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THE IMPACT OF TERMS ON EXCHANGE

(A Comparative Jurisprudence Study)

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ABSTRACT

The contract of sale is one of the oldest and most common contracts in human history, it is the contract from which many contracts have derived, a person has needed it since he needs food and drink. One aspect of the sale is the exchange, which means the exchange of currencies, and one of the most important things that affect exchange is the term so that what is permissible and forbidden is decided. Therefore, it is the core of the research, research is divided into four sections, sections one defines exchange and term linguistically and idiomatically, sections two deals with the legality of the exchange, sections three discusses the condition of receipt in the exchange contract, and sections four deals with exchange and remittance and the impact of the term on them. Praise be to Allah, the owner of the grace, praise befitting his majesty and greatness of his authority. He legislated some of the rulings that correct the conditions of human beings, achieve justice in them, instills friendliness among them, and keep grudges away. Our Lord, there is no easy except what you made easy, and you make sadness easy if you want, so make our affairs easy for us. You are Hearer, the Respondent: The contract of sale is one of the oldest and most common contracts in human history, it is the contract from which many contracts have derived, and a person has needed it since he needs food and drink. One aspect of the sale exchanges, which means exchange of currencies, and for the exchange there are regulations that a Muslim must adhere to.

Introduction

Reasons for choosing the subject

One of the main reasons for choosing the subject "term" is that it plays the most important role in solving the problems as it may be a reason for the transform the sale to usury, Hence, we proceed to discuss the issue of the term in the exchange contract to find out the truth, and to show the risks that may lead to destruction due to the negligence of some and their lack of knowledge in this issue, especially in this time when the forms of usury have multiplied and varied.

The subject importance

The importance of the topic lies in the development of new methods of dealing, the presence of mediators between the parties, and the prevalence of transactions by money orders or remittance among countries, this requires a new jurisprudential adaptation that has not been previously mentioned.

Research Methodology

Throughout this research, a detailed, inductive, comparative, weighted approach was followed, a detailed, comparative, weighted inductive approach was followed, in addition to evoking issues from their point of view and extrapolating statements about them, then comparison, and finally confirming what is correct.

Research plan

1. The research is divided into four sections:
2. Sections one defines exchange and term linguistically and idiomatically.
3. Sections two deals with the legality of the exchange
4. Sections three discusses the condition of receipt in the exchange contract.
5. Sections four deal with an exchange, remittance, and delaying the receipt in modern technologies.
6. Conclusion
7. References

Sections one

The definition of exchange and term linguistically and idiomatically

It includes two requirements:

The first requirement: Defining the exchange linguistically and idiomatically

The second requirement: Defining the term linguistically and idiomatically

The first requirement: Defining the exchange linguistically and idiomatically

First: exchange linguistically

Exchange linguistically has different meanings: it means repentance, justice, and ransom¹, volunteerism, our Messenger said: (He who innovates (an act or

¹ See: Tahdheeb Al-Lugha, by Al-Azhari - Abu Mansour Muhammad bin Ahmad Al-Azhari Al-Harawi (date 370 AH). Edited by: Abd Al-Salam Muhammad Haroun, Egyptian General Foundation Press, 1383 AH / 1963 AD. 2/125, and

practice) or gives protection to an innovator, there is a curse of Allah and that of His angels and that of the whole humanity upon him. Allah will not accept from him (as a recompense) any obligatory act or supererogatory act², also it comes to mean helplessness, Allah said: (you cannot avert (your penalty) nor (get) help)³, which means they cannot distract themselves from the torment⁴

Besides, it comes in the selling transactions, as it is said (He spent the dirhams, sold them (for their dirhams or dinars)⁵, and also means a statement, Allah said (We have certainly diversified in this Qur'ān that they may be reminded, but it does not increase them except in aversion)⁶

If it is the subject of the speech, then it means deriving some of it from another⁷

Second: The exchange idiomatically

The expressions of the jurists differed in explaining the concept of exchange as follows:

1. According to the Hanafi school: it is "exchanging the prices⁸, which means: gold and silver, so the definition becomes: it is the sale of silver for silver or gold for gold or the sale of one for the other, the exchange is selling of the same price⁹. in Fath al-Qadeer: "Exchange is a sale if each of his substitutes is of the same value, but he said that it is of the same price, and is not limited to saying "selling a price for a price to enter the sale of jewelry in jewelry or for cash"¹⁰

Al-Qamoos Al Muheet, by Fayrouz Abadi - Majd al-Din Abu Al-Zahir Muhammad Bin Ya'qub (date 817 AH) prepared and presented by: Dr. Muhammad Abdul Rahman Maraashly, House of Revival of Arab Heritage, Beirut, 1st Edition, 1417 AH / 1997 AD: 2/166.

²Sahih Muslim - Abu Al-Hussein Muslim bin Al-Hajjaj Al-Nisabouri (date 261 AH), edited by: Muhammad Fuad Abdul-Baqi, House of Revival of Heritage, Beirut, Bab Fadl Al-Madina: 4/114, No. (3389).

