

“TREATMENT OF MU‘ĀMALĀT ISSUES IN IFTIKHAR AL-DIN AL- BUKHARI’S KHULĀṢAT AL-FATĀWĀ”

<https://doi.org/10.5281/zenodo.23175651>

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In Islamic jurisprudence (fiqh), the rulings governing property, economic, and contractual relations among people constitute an important part of mu‘āmalāt. The Shari‘ah and legal foundations of such relationships as sale and purchase, lease, partnership, loan, exchange of money and goods, guarantee, transfer of debt, and pledge have been developed in detail in classical fiqh sources. This juristic heritage is also of considerable importance for studying the theoretical and legal foundations of financial relations applied in contemporary Islamic economics and finance. Within the framework of this study, primary attention is devoted to identifying and systematizing the fiqh issues relating to mu‘āmalāt presented in Iftikhar al-Din al-Bukhari’s Khulāṣat al-Fatāwā and to elucidating their substance and significance. In particular, the rulings in the work concerning sales, spot and deferred sales, installment sales, the exchange of money and goods, delivery of products, manufacture of goods to order, and other property and financial relations are examined as the principal objects of analysis. The focus is not merely on reproducing these rulings, but on identifying their juristic foundations, interrelationships, and distinctive features within the Hanafi school of law.

The mu‘āmalāt section of Khulāṣat al-Fatāwā makes it possible to examine the legal approaches to economic relations that developed within the Hanafi juristic environment of Transoxiana in the eleventh and twelfth centuries. The work brings together fatwas concerning various forms of sale, the characteristics of goods and money as objects of exchange, the rights and obligations of contracting parties, conditions affecting the validity of transactions, and a range of economic relationships. This makes it an important source for the juristic study of economic transactions.

Another important direction of the study is to identify the substantive and legal relationship between the classical rules of mu‘āmalāt presented in Khulāṣat al-Fatāwā and contemporary Islamic finance. Issues addressed in the work – such as sale, deferred and installment sales, partnership, and monetary and commodity relations – are comparatively examined alongside corresponding contractual relationships in modern Islamic finance. This comparative analysis makes it possible to determine the theoretical and practical significance of legal solutions developed in classical Hanafi jurisprudence for contemporary financial relations.

From this perspective, the research undertaken in this section comprises three interrelated stages: identifying and systematizing the issues of mu‘āmalāt contained in Khulāṣat al-Fatāwā; analyzing their substance and legal foundations in

Hanafi jurisprudence; and revealing the aspects that connect these rules with contemporary Islamic economics and finance. In this way, the study seeks to substantiate not only the historical significance of Iftikhar al-Din al-Bukhari's juristic legacy concerning mu'āmalāt, but also its scholarly and practical potential for examining contemporary Islamic finance from the perspective of the Hanafi school.

The term mu'āmalāt (المعاملات) is the plural of the Arabic word mu'āmalah (المعاملة) and, in its lexical sense, denotes interactions and dealings among people. In fiqh terminology, mu'āmalāt refers to the body of Shari'ah rulings governing property, economic, and contractual relations between people. In fiqh literature, the concept is used with different scopes. In a broad sense, it may encompass juristic rulings concerning legal relations among people other than acts of worship. In a narrower sense, mu'āmalāt primarily denotes the fiqh rules governing property-related economic and contractual relations, including sale and purchase, lease, partnership, loan, ṣarf, salam, pledge, guarantee, transfer of debt, agency, and other financial transactions.

In this study, the concept of the 'science of mu'āmalāt' is used in its narrower sense, namely as the branch of fiqh that studies property and financial relations among people and the Shari'ah and legal foundations of the contracts associated with them. On this basis, the issues in Khulāṣat al-Fatāwā concerning sales, spot and deferred sales, installment sales, the exchange of money and goods, partnerships, and other financial relationships are analyzed as part of the juristic heritage of mu'āmalāt.

Trade occupies an exceptionally important place in Islam. The following historical episode clearly illustrates this. When the Messenger of Allah (peace and blessings be upon him) migrated to Madinah al-Munawwarah, his first undertaking was to establish a mosque, and his second was to establish a commercial center—a marketplace—for the Muslims. This event is well known in Islamic history. In this light, it may be said that, alongside worship of Allah, engaging in lawful trade is also regarded as an important activity in Islam.

