

Analysis of the Types of Interest {Riba} in Islamic Law

By

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Abstract

The basic difference between the conventional and the Islamic systems of transaction is riba which is the main source of income in conventional system of transactions but is prohibited in the Islamic theory of contract and is also declared harmful for the economy in Islamic law.

As riba is prohibited, it is declared unlawful in its different forms. This article analyzes the different types of riba that are relevant, aims at defining each type of interest [riba] and explaining the difference between these types with examples.

The article gives a comprehensive and exclusive definition of interest [riba] but avoids to elaborate it because it is the topic of another article. It also does not discuss the underlying causes of riba though some relevant matters are discussed here.

This article explains the Shariah standard of riba and its parameters. It also answers some questions related to riba and its definition being not exhaustive.

The article will make it clear that riba is absolutely prohibited in the Islamic law and nobody is allowed to suggest that there are two types of riba, one of which is prohibited and the other is permitted.

Key words: *types of riba, definition, Shariah standard, Parameter, objections and answers.*

This article is going to define each type of interest riba and distinguish between them, so it is appropriate to introduce these types for attention of scholars going to study it.

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Introduction:

Riba is a very controversial economic issue, and it is the basic difference between the Islamic theory of transactions and conventional theory of transaction. The Islamic theory of transaction declares riba prohibited because it destroys the economy. On the other hand the conventional theory of transaction considers interest {riba} as the backbone of the economy. Islam declares riba harmful for the economy, whereas interest is an important element for the development of economies according to conventional theory of transactions. Here, riba is defined along with its types and some relevant issues explained.

Definition of Riba:

As we attempt to discuss the different types of riba, it is necessary to define riba in general, so as to explain the concept of riba.

Al Haskfi defined riba and said:

الربا هو فضل خال عن العوض على المعيار الشرعي، مشروط لأحد المتعاقدين في مبادلة المال بالمال.¹

Riba is defined as an excess without consideration according to Sharia standard, stipulated for one party in exchange of properties.²

Definition of Riba made by al Haskafi and also by Muhammad Amin Iban-e-Abidin is best definition from all other definitions made by other Hanfi scholars because

¹ al Haskafi/Alaud Din/ al Durr-e- al Mukhtar with marginal note of Ibn-e- A'abdin Muhammad Amin/ Istanbul: Dar Qahrman/ 1984/ 5:168-170.

² la Durr-e- al Mukhtar with marginal note of Ibn Abidin Mohammad Amin/5:168- 170. also Ibn al Hummam Abdul Wahid/Fath al Qadir with other marginal notes/Beirut: Dar Ihya al Turath al Arabi/ 6: 146, al Baberti Akmal al Din Muhmmad Mahmud/al Inayah with Sharh Fath al Qadir/ 6: 146, Afindi Sadullah bin Easa /marginal note ala al Inayah/ 6: 146, al Kasani Ala ud Din Abu bakr Ibn Masaud / al Baday wa al Sanay/ Beirut: Dar al Kitab al Arabi /Second edition/1401-1981/ 5: 183, al Sarkhasi Shams al Aimmah Abu Bakr Mohammad bin Abi al Fadle / al Mabsut/ Beirut: Dar al Marifah/ 1406- 1986/12: 109, al Zailai Fakh al Din Uthman bin Ali /Tabyeen al Haqaiq/ Egypt: al Maktabah al Kubra al Amiriyah/ First Edition/1314/ 4: 87, al Aini Bader ud Din Mahmud bin Ahmad/al Binayah sharh al Hidayah/ Dar al Fikr/ First edition/ 1401-1981/ 6: 524, al Marghinani Abu Baker Burhan al Din/ al Hidayah with Fath al Qadir/Beirut: Dar Ihya al Turath al Ilmi/ 6: 146, and Ibn Abidin Muhammad Amin/ Radd al Muhtar/ Istanbul / Dar Qahrman/ 5: 168. See also Al Adavi/marginal note on Sharh al khurshi/ 5: 56, Ibn Rushd Muhammad bin Muhammad/ Bidayyat al Mujtahid/ Agypt: Maktabah Mustafa al Babi al Halbi/ Fifth edition/1401-1981/2:129, al Dasuqi Ibn Arafah/marginal note by al Dasuqi/ 3: 47, al Hattab/ Mawahib al Jalil/ 4: 346, Qalyubi wa Umairah/ Hashyatan ala al Minhaj/ 2: 166, al Bajuri/ Hashyah ala Sharh Ibn al Qasim/1: 344, al Sharbini al Khateeb Muhammad/ Mughni al Muhtaj/ Agypt: Maktabah Mustafa al Babi al Halbi/1377-1958/2: 21,al Ramli, Nihayat al Muhtaj/ 3: 39, al Subki/Takmilat al Majmua /10: 48, Ibn Quadamah Abdullah bin Ahmad/ al Mughni/Beirut:Dar al Kitab al Arabi/1392-1972/ 4: 122, Ibn al Qayyim/ Ialam al Muwaqqein/ 2: 135.

