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# THE REAL DEAL

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

## Introduction to Business

<b>Linguistic definition</b>	The Arabic word for business is [الْبَيْعُ]. It comes from the root word [بَاعَ] which means "outstretched hand". In a business deal, the buyer and seller both put their hands forward for a hand shake in agreement.
<b>Legal Definition</b>	<p>مُبَادَلَةُ الْمَالِ بِالْمَالِ بِالتَّرَاضِي.</p> <p>A contract for the exchange of commodities based upon mutual consent.</p>

## Explanation of the legal definition

<b>A contract for the exchange of</b>	<ul style="list-style-type: none"> <li>This shows that there is an exchange between two parties. Both these parties must satisfy stringent conditions.</li> <li>An exchange can be of different types based upon different conditions. On the basis of this, different types of contracts are recognised in Islam.</li> <li>This also shows that a business transaction is an actual "exchange" between both sides. Any transaction in which an exchange has not taken place is therefore not a valid business transaction.</li> </ul>
<b>Commodities</b>	Commodities can be of different types. The manner of deriving benefits from them differs according to the type of contract.
<b>Based upon mutual consent</b>	<p>This is an important condition. Mutual consent must be present for a contract to be valid. However, consent is subordinate to the contract itself being valid. There is no value placed in mutual consent if the Shariah does not consent to the contract in the first place.</p>

Such as a sale or rental or agency or guarantee or lending or charity or competition etc... All of these are different types of transactions and contracts.

Thus any transaction of debt for a debt is not a proper business transaction. This is a point of difference between the Shariah and modern commercial law.

Thus, a charity or a business deal that is extracted by discomfort is impermissible because it is not based on wilful consent.

## Proofs for the permissibility of Business

Quran	<p>﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾</p> <p>And Allah has permitted trade but forbidden riba. [AlBaqarah: 275]</p>
	<p>﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ﴾</p> <p>O you who believe! Do not eat your property amongst yourselves in falsehood except by way of business based on mutual consent. [AnNisaa: 29]</p>
	<p>﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ ﴿٩﴾ فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ ﴿١٠﴾﴾</p> <p>O you who believe! If the call for prayer on the day of Jum'ah is given, then hurry to the remembrance of Allah. [AlJum'ah: 9-10]</p>
	<p>﴿لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَبْتَغُوا فَضْلًا مِّن رَّبِّكُمْ﴾</p> <p>There is no sin upon you if you were to seek the bounty of your Lord. [AlBaqarah: 198]</p>
Sunnah	<p>الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا.</p> <p>The buyer and seller have choice as long as they have not separated. [Agreed upon]</p>
	<p>اشْتَرَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنَ الْيَتِيمَيْنِ الْحَائِطَ.</p> <p>The Prophet sallallahu alaihi wa sallam bought the courtyard from the two orphans. [Agreed upon]</p>

## **The study of Business regulations in the Shariah**

A prelude to the study of the regulations regarding business entails the study of the following ten matters:

1. Pillars of a business transaction.
2. The goals and purposes of Shariah in business transactions.
3. Commodities and its types.
4. Trading competence.
5. Conditions *of* business transactions.
6. Conditions *in* business transactions.
7. Choice in contracts.
8. Contracts and its types.
9. Defects in contracts
10. Profit and what is permissible from it.

## I. Pillars of Business

<b>3 main pillars</b>	<ol style="list-style-type: none"> <li>1. The buyer</li> <li>2. The seller</li> <li>3. The commodity and its exchange</li> </ol>
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All of the following forms of exchange are permissible in Islam:

- The buyer and seller are physically present and agree verbally to the contract.
- Silent transaction [بَيْعُ الْمَعَاوَاةِ]: where the money and the product change hands without verbal agreement. Such a contract is permissible according to the majority of the scholars of Islam.
- Modern methods of transaction: via the internet, phone, SMS, fax, telex, TV etc... take the ruling of the non-verbal silent transaction in permissibility.