³Surat Al-Furqan, from verse 19.

⁴See: Jami al-Bayan fi Ta'wil al-Qur'an, by al-Tabari - Abu Jaafar Muhammad bin Jarir bin Yazid bin Katheer (date 310 AH) Edited by: Ahmad Muhammad Shaker, The Resala Foundation, Beirut, 1420 AH / 2000 CE: 19/251.

⁵Al-Maghrib in Al-Maarab Arrangement, by Al-Mutarzi - Abi Al-Fath Nasir Al-Din Bin Abd Al-Sayed Bin Ali (date 610 AH / 1213 AD), edited by: Mahmoud Fakhoury and Abdel Hamid Mukhtar, Usama Bin Zaid Library, Aleppo, 1st Edition, 1399 AH / 1980 AD: 1/266.

⁶Surah Al-Israa, verse / 41.

⁷ almaejam alwasit limajmueat min aleulama' (Ibrahim Mustafa - Ahmad Al-Zayyat - Hamid Abdel Qader - Muhammad Al-Najjar), Dar Al-Fikr, Beirut 1401 AH / 1981AD: P / 513.

⁸Al-Mabsut, by Sarkhasi - Muhammad bin Ahmed bin Abi Sahl Shams al-Imam al-Sarkhasi (483 AH) ,, Dar al-Maarifah, Beirut, without edition, 1414 AH / 1993 AD: 2/14, and the selection for the explanation of the Mukhtar, by al-Baldhi - Abi al-Fadl Abd Allah Mahmoud Bin Mawdud Bin Mahmoud Al-Mawsili (683 AH), Al-Halabi Press, Cairo, 1st Edition, 1356 AH / 1937 AD: 2/39.

⁹ alhidayat sharah albadaya, Al-Mirghanani - Abi Al-Hassan Ali bin Abi Bakr (593 AH), the Islamic Library, Damascus, 1386 AH / 1966 AD: 3/81, and Bada'a Al-Sanai', by Al-Kasani - Abu Bakr Ala Al-Din Bin Masoud Bin Ahmed (578 AH), edited by: Muhammad Yasin Darwish, published by the Arab History Foundation, Beirut, 1421 AH / 2001 CE: 5/215.

¹⁰Fatah al-Qadeer, by Ibn al-Hamam - Kamal al-Din Muhammad ibn Abd al-Wahid ibn Abd al-Hamid (861 AH) House of Revival of Sciences, Beirut 1400 AH / 1980 AD: 7/133.

2. the Malikis said: The exchange is the sale of cash with cash of a different type¹¹, as for Al Muratala, it is the sale of cash for cash of its kind, it is divided into three types: if the two differed like gold and silver, then it is the exchange, and if they are united, if the sale is by weight then it is Muratala, and if it is by number, then it is the alternation¹²

Hence, the exchange is exchanging gold for silver or silver for gold only.

This is followed by a type of cash.

3. According to the Shafi'i, the exchange is "selling cash of one type for another"¹³, and have two meanings and two descriptions¹⁴.

4. Hanbalis defined it: as "the sale of cash for cash, whether the gender is united or different"¹⁵, according to the definition in the concept of exchange and its provisions apply to it.

According to the majority of Hanafi, Shafi'i, and Hanbali jurists, the exchange is selling gold for gold or silver for silver or silver for gold.

The Malikis, restricted the exchange to selling cash of different types when the sale is substituting cash for cash, then it is called an exchange, and this sale has been called an exchange to dispose it from the rest of the sales, and it is concerned by the Sharia with rules and regulations that are not required in other types of sales¹⁶.

The second requirement: the term linguistically and idiomatically

First: linguistically

¹¹ hashiat aldasuqi ealaa alsharah alkabir, by al-Dasouki - Ahmed bin Ahmed bin Arafa al-Desouki al-Maliki (1230 AH), Dar al-Fikr, Beirut: 3/2.

¹²Talents of Galilee, for Al-Raini - Abi Abdullah Muhammad bin Muhammad Al-Hattab (954 AH) Dar Al-Fikr, Beirut 2nd Edition, 1398 AH / 1978 AD: 4/226, the language of the salik to the nearest tract known by the footnote of al-Sawy on al-Sharh al-Saghir, by al-Sawi - Abu al-Abbas Ahmad bin Muhammad al-Khaluti, famously known as al-Sawi al-Maliki (1241 AH), Dar al-Ma'arif, Cairo: 3/63.

¹³Mughni al-Muhtaj - al-Sharbini - Shams al-Din Muhammad ibn Ahmad al-Khatib (977 AH) Mustafa Muhammad Press, Cairo, 1378 AH / 1966 CE: 2/25, and 'iieanat altaalibayn, al-Bakri - Abu Bakr bin al-Sayed Muhammad Shata al-Damiyati (1310 AH), Dar al-Fikr, Beirut: 3/27.