it is exclusive and comprehensive and all other definitions of riba are objected and rejected.

Illustration:

- 1- According to Hanafi and Hanbali view, Riba is an increase which is without consideration according to Sharia standard. However, according to Malki and Shafei view-point it is contract of exchange of property with other property with excess without consideration.
- 2- Such a contract is vitiated according to the Hanfi jurists while it is void contract according to the Malki and Shafei jurists because it has the element of riba.
- 3- If the condition of excess is revoked, this contract becomes valid according to Hanfi jurists but it remains void unless it is concluded again without the condition of excess according to Malki and Shafei.

The above mention definition is given for the general riba. Now, the definition of each type is mentioned.

Types of Riba:

There are two types of interest (riba) and these are as: 1-Riba al Fadl. 2- Riba al Nasia. Each one is defined below:

Definition of Riba Al Fadl:

ربا الفضل هو فضل مالٍ خالٍ عن العوض على المعيار الشرعي، مشروط لأحد المتعاقدين في مبادلة - ٥
المال الموزون أو المكيل بجنسه.

It is an excess of property without consideration according to Shariah standard, stipulated for one party in exchange of weighable or measureable property of homogenous nature.

b- The definition of riba al fadl covers all types of riba al fadl and it is comprehensive as well as exhaustive and exclusive.

RIBA AL NASIA:

ربا النسبة هو فضل وقتٍ خالٍ عن العوض على المعيار الشرعي، مشروط لأحد المتعاقدين في مبادلة المال بجنسه أو مبادلة المال بمثله في الوزن أو الكيل.³

- a- Riba al Nasia is an excess of time without consideration according to Shariah standard, stipulated for one party in exchange of property by homogenous or homo-estimation in weight or in measurement.⁴

³ Definition of riba al fadl and riba al nasia in both English and Arabic language is made by me and I am sure that these definitions in both languages are comprehensive and exclusive [جامع و مانع] > If somebody has objection against any one of these or both he will be appreciated by providing information about it.

⁴ The definitions of Riba al Fadl and Riba al Nasia are derived from the general riba defined by Hanfi and Hanbali jurists.

- b- The definition of riba al nasia covers all types of riba al nasia and excludes all other matters where riba al nasia is not involved.

Explanation:

The Illustration of definition of interest is given in my article titled: Analysis of interest in Islamic law. Here we will explain some terms related to each type of interest.

1- The word ‘excess’ means: the increase on Shariah standard. If it is excess of property, then it is riba al fadl. If it is excess of time, it is riba al nasia.

a- Shariah Standard for Riba Al Fadl:

Shariah standard for riba al fadl is an exchange of weighable or measurable property by homogenous property with excess of property on Shariah standard, stipulated for either of the contracting party. The Shariah standard for riba al fadl is exchange of {weighable or measureable property + homogeneous} or exchange of {Homo-estimation in weight or measurement+homogenous}.⁵

Condition of shariah standard for riba al fadl:

There are two conditions for Shariah standard of riba al fadl. 1- The property must be weighable or measureable {Both exchanged properties are homo-estimation in weight or measurement}. It means the riba al fadl is not involved in any non weighable and non measureable property.