A substantial part of human life is inevitably connected with financial dealings and the issues arising from them, as everyday life itself requires such interactions. If financial transactions and exchanges were not properly regulated and the necessary rules were not developed, daily life would become more difficult and disputes among people would increase. The Holy Qur'an sets out the general principles governing mu'āmalāt—that is, the full range of financial and economic relations among people, particularly matters connected with trade and entrepreneurship. The Messenger of Allah (peace and blessings be upon him) explained these principles in greater detail. Muslim scholars studied commercial matters with a degree of thoroughness comparable to their study of prayer, one of the five pillars of Islam.

In Khulāṣat al-Fatāwā, Kitāb al-Buyū' (البيع), the 'Book of Sales,' appears at the beginning of the third part of the second volume. The term buyū' (البيع) is the plural of bay' (بيع) and indicates that the book covers various

issues and forms of sale. Accordingly, Kitāb al-Buyū' is one of the principal sections of the work in which fiqh issues relating to mu'āmalāt are collected. The author also organizes sales-related questions according to a particular internal classification, dividing the subject matter into chapters and smaller subsections. This enables the numerous fiqh issues concerning sales to be grouped thematically and presented in a coherent sequence.

The arrangement of Kitāb al-Buyū' in Khulāṣat al-Fatāwā also displays a distinctive feature. The discussion of sales begins with salam and concludes with sarf—the exchange of money and currencies. This arrangement differs from the manner in which sales issues are organized in some other works of fiqh and fatwa. The feature is significant for identifying Iftikhar al-Din al-Bukhari's methodological approach to selecting and systematizing juristic material concerning sales.

Because Khulāṣat al-Fatāwā belongs to the fatwa genre, the author does not always separately provide theoretical definitions of sale and certain related fiqh terms. The work focuses primarily on presenting concrete issues arising in practice and explaining their juristic solutions. Therefore, before undertaking a systematic analysis of the fatwas relating to commercial transactions in the work, it is appropriate to clarify the concept of bay', its legal nature, and its principal constituent elements.

In Islamic law, sale—bay' (الْبَيْعُ)—means a transaction aimed at exchanging property for a specified countervalue on the basis of the mutual consent of the parties. Although fiqh literature offers different definitions of bay', their common substance is the consensual exchange of one item of property value for another. In modern legal terminology, this relationship broadly corresponds to a contract of sale and purchase. Fiqh sources use the term bay' (الْبَيْعُ; plural: buyū', الْبُيُوعُ) and, in certain contexts, shirā' (الشِّرَاءُ) to denote sale and purchase. It has been defined as 'the exchange of one property for another by mutual consent.' In Hanafi jurisprudence, however, the meaning of māl (property) and the particular characteristics of certain forms of sale created a need for a broader formulation of the definition of bay'.

For example, 'Abd al-Ghani al-Maydani, in al-Lubāb, defines it as 'the exchange of one thing for another,' without limiting the subject matter of the contract solely to the concept of māl. This approach makes it possible to include certain forms of sale, particularly salam, within the concept of bay'. Wahbah al-Zuhayli likewise specifically notes this aspect of the definition. The principal legal effect of a sale is the reciprocal transfer of proprietary values between the parties. The seller—bā'i' (الْبَائِعُ)—undertakes to transfer ownership of the sold item—mabī' (الْمَبِيعُ)—to the buyer, while the buyer—mushtarī (الْمُشْتَرِي)—undertakes in return to pay the agreed price—thaman (الثَّمَنُ). In performance of the contract, delivery of the goods to the buyer is expressed by the term taslīm (التَسْلِيمُ), while the buyer's taking possession is expressed by qabḍ (الْقَبْضُ). Thus, bay' denotes not merely the physical exchange of goods and money, but a juristic and legal relationship that gives rise to specific rights and obligations between the parties. Establishing these theoretical foundations provides a

methodological basis for a consistent analysis of the practical sales issues and fatwas contained in *Khulāṣat al-Fatāwā*.

A sale contract may be concluded through the following means:

First, through conduct. If the price of the goods is clearly displayed or otherwise known in advance – as is commonly the case when prices are marked on goods in shops – the buyer may pay the seller and purchase the item without saying anything. Alternatively, where the precise price is not expressly stated, the buyer may hand money to the seller, who retains the amount corresponding to the price and returns the change. This process takes place without verbal exchange. For this reason, this form of sale is also known as *ta'āṭī*, or sale by mutual giving and taking, because it is completed through the acts of taking and giving themselves even without verbal negotiation. Second, a sale may be concluded through words and conduct. In this case, the buyer asks the shopkeeper the price of an item, the seller answers, and the buyer pays that amount and takes the goods. Third, a sale may be concluded solely through words. Many sale contracts are primarily concluded verbally: the seller and buyer negotiate, and once they agree on a specific price, the sale is concluded; the buyer then pays and takes the goods.