¹⁴ Two meanings: as if he says I sold you or gave you this dinar with these dirhams, two descriptions: Like saying I sold you or sent you a dinar, See: 'iieanat altaalibeen 3/27.

¹⁵Al-Mughni in the jurisprudence of Imam Ahmad bin Hanbal, by al-Maqdisi - Abi Muhammad Abdullah bin Muhammad bin Qudama (620 AH), Dar al-Fikr, Beirut, 1st Edition, 1405 AH / 1985 AD: 5/387, and Kashshaaf al-Qanaa, by al-Bahouti - Mansour bin Yunis binIdris (1051 AH), edited by Hilal Moslehi, Dar Al-Fikr, Beirut, 1402 AH / 1982 AD: 3/226.

¹⁶Provisions of money exchange, Abbas Al-Baz: p / 19.

The term linguistically means duration and time, or it means delay and it is opposite to urgent¹⁷.

It has been mentioned in the Qur'an with several meanings:

1. The end of life: Allah Almighty said (for every nation is a [specified] term. So when their time has come, they will not remain behind an hour, nor will they precede).¹⁸
2. the end of the period set as a time limit for the end of an obligation or performance, the Almighty said: (you who have believed, when you contract a debt for a specified term, write it down)¹⁹
3. Duration. Allah says (And We settle in the wombs whom We will for a specified term)²⁰

The difference between timing and term; the term is a limited time in the future²¹

Second: term idiomatically

Despite my review of the jurisprudential sources of the ummah's scholars to obtain a specific definition of the term, I did not find a definition that fulfills the jurisprudential concept to be a basis for a systematic construction. Rather, I found in jurisprudential references that the topic of the term has been fully studied and analyzed, by Muslim jurists in all its aspects, in the provisions of acts of worship, transactions, family rulings, and judicial procedures, so I extracted from all of this a comprehensive definition, so we say: The term is "the future period to which an order is added, whether this addition is a time for fulfilling an obligation or a time for terminating an obligation, and whether this period is prescribed by Sharia, by the judiciary, or by the will of the of the obligee, one or more individuals"²²

Al- Sarkhasi²³. Al-Kasani²⁴, said: The term is considered a matter that is not required by the contract. Rather, it was prescribed to protect the debtor²⁵

¹⁷ See: almisbah almunir fi Gharib al-Sharh al-Kabir, by Al-Fayoumi - Abi Al-Abbas Ahmad bin Muhammad bin Ali Al-Maqri (770 AH), Dar Al-Fikr, Beirut, 1st Edition, 1397 AH / 1977 AD: 1/6.

¹⁸ Surat Al-A'raf: verse / 34.

¹⁹ Surat Al-Baqarah: Verse / 282.

²⁰ Surat Al-Hajj: Verse 5.

²¹ See: The Encyclopedia of Terminology of Arts and Sciences, by Al-Farouki - Muhammad bin Ali Ibn Al-Qadi Muhammad Hamid Al-Hanafi Al-Thanawi (after 1158 AH) Presented, supervised and revised by: Dr. Rafiq Al-Ajam, investigation by: Dr. Ali Dahrouj, Lebanon Library Publishers, Beirut, 1st Edition, 1416 AH / 1996 AD: 1/83, and Colleges, for Al-Kfawi - Abi Al-stay Ayoub Bin Musa Al-Husseini Al-Quraimi (1094 AH), Edited by: Adnan Darwish, Foundation for Resala, Beirut, 1419 AH / 1999 AD: 2/103.

²² See: Bada'a` al-San'a`: 1/181, and Al-Mughni, by Ibn Qudama: 12/359, and Ashabaha and analogues in the doctrine of Abu Hanifah An-Nu'man, by Ibn Nujim - Zain al-Din ibn Ibrahim ibn Muhammad, (AH 970). Scientific Books House, Beirut, and Edition 1, 1419 AH / 1999 AD: p. 356.

²³ Abu Bakr Muhammad bin Ahmed bin Sahl al-Sarkhasi al-Hanafi his (Al-Mabsut) and (Al-Usul) (483 AH) See: Al-Jawaher Al-Madiha in Tabaqat Al-Hanafi, by Al-Qurashi - Abu Muhammad Abdul Qadir bin Muhammad bin Nasrallah Al-Qurashi, Muhyiddin Al-Hanafi (775 AH) Mir Muhammad Kutub Khanah, Karachi: 2/28, and Taj Al-Tarajim, by Ibn Qatlubugha - Abi Al-Feda Zain Al-Din Abu al-Adl Qasim bin Qutlubga al-Suduni Attributed to his

Through this definition we understand that it includes:

First: The legal term, which is the future period specified by the wise legislator as a reason for a legal ruling, such as the waiting period and the duration of pregnancy.

Second: The judicial term: which is what the judge strikes in order to attend litigants, or to bring evidence.