2- Both exchanged properties must be homogenous. If these are not homogenous, then there is no riba al fadl.

Examples:

It is appropriate to clarify the concept of riba al fadl by examples, and there are two types of examples given below.

Positive examples:

Positive examples are those where riba al fadl is involved. Wherever homo-estimation properties in weight or in measurement are exchanged by homogeneous ones with stipulated excess of property there is riba al fadl. For instance,

1- Exchange of gold by gold. These both exchanged properties are weighable plus homogeneous. It means: {homo-estimation in weight plus homogeneous} so if there is an excess of property, it is riba fadl.

⁵ Al Haskafi/ al Durr al Mukhtar with Rad al Muhtar/ 5: 168

Riba is the name of excess without corresponding consideration on Shariah standard, stipulated for either of the contracting parties according to Hanafi jurists. According to Malki and Shafei viewpoint riba is a contract of exchange of two homogenous properties and homo-estimation in weigh or measurement with stipulated excess for any one party. Thus, riba is a contract and it is not name of a simple increase.

2- Exchange of wheat by wheat. Both exchanged properties are measureable plus homogeneous. It means: {homo-estimation in measurement plus homogeneous} so if there is excess of property, it is riba al fadl.

Negative Examples:

Negative examples are the examples where riba al fadl is not involved

- 1- Exchange of gold by silver. Both exchanged properties are homo-estimation in weight but not homogeneous, so excess of property is not riba al fadl.
- 2- Exchange of wheat by barley. These properties are homo-estimation in measurement but not homogeneous, so excess of property is not riba al fadl.
- 3- Exchange of wheat by gold. These properties are not homo-estimation {because one of these is measureable while the other is weighable} and these both properties are not homogeneous also, so excess of property is not riba al fadl.
- 4- Exchange of one buffalo by two buffaloes. Both properties are homogeneous but these are neither weighable nor measureable, so the excess of property is not riba al fadl.

b- Shariah Standard For Riba Al Nasia:

It has been mentioned earlier that if there is excess of time on Shariah standard it is riba al Nasia and the Shariah standard for riba al Nasia is an exchange of property by homogenous or by homo-estimation in weight or in measurement. If there is excess of time for either of the contracting party, it is riba al nasia.

Shariah Standard for Riba Al Nasia:

The Shariah standard for riba al fadl is Exchange of homo-estimation properties in weight or in measurement plus homogeneous. This Shariah standard of riba al fadl has two attributes {homo-estimation in weight or in measurement plus homogeneous} while Shariah standard of riba al nasia has one of these two attributes: 1- Homo-estimation in weight or in measurement. 2- Homogeneous.

Wherever either of these two attributes is found, the stipulated excess of time is considered riba al Nasia.

Examples of Riba Al Nasia:

It is appropriate to explain the Shariah standard of riba al Nasia by its examples. There are two types of examples given below.

Positive Examples:

The positive examples are those in which riba al Nasia is involved. a- When two homo-estimation properties in weight or in measurement are exchanged together and there is stipulated excess of time, it is riba al Nasia such as:

- i- Exchange of gold by silver. If there is stipulated excess of time, it is riba al nasia.
- ii- Exchange of wheat by barley. If there is stipulated excess of time, it is riba al nasia.
- b- Wherever two homogenous properties are exchanged and there is stipulated excess of time it is riba a Nasia such as:
 - a- Exchange of gold by gold. If there is stipulated excess of time, it is riba al nasia.
 - b- Exchange of wheat by wheat. If there is stipulated excess of time, it is riba al nasia.
 - c- Exchange of buffalo by one or two buffalos. If there is stipulated excess of time, it is riba al nasia.⁶

Negative Examples:

Negative examples are those where riba al nasia is not involved.

- a- Exchange of wheat by gold or by any paper currency. If there is stipulated excess of time, it is not riba al nasia because both properties are neither homo-estimation nor homogenous.
- b- Buying a buffalo by fifty thousand rupees. If there is stipulated excess of time, it is not riba al nasia because both properties are neither homo-estimation nor homogenous.

