible for the *murabaha sukuk* issuer to trade the certificates at a higher or lower value.

Article 280: It is not permissible to calculate a variable profit in *murabaha sukuk* contracts.

Article 281: Partnership *sukuks* (*musharakah ukuks*) are defined as follows: Certificates of equal value issued by a particular project owner or an entity looking to fund a particular project or economic activity. The *sukuk* holders own the company's assets and share the profits and losses.

Article 282: Partnership *sukuk* holders have the right to appoint one of the partners or a third party to manage the *sukuks* that represent the company's assets.

Article 283: It is permissible to trade partnership *sukuks* after the subscription ends and to allot the project's *sukuk* certificates and commitments and begin the relevant activity.

Article 284: Investment speculation (*al-mudharaba sukuk*) is defined as follows: A joint certificate representing projects or activities managed on a speculation basis by the partners appointing a speculator or third party for the operation, administration, and management of the projects or activities.

Article 285: The speculator cannot be obligated to guarantee a profit, and the holders of the speculation *sukuk* alone bear losses unless there is a defect on the part of the speculator.

Article 286: It is permissible to trade or redeem common ownership speculation *sukuk* share certificates for tangible goods, usufructs, or service assets prior to the relevant activity's commencement, provided that the currency exchange *Sharia* rules are observed in the liquidation activity, and the assets are receivables or when the possessions represented by the *sukuks* are sold for a deferred price.

Article 287: It is permissible for the speculation *sukuk* issuer (*al-mudharib*) to pledge in the *sukuk* issuance prospectus to purchase the offered *sukuk* after the issuance process at the market price, not at the nominal value of the *sukuk*.

Article 288: Speculative *sukuks* can be redeemed prior to the commencement of the activity under the following conditions:

a. The currency exchange *Sharia* rules must be observed during the liquidation process.
b. The assets are receivables, or the possessions represented by the *sukuks* are sold for a deferred price.

Article 289: It is not permissible for the *sukuk* issuer (the speculator) to stipulate a lump sum in the *sukuk* prospectus.

Article 290: The *sukuk* issuer may undertake a separate contract from the *mudharaba sukuk* issuance contract to buy back the *sukuk* when offered for trade at its market value only.

Article 291: It is permissible to stipulate in the prospectus for the *sukuk* issuance that a separate third party promises to contribute, free of charge, to guarantee the speculation of the *sukuk*'s nominal value, provided that the promise is not binding.

6.7 Chapter Outcomes

- Chapter Six presents essential contemporary participation contracts in Islamic transactions, namely, the investment management partnership (*al-mudharaba*) contract and investment *sukuk* contracts.

- The idea of Islamic banks based on partnership contracts to eliminate *riba*-based debit transactions is discussed. Such activity gradually developed and became dependent on credit transactions, similar to those used by traditional banks.
- This chapter contains 38 codified articles. See Table 1.
- The chapter introduces *Sharia* partnership theory and the related values and ethics in light of the profit- and loss-sharing principle.
- Risk-taking is an integral part of trade, as one of the partners has no profit guarantee.
- There is a close relationship between Islamic investment and responsibility for commercial risks that might affect a transaction, such as total or partial destruction, damage to the goods, or a price drop.
- Islamic financial transaction jurisprudence is adaptable to modern partnership concepts. However, the mechanisms used for these partnerships are only permissible if they do not violate *Sharia* principles. See the details in Chapter Two of this research.
- The concept of a company being a legal entity was recently introduced by modern statutory laws. Although Islamic jurisprudence does not use this expression in describing contracts, the concept of legal personality exists in Islamic jurisprudence.
- The company as a legal entity entails obligations and responsibilities independent of the partners as individuals, given that the company has a legal personality and is an independent entity. Additionally, the company shall have full capacity to conduct business immediately upon establishing its incorporation articles and the issuance of official permits.
- The *mudharaba* contract is a renewable partnership contract. The need for such contracts emerged in the past, but many forms of speculation keep pace with ongoing commercial developments. See Diagram 1.
- *Sharia* includes set controls for speculative contracts; some of these conditions pertain to the owner of the money, others pertain to the speculator, and conditions concern the speculation proceeds.
- The *mudharaba* contract is based on an essential *Sharia* maxim: No rewards without bearing risks. Therefore, Islamic *Sharia* does not allow guaranteed profit without tying it to the associated risk factors and consequences.

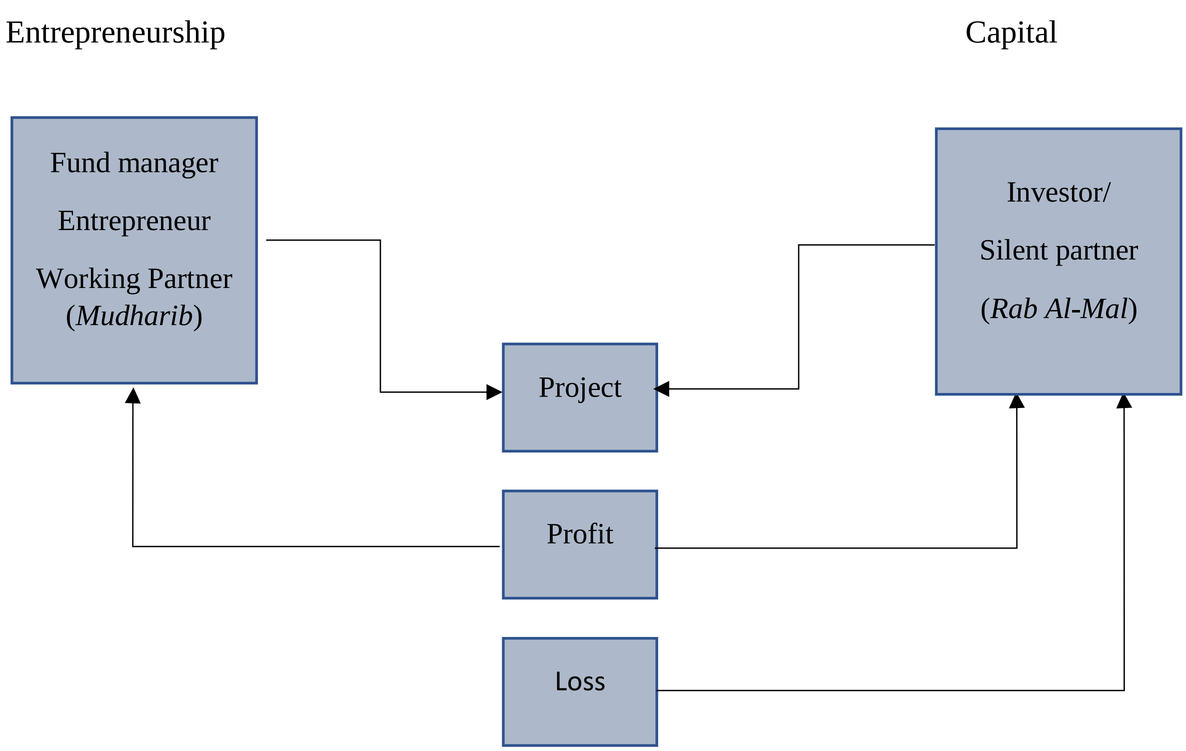
- Investment *sukuks* are securities with a fixed term, representing common ownership shares for objects, usufructs, or services that entitle the owner to benefits and bear responsibilities according to the extent of that ownership.
- *Sharia* controls govern *sukuk* investment, including the issuance, trading, and amortization of *sukuks*.
- The Islamic *sukuk* has become a new financing trend stemming from *Sharia* transactions. It is a financing mechanism that meets needs unfulfilled by Islamic banks in terms of the natural partnership between production factors in financing development in the form of speculation, participation, and a shift away from *murabaha* financing, which most Islamic banks have relied on during the last twenty years. See Diagram 2.
- Islamic *sukuks* grew popular and spread as a contemporary financial tool accepted by all investors and project developers looking for liquidity funds to complete and expand their projects.
- The issuance of Islamic *sukuks* is an extension of the main *Sharia* transaction formulas, such as leasing, *salam*, manufacturing financing (*istisna'a*), and *mudharaba*, and was developed to keep pace with the requirements of the financial era and provide an alternative to bonds that deal with banking interests. See Diagram 3.
- Islamic *sukuks* are one of the most important alternatives to *riba* loans and bonds. *Sharia* investment *sukuks* have become an essential tool for investing surplus financial resources in the community. They have attracted small savings and facilitated large projects, especially infrastructure projects.
- It has become necessary to create a legal framework for these modern financial instruments.

	Contracts	Codified Articles
A	Modern Company Types	4
B	Corporate Legal Entity	1
C	Investment Management Partnership (*Al-Mudharaba* Contract)	2

D	Speculation Contract (*Al-Mudharaba*) Terms and Conditions	6
E	Liquidation of *Al-Mudharaba* Contracts	1
F	*Sukuk* Investments	24
	Total	38

Table 1

Al-Mudharaba Contract Structure



Basic *Sukuk* Structure

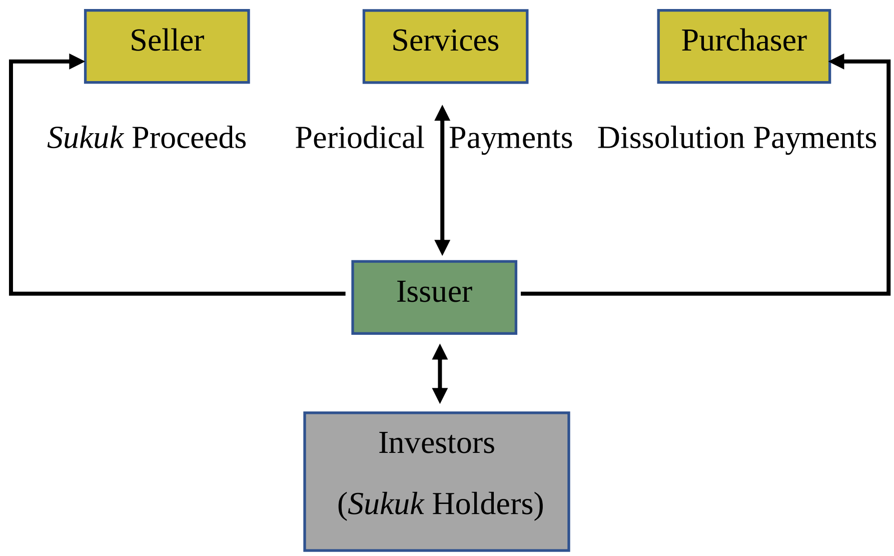


Diagram 1

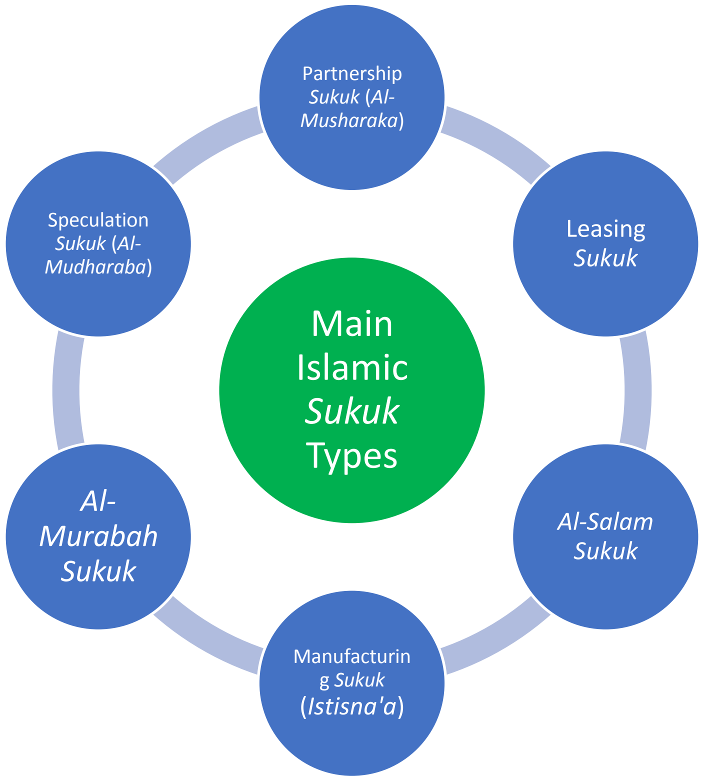

Partnership *Sukuk* (*Al-Musharaka*)
Leasing *Sukuk*
Al-Salam Sukuk
Manufacturing *Sukuk* (*Istisna'a*)
Al-Murabah Sukuk
Speculation *Sukuk* (*Al-Mudharaba*)
Main Islamic *Sukuk* Types

Diagram 3

Conclusion

Through continuous research and the examination of Islamic jurisprudence books, this thesis, consisting of six chapters, makes it possible to overcome the difficulties and challenges preventing the development of integrated laws for contemporary Islamic financial transactions.

This conclusion presents the most important results and a number of recommendations.

Thesis results

- The modern history of Islamic financial transactions began approximately 45 years ago. Since then, Islamic financing has achieved impressive results and penetrated the traditional financial market. During this period, Islamic financial transactions have shown their ability to compete with the prevailing economic and financial systems. This success became evident during the financial crisis of 2007–2009, when Islamic finance showed remarkable resilience in dealing with financial shocks and the credit crunch.
- In the wake of the recent global financial crisis, it is clear that the financial landscape requires appropriate reforms. There is a consensus among global market dealers regarding the importance of finding alternatives to usurious transactions. This requirement is at the core of Islamic financial transactions, which explains their global acceptance. The *Sharia* principles governing transactions help explain their resilience against the adverse effects of the recent global crisis.
- Despite the strong elements of Islamic finance that helped its global spread, there is an urgent need to develop legal infrastructure for these financial instruments, which will help enhance the sustainability of Islamic financial transactions as alternatives to usurious transactions.
- Laws related to Islamic transactions are already included in some countries' legal systems. Some countries incorporate Islamic financial laws into their civil law systems, others include them in their common law systems, and still others include them within their central banking system. This is due to the lack of a unified legal system for Islamic finance.
- The main legal challenge arising from the lack of codification of the rules and principles of Islamic financial transactions is the difficulty of anticipating court decisions in any

dispute arising from a contract based on an Islamic financial transaction. Mainly, the case law principle is not applied within the *Sharia* framework. Therefore, Islamic finance will face significant legal challenges unless it has an integrated, unified codification implemented both locally and globally.

- The Al-Majallah project of the Ottoman state is considered the most thorough attempt to codify Islamic financial transactions. However, this project was flawed, and various issues made it unacceptable on the international scene. The most important limitation was that it primarily followed the jurisprudence of only the Hanafi school. Additionally, the Majallah articles did not cover all contemporary jurisprudential transactions.
- This thesis research is distinguished by its focus on codifying contemporary Islamic financial transactions. As current financial transactions have become a modern and ongoing specialized science, they have no previous examples in Islamic jurisprudence. However, the legitimacy of such transactions is judged based on Islamic legal rules and principles.
- There is no precise definition of contemporary Islamic financial transactions; consequently, they are defined as commercial and financial transactions based on Islamic jurisprudence law that people have been developing and practicing in the modern global business era.
- Four standards are presented to distinguish between modern and classic Islamic finance transactions:
    a. First Standard: The contract should be one of the commercial transactions that dealers have established in the modern era.
    b. Second Standard: The Islamic *Sharia* provisions of a commercial transaction differ from those of past transactions due to changing circumstances and conditions.
    c. Third Standard: The transaction has a new name.
    d. Fourth Standard: The commercial transaction is complex and composed of more than one “nominate transaction.”
- This thesis research presents six essential criteria used in the codification process:

a. First, the most integrated legal opinions among the four primary Islamic jurisprudence schools are chosen and aligned with modern international commercial developments.
b. Second, Islamic *Sharia* objectives (*maqasid al-Sharia*) are considered when codifying modern Islamic transactions.
c. Third, forbidden Islamic commercial transactions are clarified.
d. Fourth, an essential rule related to the contemporary Islamic financial transactions jurisprudence is applied: "Originally, the initial *Sharia* provision of any innovative structured commercial transactions is permissibility" (*Mu'bah*).
e. Fifth, Islamic jurisprudential theories are provided in the form of legal clauses.
f. Sixth, the ethical concerns of Islamic financial transactions are presented within the codified articles.

- This thesis has examined previous Islamic scholars' efforts to understand what makes a transaction not *Sharia* permissible. This important knowledge gives researchers an accurate methodology for determining the correct *Sharia* provisions related to newly developed Islamic financial and commercial transactions.
- This thesis concluded that six factors influence a transaction and make it *Sharia* impermissible, namely, *riba*, aleatory elements (*gharar*), fraud (*taghreer*), injustice (*dhulm*), harm (*dharar*), and stratagems (*hiyal*).
- This research presents a novel and accurate mechanism for examining new financial transactions and their compatibility with *Sharia* jurisprudence by examining the six abovementioned influential factors of any transaction. If one of these six factors is discovered to be present, the transaction becomes *Sharia* impermissible. Therefore, these occasioning factors form a checklist to determine the transaction's *Sharia* legality.
- Knowing the transaction's occasioning factors helps financial institutions structure new Islamic financial instruments that keep pace with market requirements by creating financing mechanisms devoid of *Sharia* prohibitions.
- Judges and arbitrators can judge the validity of Islamic financial transactions by examining contracts and ensuring that they are free of these six factors.

- For any contract that includes one of these six factors, the condition is judged void, and the contract should be rectified if possible.
- The flexibility of Islamic *Sharia* is evident in that it forbids certain types of financial and sales transactions, but any other transaction types in any form and combination are permissible, provided that they do not include any of the six factors mentioned above.
- Knowing the *Sharia* provisions regarding novel transactions is essential. A transaction must be analyzed, and its structure must be evaluated and compared with previous transactions assessed in terms of Islamic *Sharia*. This process helps in understanding the *Sharia* legitimacy and compliance of a new transaction type.
- The codification of prohibited transactions according to Islamic *Sharia* facilitates the study of Islamic finance and understanding of the *Sharia* provisions related to transactions.
- There may be some novel financial transactions that some modern jurists or *Sharia* banking boards have judged to be permissible. However, by looking at the transactions' actuality and analyzing the rationale behind the *Sharia* judgment, it becomes clear that some such transactions are impermissible because they are intended to circumvent *riba* through fictitious sales.
- Financial instruments based on stratagems do not help in achieving the *Sharia* objective of building a stable economy. It is not possible to build Islamic banking systems by relying on stratagems. Among such forbidden banking transactions are those that cannot be rectified because they involve *riba*.
- Adding a binding promise to a contract is forbidden because it is a trick that makes the contract impermissible. Likewise, a *tawarruq* contract in Islamic banks is inconsistent with Islamic *Sharia* provisions and objectives. Structuring combined contracts produces financial instruments that strengthen the bank's position and excessively protect it; such instruments include lease contracts ending with ownership and diminishing participation contracts, which are unjust and incompatible with *Sharia* provisions and purposes.
- Islamic banks are supposed to be participatory banks. However, if a bank enters into a transaction as a merchant and financier simultaneously, doing so spoils the sale, and the contract is considered a stratagem that is contrary to *Sharia*.
- Islamic law defines two types of conditions related to sales contracts:

   a. The first type are conditions related to the validity of the sale. The violation of a condition of this type invalidates the contract.
   b. The second type are conditions in the sales contract. The breach of a condition of this type invalidates the condition but not the contract.

- Every condition that contradicts Islamic *Sharia* rules is invalid and, therefore, not permissible to implement.
- The option clause in Islamic sales contracts is one of the things that distinguishes Islamic jurisprudence from other statuary laws, as such clauses are rights, not obligations. Option clauses allow both sellers and buyers to reserve their right to withdraw from the sale after completing the transaction.
- Among the profound benefits of Islamic jurisprudence is that it allows contracting parties to revise a concluded contract. The sale may happen suddenly without contemplation or consideration of the value of the commodity, and one or both parties may then regret making the sale. For this reason, Islamic law allows a deliberation called an option. The seller and buyer can choose whether to continue or cancel the sale.
- The point of permitting sale options is to allow either party to deliberate and determine what will bring the most benefits or to supplement for deficiencies and prevent damages.
- The new *murabaha* contract, also called banking *murabaha*, is one of the most widely used contracts in Islamic banks, providing an alternative way for customers to secure financing rather than engaging in interest-based lending, which is *riba*. Due to the low risk involved, Islamic banks have shifted from working with partnerships to focusing on loans using sales contracts such as *murabaha*. However, the issue with such transactions is that if a financing institution becomes a party to the transaction, playing a double role as a merchant and a financier, the transaction becomes a stratagem to bypass interest-bearing lending. Therefore, codifying the *murabaha* sale contract in the form proposed in this thesis research will limit the use of such sales as a stratagem for financing clients.
- In *murabaha* contracts, if the promise to the one who ordered the purchase or to the seller is binding, then the transaction is not *Sharia* permissible according to all Islamic

jurisprudence schools. A binding promise is considered a ploy to sell a commodity the seller does not own and is not permissible according to Islamic law.