Third: The agreement period, which is the future period specified by the obligor as a date to fulfill his obligation (the time for addition), or to terminate the implementation of this commitment (the time limit), whether those actions take place unilaterally or voluntarily²⁶

Section two

The legality of the exchange

The legitimacy of the exchange was proven by the Noble Book and the Noble Sunnah, consensus, and reason.

First: From the Holy Quran:

Allah says: (Allāh has permitted trade and has forbidden interest)²⁷

Al-Jassas said:²⁸(Allāh has permitted trade and has forbidden interest) Means the permissibility of all sales because the word sale is subject to a reasonable meaning in the language, which is the ownership of money with money in an offer and acceptance based on mutual consent, and this is the reality of selling. Then it is permissible and some of it is corrupt, but that does not preclude considering the generalization of the word whenever we disagree about the permissibility of sale or its corruption²⁹.

Ibn al-Arabi said:³⁰ “And Allah permitted the sale: the absolute in which compensation falls on the validity of intent and action, and forbidden and the falsehood of it is forbidden”³¹

father Mu'taq, Sudun al-Sheikhuni) al-Jamali al-Hanafi (879 AH), edited by: Muhammad Khair Ramadan Yusuf, Dar al-Qalam, Damascus, 1st Edition, 1413 AH / 1992 AD: p / 18.

²⁴Ala 'al-Din Abu Bakr bin Masoud bin Ahmad al-Kasani al-Hanafi (587 AH), see: (Bada'i al-Sanai'i) and (Al-Sultan Al-Mubeen). See: Al-Jawaher Al-Madih, by Al-Qureshi: 2/244, and Taj Al-Tarajum, by Ibn Qatlubga: p. 327.

²⁵ See: Al-Mabsut, Al-Sarkhasi: 13/24, and Bada'a Al-Sanai': 5/174.

²⁶See: General Theory of Commitment, Dr. Mustafa Al-Zarqa, Damascus University Press, 1st Edition, 1382 AH / 1961 AD: p. 32.

²⁷Surah Al-Baqara, from verse 275.

²⁸Ahmed bin Ali Al-Razi, Abu Bakr Al-Jassas, to him (Rulings of the Qur'an) and (Usul al-Fiqh) (370 AH).See: Al-Wafi Balwaliat: 19/54, and Al-Jawaher Al-Madi: 1/54.

²⁹Ahkam al-Qur'an, by Ibn al-Arabi - Ahmad bin Ali Abu Bakr al-Razi al-Jasas al-Hanafi (370 AH), edited by: Abd al-Salam Muhammad Ali Shaheen, Dar al-Kutub al-Ulmiyyah, Beirut, 1st Edition, 1415 AH / 1994 AD: 1/568.

³⁰Muhammed bin Abdullah bin Muhammad al-Maafari al-Ishbili al-Maliki, Abu Bakr Ibn al-Arabi: a judge, a hadith memorization, the category of (Rulings of the Qur'an) and (Al-Asasem from Al-Qawasim) (453 AH).See: The

Al-Razi said:³² Allah permissible sale requires that every sale be permissible, the prohibition of usury requires that every interest be forbidden, because usury is an increase and no sale but it is intended to add to it. The first verse permits all sales, and the last one forbids, so that what is permissible is not known from this verse, so it was a summary, so it is necessary to refer to what is permissible and what is forbidden to the statement of the Messenger³³

2. Allah Almighty says (do not consume one another's wealth unjustly but only business by mutual consent)³⁴

Al-Jassas said: "So he excluded from the sentence the trade with their mutual consent and did not make it false, and this is in permissible trade not forbidden."³⁵

Ibn al-Arabi said: "Falsehood, as we have shown it in the books, is the one whose expression does not use money without compensation in the form of compensation.

Trade is exchanging money, which is selling and it includes three types: an eye for an eye, which is selling cash; or a debt that is deferred, or a condition that is in dates or on the Istisna'a fee, or a sale with a benefit"³⁶

Second: from the noble Sunnah

1. Al-Bukhaari: Narrated Ibn Shihab: that Malik bin Aus said, "I needed change for one-hundred Dinars. Talha bin 'Ubaidullah called me and we discussed the matter"³⁷, and he agreed to change (my Dinars). He took the gold pieces in his hands and fidgeted with them, and then said, "Wait till my storekeeper comes from the forest." `Umar was listening to that and said, "By Allah! You should not separate from Talha till you get the money from him, for Allah's Apostle said, " The selling of gold for gold is Riba (usury) except if the exchange is from hand to hand and equal

deaths of notables, by Ibn Khallakan - Abi Al-Abbas Ahmed bin Muhammad bin Ibrahim bin Khalkan (681 AH), Dar Al-Thaqafa, Beirut: 4/296, and the biography of the flags of the nobles, by Al-Dhahabi - Abu Abdullah Shams al-Din Muhammad bin Ahmed (748E) Edited by: Shuaib Al-Arnaout, published by the Resala Foundation, Beirut, ed. 9, 1413 AH / 1993 AD: 20/199.