2- The word ‘stipulated’ means the excess of time is stipulated for either of the contracting party or the excess of property is demanded by the creditor in case of delay in the payment of debt without prior condition and it is against the delay in the payment.

There are two reasons for this addition:

- i- The first reason: It is due to the attitude of the ignorant Arab people before the revelation of the Islamic law, as stated below.
 - a- Sometimes, they stipulated an excess on the amount of loan or debt while concluding a contract of loan and the amount of excess was agreed upon at the beginning as a contractual obligation.⁷
 - b- Sometimes, they demanded an excess {riba} at the time of payment of loan as the borrower was unable to pay the loan within the specified time and the creditor demanded an excess over the amount of loan due to the increase in the time of payment.⁸

⁶ It is according to Hanfi jurists and not according to Malki and Shafei jurists.

⁷ Abu Bakr al Jassas / Ahkam al Quran/ Beirut: Dar al kitab al Arabi / 1: 65

⁸ Al Qurtabi Muhammad bin Ahmad / al Jamey le-Ahkam al Quran / Beirut: Dar Ihya al Turath al Islami/ 4:130, and al Imam al Razi / al Tafsir al Kabir/ Beirut: Dar al fikr/ 9: 2 and Ibn al Kathir / Tafsir al Quran al Azim /1 : 404.

- c- Sometimes, a man purchased a commodity on deferred payment and the seller demanded his debt at the time of maturity but the debtor was not in position to pay upon which the seller increased in the amount of debt against the delay in the period of payment.⁹

So, it is not necessary that the demand of an excess is made at the time of entering into a contract and such a demand can be made at the time of payment of loan as narrated by Zaid bin Aslam {May Allah be pleased with him} and he said “ Riba was taken in the era of ignorance, and one person had given a loan to another person for a specified period, and when the fixed period of payment is over, he demands his debt from the debtor, and he says: either you pay debt now or you increase the amount against more time. If he does not pay at the maturity of time, then he was compelled to pay an excess amount against increase the time of payment”.¹⁰

ii- The second reason for this addition is an excess paid to creditor without prior stipulation and without any demand from creditor and it is valid because Prophet {blessing of Allah and peace be upon him} sometimes, paid more to creditor for his good behavior. As narrated by Abu Hurairah {May Allah be pleased with him}” a person came to Prophet {blessing of Allah and peace be upon him} and asked for loan and Prophet {blessing of Allah and peace be upon him} gave him a loan half of Wasaq equaling 30 kg. Meanwhile other person came to Prophet {blessing of Allah and peace be upon him} and he demanded the payment of his debt taken by Prophet {blessing of Allah and peace be upon him} and it was also half of Wasaq equaling 30 kg and Prophet {blessing of Allah and peace be upon him} gave him 60 kg and said: half of wasaq is against your debt and the other half is a gift from me”.¹¹

It was without any prior stipulation or contractual obligation and it is valid in the light of the verse of Holy Quran: “Is there any reward for good other than the good”.¹²

NOTE: The purchases on bank’s credit card are also like the practice of the people at the time of ignorance, because if the price of commodity bought on credit card is not paid within the specified time, the bank charges extra amount.

Occurrence of Riba:

There are three different situations involving riba al nasia as follows:

- a- Both the exchanged properties are homo-estimation in weight or in measurement as well as homogenous such as 10 gram gold is exchanged by ten gram of gold but one is delivered at the time of contract and the other will be handed over after six months.

⁹ Jalal al Din al Sayuti/ al Durr al Manthur / Beirut /2 : 72

¹⁰ It is narrated by al Imam Malik and al Baihaqi, See: al Muwatta / hadith no: 1367 and al Sunan al Kubra / 5: 275

¹¹ It is narrated by al Baihaqi / al Sunan al Kubra / 5: 351/ hadith no: 10722

¹² Surah al Rahman: 60

- b- Both exchanged properties are homo-estimation in weight or in measurement but not homogenous. For instance, ten grams of gold is exchanged by one hundred gram of silver but one of those is handed over at the time of contract while the other is to be delivered after six months.
- C- Both exchanged properties are homogenous but not homo-estimation in weight or in measurement such as one cow is exchanged by two cows but one of these is deferred, when both properties are homogenous the excess of time is riba al nasia according to Hanafi jurists.