In *fiqh*, the verbal elements by which an exchange is concluded are known as *ījāb* (offer) and *qabūl* (acceptance). *Ījāb* is the initial proposal expressed by either the seller or the buyer, while *qabūl* is the other party's assent to that proposal. A sale becomes fully concluded through these two elements. Once offer and acceptance are complete, the sale contract becomes legally effective under the *Shari'ah*. Ownership of the goods then passes to the buyer and the *thaman* to the seller, and each party exchanges the relevant countervalue. If either party subsequently refuses to proceed with the sale, this amounts to repudiating an already completed transaction, and such repudiation is not legally effective. *Ījāb* and *qabūl* constitute the principal *rukn* (essential element) of the sale contract, and the following requirements apply to them:

First, the acceptance must correspond to the offer. For example, if one person says to another, 'I sell you these two books for one hundred thousand soums,' and the buyer replies, 'I buy them for fifty thousand soums,' or 'I buy one of them for fifty thousand soums,' the acceptance does not correspond to the offer. If the buyer says, 'I buy both books for one hundred thousand soums,' the acceptance corresponds to the offer. Likewise, if in this situation the buyer says, 'I buy both books for one hundred and twenty thousand soums,' the sale is also permissible because correspondence is implicitly present. The buyer, however, is not obliged to pay the additional twenty thousand soums unless the seller accepts this statement during the contractual session; in that case, payment of the additional amount becomes obligatory.

Second, there must be no intervening circumstance between the offer and acceptance that signifies withdrawal from the offer or causes it to lapse. Examples include one of the contracting parties leaving the contractual session, becoming occupied with an entirely unrelated matter, or the person who made the offer dying before acceptance. The death of the offeror terminates the offer.

Alongside explaining commercial matters, the jurists also set out the relevant Shari'ah rules and rulings. Accordingly, many jurists have defined sale as follows: sale is an exchange whereby, through mutual consent, ownership of one commodity is acquired and transferred in return for another commodity. From a general perspective, sale may therefore be divided into the following three categories:

- Barter sale: the exchange of one type of commodity for another type of commodity, such as exchanging a watch for a book.
- Currency-exchange sale: the exchange of one type of currency for another, such as exchanging US dollars for Uzbek soums. In fiqh terminology, this type of transaction is also referred to as *ṣarf*.
- Absolute sale: for example, purchasing goods for money. This is also referred to as an ordinary sale.

A sale contract is essentially based on the reciprocal exchange of property. It is therefore appropriate to consider the meaning of *māl*, the principal subject matter of sale. Jurists have expressed different views concerning its definition. Ibn 'Abidin, for example, defines *māl* as something toward which human nature is inclined and which can be stored until the time of need. Something acquires the status of *māl* when all or some people recognize it as property, a value can be assigned to it, and its use is legally permissible under the Shari'ah.

Hawi al-Qudsi states: 'Māl is the designation for everything other than human beings that has been created for human benefit. Things that can be stored and freely disposed of are likewise regarded as *māl*.'

In these two definitions, the term *māl* is not confined solely to tangible objects; it also includes perpetual benefits. Shafi'i jurists explicitly state that the definition of sale also encompasses the sale of perpetual benefits. Al-Shatiri, for example, states that linguistically, sale means exchanging one thing for another, while in Shari'ah terminology it is a financial transaction involving countervalue that confers ownership of an object or a perpetual benefit. The sale of perpetual benefits includes, for example, selling a right of passage, the right to place a beam upon a wall, or the right to construct a building above another storey. Hanbali jurists likewise state in their definitions of sale that it encompasses perpetual benefits. Al-Buhuti, for example, defines sale as the exchange of property for property, or for an unrestricted permissible benefit not limited to a particular circumstance.

Al-Mardawi, citing al-Wajiz, states: 'Sale is the transfer of ownership of an object or a perpetually permissible benefit in return for property.' These statements indicate that, according to the Shafi'i and Hanbali schools, perpetually permissible benefits also constitute *māl* and may therefore be bought and sold. The reason for qualifying such benefits as perpetual is that, if a benefit is not perpetual but is enjoyed only for a specified period, the transaction becomes a lease rather than a sale. Some Hanafi jurists, however, restricted *māl* to tangible objects, whereas other jurists did not. Later Hanafi jurists offered certain observations concerning this restriction in defining *māl*. For this reason, Shaykh Mustafa al-Zarqa criticized the

foregoing definitions and proposed the following: 'Māl is every object that possesses material value among people.'

