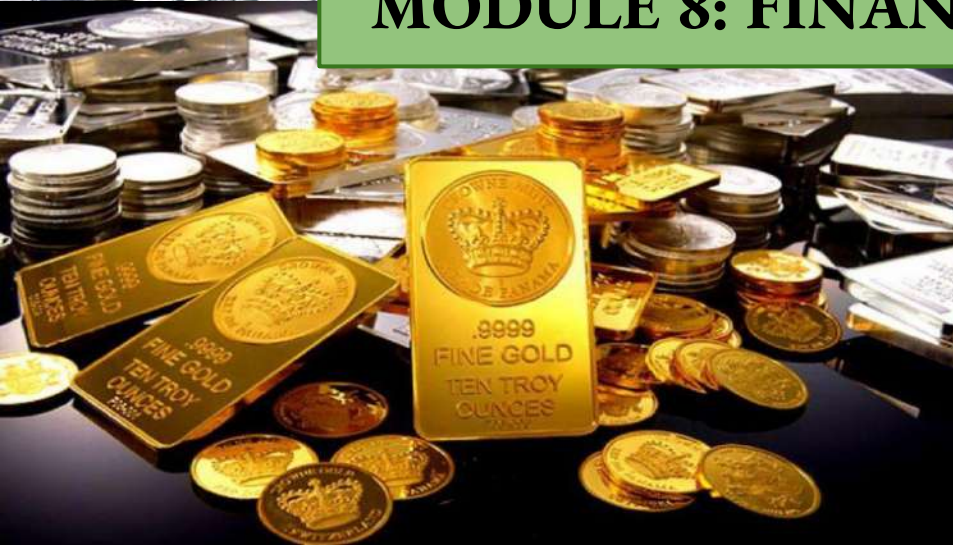


MODULE 8: FINANCIAL TRANSACTIONS



OVERVIEW

- The default ruling on transactions is permissibility.
- Allah legislated rulings for transactions that maximize human welfare, prevent injustice, and avert conflicts between people.
- Islam is a ‘package deal’—we don’t focus on ritual worship while neglecting the Islamic laws governing economic transactions.

CONDITIONS OF A VALID SALE

- Mutual consent
- Ownership of the item (or representing the owner)
- Item must be known—what it is, its type, cost, etc.
- Must be something that can be handed over
- Must be halal (excludes things that are haram, impure, or ‘money for money’ sale of debts).
- Offer and acceptance



OFFER AND ACCEPTANCE

- There is mutual understanding that the sale is complete.
- This is either in words that are express (explicit) or implied.

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.

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

ITEM OF SALE BEING KNOWN

- The item of sale must be in view or observable (directly or virtually).
- There are some differences of opinion about an item being observable: in the Maliki school allows it as 'sale by description' or 'sale by estimation.'
- 'Sale by estimation' is to say: 'I will buy your entire flock of sheep at 100\$ per sheep' by merely having a rough estimate of the total number of sheep. This is not 'gharar' because the amount of money per sheep has been identified. If it turns out to be 50 sheep he pays 5,000\$.



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—although, in the Maliki school, it would be allowed to ‘buy the milk in the udder’ if the buyer has past experience about the amount of milk that comes from the cow.]

- ‘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.’

THE EXCEPTIONS TO THIS ARE...

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)

PERMISSIBLE TRANSACTIONS

These are ‘transactions’ and not all forms of buying and selling.

- **Lending an item**
- **‘As is’ sales**—provided the defects are known. One must disclose the defects. In the Maliki school, one cannot say, ‘Inspect it yourself and take it as it is.’ Rather, the seller must actively disclose all significant defects.
- **Posting bail (daman).**
- **Debt transfer (hawala).** If Khalid owes ‘Amr \$50 and ‘Amr owes Zayd \$50 dollars, ‘Amr can tell Khalid to pay Zayd directly. This is permitted provided Khalid and Zayd accept dealing with one another.

PERMISSIBLE TRANSACTIONS

- **Loan of an item for common use** (‘Ariyya)—this is a type of charity that involves lending an item of use, such as a tool. It is the lowest level of charity (See: Sura al-Ma’un). The borrower is responsible for the item until returned. If it breaks in the process of normal use, it is not on the borrower.
- **Hiba (gifts) and Sadaqa (charity).** Gifts to one’s children must be equal unless the other children consent. Judges, governors, and zakat collectors may not accept gifts [unless it is outside the area of their jurisdiction].
- **Hiring and renting.**
- **Sale in bulk**—a restaurant owner may send a wholesaler a payment and request a bulk shipment of meat, for example.

PERMISSIBLE TRANSACTIONS

- **Use of collateral (rahn)**—one who owes a debt can give a creditor an asset that he would assume as his own if the debt is not paid. Upon repayment, the collateral is returned.
- **Deposits**—it's allowed to request a deposit. If one invests it and makes a profit, the profit is his, but if he loses the money, he is liable for it.
- **Endowments (waqf/hubus)**—this is a form of charity, which is an asset such as property or land, donated for a specific cause with no intent of being taken back.

FORBIDDEN TRANSACTIONS

- **Fraud:** to conceal faults, adulterate things (watering down), over-rate, or mislead.
- **Hoarding:** to buy a large quantity of staple items in a land and hold on to them until the demand increases. One may do this for non-staple goods that people do not need in their daily lives.
- **Transacting with ignorant buyers:** it is forbidden for a city-dweller to go out to the Bedouins and sell to them, because the latter cannot compare prices. It is the same with foreigners or those vulnerable to being fooled.

FORBIDDEN TRANSACTIONS

- **Invalid conditions:** any stipulation in the sale contract that contravenes the purpose of the sale or is insignificant does not invalidate the sale, but the condition is invalid. For example: a cloth merchant stipulates that his cloth can only be used for make pants, his condition is invalid. Or: someone sells a home to a person and stipulates that the buyer must live in the home, as opposed to fixing it up and reselling it—the contract would still be valid but the stipulation is invalid.
- **Gambling:** risking one's wealth on an act of luck, skill, or work.

FORBIDDEN TRANSACTIONS

- **Non-refundable deposits:** a deposit one makes towards a purchase, but if the purchaser cancels the sale, he loses the deposit. This is forbidden.
- **Purchasing stolen goods.** If a person knows they are stolen, the purchase is invalid and the goods are to be returned to the owner. If the purchaser did not know the goods were stolen, then item is returned to the owner and the purchaser seeks compensation from the seller for fraud.

FORBIDDEN TRANSACTIONS

- **Gift-giving without transfer of ownership** (nuhl). This is when a person gives a gift but retains ownership of it. It is to say, ‘This is yours as a gift, but you will only take full ownership of it after my death.’ This is prohibited because it blurs the lines of ownership. This is only permitted if the child is a minor and cannot manage when they are given. The parent must hand over the item when the child reaches the age of rushd.
- **Price-fixing**. It is haram for a ruler to demand that a product be sold for a certain price, or that merchants be disallowed from raising or lowering their prices. (We’re not communists!)

NEXT LESSON

- Gharar
- Riba

