

WITH THE NAME OF ALLAH, MOST GRACIOUS, MOST MERCIFUL

THE ISLAMIC INSTITUTE OF URBAN AFFAIRS

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**P R E S E N T S
A SPECIAL LECTURE
BY**

USTADH ABDULLAH BIN HAMID ALI

**TOPIC: "UNDERSTANDING INTEREST"
(RIBA)**

**FOR SALE on DVD with personal notes on
lecture from USTADH ABDULLAH BIN HAMID ALI**

**What is interest? Does the Western System of interest
VIOLATE ISLAMIC LAW?**

**Ustadh Abdullah will explore the MEANINGS and
DEFINITIONS of INTEREST ACCORDING TO CLASSICAL,
ISLAMIC TEXTS in comparison with modern usage and
applications!**

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and translator of several works on Islam, including the
"Muslim Funeral Guide" as well as "The Attributes of God".**

The Stated Interests of Islam: المصالح المعتبرة

- 1- Protection of Religion: حفظ الدينⁱⁱ
- 2- Protection of Person: حفظ النفسⁱⁱⁱ
- 3- Protection of Sanity: حفظ العقل^{iv}
- 4- Protection of Progeny: حفظ النسل^v
- 5- Protection of Wealth: حفظ المال^{vi}

Islamic Legal Rulings: الأحكام الشرعية

- 1- Compulsory (wajib/fard)^{vii}
- 2- Recommended (mandub/sunnah)
- 3- Neutral (mubah)
- 4- Disliked (makruh)
- 5- Unlawful (haram)

- Valid (sahih)^{viii}
- Invalid (fasid/batil)^{ix}

Forms of Material Gain

I. Non-substituted gains

- (a) Inheritance
- (b) War spoils
- (c) Gifts (viz. presents and religious endowments)
- (d) Ownerless items (viz. firewood, game for hunting, and unclaimed land)

II. Substituted gains

- (a) *Substitute for wealth*, (عوض عن مال) like a sale of moveable or immovable property [البيع]
- (b) *Substitute for work rendered*, (عوض عن عمل) like services contracted by a carpenter, plumber, etc. [الإجارة]
- (c) *Substitute for sexual gratification*, (عوض عن فرج) like the dower paid to a woman in marriage. [الصداق]
- (d) *Substitute for physical transgression against one's person or life*, (عوض عن جناية) like the blood money paid for the accidental murder of a believer. [الديات]^x

The Wisdom and Wide Scope of Permissibility of Business

Allah legislated trade to bring ease upon humanity. Every living person on the planet has needs and necessities that must be fulfilled. And due to the structure of all societies, none of that would be possible to carry out without recourse to trade. When a person is in need of food, clothing, shelter, or other things without which life could not be sustained or undue hardship would result, while those essentials are found in the possession of a certain person or group, it becomes an urgent necessity that all parties involved develop a system built upon justice and peace for ensuring one another's survival and subsistence. Otherwise, the world would completely be overrun by theft, murder, and the uncurbed usurpation of one another's wealth. Gold and silver currency was eventually developed and made the foundations of all costs and prices, and the natural valued substitute for property destroyed. And the world would eventually agree upon the use and circulation of these two precious metals in every day monetary transactions.

Perhaps the most liberal and least restrictive area of the Islamic law is the area of business and financial transactions. For this reason, many scholars hold that the presumed ruling of all business and financial transactions is one of unrestricted permissibility. Only when a scriptural text is found forbidding a particular transaction does it become an obligation for a Muslim to seek to annul his contractual agreements. In fact what supports the validity of this view is that the number of unlawful transactions mentioned in the Islamic law books are very limited in number. In spite of that, it still behooves a Muslim to become acquainted with those rulings to ensure that he is walking on good footing with regard to what he buys and sells in both an Islamic and non-Islamic market place.

