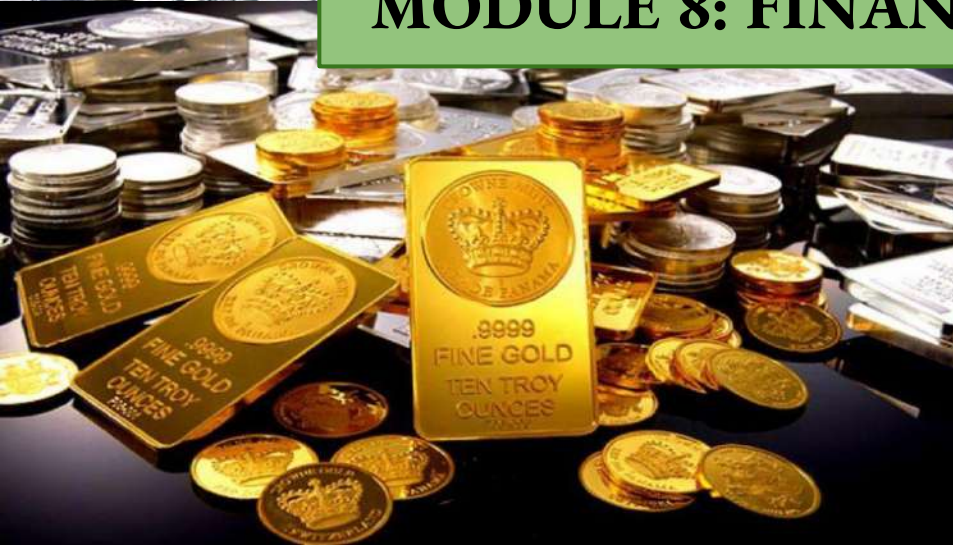




MODULE 8: FINANCIAL TRANSACTIONS



OVERVIEW

Islamic Law consists of:

- 1] **Worship** (purity, prayer, fasting, zakat, Hajj, etc.)
- 2] **Transactions** (marriage, divorce, inheritance, buying and selling)
- 3] **Criminal law** (prescribed punishments, discretionary punishments, etc.)

WHAT WE ARE LEARNING

- 1] The default regarding business transactions
- 2] Broad ethics of buying and selling
- 3] Basics of ‘transaction law’
- 4] Conditions for a valid sale/trade
- 5] Permissible sales
- 6] Prohibitions in sales, namely: haram products, usury (*riba*), and gharar

PRINCIPLES

‘The default regarding matters is permissibility.’

- Wearing a blue hat.
- Drinking water
- Walking to the store

WHAT ABOUT TRANSACTIONS?

‘The default regarding transactions is permissibility.’ الأصل في المعاملات الإباحة

1] The Quran orders us to fulfil our contracts and agreements:

‘*O you who believe, fulfill [your] contracts.*’ (5:1) يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

This command is comprehensive, proving that the default is that business transactions are permissible.

WHAT ABOUT TRANSACTIONS?

2] Allah says:

إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ *‘Unless it is commerce done with mutual consent...’*

In this verse Allah did not make any other conditions for trade, which indicates that mutual consent is what permits business transactions.

3] Allah says:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا *‘And Allah has permitted sales and prohibited usury...’*

DEFAULT

The Prophet (Allah bless him and give him peace) forbade various sales but did not explain the permissible ones, his doing so proves that the **initial presumption for the validity of a sale is that it is lawful.**

Imam al-Shafi'i said, 'The general rule for all sales is **permissibility** as long as they are concluded by consenting capable decision makers, except for what the Messenger of Allah (Allah bless him and give him peace) has forbidden, or what is sufficiently similar to that which the Messenger of Allah (Allah bless him and give him peace) has forbidden; and anything different from those is permissible, following the permissibility of sales stated in the book of Allah...'

