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Reasons of the Maliki School's Exceptional Prohibition Certain Financial Transactions and Contradictions and Oppositions Judgements and Effects as a Model

Abstract

Maliki jurists contributed to the development of the jurisprudence of financial transactions, given their critical importance to people's lives and the preservation of their rights. They were distinguished by their broad perspective on the consequences and formulations of contracts, relying on the principles of their school of thought and their own interpretations that took into account evidence and Sharia objectives.

They prohibited the combination of specific contracts with a sale contract in a single transaction, combining them in their term "jass mashnaq" (ju'alah, sarf, musaqah, sharecropping, marriage, qirad, and qard). Although they agreed with the majority in prohibiting some of these contracts, the Malikis differed on the reason for the prohibition and prevention, considering the contradiction of rulings and objectives as a general principle preventing the combination of contradictory contracts. In this article, I will attempt to examine the reasons for the Malikis' unique prohibition and compare them to other schools of thought. I will also highlight the Malikis' efforts in establishing the jurisprudence of financial transactions and introduce the principles upon which they built their school by presenting some of the applications and models under study.

Keywords: *Maliki exclusivity, contradiction and opposition, hanging plaster, two deals in one deal*

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Maliki məktəbinin müstəsna olaraq qadağan edilməsinin səbəbləri müəyyən maliyyə əməliyyatları – ziddiyyətlər və müxalifətlər bir model kimi hökmlər və effektlər

Xülasə

Maliki fəqihləri insanların həyatı və hüquqlarının qorunması üçün kritik əhəmiyyətini nəzərə alaraq maliyyə əməliyyatları fiqhinin inkişafına öz töhfələrini vermişlər. Onlar öz düşüncə məktəbinin prinsiplərinə və dəlilləri, şəriət məqsədlərini nəzərə alan öz şərhlərinə əsaslanaraq müqavilələrin nəticələri və tərtibi ilə bağlı geniş perspektivləri ilə seçilirdilər. Onlar xüsusi əqdlərin alqı-satqı müqaviləsi ilə birləşdirilərək bir alqı-satqıda onları "cəs məşnəq" (cüəla, sarf, musaqa, pay, nikah, qirad və qard) terminində birləşdirməyi qadağan etmişlər. Malikilər bu əqdlərin bəzilərinin haram edilməsində çoxluqla həmfikir olsalar da hökm və məqsədlərin ziddiyyətini, ziddiyyətli əqdlərin birləşməsinə mane olan ümumi prinsip hesab edərək qadağanın və qarşısının alınmasının səbəbi barədə ixtilaf etmişlər. Bu yazıda Malikilərin bənzərsiz qadağasının səbəblərini araşdırmağa və onları digər məzhəblərlə müqayisə etməyə çalışacağam. Mən həmçinin Malikilərin maliyyə əməliyyatlarının fiqhinin qurulmasında göstərdikləri səyləri vurğulayacağam və öyrənilən bəzi tətbiq və modelləri təqdim etməklə onların məktəblərini qurduqları prinsipləri təqdim edəcəyəm.

Açar sözlər: *maliki eksklüzivliyi, ziddiyyət və müxalifət, asma suvaq, birdə iki sövdələşmə*

Introduction

Throughout the ages, Maliki jurists have had a significant role and undeniable merit in developing and renewing the jurisprudence of transactions, researching it both in terms of foundations and implementation. This is because it is one of the most important laws and rulings that people need in their lives and livelihoods. Muslims cannot do without financial transactions and sales and purchase contracts, as they protect their rights and wealth, and guard against falling into forbidden and prohibited matters.

Research

Because of this special status and care, they had a broad perspective on the implications and formulations of their contracts. They were aided in this by the principles of their school of thought and the disputes of their ijtihad, which were closely linked to the evidence of Islamic law and established objectives. They stipulated the prohibition of combining certain contracts with a sale contract in a single transaction. Because this combination leads to uncertainty, contradiction, and inconsistency in rulings and effects, they combined them in their saying, "hanging plaster." The jīm stands for "ju'alah," the Ṣād stands for "exchange," the mīm stands for "crop-cropping," the shīn stands for "partnership," the nūn stands for "marriage," and the qāf stands for "lending and loan." While the majority agreed with them on prohibiting the combination of some of these contracts with a sale contract in a single transaction, they differed with them on the reasons for the prohibition and the rationale for the prohibition. They argued that it is prohibited due to the contradiction of their rulings and the inconsistency of their objectives. Indeed, they made this the basis for prohibiting the combination of contradictory contracts in a single transaction, basing all matters of jurisprudence and transactions on it. In this article, I will attempt to discuss the reasons that set them apart from others in prohibiting the combination of contracts by examining their consequences and the contradictions and inconsistencies they lead to in rulings and effects. I will compare this with other schools of thought to demonstrate their uniqueness in this regard, and I will attempt to study the principles upon which they built their school by presenting some of their applications.

First Section: **The Ruling on the Combination of the Seven Contracts with a Sales Contract in Islamic Jurisprudence**.

