

SALE

Post-Sale Repair And Replacement

What are the basic guidelines for the seller who agrees to repair or replace an item after the sale takes place?

If before the sale the seller agrees to repair or replace an item after the sale takes place, he is obligated to do so; if after the sale it turns out that due to expense or inconvenience the seller is unable to repair or replace the item, he is minimally obligated to choose whether to repair the item until it functions satisfactorily, replace the item with an equivalent new or used item, or mutually agree with the buyer a monetary compensation that enables the buyer to repair or replace the item.

Rules Of Pricing

What are the guidelines regarding product pricing?

It is permissible to sell items at any price the seller chooses, whether at a discount or for a profit, as long as the discount or profit does not create (or is created by) artificial pricing, such as that created by hoarding, collusion, monopoly, and the like.

Discount On Accepted Defective Items

If the buyer decides to keep a low quality, or a defective, item as it is, would he be entitled to a compensatory discount?

If the buyer decides to keep the item as it is, the buyer is not thereby entitled to a compensatory discount, though it is still permissible for the seller to offer a discount.

If Returning An Item Is Not Possible

What options are available to the buyer if returning the defective item is practically impossible?

If returning the defective item becomes impracticable or impossible, then the buyer is entitled, at the seller's discretion, to either:

1. a replacement; or
2. a monetary compensation.

Damages Covered By Seller

What damages does the seller compensate for?

The seller only compensates for the defect and its related damages, including those damages necessary for the discovery of the defect. If the buyer damages the item and *then* discovers a separate defect, the buyer is no longer entitled to return the item (because of the new damage) but is entitled to compensation for the previous defect.

Conditions Of Sale

What are the conditions for the sale of goods and services?

Conditions for the sale of goods and services include: 1) a valid buyer and seller; 2) an offer and acceptance; 3) unconditionality; 4) immediacy; 5) the disclosure of all details pertaining to the sale's execution; and 6) an option to cancel.

Unknown Or Contingent Price In Contract Of Sale

Is it permissible to keep the price unknown or contingent upon a separate event?

It is forbidden to sell goods and services in which the price is unknown or is contingent or conditioned upon the occurrence of a separate event; though while conditioning one contract on another is forbidden (e.g. the monthly payment on a bank's car lease depends on the amount of money deposited into the bank), joining two or more contracts into one contract is permissible (e.g. a contract to lease a car and a contract to deposit money with a bank as part of one contract).

Indefinitely Deferred Or Contingent Payment In Contract Of Sale

Is it permissible to indefinitely defer payment or make it contingent on a future event?

It is impermissible to sell goods whose payment is deferred to an unknown date and contingent on the occurrence of a future event (e.g. paying for an unborn calf on the date of its birth); deferred payment is permissible as long as the date is specified in the agreement.

Multiple Agreements As Part Of One Agreement

Is it permissible to agree upon multiple agreements as part of one agreement?

It is impermissible to sell goods and services in which the seller (or buyer) offers the buyer (or seller) a choice of two or more possible agreements as part of the same agreement. For example, the seller contracts that a certain good is purchasable for \$10 today, \$5 tomorrow and \$3 the day after. This is different from a valid negotiation which occurs before the finalization of a contract.

Trading In Impermissible Goods And Services

May I trade in impermissible goods and services?

It is impermissible to trade in goods and services that are impermissible in themselves (e.g. buying futures contracts or selling life insurance) or a means to the impermissible where causality is suspected or known (e.g. selling sound equipment to a nightclub).

Trading In Non-Existent Item

May I trade in an item that is not in existence on the date of transaction?

It is impermissible to trade in the non-existent (e.g. unharvested crops or an unborn calf); though, it is worth making a distinction between something not yet *naturally* existent from something not yet manufactured (e.g. undeveloped property), where a purchase is legitimate because one does not speculate on the outcome of an event but rather invests in the production of a good; the exception occurs when the non-existent is purchased *as a consequence* of purchasing something that may instrumentally cause the existence of something non-existent (e.g. purchasing a cow that expects to give birth to a calf), which is permissible, as long as they are not sold separately.

Trading In Goods Naturally Connected To The Site Of Their Origin

May I trade in goods that are naturally connected to the site of their origin?

Goods that are still naturally connected to the site of their origin are impermissible to sell until they are first separated, including, for example, fruit on the tree (unless the tree is first sold or the fruit first picked), wool on the sheep (unless the sheep is first sold or the wool first sheared), steel beams in a building (unless the building is first sold or the beam dismantled), milk in the udder (unless the animal is first sold or the udder first milked).

