

the following circumstances it becomes obligatory upon everyone who has the ability to perform it:

- (1) If the person is in the rows of those actually engaged in fighting.
- (2) If the enemy has appeared in the people's land.
- (3) If the Imam calls for all to go out to the jihad.

## **The Conditions for Jihad to Be Obligatory**

[In general, jihad is only obligatory upon a person when he meets the following conditions:]

- (1) Being a Muslim.
- (2) Being sane.
- (3) Being adult.
- (4) Being male.
- (5) Being free of physical defects (such as illness, blindness, being lame).
- (6) Having the needed expenditures.

## **The Different Types of Jihad**

Jihad can be divided into the following four types:

- (1) Jihad against the soul: This refers to striving against one's soul to make it learn about the religion, act upon those teachings, call others to it and bear with patience the harm that comes as a result of calling others to the straight path.
- (2) Jihad against Satan: This is struggling against Satan with respect to the doubts and desires that he casts into the heart of man.
- (3) Jihad against the disbelievers and hypocrites: This is done with the heart, tongue, wealth and hand.
- (4) Jihad against the wrongdoers, heretics and evil folk: This is best to be done with one's hand. If one is not able

to do that, then with one's tongue. If one is not able to do that either, then with one's heart.

## **The Virtues with Allah Awaiting the Martyr**

There are seven benefits with Allah awaiting the martyr: he will be forgiven from the moment of his first drop of blood, he shall see his abode in Paradise, he shall be rescued from the punishment of the grave, he will be saved from the great frightening, he shall wear the crown of faith, he shall get married from the *haur al-ain* [spouses in Paradise] and he shall intercede for seventy of his relatives.

## **Etiquette of War**

The etiquette of war in Islam includes the following points: those fighting cannot betray their trusts, women and children are not to be killed if they are not combatants, the fighters are to be free of arrogance and deceit, they should not wish to have to face the enemy, they should supplicate for victory and assistance from Allah, such as by saying, "O Allah, revealer of the book, mover of the clouds, dispenser of the clans, vanquish them and support us against them."

It is forbidden to flee from the fighting except under two circumstances: (1) as a way of fending off the fighting or (2) as a way of joining back with the troops.

## **The Captives of War**

The captives of war are divided into two categories:

(1) Women and children who are made slaves.

(2) Fighting men for whom the leader has three choices: set them free, ransom them or kill them.

The leader must review the troops as they set out. He must keep them from deserting or causing dissent. The leader should not seek any assistance from disbelievers except in cases of dire necessity. He should prepare the provisions and travel with the army in a kind manner. He should seek the best place for them to camp and he should prevent the army from committing any evil or sins. He should speak to them in a way that will strengthen their conviction and make them seek martyrdom. He should order them to be patient. He should divide up the army and appoint specialists and guards over them. He should also send spies out to check on the enemy. He should expel any spies for the enemy from the troops. He should consult the religious and intelligent people concerning the matters of jihad.

## **How the Army Should Treat Their Leader**

The army should obey their leader and be patient with him. It is not allowed for them to fight except by his permission, unless they have been hit by a surprise attack and they fear the spread of harm. If the enemy requests a truce or if the fighting is during the sacred months, the Muslims should then sign a truce.

## **Part Two: Transactions among Humans**

This part shall be comprised of the following chapters:

Chapter One: Business Transactions

Chapter Two: Interest

Chapter Three: Lease and Rentals

Chapter Four: Religious Endowments

Chapter Five: Bequests



# **Chapter One: Business Transactions**

This chapter is comprised of an introduction and the following two topics:

Topic 1: The essential components and conditions of a business transaction;

Topic 2: Prohibited sales transactions.

## **Introduction**

### **Lexical and Legal Definition of *Bai'***

*Bai'* (بيع) is the verbal noun of *baa'*. It is the exchange of wealth for wealth or the giving of one item in exchange for something else in its place.

From a legal point of view, buying and selling refers to a contract involving an exchange of wealth which results in the permanent ownership of an item or a usufruct and which is not done for the sake of getting closer to Allah.

Legal buying and selling is permissible, as the Book, sunnah, consensus and reasoning all indicate its permissibility.

### **The Wisdom Behind Legalizing Buying and Selling**

Since money, merchandise and goods are distributed among people in general and there is a need for humans to have what is in the hands of their associates who will not sacrifice it without something in exchange, there is a strong

need for the permissibility of buying, selling and meeting one's goals. For these reasons, Allah has permitted buying and selling to fulfill those benefits and needs.