³¹The provisions of the Qur'an: 1/321.

³²Muhammad bin Omar bin al-Hasan bin al-Husayn al-Taymi al-Bakri, Abu Abdullah, Fakhr al-Din al-Razi: Imam al-Mafsiir, author of the great tafsir called (Keys to the Unseen) and (Results in the Science of Fundamentals) (606 AH). See: Biographies of the Nobles, 18/77, and the Shafi'i classes, by Al-Subki - Taj Al-Din Abd Al-Wahhab Bin Taqi Al-Din Al-Subki (771 AH). Edited by: Dr. Mahmoud Mohamed Al-Tanahi d. Abd Al-Fattah Muhammad Al-Helou, Hajar House for Printing, Publishing and Distribution, 2nd Edition, 1413 AH: 8/81.

³³ mafatih alghayb, by Al-Razi - Abu Abdullah Muhammad bin Omar bin Al-Hassan bin Al-Hussein Al-Taymi Al-Razi, Khatib Al-Ray (606 AH), House of Revival of Arab Heritage, Beirut, 3rd Edition, 1420 AH: 7/77.

³⁴Surah An-Nisa, from verse 29.

³⁵Provisions of the Qur'an: 1/304

³⁶Provisions of the Qur'an: 1/321.

³⁷Negotiated: that is, buying and selling, which is between the two parties of increase and decrease, and it is a description of commodity. Irshad al-Sari to explain Sahih al-Bukhari, by al-Qastalani - Ahmed bin Muhammad bin Abi Bakr bin Abd al-Malik al-Qutaybi al-Masri, Abu al-Abbas, Shihab al-Din (923 AH), Great Amiriya Press, Cairo, 7th Edition, 1323 AH: 4/78.

in amount, and similarly, the selling of wheat for wheat is Riba (usury) unless it is from hand to hand and equal in amount³⁸

Narrated Ibn Shihab: that Malik bin Aus said, "I needed change for one-hundred Dinars. Talha bin 'Ubaidullah called me and we discussed the matter, and he agreed to change (my Dinars). He took the gold pieces in his hands and fidgeted with them, and then said, "Wait till my storekeeper comes from the forest." `Umar was listening to that and said, "By Allah! You should not separate from Talha till you get the money from him, for Allah's Apostle said, "The selling of gold for gold is Riba (usury) except if the exchange is from hand to hand and equal in amount, and similarly, the selling of wheat for wheat is Riba (usury) unless it is from hand to hand and equal in amount, and the selling of barley for barley is usury unless it is from hand to hand and equal in amount, and dates for dates, is usury unless it is from hand to hand and equal in amount". Sahih Bukhari³⁹

The Significance of the two hadiths

- a. The legality of the exchange from the hadith of Bukhari, "We discussed the matter, and he agreed to change".
- b. The condition of exchange in the words of Omar when he said: to give him a paper or to return his gold to him.

2. Al-Bukhaari: "Abu Al-munhal said, I asked Bara 'ibn Zayd ibn Arqam, exchange for each one of them says that the Messenger of Allah forbade selling gold for paper as a debt.⁴⁰⁻⁴¹

³⁸Al-Jami al-Sahih al-Muqisas, al-Bukhari - Abu Abdullah Muhammad bin Ismail (256 AH), verified by: Dr. Mustafa Deeb Al-Bagha, Dar Ibn Katheer, Beirut, 3rd Edition, 1407 AH / 1987AD, Book of Sales, Chapter of Barley with Barley: 3/74, No. (2174).

³⁹Sahih Muslim, Book of Musaqqa, Chapter forbidding the Sale of Paper for Gold for Cash: 6/15, No. (1586), which means take and give equally.

⁴⁰ Debt: Al-Kawakeb Al-Darari in Sharh Sahih Al-Bukhari, by Al-Karmani - Muhammad bin Yusuf bin Ali bin Saeed, Shams Al-Din (786 AH), House of Revival of Arab Heritage, Beirut, Edition 2: 1401 AH / 1981AD: 10/48.

⁴¹Sahih Al-Bukhari, Book of Sale, chapter on paper with gold, Neseih: 3/75, No. (2180).

Indicative aspect; The hadith indicated that it is permissible to exchange, as the two companions were asked about the exchange, they forbid the sale of gold and silver is a debt due to the interest it contains.

Third: the consensus

He said in Persuasion: "They agreed that selling gold for gold among Muslims is delay usury and forbidden and that selling silver for silver is delay usury and is forbidden."⁴²

Imam al-Nawawi said: "agreed that it is not permissible to sell the usurious wealth of the same and one deferred and it is not permissible differentiation if the sale immediately as gold in gold and it is not permissible to disperse before receiving money if sells it of the same kind or another kind, such as gold for silver, wheat with barley."⁴³

Fourth: the reasonable

Selling the two cash together, which is called (exchange), serves the interests of the people and facilitates their transactions. To fulfill their needs, a person may require gold and have nothing but silver, and this is part of the spirit of Sharia, as it came to achieve the interests of the people. In addition to that, the nature of the human being to move between countries, and it is known that the countries deal in currencies that differ from each other, which makes him obliged to change the money he possesses.