To discuss the Maliki school's exclusivity in prohibiting the combination of certain financial transactions due to the contradiction and inconsistency in rulings and legal implications, I will address in this section the ruling on the combination of the seven contracts, which are united by their term "hanging plaster." They have stipulated in their books that they are prohibited from combining them with a sales contract in a single transaction, and I will attempt to study them from a comparative jurisprudential perspective. After gathering, tracing, and extrapolating the scholarly material for this paper, I found that jurists have differed on the ruling on combining these contracts. They agreed on prohibiting the combination of a sales contract with a loan contract in a single transaction, but differed on other contracts. (Ibn Abidin, n.d., vol. 5, p. 167; Ibn Rushd, n.d., vol. 2, p. 162; Al-Shirazi, n.d., vol. 1, p. 304; Ibn Qudama, n.d., vol. 6, p. 334)

First: Prohibiting the Combination of a Sale Contract and a Loan Contract in a Single Transaction:

A. Forms of Combining a Sale Contract and a Loan Contract in a Single Transaction, There are two forms of this:

1. **The first form**: A man lends another man one thousand dirhams, on the condition that he buys a commodity from him whose price does not exceed five hundred dirhams with the one thousand dirhams he lent him. The man then agrees to lend him only the increased price of the commodity, and the buyer also agrees to pay this increased price for the commodity only for the thousand dirhams the seller will lend him (Al-Shatibi, n.d., vol. 3, p. 196; Ibn Taymiyya, n.d., vol. 4, p. 39; Ibn Taymiyya, n.d., p. 142; Al-San‘ani, n.d., vol. 3, p. 810).

This transaction combines a sale and a loan, and this transaction also involves evading usury. The seller takes more than he gave, so that the lender achieves the increase through a sale that he combines with the loan. He then takes the increased value in exchange for the loan. Thus, it constitutes a loan that brings a clear benefit, (Al-San‘ani, n.d., vol. 3, p. 810; Ibn al-Qayyim, n.d., vol. 1, p. 363).

2. The second scenario:

For example, if a man lends money to another person and takes something from him, saying, "If you don't have it, and it's not possible for you to return the money, then it's a sale to you." Thus, the thing he took from him is sold in exchange for the money he lent him, (Al-Shawkani, n.d., vol. 6, p. 324; Al-Mubarakfuri, n.d., vol. 4, p. 432; Al-San‘ani, n.d., vol. 3, p. 810).

This contract combines a sale and a loan, and this loan brings a benefit from the thing the lender took. This constitutes a form of evading usury. This contract is also linked to the sale and the loan, as the lender lends him something in exchange for this loan. This involves favoritism in the price for the loan he lent him, and involves uncertainty and ignorance arising from hesitation in concluding the contract. (Al-Qarafi, n.d., vol. 3, p. 266; Ibn Taymiyya, n.d., vol. 33, p. 295; Al-Shawkani, n.d., pp. 324–325)

I say: The jurists have agreed that these two scenarios are forbidden and prohibited, because they involve a clear evasion of usury. However, they have permitted their combination without a condition, such that the borrower gives him the better of the two. There is no problem, because usury is the name for an increase stipulated in the contract, and this does not exist here. Rather, this is a form of good judgment, and it is recommended. (Al-Kasani, n.d., vol. 7, p. 395; Al-Nafrawi, n.d., vol. 2, p. 132; Al-Nawawi, n.d., vol. 3, p. 62; Ibn Taymiyya, n.d., vol. 6, p. 177)

B- The reason for the prohibition and the reason for prohibiting the combination of a sale and a loan in a single transaction according to the Maliki school:

The jurists unanimously agree that combining a sale and a loan in a single transaction is prohibited, because their combination constitutes a pretext for usury, (Al-Sarakhsi, n.d., vol. 14, p. 40; Ibn Abidin, n.d., vol. 5, p. 167; Ibn Rushd, n.d., vol. 2, p. 162; Al-Qarafi, n.d., vol. 3, p. 226; Al-Shirazi, n.d., vol. 1, p. 304; Al-Mawardi, n.d., vol. 6, p. 431; Al-Nawawi, n.d., vol. 3, p. 62; Ibn Taymiyya, n.d., vol. 4, p. 39; Ibn Qudama, n.d., vol. 6, p. 334)

What is prohibited in their combination is for a sale to be conditional upon a loan or a loan to be conditional upon a sale, as this leads to favoritism in the sale price for the sake of the loan and to circumvent usury.

However, the Maliki school prohibited combining a sale and a loan in a single transaction, because this leads to contradiction and inconsistency in rulings and effects. Ibn al-Arabi (may God have mercy on him) said in this regard: "The hadith prohibiting a sale and a loan entails a novel principle of the Maliki school, namely that any two contracts that are contradictory in form and contradictory in ruling are impermissible to combine. Its basis is a sale and a loan, and all issues of fiqh are based on it. (Ibn al-‘Arabi, 1992, vol. 2, p. 843; Al-Sawi, n.d., vol. 3, p. 725)," Al-Qarafi (may God have mercy on him) says: "The secret behind the difference is that contracts are causes, as they encompass the attainment of their wisdom through their effects by way of compatibility. One thing with one consideration does not suit two opposites. Therefore, any two contracts that have a contradiction between them cannot be united by a single contract.", (Al-Qarafi, n.d., vol. 3, p. 142; Ibn al -‘Arabi, 1992, vol. 2, p. 843)

The intended contradiction and inconsistency between a sale and a loan is that: a sale is based on bargaining and bargaining, while a loan is based on generosity and tolerance (Ibn al-Shat, n.d., vol. 3, p. 292)

Al-Mawaahib al-Jalil states: "A sale and a loan are not permissible, nor is it permissible to combine a loan with a lease or rent... and any contract of exchange may not be combined with a loan." (Al-Hattab, n.d., vol. 4, p. 314; Al-Dusuqi, n.d., vol. 3, p. 549)

The Malikis prohibited combining a sale and a loan in a single transaction due to the contradiction and inconsistency between the two contracts. The Malikis based all matters of jurisprudence on this principle.