- In Islamic finance, it is necessary to ensure that *Sharia* objectives are met, that the purposes of contracts are *Sharia* compliant, and that stratagems are avoided. The objectives of a sale are an influential factor in the sales contract. If the sale is just a way to achieve another forbidden goal, such as lending with interest, the transaction becomes forbidden even if its stated purpose is acceptable, and using a stratagem makes the transaction even worse.
- A *salam* contract is a contract that achieves the stated goals for both the seller and the buyer. Despite the presence of an aleatory element (*gharar*) in a transaction, the legitimacy of *salam* contracts is important because people depend on this type of transaction. The producer needs capital and expenses to produce a commodity, and the buyer needs a lower commodity price than the current sales price. Thus, a *salam* contract meets these needs and achieves both public and private interests.
- *Al-salam* sales have excellent benefits and advantages for both the seller and the buyer, but there are risks due to the possibility of exploiting the sale structure to access *riba*. A *salam* contract may appear to meet the necessary conditions, but the contract may still contain a hidden stratagem, such as an interest-based loan. Therefore, judges must pay attention to this issue, and the proposed codification of *al-salam* contracts will help reveal such ploys.
- Islamic banks use *salam* contracts to provide financing for customers. However, although the transaction terms and conditions may appear acceptable, the bank may still have taken on two roles: first, as the merchant who produces the commodity, which detracts from the nature of the bank's work, and second, as a financier. This circumstance makes the transaction a fictitious sale process, and the commodity sold through the *salam* contract is nothing but a stratagem. Therefore, it is necessary to advise Islamic banks not to engage in fictitious transactions that could land them in legal trouble.
- An investment agency contract (*al-wakala bi al-istithmar*) is a modern contract that has recently gained wide popularity in Islamic banks as a successful alternative to term

deposits in traditional banks. It achieves the same ends as interest-bearing loans but without any legal issues. However, in many cases, such contracts include some components that make the contract subject to criticism, the most important of which is the failure to decide the agent's wages. Additionally, the agent should not agree to guarantee a certain amount of money or profit. It is essential to add conditions that allow for the termination of the investment agency contract. The thesis proposes legal codifications for such contracts that can control these issues.

- Partnership contracts are the foundation of the Islamic banking model. These contracts are essential financing methods for investment operations in various economic activities, whether industrial, commercial, or real estate. At first, Islamic banks used partnership instruments very effectively, as they dealt mainly with the concept of profit and loss sharing, and this is one of the advantages of Islamic banks over traditional banks. However, over time, Islamic banks turned away from these types of partnerships in favor of debt financing through *murabaha*, *tawarruq*, and *salam* contracts until debt financing became the main activity of Islamic banking institutions.
- The term "legal entity" was not known in Islamic jurisprudence until the middle of the fourteenth century AH. The idea of a legal entity is not entirely alien in Islamic jurisprudence, as previous jurists mentioned similar concepts, such as the state system, the state treasury of Muslims, endowments, and the *masjids*. Islamic jurisprudence includes provisions conveying the same idea as a "legal entity."
- Corporate legal entities have become one of the main features of partnership contracts of all kinds, such as *mudharaba* contracts and partnership contracts in investment instruments. Therefore, it has become necessary to develop commercial laws to include all the new rationales behind the contracts involving entities representing a legal personality.
- Speculation contracts (*mudharaba* contracts) are one of the main types of contracts in Islamic finance, and the civil laws applicable to such contracts do not cover all relevant aspects; for example, the ethical aspect is insufficiently covered. Speculators usually try to influence prices by creating factors that increase or decrease prices, such as spreading rumors or making fake deals. Laws must be put in place to govern such acts affecting

speculators; for example, a detailed codification is introduced herein to ensure fair profit distribution. Additionally, detailed speculation liquidation procedures are codified in this thesis.

- The Islamic *sukuk* is one of the new forms of *Sharia* transactions; it is an acceptable alternative to traditional bonds involving interest-based lending. *Sukuks* are based on well-known transactions such as *ijarah*, *salam*, *istisna*, and *mudharaba*. *Sukuks* are considered a development made to keep pace with contemporary financing requirements. *Sukuks* have become well known and have rapidly spread worldwide as a contemporary financing instrument accepted by both Muslims and non-Muslims in both the private and governmental sectors.
- All types of *sukuk* contracts face a particular legal problem: the civil laws of some countries do not yet provide a sufficient legal framework for Islamic *sukuks*, and the current reliance on the *Sharia* standards set by the Islamic financial institutions' *Sharia* boards causes a significant problem in the event of disputes between *sukuk* holders and issuers. This research has solved this problem by codifying the essential types of financing instruments currently in use.
- It is highly advisable for countries that benefit from Islamic finance instruments to prepare laws and adopt legislation that is compatible with the essence of Islamic financial transactions and not in conflict with it.
- The jurisprudential adaptation of complex contemporary financial transactions is an essential and indispensable step for researchers to deeply understand all aspects of a transaction, ultimately identifying the correct *Sharia* provisions for the transaction.
- The significant challenges in codifying contemporary Islamic financial transactions have led to the belief that this project is challenging to implement. However, this thesis research overcomes such challenges.
- Codifying Islamic commercial transactions benefits the global financing market in terms of judicial rulings, increases transparency, and makes it easy to refer to legal articles related to the ruling. Codification also unifies judicial rulings and prevents disruption in judicial rulings due to differences in jurisprudence among judges, which causes a lack of confidence in the judicial system.

- At the end of the research, the desired goal greatfully reached, which was to present a model law proposal for modern Islamic financial sales and transactions, which included 291 legal articles.

Islamic jurisprudence glossary

Introduction:

Allah: One of God’s most beautiful names and attributes.

Prophet Mohammad: The name of Allah’s last and final Messenger.

Qu’ran: The book revealed to the Prophet Mohammad (peace be upon him).

Sunnah: The way of the Prophet Mohammad (peace be upon him).

Sharia: What Allah has legislated for His servants in terms of beliefs, acts of worship, morals, transactions and systems of life, in its various divisions, in order to achieve their happiness in this world and the hereafter.

Chapter One

Fiqh: Islamic jurisprudence. It is described as the jurists’ understanding and practices derived from Islamic divine law the Qur’an and the teachings and living example of the Prophet Muhammad (peace be upon him), the *Sunnah*.

Fiqh al-Usra: Family jurisprudence law.

Fatwa: A legal opinion or decree handed down by an Islamic religious leader.

Ijmaa: An agreement of all the mujtahids (senior Muslim scholars) from the community of Muhammad, may Allah’s peace and blessings be upon him, in a certain era after his death on a particular Islamic ruling

Qiyas: The process of associating something known with another for the purpose of establishing or denying a common ruling due to the commonality between them.

Mu’bah: Deeds that Allah and His Messenger, the Prophet Mohammed (peace be upon him) left people free to do or not to do.

Maqasid Al-Sharia: The goals that *Sharia* was set up to achieve in the interest of the people. These objectives inform the meaning of laws in all or most legislation so that their observation does not pertain to the universe in a special type of *Sharia* provision.

Chapter Two

Fiqh al-mua'malat:

Illah Shariya: Occasioning factors.

Gharar: Aleatory elements in a transaction.

Tāghreer: Fraud in a transaction.

Dhulm: Injustice in a transaction.

Dharar: Harm in a transaction.

Hiyal: Stratagems in a transaction.

Riba: An interest taken on moneylending.

Riba Al-Fadl: Riba in excess/surplus.

Riba Al-Nasa: Riba in delay.

Riba Al-Buyua: Riba in sales.

Waseela: The means to the thing.

Chapter Three

Bai' Al Dain bid Dayn: The sale of a debt for a debt.

Al-Enah Sale: A sale with an immediate repurchase.

Al-Tawarruq: A monetization sale transaction.

Al-Wafa Sale: A sale with a condition to possibly repurchase the sold thing.

Ijarah Muntahia Bittamleek: A lease ending with ownership.

Al-Mushtaqqat Al-Maliyyah: Financial derivatives.

Al-Sarf: Currency exchange.

Chapter Four

Al-Mal: Every property or service with material value or a *Sharia*-permissible benefit.

Al-Mal Al-Mutaqawam: Legitimate property that is privately held and has commercial value if it perishes.

Bai Al-Taljia'h: Forced sales in which the parties pretend to sell to a third person to escape an oppressor or an assault on the thing being sold.

Bai Al-Ha'zil: Mocking or ridiculing sales in which the sale is done by the one who speaks the words of the sale, not according to the will of his or her truth.

Al-Khiyar: Options available to both contracting parties that allow signing the contract or not signing it.

Khiyar Al-Majlis: An option of withdrawal from the contract before parting.

Khiyar Al-Shart: An option by stipulation, or a conditional option.

Khiyar Al-Ghabn: An option in case of discovering a gross deception in the sales contract.

Khiyar Al-Tadlees: An option in case of discovering the fraudulent concealment of defects in the sales contract.

Khiyar Al-A'yb: An option in case of discovering a defect in the sale.

Khiyar Al-Ikhbar bil Thaman: An option in the case of the seller notifying the buyer of incorrect sales prices.

Wakeel fe Al-Bay'a: A third party authorized to sell an asset.

Chapter Five

Al-Murabaha Al-Fiqhiyah: A trust-based sales contract between the seller and buyer to sell the commodity at the same price the seller bought it but with an additional known amount of profit.

Al-Murabaha lil A'mir Bil Shira': Banking *murabaha* or *murabaha* to purchase goods on behalf of an orderer.

Al-Salam Contract: A sales contract of well-described future goods to be delivered for a price to be paid when concluding the contract.

Al-Wakala Bi Al-Istithmar: Investment agency contracts appointing another person to invest and grow one's wealth, with or without a fee.

Chapter Six

Al-Mudharaba Contract: A partnership agreement between two parties, one providing the capital and the other providing the trading or investment expertise and effort.

Rab Al-Mal: The capital provider.

Mudharib: The speculator.

Bait Al-Mal: House of money or house of wealth. Historically, it was the state's financial entity responsible for all money administration and governance.

Investment Sukuk: Islamic bond certificates issued by governments or companies to raise funds from investors for a specified period of time with a specified payment date, during which period *sukuks* and bonds usually distribute a profit rate (fixed or variable) periodically.

Musharakah Sukuk: Partnership *sukuk* certificates of equal value issued with the aim of using the mobilized funds for establishing a new project, developing an existing project, or financing a business activity on the basis of any partnership contracts.

The Model Law for Modern Islamic Financial Sales and Transactions

The Main Occasioning Factors of Forbidden Islamic Financial Transactions

Codifying the Different Types of *riba* as Influencing Factors in Transactions:

Article 1: *Riba* is a conditional increase in return for deferring a loan. In addition, each subsequent postponement of the debt after its settlement is *riba*, whether due as a loan, sale, or exchange of fungible commodities/goods of the same homogeneous type.

Article 2: *Riba* is forbidden, and a contract shall be void if *riba* is involved.

Article 3: If a sale based on *riba* is concluded, the trader must gain nothing additional but his or her rightful amount of capital. Whether a trader receives a *riba* or not, it must be returned if the trader seizes the additional *riba*.

Likewise, if a person deals with *riba* and then repents, he or she must have no extra return but his or her original capital. The trader must return the extra amount to the one from whom it was received as interest.

Article 4: *Riba* is divided into two types:

3. *Riba* in loans and debts (*riba al-quroodh wa duyun*): Every debt includes a conditional increase on the loan's principal or debt increase in exchange for delaying payment.
   - *Riba* in loans (*riba al-quroodh*) has one of the following characteristics:
     c) A conditional increase in the loan's capital.
     d) The loan gives a conditional benefit to the borrower.
   - *Riba* in debts (*riba al-duyoon*) involves the conditional increase that the creditor takes from the debtor in exchange for deferment.
4. *Riba* in sales (*riba al-buyua*) is an exchange of fungible commodities (bartering) and is split into two types:
   - *Riba* in excess/surplus (*riba al-fadl*): An excess taken in exchange for specific homogeneous commodities sale (barter).
   - *Riba* in delay (*riba al-nasa*): A deferral in exchange for a specific sale of homogeneous commodities (barter), where the receipt of one of the two commodities is related to the *riba* causes mentioned above regarding

excess/surplus and the *Sharia* criterion requires that the commodities be exchanged immediately and neither of the two exchanged commodities is cash.

Article 5: *riba* in sales (*riba al-buyua*) can be verified by two main maxims:

First, if the two exchanged commodities are of the same homogeneous type and share the same occasioning factor (*illah Sharia*), then both excess *riba* (*al-fadl*) and delayed *riba* (*al-nāsā*) are prohibited.

Second, if the two exchange commodities share the same occasioning factor (*illah Sharia*) and are of different homogeneous types, then only delayed *riba* (*al-nasa*) is prohibited, and excess *riba* (*al-fadl*) does not apply.

Article 6: In an exchange sale contract (bartering) involving the same homogeneous commodities and having an exact *riba* cause, the following conditions must be met, and a breach of one of these conditions invalidates the contract:

d) The exchange must be on the spot, and deferment is forbidden.
e) The exchanged commodities must be alike and equal.
f) An increase in the volume of the same homogeneous commodities is forbidden.

Article 7: The following condition must be met in an exchange sale contract (bartering) involving different homogeneous commodities with an exact type of *riba* factor (*illah*). A breach of the following condition invalidates the contract: It is forbidden to defer the exchange of commodities, which must be exchanged on the spot.

Article 8: The quality of the same homogeneous commodities does not exempt an interchange from *riba* prohibitions.

Article 9: Ignorance of an equal exchange of the same homogeneous commodity type has the same consequences as full awareness of excess-related *riba*.

Article 10: An exchange of different commodities that share the same *riba* occasioning factor (*illah*) is not permitted under any conditions or standards.

Article 11: It is permissible to exchange two homogeneous commodities of different quantities with compensation added to the transaction, provided that it is not a ploy to bypass excess *riba*.

Article 12: It is permissible to sell a *riba*-based commodity alongside another *riba*-based commodity of the same homogeneous type when handicrafts are involved.

The two exchanged commodities are not required to be equal or identical, and the circumstances of exchanges can vary.

There are two primary conditions for this type of transaction:

c) The sale should not be made for insider trading reasons.
d) The crafted item should not be used to circumvent excess *riba*.

Article 13: It is not permissible to agree on a sale involving a fixed cash price that will decrease if there is a delay in payment. It is also not permissible to agree that the sale price will increase if there is a delay in payment.

Article 14: Every loan that benefits the lender is considered *riba*.

Article 15: Every loan in which the lender stipulates an increase in any form added to the loan is forbidden.

Article 16: Trading in currencies is permitted provided that the following criteria are met:

d) The parties take possession of the exchanged materials before leaving one another, whether the received material is tangible or virtual, or the status of the received material must be stipulated.
e) There should be no conditional option or deferment regarding the delivery by either party.
f) It is forbidden to deal in the forward/futures exchange market.

Possession must be taken off the total exchanged amount. Taking possession of only part of the exchanged amount makes the received amount valid and voids the remaining amount.

Codifying Aleatory Elements (Gharar) as an Influencing Factor in a Transaction

Article 17: An aleatory (*gharar*) contract happens when neither contracting party can determine when a contract is considered complete or what amount is taken or given in the transaction.

Article 18: A contract is considered aleatory (*gharar*) if it meets the following four conditions; however, if one of these conditions fails, then the *gharar* does not have an effect on the contract, and the contract remains valid:

e) The contract is so aleatory that the transaction can be described as ambiguous selling.
f) The contract is not necessary.
g) Aleatory elements are part of the contract, but the contract is not intended to be aleatory itself.
h) Aleatory elements are present in at least one of the financial contract's transactions.

Article 19: Aleatory (*gharar*) contracts are unlawful in four conditions:

First type: The terms of the contract cannot be met.

Second type: The costs or description of the evaluated materials are unclear.

Third type: The materials sold are not in the trader's possession.

Fourth type: There is *gharar* related to deferment that is not clearly defined, whether concerning the price or a commodity sale.

Article 20: Consent between the contracting parties in a contract known to involve aleatory elements, risk, or gambling does not make the contract valid.

Article 21: A contract whose type is not specified before the exchange is invalid. For example, this may occur when two contracts are combined into one contract, sale, or lease.

Article 22: Any obscurity or vagueness in the sales contract can lead to a dispute and thus invalidates the contract.

Article 23: Sales that include a condition of a nonrefundable down payment wherein the advance is forfeited if the buyer does not end up purchasing the commodity are *Sharia* permissible.

Article 24: Any agreement/contract based on gambling or betting is unlawful and considered void.

Article 25: Any commitment to a debt due to gambling or betting is legally void, and the person who agreed to the commitment is not required to act upon his or her obligation.

Article 26: Whoever loses in gambling or a wager may recover what has been paid within a period to be determined by the judge, even if there is a different agreement between the parties.

Article 27: The preceding provisions are excluded from prizes won for specific achievements in sports. It is permissible for the prize to be offered by one contestant or by a third party to the winner.

Article 28: Before fruit ripens, selling the fruit separately from the trees is not permissible. Additionally, plants may not be sold before they are ripe. Unless the purchaser can benefit from the goods as they are, they must be harvested immediately.

Codifying Fraud (*Taghreer*) as an Influencing Factor in Transactions

Article 29: It is not permissible for one of the two contracting parties to deceive the other using fraud, whether by word or by action, to influence the other party to conclude a contract that he or she would not have concluded otherwise.

Article 30: Fraud makes the contract void if the following four conditions are met:

e) Fraudulent methods are used.
f) The fraudulent aspect influences the other party to accept and conclude the contract.
g) The fraud was propagated by one of the contractors or by a third party.
h) The fraud is hidden and not visible to one of the parties. Moreover, that party cannot easily detect the fraud.

Article 31: The party perpetrating the fraud loses the right of recourse if the sale is cancelled after the other party becomes aware of the fraud.

Article 32: The contracting party who discovers that the sale is fraudulent and that the commodity sold was defective may return the sold commodity in exchange for the original amount paid.

Codifying Injustice (*Dhulm*) as an Influencing Factor in Transactions

Article 33: Unjust financial and commercial transactions are defined as financial or commercial transactions that result in unlawful appropriation by one of the contracting parties.

Article 34: Injustice between the contracting parties is forbidden. Accordingly, the contract is void if evidence indicates the occurrence of an injustice against the affected contractor.

Article 35: A contract is considered void if the following three conditions are proven:

d) One contractor has obtained wealth from the contract without the knowledge of the other contracting party.

e) One contractor is aware of the infringement upon the other contracting party's rights, but this infringement is not acknowledged in the contract.

f) One contractor knows of the infringement upon the other contracting party's rights; however, the first contractor still agrees to the contract out of need.

Article 36: A sale that leads to a monopoly over a commodity is prohibited.

Article 37: A trader who buys a commodity to monopolize the market and control its price when consumers are in serious need of this commodity is legally obligated to sell that commodity at the market price.

Article 38: A contract assisting with something prohibited by *Sharia* is not permissible.

Article 39: All contracting parties deserve potential profit from a commercial transaction but must also bear potential losses.

Codifying Harm (*Dharar*) as an Influencing Factor in Transactions

Article 40: Harm in Islamic financial and commercial dealings means that either of the contracting parties inflicts harm on themselves or others; as a result, the harm neither exceeds the benefit nor is equivalent to it.

Article 41: Insignificant harmfulness is tolerable in all contract types, even though harm is still done to one of the contracting parties or others.

Article 42: Harm that warrants the prohibition of a financial or commercial transaction is determined by the following conditions:

c) The harm must outweigh the corresponding benefit or be equal to it.

d) The harm occurs immediately or is thought to likely occur in the future.

Article 43: For contractual liability to be fulfilled, there must be harm to the creditor/contractor due to the debtor's/contractor's failure to meet his or her contractual obligations. Thus, if there is no harm, then there is no liability. However, if the harm is probable, liability is not realized until the harm occurs.

Article 44: Definition of stratagems (*ḥiyal*): Engaging in unlawful artifice so as to appear to be engaged in a legitimate act, bypass a *Sharia* legal provision, or turn attention to another ruling. Additionally, the provision is not changed or dropped if such a stratagem is not employed.

Article 45: Every stratagem that includes a prohibited act is considered forbidden.

Article 46: Every stratagem used to achieve something forbidden is forbidden; the original ruling does not change simply by changing its shape, form, or name.

Article 47: Every stratagem involving trespassing upon a right or premised upon something forbidden is considered a forbidden ploy.

Article 48: Every stratagem involved in an indebtedness process is a ploy or *riba*.

Article 49: Every fictitious transaction intended to access money is *riba*.

Article 50: Any contract with the same effects as those mentioned as having *Sharia* forbidden purposes, such as riba damages, is *riba*, and changes in the contract do not change its real essence.

Article 51: Every sales contract not truly intended for its stated purposes but rather to achieve a loan with interest is *Sharia* invalid.

Article 52: If a third party, such as a financier of the sale, enters into a sales contract between two parties, the sale is a *riba* ploy in the form of a sales contract that leads to a loan with excess interest, thus invalidating the contract.