BROAD ETHICS OF SALES

1] **Truthfulness and full disclosure.** The seller must give full and truthful information about the product, including its type, origin and cost. The Prophet (Allah bless him and give him peace) said, 'All merchants are resurrected on the day of judgments as sinners, except for those who feared Allah, treated their customers well, and were truthful.' (Tirmidhi)

2] **Ease of conduct.** The seller and buyer should not be too harsh in their conditions or insist on prices that are too high or too low. The Prophet (Allah bless him and give him peace) said, 'Allah is merciful to the man who is easy when he sells, when he buys, and when he collects his loans.' (Bukhari)

BROAD ETHICS OF SALES

3] **Avoidance of swearing, even if truthful:** It is recommended not to swear in the name of Allah in any sale, since it is disrespectful and unworthy of the name of Allah. The Prophet (Allah bless him and give him peace) said, ‘Swearing destroys the goods, and wipes out their blessings.’ (Muslim)

4] **Frequent paying of charity:** It is recommended that a merchant pays charity often to atone for whatever swearing, cheating, hiding of information, poor conduct he may have committed. The Prophet (Allah bless him and give him peace) is reported to have said, ‘O merchants, the devil and sins are present at each sale, so purify your sales with charity.’ (Tirmidhi)

5] **Documentation and witnessing of all debts:** It is desirable that all contracts and loans be written, and that witnesses sign for all delayed sales and debts, as Allah has prescribed in the Quran [2:282].

BROAD ETHICS OF SALES

Transaction law can be complex. For everyday transactions conducted by most people, we just need to focus on two areas:

1] **Conditions for a valid sale/trade**

2] **Prohibitions in trade, namely:**

-Haram products

-Usury (riba)

-Gharar

-Selling things that are halal in essence but haram to sell because of their use.



CONDITIONS OF A VALID SALE

- 1] The seller and buyer must be sane.
- 2] The seller and buyer must have *rushd* (maturity and capacity to handle their finances).
- 3] The seller must consent to the sale (he cannot be coerced unjustly).
- 4] The seller must own the item being sold.



CONDITIONS OF A VALID SALE

- 5] The item for sale must be something known to the buyer and the seller (what particular thing it is, how much it is, and what kind, etc.).
- 6] The item must be something that can be handed over (you might own 100 acres and have the rights to the wild animals in it, but you may not be able to control them and hand them over).
- 7] The contract of sale must be free of prohibited conditions.
- 8] The item sold must be lawful. Prohibited items would include anything haram, or debt, as it would constitute a 'money for money' trade.

OFFER AND ACCEPTANCE

There must be an 'offer and acceptance' – or there must be 'mutual understanding' that the sale/trade is complete. A sale is **not valid** unless there is an **express or implied** offer and acceptance.

S: 'I'll sell this to you for \$50.'

B: 'Okay.'

S: 'This is yours for \$20.'

B: 'I'll take it.'

B: 'I'll give you \$30 for that book.'

S: 'Sure.'

PHYSICAL EXCHANGE SALE

A 'physical exchange sale' (Mu'ata) is giving the seller the price (cost) and taking the item without speaking.

Examples:

- The shirt has a price tag on it and you hand the seller the cost.
- You put \$1 into a vending machine for a coke.
- You are in a suq and know that in every shop a dozen eggs is \$2, so you grab the eggs and hand the shopkeeper \$2.

This is permissible as long as it is customary and mutual agreement is understood and implied.

ITEM OF SALE BEING KNOWN

It is not valid to sell something unknown.

- ‘I’ll sell you one of these shirts.’
- ‘I’ll sell you all of the apples that grow on this tree.’
- ‘I’ll sell you all of the fish in this pond.’



ITEM OF SALE BEING OBSERVABLE

- ‘I’ll sell you the shirt in my closet.’ (Allowed by Malikis, disallowed by Shafi’is)
- ‘I’ll sell you my 2018 Honda Accord sitting in my garage’ [Shafi’is say this is allowed if the potential buyer has seen it before and it is something that does not generally change within the time that has elapsed since it was last seen.]



ITEM OF SALE EXISTING

It is not permissible to sell a non-existent object, or an object that may cease to exist.

- ‘I’ll sell you the calf inside that cow’s belly.’
- ‘I’ll sell you the milk in that cow’s udder.’

[both of these may cease to exist]

- ‘I’ll sell you whatever calf this cow delivers next year.’
- ‘I’ll sell you all of the dates that grow from this tree next season.’

ITEM OF SALE EXISTING

The exceptions to this rule are:

1] **Bay' al-Salam** (forward sales)

Bay' al-Salam is a contract for deferred delivery, where the buyer pays in advance for identified goods, which the seller will supply on a pre-agreed dates. They must stipulate the quantity and quality of the assets.

2] **Istisna'** (the sale of a manufactured object with partial payments at different stages of production)

NEXT LESSON

- 1] Review of the basic conditions of valid sales.
- 2] Permissible transactions
- 3] Forbidden transactions

