



## MODULE 8: FINANCIAL TRANSACTIONS



# WHAT WE'VE LEARNED

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- The default about sales
- The conditions of a valid sale
- General permissible transactions
- General prohibited transactions
- Riba—its history and types

# LINGERING QUESTIONS

Programs offered by credit cards

Loyalty programs whereby people earn points for each order they make (or bonus miles for airlines, etc.) are permissible. As long as someone is paying their fees on time to avoid interest there is no problem availing oneself of these reward programs.

However, if the banks are given them as a form of interest on one's deposit, or can only be redeemed by purchasing bank products that are haram, then it would not be permitted.





# GHARAR

- Linguistically: Literally it is ‘danger.’ It is also defined as ‘Something with a likeable appearance but disliked reality.’ (The Quran calls the lower-world ‘*a deceptive enjoyment*’.
- Legally: A gharar sale is ‘exposing oneself or property unwittingly the possibility of perishing.’

## BASIS

The origin of the prohibition of gharar can be traced back to the Quran, even as the term is not directly mentioned anywhere. The Quran explicitly forbid is maysir (2:219, 5:90–91), literally a game of arrows.

Maysir came to be seen as an all-encompassing term for all types of gambling.

The most explicit prohibition of gharar comes in the hadith. Some are general, some mention it in forbidden sales or contracts.

The Messenger of Allah (Allah bless him and give him peace) prohibited gharar sales and pebble sales.”

# GHARAR

Gharar is any sale that incorporates a risk that affects one or more of the parties to the contract and may result in the loss of property.

- ‘What is not known to exist in the future...’—Qarafi
- ‘That whose nature and consequences are hidden.’—Shirazi
- ‘That which is undeliverable, whether it exists or not.’—Ibn al-Qayyim

Gharar is broad ignorance of the nature, type or description of an object of sale. It often involves deception. It is tied with uncertainty, jeopardy, risk.

# GHARAR

Imam al-Nawawi: ‘The prohibition of gharar sales is a fundamental part of Islamic law, under the topic of which many issues may be included. Two items are excluded from the topic of gharar sales:

- 1] Items that are included as part of a sale, and that may not be sold separately (e.g. the foundation of a house, or milk in the udder belonging to an animal).
- 2] Items that are customarily tolerated, either due to its insignificance, or the difficulty of identifying (e.g. the fees for using a bathroom where the amount of water used in the bath may vary, drinking from private waters, and the amount of cotton used in the lining of a garment)’

# TYPES OF GHARAR SALES

- Pearls in shells ('I'll sell you however many pearls I get in my next dive for such and such.')
- Unborn animals in the womb
- Fish in the water prior to catching them
- Birds in the air prior to hunting them
- Selling someone else's property on the understanding that he will buy it and then deliver it (i.e., selling what the seller will own prior to his owning it, since the seller would have sold what he does not own at the time.)
- 'Touch sales' ('Whichever dress you touch, it is yours.')
- Discarded items sales ('I sell you this item if or when I discard it, for such and such.
- 'Pebble sale' ('I sell you this land to the farthest point to which you throw a pebble.' Or 'Throw this pebble, then whichever dress it falls upon is yours.

Some of these are defective sales from the start.



# GHARAR AND IGNORANCE

Gharar and ignorance may be grouped into three types:

- 1] Substantial and haram by agreement—e.g., selling birds in the sky.
- 2] Minor and allowed—e.g., the foundation of a house, potatoes in a specific plot of land.
- 3] Intermediate with different opinions about it being halal or haram.

Minor gharar in food items is permissible if the buyer has the option of inspection.

## **MODERN GHARAR–INSURANCE**

Insurance is unlawful (haram) according to Shariah. They have either an element of interest (riba) or chance (qimar), both of which have been explicitly forbidden by Allah in the Qur'an.

# COMMON FORMS OF INSURANCE

Insurance is paying for an unknown. Premiums are paid while the return is uncertain. One may lose the premiums paid or receive in return more than what was paid.

The Islamic Fiqh Academy (Jeddah), and which consists of top recognized scholars from around the globe researched the issue in considerable depth. The meeting was attended by 150 such scholars from 45 Islamic Countries, and they unanimously declared all types of prevalent insurances to be unlawful.

## CAVEATS

In general, insurance is impermissible, unless there is a legal requirement for a necessity or other mitigating circumstances, such as health insurance in countries where not having it can lead to financial ruin should someone have a serious medical condition. [Zuhayli, *al-Fiqh al-Islami*]

# CAVEATS

- When the scholars allow such car insurance or health insurance, they are applying the legal maxim: ‘The forbidden becomes permissible due to duress (darura).’ But there is no threat to life or limb in not having a car...
- They take the maxim and extend it with another maxim: ‘Difficulty (haja) shall be treated as duress (darura).’
- If one didn’t have insurance, one could not drive a car. This does not pose as **an immediate and unavoidable threat** to one’s life or property. Rather it poses a significant difficulty (haja) which in certain scenarios can be great enough to be treated as duress (darura).

## MINIMUM?

- The default is yes, you do.
- But if one is required to pay a higher insurance premium to avoid the risk of wasting money and time on costly repairs on a cheaper vehicle, it would be permissible to the need.
- The question here is whether or not we treat this as duress (darura), or mere convenience.



# PROPERTY INSURANCE

Some scholars class property insurance as being permissible as an indemnity against personal injury claims that can occur if someone was injured on one's property.

# TRAVEL INSURANCE

Travel insurance has the default ruling of impermissibility unless one is traveling to a destination where there is an overwhelming possibility of ending up in a situation that would leave one in extreme hardship. An example of this could be someone traveling to a war-torn country for aid, where an injury is likely and medical costs are high.

## **EMPLOYEE INSURANCE**

If an employer arranges a contract for the employee then there is no sin or blame on the employee. He may benefit from the policy should the need arise.

# COVER PLAN CONTRACTS

What about 'cover plan' contracts—AAA road recovery services, etc?

For AAA there is a fixed premium paid per year. When one becomes a member, one pays for the service which the company offers him, **which is to be at his assistance at any time**. The money which is being paid is for the service. This is the reason why the company does not pay for any damages to the car. If you are short of fuel they will bring the fuel for you, but you will have to pay for it. If one does not use their service during the course of the year, then the payment still remains, as one is paying for the service of them being there for you at any time.

## SOCIAL INSURANCE

Social insurances paid by governments or retirement and insurance funds to public servants are all valid [Sh. Wahba al-Zuhayli]. These monies are similar to the *bayt al-mal*, from taxes collected by the government from wages.