Article 53: Commodities obtained on credit are prohibited from being resold at a price lower than the original purchase price, except if the characteristics of the purchased commodity have changed.

First maxim: Selling without actual possession is illegal in Islamic Sharia

Article 54: Selling what is not in the seller's possession is not valid.

Article 55: Selling someone else's possession without the owner's permission is not valid.

Article 56: A commodity or a service that cannot be delivered or fully enabled to the buyer may not be sold.

Second maxim: The sale of debt for a debt (Bai' Al Dain bid Dayn) is illegal according to Sharia

Article 57: A debt or receivables trade is a sales contract in which the creditor sells his or her payable right upon the debtor either to the debtor him or herself or to a third party at a discounted price or cost price on a spot value payment basis.

Article 58: The exchange of a delayed counter value for another delayed counter value is forbidden under Islamic law.

Article 59: The selling of debt comes in different forms, including the following:

> First: Selling the debt to the one who owes the debt (i.e., the debtor) at a spot payment price. This sale is legally permissible.
>
> Second: Selling the debt to the debtor for another debt. This sale is legally permissible.
>
> Third: Selling debt to the third party at a spot payment price. This sale is also legally permissible.
>
> Fourth: Selling debts to a third party at a deferred price. This sale is also legally permissible.
>
> Fifth: The sale of a delayed debt not fixed in the liability for a delayed debt, which is the "sale of the debt for the debt" initially or principally, is considered an illegal debt sale in *Sharia*.

Article 60: Deferred debt not received in exchange for a deferred debt that has not been received is forbidden in Islamic law.

Article 61: Debt cancellation between two parties that leads to a debt increase owed by the debtor in exchange for postponing the debtor's payables is not permissible in *Sharia*.

Third maxim: Combining two sales transactions in one contract is unlawful

Article 62: It is not permissible to combine two transactions into one contract transaction.

Article 63: It is not *Sharia* permissible to combine a sale and an advance in one contract transaction.

Types of forbidden sales

Sale with an immediate repurchase (*al-enah* sale)

Article 64: A sale with an immediate repurchase (*al-enah* sale) in which a seller sells a commodity for a deferred price and then repurchases it from the same buyer for less than the selling price is *Sharia* impermissible.

Article 65: *Al-enah* sales have different forms and structures mentioned by jurists in Islamic jurisprudence references:

- First form: Selling a commodity at a deferred price to a buyer and then repurchasing it from the same buyer at a lower price in cash with a stipulation in the contract for the first sale that the seller will repurchase the commodity from the buyer.
- Second form: Selling a commodity at a deferred price to a buyer, then repurchasing it from the buyer at a lower price in cash even with no stipulation in the contract, or conducting a mutual agreement before the contract, even if that act is seen as an acceptable behavior among society members or it is common practice for the seller to repurchase the commodity, all are not permissible.
- Third form: Selling the commodity first for received cash and then repurchasing it from its purchaser for more than the standard market sale price value of a homogenous commodity type or unreceived value amount. *Sharia* jurists title this sale structure a reverse *al-enah*, which is also not permissible.

Article 66: Stratagems are forbidden in all transactions. Therefore, if the second contractor in an *al-enah* sale and a *reverse al-enah sale* has any relation to the first contractor and is used as a mediator to bypass *riba* through a fictitious transaction, the contract is void.

Article 67: Any means that lead to a forbidden sale are also forbidden.

Monetization sale transaction (*al-tawarruq)*

Article 68: *Tawarruq* involves buying a commodity at a deferred price and selling it to a nonseller at a lower expedited price to obtain the cash. This transaction is not *Sharia* permissible because it circumvents *riba*.

Article 69: Organized *tawarruq* involves the seller (financier) arranging to obtain cash for the buyer (in need of cash) by selling the buyer a commodity at a deferred price. The seller (financier) sells it on behalf of the buyer, or the buyer sells the commodity to a third party for a cash price less than the first purchased price. The received cash price is handed over to the buyer. This transaction is not permissible according to *Sharia*.

Article 70: Reverse *tawarruq* takes the same form as organized *tawarruq* transactions, except the applicant for *tawarruq* is the institution, and the financier is the customer. This transaction has other names, such as reverse *murabaha*, inverted *tawarruq*, direct investment, and *murabaha* investment. This transaction is not permissible according to *Sharia*.

A sale with a condition to possibly repurchase, also called redemption sale (*Al-Wafa*) sale

Article 71: An *al-wafa* sale involves the seller selling a commodity at an agreed-upon price for cash or debt, provided that when the seller returns the price to the buyer or pays the debt within an agreed period, the seller has the right to take back the sold commodity from the buyer.

Article 72: An *al-wafa* sale can occur in two cases:

First, the *al-wafa* sales transaction is stipulated in the contract, where the debtor (seller) inserts a condition to resell the commodity after the creditor (buyer) refunds the price or repays the debt. Accordingly, the creditor (buyer) will return the commodity. This sale is not *Sharia* permissible.

Second, the *al-wafa* sale takes place based on an agreement between the parties that preceded the contract that when the debtor returns the debt, the creditor returns the commodity. This sale is also not permissible according to *Sharia*.

Bond issuance and trading

Article 73: A bond is a loan document; the issuer undertakes to pay the total loan value to the document holder on a specified date at a specified interest rate. *Sharia* forbids bonds.

Article 74: *Sharia* does not permit the trading, purchase, sale, or pledging of interest-bearing bonds.

Article 75: Bonds representing a commitment to pay their amount with interest attributed to the original purchase price or conditional interest are impermissible by *Sharia* for issuance, purchase, or circulation because they are considered a *riba* loan type regardless of whether the issuer is private or public and linked to the state. Moreover, naming these bonds investments, savings, or bond certificates or naming the *riba* interest profit, revenue, a commission, or a return does not change its impermissibility in *Sharia*.

Article 76: Zero-coupon bonds are also prohibited, as they are loans sold at less than their nominal value, and their owners benefit from the differences as a discount to these bonds.

Article 77: Bonds linked with prizes are also prohibited, as they are loans in which a benefit or an increase is stipulated for all or some lenders, not by appointment or as gambling.

Lease ending with ownership (*Ijarah Muntahia Bittamleek*)

Article 78: A lease ending with ownership is an agreement between two parties to lease a specific thing (item/service) for a specific period and a known rent that may exceed the usual rent, provided that it ends with the ownership of the leased (item/service) to the lessee. This compound contract is not legally permissible in any form.

Article 79: A single lease contract allows the lessee to own the lease by paying rental installments. This contract type is not *Sharia* permissible.

Article 80: A lease associated with a sales contract, subject to the payment of all agreed-upon rentals within the agreed period, is not *Sharia* permissible.

Article 81: Pairing the lease with a donation/gift in a contract or a promise to give the leased asset as a gift with the condition of completing the lease payments, ending with a separate donation/gift contract, is not *Sharia* permissible.

Article 82: The conjugation of a lease giving the lessee the right to own the leased asset upon the completion of payment installments in return for a nominal or actual price paid by the lessee at the end is not *Sharia* permissible.

Article 83: There are two forms of transactions in which the buyer buys the commodity and leases it back to the seller, ending with an ownership contract:

- First, the seller stipulates in the contract that the buyer will lease back the commodity with a lease ending with an ownership contract. This process is not *Sharia* permissible.
- Second, an undisclosed understanding between the seller and the buyer before signing the contract is to lease back the sold asset to the seller on a lease ending with ownership without stipulating it in the contract. This complicity makes the transaction forbidden by *Sharia*.

Diminishing partnership ending with ownership

Article 83: A diminishing partnership ending with ownership is a partnership contract between two parties for a specific commodity/service whereby the two parties initially agree in the same contract that one of them will gradually sell back his or her share to the other. This is often accompanied during the partnership contract by an agreement to lease the commodity/service to one of them or to a third party, where the lease income is divided between the two partners according to their shareholding.

Article 84: A diminishing partnership agreement comes in the form of a contract clause dictating that one partner will sell back his or her total capital share and the agreed-upon profits to the other. These conditions make the contract not *Sharia* permissible.

Article 85: The stipulation of selling the share in the diminishing partnership contract, whether the share price is predetermined or calculated according to the market value at the time of sale, makes the transaction *Sharia* impermissible and makes it a type of prohibited (*Enah*) sale.

Article 86: If the diminishing partnership contract includes a binding promise by one of the contract parties to buy back the other's share, the contract is not *Sharia* permissible.

Article 87: The bank may not be a party in a diminishing partnership ending with an ownership contract.

Financial derivatives (*al-mushtaqqat al-maliyyah*)

Article 88: Derivatives are subcontracts based on original contracts or other investment tools, such as commodities, bonds, stocks, or currencies, also called derivative securities, and agreements between the parties that access derivatives. The *Sharia* ruling on derivatives is based on the types of contracts used within the derivatives mentioned in the following articles.

Article 89: Derivatives are forward contracts conducted through futures exchange trading halls to buy and sell a commodity or a financial instrument in a future period, where the seller does not intend to deliver the item, sold nor does the buyer deliver the price. Instead, the parties intend to bet on the rise and fall of prices. The futures contract is stereotyped and arranged according to quantity, quality, and delivery details. The price is the only variable in the contract and is ascertained on the trading floor. It is not *Sharia* permissible to deal with futures contracts by formatting or trading.

Article 90: An options contract is a contract that bestows upon its holder the right to buy or sell an identified item (securities, commodities, currencies, or debts) at a determined price within an agreed-upon timeframe or terminate the contract for a predetermined consideration or penalty. There are no obligations in this contract except upon the seller's rights. This option is not *Sharia* permissible in terms of either formation or trading.

Article 91: A swap contract is a contractual agreement between two or more parties to temporarily exchange obligations or rights. The parties agree to either exchange payments resulting from obligations they made to another party without preference to either original obligation toward a third party not included in the contract or by exchanging the receipts that each accrues on the owned assets. *Sharia* does not permit this contract because the swap is fictitious, interest is applied, and no actual exchange is involved.

Article 92: Commodity swaps occur in the commodity market when a contracting party purchases a determined commodity quantity at the market price from the other party and pays on a spot basis. The commodity is simultaneously sold back to the seller as a forward sale at a preagreed price, and the payment is made at intervals according to the agreement. This contract is not *Sharia* permissible

Article 93: A stock dividend swap is an agreement between two parties to exchange a specific share's return rate at a fixed future date or a group of shares or another financial asset at a return share rate. This contract is not *Sharia* permissible.

Article 94: A currency swap is a contract between two parties to buy specified amounts of foreign currency on a spot-price basis and sell back the exact specified amounts on the forwarding prices. This contract is not *Sharia* permissible.

Article 95: An interest rate swap is a forward contract whereby two or more parties agree to exchange (variable or fixed) return rates for (variable or fixed) return rates on a fixed amount in a determined currency without necessarily being associated with the exchange of that amount. This contract is not *Sharia* permissible.

Currency trading

Article 96: A currency sale on a deferment basis or a binding future promise to exchange currencies is not *Sharia* permissible.

Article 97: *Sharia* permits exchanging what is due in cash under the condition that the currency exchange happens immediately and at the present-day rate and the exchange handover is performed immediately.

Article 98: It is permissible to exchange the two parties' debt currency subject to the presence of the contracting parties or whoever represents them physically in the location where the exchange is taking place.

Article 99: In currency margin trading, the buyer (customer) pays a small part of what he or she intends to buy, called the margin. The intermediary pays the client the remaining loan, provided that the purchase remains pledged in the loan amount. This kind of Forex trading is not *Sharia* permissible.

Article 100: Currency trading on regulated exchange markets (the stock exchange) with the condition that exchanges are delayed for either currency being exchanged, although the contract ends with actual delivery, is not *Sharia* permissible.

Article 101: Trading currencies in the organized exchange markets (the stock exchange) with the condition that one or both exchanges are delayed, that the contract should not end with actual receipt and delivery, and that a counter contract can instead liquidate the contract is not *Sharia* permissible.

Article 102: A bilateral promise to exchange currency trading contracts by one or both parties is forbidden by *Sharia*.

Article 103: Parallel purchasing and currency sales are not *Sharia* permissible.

Article 104: It is not permissible for one of the parties to guarantee the other party to protect the other partner from currency-trading risks. However, it is permissible for a third party to voluntarily provide a guarantee for the deal under no stated written condition for the guarantee in the contract.

Definition of property *(al-mal*)

Article 105: Every property *(al-mal*), or right, has material value in dealings or has a benefit that *Sharia* permits.

Article 106: There are two types of property *(al-mal*):

Legitimate property *(al-mal al-mutaqawam*) is privately held and has commercial value if it perishes. This type of property is permissible for inclusion in commercial deals.

Nonlegitimate property (non-*mutaqawam*) is not Sharia permissible. This type of property is not permissible for inclusion in commercial deals.

Article 107: Fungibles are things whose units or parts are homogenous and replaceable and can thus take the place of one another without a significant difference and are calculated in dealing with a number, measurement, capacity, or weight.

Nonfungibles are things whose individual units or parts vary significantly in terms of qualities or value or are rare in the market.

Definition of a legitimate *Sharia* sale and the conditions for its validity

Article 108: A *Sharia*-permissible sale involves a contract for exchanging asset(s), even if it involves debt, or for a permissible service or services for another of the same type in perpetuity but not done on a *riba* basis or as a loan.

Article 109: Sales are categorized into three types:

d) General sales involve selling things for an on-the-spot cash price or deferred payment.
e) Barter is the exchange of one material property *(al-mal*) for another material property *(al-mal*).
f) Exchange is the sale of one currency for another currency.

Article 110: A contemporary financial transaction is any financial transaction that has appeared in the modern era but has not been previously addressed in a *Sharia* ruling.

Article 111: There are three pillars of a sales contract: the contracted object, the contracting parties, and the form of the contract.

Article 112: The necessary elements for the conclusion of the sales contract are as follows:

- The two parties to the contract must agree on the fundamental elements.
- The thing being sold must be possible to be sold, specific, identifiable, and permissible to deal with.
- The obligations and commitments arising from the contract must have a legitimate cause.

Article 113: The conditions of a valid sales contract are as follows:

h) The first condition is the mutual consent of the contracting parties.

i) The second condition is the permissibility of the contracted subject's disposition by the contracting parties.

j) The third condition is the permissibility of benefitting from the contracted subject.

k) The fourth condition is the contracting parties having the full right to dispose of the contracted subject.

l) The fifth condition is the ability to deliver the contracted property.

m) The sixth condition is the availability of information and facts about the contracted subject.

n) The seventh condition is the awareness of the value of the contracted subject.

Article 114: The sale takes place following an offer and acceptance and in every sense that indicates ownership and possession, provided that it is not a farce or the result of coercion.

Article 115: The reciprocal sale delivery by mutual consent between the contracting parties replaces the offer and acceptance, whether the sale is small, large, or valuable, provided that it is carried out according to the in-force custom between the contracting parties.

Article 116: The transaction's conclusion is considered clear, not merely a conjecture.

Article 117: Everything sold transfers to the buyer's ownership from the time the contract is concluded. Any increase in or growth of the thing being sold before its receipt is considered the property of the buyer.

Article 118: Starting from the time of the contract's conclusion, it is not permissible for the seller to dispose of the sold thing or of what has grown or increased from it.

Sales involving an authorized third party (*wakeel fe al-bay'a*)

Article 119: Whenever a property is sold without the owner's authorization, the sale is paused, subject to the owner's permission. If the owner permits it, the sale will be executed; otherwise, the sale will be invalid.

Article 120: For the owner's authorization to be valid in the case of someone selling his or her property without permission, the seller, buyer, and owner of the goods being sold must still be alive. Moreover, the thing being sold should still exist and should not be changed in the meantime. Furthermore, the exchange price used in the sale (i.e., the commodity's price) remains the same, provided that the exchange did not involve cash.

Article 121: If the owner has issued a valid authorization for the sale by the person who was initially not authorized to make the sale, the owner's authorization is considered equivalent to the power of attorney for the unauthorized person to complete the sale. Moreover, the unauthorized person can retain the payment if already received from the buyer; otherwise, the buyer is not obliged to repay that amount to the owner. This is because if the buyer has paid the price, then the payment is valid, and the buyer's liability is clear.

Article 122: If the owner does not authorize the sale done by the unauthorized person, and the purchaser has paid the price to the unauthorized person, not knowing at the time of payment that the seller was unauthorized and sold the property of someone else without the owner's permission, then the original owner may return the payment if it still exists or pay back the equivalent if the payment no longer exists.

Article 123: If an unauthorized person handed over the property to the buyer without the owner's permission, and it then perished under the buyer's ownership, the original owner has the right to be compensated for its value in whatever form the owner wants from either the unauthorized person or the buyer and whomever the owner does not choose will be released from payment.

The provisions for sales related to minor, nonverbal, and visually impaired persons or people with a mental disability

Article 124:

d. Every person who has reached the age of maturity is in control of his or her mental capacity and has not been placed under restrictions shall be fully qualified to exercise his or her rights in buying and selling.
e. A person reaches the age of maturity once he or she completes twenty-one lunar years.
f. As determined by law, anyone who has reached the age of maturity but is foolish or mentally handicapped is considered to have a deficient capacity to engage in sales.

Article 125: If a premature person enters into a sales contract, the contract shall not be executed unless the person's guardian authorizes the sale and the other conditions for the sale's validity are met.

Article 126: If a nonverbal person can be understood and indicates agreement with the "sale," then his or her offer and acceptance through signing or writing are valid.

Article 127: It is permissible for a visually impaired person to buy and sell, whether for him or herself or for others. The visually impaired person may return the purchased commodity if he or she was unaware of the description of the thing being sold.

However, the visually impaired person does not have the right to return the purchased thing after receiving a complete description; after touching, tasting, and smelling the thing; or after having his or her agent view the purchased thing.

Article 128: A sales contract involving someone proven to have a mental disability is considered null and does not apply.

Forbidden sales types and contract components

Article 129: Anything that cannot be delivered to the buyer based on the nature or condition of the item may not be sold.

Article 130: It is not *Sharia* permissible to sell nonexistent things.

Article 131: It is not permissible for Muslims to sell things that Islamic *Sharia* has prohibited, except for what has been licensed for trade due to a preponderance of interest in selling it.

Article 132: Any sales contract that is used to achieve an act that is forbidden in Islamic *Sharia* is an invalid contract.

Article 133: It is not permissible for the seller or buyer to dispose of what they received from a voided contract. What has been spent must be compensated for.

Article 134: Whatever is obtained by the seller or buyer through an invalid contract is mandatorily guaranteed by both parties, just as it is guaranteed in the case of a valid contract.

Article 135: A valid sales contract necessary for both contracting parties entails the following:

> First, the buyer must pay the price if the thing being sold is present, and the price in money must be paid immediately or by the deadline if the deal involves deferred payment.

Second, the seller must deliver the item sold to the buyer after receiving the price. However, if both parties agree to defer the payment, the seller must deliver the sold item before receiving payment.

Third, the seller must guarantee the price to the buyer. If the thing being sold perishes while it is still under the seller's ownership or is consumed without the buyer's permission or by the action of another person, the buyer can demand to void the contract.

Fourth, the buyer must guarantee the price of the thing being sold if the buyer took possession of the thing before paying the price.

Terms and conditions in sales contracts

Article 136: The definition of the terms or conditions in a sales contract is as follows: A condition placed by one of the contracting parties on the other in which the conditioning party has an interest. The condition(s) can be related to the price, the sale, or the contractor.

Article 137: Conditions in the sales contract are categorized into two types:

First, valid condition types are as follows:

h) Conditions regarding what is required for the contract to become effective.
i) Conditions related to the documentation of the buyer's or purchaser's rights.
j) Conditions related to the description of the sale.
k) Conditions in which there is an acknowledged benefit in the sale, be it stipulated by the seller or the buyer.
l) Restrictive conditions that do not prevent the contract from becoming effective.
m) Penal conditions, provided that the compensation is granted in the form of work and not money, as the latter would be *riba*.
n) Conditions that are based on an action or the occurrence of a particular thing.

Second, there are three types of invalid conditions.

The first are conditions that make the contract void, including the following:

- Conditions that lead to *riba*.
- Conditions that often lead to disputes and litigation.
- Conditions that, when combined, lead to greed and cupidity.

The second are invalid conditions that do not affect the contract's validity.

- Conditions that conflict with the purpose of the contract but do not affect the contract's validity; the contract is not changed by an increase, a deficiency, ignorance, or deception.

The third are invalid conditions that prevent the contract from being concluded.

- Conditions that cannot be fulfilled or achieved cause the contract not to be concluded in the first place.

Article 138: The price in a deferred sale may be more than the price in an immediate sale, provided that the seller agrees with the buyer on it being a deferred sale, on the price, and on the delivery date. It is not permissible to conclude the contract without indicating whether the sale is immediate or deferred.

Article 139: The seller may not increase the price if the buyer cannot pay the price at the end of the term, and it is not permissible to respite the buyer in return for financial or material consideration.

Options (*al-khiyar*) in the sales contract

Article 140: The definition of an option (*al-khiyar*) is as follows: Islamic options are a right, not an obligation, that commonly dictates whether one of the two parties, the seller or the buyer, can cancel a contract. Such options are valid for all sale types.