Shaykh Muhammd Al-Rugi says,

"The Islamic law code in general - with all it encompasses including the laws of finance- has come in order to bring about happiness to humanity, to regulate their lives with a system built upon justice and right direction, to bring for them benefits and to ward off from them harms, and to rid them of their burdens and the shackles that were upon them. Allah - Exalted be He - says: "Ta Ha. We have not sent down this Qur'an for you to be miserable." He also said: "There has come to you a Messenger from yourselves. It is hard on him what you suffer of adversity..." And He - glory be to Him - said: "If Allah had willed He would have brought hardship upon you."

From there, its judgments have come built upon consideration given for the condition of those who are legally responsible, and their material and spiritual capacities in establishing the religion (*din*) and remaining firm and straight upon the command of the Holy Scripture. And, among its fundamentals in that regard is that *"difficulty is lifted" "harm is removed," and "difficulty results in facilitation"...*

And, it is known that Muslims today are stumbling into a stifling economic reality and a critical living condition. And, they also live new forms and styles of financial transactions unknown to those who preceded. So, it is neither of jurisprudence nor justice for us to deal with them in the ways of the predecessors, nor adorn them with the clothing of their issues and applications that they lived.

Rather, it is necessary that we deal with them in light of the universal principles (*al-kulliyat*) of the Holy scripture, its fundamentals, objectives, and legislative reasons for its rulings that are beyond the restrictions of time, space, or person; while seeking direction in that from the understandings of the ancestors and their methods of legislative adaptation to novel occurrences; especially, with regard to what is foreign and coming from a non-Islamic land and environment, not the environment of the Muslims..."^{xi}

The Fundamental Ruling of Financial Transactions

Financial transactions are legitimate and legal for Muslims to become parties in by the agreement of all Muslim scholars throughout the ages. The Qur'an also makes reference to this fact and encourages it.

"It is no crime in you if ye seek of the bounty of your Lord." [2:198]

"O ye who believe! Eat not up your property among yourselves in vanities; But let there be among you traffic and trade by mutual good will." [4: 29]

*"And when the prayer is finished, then may ye disperse through the land, and seek of the bounty of Allah: and celebrate the praises of Allah often (and without stint): that ye may prosper."
[62: 10]*

The Prophet – may Allah bless and grant him peace - said,

"O Allah! Bless my Ummah in its early morning efforts!"^{xii}

And he said,

"Verily Allah loves to see His slave strive in the search for what is lawful."^{xiii}

He also said,

"Seeking out what is lawful is a duty upon every Muslim."^{xiv}

And when the Companion, Rafi' ibn Khudayj, asked him, "O Messenger of Allah! What form of material gain (*kasb*) is most wholesome?" he said, "What a man does with his hand, and every righteous business transaction."^{xv}

The Obligation of Knowing the Rules of Buying and Selling

It has been related that 'Umar ibn al-Khattab – may Allah be pleased with him - would make rounds in the marketplace and would hit some of the merchants with a whip upon seeing them involved in unethical business practices. And he would say,

“None are to sell in this marketplace of ours unless he is one who knows the law (fiqh). Otherwise, he'll devour interest (riba) willfully or unwillingly.”

* * *

Contracts

“O ye who believe! Fulfill [your] contractual agreements.” [5:1]

A business or financial transaction is a form of contract whether it takes the form of a recorded document or verbalized between the parties initiating it. For that reason, it must conform to the conditions of all contractual agreements.

Chief Elements of Every Contract:

- 1- Party #1
- 2- Party #2
- 3- Point of Contraction and Agreement
- 4- Exchange Items
- 5- Expression of Mutual Consent

Chief Elements of Every Financial Transaction:

- 1- The Seller
- 2- Buyer
- 3- Point of Contraction
- 4- Exchange Items
- 5- Expression of Consent

Forms of Transactions^{xvi}

A transaction may take different forms,

- 1- The Transaction of a Currency for an Item
- 2- The Transaction of an item for another item
- 3- The Transaction of one Currency for another Currency
 - *Sarf*: (الصرف) This is when gold is exchanged for silver or the like

- *Muratala*: (المراطة) This is when one currency is exchanged for another according to weight, like the weight of gold for gold, silver for silver, or gold for silver.
- *Mubadala*: (المبادلة) This is when the number of one currency is exchanged for an equal number of the other currency, like 10 pieces of gold for 20 pieces of silver, or gold coins for gold coins, or silver coins for silver coins.