Selling Goods Without Ownership

May I sell goods that are not in my ownership?

It is impermissible to sell goods that are not owned by the seller, or when the seller is not the owner, the seller lacks authorization; permissible ownership includes constructive ownership, where the seller might not physically possess the good, but is liable for the risk associated with it (e.g. permissible stocks traded on the Internet).

Selling Defective Goods

May I sell defective goods by intentionally withholding information about their defect?

It is impermissible to sell goods that are defective, where the seller intentionally withholds information about a defect; though if the defect was not known by either buyer or seller at the time of the sale, the sale may still be cancelled within the specified period of cancellation; qualitative or quantitative misrepresentation of any aspect of a good or service is impermissible and constitutes fraud, grounds for the aggrieved party to rescind the agreement at any time. The buyer, nevertheless, still has the choice of whether or not to accept the defective good.

Selling Goods That Support The Enemies Of Islam

May I sell goods and services that support the enemies of Islam?

It is impermissible to sell goods and services that support (e.g. with weaponry) the enemies of Islam.

Selling Inherently Filthy Goods

May I sell goods that are inherently filthy?

It is impermissible to sell goods that are inherently filthy (e.g. the milk of animals forbidden to eat) or affected with irremovable filth (e.g. wine in food).

Underbidding

Is underbidding permissible? May I buy goods and services sold by underbidders?

Goods and services that are sold by underbidders who lower prices in order to attract buyers away from (even verbally) agreed upon sales are forbidden, as is underbidding, unlike competitive bidding where prices have not yet been agreed upon; similarly, it is forbidden for a buyer to leave an (even verbally) agreed upon sale for a transaction with more favorable terms, even during the period of cancellation; it is also forbidden to artificially bid up a price on behalf of a seller.

Partly Impermissible Transaction

What is the liability of the buyer in the case of a partly impermissible transaction?

When a transaction is partially permissible and partially impermissible the buyer has the right to choose whether he wants to refund the whole amount or refund just the impermissible portion.

Trading Without Consent Or Knowledge Of Parties

Is it permissible to trade without consent or knowledge of both parties?

It is forbidden to purchase an item without the seller's knowledge or consent, or to force a seller to sell an item, even if the buyer leaves money.

Forced Renegotiation Of Finalized Contract

Is it permissible to force renegotiation of an already finalized contract?

It is forbidden to force a seller to renegotiate an already finalized contract, even if market conditions change, or if immediately after closing the first sale the seller agrees more favorable terms with another buyer.

Essentials Of Valid Transaction

What are the essentials of a valid transaction?

The essentials of a valid transaction in Islam are:

1. Item
2. Price
3. Valid buyer and seller
4. Offer and acceptance
5. Unconditional agreement
6. Immediate execution
7. Ownership

Existence Of Item Being Transacted

Is it a condition for a valid transaction that the item being transacted exist at the date of transaction?

The good or service in question must exist at the time of agreement, and its qualitative and quantitative attributes openly known. For those cases where the nature of the transaction itself makes this impossible, both parties should agree the amounts of all future exchanges of goods, services, and money; such as *istisna*, where the good remains to be manufactured; or *mudarabah*, where the service remains to be rendered; or *ijarah*; where the usufruct remains to be transferred.

Arbitrary Sale Of General Nature

Is an arbitrary sale of a general nature valid?

An arbitrary sale of a general nature is invalid, such as selling fish in the water (assuming the seller owns the body of water as in a fish farm), whose quantitative and qualitative value is unknown at the time of the contract.

Trading Visible But Unquantifiable Item

Is it valid to transact a visible but unquantifiable item?

It is permissible to sell an item that is visible even if it is unquantified, such as a heap of grain whose weight is unknown or a basket of fruit whose number is unknown, when both buyer and seller agree to the transaction.

Buying Item Without First Seeing It

Is it permissible to buy an item without having seen it?

It is permissible to buy something without having seen it (e.g. mail-ordered purchases).

Transacting Item Of No Value

Is it permissible to transact an item that has no intrinsic value?

It is not permissible. The item should be worth something based on intrinsic value, such as an asset or service.

Transacting Unusable Item

Is it permissible to transact an item that is effectively useless?

The item should not be of such a negligible amount that it is effectively useless (e.g. a drop of petrol) and the contract's execution must not deem the item unusable. It is invalid, for example, to sell one-half a car or one-fourth a horse because the usefulness of the car or horse is based on the physical integrity of the entire object.