There is an urgent need and the public interest calls for such a contract so that a person does not fall into embarrassment and hardship.

Section three

The condition of receipt in the exchange contract

The exchange is considered in the exchange contract a condition of the validity of the exchange contract. Saheb al-Badi'a says: one of its conditions – the two parties should receive the money before they separated, as in the well-known hadith, "Gold for gold, and silver for silver, equally"⁴⁴⁻⁴⁵

⁴²Persuasion in matters of consensus, by Ibn al-Qattan - Ali bin Muhammad bin Abd al-Malik al-Kutami al-Hamiri al-Fassi, Abi al-Hasan Ibn al-Qattan (628 AH), edited by: Hasan Fawzi al-Saidi, al-Faruq al-Hadith for printing and publishing, Cairo, Edition 1, 1424 AH / 2004 AD: 2/ 288.

⁴³Al-Minhaj Sharh Sahih Muslim Bin Al-Hajjaj, by Al-Nawawi - Abi Zakaria Muhyiddin Yahya Bin Sharaf Al-Nawawi (676 AH), House of Revival of Arab Heritage, Beirut, 2nd Edition, 1392 AH: 11/9.

⁴⁴Sahih Muslim, Book of Al-Musaqah, Chapter of Exchange: 5/44, No. (4147) on the authority of Ubadah bin Al-Samit.

⁴⁵Badaa'a Al Sanai'a: 5/215.

Imam Al-Shawkani says: The apparent meaning of this is that it is not permissible to sell usurious kind to another except in case of receiving the money, and it is not permissible to postpone even if the kind differs.⁴⁶

It was narrated that 'Abd-Allaah ibn Umar that Umar ibn al-Khattab said, then, do not sell gold for gold unless they are equal, or paper for paper unless they are equal, or sell the paper for gold, I fear for you Al-Riba, which is usury"⁴⁷

These texts indicate the requirement for exchange between the two parties is to receive money before they were separated.⁴⁸

Ibn al-Mundhir said: ⁴⁹"All of the scholars from whom we have memorized that if the two parties separated before they were exchanged, the exchange is corrupt."⁵⁰

Hanafi jurists⁵¹, Malikis⁵², Shafi⁵³, and the Hanbali⁵⁴, have agreed that the exchange (i.e. the exchange of the two parties) is required in the council - that is, the contract council and before their separation.

As for the origin of exchange, it is based on the hadiths of the Messenger:

1. "The Messenger of Allah said: "(Exchanging) gold for silver is Riba unless it is done on the spot"⁵⁵.

⁴⁶Neil Al-Awtar, Explanation of Selected News from the Hadiths of the Sayed of the Good People, by Al-Shawkani - Abu Ali Muhammad bin Ali bin Muhammad (1250 AH), Dar Al-Jeel Library, Beirut, ed. 1, 1393 AH / 1973 AD: 5/278.

⁴⁷Muwatta Malik - Abu Abdullah Malik bin Anas (159 AH), edited by: Muhammad Mustafa Al-Azami, Zayed bin Sultan Al Nahyan Foundation, Dubai Edition 1 1425 AH / 2005 CE, Book of Sales, chapter of what came in the exchange: 1 / 917, No. (2337), and Al-Sunan Al-Kubra, by Al-Bayhaqi - Abu Bakr Ahmad Ibn Al-Hussein (458 AH), edited by: Muhammad Abdul Qadir Atta, Dar Al-Baz Library, Medina, 1st Edition, 1409 AH / 1989 AD, Book of Exchange, Chapter of exchange in the council: 5/465, No. (10511).

⁴⁸Separation: Either it was separated in the body, or the sayings were separated, and the difference considered by the public is that the two contracting parties separate. If one of them went and the other remained, even if they were in their council, they would not be separated, and if their council was prolonged due to the lack of separation in bodies. if they slept in the council or fainted, and so if they rose from their council. Bada'i Sanayeh: 2/215.

⁴⁹Abu Bakr Muhammad bin Ibrahim bin al-Mundhir al-Nisaburi, (al-Ashraf fi different scholars) and the book (al-Ijma ') (309 AH). sayr 'aelam alnabla': 9/285.

⁵⁰Al-Ijma ', by Ibn al-Mundhir - Muhammad bin Ibrahim al-Nisaburi (309 AH), Dar al-Da'wah, Alexandria, 3 ed. 1402 AH: 1/92.

⁵¹Bada'i Al Sanai': 5/215, Choice: 2/31.