Maliki jurists provided extensive evidence for this, some of which I will discuss in some detail.

C-**Evidence for the prohibition of combining a sale and a loan in a single transaction**:

1- **From the Qur'an**:

God Almighty says: {And God has permitted trade and forbidden usury} [Al-Baqarah: 275], and He also says: {O you who have believed, fear God and give up what remains of interest, if you should be believers} [Al-Baqarah: 278].The significance of these verses: Scholars have deduced from these verses that every loan that brings benefit is usury(Ibn Rushd, n.d., vol. 2, p. 162), as in the Almighty's saying: {And God has permitted trade and forbidden usury}. Usury is adding an amount to a loan or advance beyond the amount paid; Because the lender combines the sale with the loan in order to obtain an increase in exchange for the loan, the buyer is favored in the sale for the sake of the loan, and thus the benefit accrues from the loan (Ibn Rushd, n.d., vol. 2, p. 162; Al-Qarafi, n.d., vol. 3, p. 226). Similarly, if the seller stipulates a loan for himself, he becomes a seller of his goods at the price he desires and with the benefit of the stipulated loan (Al-Qazwini, n.d., vol. 9, pp. 383–384; Al-Baghawi, n.d., vol. 8, p. 145).

2- **From the Sunnah**:

First: On the authority of Abu Hurayrah (may Allah be pleased with him), who said, "The Messenger of Allah (peace and blessings be upon him) forbade two sales in one sale." (Abu Dawud, n.d., no. 3444, vol. 9, p. 332; Al-Bayhaqi, n.d., vol. 5, p. 343; Al-Hakim, n.d., vol. 2, p. 45)

Second: On the authority of Abd al-Rahman ibn Abdullah ibn Mas'ud, on the authority of his father, who said, "The Messenger of Allah (peace and blessings be upon him) forbade two transactions in one transaction.", (Ahmad ibn Hanbal, n.d., no. 3783, vol. 1, p. 398; Al-San‘ani, n.d., no. 14633, vol. 8, p. 138; Ibn Abi Shayba, n.d., vol. 8, p. 192)

The meaning:The majority of jurists, in their interpretation of these two hadiths, stated that the reason for the prohibition is that the contract is conditional upon another contract, and combining the sale and loan in a single transaction is conditional upon them, such as when someone lends money, for example. Provided that he takes something from it, and if he is unable to return the money (Al-Qarafi, n.d., vol. 3, p. 266), it is considered a sale against him. When a loan turns into a sale, the lender buys the commodity for less than its price due to the loan. The excess is due to the loan and is considered compensation for it, (Ibn Rushd, n.d., vol. 2, p. 162)

Second: On the authority of Abdullah ibn Amr ibn al-'As (may Allah be pleased with him), he said: "The Messenger of Allah (peace and blessings be upon him) forbade two sales in one sale, a sale and a loan, a profit on something that is not guaranteed, and selling something that you do not possess" (Ahmad ibn Hanbal, n.d., no. 6918, vol. 11, p. 132; Al-Tirmidhi, n.d., no. 1234, vol. 3, p. 526; Al-Nasa’i, n.d., no. 4644, vol. 7, p. 340; Al-Hakim, n.d., vol. 2, p. 17).

Evidence:

The hadith indicates that combining a sale and a loan in a single contract is impermissible. This hadith generally includes the impermissibility of stipulating a sale contract in a loan contract. When they are combined without conditions, it is permissible, because a sale can be done separately, and a loan can be done separately. Therefore, combining them without conditions is permissible. (Al-Nafrawi, n.d., vol. 2, p. 132)

Third: On the authority of Ali (may Allah be pleased with him), he said: The Messenger of Allah (peace and blessings be upon him) said: "Every loan that brings benefit is usury." (Al-Bayhaqi, n.d., vol. 5, p. 350; Al-Suyuti, n.d., no. 4249, vol. 4, p. 153)

The significance of the evidence:

The loan contract was originally legislated to be a charitable contract, preventing the lender from benefiting from his loan. This benefit would detract from the purpose for which the contract was designed, namely, to be charitable, lenient, and facilitating. The benefit of combining a sale and a loan in a single transaction is that it leads to favoritism in price, and the seller sells his goods for the price he desires because of the loan. (Al-Dardir, n.d., vol. 3, p. 67)

3- From the consensus:

The jurists of the various schools of jurisprudence are unanimously agreed that combining a loan (Al-Sarakhsi, n.d., vol. 14, p. 40; Ibn Rushd, n.d., vol. 2, p. 162; Ibn Qudama, n.d., vol. 6, p. 334).