The Chief Elements of Every Business Transaction

- 6- The Seller (البايع)
- 7- The Buyer (المشتري)
- 8- The Price (الثمن)
- 9- The Sale Item (المثمنون)
- 10- Consent (الصيغة)

- Conditions of the Seller and Buyer

- (1) Discernment (tamyiz)^{xvii}
- (2) Ownership (milk)^{xviii}
- (3) Willingness to sell or buy, (ta'ah)^{xix}

- Conditions of Price and Item

- (1) Cleanliness (taharah)
- (2) Something use can be taken from (muntaf'an bihi)
- (3) Defined and known (ma'lum)
- (4) Within one's capacity to hand over (maqdur 'ala al-taslim)

- Conditions of Consent

- (1) That the offer and acceptance happen in the same sitting (or with slight delay that doesn't produce any harm to any party)
- (2) That they correspond to one another with relation to the intent of what is being contracted
- (3) That it be either a statement or action from both parties indicating that the deal is final

Shaykh Abu al-Hasan^{xx} says about the definition of a business transaction (bai'),

"It (a business transaction) has three chief elements. The first [chief element] is whatever indicates consent, such a statement, like when the seller says, "I've sold it to you," or like for the buyer to say, "I've bought it," or if [the consent is indicated] by an action, like the exchange [of items from hand to hand]. The second [chief element] is the [existence of the] one initiating the contract. And that is the seller and

the buyer. And in order for the sale made by such a person to be valid it is a condition that he is discerning (*mumayyiz*). So the sale made by any other kind of person will not hold valid, nor the purchase made by such a person due to youthfulness, insanity, drunkenness,^{xxi} or the like of that. And only the sale of one who is legally responsible is binding. The third [chief element] is the [the existence of the] object of contraction. And that is the price and the sale item. Five conditions are stipulated for each of them: (a) Purity. That means, that it is not permitted to sale filth, like feces, nor [is it permitted to sale] something filthy that cannot be made clean, like oil [customary used with foods and lamps]. [Another condition for the object of contraction is] (b) that benefit can [actually] and legally be taken from it. So it is not permitted to sale what is unlawful to eat, like horses, mules, and donkeys^{xxii} when it is on the brink of death. And [the same applies to] the thing to which no prohibition against taking benefit from it absolutely has been found^{xxiii}. And (c) [the third condition for the object of contraction is] the ability to hand it over, so it is not permitted to sale the runaway slave, the stray camel, or the fish in the water. And (d) [the fourth condition is] knowledge of both the price and the sale item. So the lack of knowledge of both or one of them is something that invalidates [the sale], like for one to purchase [something] with the weight of an unknown stone or the dirt of goldsmiths."^{xxiv}