Nevertheless, several issues discussed by Hanafi jurists show that they permitted the sale of certain benefits attached to tangible objects, such as a right of passage. They treated such a right as māl in association with tangible property. Among the Malikis, a well-known definition of sale is attributed to Ibn 'Arafah: 'Sale is a contract of exchange concerning things that are neither usufructs nor the enjoyment of pleasure.' This definition excludes marriage and lease contracts, because they are contracts relating to benefits.

It is well known that the Holy Qur'an and the Prophetic hadith do not provide a separate technical definition of māl. Rather, the Shari'ah leaves its identification to prevailing custom ('urf) as understood by people. Accordingly, Ibn 'Abidin states in his definition of māl: 'Something becomes māl when all people or some of them regard it as such.' Thus, things generally recognized among people as property are regarded as māl. However, where an explicit textual proof (naṣṣ) establishes that something is not recognized as lawful property—for example, intoxicants (khamr) and swine—it is not treated as māl. The revealed texts, however, do not expressly require māl to be a tangible object.

Today, electricity and gas have become among the highly valued resources for which human demand continues to grow. Yet it is difficult, strictly speaking, to classify them as ordinary tangible objects. Nevertheless, they may be bought and sold, and people conduct such transactions without objection. Ibn 'Abidin's definition of māl is therefore close to practical reality because it does not confine māl exclusively to tangible objects. The sale of intangible things is not deemed impermissible merely because they are intangible, provided that no Shari'ah prohibition applies. When jurists define māl as 'something toward which human nature is inclined,' they mean something from which benefit can be derived. Things from which no benefit can be obtained are not regarded as māl and cannot serve as the subject matter of a sale.

A sale contains the following four elements:

1. The contracting parties: the seller and the buyer;
2. The contractual form (ṣighah): offer and acceptance, or mutual giving and taking;
3. The goods sold;
4. The thaman (agreed price).

The Shafi'i school regards these four aspects of a sale as its constituent pillars (arkān), because without them a sale does not come into existence in its legal sense. According to the Hanafi school, these elements are certainly necessary and interrelated; however, offer and acceptance—or mutual giving and taking—constitute the essential basis of the transaction, while the remaining elements are conditions necessary for the validity of the contract. In practical terms, the positions of the two schools are not contradictory.

The contracting parties to a sale are the seller and the buyer. They are required to possess legal capacity, including sound reason and maturity. If a party is

mentally incapacitated or a minor, the transaction concluded by that person is subject to the authorization of his or her guardian. This is because a sale may involve both benefit and loss, and a mentally incapacitated person or a minor may transact to his or her own detriment, whereas the guardian acts with the person's interests in view. If the parties conclude a sale merely in jest or under compulsion, their agreement is regarded as *fāsid* (defective/irregular).

The goods are the item acquired by the buyer under the sale contract. For example, if a person purchases a house for two hundred thousand US dollars, the house is the subject matter sold. The goods may consist of a specific object or a share in jointly owned property. Where the subject matter is a share in common property, the seller may sell it either to a co-owner or to an entirely unrelated person.

Thaman is the price agreed upon by the contracting parties. It differs from value, because value refers to the market value of the goods, whereas thaman is the contractually agreed price. It may be higher than, equal to, or lower than the market value of the goods, since the thaman varies according to the parties' mutual agreement. For a sale contract to be complete, the thaman must be established. A sale stipulated to be without a price is not concluded. If goods are sold at an indeterminate price, or if the buyer makes no reference to the price, the sale is *fāsid*. It is sufficient, however, to identify the thaman by indication. If the amount of the thaman is stated but its value is unknown to one of the contracting parties—for example, where the price is expressed in euros or dollars—the transaction is likewise *fāsid*. If the value of the currency is clarified during the contractual session and the seller agrees to it, the defect is removed.

Once a sale contract has been concluded in accordance with Shari'ah requirements, its principal legal effect is that the seller becomes entitled to the thaman and the buyer becomes entitled to the goods sold. Full performance of the obligations arising from the contract, however, requires each party to deliver the relevant countervalue: the seller must deliver the goods and the buyer must pay the thaman. It is therefore necessary to distinguish between the conclusion of the sale and its performance. If the sale is concluded on a deferred-payment basis and delivery of the goods has not itself been deferred, the seller must deliver the goods to the buyer, while the buyer must pay the thaman at the agreed time. In a spot sale, the sequence in which the goods and the thaman are delivered assumes particular importance. As a general rule, either party may perform first. In certain circumstances, however, each party may have the right to retain the goods or the thaman in its possession in order to secure performance of the counter-obligation.