The option of withdrawal before parting (*khiyar al-majlis*)

Article 141: The definition of the contract place (*majlis al-aqd*) is as follows: a location where the seller and the buyer or their representatives are together, and the two parties are engaged in negotiating the contract. The contract place event begins with a proposal and ends with the parties leaving the contract place.

Article 142: The option of withdrawal before parting (*khiyar al-majlis*) is a legal right under which each of the contracting parties has the choice to rescind or confirm the contract, as long as they are both physically or virtually located in the place where the sales contract is being concluded; however, once they depart from that location, the option becomes invalid.

Article 143: If the two contracting parties agree to the condition that they have no option to withdraw before parting or they forego this option; then, the sale is obligatory from the time the contract is concluded or from the time of the forfeiting of the option, and if one of the contracting parties foregoes his or her right, the option remains valid for the other party.

Article 144: The option to withdraw before parting is withdrawn by the death of one of the contracting parties or by reason of insanity or unconsciousness. However, the option remains valid if the party recovers before the contract is concluded.

Article 145: The buyer may not dispose of the purchased commodity, and the seller may not dispose of the payment as long as the option remains valid.

Article 146: The buyer's disposal of the thing being sold is considered an acknowledgment of the completion of the sale and the annulment of his or her option, even if his or her behavior is problematic. The seller's disposal of the payment is considered an acknowledgment of the completion of the sale and the cancellation of his or her option, even if his or her disposal action is not completed.

Article 147: Both seller and buyer forfeit the option to withdraw before parting and the sale becomes obligatory if there is damage to the sold item after the buyer takes possession of it.

Article 148: The option of both contracting parties is forfeited if the thing being sold is damaged, provided that the thing being sold is under the buyer's guarantee before the transfer of possession and the sale is valid. However, if the sold item is under the seller's guarantee, the sale and option are both voided.

Article 149: The option of withdrawal before parting is forfeited by both contracting parties if the purchaser damages the sold commodity before or after receipt, regardless of whether it was under the seller's or the purchaser's guarantee at the time.

Article 150: The sale is confirmed and moves ahead after verbal confirmation and action indicating consent, such as the disposal, leasing, or mortgaging of the sold commodity, not after only testing or experimenting with the commodity.

Article 151: The moment of separation after the conclusion of the sales contract is determined by what people traditionally consider separation by departing from the place where the contract is concluded, regardless of the form of that meeting, such as online, in person, or by phone.

Article 152: The forced separation of the seller and the buyer does not void this option. If one of the parties is forced to remain without the other, the forced party's option remains, and the other's is forfeited.

The option by stipulation, or conditional option (*khiyar al-shart*)

Article 153: The conditional option is defined as an option to cancel a previously agreed-upon sale within a specific, agreed-upon number of days.

Article 154: It is permissible for both the seller and the buyer, one of them without the other or their agents, to pursue the conditional option of halting the sale or permitting it to go forward for a specified period of time.

Article 155: The conditional option can be triggered before the sales contract is concluded, during the time the contract is active, or after the sale is concluded but before departure from the place the contract is concluded.

Article 156: The conditional option is not valid in an exchange sale, *salam* contract, or commodity-bartering sale involving homogenous *riba* commodity types. If the condition is agreed upon, the contract is void, and the sale is invalid.

Article 157: The conditional option is invalid in a contract based on a stratagem that adds interest to a loan. The contract is thus invalidated.

Article 158: The conditional option does not prevent the transfer of the thing being sold to the buyer or the transfer of the payment to the seller.

Article 159: Everything that increases or expands separately or is connected to the sale becomes owned by the buyer and is added to the payment the seller receives.

Article 160: The provisions for the buyer's disposal of the sold item and the seller's disposal of the payment during the agreed upon period for the conditional option are the same as the provisions of the option of withdrawal before parting. See Article (144) and Article (145).

Article 161: The provisions regarding the damage or ravaging of the thing being sold within the conditional option period are the same as those regarding the option of withdrawal before parting.

Article 162: The seller's disposal of the sold commodity does not void the contract, even if the choice is solely the seller's.

Article 163: Any action or behavior that confirms the sale or moves it ahead under the option of withdrawal before parting (*khiyar al-majlis*) is similarly considered with the conditional option. See Article (149).

Article 164: The termination of the sales contract does not depend on the consent of the other party or the other party's presence.

Article 165: The conditional option cannot be inherited, but if one of the contracting parties asks for it to be transferred before his or her death, the requester dies, and the annulment is not yet applied, then his or her heirs have the right to demand the application of the conditional option, provided that all the heirs agree. The lack of consent of one of the heirs forfeits the right of all heirs to the conditional option.

An option in case of discovering a gross deception in the sales contract (*khiyar al-ghabn*)

Article 166: The intention to buy or sell outside the usual market prices is a gross deception that triggers this option (*khiyar al-ghabn*).

Article 167: There is no way to void the sale unless gross deception by one party is discovered by the other. A slight deception does not permit the use of the deception option, which gives the deceived party the right to rescind the contract.

Article 168: The deception option becomes valid if it appears that one party entered into bidding to increase the sales price but had no intent to go forward with the actual sale.

Article 169: The deceived buyer can pursue the deception option if the seller falsely states that he or she received bids at other prices. Alternatively, the seller is misleading in the *murabaha* contract if he or she states that the price for the sale is higher than the actual purchase price.

Article 170: The deceived party can rescind or maintain the sales contract, and the option to continue with the sale does not allow indemnity entitlement.

Article 171: If the thing being sold through gross deception has a defect that is discovered only after the thing enters the purchaser's possession, this does not preclude the deception option, but an indemnity must be paid by the purchaser who decided to annul the sale.

Article 172: If the purchaser damages the sold thing, he or she must pay the cost of replacement to the seller if the contract is rescinded.

Article 173: The option is forfeited if the deceived party becomes aware of the gross deception and still accepts or contentedly disposes of the sold thing.

Article 174: If the deceived party dies due to gross deception, the deception option does not pass to his or her heirs.

An option in case of discovering the fraudulent concealment of defects in the sales contract (*khiyar al-tadlees*)

Article 175: The fraudulent concealment option (*khiyar al-tadlees*) becomes possible if the seller's actions make the buyer believe that the thing being sold has an attribute that falsely necessitates a price increase or if the seller is concealing a defect.

Article 176: If the buyer becomes aware of the fraudulent concealment of defects in the sale, her or she can choose between terminating the sale and keeping possession of the commodity without requiring compensation for the fraud.

Article 177: The buyer does not have the option to rescind the sales contract, providing the following:

d. The buyer was aware of the fraudulent concealment when the contract was concluded.
e. The buyer accepted the sale after becoming aware of the fraudulent concealment.
f. The buyer disposed of the sold commodity, or the cost of the fraudulent concealment was not more than the sale price.

Article 178: The purchaser's heirs after his or her death have the right to pursue the fraud concealment option within the options' conditions.

An option in case of discovering a defect in the sale (*khiyar al-a'yb*)

Article 179: The defect option (*khiyar al-a'yb*) is possible when a defect is discovered after the sale's conclusion that the seller did not notify the buyer about or when the seller was not aware of the defect at first, but it turns out that the defect was initially present in the commodity before the sale. Furthermore, this defect reduces the value of the thing being sold or its price so that the seller cannot benefit from the sold thing as much as he or she could if it was free of the discovered defect.

Article 180: The defect option is guaranteed to the buyer, even if it is not established in the contract.

Article 181: The defect option applies if the defect was present in the thing being sold at the time of the contract or after the deal was concluded, but the thing being sold is still in the seller's possession because it has not been delivered yet.

Article 182: If the buyer becomes aware of an old defect in the sold thing, he or she can apply the option to return the thing being sold or keep it, plus compensation for damages.

Article 183: The buyer is prevented from applying the defect option under the following conditions:

e. The buyer shows any signs of satisfaction with the sale.
f. The buyer disposes of or uses the thing being sold, such as selling, leasing, mortgaging, or changing it; in such cases, the right to the defect option is lost due to the difficulty of returning the thing.
g. There is an apparent deficiency in the sale.
h. The sold commodity is lost.

Article 184: No defect option is possible if the defect occurred after the sale.

Article 185: The right to pursue the defect option does not lapse from the buyer even after a long time has passed since the sale was concluded.

Article 186: If the sale was made through barter and a defect is found in either of the commodities, the defect option is valid for the current owner of the damaged commodity, who can reclaim his or her original commodity if it is still available or be compensated for the value of the thing he or she sold if that thing is not possible to retrieve.

Article 187: If there are several contracting parties to the sale and a defect is found in the sale, it is permissible for some to retain their share of the sale and others to return their share.

Article 188: If different items are purchased in one transaction and some of the sold items appear defective, the buyer can choose among returning all of the purchased items;

returning only the defective part of the sale, provided that the separation of the latter does not affect the sale; or accepting the whole sale, including additional compensation for the defective part.

Article 189: There are two conditions regarding any growth that has occurred in the thing being sold since the time the sale was concluded: If the growth was separate and not attached to the sold thing, this increase remains attached to the sale and can be retained by the buyer, but if the growth is attached to the sale, then it is returned to the seller.

Article 190: A price change is not a defect. If the buyer buys something and its price decreases, the buyer does not have the right to return the sale due to the price change.

Article 191: If the buyer's heirs, after his or her death, become aware of a sale defect, they have the right to pursue the option, but if one of them forfeits this right, the right will be forfeited by all heirs.

An option in the case of the seller notifying the buyer of different selling prices (*khiyar Al-ikhbar bil thaman*)

Article 192: The price notification option is defined as follows: This option is triggered in sales where the seller must tell the buyer about the actual commodity price but is untruthful and reports either a higher price or a lower price. This practice often takes place in *murabaha* sales and partnerships (*musharaka*).

Article 193: The actual cost must be declared when the seller declares the sale cost in *murabaha* and partnership sales. If it becomes clear to the buyer after the contract's conclusion that the price is less than what the seller stated, the seller is obligated to sell the commodity at the actual price, as there is no option given to the buyer to cancel the contract.

Article 194: If the seller mentions that the commodity was bought at a specific price and that the commodity was bought at a deferred price, the seller is obligated to sell at the actual cost of the commodity.

Article 195: The seller is obligated in sales in which he or she declares the cost to accurately indicate to the buyer the price paid in the contract. However, if the seller tells the buyer a different price, the buyer can choose between returning the thing being sold and voiding the contract or keeping the thing being sold without compensation.

Islamic jurisprudence *murabaha* (*al-murabaha al-fiqhiyah*)

Article 195: A trust-based sales contract is a type of sale that involves an agreement between the seller and buyer to sell the commodity at the same price the seller bought it, plus a known profit or percentage based on that initial cost.

Article 196: An Islamic jurisprudential *murabaha* sale contract (*al-murabaha al-fiqhiyah*) is defined as follows: The sale and purchase of goods or services where the acquisition cost and the markup must be disclosed to the purchaser. There are three requirements for the sale to be valid, and a lack of sufficient knowledge about any of them invalidates the contract:

d. Both parties should know the first price (actual cost);

e. Both parties should know the profit margin; and

f. The capital should be the same *riba*-based homogeneous commodity type.

Article 197: It is permissible for both parties to add the option to rescind the contract (*khiyar al-shart*) in the *murabaha* contract during the option-selection period between the two parties.

Article 198: It is not permissible to sell the commodity by *murabaha* before it comes under the seller's complete ownership.

Article 199: It is not permissible to hold a deferred *murabaha* contract in gold, silver, or other currencies.

Article 200: It is not permissible to issue negotiable instruments with *murabaha* debts or other receivables.

Article 201: The *murabaha* contract may not be renewed for the same commodity for which a previous *murabaha* sale contract was made with the same customer.

Article 202: Expenses added to the commodity price must be in line with the commercial practices of merchants, not other groups, and everything that increases in the sold thing or its value is attached to its price.

Article 203: The buyer can stick to the actual price and discount the increase if he or she finds that the seller's declaration of the commodity's purchase price is incorrect.

Article 204: The profit in the *murabaha* sale contract must be known, and the statement of the total price alone is insufficient. The profit may be based on a lump sum or a percentage of the purchase price only or the purchase price plus the expenses. This determination must be made by agreement and consent between the two parties.

Article 205: It is not permissible to agree upon the contract's conclusion that the profit shall not be fixed and instead be made variable by linking it to a variable rate of interest or the market rate; doing so leads to *riba* and aleatory elements (*gharar*).

Article 206: It is not permissible to combine contracts in a way that leads to *riba*, such as if a buyer buys a commodity from a seller through a *murabaha* sale at a deferred price and then sells it back to the seller at a lower price, or sells a commodity to a buyer at a spot price and then repurchases it from the buyer at a deferred price that is more than the spot price.

Article 207: It is permissible for the *murabaha* sale parties to agree to pay the commodity price in installments, but it is not permissible for the seller to impose an increase on the profit as a result of the buyer requesting an extended repayment term or installment delay, regardless of whether he or she has a valid excuse.

Article 208: The seller must guarantee any hidden defects that appear after completing the *murabaha* sales contract. Defects that occur after the *murabaha* contract's conclusion and the buyer's receipt of the commodity are under the buyer's guarantee.

Banking *murabaha* or *murabaha* to purchase orderer contract

Article 209: The definition of banking *murabaha* or *murabaha* to purchase orderer contract (*al-murabaha lla'mir bil shira'*) is as follows: A customer asks to buy a specific commodity, and its price is known, but the commodity is not available to the merchant. The customer offers to buy it from the merchant for an agreed-upon amount of profit. Usually, the price is paid in installments according to the agreement between the two parties.

Article 210: A *mura*baha to purchase orderer contract is a transaction consisting of three parties: the customer or entity who orders the purchase, the merchant or (Islamic bank), and the seller.

Article 211: The bank may not be a party to the *murabaha* contract between the seller and the buyer.

Article 212: The bank financing the customer may not be an agent for a fee in purchasing the goods from the seller through the *murabaha* contract.

Article 213: It is not permissible for the merchant to sell the ordered goods until after he or she actually possesses them.

Article 214: A promise of a *murabaha* transaction is not a contract, and a promise to purchase may not be made binding on either or both contracting parties.

Article 215: It is not permissible for the party who made the purchase to obligate the party that requested the purchase to buy the goods after their purchase, as the former made the purchase by choice.

Article 216: The parties may agree to mortgage the *murabaha* sold commodity to the seller if the payment is deferred or completed in installments to guarantee the total price paid.

Article 217: It is not permissible to include a condition under which a specified sum of money or percentage is to be paid if the debtor delays payment, with or without an excuse.

Article 218: If the debtor proves his or her insolvency and inability to pay, he or she is entitled to postpone payment until the hardship is over, for a period determined by a judge, unless the creditor proves otherwise.

Article 219: It is not permissible to re-evaluate the sold commodity as *murabaha* with an increase in the new price due to the buyer's delay in paying the price.

Article 220: The seller may grant an early settlement reduction upon the buyer expediting the fulfillment of his or her financial obligations.

Article 221: The fictitiousness of the *murabaha* contract invalidates it as if the contract conceals a loan with interest or if the purpose behind the transaction is actually *tawarruq*.

***Salam* sales contracts**

Article 222: A *salam* sale is a sale contract of well-described goods to be delivered in the future for a price to be paid at the time and place the contract is concluded.

Article 223: *Salam* sales may involve only products whose qualities, size, and weight can be precisely controlled to prevent disputes upon delivery.

Article 224: The sold good is a debt owed by the seller.

Article 225: It is not *Sharia* permissible for the buyer to sell the *salam*-bought product before fully possessing it.

Article 226: The terms of the *salam* sales contract must consist of the following:

k. A commodity purchased from the seller that is not currently available must be of a type that can be clearly and accurately described in a way that will not lead to dispute.

l. Both parties must agree on and declare the price of the *salam* sale product.

m. The thing being sold must be of a type that can be delivered so that it is most likely that the thing will be available at the specified time of delivery, whether at the seller's property or in the market.

n. The debt may not be equivalent to the original cost of the commodity, whether the debt belongs to the buyer or a third party. Instead, the total cost must be paid at the time and place of the contract's conclusion or up to three days afterward.

o. The receipt of the sold commodity must be deferred to a specified agreed-upon date.

p. The thing being sold must be deliverable, so it is most likely that the product will be available at the time of delivery at the seller's farm or the market.

q. Options in *salam* sales are prohibited, especially after the payment is received.

r. It is not permissible to obligate the buyer to deliver the sold item before the due date.

s. It is permissible to deliver the sold commodity in acknowledged installments within known deadlines, provided that the original cost of the *salam* commodity is fully paid at the time of the contract's conclusion.

t. *Salam* sales products may not be sold at the market price upon delivery minus a known amount or percentage.

Article 227: If a seller cannot deliver the sold *salam* product under the agreed-upon terms because of a delay in production due to an emergency, the buyer is to be given a choice between waiting for the product to be delivered or rescinding the contract and recovering his or her payment.

Article 228: The buyer may exchange the required *salam* sale product for something other than currency after the delivery date passes without stipulating the exchange in the contract. This regulation applies regardless of whether the substitute is of the same homogeneous product type as the *salam* sale product. The substitute can be exchanged for the original cost of the *salam* commodity, and the substitute market value must not be greater than the agreed market value of the *salam* sales product on the due date.

Article 229: It is permissible to cancel the *salam* sales contract and return the total cost already paid upon both parties' agreement. It is also permissible to cancel part of the *salam* sale and recover the remaining part of the *salam* commodity's capital.

Article 230: Cancelling a *salam* sale after both parties agree and return the total paid capital is permissible. It is also permissible to cancel part of the *salam* sale to recover the corresponding part of the capital.

Article 231: Delivery may occur before the specified date, provided that the *salam* product is of the same quality and quantity agreed upon. If the buyer has an acceptable impediment to accepting the commodity, the buyer is not forced to receive it, and the purchaser is obliged to deliver the commodity as specified.

Article 232: If the seller is unable to deliver the sold thing due to bankruptcy, the seller must be given a grace period until it becomes possible for him or her to deliver to the buyer what they have agreed upon.

Article 233: It is not *Sharia* permissible to require a penalty stipulation for the seller's delay in delivering the product.

Article 234: It is not *Sharia* permissible to issue tradable Islamic bonds (*sukuk*) based on the debt from a *salam* sales contract.

Article 235: It is permissible to document a future product in a *salam* sale by a mortgage, guarantee, or other legitimate means of authentication.

Article 236: A bank may not be a party to a *salam* sales contract between a seller and a buyer.

Article 237: The bank financing the customer may not be an agent hired to purchase the goods from the seller through a *salam* contract.

Article 238: Fictitiousness in a *salam* sales contract invalidates it, such as if the contract conceals a loan with interest or the purpose behind the transaction is *tawarruq*.

The parallel advanced *salam* sales contract

Article 239: The definition of a parallel advanced *salam* sales contract is as follows: A future *salam* sales contract where the seller concludes an independent *salam* sales contract with a third party to obtain a commodity whose specifications are identical to the commodity contracted to be pledged in the first *salam* sales contract to be able to fulfill his or her first obligation. Therefore, the seller in the first *salam* sales contract becomes a buyer in the second *salam* sales contract.

An investment agency contract (*al-wakalah bi al-istithmar*)

Article 240: An investment agency contract is defined as follows: A particular contract for investment and development funds, not based on partnerships or legitimate debts, in exchange for fixed fees or percentages.

Article 241: An investment agency may only be involved in what does not violate Islamic *Sharia* provisions.

Article 242: For the agency's validity, it is required that both contracting parties (agent and principal) be *Sharia* authorized to act concerning the action with which they are entrusted.

Article 243: Both investment agency parties (principal and agent) may agree to halt the agency at a future date, based on a future event, or after investing in a specific geographical location.

Article 244: The principal may amend the agency type and the restrictions placed in the contract, provided that these modifications do not affect the agent's rights or what the agent has previously disposed of prior to the modification.

Article 245: It is not *Sharia* permissible to add a condition in an investment agency contract that makes the agent guarantee the investment even if there is no negligence on his or her part.

Article 246: Both contracting parties must acknowledge the investment agency's fees.

Article 247: The principal bears all the expenses related to the investment.

Article 248: The agent is not liable for any loss, except in cases on his or her intentional misconduct, negligence, or breach of contract, excluding breaches that happen to be advantageous to the principal.

Article 249: If the agent is held liable for capital loss, the liability is limited to the equivalent of the original cost of the commodity, and the agent is not accountable for expected profit loss.

Article 250: The investment agent cannot appoint a third-party agent for the core investment process without the principal's consent.

Article 251: For every investment action in which the agent violates the principal's investment conditions, the agent becomes a guarantor, but if the principal approves the investment activity, the action becomes valid.

Article 252: Islamic banks may not be investment agents for their clients, but they can contract an agent to invest their capital.

