



Conditions of Sale in Islamic Jurisprudence

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Abstract

This research has been done on the conditions of sale, which are mentioned in the Islamic jurisprudence for the sale, so that the sale is confirmed and forbidden sale is prevented, and this shows the general purpose of this article. The working method of this article is a library, to complete the content of this article, authoritative books such as Fatah al-Qadir, Bada'i al-Sana'ia, Fiqh al-Sunnah, etc. have been used. And the results show that the jurists of the four sects of Ahl al-Sunnah and Jama'at have defined the sale in different terms, but the common point is that everyone is of the opinion that the sale is the exchange of property for property, which is done by way of compromise and for The correctness and correctness of the sale, it is necessary to have the proper distribution Some of them are related to warm transaction contracts, and some of them are related to things that are transacted, i.e. the price of the seller, and some of them are related to the form of contract, i.e. demand and acceptance.

Keywords: *Sale; Condition; Contract; Contract Against*

Introduction

Almighty Allah made the earth flat for human being and made all things tame for them so that he can use it properly and in the right way, and try to earn a lawful livelihood, and not allow themselves laziness and laziness under the pretext of this and that. A hardworking person with any kind of profession is loved and respected by the people, just like an idle and lazy person who is burdened by others, and out of sight.

Allah Almighty in order to expand the field of life for His slaves, has made selling legal because every human being has an urgent and definite need for food, clothing and other necessary things, and as long as he is alive, he does not need them, and it is obvious that every human being cannot afford all those necessary things. He provided himself, so he is forced to take them from others, and for this, there is

no better and more complete way than the exchange method, so he gives something that is more than he needs, and he does not need it, and he takes something from others that he needs.

Research Materials and Methods

The method of research was the library, in order to complete the presented topics, authoritative books such as Fatah al-Qadir, Mughni al-Muhtaj, Bada'i al-Sana'ia, Fiqh al-Sunnah, etc. have been used.

Definition of Sale

Sale in the dictionary: sale is the infinitive of " baa ya buy'aa ", the word sale in the dictionary has the absolute meaning of exchange, and the two words "buy" - sell - and "buy- sharaa" – buying - are used in the same meaning, and buy and buy are among the words that are used for opposite meanings and are common. As stated in the Arabic language: selling is the opposite of buying, and selling itself is called buying. The word selling is one of the opposites (Ibn Manzoor, 2011).

Sale in the Term: The jurists have defined the term sale in different definitions. The definition of each religion will be stated separately, but the thing that is fixed for everyone is that it is called the sale of the exchange of property for property.

Definition of Sale According to Hanafi: In the most reliable book of Hanafi jurisprudence, Fath al-Qadir, sale is defined as follows: Sale is the exchange of property for property, which was done with the consent of the parties through acquisition (Sivasi, 2007).

The Definition of Sale According to Malikia: In the book of al-Saghir authentic Fiqh of Maliki sale is defined as: a contract in which one thing is exchanged for another thing, provided that the thing is not against interests, but is the same thing (Adawi, 2013).

Definition of Sale According to Shufa'a: Shufa'a are of the opinion that sale is a contract of financial exchange, which is paid towards the real property or benefit of the subject in the form of compulsion (Qaliubi, 2008).

Definition of Sale According to the Hanbalis: The Hanbalis believe that the sale is the exchange of property for property or for permissible benefits in exchange for financial exchange, which is for the purpose of punishment (Ibn Qadamah, 1968).

Balance and Comparison of Definitions: The jurists of the four sects of Ahl al-Sunnah and Jama'at have defined the sale in different terms, but the common point is that everyone is of the opinion that the sale is the exchange of property for property, which is done by way of compromise. Despite that, there is a difference in the sale of interests among the religions: because the Hanafis do not consider the interests to be property, therefore, according to the Hanafis, the sale of interests is not permissible, and the Malikis, if they consider several interests as property, but do not sell the exchange of benefits, at the same time, the Shuafi's and Hanbali exchange the benefits to The property is considered to be sold if the acquisition of benefit is due to coercion. So, the better definition is the definition of Shuafi's and Haybales, which is common.