Imam al-Sarakhsi links the seller's right to retain the goods in this context to payment of the thaman. According to his explanation, if the agreed thaman has not been paid to the seller in full, the seller may postpone delivery to the buyer and retain the goods until full payment is made. In a spot sale, this rule functions as a means of securing the seller's right to receive the price. The seller's right of retention, however, is connected with a situation in which immediate delivery of the goods is possible. If the goods are not in the seller's possession or cannot be

delivered immediately, the buyer likewise has the right to defer payment of the *thaman* until the goods are delivered. For example, if a seller who is travelling sells goods located elsewhere, the buyer may withhold payment until the opportunity to receive the goods has been secured. This reflects a juristic approach aimed at maintaining proportional protection of the parties' reciprocal obligations.

Shafi'i jurists, in discussing this issue, state that the seller should first deliver the goods, after which the buyer pays the agreed *thaman*. At the same time, if the seller has reasonable grounds to fear non-payment or delay in payment, the seller may retain the goods until the *thaman* is paid. Likewise, if the buyer has not been given a genuine opportunity to receive the goods, the buyer may withhold the *thaman* until delivery occurs. Although these approaches contain certain differences, their common objective is to protect the proprietary interests of both parties to the sale.

In contemporary commercial practice, the sequence for delivery of the goods and payment of the *thaman* likewise varies according to the parties' agreement and the form of sale. In a spot sale, the seller may first deliver the goods and then receive payment, or may require the buyer to pay all or part of the *thaman* in advance. In a deferred-payment sale, the goods are delivered to the buyer while the obligation to pay the *thaman* is postponed until an agreed future date. Once the payment date falls due, the seller becomes entitled to demand the *thaman*. Thus, the classical *fiqh* rules concerning the sequence of delivery and payment are aimed at coordinating the reciprocal obligations of the parties and protecting their proprietary rights. Comparing these rules with contemporary commercial practice makes it possible to reveal the substantive relationship between sales mechanisms developed in classical Hanafi jurisprudence and modern contractual relations.

Among the issues concerning commercial relations in *Khulāṣat al-Fatāwā*, an important place is occupied by the rulings on delivery of goods – *taslīm* – and their receipt by the buyer – *qabḍ*. These issues are significant because, in Islamic finance, the genuine economic substance of a sale is directly connected with legal processes such as ownership of the goods, the ability to dispose of them, delivery, and taking possession. From this perspective, the juristic solutions concerning *taslīm* and *qabḍ* found in *Khulāṣat al-Fatāwā* have important theoretical value for studying the *fiqh* foundations of sale-based financial products in contemporary Islamic finance.

According to the juristic approaches reflected in the work, delivery of goods is not limited to physically placing them directly into the buyer's hands. Depending on the nature of the goods, the parties' agreement, and prevailing commercial custom, *taslīm* and *qabḍ* may take different forms. These may include handing the goods directly to the buyer, delivering them to an address designated by the buyer, handing them to the buyer's agent, or, pursuant to the buyer's instructions, delivering them to a specified warehouse, enterprise, or other third party. The principal criterion is that the buyer obtains the ability to receive the goods and exercise control over them.

This rule is particularly significant for contemporary Islamic finance. In sale-based financing structures such as *murābaḥah*, the financial institution must

acquire ownership of the goods and, where relevant, take possession of them and assume the risk associated with them; these factors are important in determining the genuinely commercial nature of the transaction. The juristic approaches in *Khulāṣat al-Fatawā* indicating that *qabḍ* is not limited to physical receipt may therefore serve as one of the theoretical foundations for examining, from a Hanafi perspective, modern forms of constructive possession, including warehouse documents, receipt through an agent, delivery of goods to a third party, and similar arrangements.

Issues relating to delivery of goods to an address specified by the buyer are also noteworthy from the perspective of contemporary Islamic finance. If the seller undertakes to deliver the goods to a particular location, the seller's obligation of *taslīm* is fulfilled when the goods reach the agreed place and are handed over to a person authorized to receive them. If delivery to a different or more distant location is requested, additional costs may be determined by agreement between the parties. These rules are relevant to the *fiqh* analysis, in modern trade finance, of the distinction between the price of the goods and the costs of transportation, logistics, storage, and other ancillary services.

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