Termination of investment agency contract

Article 253: The investment agency's contract shall be terminated or canceled according to the following information:

g. The contract can be cancelled following the principal's death or loss of eligibility for granting power of attorney because the agency's existence depends on the principal's valid authorization.

h. Islamic jurists have excluded the selling agency from selling a mortgage upon the agent's death or loss of capacity when the term of the sale ends.

i. The agent can dismiss him or herself from the agency without paying to avoid causing the principal possible disadvantages.

j. If the principal acts on behalf of the agent, this invalidates the agent's agency.

k. The agency's contract can be terminated due to damage or losses caused by the agency.

l. Temporary investment agency contracts must include an expiration date.

Modern Types of Companies

Article 254: A modern company is defined as a capital-based company whose establishment and formation depend on the partners' capital funds, regardless of its independent identity, and its shares are tradable.

Article 255: A joint stock company is a company whose capital is divided into equal and tradable shares; a partner's liability is limited to his or her capital share.

Article 256: A shares commended company is a company whose capital is composed of tradable shares and whose partners are of two types: partners who are guarantors and fully liable for the company's debts and partners whose liabilities are limited to their shares.

Article 257: A limited liability company is a company whose capital is owned by a specific limited number of partners.

Corporate Legal Entity

Article 258: A corporate legal entity is a person or entity with an independent legal personality or an independent legal entity who may legally own and carry out a given economic activity and has the ability to engage in litigation and make decisions that achieve his or her own interests.

Investment Management Partnership (*Al-Mudharaba* Contract)

Article 259: An *al-mudharaba* contract is a partnership contract between two or more individuals or entities, one of whom provides the capital and the other the work; the profit is split between them according to the terms of their agreement, and the loss is borne solely by the capital provider, as long as the speculative partner is not negligent.

Article 260: There are two types of *al-mudharaba* contracts:

c. An unrestricted *mudharaba* contract: This is a speculative contract in which the capital owners or providers give full permission to the speculator (*al-mudharib*) to administrate the fund, not specifying the work's type, place, or time or even the parties that the speculator can work and trade with.
d. A restricted *mudharaba* contract: The capital owner restricts the speculative worker and assigns the applicable scope of speculation.

Speculation Contract (*Al-Mudharaba*) Terms and Conditions

Article 261: Any condition in a speculation contract (*al-mudharaba*) that leads to profit obscurity between the parties prevents the fulfilment of the contract's purposes and renders the contract void.

Article 262: Any condition in the speculation contract (*al-mudharaba*) that does not further the interests of the contract parties or help meet the contract's requirements leads to the invalidity of the condition, although the contract remains valid.

Article 263: If the *mudharaba* contract is invalid, then the speculator (*al-mudharib*) shall receive none of the shared profit. However, the capital provider must pay the speculator a wage for his or her speculation work evaluated based on common *mudharaba* practices.

Article 264: A speculation contract (*mudharaba*) must include conditions related to the contracting parties:

d. Both contractors must have the legal capacity to engage in a contract, assign the power of attorney, delegate responsibilities, and terminate deals.
e. The *mudharaba* contract is not binding on either party. Moreover, both parties have the right to terminate the contract at any time, except in two cases:
   - First, if the speculator (*mudharib*) begins his or her work, the *al-mudharaba* contract becomes compulsory until the liquidation is completed.
   - Second, if the two parties agree to set a time frame for speculation, neither party has the right to terminate the speculation before the agreed-upon period is over.
f. Multiple entities, including governments, may provide speculative capital funds.

Article 265: The speculation contract (*mudharaba*) must include conditions related to investment capital (*al-mudharaba* capital):

m. The definition of speculation capital (*al-mudharaba* capital) is as follows: The capital given to the speculator to speculate in the market. It can be cash, gold, silver, or anything tangible that can be traded.

n. Speculation capital must be clearly and transparently defined, and speculation between the two parties with undefined capital invalidates the contract.
o. Speculation is not limited to trade but is permissible in all businesses aiming to develop capital and profit.
p. Speculation capital may take the form of cash or tradable commodities. However, it is required when speculating on tradable commodities that independent experts appointed by both parties evaluate the bids, and the asset's value shall be considered the speculation's capital so that the speculator must return the value in cash at the end of the speculation activities.
q. It is not permissible to include the speculator's expenses in the speculation capital; instead, they are calculated as a separate fee.
r. It is not permissible for the speculator to borrow more than the speculation capital except with the capital provider's permission.
s. The speculation capital may not be a debt to the capital provider owed by the speculator (*al-mudharib*). However, if the speculation capital is a debt owed by a third party and the speculator actually or constructively receives it from the third party, the speculation contract is valid.
t. The speculator (a*l-mudharib*) shall be given the authority to control all or part of the *mudharaba* capital. However, handing the capital to the speculator (*al-mudharib*) is not necessary. Prohibiting the speculator from supervising the speculative capital invalidates the contract.
u. The capital provider can restrict the speculation geographically, seasonally, or by project type.
v. In a restricted speculation contract, the speculator must adhere to the conditions set by the capital provider. The speculator is held responsible if any of the set *mudharaba* conditions are violated.
w. It is not permissible for the capital provider to obligate the speculator to guarantee the capital. Moreover, any condition in the contract that obliges the speculator to guarantee the capital is considered null, rendering the contract invalid.

x. If the speculator dies and the speculative funds are available and collectible, the capital must be returned to the provider of that capital. However, if the capital is unavailable and its condition is unclear, the capital is a debt on the part of the speculator (company) to the provider.

Article 266: The speculation contract (*mudharaba*) must include conditions related to profit distribution:

n. The speculation profit is the part of the capital excess to which the capital provider and the speculator are entitled.
o. Each party's clear profit share statement shall be declared in the speculation contract, and the profit must be distributed according to an agreed-upon percentage of the profit and not a lump sum or a percentage of the capital share.
p. The profit must be distributed based on a percentage of shares between the capital owner and the speculator, and it is not permissible for one party to retain all of the profit.
q. It is not permissible for the speculator to combine the fee paid for the speculation work and a percentage earned of the speculation profit unless the fee is for a separate task from the speculation business and has a separate contract.
r. After the contract's conclusion, the parties may apply any modification to the profit distribution percentage and define the terms and applicable period of the new clause.
s. It is not permissible for both speculation contract parties to stipulate adding a lump sum to the initially agreed-upon percentage, and adding such conditions to the contract invalidates it. However, both parties can agree that if excess profits are achieved, one of the parties can take a higher percentage of the profit than was previously prescribed. However, if the profits are equal to or less than those predicted in the initial contract, the profits shall be distributed according to the original contract.
t. It is not permissible for the two parties to agree that the capital provider shall pay the speculator twice, paying one of the speculative operations separately and then paying the total agreed-upon speculation percentage listed in the contract.

u. The profit from the speculation activity shall be distributed based on the total profits and losses of the operation. Losses shall be deducted solely from the capital, provided that no negligence on the part of the speculator exists. If the profits are equal to the losses, the capital provider receives back his or her capital, and the speculator does not receive anything.
v. It is permissible for the speculator to pay a certain percentage of the profit during each specified period, provided that the final settlement is to take place at the end of the speculation contract, and the capital provider bears any losses that occur.
w. The speculator may provide the speculative capital for two separate contracts, one for the capital partnership and the other for speculation tasks. The profit shall be distributed to him or her as a partner plus an additional share as a speculator. In case of a loss, the speculator bears the loss as a partner and for his or her efforts as a speculator unless he or she was negligent in his or her speculation activities.
x. If the speculation contract is valid, the capital provider decides to sell a commodity, and the speculator (*mudharib*) refuses to sell, then the words of one do not prevail over the other. The best solution is to reach an agreement with the help of experts and specialists regarding the most appropriate action. Moreover, both parties can agree to liquidation, which is permissible.
y. It is not permissible to distribute the profit before the capital is recovered. The speculator has the right to receive the profit share only after completing the agreed-upon work and profit share distribution.
z. The capital provider shall solely bear the loss, and any conditions related to the contrary are invalid. If the value of the speculation capital deteriorates, the loss in value is deducted from the final profit, and the speculator shall not be responsible for guaranteeing the lost value, providing no negligence on his or her part has occurred.

Liquidation of Speculation Contracts

Article 267: The speculation contract can be liquidated for voluntary or compelling reasons, such as in the following cases:

g. The contract is terminated by one or both contracting parties before the speculation activities begin.
h. The maturity date predetermined by both contracting parties is reached.
i. The funds have been damaged or lost or if the speculator's capital is returned before the speculation activity starts, providing that no negligence has occurred.
j. The capital funds are exhausted.
k. The speculator's operations are liquidated.
l. The speculator dies, one of the contracting parties loses eligibility, or the capital provider is interdicted due to bankruptcy.

***Sukuk* Investments**

Article 268: The definition of *sukuks* is as follows: Securities with a fixed term, representing equal values, that are tradable according to Islamic *Sharia* standards and that entitle their owner to benefits and responsibilities corresponding to the extent of ownership.

Article 269: The *sukuk* prospectus should mention that the *sukuk* certificates must be issued and traded per *Sharia* controls and invested in projects that comply with the provisions of Islamic *Sharia*.

Article 270: The *sukuk* structure must be based on *Sharia* contracts following Islamic financing formulas that regulate issuance, trading, and buyback.

Types of *Sukuk* Investments

Article 271: Lease *sukuks* are defined as follows: They are securities of equal value representing a common share of ownership of a leased object, usufruct, or services generating revenue.

Article 272: It is not *Sharia* permissible for the lease *sukuk* capital or the returns to be guaranteed.

Article 273: The lease *sukuk* should be redeemed at its market value, not its nominal value.

Article 274: *Salam sukuks* are defined as follows: Certificates of equal value issued for capital raised to purchase commodities through a *salam* contract; the *salam* commodity becomes owned by the *sukuk* holders.

Article275: It is not permissible for either the buyer or the seller to trade *salam sukuk* certificates.

Article 276: Manufacturing *sukuks* (*istisna'a sukuk*) are defined as follows: Certificates of equal value that are issued to raise capital to produce the goods, where the *sukuk* holders own the product.

Article 277: It is not permissible for either the buyer or the seller to trade manufacturing *sukuk* certificates.

Article 278: *Murabaha sukuks* are defined as follows: They are certificates of equal value issued to finance the purchase of a *murabaha* commodity. The *murabaha* goods become owned by the *sukuk* holders.

Article 279: It is not permissible for the *murabaha sukuk* issuer to trade the certificates at a higher or lower value.

Article 280: It is not permissible to calculate a variable profit in *murabaha sukuk* contracts.

Article 281: Partnership *sukuks* (*musharakah ukuks*) are defined as follows: Certificates of equal value issued by a particular project owner or an entity looking to fund a particular project or economic activity. The *sukuk* holders own the company's assets and share the profits and losses.

Article 282: Partnership *sukuk* holders have the right to appoint one of the partners or a third party to manage the *sukuks* that represent the company's assets.

Article 283: It is permissible to trade partnership *sukuks* after the subscription ends and to allot the project's *sukuk* certificates and commitments and begin the relevant activity.

Article 284: Investment speculation (*al-mudharaba sukuk*) is defined as follows: A joint certificate representing projects or activities managed on a speculation basis by the partners appointing a speculator or third party for the operation, administration, and management of the projects or activities.

Article 285: The speculator cannot be obligated to guarantee a profit, and the holders of the speculation *sukuk* alone bear losses unless there is a defect on the part of the speculator.

Article 286: It is permissible to trade or redeem common ownership speculation *sukuk* share certificates for tangible goods, usufructs, or service assets prior to the relevant activity's commencement, provided that the currency exchange *Sharia* rules are observed in the liquidation activity, and the assets are receivables or when the possessions represented by the *sukuks* are sold for a deferred price.

Article 287: It is permissible for the speculation *sukuk* issuer (*al-mudharib*) to pledge in the *sukuk* issuance prospectus to purchase the offered *sukuk* after the issuance process at the market price, not at the nominal value of the *sukuk*.

Article 288: Speculative *sukuks* can be redeemed prior to the commencement of the activity under the following conditions:

c. The currency exchange *Sharia* rules must be observed during the liquidation process.
d. The assets are receivables, or the possessions represented by the *sukuks* are sold for a deferred price.

Article 289: It is not permissible for the *sukuk* issuer (the speculator) to stipulate a lump sum in the *sukuk* prospectus.

Article 290: The *sukuk* issuer may undertake a separate contract from the *mudharaba sukuk* issuance contract to buy back the *sukuk* when offered for trade at its market value only.

Article 291: It is permissible to stipulate in the prospectus for the *sukuk* issuance that a separate third party promises to contribute, free of charge, to guarantee the speculation of the *sukuk*'s nominal value, provided that the promise is not binding.

Works Cited

Abdulbar, Muhammad. *Taqneen Al-Fiqh Al-Islami*. Second ed., Doha, Department of Islamic Heritage, 1986, waqfeya.net/book.php?bid=6020. Accessed 25 Nov. 2020.

Abduljawad, Muhammad. *Buhooth Fe Al-Sharia Al-Islamiyah Wa Al-Qanoon*. First ed., Alexandria, Mushiat Al-Ma'arif, 1991, p. 38.

Abdulla Yusuf Ali. "Surah An-Nisa, Chapter: 4, Versus: 29." *The Holy Quran*, Islamic Propagation Center International, 2008, quranyusufali.com/4/. Accessed 9 Oct. 2021.

Abu Al-Aynain, Badran. *Tareekh Al-Fiqh Al-Islami Wa Nadhariyat Al-Uqood*. First ed., Beirut, Dar Al-Nahdha Al-Arabia, 1999, p. 108, ia600702.us.archive.org/1/items/fnbx3/fnbx3.pdf.

Abu Ghuddah, Abdulsattar. "The Investment Agency: Its Principle and Applications." *Al-Baraka Islamic Economics Fourm*, Al-Baraka Banking Group, 16 July 2013, p. 331, shortest.link/2SFI. Accessed 10 Feb. 2022.

Abu Rukhayah, Majid, et al. *Fiqh Al-Mua'malat*. First ed., Amman, Dar Al-Nafa's Publishing, 2016, pp. 121, 124.

Abu Zayd, Bakr. *Bitaqat Al-Ai'timan*. First ed., Beruit, Al-Resala Publishing, 1996, p. 2, www.saaid.net/book/open.php?cat=83&book=351. Accessed 3 Feb. 2021.

Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). *Shari'ah Standard No. (13) Mudarabah*. *AAOIFI*, Manama, AAOIFI, 14 June 2015, pp. 367, 373, 374, 378, 384, 385, aaoifi.com/s-13-mudarabah/?lang=en. Accessed 12 Mar. 2022.

---. "Standard No. (59) Debt Sell." *AAOIFI*, Dec. 2018, aaoifi.com/wp-content/uploads/2022/01/%D9%85%D8%B9%D9%8A%D8%A7%D8%B1-%D8%A8%D9%8A%D8%B9-%D8%A7%D9%84%D8%AF%D9%8A%D9%86.pdf. Accessed 16 May 2022.

Accounting and Auditing Organization for Islamic Financial Institutions. *Sharia Standard (1), Trading in Currencies*. First ed., Manama, AAOIFI, 29 May 2000, p. 56, aaoifi.com/shariaa-standards/?lang=en. Accessed 7 Aug. 2021.

---. *Sharia Standard (21), Financial Paper (Shares and Bonds)*. *AAOIFI*, First ed., Manama, AAOIFI, 20 May 2004, pp. 265, 567, 581, aaoifi.com/ss-21-financial-paper-shares-and-bonds/?lang=en. Accessed 16 June 2021.

---. *Shariah Standard No. (8), Murabahah*. *AAOIFI*, Manama, AAOIFI, 2015, p. 211, aaoifi.com/shariaa-standards/?lang=en. Accessed 14 Dec. 2021.

---. *Shariah Standard No. (17): Investment Sukuk*. First ed., Manama, AAOIFI, 2015, pp. 468, 479, aaoifi.com/shariaa-standards/?lang=en. Accessed 2 Apr. 2022.

---. *Shariah Standard No. 46, Al-Wakalah Bi Al-Istithmar (Investment Agency)*. First ed., Manama, AAOIFI, 2015, pp. 1120, 1122, aaoifi.com/shariaa-standards/?lang=en. Accessed 9 Feb. 2022.

Al-Albani, Mohammad. *Irwa' Al-Qaleel*. Second ed., vol. 5, Beirut, Al-Maktab Al-Islami, 1985, pp. 148, 220, waqfeya.net/book.php?bid=537. Accessed 14 May 2021.

---. *Sahih Sunan Abu Dawud*. Second ed., vol. 2, Riyadh, Al-Ma'arif Publishing, 2000, p. 374, archive.org/details/WAQssunnd/ssunnd2?view=theater. Accessed 3 July 2021.

---. *Sahih Sunan Ibn Majah*. First ed., vol. 2, Riyadh, Al-Ma'arif Bookshop & Publisher, 1997, p. 218, archive.org/details/WAQssmada/ssmada2?view=theater. Accessed 9 Oct. 2021.

Al-Ansari, Mohammad. *Sharh Hudood Ibn Arafah*. First ed., Beirut, Dar Al-Gharb, 1993, pp. 370, 382, archive.org/details/FP3989/page/n1/mode/2up?view=theater. Accessed 26 Oct. 2021.

Al-Aqtouqhani, Younus. *Harakat AT-Tajdid Fi Taqnin Al-Fiqh Al-Islami*. First ed., Beirut, Dar Al-Kotob Al-ilmiyah, 2015.

Al-Ashqar, Omar. *Muawiqat Tatbeeq Asharia Al-Islamiyah*. First ed., Amman, Dar Al-Nafais, 1992, p. 137, ia801305.us.archive.org/28/items/FPmotdshis/motdshis.pdf. Accessed 12 Nov. 2020.

Al-Asqalani, Ahmad. *Al-Isabah Fe Tamyeez Al-Sahabah*. First ed., vol. 2, Cairo, Dar Hajr, 2008, p. 605, ia601005.us.archive.org/31/items/waq98071_201909/02_98072.pdf. Accessed 10 May 2021.

Al-A’yidi, Ali. *Fiqh Al-Awlawiyat Fe Al-Mua’malat Al-Maliyah Al-Mua’sirah*. First ed., Riyadh, Kunuz Eshbelia Publishing, 2021, p. 126.

Al-Azhari, Mohamed. *Al-Zahir Fe Ghareeb Alfadh Al-Shafi’i*. First ed., Kuwait, Kuwait Ministry of Awqaf and Islamic Affairs, 1979, p. 216, archive.org/details/FP28484/page/n503/mode/2up?view=theater. Accessed 5 June 2021.

Al-Bahuti, Mansour. *Al-Rawdh Al-Murbi’a Ala Zad Al-Mustaqnia*. Edited by Khalid Al Janahi, First ed., Damascus, Dar Al-Mia’raj, 2021, p. 555.

---. *Al-Rawdh Al-Murbi’a Sharh Zad Al-Mustaqnia*. Edited by Abdulla Al-Tayyar et al., Second ed., vol. 6, Riyadh, Dar Al-Watan, 2006, p. 121, shortest.link/1fX2. Accessed 8 Oct. 2021.

---. *Kashaf Al-Qina’a Ala Al-Iqna’a*. First ed., vol. 7, Riyadh, Saudi Arabian Ministry of Justice, 2005, p. 332.

---. *Sharh Muntaha Al-Iradat*. Second ed., vol. 3, Beirut, Al-Resalah Publishers, 2005, pp. 162–163, ia800901.us.archive.org/1/items/sharh_montha_eradat/shmiradat3.pdf. Accessed 2 June 2021.

Al-Baji, Abu al-Walid. *Fusul Al-Ahkam Wa Bayan Ma Mada Alaih Al-Amal Inda Al-Fuqaha Wa Al-Hukkam*. First ed., Beirut, Dar Ibn Hazm, 2002, p. 215, down.ketabpedia.com/files/bkb/bkb-fi02329-ketabpedia.com.pdf. Accessed 31 Jan. 2021.

Al-Bassam, Abdulla. *Tayseer Al-Allam Sharah Umdat Al-Ahkam*. Tenth ed., Sharjah, Al-Sahaba Bookshop, 2006, p. 449, ia800203.us.archive.org/29/items/waq89632/89632.pdf. Accessed 2 Feb. 2021.

Al-Bayhaqi, Ahmad. *Al-Sunan Al-Kabeer*. First ed., vol. 14, Riyadh, Dar Hajr, 2011, p. 529, waqfeya.net/book.php?bid=8426. Accessed 13 Oct. 2021. Hadeeth (14545).

Al-Bayhaqi, Ahmmad. *Al-Sunan Al-Kubra*. First ed., vol. 5, Beirut, Dar Al-Kutub Al-ilmiyah, 1994, p. 474, ia600809.us.archive.org/8/items/FP78881/skb05.pdf. Accessed 14 May 2021.

Al-Baz, Abbas. *Ahkam Sarf Al-Nuqood Wa Al- Umlalat*. First ed., Amman, Dar Al-

Nafa'is, 1999, pp. 41, 60, 73, 74, down.ketabpedia.com/files/bkb/bkb-fi08866-ketabpedia.com.pdf. Accessed 7 Aug. 2021.