⁵²Explanation of Al-Zarqani Ali Mukhtasar Khalil, Abd al-Baqi bin Yusuf bin Ahmad al-Zarqani al-Masri (1099 AH), edited by: Abd al-Salam Muhammad Amin, Dar al-Kutub al-Ilmiyya, Beirut, 1st Edition, 1422 AH / 2002 AD: 3/355, and Mawaheeb Al Galilee: 4/304.

⁵³Mother, by Shafi'i-Abi Abdullah Muhammad bin Idris (204 AH / 820 CE), published by Dar al-Maarifa, Beirut 2 ed. 1415 AH / 1995 CE: 2/24, and rawdat altaalibayn waeumdat almuftini, by Al-Nawawi - Abi Zakaria Yahya Bin Sharaf (676 AH), the Islamic Office, Beirut, 2nd Edition, 1405 AH / 1985 AD: 3/48.

⁵⁴Al-Mughni, by Ibn Qudama: 5/451, and the editor in jurisprudence on the doctrine of Imam Ahmad bin Hanbal, by Ibn Taymiyyah - Abd al-Salam bin Abdullah bin al-Khader bin Muhammad, Ibn Taymiyyah al-Harrani, Abu al-Barakat, Majd al-Din (652 AH), Knowledge Library, Riyadh, 2nd Edition 1404 AH / 1984 AD: 1/320.

2. The Messenger of Allah said: Sell gold for silver, how you wish, hand in hand”⁵⁶
3. The Prophet forbade selling paper for gold as a debt.⁵⁷

Section four

Exchange and remittance and the impact of the term

The Vice President of the European Council for Fatwa and Research⁵⁸ issued a fatwa that conducting money transfers in the same currency is legally permissible, whether it is done with a fee that is “adapted based on agency with a fee” or without it, it is a paid agency, and his eminence said: One of the conditions that must be applied in dealing in currencies is to be fulfilled When buying and selling the immediate exchange, "that is, the two parties receive the money at the contract or at the bank record" ... this came in his latest fatwa on this subject ... and the question came as follows:⁵⁹

Among the questions and inquiries that still concern many people about the ruling on transferring money from one country to another in different currencies, for example, a local currency is paid in Qatari riyals to the money changer in the State of Qatar, and the beneficiary receives it in his country's currency in Saudi Arabia in Saudi riyals or any other country?

To answer that, we say:

First - Conducting remittances in the same currency: it is permissible according to Shari'a, whether with a fee (adapted based on the agency with a fee) or without it. It is a paid agency, and exchange houses and banks carry out money transfers for the general public, as they are guarantors of cases of infringement, default, and violation of conditions, and in this regard, collective fatwas and collective decisions were issued.

Second: One of the conditions that must be applied in dealing in currencies is that the immediate exchange (i.e., the receipt of the two upon the contract or the bank record), and equality between the two currencies if they are of the same type, such

⁵⁵Al-Muwatta, Sale book, chapter on what was mentioned in the exchange: 4/920, No. (2345), and Ahmad in his Musnad: 1/300, No. (162).

⁵⁶Al-Jami al-Sahih, (Sunan al-Tirmidhi) - Abu Issa Muhammad bin Issa (d .: 279 AH), edited by: Bashar Awad Maarouf, House of the Islamic Revival of the West, Beirut, 1st Edition, 1418 AH / 1998 AD, Book of Sales, 2/532, No. (1240). Al-Tirmidhi said: Hassan.

⁵⁷Sahih Muslim, Book of Al-Musaqah, Chapter forbidding selling paper for gold in debt, 5/45, No. (4156).

⁵⁸Eminence Sheikh Prof. Ali Mohieddin Al-Qaradaghi, Secretary General of the International Federation of Muslim Scholars.

⁵⁹See: Al-Sharq website: <https://al-sharq.com/article/01/2016> viewed on: 12/26/2020.

as selling the Qatari currency in the Qatari currency, but when the types differ, then the exchange must be achieved. When contracting, equality is not required.

conducting remittances in the same currency, it is legally permissible, whether it is done with or without a fee, it is a paid agency, and the jurists have stipulated that the two parties be paid in the contract council based on authentic hadiths of the Prophet, including the hadith of Abu Sa`id al-Khudri⁶⁰, and Obada⁶¹, where these hadiths indicate the necessity of receiving money immediately, but contemporary jurists have expanded the circle even in selling currencies, so they considered the recording of currency in the bank account or the so-called bank record as tantamount to a legally considered seizure, and thus collective fatwas were issued from the Fiqh Councils and scientific seminars, including the decisions of the Islamic Fiqh Academy in Jeddah and the Fiqh Council in Makkah Al-Mukarramah.

Third: The transfer of sums through banks or money changers is legally permissible, even if it is in a currency other than the currency that the sender delivered, as this case is called the transfer and exchange, so it is an exchange because the sender, for example, paid Qatari riyals and requested that they be converted into dollars in the country of the beneficiary from the transfer, which is also remittance; as the bank/money changer is remitting this amount. The Fiqh councils have agreed that the legally required money was achieved through a bank record, that is, recording the amount in the client's account, and in that case, manual money receiving is not required.