4- It is reasonable:

Sale and loan are diametrically opposed and contradictory in terms. (Al-Kafawi, n.d., vol. 3, p. 140; Al-Jurjani, n.d., p. 72). Opposites are two existential attributes that alternate in one place and cannot coexist, such as blackness and whiteness (Al-Qarafi, n.d., vol. 3, p. 142; Ibn al-ʻArabi, 1992, vol. 2, p. 843). The difference between opposites and contraries is that opposites cannot coexist and cannot be superseded, such as nonexistence and existence, and movement and stillness. Contraries cannot coexist but can be superseded, such as blackness and whiteness (Al-Mawsili, n.d., vol. 2, p. 7; Al-Zaylaʻi, n.d., vol. 4, p. 393; Ibn al-Humam, n.d., vol. 6, p. 410). Contracts also have causes, as they encompass the attainment of their wisdom through their causes by way of correspondence. One thing based on one consideration is incompatible with opposites. Any two contracts that have a contradiction between them cannot be united by a single contract. This is because sale is based on deception and bargaining, while loaning is a matter of generosity and devotion. (Al-Qarafi, n.d., vol. 3, p. 142; Ibn al-ʻArabi, 1992, vol. 2, p. 843; Ibn Rushd, n.d., vol. 2, p. 182)

Second: Contracts whose rulings differ regarding their combination with a sale contract in a single:

Transaction:

These are: ja'ala, sarraf, musaqat, shirkah, nikah, and qirad, all of which are grouped together in the phrase "suspended plaster."Jurists have differed regarding the ruling regarding the combination of these contracts with a sale contract in a single transaction. This is due to their differing interpretations of the two hadiths: "The prohibition of two sales in one sale" and "The prohibition of two transactions in one transaction." The Hanafis and Malikis, (Al-Mawsili, n.d., vol. 2, p. 7; see also Al-Zaylaʻi, n.d., vol. 4, p. 393; Ibn al-Humam, n.d., vol. 6, p. 410) according to the well-known opinion among them(Al-Qarafi, n.d., vol. 3, p. 142; see also Ibn al-ʻArabi, 1992, vol. 2, p. 843; Ibn Rushd, n.d., vol. 2, p. 182), the Shafi'is (Al-Shirazi, n.d., vol. 1, p. 267; Al-Nawawi, n.d., vol. 9, p. 412), the majority of the Hanbalis (Ibn Qudamah, n.d., vol. 6, s. 323; Al-Bahuti, n.d., vol. 4, p. 401), and the Zahiris (Al-Tasuli, n.d., vol. 2, p. 14; see also Al-Hattab, n.d., vol. 6, p. 145), have prohibited it. Ashhab (may God have mercy on him) among the Malikis (Al-Tasuli, n.d., vol. 2, p. 14; see also Al-Hattab, n.d., vol. 6, p. 145), and Ibn Taymiyyah (Ibn Taymiyya, n.d., p. 189, p. 229) and Ibn al-Qayyim (Ibn al-Qayyim, n.d., vol. 1, p. 344; see also vol. 3, p. 486) (may God have mercy on them) among the Hanbalis have permitted their combination with a sale contract in a single transaction.

A - The well-known opinion among the Malikis:

The Malikis agree with the majority in prohibiting the combination of these contracts with a sale contract in a single transaction (Al-Qarafi, n.d., vol. 3, p. 142; Al-Hattab, n.d., vol. 6, p. 145; Ibn Juzayy, n.d., p. 223). However, they are unique in their opinion in permitting the combination of two different contracts with two different, distinct considerations in a single transaction, which is the well-known opinion of the school (Malik, n.d., vol. 4, p. 127; see also Ibn al-ʻArabi, 1992, vol. 2, p. 842). This is indicated by what is stated in the Mudawwana: “I said: If I sold my slave to him for ten dinars on the condition that his slave sell me for twenty dinars, Malik said: There is nothing wrong with it, it is only a slave for a slave and an additional ten dinars. I said: What do you think if he sold a commodity for ten dinars on credit on the condition that he take one hundred dirhams for it, is this sale invalid or not? He said: It is not invalid, and there is nothing wrong with this according to Malik. I said: Why? He said: Because the wording here is not taken into account, because their action leads to goodness and a permissible matter. I said: How can it lead to goodness when he only stipulated the price of ten dinars for which he would take one hundred dirhams? He said: Because he would never take dinars for it, but rather dirhams, so his saying ten dinars is meaningless. Since the ten in their statement is meaningless, we know that the price of the commodity was one hundred dirhams, even if they spoke as they did.” (Malik, n.d., vol. 4, pp. 126–127) The Malikis do not consider this scenario to be prohibited. Because, according to them, the combination of sale and exchange is cash for cash, with one of the two currencies is a commodity, or with both currencies, with each one being a commodity. Commenting on the examples I mentioned for the Maliki school, the Mudawwana also states: "Ibn al-Qasim said: Malik said, 'This is neither exchange nor sale, nor gold and commodity for gold... Malik only looks at their actions, not their wording (Malik, n.d., vol. 4, p. 126).'" This is based on the principle that the meanings of contracts are what count, not the words and structures. (Al-Suyuti, n.d., vol. 1, p. 166; Ibn Najim, n.d., vol. 1, p. 447)