Al-Bukhari, Mohamed. *Sahih Al-Bukhari*. Translated by Muhsin Khan, First ed., vol. 3, Riyadh, Dar Al-Salam, pp. 491, 503, www.noor-book.com/en/ebook-Sahih-al-Bukhari--pdf. Accessed 7 Aug. 2021. Book 34, Hadeeth number 2177, Book 34 - Hadeeth 2076.
Book 35, Hadeeth number 2240.

Al-Bulaihi, Saleh. *Al-Salsabeel Fe Ma'rifat Al-Daleel*. Fourth ed., vol. 2, Riyadh, Al-Ma'arif Bookshop & Publisher, 1986, p. 53.

Al-Buwaiti, Yousif. *Mukhtasar Al-Buwaiti*. First ed., Jeddah, Dar Al-Minhaj, 2015, pp. 636–655.

Al-Dharir, Al-Sddiq. *Al-gharar Wa Atharuh Fe Al-Uqood Fe Al-Fiqh Al-Islami*. First ed., Jeddah, Islamic Institute for Research and Training, 1993, pp. 48, 51, ia902606.us.archive.org/18/items/goatmgoatm/goatm.pdf. Accessed 4 Mar. 2021.

Al-Dhohayan Endowments. "Explanation and Translation of the Term: Ijmaa - Encyclopedia of Translated Islamic Terms and Dictionaries." *Terminologyenc.com*, Al Dhohayan Endowments, terminologyenc.com/ar/browse/term/570. Accessed 10 Oct. 2020.

---. "Explanation and Translation of the Term: Qiyas - Encyclopedia of Translated Islamic Terms and Dictionaries." *Terminologyenc.com*, Al Dhohayan Endowments, terminologyenc.com/ar/browse/term/7034. Accessed 10 Oct. 2020.

Al-Dorar Al-Saniyyah. "Selling the Al-Salam Sale Product before Due Delivery Date." *Al-Mawsu'a Al-Fiqhiyyah*, shortest.link/39Q7. Accessed 1 Mar. 2022.

Al-Dosari, Talal. *Uqud Al-Tahawut Min Makhatir Tadhabdhub Asear Al-Umalat*. First ed., Riyadh, Kunuz Eshbelia Publishing, 2010, p. 223.

Al-Dosiri, Talal. "The Investment Agency." *Al Baraka Islamic Economics Forum*, Al-Baraka Banking Group, 16 July 2013, shortest.link/2-6i. Accessed 16 Feb. 2022.

Al-Durayni, Fathi. *Al-Nadhariyat Al-Fiqhiyah*. Fourth ed., Damascus, Damascus University Publications, 1996, p. 140, www.riyadhalelm.com/book/26/23_alnzryat_alfqhiah_alrdini.pdf. Accessed 10

Dec. 2020.

Al-Dusuqi, Muhammad. *Hashiyat Al-Dusuqi Ala Al-Sharh Al-Kabeer*. First ed., vol. 3, Cairo, Essa Al-Babi Al-Halabi Publishing, 1920, p. 159, ia801306.us.archive.org/2/items/hadsshkahadsshka/03_hadsshka.pdf. Accessed 8 Dec. 2021.

Al-Fuzan, Saleh. *Al-Mulakhas Al-Fiqhi*. First ed., vol. 2, Riyadh, Dar Al-A'simah, 2002, p. 27, ia601301.us.archive.org/18/items/FP113456/02_108320.pdf. Accessed 28 Oct. 2021.

---. *Al-Sharh Al-Mukhtasar Ala Matn Zad Al-Mustaqni'a*. First ed., vol. 3, Riyadh, Dar Al-A'simah, 2004, p. 40, ia902701.us.archive.org/13/items/FP62446/03_62448.pdf. Accessed 4 Oct. 2021.

Al-Ghufaili, Abdulla, and Sultan Al-Nasir. *Sharh Akhsar Al-Mukhtasarat*. First ed., Riyadh, Dar Al-Somaie, 2017, p. 23.

Al-Hanbali, Mari'e. *Daleel Al-Talib Li Naiyl Al-Matalib*. Edited by Sultan Al-Eid, First ed., Riyadh, Ithraa Al-Motoon, 2019, p. 382.

Al-Hanbali, Mar'ei. *Ghayat Al-Muntaha Fe Jam'i Al-Iqnaa Wa Al-Muntaha*. First ed., vol. 1, Kuwait, Gheras Publisher, 2007, p. 541.

Al-Hattab, Muhammad. *Mawahib Al-Jaleel Li Sharh Mukhtasar Khalil*. Third ed., vol. 4, Beirut, Dar Al-Fikr, 1993, p. 469, ia800300.us.archive.org/8/items/FP137771/05_137775.pdf. Accessed 21 Oct. 2021.

Al-Hijjawi, Musa. *Al-Iqnaa' Le Talib Al-Intifaa*. Second ed., vol. 2, Riyadh, Saudi Arabian Ministry of Justice, 1998, pp. 209, 447, ia601309.us.archive.org/18/items/FP65772/02_65773.pdf. Accessed 26 Oct. 2021.

---. *Zad Al-Mustaqni'a Fe Ikhtisar Al-Muqni'a*. Second ed., Riyadh, Dar Al-Somaie, 2014, p. 103, archive.org/details/waq64576/page/n302/mode/2up?view=theater. Accessed 10 Aug. 2021.

---. *Zad Al-Mustaqni'a Fe Ikhtisar Al-Muqni'a*. Edited by Muhammad Al-Habdan, Second ed., Dammam, Dar Ibn Al-Jawzi, 2007, pp. 209–212, shortest.link/2VjC.

Accessed 4 Feb. 2022.

Al-Idliby, Bara. *Ma'lamat Zayed*. First ed., vol. 21, Abu Dhabi, Zayed Foundation for Charity and Humanitarian, 2013, pp. 63, 64, waqfeya.net/book.php?bid=12468. Accessed 6 May 2021.

Al-Jassas, Ahmad. *Sharh Mukhtasar Al-Tahawi*. First ed., vol. 2, Beirut, Dar Al-Bashair Al-Islamiyah, 2010, p. 114, ia800200.us.archive.org/23/items/waq107023/02_107024.pdf. Accessed 11 Aug. 2021.

Al-Kasani, Abu Bakr. *Badaa' Al-Sana' Fe Tarteeb Al-Sharaia*. Second ed., vol. 5, Beirut, Dar Al-Kutub Al-ilmiyah, 1986, p. 135, ia800301.us.archive.org/12/items/waq75041/05_75045.pdf. Accessed 10 Aug. 2021.

Al-Khassaf, Ahmad. *Kitab Al-Hiyal*. First ed., Cairo, Cairo Bookshop, 1897, p. 12, bit.ly/2U1t6Ff. Accessed 8 Aug. 2021.

Al-Khathlan, Sa'ad. *Fiqh Al-Mua'malat Al-Maliyyah Al-Mua'sirah*. First ed., Riyadh, Dar Al-Sumaie, 2012, p. 144.

Al-Lahim, Abdulkarim. *Al-Mut'la Ala Daqa'q Zad Al-Mustaqni'a - Al-Mua'malat Al-Maliyah*. First ed., vol. 1, Riyadh, Kunuz Eshbelia Publishing, 2008, pp. 14, 321, 347, 466, 475.

Al-Mahasni, Mohammed. *Sharh Majallat Al-Ahkam Al-Adliyah*. First ed., Damascus, Al-Traqqi Printing, 1928, p. Article: 378.

Al-Masri, Rafeeq. *Al-Tamweel Al-Islami*. First ed., Damascus, Dar Al Qalam, 2012, pp. 66, 90, 91, 94.

---. *Buhuth Fi Al-Iaqtisad Al-Islami*. Second ed., Dar Al-Maktabi, 2009, pp. 38, 180.

Al-Mawardi, Ali. *Al-Hawi Al-Kabeer Fe Fiqh Mathab Al-Imam Al-Shafi'e*. FIrst Edition ed., vol. 5, Beirut, Dar Al-Kutub Al-Ilmiyah, 1994, p. 33, ia804502.us.archive.org/3/items/FP56035/hakb05.pdf. Accessed 9 Oct. 2021.

Al-Mazroa, Abdulhakim. *Al-Suriya Fi Al-Muawadhat Al-Maliyah*. First ed., Riyadh, Kounouz Wshbelia, 2017, p. 40.

Al-Mirdawi, Ali. *Al-Insaf Fe Ma'rifat Al-Rajih Min Al-Khilaf*. First ed., vol. 11, Riyadh, Dar A’lam Al-Kutub, 2005, p. 194, ia801209.us.archive.org/20/items/FP54633/mshki11.pdf. Accessed 3 June 2021.

Al-Mitrik, Omar. *Al-Riba Wa Al-Mueamalat Al-Masrafia Fi Nadhar Al-Shariah Al-Islamiyah*. Second ed., Riyadh, Dar Al-Asimah, 1996, p. Introductory-B, ia600302.us.archive.org/12/items/waq28238/28238p.pdf. Accessed 3 Feb. 2021.

Al-Muhanna, Khalid. *Al-Mushtaqat Al-Maliyah Mafaheemaha Anwa’aha Wa Istikhdamatiha Fe Idarat Al-Makhatir Al-Muhasabiyah*. First ed., SABIC Chair for IFMS, 1 Sept. 2010, p. 22.

Al-Musa, Muhammad, et al. *Al-Fiqh Al-Muyassar*. Second ed., vol. 6, Riyadh, Madar Al-Watan Publishing, 2012, p. 23, shortest.link/27cb. Accessed 7 Dec. 2021.

Al-Mushaiqih, Khalid. *Al-Mukhtasar Fe Al-Fiqh*. Second ed., Riyadh, Al-Rushd Bookshop Publishing, 2013, p. 33.

Al-Mutee’i, Muhammad. *Takmilat Al-Majmu’a Sharh Al-Muhathab*. First ed., vol. 12, Riyadh, Dar A’lam Al-Kutub, 2003, p. 145, al-maktaba.org/book/2186/6318. Accessed 29 Jan. 2022.

Al-Nasa’i, Ahmad. *Sahih Sunan Al-Nasa’i*. Edited by Mohammad Al-Albani, First ed., vol. 3, Riyadh, Al-Ma’arif Publishing and Distribution, 1998, pp. 238, ia600304.us.archive.org/20/items/WAQssnisaa/ssnisaa3.pdf. Accessed 21 Jan. 2022. number: 4628.

---. *Sunan Al-Nasa’i*. 1930. Fourth ed., vol. 7, Beirut, Dar Al-Bashair, 1994, p. 288, ia800200.us.archive.org/16/items/waq106636waq/07_106639.pdf. Accessed 9 June 2021.

Al-Nawawi, Yahya. *Al-Athkar*. Second ed., Beirut, Ibn Katheer, 1990, p. 195.

---. *Rawdhat Al-Talibeen*. First ed., Beirut, Dar Ibn Hazm, 2002, p. 855, archive.org/details/WAQ121769/page/n2/mode/2up?view=theater. Accessed 18 Mar. 2022.

Al-Naysaburi, Muslim. *Sahih Muslim*. First ed., Riyadh, Bayt Al-Afkar Al-Duwaliyah, 1998, pp. 646, Number: 1587, 1548, sunnah.com/muslim:1587c. Accessed 15 Feb. 2021.

Al-Omrani, Abdulla. *Al-Sanadat Min Mandhour Shari*. First ed., Riyadh, Kunuz Eshbelia

Publishing, 2008, p. 8.

Al Omrani, Abdulla. *Al Uqood Al-Maliyah Al-Murakkabah*. First ed., Riyadh, Dar Konoz Eshbilya, 2006, p. 46, www.kutub-pdf.net/reading/caqKLH.html.

Al Qabaj, Samir. *Majallat al Ahkam al Adliyah Masadiraha Fe Qawaneen al Sharq al Islami*. *Roudabooks.com*, First ed., Amman, Dar Al Fath, 20008, www.roudabooks.com/book/37911#.

Al-Qahtani, Fawaz. *Al-Qawaeid Wa Al-Dhawabit Al-Faqhia Al-Muathira Fi Al-Mueamalat Al-Masrifia Al-Islamia*. First ed., vol. 2, Al-Madina, Dar Al-Nasiha, 2017, p. 357.

Al-Qaisi, Laith. *Nadharat Fe Taqneen Al-Fiqh Al-Islami*. First ed., Beirut, Nama center for research and studies, 2015, pp. 309–310.

Al-Qari, Ali. *Majallat Al-Ahkam Al-Shariyah*. First ed., Riyadh, Dewan Al-Muhameen Bookshop, 2021, p. Article 68, 248, 406, 1857.

Al-Qortubi, Omar Ibn Abdulbar. *Al-Istithkar*. Second ed., vol. 6, Beirut, Dar Al-Kutub Al-ilmiyah, 2002, p. 270, www.almeshkat.net/book/12964. Accessed 3 June 2021.

Al-Raysuni◌Ahmad. *Maqasid Al-Maqasid: Al-Ghayat Al-Ilmiyah Wa Al-Amaliyah Le Maqasid Al-Sharia*. First ed., Beirut, Al-Shabakah Al-Arabiyah Llabhath Wa Al-Nashir, 2013, p. 46, shortest.link/1LIs. Accessed 4 Nov. 2020.

Al-Rumi, Haytham. *Al-Syaghah Al-Fiqhiyah Fe Al-Asr Al-Hadeeth*. First ed., Riyadh, Dar Al-Tadmuriyah, 2012, p. 518, archive.org/details/Pdf1573. Accessed 9 Dec. 2020.

Al-Saadi, Abdulmalik. *Al-Bay'a Wa Al-Hiba*. First ed., Amman, Dar Al-Fath, 2017, p. 86.

Al-Saadi, Abdulrahman. *Irshad Uwli Al-Basayir Wal'albab Linil Al-Faqih Bi'aqrab Al-Turuq Wa Aysar Al-Asbab*. First ed., Riyadh, Adhwa Al-Salaf Publishing, 2000, p. 168, archive.org/details/FP45048/page/n341/mode/2up?view=theater. Accessed 2 Feb. 2021.

---. *Taysir Al-Latif Al-Mnan Fi Khulasat Tafsir Al-Quran*. First ed., Riyadh, Saudi Ministry of Islamic Affairs, Dawah and Guidance, 2001, p. 117, ia800309.us.archive.org/34/items/tlmktqtlmktq/tlmktq.pdf. Accessed 2 Feb. 2021.

Al-Saeedi, Abdulla. "Al-Tawarruq Kama Tujreeh Al-Masarif Fe Al-Waqt Al-Hadhir." *Researches of the Seventeenth Session of the Islamic Fiqh Academy*, The International Islamic Fiqh Academy (IIFA), 19 Feb. 2006, p. 502, www.quranicthought.com/wp-content/uploads/post_attachments/5fbd6ff43bba5.pdf. Accessed 6 Dec. 2021.

Al-Sajestani, Abu Dawud. *Sunan Abi Dawud (3504) - Wages (Kitab Al-Ijarah). Sunnah.com*, First ed., vol. 4, Riyadh, Darussalam, 2008, p. 83, sunnah.com/abudawud:3504. Accessed 3 July 2021.

---. *Sunan Abu Dawud (3376) - Commercial Transactions (Kitab Al-Buyu)*. First ed., vol. 4, Riyadh, Darussalam, 2008, pp. 83, 140, sunnah.com/abudawud:3376. Accessed 6 Mar. 2021.

---. *The Book of Employment - Wages (Kitab Al-Ijarah)* (3462). Translated by Nasiruddin Al-Khattab, First ed., vol. 4, Riyadh, Darussalam, 2008, p. 123, sunnah.com/abudawud:3462. Accessed 12 Jan. 2022.

---. *The Book of Employment - Regarding a Man Selling What He Does Not Possess (3503)*. Translated by Nasiruddin Al-Khattab, First ed., vol. 4, Riyadh, Darussalam, 2008, p. 140, sunnah.com/abudawud:3503. Accessed 11 Sept. 2021.

Al-Sanhuri, Abdulrazzaq. *Al-Waseet Sharh Al-Qanoon Al-Madani Al-Jadeed*. First ed., vol. 2, Cairo, Dar Ihyaa Al-Turath Al-Arabi, 1952, p. 882.

---. *Al-Waseet Sharh Al-Qanoon Al-Madani Al-Jadeed*. First ed., vol. 4, Cairo, Dar Ihyaa Al-Turath Al-Arabi, 1952, p. 149.

---. *Masadir Al-Haq Fe Al-Fiqh Al-Islami*. Second ed., vol. 5, 6, Beirut, Al-Halabi Legal Publications, 1998, pp. 168, 224, 19–20.

---. *Nadhariyat Al-Haq*. Second ed., Beirut, Al-Halabi Legal Publications, 1998, pp. 140, 404.

---. *Usool al Qanoon*. First ed., Cairo, Lajnat Al Taleef Wa Al Tarjuma, 1950, books-library.net/free-1208886785-download. Accessed 19 Nov. 2021.

---. *Wujoob Tanqeeh Al-Qanoon Al-Madani Al-Masri*. First ed., Cairo, Nouri Printing, 1936, p. 114.

Al-Sarkhsi, Muhamed. *Al-Mabsout*. First ed., vol. 8, 19, Al-Sa'ada printing Co., Cairo, 1893, pp. 3, 61, ia600704.us.archive.org/19/items/FPmbsootmbsoot/mbsoot08.pdf. Accessed 10 May 2021.

Al-Sawi, Ahmad. *Bulqat Al-Salik Li-Aqrab Al-Masalik*. First ed., vol. 2, Cairo, Mohammad Ali Printing Press, 1935, p. 49.

Al-Shafi'i, Muhammad. *Al-Um*. First ed., vol. 4, Cairo, Dar Al-Wafa, 2001, p. 5, ia600208.us.archive.org/16/items/waqalom/alom05.pdf. Accessed 14 Nov. 2020.

Al-Sharbeeni, Mohammad. *Mughni Al-Muhtaj Ela Ma'rifat Ma'ani Alfadh Al-Minhaj*. First ed., vol. 2, Beirut, Dar El-Marefah, 1997, pp. 60, 61, ia802902.us.archive.org/30/items/WAQ44502/mmmmam2.pdf. Accessed 12 Oct. 2021.

Al-Shatibi, Abu Ishaq. *Al-Muwafaqat Fi Usul Al-Sharia*. First ed., vol. 5, Al Khobar, Dar Ibn Afan, 1997, p. 187, ia802608.us.archive.org/12/items/FPmuafkat/muafkat5.pdf. Accessed 27 Mar. 2021.

---. *Al-Muwafaqat Fi Usul Al-Sharia*. First ed., vol. 3, Al Khobar, Dar Ibn Afan, 1997, p. 125, ia802608.us.archive.org/12/items/FPmuafkat/muafkat3.pdf. Accessed 1 Apr. 2021.

---. *Al-Muwafaqat Fi Usul Al-Sharia*. First ed., vol. 2, Al-Khobar, Dar Ibn Afan, 1997, p. 388, ia902608.us.archive.org/12/items/FPmuafkat/muafkat2.pdf. Accessed 19 Nov. 2021.

Al-Shithri, Abdulrahman. *Hukm Taqneen Al-Sharia Al-Islamiyah*. First ed., Riyadh, Dar Al-Somaie, 2007, p. 50, archive.org/details/waq103583/page/n58/mode/2up?view=theater. Accessed 30 Dec. 2020.

Al-Shithri, Saad. *Sharh Mukhtasar Khuqair Fe Al-Fiqh Al-Hanbali*. First ed., vol. 2, Riyadh, Dar Kunuz Eshbelia, 2017, p. 560.

Al-Shubaili, Yousif. "Al-Murabaha Bi Ribh Mutaqayyer." *Bank Al-Bilad Sharia Committee*, Dar Al-Mayman, 2013, p. 11, www.bankalbilad.com/Documents/Murabaha%20(Proof11)%2025-06-2013.pdf.

Accessed 15 Dec. 2021.

Al-Sulaiman, Mubarak. *Ahkam Al-Ta'amul Fe Al-Aswaq Al-Maliyyah Al-Mua'sirah*. First ed., vol. 2, Riyadh, Kunuz Eshbelia Publishing, 2005, p. 1106, archive.org/details/FP27762/page/n1224/mode/2up?view=theater. Accessed 27 June 2021.

Al-Suwailem, Sami. *Al-Madkhal Ela Al-Tamweel Al-Islami*. First ed., Beirut, Nama for Research and Studies Center, 2013, p. 104.

Al-Tahawi, Ahmad. *Mukhtasar Ikhtilaf Al-Ulama*. Edited by Ahmad Al-Jassas, First ed., vol. 3, Beirut, Dar Al-Bashair Al-Islamiyah, 1995, p. 7, ia801302.us.archive.org/32/items/FP33781/03_33783.pdf. Accessed 4 Feb. 2022.

Al-Tirmidhi, Mohammad. *Al-Jami Al-Kabeer*. Second ed., vol. 2, Beirut, Dar Al-Qarb, 1998, p. 561, ia600208.us.archive.org/7/items/gktgktgkt/gkt2.pdf. Accessed 15 Oct. 2021. Hadith number (1285).