Conditions of Sale

For the correctness of the sale, it is necessary for the conditions to be confirmed: some of them are related to the contract and the transaction, and some of them have attached items on which the transaction takes place, that is, the property whose ownership is intended to be transferred to the other party, whether it is the goods or the price, i.e. the price or It is a sale, and some of it comes back to the form of a contract, i.e. demand and acceptance.

Conditions Related to the Contractor and Executor of the Sale Contract

Among the conditions of marriage are reason and discernment, so the marriage of an insane person, a drunkard, a child, and an unqualified person is not valid. And a child who is of pure family, the marriage is valid and depends on the permission of his guardian, and if his guardian allows it, it is legally valid.

Condition of Sale (Contracts)

If one of the conditions of the contract is not fulfilled, what will be the nature of the sale, then it is necessary to briefly explain the conditions of the sale (contract against) in the eyes of the four schools of thought.

Condition of the Contract with the Hanaf

The Hanaf have stated a series of conditions for the contract, which are as follows:

- 1- Existence of the contract at the time of the contract: Therefore, it is not permissible for them to sell things that do not exist at the time of the contract and are non-existent on the basis of this condition.
- 2- The contract must be against property: and property has been defined as follows: (property is the property that human nature tends towards and uses and consumes in it). Therefore, on the basis of this condition, the sale is not valid if there is no property. The condition of property in the contract is due to the fact that the Hanaf have defined sale as an exchange of property for property.
- 3- If the contracting is in possession of the entire property, or the contracting is authorized to sell it: then, if the contracting party is not in possession of the property of the seller or if the seller is not allowed to sell it, the sale will not be concluded.
- 4- The item sold or contracted against is capable of delivery: that is, the seller is able to deliver it to the customer in a suitable way. Therefore, if the sale of something that is beyond the seller's power to deliver to the customer, the sale is not concluded (Kasani, 2006).

Conditions of the Contract with the Maliki

In the contract, the owners have made a number of conditions, in case of violation of one of the conditions of the sale, the sale will not be valid.

- 1- The contract must be pure and pure: So, considering this condition, it is not valid to sell impure eyes such as a dead person, blood, or a pig, and to sell an impure object that cannot be cleansed.
- 2- The contract against something is permissible and it is beneficial to benefit from Sharia: that is, the contract is against something which is permissible and it is possible to benefit from it in a Sharia way. Therefore, selling something that is not permissible is not valid even if it is abominable, and also based on this condition, it is not permissible to sell insects because there is no profit from it.
- 3- The contract must be capable of delivery: If the Hanafs also made it a condition of being capable of delivery, then based on this condition, selling a fugitive slave, selling a bird in the air, or a fish in the sea, etc., is not valid.
- 4- The contract is not prohibited against it: therefore, the sale of muzabaneh and the likes, which is prohibited, is not valid.
- 5- The contract should not be unknown to the parties of the contract: that is, the sale and the contract should be completely known to the parties, so based on this condition, it is not permissible to sell something that is unknown to the parties of the contract (Adawi, 2013).

Terms of the Contract Against Shufa'a

We state the conditions that the Shufa'a have made for the contract against the condition in a concise way without details and explanations, because the conditions of the Shufa'a and Maliki are almost the same and there is no obvious difference between them. So, the conditions that the Shufa's have set as a condition for the contract are as follows:

- 1- The object of the contract must be pure.
- 2- The contract against be beneficial to.
- 3- The contract against is capable of delivery.
- 4- The contract is against the owner, for the seller.
- 5- The parties to the contract have a contract against knowledge (Sherbini, 2010).

The Conditions of the Contract with Hanabala

The conditions that Hanbali set for the contract are as follows:

- 1- The contract is against property.
- 2- The contract is in the property of the seller.
- 3- The contract against is capable of delivery.
- 4- The contract should be known to the parties of the contract.