Transacting Items Impermissible In Shariah

Is it permissible to transact an item that is impermissible according to the Shariah?

The item's intended purpose must be permissible by the standards of the Shariah because trade in forbidden goods and services is itself forbidden, even if sold in relatively small quantities alongside something permissible.

Selling An Item One Does Not Own

May I sell an item that is not in my ownership?

The seller must own the item in question, because a sale is effectively the transfer of ownership, where ownership is measured by risk liability, not necessarily by physical possession. One party may possess an item physically, such as a leased car, and not own the risk, while another may own an item's risk, such as a stock transacted over the Internet, and not possess it physically. The seller must possess the entire portion of the risk liability of an item before its sale. If the item is being used as collateral for a separate contract, the seller must obtain prior approval for the sale from the party for whom the collateral is put up.

Ambiguous Or Unknown Price

Is a transaction that keeps the price ambiguous or unknown valid?

The price and the currency must be known to both buyer and seller, without any conditions linking future events with price; the following statements are invalid:

- "Buy this now and pay me later when you know the price"
- "The item is yours. Just pay me whatever he paid"
- "Pay that man whatever he charges and take delivery now."

Integrals Of Contract

What are the integrals of a contract?

A contract includes at least two legitimate parties; a buyer offering and a seller accepting, or a seller offering and a buyer accepting; an agreement that neither conditions nor is conditioned by another agreement; and an immediate execution.

Validity Of Buyer And Seller

What are the conditions of validity for a buyer and seller?

The buyer and seller must both be:

- Sane;
- Adult, meaning both buyer and seller should have reached puberty (with some exceptions made based on customary practice, such as a responsible child selling fruit);
- Free from duress; meaning they should not be forced by an outside party to conduct transactions against their will;
- Acting in accordance with the Shariah; meaning that the permissibility of the transaction itself must not be obviated by the intention of the buyer or the seller. For instance, a Muslim weapons manufacturer must not sell weapons to a buyer at war with Muslims; a Muslim publisher must not offer printing services to an author spreading lies against Muslims; a Muslim computer programmer must not offer services to an aeronautics firm supplying weaponry to bomb Muslims; and so on;
- The seller must constructively own the item to be sold, or be legally authorized to represent the actual owner.

Types Of Offer

What are the different types of offer in Shariah?

Whether an offer from the buyer to the seller or from the seller to the buyer, an offer is of three types:

1. Written offer: Contracts involving any level of detail and complexity require a written offer;
2. Spoken offer: Suffices for transactions involving a straightforward purchase, such as buying food from a vendor at a market;
3. Unspoken offer: The three most common types of unspoken offer are the *indicated offer*, by hand signal (or other form of signaling) between two parties familiar with the transaction, such as in a stock exchange; the *implied offer*, a transaction whose details are understood beforehand by both parties, such as at a supermarket; and the *credited offer*, in which

payment occurs at the end of a designated period, such as a utility charge at the end of the month to a homeowner.

Disclosure On Part Of Seller

What are the obligations of the seller as regards disclosure of the item being sold?

The seller is obligated to disclose, as accurately as possible, the item's relevant qualities, defects and irregularities; any willful misrepresentation, whether directly, by stating so explicitly, or indirectly, by allusion, regarding the price of the item or the item itself, constitutes fraud.

Payment Of Transaction

What are the rules regarding payment – whether in cash or in kind – in case of spot and deferred transactions?

The amount and timing of payment must be agreed upon before delivery, whether the transaction is on spot or deferred:

- **Cash for Goods:** If the sale is a spot transaction and involves the payment of cash (or a like monetary instrument) for the delivery of goods, the seller is entitled to receive payment before delivery, though he may choose to waive this right;
- **Goods for Goods:** If the sale is a spot transaction in which only goods are exchanged, the two parties must make the exchange at the same time;
- **Deferred Payment:** Payment is deferrable when the seller agrees, as long as the payment date is known beforehand.

Damage In Item During Execution Of Sale

What is the liability of both parties in case the item being transacted is damaged during the execution of the sale?

If during a sale's execution, the item is damaged, destroyed, wrongfully consumed, or in any way reduced in value from the time the sale was agreed upon, then responsibility (and the payment of the item's price) is as follows:

- before the buyer takes possession it is the seller's responsibility, unless the buyer causes the damage, in which case the buyer is responsible;

- before the buyer takes possession, if a third party (known or unknown) causes the damage, the buyer chooses whether to cancel the deal, thereby holding the third party responsible to the seller, or maintain the deal, thereby holding the third party responsible to himself;
- before the buyer takes delivery, if the cause of damage is not attributable to any party, whether buyer, seller or third party, the seller is responsible (e.g. water damage from rain);
- once the buyer takes possession, it is the buyer's responsibility.