NOTE: There is neither riba fadl nor riba nasia in a sale contract in which both exchanged properties are neither homogenous nor homo-estimation in weight or measurement as {bay al muajjal} deferred payment sale and advance payment sale {bay al salam}.

Why Riba Al Nasia is Prohibited?

Riba al nasia means the excess of time in exchange of homogenous properties or exchange of homo-estimation properties in weight or measurement and it is prohibited. The reason is given below:

1- Time is money in the modern new financing theories and it is considered valuable in the Islamic classical law as well.¹³ Imam al Shafei said: “Food stuff deliverable in the near future is more costly than the price of food stuff payable on additional future date”.¹⁴

Al Nowi said: “Five paid in cash is equal to six payable on a future date”.¹⁵

b: It mostly encourages a creditor to demand excess in the property and there is legal maxim: What is most likely to happen is taken as the actual occurrence {المظنة تقوم مقام المثنة}.¹⁶

QUESTION: A question may arise that the definition of riba al nasia covers Qard Hassan because it is also exchange of property by homogenous with excess of time. For example:

A man gave one sack of wheat to other as a loan and the other person is to return the sack of wheat after six months. This is an exchange of measureable property by homogenous with an excess of time and this excess of time is riba al nasia and riba is

¹³ See: al Sarkhasi/ al Mabsut/12: 111, al Kasani/ Badaye al Sanaye/ 5: 225 /al Zalayi /Tabyeen al Haqaiq/4: 78, Ibn Abidin/ Radd al Muhtar/ 4: 258, al Dusuqi Ibn Arafah / marginal note by al Dusuqi/ 3: 165, al Zarqani/marginal note by al Zarqani ala Khalil/ 5: 176, al Shatbi Abu Ishaq/ al Muwfaqat/ 4: 41-42, Ibn Juzay/ al Qawanin al Fiqhiyyah/ 174, al Nowi/ al Majmu/ 6: 22/ al Sharbini al Khateeb/ Mughni al Muhtaj/ 2: 78, Tuhfahtul Muhtaj/ 4: 432, Ibn Taimiyyah/ Majmu al Fatawa / 29: 413,499, 525.

¹⁴ Al Imam al Shafei / al Umm/ 3: 12

¹⁵ Al Nowi/ al Majmu/ 6: 22

¹⁶ Abdul Wahab Khallaf/ Ilm Usool al Fiqh/Cairo: Dar al Qakam/ 1972/ 67.

prohibited whereas Qard Hassan is permitted. The Quran says:¹⁶{من الذي يقرض الله قرضا حسنا} Who is it that will offer up unto God a goodly loan, which He will amply repay, with manifold increase?

There is another verse of Holy Quran says: ¹⁷{من ذا الذي يقرض الله قرضا حسنا فيضاعفه له} {وله أجر كريم} Who is it will offer up unto God a goodly loan that gives goodly loan, which He will amply repay?

b- Another example of Qard Hassan: A person gives 10,000 to other person as a loan, which is to be returned after six months. Both properties are homogenous and there is also an excess of time and it is a case of riba al nasia and riba is prohibited while Qard Hassan is permitted. So the definition of riba in general and definition of riba al nasia in particular is not hurdle {Maney} in Qard Hassan.

Answer:

Muslim jurists are divided into two groups due to difference of opinion and each one of them has answered the question as follows:

a- Hanfi jurists hold that: The stipulation of excess of time period in exchange of weighable or measureable properties by homogenous as in Qard Hassan is not valid and the condition of time stipulated in Qard Hasan is unlawful while Qard itself is valid. The creditor can demand his loan {qard} from debtor at any time though loan is taken or given for a specific time because Qard Hasan is similar to borrowing a commodity {Ariyyah} and creditor can demand the article at any time though the borrower had borrowed this commodity for a specific time.¹⁸ The reason is that the contract of loan and contract of borrowing both are not binding, and can be terminated at any time.¹⁹

Loan {Qard Hassan} is not covered in the definition of riba because riba is an increase stipulated or demanded though it is excess of property or excess of time and this stipulation of the excess of time in Qard Hasan is void as it is vitiated in borrowing property {Ariyyah}.