Ibn Juzai al-Kalbi^{xxv} says,

“So as for the seller and the buyer, three conditions are stipulated with regard to each of them. The first [1] is that one be at the age of [rational] discrimination (*mumayyiz*), as opposed to the insane, the inebriated, and the young person who does not rationally discriminate. The second [2] is that they be owners [of the wealth being exchanged], deputized by two owners of wealth, or their overseers. As for purchasing [something] for someone without his permission or selling for him - i.e. the sale made by the presumptuous trustee (*bai' al-faduli*) - it holds validity. But it rests upon the permission of its owner. Shafi'i said, however, “It doesn't hold validity.” The third [3] is for the two to be willful actors. For surely the sale made by the one who is coerced as well as his purchase are invalid. And when a man is coerced to pay a fine unrightfully and then sells a portion of his wealth [due to the fine], the sale is not permitted. And the [coerced] seller takes what he sold to the buyer free of cost, while the buyer returns for the cost to the one who coerced the seller. And that is the same if he paid the cost to the one who did the coercing or the one who was coerced (he is to return to the one who did the coercing for the price). But neither the fine imposed by the government tax collectors nor the collector of [the unlawful] market sales taxes (*muktari al-mukus*) falls in this category.^{xxvi} For such a transaction is effective and they (those coerced) having no right to reverse it. And when the buyer coerces the seller to make a purchase, he is no different than the usurper (*ghasib*) in all of its [applicable] rulings. It is also a condition for the seller to be of full adult age (*rashid*).^{xxvii} For surely the sell made by the wasteful spender (*safih*) and the ward (*mahjur*) is not effective. And the things purchased by such a person are subject to the review of his guardian...and as for the price and the sale item, there are four conditions stipulated for each one of them. They are: [1] that it be clean/pure, [2] something use is made of, [3] known (or defined), and [4] capable of being handed over. We say 'clean/pure' in opposition to 'impure.' For, surely such [a thing] is not permitted to sell, such as wine and swine. But there is disagreement about the sale of ivory, dung [for fertilizer and the like], and the sale

of impure oil. It (impure oil) has been forbidden absolutely according to the standard view (mashhur). But Ibn Wahb permitted it when the buyer points it out (i.e. the flaw). There is also disagreement over using it (impure oil) for lamps in places outside of mosques. And we say "benefit taken from it" in opposition to what has no benefit in it, like weeds and dogs. There is also disagreement over the permissibility of selling dogs for hunting and [for guarding] small livestock. But if the use [taken from the dog] is impermissible, then it is as if it (the possible use) doesn't exist, as [in the ruling of selling] musical instruments [which is the same as with dogs]. And we say "known/defined" in opposition to what is unknown (majhul). For surely the sale of it (what is unknown) is not permitted with the exception of the lump sale or purchase (bai' al-jazaf), which is permitted with two conditions: [1] One of them is that it (the sale item) be something that is [customarily] measured or weighed, like grains (ta'am) and the like. But such is not permitted with regard to what is of grave importance and is considered individually, like clothes, silver coins, and jewels [even though that is] in opposition to the two of them (i.e. Shafi'i and Abu Hanifah), and [it is] also not [allowed] with regard to what is sold according to their numbers, like livestock. [2] The second [condition for the lump sale or purchase] is for the seller and buyer to be equal in their knowledge of its amount as well as their lack of knowledge of it [even though that is] in opposition to the two of them (Shafi'i and Abu Hanifah). And we say "capable of being handed over" in opposition to the sale of birds while they are [still] in the air, [the sale of] fish while they are [still] in the sea, and the like of that. Included in that is the usurped item (i.e. it is not permissible to sale it). Rather, only the one who usurped it may sell it [in spite of the fact that both the usurpation of it and the sale of it are forbidden]."^{xxviii}

Forms of Wealth (الأصول و المنقولات/ والعيون والمنافع)

Wealth is of two basic forms:

- (1) Immovable property ('aqar), like homes and plots of land
- (2) Movable property (manqul), like clothing and riding animals

And wealth is sought for two reasons:

- (1) For its direct benefit (li 'aynihi), like the flesh of cows or lamb that is eaten
- (2) For its use and utility (li manfa'atihi), like riding a horse, driving a car, etc.

Understanding Interest (Riba)

"Those who devour interest will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: "Trade is like usury." But Allah hath permitted trade and forbidden interest." [2: 275]

Qadi Abu Bakr ibn Al-'Arabi says,

"*Riba* [or interest] linguistically is synonymous with [the word] *ziyadah* (addition). And what is meant by it in the verse is 'every addition that no substitute is given for.' But surely the addition is not unlawful (*haram*) because of its essence by proof of the permissibility of initiating a contract while stipulating it in its [appropriate] manner. And if it had been unlawful, it would not have been valid for a substitute to be given for it. But a contractual agreement like [the purchase of] wine, carrion, and the like does not apply to it (the addition) [since such contracts are unlawful]. So it has become clear that the meaning of the verse is that Allah has made lawful the absolute trade wherein [the exchange of] a substitute occurs upon the soundness of [one's] intention and [freedom of] action. But He has made unlawful all forms that occur in the way of falsehood and vanities."^{xxix}