Al-Tirmithi, Mohamed. *Sahih Sunan Al-Tirmithi*. Edited by Mohamed Al-Albani, Second ed., vol. 2, Riyadh, Al-Ma'arif Publishing, 2000, p. 16, ia600608.us.archive.org/18/items/WAQssunnt/ssunnt2.pdf. Accessed 9 June 2021.

Al-Uthaimeen, Mohammad. *Al-Ta'leeq Ala Al-Kafi*. First ed., vol. 6, Al-Qaseem, Ibn al-Uthaimeen Fundation, 2018, p. 140.

---. *Al-Sharh Al-Mumtieu Alaa Zad Al-Mustaqnae*. First ed., vol. 9, Dammam, Dar Ibn Al-Jawzi, Nov. 2004, p. 183, ia600203.us.archive.org/29/items/waq53629/09_53637.pdf. Accessed 2 Feb. 2021.

---. *Al-Sharah Al-Mumtieu Ala Zad Al-Mustaqnae*. First ed., vol. 8, Dammam, Dar Ibn Al-Jawzi, 2004, p. 184, ia800203.us.archive.org/29/items/waq53629/08_53636.pdf. Accessed 2 Feb. 2021.

Al-Uthaimeen, Mohammed. *Al-Ta'leeq Ala Al-Rawdh Al-Murbi'a*. First ed., vol. 1, Riyadh, Ibn Othaimeen Foundation, 2016, p. 601, ia803100.us.archive.org/0/items/a1641n/a1641n.pdf. Accessed 12 Oct. 2021.

Al-Uzjandi, Hasan. *Al-Fatawa Al-Hindiyah*. First ed., vol. 3, Egypt, Bulaq Publishers, 1893, p. 180, ia802609.us.archive.org/31/items/waq99001/03_99003.pdf. Accessed 6 Feb. 2022.

Al-Zarkashi, Mohammad. *Sharh Al-Zarkashi Ala Mukhtasar Al-Khiraqi*. Third ed., vol. 3, Riyadh, Dar Al-Fham, 2003, p. 398.

Al-Zarqa, Mustafa. *Al-Madkhal Al-Fiqhi Al-'Am*. Third ed., vol. 1, Damascus, Dar Al Qalam, 2012, p. 605.

---. *Aqd Al-Ba'ia*. Second ed., Damascus, Dar Al-Qalam, 2012, p. 10, ia803006.us.archive.org/9/items/mjoo5/mjoo5.pdf. Accessed 20 Aug. 2021.

---. "Majallat al Ahkam Al-Adliyah Wa Harakat Al-Taqneen Min Al-Fiqh Al-Islami." *Journal of Judiciary and Law*, vol. One, 1969. Published in Baghdad.

Al-Zuhaili, Wahba. *Al-Fiqh Al-Islami Wa Adillatih*. 1984. Second ed., vol. 5, Beirut, Dar Al-Fikr, 1985, p. 3510, ia800206.us.archive.org/22/items/maktabanagalerikitabkuningkitabempat/alfiqhislamiwahbah5.pdf. Accessed 10 Aug. 2021.

---. *Al-Uqood Al-Musammat Fe Qanoon Al-Mua'malat Al-Madaniyah Al-Emarati Wa Al-Qanoon Al-Madani Al-Orduni*. Eight ed., Beirut, Dar Al-Fikr, 1987, p. 40, shortest.link/WBw. Accessed 10 Sept. 2021.

At-Tirmidhi, Mohammad. *Al-Jami Al-Kabeer*. Translated by Abu Khallyl, First ed., vol. 3, Riyadh, Darussalam, 2007, p. 52, sunnah.com/tirmidhi:1940. Accessed 16 Mar. 2021.

Bahrain Economic Development Board. "Bahrain Business Laws | Civil Law." *Bahrainbusinesslaws.com*, 2001, bahrainbusinesslaws.com/laws/Civil-Law. Accessed 14 Jan. 2022.

Balasubramaniam, Kesavan. "How Does Margin Trading in the Forex Market Work?" *Investopedia*, 11 Mar. 2020, www.investopedia.com/ask/answers/06/forexmargin.asp. Accessed 3 Aug. 2021.

Barone, Adam. "The Ins and Outs of Banks." *Investopedia*, 2019, www.investopedia.com/terms/b/bank.asp.

Basa, Abdennour, et al. "Al-Ilal Al-Shariya Fe Al-Istilah Al-Maqasidi." *Muejm Al-*

Mustalahat Al-Mqasdy, Edited by Ahmed Al-Raissouni, Al-Furqan Islamic Heritage Foundation, 2017, p. 458.

Basha, Mohammad. *Murshid Al-Hayran I'la Ma'rifat Ahwal Al-Insan*. First ed., Riyadh, Al-Qanoon Wa Al-Iqtisad Bookshop, 2015, p. 103.

---. *Murshid Al-Hayran I'la Ma'rifat Ahwal Al-Insan*. First ed., vol. 2, Riyadh, Dar Al-Salam, 2001, p. 752. Article: 395.

Bellis, Mary. "The History of Money." *ThoughtCo*, ThoughtCo, 27 Jan. 2006, www.thoughtco.com/history-of-money-1992150. Accessed 22 Aug. 2021.

Black's Law Dictionary. "Definition of LEGAL ENTITY (Black's Law Dictionary)." *The Law Dictionary*, 27 Mar. 2017, thelawdictionary.org/legal-entity/. Accessed 23 Mar. 2022.

Bozkurt, Gülnihal. "REVIEW of the OTTOMAN LEGAL SYSTEM." *OTAM(Ankara*, 1992, www.mybib.com/#/projects/EeryK0/citations/BeOmWo/edit/article_journal, 10.1501/otam_0000000126.

Bureau of Experts at the Council of Ministers - Kingdom of Saudi Arabia. *Banking Control Law*. 12 Apr. 1966, laws.boe.gov.sa/BoeLaws/Laws/LawDetails/8f70dc63-dd9a-4734-9216-a9a700f2c78c/1. Accessed 23 Jan. 2022.

Cambridge Dictionary. "Aleatory Contract." *Dictionary.cambridge.org*, Cambridge University Press, dictionary.cambridge.org/dictionary/english/aleatory-contract?q=Aleatory+Contract. Accessed 4 Mar. 2021.

Chapra, Mohammad. *Morality and Justice in Islamic Economics*. First ed., UK, Edward Elgar Publishing, 2014, p. 72.

Chen, James. "Derivative Definition." *Investopedia*, 2019, www.investopedia.com/ask/answers/12/derivative.asp. Accessed 17 June 2021.

Cleveland, William, and Marin Bunton. *A History of the Modern Middle East*. Westview Press, 2009.

Damodaran, Rupa. "Standards Can Help Islamic Finance Grow: Zeti | New Straits Times." *NST Online*, 13 Nov. 2015, www.nst.com.my/news/2015/11/standards-can-help-islamic-finance-grow-zeti.

Darmanin. “Opinion of the European Economic and Social Committee on “Financing Structures for SMEs in the Context of the Current Financial Situation” (Own-Initiative Opinion).” *Official Journal of the European Union*, vol. C 48, no. 07, 15 Feb. 2011, p. 35, eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010IE1159&qid=1652254996868. Accessed 11 May 2022.

Dhiyab, Ziyad. *Iflas Al-Sharikat Fe Al-Fiqh Al-Islami Wa Al-Qanoon*. First ed., Amman, Dar Al-Nafais, 2011, p. 37, down.ketabpedia.com/files/bkb/bkb-fi11069-ketabpedia.com.pdf. Accessed 12 Mar. 2022.

Dictionary.com. “Definition of STRATAGEM | Dictionary.com.” *Www.dictionary.com*, Dictionary.com, LLC, www.dictionary.com/browse/stratagem. Accessed 29 Mar. 2021.

Dustur. *Official Collection of Ottoman Legislation Enacted between 1839 and 1865*. Second ed., vol. 4, Istanbul, Matba-yi Amira, 1865.

Egyptian Civil Law. *Sale*. 29 July 1948, urbanlex.unhabitat.org/sites/default/files/131-1948_the_egyptian_civil_law.pdf. Accessed 31 Aug. 2021.

Elliott, Larry. “Larry Elliott: Banks Need to Go back to Being Boring.” *The Guardian*, 26 Jan. 2009, www.theguardian.com/business/2009/jan/26/banks-responsibility-larry-elliot. Accessed 4 Dec. 2021.

Fatwa and Sharia Supervisory Board. “DFM Shariah Compliant Standards (Standard 2) for Issuing, Owning, and Trading Sukuk.” Dubai Financial Market (DFM).

Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates. *Sale and Barter*. 14 Feb. 1987, legaladviceme.com/legislation/126/uae-federal-law-5-of-1985-on-civil-transactions-law-of-united-arab-emirates. Accessed 31 Aug. 2021.

Financial Conduct Authority. “Glossary Terms - FCA Handbook.” *Www.handbook.fca.org.uk*, www.handbook.fca.org.uk/handbook/glossary/?filter-title=derivative. Accessed 23 June 2021.

Fincyclopedia. “Types of Murabaha to the Purchase Orderer (MPO).” *Fincyclopedia*, 18

Aug. 2021, fincyclopedia.net/islamic-finance/tutorials/types-of-murabaha-to-the-purchase-orderer. Accessed 17 Dec. 2021.

First decision: Margin Trading. "Margin Trading." *Islamic Fiqh Academy Magazine*, 8 Apr. 2006, p. 229.

Foster, Nicholas HD. *Islamic Commercial Law (II): An Overview*. Jan. 2007, p. 5. *InDret, Revista Para El Analisis del Derecho*, indret.com/wp-content/uploads/2007/05/405_en.pdf. Accessed 25 Dec. 2020.

Goldziher, Ignaz. *Muhammedanische Studien*. 1889. Reprint ed., Germany, Halle a.S., Niemeyer, 1961, pp. 75–76, archive.org/details/muhammedanisches00gold. Accessed 14 Dec. 2020.

Greenspan, Alan. "FRB: Speech, Greenspan -- Financial Derivatives -- March 19, 1999." *Www.federalreserve.gov*, 19 Mar. 1999, www.federalreserve.gov/boarddocs/speeches/1999/19990319.htm. Accessed 23 June 2021.

Grima, Simon. "Financial Derivatives." *Encyclopedia.pub*, encyclopedia.pub/1477. Accessed 17 June 2021.

Grossbard, Justin. "Forex Statistics [Updated for 2021]." *Compare Forex Brokers*, 9 June 2021, www.compareforexbrokers.com/forex-trading/statistics/.

Group of Sharia, Politicians, and legal Scholars. *Mashru'a Taqneen Al-Sharia Al-Islamiyah*. First ed., Umm Al Quwain, Dar Al-Kitab Al-Islami Al-A'lami, 1992, p. 119.

Group of Sharia Scholars. *Al-Mawsua'a Al-Kuwaitiyah*. Second ed., vol. 9, Kuwait, Kuwait Ministry of Awqaf and Islamic Affairs, 1983, p. 63, ia803101.us.archive.org/13/items/FPmfkmfk/mfk09.pdf. Accessed 10 Sept. 2021.

Hammad, Nazeeh. *Mua'jam Al-Mustalahat Al-Maliyyah Wa Al-Iqtisadiyah Fe Luqat Al-Fuqaha*. Second ed., Dumascus, Dar Al-Qalam, 2014, p. 422, ia802601.us.archive.org/31/items/WAQ99007/99007.pdf. Accessed 27 Mar. 2022.

Hammoud, Sami. *Tatweer Al-A'mal Al-Masrafiyah Bima Yattafiq Wa Al-Sariah Al-Islamiyah*. Second ed., Amman, Al-Sharq Printing and Publishing, 1982, p. 432, ia903404.us.archive.org/10/items/gmvw9/gmvw9.pdf. Accessed 8 Jan. 2022.

Hanbal, Ahmad. *Mu'snad Al-Imam Ahmad Bin Hanbal*. Edited by Shu'ab Al-Arnau't, First ed., vol. 6, Beirut, Al-Resalah Publishing, 2001, pp. 324 (3783), ia802605.us.archive.org/26/items/waqmsnda/msnda06.pdf. Accessed 11 July 2021.

Hashim, Zahr el-Dean. *Maqasid Al-Biyu'a Wa Turuq Ithbatiha Fe Al-Fiqh Al-Islami*. First ed., Amman, Dar Al-Nafaes, 2011, p. 41.

Haydar, Ali. *Durar Al-Hukkam Sharh Majallat Al-Ahkam*. Second ed., vol. one, Amman, Dar Al Thaqafa, 2015, pp. 7, 8, waqfeya.com/book.php?bid=5017.

Homer, Sidney, and Richard Sylla. *A History of Interest Rates*. 1963. FOURTH EDITION ed., New Jersey, John Wiley & Sons, Inc., 2005, p. 3, vnn1.online.fr/Cafeteria/Financial_Accounting_Banking/A.History.of.Interest.Rates.Wiley.Finance.Series.4th.Ed.eBook-YYePG.pdf. Accessed 15 Feb. 2021.

Hussein, Abdulla. *Almuqaranat Al-Tashreiyah Bayna Al-Qawaneen Al-Wadhiyah Wa Al-Tashrei'a Al-Islami*. Second ed., vol. 1, Cairo, Dar Al-Salam, 2006, p. 117.

Ibn Abdul Bar, Yusuf. *Al-Istithkar Al-Jamia Le Mathahib Fuqahaa Wa Ulama Al-Amsar*. First ed., vol. 20, Beirut, Dar Qutaiba, 1993, p. 91, waqfeya.net/book.php?bid=1457. Accessed 14 Nov. 2020.

Ibn Al-Arabi, Abu Bakr. *Ahkam Al-Quran*. Third ed., vol. 1, Beruit, Dar Al-kutub Al-ilmiyyah, 2003, p. 324, ia902806.us.archive.org/1/items/FPakquiaakquia/akquia1.pdf. Accessed 1 Feb. 2021.

---. *Al- Qabas Fe Sharh Muwatta Malik Bin Anas*. First ed., vol. 1, 2, Beirut, Dar Al-Qharb Al-Islami, 1992, pp. 324, 787, ia800302.us.archive.org/12/items/qabasqabas/qabas.pdf. Accessed 1 Feb. 2021.

Ibn Al-Atheer, Abu Sa'dat. *Al-Nihaya Fi Ghareeb Al-Hadeeth Wa Al-Athar*. First ed., Dammam, Dar Ibn Al-Jawzi, 2001, p. 397, archive.org/details/waq48472/page/n395/mode/2up?view=theater. Accessed 5 June 2021.

Ibn Al- Atheer, Abu Sa'dat. *Al-Nihayah Fe Ghareeb Al-Hadeeth Wa Al-Athar*. First ed., vol. 4, Beirut, Dar Al-Kutub Al-Ilmiyah, 1979, p. 372, archive.org/details/waq1283/04_1286/page/n372/mode/2up. Accessed 30 Aug. 2021.

Ibn Al-Humam, Muhammad. *Fat'h Al-Qadeer*. First ed., vol. 6, Beirut, Dar Al-Kutub Al-Ilmiyah, 2002, p. 223, ia902801.us.archive.org/22/items/waq72501/06_72506.pdf. Accessed 12 Mar. 2022.

Ibn Al-Jallab, Ubaid Allah. *Al-Tafreia Fe Fiqh Al-Imam Malik Bin Anas*. First ed., vol. 2, Beirut, Dar Al-Kutub Al-Ilmiyah, 2007, p. 111, archive.org/details/FP88497/02_88498?view=theater. Accessed 10 Aug. 2021.

Ibn Al-Munthir, Mohammad. *Al-Awsat Fe Al-Sunan Wa Al-Ijma'a Wa Al-Ikhtilaf*. First ed., vol. 10, Cairo, Dar Al-Falah, 2009, p. 50, bit.ly/3fTaMWx. Accessed 11 Aug. 2021.

Ibn Al-Munthir, Muhammad. *Al-Ijma'a*. Second ed., Riyadh, Dar A'lam Al-Kutub, 2003, p. 134, ia802606.us.archive.org/2/items/FP39702/39702.pdf. Accessed 29 Jan. 2022. Number: 556.

Ibn Al-Najjar, Muhammad. *Mau'nat Uli Al-Nuha Sharh Al-Muntaha*. Fifth ed., vol. 5, Makkah, Al-Asadi ?Bookshop, 2008, p. 61, ia800208.us.archive.org/30/items/waq103971/05_103975.pdf. Accessed 24 Sept. 2021.

---. *Muntaha Al-Iradat Fe Jam'a Al-Muqn'a Ma'a Al-Tanqeeh Wa Ziyadat*. Second ed., vol. 1, Beirut, Al-Resalah Publishing, 2006, p. 253, ia601303.us.archive.org/35/items/FP141987/01_141987.pdf. Accessed 24 Sept. 2021.

Ibn Al-Qayyim, Mohamed. *Tahtheeb Al-Sunan*. First ed., vol. 3, Beirut, Al-Ma'arif Publishing, 2007, p. 1631, ia800306.us.archive.org/17/items/waq86221/86221.pdf. Accessed 3 June 2021.

Ibn Al-Qayyim, Mohammad. *I'lam Al-Muwaqqi'in 'an Rabb al 'Alamin*. First ed., vol. 3, Al-Dammam, Dar Ibn Al-Jawzi, 2002, pp. 172, 207, 407, ia800904.us.archive.org/31/items/FP57544/3-57546.pdf. Accessed 1 Mar. 2021.

---. *I'lam Al-Muwaqqi'in 'an Rabb al 'Alamin*. First ed., vol. 5, Al-Dammam, Dar Ibn Al-Jawzi, 2002, p. 294, ia600904.us.archive.org/31/items/FP57544/5-57548.pdf. Accessed 2 Apr. 2021.

Ibn Ashur, Muhammad al-Tahir. *Maqasid Al-Shariah*. First ed., vol. 3, Doha, Ministry of Awqaf and Islamic Affairs, 2004, p. 317, archive.org/details/FP64275/03_64277/page/n316/mode/2up?view=theater. Accessed 27 Mar. 2021.

Ibn A'bideen, Mohamed. *Rad Al-Muhtar Ala Al-Dur Al-Mukhtar Sharh Tanweer Al-Absar*. First ed., vol. 7, Riyadh, Dar A'lam Al-Kutub, 2003, pp. 545, 546, ia802205.us.archive.org/13/items/waq61487/07_61493.pdf.

Ibn A'bideen, Mohammad. *Al-Rad Al-Muhtar Ala Al-Dur Al-Mukhtar*. Second ed., vol. 5, Beirut, Dar Al-Fikr, 1992, p. 143.

Ibn Dhuwayyan, Ibrahim. *Manar Al-Sabeel*. First ed., Beirut, Al-Maktab Al-Islami, 2000, p. 296, ia800901.us.archive.org/11/items/FP8081/01_8081.pdf. Accessed 29 Jan. 2022.

Ibn Hazm, Ali. *Al-Muhalla*. 1929. First ed., vol. 8, Beirut, Dar Al-Jeel, p. 249.

Ibn Illibban, Muhammad. *Akhsar Al-Mukhtasarat Fe Al-Figh Ala' Math'hab Al-Imam Ahmad Bin Hanbal*. Edited by Muhammad Al-Ajmi, First ed., Riyadh, Dar Al-Bashayer Al-Islamiyah, 1996, p. 166, archive.org/details/waq50896/mode/2up?view=theater. Accessed 21 Oct. 2021.

Ibn Khaldun, Abdulrahman. *The Muqaddimah*. 1967. Translated by Franz Rosenthal, First ed., New Jersey, Princeton University Press, 2015, p. 272, www.mybib.com/#/projects/EeryK0/citations/DkqXAv/edit/book. Accessed 10 Mar. 2021.

Ibn Majah Al-Qazwini, Muhammad. *Sunan Ibn Majah*. Translated by Nasiruddin Al-Khattab, First ed., vol. 3, Riyadh, Darussalam, 2007, pp. 249, 338, sunnah.com/ibnmajah:2341. Accessed 16 Mar. 2021.

Ibn Mandhour, Mohamed. *Lisan Al-Arab*. 1883. First ed., vol. 10, Beirut, Dar Sadir, 2003, p. 375, ia600209.us.archive.org/28/items/waq10576/10_10585.pdf. Accessed 5 June 2021.

Ibn Muflih, Mohamed. *Kitab Al-Furua'*. First ed., vol. 6, Beirut, Al-Resalih Establishment, 2003, p. 316, ia801608.us.archive.org/34/items/waq60625/06_60630.pdf. Accessed 5 June 2021.

Ibn Muflish, Ibrahim. *Al-Mubdi'a Sharh Al-Muqni'a*. First ed., vol. 9, Riyadh, Dar A'lam Al-Kutub, 2003, p. 345.

Ibn Noujaim, Zainuddin. *Al-Ashbah Wa Al-Nadhair*. First ed., Beirut, Dar Al-Kutub Al-Ilmiyah, 1999, p. 290, archive.org/details/FP75620/mode/2up?view=theater. Accessed 9 Jan. 2022.