Now the definition of riba al nasia does not cover Qard Hassan because riba al nasis is exchange of property by homogenous or by homo-estimation in weight or

¹⁶ Sura al Baqarah/ 245

¹⁷ Sura al Hadid/ 11

¹⁸ Al Kasani / Badayewa al Sanaye /5: 225 and 6: 215 IbnAbdin/ Radd al Muhtar/4: 170, al Marghinani/Burhan al Din/ al Hidayah/3: 60, al Sarkhasi / al Mabsut/ 12: 11 and 22: 45, al Zalai / Tabyeen al Haqaiq/ 4: 78, and it is discussed by other jurists such as al Savi/ Bulugh al Salik/4: 41-42, al Dusuqi/ Hashayah al Dusuqi/3: 165 al Zarqani/ Hashyah al Zarqani/ 5: 176, IbnJuzay / al Qawanin al Fiqhiyyah / 290, Shatabi/ al Muwafaqat/ 2: 79 and Shafei Jurists as al Imam al Shafei/ al Umm/ 3: 62 and 88, al Nowi / al Majmu /6: 22, al Sharbini/ Mughni al Muhtaj/ 2:79, and Hanbli Jurists such as IbnQudamah/ al Mughni/ 4: 349, IbnTaimiyyah / Mujmu al Fatawa/ 20: 629, 29: 413, 499, 525

¹⁹ al Majmu al Fatawa /6: 215

measurement with excess of time stipulated for either party while Qard Hassan is exchange of property by homogenous without stipulation of time period.

OBJECTION: A question arises against the Hanfi view point that Qard Hassan is validated to solve the problems of the needy and their problems are not solved without the condition of time period. If the time condition is void, how can their problems be solved by Qard Hassan?

ANSWER: It is stated that: the condition of time is void and the creditor can demand his loan from the borrower but when the creditor demands the return of his loan and borrower says: I have expended it on my need and I do not have any money to return. At this, the creditor can extend the time period for the payment of loan in the light of the verse: { وإن كان ذو عسرة فنظرة إلى ميسرة وأن تصدقوا خير لكم إن كنتم تعلمون }

“If, however, [the debtor] is in straitened circumstances, [grant him] a delay until a time of ease; it would be for your own good- if you but knew it – to remit [the debt entirely] by way of charity.”²⁰

b- Majority of Muslim jurists have answered this question in different ways as follows:

1- Goodly loan {Qard Hassan} is permitted, even recommended, as an exceptional case to fulfill the need of the deserving persons and this exemption is given by the lawgiver. The Quran says: who is he that will lend to Almighty Allah a goodly loan {Qard Hassan}^{21, 22} and exemptions are not objected, so it is not under the provision of general rule {عزيمة} of the prohibition of riba.²³

2- The excess of time is a gift to the beneficiary by the creditor in Qard Hassan.

3- The creditor intends to get reward from Almighty Allah against the time period granted to borrower and the difference between both contracts is the intention of credit sale and intention of goodly loan {Qard Hassan} and if the contract is concluded with the intention of goodly loan {Qard Hassan} then it is permitted and it is recommended also. But if this contract is concluded with the intention of credit sale, then it is prohibited because of an excess in the time in exchange of property by homogenous or by homoeostimation in weight or measurement and this excess is riba al nasia.²⁴ It is based on the verse of Holy Quran:²⁵ {فَاتَاهُمُ اللَّهُ ثَوَابَ الدُّنْيَا وَحَسُنَ ثَوَابُ الْآخِرَةِ وَاللَّهُ يُحِبُّ الْمُحْسِنِينَ} Whereupon God granted them the rewards of this world as well as the goodliest rewards of the life to

²⁰ Sura al Baqarah/ 280

²¹ Surah al Hadid / verse: 11

²² Ibn Hazam al Zahiri / al Muhalla / 8:494.