The Foundations of Interest

- 1- Gold
- 2- Silver
- 3- Wheat
- 4- Barley
- 5- Dates
- 6- Salt

The Prophet – *may Allah bless and grant him peace* - said,

"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt are to be [exchanged] equal for equal, hand to hand. So whoever adds or asked for an increase has devoured interest. The taker and giver are equal in it (i.e. the sin)."^{xxx}

Kinds of Interest

I. Interest of Increase (ربا الفضل)

The Prophet – *may Allah bless and grant him peace* - said,

"Do not sell gold for gold unless it is equal for equal. And do not exchange some of it for a greater amount for the other. And do not sell silver for silver unless it is equal for equal. And do not exchange some of it for a greater amount for the other. And do not sell from it something that is absent for what is present."^{xxxi}

He also said,

"Dates for dates, wheat for wheat, barley for barley, salt for salt are [to be exchanged] equal for equal, hand to hand. So whoever adds or asks for an increase has devoured interest except for when they are of different kind [then it is permissible to exchange in different amounts]."^{xxxii}

II. Interest of Delay (ربا النساء)

The Prophet – *may Allah bless and grant him peace* - said,

“Gold for silver is interest (riba) unless it is *ha'a* and *ha'a*^{xxxiii}. Wheat for wheat is interest unless it is *ha'a* and *ha'a*. Barley for barley is interest unless it is *ha'a* and *ha'a*. And dates for dates is interest unless it is *ha'a* and *ha'a*.”^{xxxiv}

He also said,

“Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt are [to be exchanged while being] like for like, equal for equal, hand to hand. But when these categories are different [from one another], then sell [them] as you wish when it is hand to hand [without delay].”^{xxxv}

Abu al-Hasan said,

“Interest of increase is unlawful...as well as the interest of delay that happens with respect to cash, which is gold and silver. So it is neither permitted to sell two silver coins (dirhams) for three, nor [is it permissible] to sell one silver coin for another until a day or hour [later] for instance.”^{xxxvi}

Does Interest Apply to Wealth Other than the Aforementioned?

Nawawi says,

“The Prophet – *may Allah bless and grant him peace* - expressly stated in these hadiths the prohibition of interest (riba) in six things: gold, silver, wheat, barley, dates, and salt. The Literalists (ahl al-zahir) said: “Interest only applies to these six [forms of wealth]” based upon their principle of negating legal analogy (qiyas). [However] All scholars other than them have said: “It doesn’t specifically apply to the six. Rather, it transfers to all that fall within their meaning and share with them the same legal justification (‘illah).” But they have differed about the actual legal justification that happens to be the cause for the prohibition against interest with respect to the six. Shafi’i said: “The legal justification (‘illah) in gold and silver is that they are the category of all prices (jins al-athman). So interest doesn’t transfer to other things like things that are [customarily] weighed [to determine their cost] and other things, since they share no resemblance [in their legal justification].” He said: “And the legal justification behind the remaining four [things] is that they are edible (mat’um). So interest transfers from them to every other edible thing.” As for Malik, he said about gold and silver the same that Shafi’i said – *may Allah have mercy on him*. But he said about the [other] four: “The legal justification in their regard is that they are stored away for subsistence (qut) and are suitable for it.” So he applied it

(i.e. interest) to raisins, since they are like dates, and to legumes (qutniyya), since they fall into the meaning of wheat and barley. As for Abu Hanifah, he said: "The legal justification with respect to gold and silver is that they are [customarily] weighed (wazn). And [he said] about the [other] four [that it is because they are] measured (kayl). So it (i.e. interest) transfers to every item that is weighed, like copper, iron, and other things, and to every measured item, like plaster, alkali (ashnan), and other things."