However, the Maliki School prohibited the combination of these contracts the subject of this study with sales according to the doctrine of Ibn al-Qasim due to the contradiction between their rulings and the inconsistency of their objectives with the contract of sale. It is impossible to combine two contradictory concepts in a single transaction (Al-Qarafi, n.d., vol. 3, p. 142; Ibn al -‘Arabi, 1992, vol. 2, p. 843; Al-Hattab, n.d., vol. 6, p. 145). Imam Malik also specifically prohibited the combination of sale and exchange with one of the two currencies and a commodity, to the exclusion of others. It was also stated in the blog: “I said, ‘Is it permissible, according to Malik’s statement, to combine exchange and sale in one transaction? (Malik, n.d., vol. 3, p. 410)’ Malik said: ‘No.’” And Ibn al-Arabi - may God have mercy on him - said: “The hadith prohibiting sale and advance payment results in a new principle of the Maliki school, which is that every two contracts are contradictory in form and contradictory in ruling; It is not permissible to combine them. Its basis is a sale and a loan, (Ibn al -‘Arabi, 1992, vol. 2, p. 843; see also Al-Sawi, n.d., vol. 3, p. 725). and all issues of jurisprudence are based on it. The reason for this is that the exchange contract is based on strictness, so the option and delay of one of the two considerations are prohibited, because the ruling on exchange is immediate payment. While it is permissible to stipulate options and defer payment of the price in a sale contract, delay and immediate payment are permissible in a sale. If the sold commodity is due with the exchange, it is not permissible to adhere to the exchange. The option is not permissible in an exchange, but it is permissible in a sale. Confirmation is permissible in a sale, but it is not permissible in an exchange. The contract of ja'ala is a non-binding contract, and this contradicts the rulings of the sale contract, as it is a binding contract. The contract of ja'ala and the contract of musaqat are not affected by uncertainty and ignorance. A sale is affected by excessive uncertainty, so it is invalid. There is no term in ja'ala, unlike a sale. A ja'ala is based on trust, unlike a sale. Musaqat involves the sale of fruit before it ripens and ripens, and this is not permissible in a sale. As for a partnership, it is not for a term, but it is permissible in a sale. A partnership is contrary to the principles, while a sale is according to the principles, so they are both. Opposites and it is not permissible to combine two opposites in one contract. Marriage is based on bargaining and leniency regarding the dowry, and selling is based on haggling over the compensation. It is permissible not to consummate the marriage with the woman until she is a year old due to a reason such as her youth or something similar. It is not permissible to delay taking possession of the specific, present item sold. (Al-Shatibi, n.d., vol. 3, p. 193–197; Al-Qarafi, n.d., vol. 3, p. 142; Al-Dusuqi, n.d., vol. 3, p. 32; Al-Tasuli, n.d., vol. 2, p. 14).

Thus, it becomes clear that the Malikis did not take the text of the hadith prohibiting two sales in a single transaction at face value. Rather, they looked at the objectives and meanings of contracts based on the hadith, "The prohibition of selling and lending (Ibn Abi Shaybah, n.d., vol. 6, p. 119)." They stated that only contracts that clearly contradict the sale contract are prohibited. According to them, it is not permissible to combine a sale or exchange with a contract of commission, musaqat, partnership, marriage, or qirad, nor to combine one of these contracts with another in a single contract.(Al-Dardir, n.d., vol. 2, p. 17; ‘Abd al-Wahhab, n.d., vol. 3, p. 1494; Ibn Juzayy, n.d., p. 223)

B **- Ashhab's statement**: Ashhab, may God have mercy on him (Al-Hattab, n.d., vol. 6, p. 145; Mi‘arah ‘ala al-Tuhfah, n.d., vol. 1, p. 283; Ibn Juzayy, n.d., p. 223), held that it is permissible to combine a sale with these contracts in a single transaction. The reason, according to him, is that there is nothing wrong with combining two contracts, each of which is permissible on its own, except for those that evidence indicates are prohibited, such as combining a sale and a loan in a single transaction. Ashhab permitted this and denied that Malik disliked it. He said: What he disliked was gold for gold with both of them as a commodity, and paper for paper with both of them as a commodity. Ibn al-Qasim agreed with him on this, and it is the apparent statement of Malik in al-Mudawwana: “I said, ‘What do you think if I buy a slave from a man for ten dinars on the condition that I sell him my slave for ten dinars? (Malik, n.d., vol. 4, p. 126; Al-Kharshi, n.d., vol. 5, p. 40; Ibn Ali Ibn Hussein, n.d., vol. 3, p. 179)’ Malik said: ‘That is permissible.’ Ibn al-Arabi (may Allah have mercy on him) defended this in ‘Aridat al-Ahwadhi’ and said: ‘If he says to him, “I will sell you this slave of mine for a thousand on the condition that you sell me your house for a thousand,” then this is permissible and he has nothing to do with it…’ And if he sells his slave on the condition that the buyer sells him another slave for the same price, Abu Hanifa said: ‘It is not permissible’”. Nothing is more permissible than that, as a slave was obtained from one side, and another known slave from the other side, and this is something that has nothing to do with it (Ibn al-‘Arabi, 1992, vol. 5, p. 241). However, Ashhab believes that it is absolutely permissible to combine a sale and all other contracts in a single transaction (Mi‘arah ‘ala al-Tuhfah, n.d., vol. 1, p. 283; Mi‘arah, n.d., vol. 1, p. 283).

The reason for permissibility according to Ashhab: The reason for the permissibility of combining, according to him, is that he considered that the contract included two matters, each of which is permissible on its own, so there is no prohibition (Al-‘Adawi, n.d., vol. 5, p. 40; see also Al-Sawi, n.d., vol. 2, p. 17).

Therefore, there is no objection to combining a sale contract and these contracts in a single transaction, because each contract is permissible on its own.

Second Topic: The Forms of the Seven Contracts (Hanging Gypsum) and Clarification of the Contradiction and Contradiction in the Rulings on Their Combination with a Sale Contract.