Ibn Nujaym, Zain El-deen. *Al-Bahr Al-Ra'iq Sharh Kanz Al-Daqaiq*. Edited by Zakariya Umairat, First ed., vol. 6, Beirut, Dar Al-Kutub Al-Ilmiyah, 1997, pp. 37, 169, ia600302.us.archive.org/18/items/waq50266/06_50271.pdf. Accessed 22 Oct. 2021.

Ibn Qasim, Abdulrahman. *Hashiyat Al-Rawd Al-Murbia*. Ninth ed., vol. 4, Riyadh, Saudi Arabian Ministry of Justice, 2002, p. 400, ia801305.us.archive.org/0/items/FP16641/harumu4.pdf. Accessed 22 Sept. 2021.

Ibn Qudamah, Abdulla. *Al-Kafi*. Second ed., vol. 3, Riyadh, Saudi Arabian Ministry of Justice, 1998, p. 57, waqf.shamela.ws//books/11/1047/1047_3.rar. Accessed 22 Sept. 2021.

---. *Al-Mughni*. Fourth ed., vol. 5, 6, Riyadh, Dar A'lam Al-kutub, 1999, pp. 57, 5, 6, waqfeya.net/book.php?bid=504. Accessed 18 May 2021.

---. *Al-Muqni'a*. 1998. First ed., vol. 11, Riyadh, Dar A'lam Al-Kutub, 2005, p. 23, ia601209.us.archive.org/20/items/FP54633/mshki11.pdf. Accessed 30 Aug. 2021.

Ibn Qudamah, Abdulrahman. *Al-Sharh Al-Kabeer*. First ed., vol. 11, Riyadh, A'lam Al-Kutub, 2005, p. 316, ia801209.us.archive.org/20/items/FP54633/mshki11.pdf. Accessed 12 Oct. 2021.

Ibn Rushd, Abu Al-Waleed. *Bidayat Al-Mujtahid Wa Nihayat Al-Muqtaṣid*. First ed., vol. 3, Cairo, Ibn Taimiyah Publishing, 1995, p. 237, ia800507.us.archive.org/5/items/FP68577/03_68579.pdf. Accessed 1 Feb. 2021.

Ibn Rushd, Muhammad. *Al-Bayan Wa Al-Tahseel*. 1984. Second ed., vol. 8, Beirut, Dar

Al-Gharb Al-Islami, 1988, p. 18, ia802803.us.archive.org/5/items/WAQ7373/bita08.pdf. Accessed 9 Jan. 2022.

Ibn Taimiyah, Ahmad. *Majmua Al-Fatawa*. First ed., vol. 30, Al-Madina, Saudi Ministry of Islamic Affairs, Dawah and Guidance, 1995, pp. 36, 353, ia800300.us.archive.org/4/items/mfsiaitmmfsiaitm/mfsiaitm30.pdf. Accessed 2 Apr. 2021.

---. *Majmua Al-Fatawa*. First ed., vol. 29, Al-Madina, Saudi Ministry of Islamic Affairs, Dawah and Guidance, 1995, pp. 22, 500, ia800300.us.archive.org/4/items/mfsiaitmmfsiaitm/mfsiaitm29.pdf. Accessed 5 June 2021.

---. *Tafseer Ayat Ashkalat*. First ed., vol. 2, Riyadh, Al-Rushd Publishing, 1996, p. 632, archive.org/details/FPtao/mode/2up?view=theater. Accessed 1 Mar. 2021.

Ibn Taimiyyah, Ahmad. *Al-Fatawa Al-Kubra*. First ed., vol. 3, Beirut, Dar Al-Arqam Bin Abi Al-Arqam, 1999, pp. 107, 137, 193.

---. *Majmua Al-Fatawa*. First ed., vol. 28, Al-Medina, Saudi Ministry of Islamic Affairs, Dawah and Guidance, 1995, p. 385, ia800300.us.archive.org/4/items/mfsiaitmmfsiaitm/mfsiaitm28.pdf. Accessed 2 Feb. 2021.

Ibrahim, Basim. *Majlis Aqd Al-Bay'a Bayna Al-Nadhriyah Wa Al-Tatbeeq*. First ed., Dar Al-Nafaes, 2011, p. 153.

Defining Rental-Purchase of Real Estate. 12 July 1984, www.legifrance.gouv.fr/loda/id/LEGITEXT000006068850/. Accessed 1 July 2021.

La Semaine de Droit Musulman. Revue Internationale De Droit Comparé, Oct. 1951.

International Islamic Figh Academy. "Decision Number (66/7/4) about the Sharia Ruling of (Al-Wafa Sale)." *International Islamic Figh Academy*, 14 May 1992, www.iifa-aifi.org/ar/1855.html. Accessed 11 June 2021.

International Islamic Fiqh Academy. "Decision 102 (5/11) [1] on Currency Trading." *International Islamic Fiqh Academy*, International Islamic Fiqh Academy, 19 Nov. 1998, www.iifa-aifi.org/ar/2035.html.

---. “Decision Number 110 (4/12) about the Sharia Ruling of (Lease to Own Financing).” *International Islamic Fiqh Academy*, 28 Sept. 2000, www.iifa-aifi.org/ar/2061.html. Accessed 9 July 2021.

---. “Decision Regarding Tawarruq: Its Reality and Its Types (the Well-Known Jurisprudence and Organized Banking).” *International Islamic Fiqh Academy*, 30 Apr. 2009, www.iifa-aifi.org/en/7038.html. Accessed 8 June 2021.

---. “Resolution No. 30 (5/4) Muqāraḍah and Investment Certificates.” *International Islamic Fiqh Academy - OIC*, 6 Feb. 1988, iifa-aifi.org/en/32300.html. Accessed 1 Apr. 2022.

---. “Resolution No. 60 (11/6) [1] Concerning Bonds.” *International Islamic Fiqh Academy*, 20 Mar. 1990, www.iifa-aifi.org/ar/1813.html. Accessed 16 June 2021.

---. “Resolution Nos. 40–41 (2/5 and 3/5) Keeping a Promise and Murābaḥah to the Purchase Orderer.” *International Islamic Fiqh Academy - OIC*, 15 Dec. 1988, iifa-aifi.org/en/32332.html. Accessed 18 Feb. 2022.

---. “Sale of Debts.” *International Islamic Fiqh Academy - OIC*, 28 June 2006, iifa-aifi.org/en/32934.html. Accessed 18 May 2022.

---. “Shariah Rulings on Modern Companies: Holding and Other Companies.” *International Islamic Fiqh Academy - OIC*, The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference, 11 Jan. 2003, iifa-aifi.org/en/32864.html. Accessed 10 Mar. 2022.

Promulgation of the Companies Law - Memorandum of Incorporation and Articles of Association. 2016, kdipa.gov.kw/wp-content/uploads/2021/03/E012016.pdf. Accessed 12 Mar. 2022.

Iqbal, Munawar, and Philip Molyneus. *Thirty Years of Islamic Banking*. First ed., New York, Palgrave Macmillan, 2005, pp. 1, 36.

Irsheed, Mahmood. *Al-Madkhal Al-Shamil Ila Mua’malat Wa Amaliyyat Al-Masarif Al-Islamiyah*. First ed., Amman, Dar Al-Nafa’s, 2015, pp. 95, 99.

The Quran. Translated by Saheeh International, First ed., Jiddah, Abdul-Qasim Publishing House, 1997, p. 74, asimiqbal2nd.files.wordpress.com/2009/06/quran-sahih-international.pdf. Accessed 10 Sept. 2021.

Translation of the Meaning of the Qur'an. Translated by ---, First ed., Jeddah, Abul Qasim Publishing House, 1997, p. 450, docs.google.com/viewer?url=www.muslim-library.com/dl/books/English_The_Glorious_Quran_Sahih_International.pdf. Accessed 7 Mar. 2022.

Jab' Allah, Sameer. *Dhawabit Al-Thaman Wa Tatbiqatuh Fe Aqd Al-Bay'a*. First ed., Riyadh, Kunuz Eshbelia, 2005, p. 137.

Jones, Brian D G, and Eric H Shaw. "A History of Marketing Thought." *In Handbook of Marketing*, First, Sage, Jan. 2002, p. 41, www.researchgate.net/publication/235362475_A_History_of_Marketing_Thought. Accessed 21 Aug. 2021.

Jordanian Ministry of Justice. "Civil Law - 1976." *Pm.gov.jo*, Prim Ministry Office, 2021, www.pm.gov.jo/newspaper#. Accessed 18 Oct. 2021.

Juma, Ali. *Al-Madkhal Ela Dirasat Al-Mathahib Al-Fiqhiyah*. Fourth ed., Cairo, Dar Al-Salam, 2012, p. 414, ia600203.us.archive.org/35/items/WAQ143993/143993.pdf. Accessed 9 Dec. 2020.

Juraidan, Naif. *Masa'il Mua'sirah Mimma Ta'um Bihe Al-Balwa*. First ed., Riyadh, Kunuz Eshbelia Publishing, 2012, pp. 144, 221.

Juris pedia. "Conract Aléatorie." *Juris Pedia Le Droit Partaé*, fr.jurispedia.org/index.php/Contrat_al%C3%A9atoire_(fr). Accessed 5 Mar. 2021.

Kamal, Yusuf. *Al-Masarif Al-Islamiyah Al-Azmah Wa Al-Makhraj*. Second ed., Cario, Dar Al-Wafa, 1996, p. 94.

Karam, Abdulwahid. *Mua'jam Mustalahat Al-Sharia Wa Al-Qanoon*. First ed., Amman, The Prince Ghazi Trust for Qur'anic Thought, 20AD, p. 466, shortest.link/30FQ. Accessed 10 Jan. 2022.

Kaşıkçı, Osman. *Islam ve Osmanlı Hukukunda Mecelle: Hazırlanışı, Hükümlerinin Tahlili, Tadil ve Tamamlama Çalışmalar*. Vol. 16, Istanbul, Ottoman Research Foundation Publications, 1997, pp. 6–75.

Khuqair Al-Hanbali, Muhammad. *Mukhtasar Fe Fiqh Al-Imam Al-Mubajjal Wa Al-Hibr*

Al-Mufassal Ahmad Bin Hanbal. Edited by Abdulsalam Al-Suwaier, Second ed., Riyadh, Al-Rushd, 2005, p. 95, archive.org/details/FP61730/page/n189/mode/2up?view=theater. Accessed 13 Sept. 2021.

Meerah, Hamid. *Uqood Al-Tamweel Al-Mustajidah*. First ed., Riyadh, Dar Al-Mayman, 2011, pp. 128–129, www.riyadhalelm.com/researches/8/831.pdf. Accessed 15 Dec. 2021.

Minister of Justice and Islamic Affairs. "Bahrain Business Laws | Civil Law." *Bahrainbusinesslaws.com*, EDB Bahrain, 1975, bahrainbusinesslaws.com/laws/Civil-Law. Accessed 23 Oct. 2021.

Ministry of Justice - Spain, and Sofia Clusen. "Spanish Civil Code." *University of Granada*, 2013, derechocivil-ugr.es/attachments/article/45/spanish-civil-code.pdf. Accessed 13 May 2022.

Ministry of Justices - Portugal. *Future Assets, Pending Fruits and Component or Integral Parts*. 25 Nov. 1966, dre.pt/dre/legislacao-consolidada/decreto-lei/1966-34509075-49858675. Accessed 14 May 2022.

Ministry of Justice - United Arab Emirates. "CIVIL TRANSACTIONS LAW (Civil Code) Article 168." *Moj.gov.ae*, Ministry of Justice, 15 Dec. 1985, elaws.moj.gov.ae/UAE-MOJ_LC-En/00_CIVIL%20TRANSACTIONS%20AND%20PROCEDURES/UAE-LC-En_1985-12-15_00005_Kait.html?val=EL1. Accessed 26 May 2022.

---. "CIVIL TRANSACTIONS LAW (Civil Code) Article 655." *Moj.gov.ae*, 2020, elaws.moj.gov.ae/UAE-MOJ_LC-En/00_CIVIL%20TRANSACTIONS%20AND%20PROCEDURES/UAE-LC-En_1985-12-15_00005_Kait.html?val=EL1. Accessed 27 Mar. 2022.

Ministry of State for Federal National Council Affairs. *UAE Civil Transactions Law*. Translated by James Whelan, First ed., vol. Article 282, Dubai, Dubai Judicial Institute, 2017, p. Article 282, lexemiratidotnet.files.wordpress.com/2011/07/uae-civil-code-_english-translation_.pdf. Accessed 18 Mar. 2021.

Mohamad, and Aghilasse Kashi. "Does an Islamic Finance Industry Need a Unification of Standards? A Qualitative Discussion." *Arab Law Quarterly*, no. 31, Nov. 2017, p. 351, www.researchgate.net/publication/321113261_Does_an_Islamic_Finance_Industry_Need_a_Unification_of_Standards_A_Qualitative_Discussion, 10.1163/15730255-12313031. Accessed 1 Jan. 2021.

Nasif, Ilyas. *Mawsuat Al-Uqood Al-Madaniyah Wa Al-Tejariyah*. First ed., vol. 1, Beirut, Al-Halabi Legal Publications, 2020, p. 130.

Osoul Research Center. "Parallel Advance Purchase." *Al-Jamharah*, Osoul Research Center, islamic-content.com/dictionary/word/5676/en. Accessed 1 Mar. 2022.

Ottoman Empire. *Al-Majallah*. First ed., Beirut, Al Matba'a Al Adabiyah, 1885, p. Articles: 18, 40, 57, 84, 338, 1404.

Peters, Rudolph. "From Jurists' Law to Statute Law or What Happens When the Shariʿa Is Codified." *Mediterranean Politics*, vol. 7, no. 3, 2002, pp. 82–95, www.researchgate.net/publication/232877802_From_Jurists'_Law_to_Statute_Law_or_What_Happens_When_the_Shari'a_is_Codified. Accessed 30 Dec. 2020.

Pilbeam, Keith. *Finance and Financial Authority*. Second ed., Palgrave Macmillan, 2005, p. 334.

Qala'wi, Ghassan. *Al-Masarif Al-Islamiyah Dharura Asriyah*. First ed., Damascus, Al-Maktabi Publishing, 2009, p. 185.

Refinitiv. "Sukuk Perceptions and Forecast Study 2021: Thriving amidst Uncertainty." Refinitiv, 2022.

Reuters. "Global Islamic Finance Forecast to Grow as Main Markets Recover - S&P." *Reuters*, 3 May 2021, www.reuters.com/business/finance/global-islamic-finance-forecast-grow-main-markets-recover-sp-2021-05-03/.

Rouner, Leroy. "William Ernest Hocking." *Encyclopedia of World Biography*, Encyclopedia.com, 3 Dec. 2002, www.encyclopedia.com. Accessed 16 Dec. 2020.

Rustam, Saleem. *Sharh Al-Majallah*. 1888. Third ed., Beirut, Manshurat Al-Halabi, 2005, p. 66, shortest.link/1gtM. Accessed 3 Oct. 2021. Article: 112.

Sano, Qoutoub. *Concorance of Jurisprudence Fundamentals Terminology*. First ed., Damascus, Dar Al-Fikr, 2002, p. 431.

Santillana, Daivd. *Al-Ta'leeq Ala Majallat Al-Iltizamat Wa Al-Uqood*. First ed., vol. 1, Tunisia, Muja'mma Al-Atrash ll-Kitab Al-Mukhtas, 2018, p. 62.

Schacht, Joseph. "Foreign Elements in Ancient Islamic Law." *Journal of Comparative Legislation and International Law*, vol. 32, no. 3/4, 1950, pp. 9–17. *JSTOR*, www.jstor.org/stable/754369. Accessed 14 Dec. 2020.

Shabeer, Mohammad. *Al-Mua'malat Al-Maliyyah Al-Mua'sirah Fe Al-Fiqh Al-Islami*. Sixth ed., Amman, Dar Al-Nafa'is, 2007, p. 333, archive.org/details/FP125636/page/n334/mode/2up?view=theater. Accessed 20 July 2021.

Shahata, Shafeeq. *Al-Ittejahat Al-Tashriayah Fe Qawaneen Al-Bilad Al-Arabia*. First ed., Cairo, Institute of Arab Research and Studies, 1960, p. 90.

Shaheen, Shamil. *Dirasah Mujaza an Majallat al Ahkam al Adliyah*. First ed., Damascus, Dar Ghar Hira, 2004, down.ketabpedia.com/files/bkb/bkb-fi06150-ketabpedia.com.pdf. Accessed 10 Dec. 2020.

Siddiqui, Abdul Hamid. "Sahih Muslim 1531c - the Book of Transactions." *Sunnah.com*, Muslim Student Association (MSA), sunnah.com/muslim:1531c. Accessed 9 Oct. 2021.

Stern, Samuel Miklos , Sutherland, Carol Humphrey Vivian , Allan, John , Sellwood, David Grenville John , Breen, Walter Henry and Avila-Martel, Alamiro de. "Coin". Encyclopedia Britannica, 18 Feb. 2019, https://www.britannica.com/topic/coin. Accessed 22 August 2021.

Stern, Samuel. "Coin | Britannica." *Encyclopædia Britannica*, 2019, www.britannica.com/topic/coin. Accessed 22 Aug. 2021.

Stigall, Dan. *The Sanillana Codes*. First ed., London, Lexington Books, 2017, p. 57, www.researchgate.net/publication/338609747_David_Santillana. Accessed 15 Dec. 2020.

Suwailim, Sami. "Al-Murabaha Bi Ribh Mutaqayyer." *Bank Al-Bilad Sharia Committee*, Dar Al-Mayman, 2013, p. 134, www.bankalbilad.com/Documents/Murabaha%20(Proof11)%2025-06-2013.pdf.

Accessed 17 Dec. 2021.

Taqi Al-Din Hilali, and Muhammad Muhsin Khan. *Translation of the Meanings of the Noble Qur'an in the English Language = Tafsir Maʻani Al-Qur'an Al-Karim Bi-Al-Lughah Al-Injiliziyah*. First ed., Madinah, K.S.A., King Fahd Complex for the Printing of the Holy Qur'an, 1998, pp. 59:7, 57:25, 5:8, 282: 2.

The Council of Senior Scholars. "Lease Ending with Ownership." *ALIFTA*, General Presidency for Scholarly Research and Ifta, 5 Feb. 2000, www.alifta.gov.sa/Ar/Pages/default.aspx. Accessed 9 July 2021.

The Editors of Encyclopaedia Britannica. "Usury | Law | Britannica." *Encyclopædia Britannica*, 2020, www.britannica.com/topic/usury. Accessed 21 Feb. 2021.

The European Market Infrastructure Regulation (EMIR). "Derivatives / EMIR." *European Commission - European Commission*, ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/post-trade-services/derivatives-emir_en.

The Institute of Islamic Banking and Insurance. "Glossary of Financial Terms: K | Islamic-Banking.com." *Islamic-Banking.com*, 2021, www.islamic-banking.com/explore/glossary/glossary-financial-terms-k.

The International Islamic Fiqh Academy. "Resolution No. 137 (3/15) Ṣukūk Al-Ijārah (Leasing Bonds)." *International Islamic Fiqh Academy*, International Islamic Fiqh Academy, 6 Mar. 2004, iifa-aifi.org/en/32880.html. Accessed 6 Apr. 2022.

TransLegal. "Wrongful Act." *TransLegal*, TransLegal, www.translegal.com/dictionary/en/wrongful-act/noun/?to=en. Accessed 20 Mar. 2021.

"Aleatory." *Merriam-Webster*, Merriam-Webster Inc., 1828, www.merriam-webster.com/dictionary/aleatory. Accessed 4 Mar. 2021.

"Article 1137 - Code Civil - Légifrance." *Www.legifrance.gouv.fr*, www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000036829827/. Accessed 8 Mar. 2021.

"Fatwa." *Merriam-Webster*, Merriam-Webster, Inc., 1828, www.merriam-webster.com/dictionary/fatwa. Accessed 3 Jan. 2021.

"Foreign Exchange Market." *Farlex Financial Dictionary*, Farlex, 2012, financial-dictionary.thefreedictionary.com/foreign+exchange. Accessed 28 July 2021.

"The Option of Redemption (Articles 1659 to 1673)." *Gouv.fr*, French Government, 12 May 2009, www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000020616218/. Accessed 11 June 2021.

"Unified Legislative Framework for Islamic Finance Launched." *Gulftoday.ae*, 2020, www.gulftoday.ae/business/2020/05/06/unified-legislative-framework-for-islamic-finance-launched. Accessed 4 Sept. 2020.

Uhlig, Daria. "Interest Rate Swap | Example & Definition | InvestingAnswers." *Investinganswers.com*, 21 June 2021, investinganswers.com/dictionary/i/interest-rate-swap. Accessed 6 Aug. 2021.

Ulaysh, Muhammad. *Shar Munah Al-Jaleel Ala Mukhtasar Al-Allama Khalil*. First ed., vol. 5, Beirut, Dar Al-Fikr, 1984, p. 332, ia800306.us.archive.org/34/items/FP68801/05_%2068805.pdf. Accessed 4 Feb. 2022.