²³ Abdu al Wahab al Baghdadi al Malki/ al Israf ala Masail al Khilaf/ Tunis: Mataba al Iradah /1: 262, Ibn Taimiyyah/ Majmu al Fatawa/ 29: 49, Ibn Taimiyyah/ al Masail al Mardiniyyah/ Damascus: al Maktab al Islami/ 1399h / 99.

²⁴ It was explained by Dr Abdul al Latif Amir, a former Dean, faculty of Shariah and Law, International Islamic University, Islamabad.

²⁵ Surah Al-e- Imran/148

come: for God loves doers of good. Another verse of Holy Quran says: { من كان يريد ثواب {²⁶الدنيا فعند الله ثواب الدنيا والآخرة. } If one desires the rewards of this world, [let him remember that] with God are the rewards of [both] this world and the life to come and God is indeed All – hearing, All- seeing.

Question:

A question may arise against the majority viewpoint that: if one person commits a prohibited act with a good intention, does this intention convert the prohibited act into valid act as in the case of goodly loan {Qard Hasan} which is under the provision of riba al nasia and riba is prohibited while Qard Hasan is declared valid due to good intention, according to the majority.

ANSWER: It can be concluded that: mere intention cannot validate a contract nor it can invalidate anything unless it is in conformity with the intention of the lawgiver and the intention of the lawgiver is known by the text of Quran and Sunnah. It means if this intention is according to text of the Quran and Sunnah, then it is valid otherwise it is invalid. Qard Hasan is validated by lawgiver as the Quran says: who is he that gives the Qard Hasan to Almighty Allah.²⁷

Al Shatibi said: the intention of person must be in harmony with the intention of the law giver otherwise it is rejected.²⁸

The intention of the lawgiver is known by His rules revealed in the Quran or Hadith. Therefore intention of an individual does not play any role in the validity or invalidity of contract unless it allowed by Almighty Allah in the Quran or in the Sunnah of his Prophet {blessing of Allah and peace be upon him}

IbnHazam said: Qard is permissible in all types of fungible properties and in other properties {...} and there is no riba except a situation in which the stipulation of more or less than what he borrowed or better than he borrowed or inferior than he borrowed and it is agreed upon.²⁹

QUESTION: A question may arise: if creditor demands an excess at any time on the QardHasan given to anybody, will it be valid?

ANSWER: If the creditor demands increase of the property in Qard Hasan, it is no more Qard Hasan and becomes riba which is prohibited, and the evidence is the tradition of the Prophet {blessing of Allah and peace be upon him}: Every loan carrying benefit is riba³⁰

²⁶ Surah al Nisa/ 134

²⁷ Surah al Baqarah/245

²⁸ Al Shatibi Abu Ishaq / al .Muwafaqat/ 1: 2.

²⁹ Mohammad Ali Ibn Hzam/ al Muhalla/ 8: 494

³⁰ It is narrated by al Baihaqi and Jalal al ud Din al Sayuti: See: Al Sunan al Kubra/5: 350 and al Jamie al Saghir/ 4:153/ Hadith Number: 4249.

The benefit mentioned in the tradition, is the benefit demanded by the creditor.

Shams al Aimm al Sarkhasi said: if the benefit is stipulated in Qard, then it is prohibited but if the benefit is not stipulated in Qard, then it is not objectionable. If the debtor returns debt in a better form, it is praiseworthy and recommend in Islamic law.³¹ The Quran says: There is no reward for good except good.³²

QUESTION:A question may arise: If usurious property is exchanged by homogenous as date by date or rice by rice and one of these is of superior quality and other is inferior, then excess in one of these is valid or not?