Dispute Resolution

How should one proceed to resolve disputes regarding the terms and conditions of an agreement?

In order of precedence, disputes regarding the terms of an agreement should be resolved according to the following:

- evidence and witnessing;
- swearing of oaths by either buyer or seller, where the word of the one swearing the oath takes precedence over the word of the one not swearing an oath;
- swearing of oaths by both buyer and seller, creating a deadlock; all else equal, it is recommended for a statement of denial to take precedence over a statement of affirmation (e.g. "this sale is not invalid" takes precedence over "this sale is invalid", because the former statement supports the status quo (i.e. a valid sale) and denies a need for change);
- failing an agreement on terms, the buyer and seller have the right to agree new terms;
- failing an agreement on terms and any subsequent resolution, the buyer and seller have the right to cancel the sale between themselves amicably;
- if no amicable solution is possible, the relevant authority (e.g. judge) cancels the agreement and returns any exchanged property to its original owner.

Ownership Transfer In Contract Of Sale

When does ownership transfer to the buyer in a contract of sale?

Once a valid sale occurs, the buyer owns the item. The validity of the sale is a condition for ownership to transfer to the buyer; an aspect of the sale that invalidates the transaction also nullifies the transfer of ownership. This transfer occurs precisely when the new owner assumes the risk associated with the item's ownership.

Ownership And Possession

What is the difference between ownership and possession?

The difference may be explained as such: something that is possessed might not be owned (e.g. rental property), while something that is owned might not be physically possessed (e.g. one's stolen vehicle). Further, ownership can be both physical and what is often termed "constructive" ownership. Constructive ownership means that the *consequences* of physical ownership *risks* return to the owner and that the owner be able to sell the item (ie. one would not be permitted to sell a shipped good while it is at sea). A common example of constructive ownership without physical possession is a stock purchased over the Internet.

Returning Transacted Item

Is it valid to return a transacted item due to defective quality or misrepresentation by the seller?

It is permissible for the buyer to return an item of low or defective quality, or one misrepresented by the seller, and obligatory for the seller to accept the return. The purchased item should be returned in its entirety, even if the satisfactory portion is easily separable from the unsatisfactory portion (e.g. rotten fruit and good fruit), though the seller is entitled to let the buyer purchase only the satisfactory portion. Once the buyer agrees to retain the item, the seller is no longer compelled to accept its return. The seller who fulfills the sell-side conditions of a valid transaction without misrepresentation is not obligated to accept a return when the buyer who fulfills the buy-side conditions of a valid transaction misinterprets an aspect of the transaction.

Compensation In Case Of Return Of Sold Item

What compensation is the buyer entitled to in case a sold item is returned?

The buyer is entitled to either a replacement or the original payment at the seller's discretion.

Return Of Sold Item In Case Of No Pre-Sale Inspection

Is the buyer entitled to return an item if he neglected to inspect the item before the sale?

If before the execution of the sale the seller instructs the buyer to first check the item (when practicable; for example, it would be difficult for a single buyer to individually check the quality of 10 kilos of apples) and the buyer fails to do so, the seller is no longer obligated to accept a return, though it is permissible for him to do so.

Return In Case Of Misunderstanding About Price

Is the buyer entitled to return an item if the seller claims the sale is at cost but subsequently makes a profit?

If the buyer is told by the seller that an item is being sold at “cost” (where cost may include any value additions to the item made by the seller), and the buyer learns after the sale that the seller had actually made a profit, the buyer is entitled to return the item, but not entitled to compel the seller to sell the item at a lower price, though the seller may opt to do so.

Compensation In Case Return Of Sold Item Is Impossible

What compensation is the buyer entitled to if returning the item is not possible?

If returning the defective item becomes impracticable (e.g. partially eaten food in a restaurant) or impossible (e.g. appliance destroyed in fire by faulty electrics), then the buyer is entitled, at the seller’s discretion, to either:

1. a replacement; or
2. a monetary compensation, measured as the percentage of the total price of the item equivalent to the percentage that the defective portion would reduce the value of a similar item in the market, where the market item used for comparison would be the one with the lowest value (as measured during the time between the sale’s execution and the buyer’s possession). The seller only compensates for the defect and its related damages, including those damages (and only those damages) necessary for the discovery of the defect (e.g. the defective power supply of a computer damages the central processing unit, but not the monitor; but the buyer accidentally breaks the monitor screen; the seller is only obligated to replace the power supply and the central processing unit, not the monitor).