Ibn Taymiyyah rahimahullah says: “It is not obligatory upon people to stick to only certain terminologies for the purpose of contracts. It is not impermissible for them to make a contract with terminologies that others use as long as the terminologies that are used pertains to their intended meaning – even if certain phrases are preferred over others.”  
[AlQawaid an-Nooraniyyah Al-Fiqhiyyah (2/291)]

## II. Goals and purposes of Shariah in Business

<b>3 main goals</b>	<b>1. All business is permissible.</b>  This is from the most important goals. The Shariah permits most contracts and only prohibits those few that fulfil certain conditions. Therefore every new contract is permissible except those that contain features or conditions in it that make it impermissible.
	<b>2. Prevention of oppression.</b>  Allah has not decreed any oppression in His legislation, nor does He want us to oppress each other, whether it is by mutual consent or coercion.
	<b>Example:</b>  The prohibition of selling that which is uncertain in its quality or quantity.
	<b>3. Prevention of conflicts and disputes.</b>  Allah wishes to remove any matter that may cause us to have dispute.
	<b>Example:</b>  The prohibition of proposing to a sister for marriage, over the proposal of your brother.

### How does the Shariah legislate in business?

It does so by either one of two ways:

1. By prohibiting the transaction.
2. By allowing the transaction with certain conditions or within certain limits.

<b>Remember</b>	Many a times, a contract may have some sort of oppression in it, or may generally lead to conflicts and disputes, however it is still allowed due to the greater benefit that the Shariah perceives in allowing it.
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Such as whole/bulk sales or auction sales.

### III. Wealth and its types

<b>Legal definition of wealth</b> [مَالٌ]	Anything to which people have an inclination and is permitted in the Shariah.
<b>Note</b>	Anything that is not permissible to benefit from, such as alcohol or dead meat or pork or interest money, then they are not considered a valid commodity in Islam.

There can be three types of rights upon any valid wealth:

1. **The right of the owner:** Thus it is not permissible to take the commodity away except by his or her will. It is also for this reason that the punishment for stealing is so severe.
2. **The right of Allah:** In effect, all wealth is from the property of Allah. When Allah has allowed us to use his property, then it can only be within the guidelines specified in the Shariah.
3. **The right of the community:** This entails putting the greater benefit of the community above individual benefit.

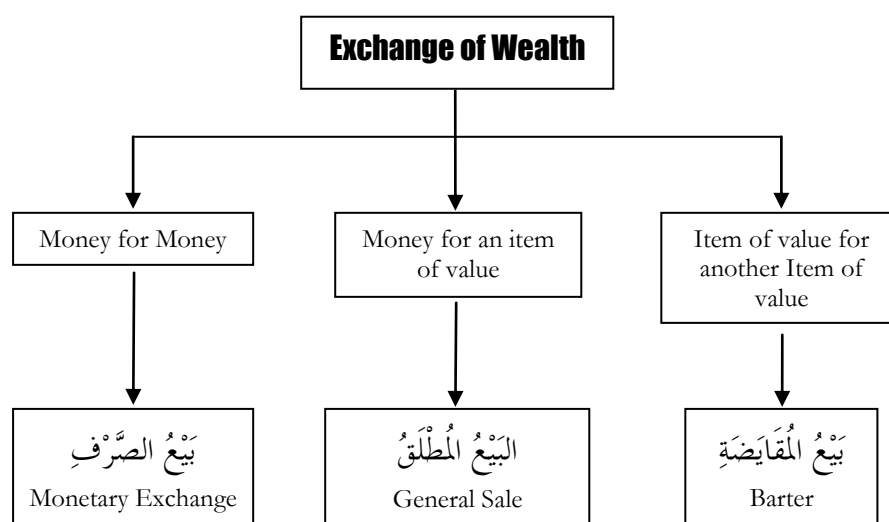
We can look at the types of wealth by way of:

- A. Its nature.
- B. Possibility of ownership of the property.
- C. Its specificity.

#### A. By way of its nature

<b>Wealth can be either</b>	<ul style="list-style-type: none"> <li>▪ Price or money [ثَمَنٌ]. This is of two types:               <ul style="list-style-type: none"> <li>○ Gold.</li> <li>○ Silver.</li> </ul> </li> <li>▪ The item that is priced or valued [مُثَمَّنٌ]. This is of two types:               <ul style="list-style-type: none"> <li>○ Non-transferable commodity (Properties and estates) [عَقَارٌ]</li> <li>○ Transferable commodity (Other than</li> </ul> </li> </ul>
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	properties) [مَتَقُولٌ]
<b>Benefits of knowing this division</b>	<p>There are numerous benefits from knowing this division:</p> <ul style="list-style-type: none"> <li>• The transferable commodities should be sold off before the non-transferable ones at the time of bankruptcy.</li> <li>• The rights of neighbours are to be catered for in non-transferable commodities rather than transferable ones.</li> <li>• The scholars have complete consensus about the permissibility of giving a non-transferable commodity as an endowment, however they differed about the permissibility of giving a transferable commodity as an endowment.</li> <li>• Pre-emption [الشُّفْعَةُ] is to be respected as far as non-transferable commodities are concerned. There is no such thing for transferable commodities, except if they are jointly owned.</li> </ul>