## **Topic One:**

# **The Essential Components and Conditions for Buying and Selling**

## **The Essential Components of Buying and Selling**

The essential components of a business transaction are:

(1) The form it takes, consisting of an offer and acceptance.

(2) The two who take part in the transaction, the buyer and the seller.

(3) The object of the contract: the price and what the price is being used to purchase.

## **The Form of the Transaction**

The form of the transaction refers to the offer and acceptance. It is an indication of approval and gladness with the transaction. The seller might say, "I sell this or give this to you or put this in your possession for such and such a price." The buyer may say, "I then buy this or possess this or purchase this or accept this," and so on. A transaction is also valid by a [clear, well-known] action by one of the two parties or by both parties.

## **Transactions Over the Phone**

If people speak over the phone, this is considered a contractual meeting. It ends with the end of the phone conversation. This is because customary practices are defining rules concerning the beginning or ending of a contractual meeting.

## **The Conditions for a Sound Business Transaction**

In order for a business transaction to be sound and valid, the following seven conditions must be met:

(1) Both the buyer and the seller, or their representatives, must approve of the transaction.

(2) It must be the case that both of them are allowed to enter into a transaction, such that they are both free, legally capable and competent.

(3) The merchandise that is being sold must be something whose usufruct is permissible. It is not allowed to sell something that has no [legal] benefit to them and it is not allowed to sell something whose benefit is forbidden, such as alcohol or pork. Similarly, it is not allowed to sell something that is only permissible in cases of necessity, such as carrion.

(4) The seller must own what he is selling or have permission to sell it at the time of the contract.

(5) The item sold must be known by its description or by being seen.

(6) The price must be known.

(7) The thing being sold must be something that the seller is able to hand over to the buyer; it is not allowed to sell the street or birds flying the sky and so forth.



## Stipulations in the Contract

Stipulations in the contract are of two types: sound and binding or illegal and voiding of the contract.

Sound stipulations include the stipulation to delay all or part of the payment or a stipulation for collateral or specific guarantee. That is for the benefit of the contract itself. Another example is the condition of a specific quality in the transaction. The Prophet (peace be upon him) said,

المُسْلِمُونَ عَلَى شُرُوطِهِمْ

“The Muslims abide by their stipulations.” Recorded by Ahmad and Abu Dawood.<sup>1</sup> It is also acceptable for the seller to stipulate upon the buyer that he will use the usufruct of what he is selling for a specified period of time, such as remaining to live in a house for one month.

The invalid conditions include: conditions that are invalid and void the contract, such as a condition involving two contracts in one, for example, an advanced payment combined with a loan, a sale with a lease and so forth. Some non-valid conditions do not void the contract, only the condition itself is considered not valid, such as the condition that guarantees that an investment will not lose money or something in which someone, in reality, neither sells the item nor gives it away. These conditions are not valid unless they are done for a particular benefit [consistent with the overall purpose of a contract], in which case they are sound.

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<sup>1</sup> According to al-Albaani, this hadith is *sahih*. See al-Albaani, *Saheeh al-Jaami*, vol. 2, p. 1138.—JZ

## Topic Two:

### Prohibited Transactions

Islam permits every sale that produces good and blessings. It forbids every transaction that contains aspects of ignorance, great risk or harm to the people in the marketplace or causes harsh feelings in the heart. Such dealings bring about hatred, disputes and fighting. These prohibited types of transactions include the following:

(1) *al-Mulaamasah*: This is when the seller tells the buyer, for example, "Any garment you touched is yours for such and such." This type of sale is not valid because it involves ignorance [concerning which garment is going to be bought] and risk.

(2) *al-Munaabidhah*: This is where the seller tells the buyer, "Any garment you fling to me is yours for such and such price." Again, this type of sale is not valid because of the existence of ignorance and risk.

(3) *Bai al-Hasaah*: This is where one says, for example, "Throw this pebble and whatever merchandise it lands on is yours for such and such price." Again, this type of sale is not valid due to the ignorance and risk involved.

(4) *Bai al-Najash*: This is where a person bids up the price on something without having the intention to buy it. This type of sale is forbidden because it is a type of deception and tricking of the buyer.

(5) Having two sales in one sale: This is, for example, when one person says to another, "I sell you this on the condition that you sell that to me," or, "on the condition that you also buy that from me." Another example is where the person says, "I will sell this to you for ten dollars right now or twenty over time," and then they part from one another without stating which one they agree to. This kind of sale is not valid. This is because the second sale is conditional on the