Then Nawawi says,

"And scholars have unanimously agreed upon the permissibility of selling the interest related item for another interest related item that does not share the same legal justification, unequally and with delay. And that is like selling gold for wheat, selling silver for barley, and other measured commodities. And they unanimously agreed that it is not permissible to sell an interest related item for another from the same category or [selling] one of them delayed; and [they unanimously agreed] that disproportion [in the exchange] is not permissible when something is sold for another of the same category without delay, like [exchanging] gold for gold; and [they unanimously agreed] that it is not permissible [for those making the trade] to part company [with one another] prior to exchanging [the interest related items] whenever one sells something for another of the same category or [even if it is] of a different category that share the same legal justification, like gold for silver, and wheat for barley; and [they have unanimously agreed] that it is permissible for there to be disproportion (tafadul) when the items are of two different classes when it happens from hand to hand, like one *sa*^{xxxvii} of wheat for one *sa*' of barley."^{xxxviii}

ⁱ These matters are also referred to sometimes as 'The Five Universals' (al-kulliyat al-khams) or 'The Bare Essentials' (al-daruriyat). The protection of them is essential in order to guarantee the interests of both religion (*din*) and worldly matters (*dunya*). (Al-Muwafaqat li al-Shatibi: 2/7)

ⁱⁱ Allah - *Might and Majestic* - guarantees for us that our religion is protected by obliging us to believe in Him, to profess our belief in Him and His messenger, to perform the daily prayers, the payment of alms, fasting, and by making the pilgrimage to Mecca. He has also protected our religion by threatening one with corrective discipline for abandoning any of the pillars of Islam or tenets of faith in the form of execution or lesser punishments.

ⁱⁱⁱ One's person is guarded from lost by the fact that Islam has regulated food, drinks, attire, living quarters, and the like by ensuring that one may only indulge in what is lawful and harmless to his person. This is also achieved by the legislation of reprisal (*qisas*) and the payment of blood money (*diyat*) for violations against one another's person.

^{iv} Sanity is preserved through the prohibition of drinking filth, poison, blood, wine, and other harmful drugs and intoxicants that damage the mind. Threatening the one who consumes things that are harmful to his mind with lashing and other punishments also preserves it.

^v Progeny is preserved by instituting legitimate ways of achieving sexual gratification, by ensuring that one party is responsible of maintenance of the family during and after a separation, and guaranteeing children's right to inheritance from their parents, etc. It is also guaranteed by legislating the punishments of stoning and lashing for illicit sexual intercourse (adultery and fornication).

^{vi} As for the preservation of wealth, this is guaranteed by regulating the various types of permissible and impermissible business transactions, by guaranteeing the right to a refund when a buyer finds a defect with something he purchased, by ensuring that one maintains his right

over his wealth, and by protecting it from the arbitrary squander, waste, and destruction of personal property by another. (See more on this in al-Shatibi's al-Muwafaqat: 2/7-9)

^{vii} Hanafis make a distinction between the terms '*fard*' and '*wajib*' whereas something is called '*fard*' when it originates from sources that are both decisive in transmission (*qat'i al-thubut*) and decisive in wording (*qat'i al-dalalah*). If a person denies something that is '*fard*' he is an apostate. Other scholars in general make no distinction between the two terms.

^{viii} Imam al-Juwayni defines the '*sahih*' act (valid) as, "whatever efficacy (*nufudh*) pertains to and is given regard to [legally]." (Al-Waraqat min 'ilm usul al-fiqh: p. 5) What this means is that when it is said, "This sale is valid (*sahih*)" it means that it is a legally valid transfer of wealth between the buyer and the seller, and that use may be made of that particular wealth. And when it is said, "This marriage is valid (*sahih*)" it means that it is lawful for spouses to take sexual gratification from one another. (Hashiyat al-Dimyati 'ala Sharh al-Waraqat of Imam al-Juwayni: p. 21)