ANSWER:

It is riba though the value of two sacks of inferior date is equal to one sack of superior date, and it is forbidden by Prophet {blessing of Allah and peace be upon him}.³³ There is no difference of opinion among the jurists on this point because the equality in quantity is required in exchange of usurious properties by homogenous in the light of the tradition of the Prophet {blessing of Allah and peace be upon him} who said: equal to equal, hand to hand and the excess is riba.³⁴

It is suggested to this man to sell his inferior date by cash and then purchase a superior quality of date and it is approved by Holy Prophet {blessing of Allah and peace be upon him}. Once, Syedna Bilal, the companion of the Prophet {blessing of Allah and peace be upon him} came to Holy Prophet and asked: Can I exchange my inferior quality date with single quantity of superior quality of date.?The Holy Prophet {blessing of Allah and peace be upon him} answered: No, but you can sell your inferior quality of date by cash and then purchase superior quality of date with this cash.³⁵

QUESTION: A question may arise: What type of equality is required in exchange of homo-estimation in weight or measurement by homogenous?

ANSWER: The answer is: Equality is of three types: 1- Equality in quantity of exchanged properties. 2- Equality in the time of delivery.3- Equality in value.

Equality of quantity is stipulated for exchange of homo-estimation in weight or measurement properties by homogenous to avoid the element of riba. If this equality is not maintained, and there is an excess of property, this is a case of riba al fadl and it is prohibited.

³¹ al Sarkhasi/ al Mabsut/ 14:35

³² Sura al Rahman/ 60

³³ It is narrated by Imam al Bukhari and it is stated by Mohammad Ali Showkani / Nail al Aowtar/5: 207

³⁴ It is narrated by al Bukhari and Muslim. Sahih al Bukhari/ hadith: 2175, Sahih Muslim/ hadith:4063.

³⁵ It is narrated by Imam al Bukhari as stated by Muhammad Ali Shawkani / Nail al Aawtar/5: 207

Equality in the time of delivery must also be maintained in the exchange of such property by homogenous or by homo-estimation in weight or measurement, and if there is an excess of time in the delivery of either commodity it is riba al nasia though both are homogenous or both are simple homo- estimation in weight or measurement, such as exchanging barley with wheat.³⁶

Equality of value should be maintained in exchange of properties which are neither homogenous nor homo-estimation in weight or measurement. However this value always varies due to evaluation by different persons.

The excess of riba is always without consideration while excess of ghabn al fahishf is not without consideration but it is considered exploitation of the other.

Conclusion:

We may conclude that:

Qard Hassan is permissible according to majority as an exceptional case to fulfil the needs of the needy and it is Istihsan and it is allowed according to Hanfi jurists provided it is without any prior condition of time period. But if there is a condition of time, then it is unlawful.

The excess of riba al fadl is found in exchange of weighable or measureable property by homogenous and the excess of riba al nasia is found in exchange of property by homogenous or by homo-estimation in weight or measurement while the excess of ghabn al fahishis found where there is no exchange of property by homogenous in weight or measurement.

Prohibition of riba is agreed upon whereas prohibition of ghabn al fahish is disputed.

The equality in quantity is essential in exchange of weighable or measureable properties by homogenous ones whereas equality in value between the two is not necessary.

Shariah standard for riba al fadl is exchange of weighable or measureable property by homogenous one with excess of property.

Shariah standard of riba al nasia is exchange of property by homogenous or by homo-estimate in weight or measurement with excess of time.

³⁶ It is according to Hanfi and Hanbli jurists while Malki and Shafei jurists holdAnd [remember:] whatever you may give out in usury so that it might increase through [other] people's possessions will bring [you] no increase in the sight of God- Whereas all that you give out in charity, seeking God's countenance, [will be blessed by Him] for it is they, they [who thus seek His countenance] that shall have their recompense multiplied.thatequality in delivery is essential between exchange of two foodstuffs and exchange of two currencies.

If the excess mentioned above is stipulated, then it is riba and if it is not stipulated in contract, then it is not interest [riba]

Interest [riba] is prohibited though the excess of it is less or more.

The stipulated excess of time in loan [qard hasan] contract is valid according to majority of Muslim jurists as an exceptional case while this condition is vitiated in loan contract according to Hanfi jurists.

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