It was previously stated that Maliki jurists held that it is impermissible to combine two contracts that are contradictory in form and contradictory in ruling (Al-Qarafi, n.d., vol. 3, p. 142; Ibn Ali Ibn Hussein, n.d., vol. 3, p. 178; Al-Shatibi, n.d., vol. 3, pp. 193–202). This is in view of the results of contracts when combined, as one thing does not combine contradictory and contradictory things. The Malikis based this evidence on analogy, in prohibiting the combination of a sale and a loan, and based all the issues of jurisprudence on it, forbidding the combination of a binding contract with a permissible contract. It includes options and rulings that contradict each other, and this is explained below:

First: Combining a sale and a reward:

There are two forms:

The first form: The subject of the contract is one, such as if someone says, "Whoever returns my camel to me, I will sell it to him for so-and-so."

The second form: The subject of the contract is multiple, such as if someone says, "Whoever returns my camel to me, I will sell him my house for so-and-so."

In terms of the contract's origin: A reward is a permissible, but not binding, contract, and the party performing it has the option to choose, and mutual consent is not required (Al-Dardir, n.d., vol. 4, p. 60). Unlike a sale, which is a binding contract, the mutual consent of the contracting parties is required, as the Prophet (peace and blessings be upon him) (Ibn Majah, n.d., vol. 2, p. 737; Albani, n.d., vol. 5, p. 125) said, "Sale is only by mutual consent." Therefore, combining the two in a single transaction is impermissible.

In terms of the rulings:

• A reward contract is a unilateral commitment, valid with the sole will of the contracting party or the rewarder, as long as they explicitly commit to something for the person performing a task, and the immediate acceptance of the task is not required (Al-‘Adawi, n.d., vol. 2, p. 176). A sale contract, on the other hand, requires evidence of mutual consent from both parties, creating an obligation between them (Ibn Rushd, n.d., vol. 2, p. 168).

Ju'alah is based on ignorance of the work and the duration, and is permissible for an unknown matter, thus involving permissible uncertainty (Ibn Rushd al-Jad, n.d., vol. 2, p. 634). A sale is the opposite, and is therefore invalidated by uncertainty and ignorance. (Ibn Juzayy, n.d., p. 169)

It was objected that the difference is not a contradiction or contradiction, because two opposites and contraries cannot coexist under any circumstances. However, two different and dissimilar things may coexist, and rulings may be based on them without any problem, clash, or confusion. There is no contradiction or contradiction in combining a sale and ju'alah, because what is prohibited is their combination in one place. This is inconceivable, as in someone saying, "I sold you my lost camel for so much, and I will reward you for its return, and you will have so much." In this scenario, he combines the nonexistent in the sale and the ignorance in the ju'alah in a single transaction.

Second: **Combining a sale and an exchange:**

This occurs in two forms:

The first form: Such as buying a commodity for two dinars, on the condition that he pays one dinar for it and takes the exchange for the other dinar in dirhams (Al-Dardir, n.d., vol. 2, p. 17).

The second scenario: For example, if he sells the commodity to him for ten dinars on credit, on the condition that he receives one hundred dirhams in exchange. (Malik, n.d., vol. 9, p. 127)

In terms of the contract's origin: The exchange contract is essentially a sale, which is the sale of cash for cash. It is a binding contract like the sale contract. Combining it with a sale falls within the prohibition of two sales in one.

In terms of the rulings:

• The exchange contract is based on strict conditions, preventing the option or delaying one of the two exchanges. Rather, it requires that the exchange be completed before the contracting parties part ways. This is because failure to complete the exchange in the same session results in cash for cash with an extended period (Ibn Rushd, n.d., vol. 3, p. 212), which constitutes usury. In contrast, a sale with delayed payment of the price is valid, and the option is permissible (Ibn Juzayy, n.d., p. 247).

• Combining a sale with an exchange contract leads to anticipation of a solution due to a defect in the commodity, or to a delayed exchange due to the possibility of a receivable, so it is not known what will happen next. (Al-Dusuqi, n.d., vol. 3, p. 32; Abd al-Sami‘ al-Aby, n.d., vol. 2, p. 13)

Objection:

According to the Maliki school, it is permissible for someone to say, "I sold you this dinar and this garment for twenty dirhams," which is a sale and exchange. Or to buy from him the commodity with the dirham he mentioned he was selling for the dinar. This is also a sale and exchange. They do not pay attention to the invalid wording if it is known to be permissible. It is as if he sold the commodity for the dirham and the dinar is invalid. What is forbidden, according to them, is that it be gold for gold and one of the two pieces of gold be a commodity, or both be a commodity. Accordingly, they do not mind combining exchange and sale in a single transaction in this manner (Malik, n.d., vol. 4, p. 126–127; Al-Kharshi, n.d., vol. 5, p. 40; Al-Qarafi, n.d., vol. 3, p. 142; Ibn al-‘Arabi, 1992, vol. 2, p. 843; Al-Hattab, n.d., vol. 6, p. 145; Ibn Qudamah, n.d., vol. 6, p. 335; Ibn al-Qayyim, n.d., vol. 3, p. 354). I say: The contradiction here is clear, as they combined opposites.

Third: Combining a sale and a musaqah (sharing) contract:

There are two forms:

The first form: The subject of the contract is one: such as if the owner of the wall says to the worker: "I have given you this wall of mine for a period of time and I will have its fruit, on the condition that I sell it to you for such-and-such."

The second form: The subject of the contract is multiple: such as if the owner of the wall says to the worker: "I have given you my wall of mine and sold you such-and-such a commodity for one dinar and one-third of the fruit." (Al-Dardir, n.d., vol. 3, p. 548)

From the point of view of the contract's origin: The musaqah contract is a binding contract that may not be rescinded except by mutual consent of both parties. Neither party has the right to rescind it except for a justifiable reason. (Abu ‘Abd Allah al-Muwāq, n.d., vol. 7, p. 486) The same applies to the sale contract, so there is no contradiction between them from the point of view of the contract's origin.