^{ix} Imam al-Juwayni defines '*batil*' (invalid) as, "what efficacy does not pertain to and is not given regard to [legally]." [*ibid*] But Imam al-Jurjani says about it, "It is what is not *sahih* (valid) by its origin." He also says, "What is not given regard to [legally] and does not produce anything [of legal obligation]." Then, the Hanafis, unlike the majority, make a distinction between the terms '*fasid*' (corrupt) and '*batil*' (invalid). Al-Jurjani says, "'*Fasid*' is what is valid (*sahih*) by its origin but not [valid] because of a characteristic. But it [still] produces ownership once it is taken hold of [by the buyer or seller] to the point that if someone was to buy a slave in exchange for wine, took over possession of him, and then set him free, he would be set free. But in the view of Shafi'i, there is no distinction between '*fasid*' and '*batil*.'" Al-Jurjani also defines '*fasid*' as "What is legitimate in itself but corrupt in meaning from a particular regard due to it being inseparable from something that is impermissible by virtue of the state [it is in] while imagining [situations when the state can be separated from the act] as a whole, like the initiation of a transaction occurring when the call for the Friday prayer is being done." [Ta'rifat: p. 42, p. 164]

Consequently, the majority of scholars have declared that the prohibition of an act (*nahy*) indicates that the performance of such an act is legally invalid and corrupt (*al-nahyu yaqtadi al-fasad*). And, an act may be prohibited for four basic reasons:

[1] Prohibited for its essence (*li dhatihi*), like blood, swine, and carrion. Such things are not allowed to be sold and they are also not permitted for a Muslim to take benefit from them in any way. So the sale of them would be invalid (*batil*) under all circumstances.

[2] Prohibited due to an inseparable characteristic found in it (*li sifatih*), like wine or the sale of something that has been usurped from another. The description found in wine that invalidates its sale is that it 'leads to inebriation.' And the characteristic found in the usurped item that forbids and invalidates its sale is that 'it was usurped.' Once such characteristics are removed, the sale of the items is considered valid (*sahih*). But if not, it is invalid (*batil*).

[3] Prohibited because of a characteristic found, not in the thing itself but inseparable from its state (*li sifatih kharijatin 'anhu mulazimatin lahu*). An example of this is fasting on the Day of the 'Id or conducting a business transaction during the sermon (*khutbah*) for the Friday prayer (*Jumu'ah*). The characteristic that invalidates the former is that 'it is a turning aside from Allah's hospitality.' And the characteristic in the latter that invalidates it is that 'it is a thing that preoccupies one from the listening that has been ordered to be done.' These kinds of sales are considered invalid (*batilah*), since the characteristics making them unlawful are inseparable.

[4] Prohibited due to a characteristic, not in the thing itself, but is separable in some circumstances (*li sifatih kharijatin ghayri lazimatin lahu*), like praying in a house that one has usurped from its owner, making Hajj with unlawful wealth, or concerted price hiking (*najashi*) in sales. In these cases, the acts are considered to be valid (*sahih*) since the prohibition is not directed against the actual act. Rather, it is directed against the characteristic connected to the act. (Mudawwanah al-Fiqh al-Maliki wa Adillatuhu: 3/450-451)

^x This division is taken from Ibn Jazai's al-Qawanin al-Fiqhiyyah: p. 186

^{xi} This statement is taken from Dr. Muhammad Al-Rugi's *fatwa* on lease-purchase entitled "*Lease Purchase and the Legal Evidence for its Permissibility*." From 'Risalat al-Ma'ahid: #12 Dhu al-Hijjah, 1421/March 2001, Fez, Morocco, p. 25.

^{xii} Reported by Tirmidhi on the authority of Sakhr al-Ghamidi.

^{xiii} Tabarani and Daylami reported it.

^{xiv} Tabarani reported it. And Mundhiri said about it, "Its chain of narration (isnad) is fair (hasan), God-willing."

^{xv} Ahmad and Bazzar related it. And Tabarani related it also on the authority of Ibn 'Umar with a chain whose transmitters are reliable (thiqat).