Expiry Of Cancellation

Under what circumstances does it become impermissible to cancel a contract?

The possibility of cancellation expires under three circumstances:

1. A buyer is no longer entitled to return an item of low or defective quality if, upon discovery of the fault, he delays the item’s return without a valid excuse, unless the seller agrees to accept the item back;
2. Once a buyer’s ownership in an item ends, whether by sale, transfer or disposition, the buyer may not demand compensation for a defect; though if the original buyer sells the item and after a time is returned the item due to a defect from the original sale, he may demand compensation;

3. If the buying and selling parties agree a period of time during which the buyer is entitled to cancel a contract for reasons agreed upon explicitly (e.g. the buyer agrees to sample a magazine subscription for 3 months) or understood implicitly (e.g. the item is of low or defective quality), the buyer is no longer entitled to cancel a contract if the period expires, unless the seller agrees to accept the item back.

Deferring Payment

Is it permissible to defer payment?

It is permissible to defer payment as long as the seller agrees and the payment date is known beforehand. The sale is invalid if the buyer makes the following general statement *before* the purchase: "I will buy this now if I am allowed to pay later," without specifying a time period for the deferral. The sale is valid if this same statement is made *after* the purchase, but the seller is then entitled to demand the money immediately, though he may waive this right by merely inquiring about the date of payment. It is a condition for the validity of a deferred payment that the seller knows the date of payment, and invalid for even the seller to allow for an open-ended deferral (e.g. "Pay me whenever you are able").

Charging Higher Price In Case Of Deferred Payment

Is it permissible for the seller to charge a higher price in case of deferred payment?

It is permissible to charge a higher price for goods paid on deferral than for goods paid on spot in cash, as long as the buyer is aware before the sale's execution.

Extending Payment Date In Case Of Deferred Payment

Is it permissible to extend the date on which deferred payment is due if the buyer is unable to pay?

In a sale for which payment is deferred and the debtor (buyer) is unable to pay even on the payment date, it is recommended for the creditor to grant the debtor an extension.

Delay In Making Payment

Is it permissible for a debtor to delay payment unnecessarily?

It is impermissible for a debtor possessing the means to pay the creditor to delay payment unnecessarily beyond the agreed upon date.

Actual and Abstract Receipt In Sale Of Commodities

May the customary method of ledger entries used by banks in regard to debits and credits be considered mutual receipt in the exchange of commodities?

It is not lawful for a seller to conduct a sale for a commodity that is not in his constructive possession; the only exception being the Salam sale.

Options In A Sale

What are the different options that may be exercised in a sale?

The different options that may be exercised in a sale are:

Khayaar al Shart

Khayaar al Shart is an option in a sale's contract giving one of the two parties a right to cancel the sale within a stipulated time. In case of death, the option is non-transferable to his heirs and the sale is automatically annulled.

Khayaar al Rooyat

Khayaar al Rooyat is the option of refusal based on which the buyer may decline to accept the goods of a sale because of their non-conformity to specifications.

Khayaar al Aib

This option may be exercised in case of a defect in the purchased asset. If the buyer finds that the asset is defective in any way, he is within his rights to demand a replacement for it or terminate the sale.

Khayaar al Wasf

The provision of this option is in reference to the quality of the purchased asset. If the asset fails to meet required quality specifications, the buyer is within his rights to exercise this option and demand a replacement of the asset.

Khayaar al Ghaban

The provision of this option is in reference to the price of the asset. If the seller sells an asset at a price that is much higher than the market price, the buyer possesses the right to return the asset and terminate the sale.

The Sale Of Goods That Have Yet To Clear Customs

Is an export sale based on a sample of the goods lawful and will it be considered complete regardless of whether or not the goods have arrived at the port?

An export sale based on a sample of the goods for approval by the importer is lawful whether or not the merchandise has arrived at the port.

Compensation For Defective Goods Damaged By Buyer

Is the buyer entitled to compensation for defective goods if they have been damaged, separately from the defect, by the buyer?

If the buyer damages the item and *then* discovers a separate defect, the buyer is no longer entitled to return the item (because of the new damage) but is entitled to compensation for the previous defect.