From the point of view of the rulings:

• The musaqah contract is based on expansion and is an exception to a prohibited principle, namely, unknown lease, thus becoming a license. (Al-Qarafi, n.d., vol. 3, p. 142)

• It is based on uncertainty, as it is a lease for fruit that has not yet been created or is unknown, unlike a sale, which is based on removing uncertainty regarding the price, the item being valued, the term, and other matters. (Ibn Juzayy, n.d., p. 169)

Objection:

What is prohibited is combining two contracts with different terms and conditions in one place. Combining them results in contradictory effects. This does not occur in the combination of sale and musaqat. It is inconceivable that they could be combined in one place, as if one person were to say to another, "I sold you my entire orchard and I will water its trees for you for a year" (Ibn Taymiyya, n.d., vol. 2, p. 380; Al-Jurjani, n.d., p. 72).

Contradiction only occurs in two successive contracts that alternate in one place, as the theologians of the scholars of proof have said: "Opposites are any two meanings that cannot be combined in one place due to their own essence from one aspect. Unless the two meanings exist in one place, there is no contradiction."

There is no harm in a seller saying, "I sold you this land of mine on the condition that you share it with me in sharecropping or musaqat." The place is multiple, and contradiction in the rulings is eliminated.

Fourth: Combining Sale and Partnership:

There are two forms of partnership:

The first form: A man sells sheep or camels to another on deferred payment for a price higher than the present value for a specified period. The buyer stipulates that he will share in the proceeds after paying the price of the shees. The buyer pays for the sheep from the sheep's production. If he is unable to pay the price within this period, the sheep owner takes possession of his sheep, and the buyer bears the cost of fodder and grazing. If he pays the price, the remaining production is distributed among them (Permanent Committee for Research and Ifta, n.d., vol. 13, p. 93).

The second form: A partnership is formed between two parties regarding a specific asset—such as real estate, a factory, an aircraft, or a ship—in which the two parties agree that ownership of the asset will revert to one of them at the end of a specified period. One of them sells his share to the other within a specified period, so the entire asset becomes the buyer's after the end of the period. This is known as diminishing partnershis (Al-Shadhli, n.d., vol. 13, p. 875; N. K. Hammad, n.d., vol. 13, p. 928; Abd al-Salam al-‘Abbadi, n.d., vol. 13, p. 941).

Contractually speaking:

A partnership contract is generally permissible, as it is a non-binding contract, unlike a sale contract, which is a binding contract. The two are opposites (Al-Shirazi, n.d., vol. 2, p. 161; Ibn Qudamah, n.d., vol. 5, p. 18).

In terms of the rulings:

• A partnership contract is based on mutual benefit and cooperation to provide a livelihood for both parties, with respect to each partner (Al-‘Adawi, n.d., vol. 2, p. 203). This is contrary to the original principle, while a sale, in accordance with the original principles, is contradictory. (Muhammad ibn Ali Hasanin, n.d., vol. 6, p. 145; Al-Dardir, n.d., vol. 2, p. 17)

An objection has been made: If the subject of the contract is multiple, there is no contradiction or conflict. It is unreasonable for a sale and a partnership to be combined in a single subject, such as one saying to the other: "I will sell you this flock of sheep on the condition that I share in its profits and its production.".

Fifth: Combining Sale and Marriage:

This is done by saying, "I sold you my house for one hundred, on the condition that I marry you to my daughter," or "that you marry me to your daughter."(Ibn Qudamah, n.d., vol. 8, p. 15; Ibn Qudamah, n.d., vol. 6, p. 335; Ibn Taymiyya, n.d., pp. 122–155)

Concerning the Contract: The marriage contract is generally a binding contract (Al-Zarkashi, 1985, vol. 2, p. 47; Ibn Qudamah, n.d., vol. 3, p. 44). It is distinguished from other contracts in that it cannot be annulled by mutual consent, as its purpose is perpetuity and permanence (Al-Hattab, n.d., vol. 3, p. 419). It may only be annulled in cases of dire necessity. A sale contract is a binding contract that may be annulled by mutual consent.

Concerning the Rulings:

• Marriage is based on generosity, tolerance, and the absence of quarrel (Al-Rasa‘, n.d., vol. 1, p. 171). Therefore, marriage by delegation is permitted. God called the dowry a gift, which is a gift, not in exchange for compensation (Abu Zayd al-Qayrawani, n.d., vol. 2, s. 24). This is unlike a sale, which is based on exchanges and equality between the price and the item being sold. (Al-Nawawi, n.d., vol. 3, p. 525; Ibn Qudamah, n.d., vol. 4, p. 113)

• Marriage requires verbal statements and witnesses to indicate that it is a marriage, not adultery or fornication(Ibn Rushd, n.d., vol. 3, p. 17). This is unlike a sale, which does not require witnesses or specific statements. Therefore, they permitted the transfer of the dowry. (Al-Hattab, n.d., vol. 4, p. 228)

• Unlike a sale, a marriage contract does not include the option of revocation.