^{xvi} Al-Qawanin Al-Fiqhiyyah:

^{xvii} Discernment or '*tamyiz*' (arabic) means for one to be able to understand conversations and able to sufficiently respond to questions asked.

^{xviii} The person purchasing or selling an item must be an owner of the item being sold or the wealth being exchanged for the item. The owner may also appoint a trustee (*wakil*) over the sale or purchase of wealth, and such a transaction will take the same ruling as if the original owner transacted it. Similar to this is when someone is in the capacity of an overseer (*nazir*) of the property and welfare of a child or person unqualified to transfer ownership of his/her property to another due to being too young or being wasteful and unable to manage his financial affairs without bringing harm to his self (*safih*).

^{xix} In other words, if someone is coerced into buying or selling something, the sale will be considered unbinding.

^{xx} He is Shaykh Abu al-Hasan Muhammad ibn Muhammad, the Maliki scholar from Egypt, who authored books like al-Muqaddimah al-'Izziyyah, and the Sharh of Ibn Abi Zayd Al-Qayrawani.

^{xxi} The transaction made by a person who is inebriated is considered null and void, since it is not done based on his own free and conscious will. In spite of this, scholars have ruled that the pronouncement of divorce made by a person in a drunken state counts against him.

^{xxii} Malikis consider it unlawful to eat horses, mules, and donkeys based on the fact that Allah mentions a specific purpose for them in Surah 16:8.

^{xxiii} This is like dogs, which are impermissible to sale, although a Muslim may own them if they are to guard one's crops and livestock, or if they are used for hunting. There is also disagreement about the permissibility of eating them. Malikis hold it to be merely disliked (*makruh*) to eat dogs.

^{xxiv} Al-Muqaddimah al-'Izziyyah: pp. 217-220.

^{xxv} He is a Maliki scholar of Islamic Spain (Andalus).

^{xxvi} This judgment that one is obliged to surrender one's wealth over to the Muslim rulers even if they take it wrongfully and by force is likely based on the Prophetic tradition reported by Imam Muslim that says that the Prophet – *may Allah bless and grant him peace* – said, "There will be after me leaders (*a'immah*) who do not take direction from my guidance and who do not take an example from my Sunnah. And in their regard there will stand men whose hearts will be as the hearts of devils in the bodies of men." The narrator, Hudhayfah ibn al-Yaman, then said, "I said: "How should I behave, O Messenger of God, if I am to reach that [time]?" He said, "You shall hear and obey the commander even if he beats your back or takes your wealth. Hear and obey!"

^{xxvii} This is important to note in that the person selling his property can only do so if he is at the age of full maturity, which is 20 lunar years of age. A person under that age may make a purchase as long as he is at an age of rational discrimination. This is why scholars have traditionally allowed for fathers to coerce their daughters under the age of 20 into marriage, since they are not old enough to initiate contracts that transfer ownership of their or other's personal property over to others. And the Hanafi ruling allowing a woman to contract her marriage without a marriage guardian (*wali*) is restricted to a woman who is at least 20 years of age and older. The contract on a girl younger than that would be invalid.

^{xxviii} Taken from al-Qawanin al-Fiqhiyyah: pp. 184-185.

^{xxix} Ahkam al-Qur'an: 1/321.

xxx Muslim #1584 (82)

xxxi Muslim #1584 (75)

xxxii Muslim #1588 (84)

xxxiii When the Arabs used to trade or sell to one another the buyer would say '*ha'a*', meaning 'take this.' And the seller would give the buyer the item and say, '*ha'a*.' So what the Prophet - may Allah bless and grant him peace - means by this hadith is that the exchange of the aforementioned items is considered interest unless both items are exchanged in the same sitting, and there is no delay.

xxxiv Muslim #1586 (79)

xxxv Muslim #1587 (81)

xxxvi Al-Muqaddimah al-'Izziyyah: p. 221

xxxvii A '*sa*' is a dry measure approximately equal to 4.212 liters.

xxxviii Sharh Sahih Muslim li al-Nawawi: 6/8, The Chapter of Interest (Riba)