The above four conditions that the Hanbalis made a condition against in the contract are stated in the book *Kashaf al-Qanaa* which was written in the Hanbali school of thought:

The sale and the price are property, because the sale is an exchange of property for property, and the sale is owned by the seller, that is, it is owned by the seller. And another thing is that the seller and the price are capable of delivery during the contract, because a thing that cannot be delivered is like a dead thing, and the sale of a dead thing is not valid, so it is also not permissible to sell a thing that is like a dead thing. And another condition is that the sale is known to the parties of the contract (Bhuti, 1978).

Conditions of Contract

The following conditions are necessary for acceptance in the forms of contract.

- 1- That both are said together in the assembly and there is no gap between them that means they are in the assembly without a gap.
- 2- In the case of goods and services where agreement is obligatory, demand and acceptance must be in agreement. If demand and acceptance do not agree and match, the sale will not be concluded. For example if seller say I sold it for hundred afghanis, and the buyer should say: I accepted it for fifty afghanis, because the demand and acceptance do not agree and match, this sale will not be concluded.
- 3- Demand and acceptance must be in the past form - to indicate the realization of the satisfaction of the parties - like the pledge saying: I sold. The customer says: I accept it. Or it can be a participle form that has a past tense, for example, *beya* = I sell, customer = I buy, that is, I am selling now and I will buy now. If the present participle form of the will is accepted or if the customs of mere acceptance are added to it, this promise is a sale, no, the sale itself and the promise of a contract is not a legal contract, and a legal contract is not concluded with it, and such a contract is not valid (Sayed sabeq, 2001).

Contract of Sale by Writing

Just as the contract of sale is concluded by pronouncing acceptance and acceptance, it is also concluded by writing the formulas and words, provided that each of the contracting parties are far from each other or that the party to the transaction is mute and unable to speak, if the seller and the buyer are in the same assembly. And if there is no excuse for speaking in between, the contract by means of writing is not valid, because speaking and speaking, which is the most obvious type of signification, cannot be deviated from it except for that, unless the truth is that there is no way out of this deviation. And in writing, it is a condition that he writes the acceptance answer in the same assembly where the writing is received by the party.

Contract of Sale by Courier

In the same way that a contract is concluded by pronouncing their request, acceptance and writing, if one of the contracting parties sends a courier to the last party, it is also concluded, provided that the party who learned about the request through the courier accepts it. When acceptance is obtained in these two cases, the marriage is complete and complete. And for the perfection of a contract, it is not necessary to be aware of acceptance (Sayed sabeq, 2001).

Contract of Sale on Behalf of Lal

Also, the sale is concluded by the famous gesture of Akhras Valal, because his gesture expresses his satisfaction, just like the speech of the speaker. If a mute person knows how to write, he can make transactions by writing. The fact that some people have said that certain words are a condition for selling, neither in the Quran nor in the Prophet's Sunnah is there anything about this. Rather, anything that satisfies the parties is sufficient (Syed sabeq, 2001).

Conclusion

Through research, the basic and important issues that are known are as follows:

A Muslim person should earn money through legal and shariah channels and strive to obtain halal sustenance.

The things that Allah (Almighty) has forbidden are all for the interests and benefits of humans and for the preservation of reason and religion.

The jurists of the four sects of Ahl al-Sunnah and Jama'at have defined the sale in different terms, but the common point is that they are all of the opinion that the sale is called the exchange of property for property that has been done through compromise.

For the validity of the sale, it is necessary to consider the terms of the contract, the contract against, and the demand and acceptance. Among the conditions of the contract, there is reason and discernment, and the contract against must be clean and have the ability to benefit, and the contract against an object is permissible, and the seller must be able to deliver it to the customer. to have and not be prohibited from it and not unknown to the parties of the contract. In acceptance and acceptance, which are the forms of marriage, it is stipulated that both of them should be together in the assembly without a gap. In something that requires agreement, among its goods and services, the acceptance and acceptance must be in agreement, and the acceptance and acceptance must be in the past tense.

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