Juristic Adaptation

According to the contemporary jurisprudential adaptation regarding receiving money through remittances, and its ruling, it is the bill of exchange⁶², it is the borrower's document for the lender to the lender's agent in another country to give him what he lent. It is permitted for a group of jurists. It is more likely that bank or postal transfers today are a combined process of two or more transactions. Rather, it is a modern contract in the sense that it has not been implemented in this complex way. There is no evidence to suggest that it is forbidden, as it is true and legally permissible from its origin. The transfer procedure is considered a judgmental receipt of the amount of the currency that represents the transfer because the method of receiving the money at the investigator's reverts to custom except for what is stipulated, and the bank record has previously been tantamount to receiving

⁶⁰Abu Sa`id al-Khudri: "I heard the Messenger of Allah() say: "Do not sell gold for gold unless they are equal, or silver for silver unless they are equal" "It was previously quoted.

⁶¹«gold with gold, silver and silver, and barley for barley, dates for dates and salt for salt, if these types are different sell how you like but equal amounts.

⁶² bill of exchange: the owner of money for his agent to pay money with a loan to secure it from the danger of the road and the gathering. Enlightening lamp: 1/278. Idiomatically: "Lending for the fall of the danger of the road." Ibn Abidin's footnote: 4/295.

the money, besides, this process does not include a conditional benefit or an increase for the lender, and if any, it is for both parties.⁶³

Fourth: Concerning the Sharia ruling for receiving the money and bank record, a decision was issued by the International Islamic Fiqh Council No. 53 (4/6) regarding forms of receiving the money, especially new ones and their provisions, which stipulated the following:

First: Receiving money as it is tangible in the case of taking by hand, or weighing in food, or transferring the possession, is achieved as a consideration and judgment by giving up with the ability to act even if the exchangedoes not exist in a sense.The way things are received varies according to their condition and the different customs,

Second: To transfer currency from one country to another:⁶⁴

First: that the transfer and receipt be in the same currency: for example if the person sends dollars and the other party receives dollars: this transfer is permissible, and taking the fee for it is permissible, according to the decisions of the (Islamic Fiqh Academy in Jeddah) in its (ninth) session, Resolution No. 84 (9/1)): “Remittances whose sums are given in a certain currency and the applicant wishes to convert them in the same currency: they are permissible according to Shari’a, whether it is free of charge or in exchange within the limits of the actual wage.” This image is the first and the most cautious if possible.

Second: the transfer is in one currency and received in another currency: here the exchange and the transfer have combined, and at that time the exchange must be made first, including the collection of the disbursed money, then the transfer is made.Among them: that the judgmental receipt takes the place of the real receipt, and among the forms of the judgmental receipt that they mentioned: 1- Receipt of the check 2- The bank record in the customer’s account, meaning that the bank records in its books and data for the benefit of the customer what he owned of the disbursed currency.

When sending an amount of money to be received by a person in another place in another currency, it is not a condition that the disbursed money be taken in his hand.Electronic networks and programs, and serves as the real disburse.

Third: If the transfer is via a party that does not present an official document, or through some merchants, acquaintances, and friends, and among the Sharia methods that are:

⁶³See: Haashiyat al-Desouki: 3/225, and al-Mughni, by Ibn Qudamah: 4/394.

⁶⁴Resolutions of the Islamic Fiqh Council of the Organization of Islamic Cooperation in its sixth session, Resolution No. 53 (6/4)

1. The person begins to exchange the currency to be converted, then hands it over to him, and asks him to convert it in exchange for a specific, known fee.
2. A person to authorize the exchange and transfer to a friend or merchant, as if someone gave his friend a thousand dollars to deliver to his family in Syria, and authorized him to spend the dollars in Syrian pounds. So the mediator did so, this is permissible, and likewise, if he assigns a dealer to exchange and transfer, but here it is necessary to agree on the price that he assigned to transfer with it and the fee that he charges for the transfer process. This is a matter of proxy for a fee, and it is also permissible.⁶⁵

Conclusion

Praise be to Allah who, by His grace, good works are fulfilled. After this brief tour of the topic (The impact of term on exchange), we came out with the following results:

1. Exchange MEANS EXCHANGING PRICES.
2. Exchange in the contract is a condition of the validity of the exchange contract; because the term affects the sale of the money, so the sale turns into usury.
3. I did not find a definition for the term among the jurists, but through studying the sayings I came out with the following definition: Term is “the future period to which an order is added, whether this addition is a period for fulfilling an obligation or a time for terminating an obligation, and whether this period is prescribed by Sharia or by the judiciary, Or by the will of the individuals.
4. The term is considered a matter that is not required by the contract, rather it is prescribed to preserve the rights of the debtor.
5. It is permissible to transfer money from one country to another, even if the exchange is different, provided that the date is before the exchange; people need such transactions.

Allah bless our Prophet Muhammad and his family

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