• Marriage is a great and significant matter, as it is the reason for the survival of the honored human species, which is preferred over all other creatures. God Almighty says: {And We have certainly honored the children of Adam} [Al-Isra': 70]. It is a reason for chastity, which eliminates corruption and the mixing of lineages. It is a reason for affection, continuity, tranquility, and other benefits, while a sale is not like this. (Al-Qarafi, n.d., vol. 5, p. 148)

• The basic principle regarding goods is permissibility until they are owned, and the basic principle regarding women is prohibition until they are married to them through ownership or marriage. The rule is that Sharia is more cautious in moving from prohibition to permissibility than moving from permissibility to prohibition. This is because prohibition depends on harmful consequences, so caution is required. It should not be introduced into a place where there is harm except by a strong reason that indicates the removal of that harm or opposes it. Permissibility is prohibited in a place where there is harm by the easiest means possible to ward off harm. Do you not see that a woman is prohibited merely by the father's marriage contract? Because it is a departure from permissibility to prohibition, and a woman who has been divorced is not permissible except through a contract, lawful intercourse, divorce, and the completion of the waiting period of the first contract, because it is a departure from the prohibition (Al-Qarafi, n.d., vol. 3, pp. 247–248; Muhammad ibn Ali Ibn Hussein, n.d., vol. 3, p. 177).

An objection has been raised: Combining contracts with different rulings and conditions in a single contract absolutely does not lead to contradictory rulings or conflicting obligations and effects. There is no harm in combining sale and marriage in a single transaction. While there is a contradiction between some of their rulings, it is inconceivable that they could be contradictory or inconsistent, because their contexts differ. The price is divided between the value of the property and the dowry of a similar property, because they are two objects for which compensation may be taken separately. Therefore, it is permissible to take compensation for both of them together. Similarly, it is permissible to combine a sale and a gift in two different contexts, even though there is a difference and inconsistency in some rulings. For example, a gift is based on kindness and kindness, while a sale is based on bargaining and fraud. There is no harm in combining them. Similarly, combining a lease and a sale, as their rulings differ, yet it is not permissible to combine them. Just as it is permissible for the recipient to accept one without the other, it is permissible for the recipient to accept one without the other (Ibn Taymiyya, n.d., p. 191; Ibn Qudamah, n.d., vol. 6, p. 335; Ibn al-Qayyim, n.d., vol. 3, p. 354).

Sixth: The Ruling on Combining Sale and Qirad:

This may be described as: "I have sold you this house for such-and-such, on the condition that its price be a qirad between you and me."

From the standpoint of the contract's origin: A qirad contract is permissible, and permissibility is the opposite of binding. A sale contract is binding, so they are contradictory. It is not valid to combine them in one contract, because doing so would deviate from its intended meaning and render it invalid. If one of them is invalid, the other is invalid, since both are included in a single contract (Malik, n.d., vol. 2, p. 691; Al-Baji, n.d., vol. 5, p. 160).

From the standpoint of the rulings:

• Qirad is based on uncertainty and uncertainty. Profit may or may not be realized, whereas sale is based on the negation of uncertainty and uncertainty (Al-Sarkhasi, n.d., vol. 22, p. 27; Ibn Taymiyya, n.d., p. 247). These two factors invalidate it, so combining them is not valid.

• The Hanafi, Maliki, Shafi'i, and Hanbali schools of thought hold that qirad is not valid in goods. (Malik, n.d., vol. 5, p. 112) By combining sale and qirad, the seller delivers goods to the buyer, who then sells them and engages in speculation on their price.

• Qirad is based on goodwill and cooperation to provide a livelihood for both parties, while sale is the opposite.

• Qirad is contrary to the fundamental principles, while selling according to the fundamental principles is therefore contradictory (Abd al-Sami‘ al-Aby, n.d., vol. 2, pp. 13–14).

It has been objected to:

The contradiction in some respects does not necessarily entail contradiction in all rulings, nor does it entail a contradiction in the obligations and effects. Therefore, there is no harm in combining qirad and sale in a single transaction, given the multiplicity of the subject matter. There is no harm in one of them saying to the other, "I sold you this house, and its price is a qirad between you and me," because the buyer will pay the full price to the seller, and the seller will return the money to him as qirad. Therefore, there is no harm.

Conclusion

After this study, I have compiled some of the findings I have reached through this topic, which I **summarize as follows**:

- The Maliki school of thought has distinguished itself in its rulings on some financial transactions. This is due to its uniqueness in establishing certain rules and principles upon which they based their doctrine.

- The Maliki school of thought, in its popular view, prohibited the combination of certain contracts in a single transaction, combining them in their statement, "hanging plaster." Ashhab (may God have mercy on him) disagreed, permitting the combination of these contracts with a sale in a single transaction, and stating that there is no harm in combining them. Similarly, combining a lease with a sale is permissible, as their rulings differ. However, it is permissible to combine them, just as it is permissible for the acceptor to accept one without the other. The Maliki school of thought held that it is impermissible to combine two contracts that are diametrically opposed and contradictory in terms. This is based on the outcomes of their combination, since two contradictory and opposite things cannot be combined in one thing. The Maliki school based this evidence on analogy, prohibiting the combination of a sale and a loan, basing all matters of Islamic jurisprudence on it. They prohibited the combination of a binding contract with a permissible contract that includes an option and rulings that contradict each other.

As for the ruling on combining contracts other than the seven contracts with a sale contract, the Maliki school stipulated the permissibility of combining a sale and a gift in a single transaction, as well as leasing with a sale. The reason for this is that these contracts do not contradict or conflict with each other. This indicates that they consider this principle and base all their principles in the field of transactions on it.

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