**Figure 1:**  
Exchange of commodities (by way of nature of commodity)



## B. By way of possibility of ownership of the property

<b>That which cannot be owned</b>	Such as those properties that have general benefit for all, such as roads, alley paths between properties, wells, bridges etc.. as long as the benefit is for all.
<b>That which shouldn't be owned except by an express reason from the Shariah</b>	Such as properties that are endowments for the poor.
<b>That which can be owned</b>	These are all commodities that do not fit into the above two types.

### C. By way of its specificity

A commodity that is bought or sold, may be either:

- Specific [مُعَيَّنٌ]
- Non-Specific and remains in one's liability [فِي الذَّمَّةِ]

<b>Specific commodity</b>	The deal was contracted on a specific commodity.
<b>Example</b>	I will sell you this copy of Sahih AlBukhari that I have in my hand.

<b>Non-specific commodity</b>	The deal was contracted on a commodity that is non-specific that remains in a person's debt or liability.
<b>Example</b>	I will sell you a copy of Sahih AlBukhari printed by ..... in the year ..... available in colour .....

### What is the benefit of knowing whether the deal has been contracted upon a specific or a non-specific commodity?

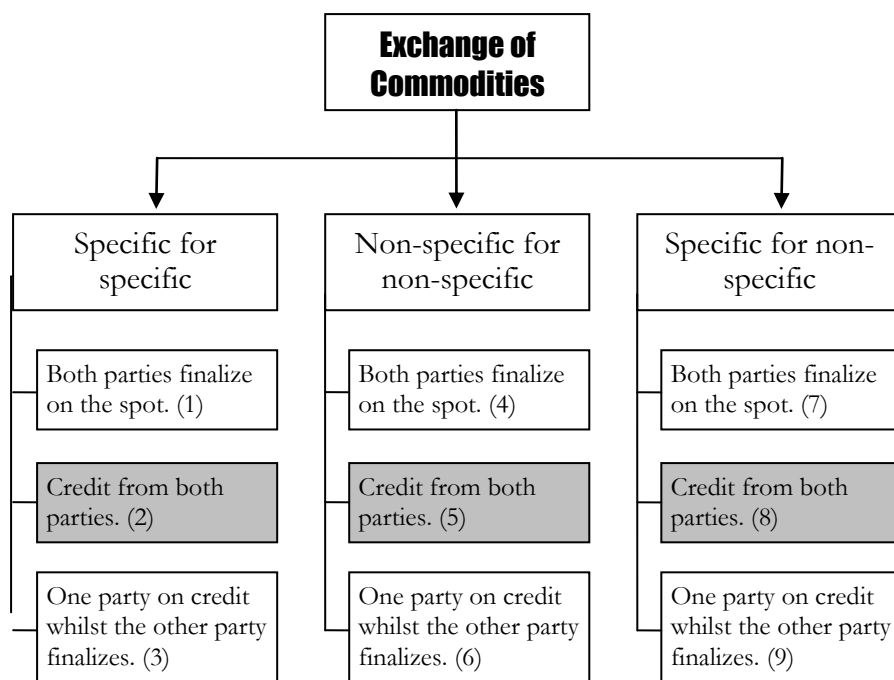
The benefit of knowing this, is working out what the solution should be if a defect is found in the product. So, if the defect is found in a product where the deal was contracted on:

- A specific commodity: Then the seller must return the price that was paid and take back his product from the buyer.
- A non-specific commodity: Then the seller has the option of either returning the price or giving him another product similar to it in description (that is free of the defect). The buyer cannot force the seller to give his money back. Rather, if the seller wishes to give him another copy of the book, then he is obliged to take it.

### Exchange of commodities by way of specificity

A commodity that is specific or non-specific may be bought and sold either one of two ways:

- Transfer of the commodity is finalized immediately [نَاجِزٌ].
- Transfer of the commodity is finalized at a future time. Until then, it remains on credit [نَسِيئَةٌ].



👍 This type of exchange of commodities is forbidden by complete consensus of the scholars.

**Figure 2:** Exchange of commodities (by way of specificity)

<b>Example for (1)</b>	I will give you this Sahih AlBukhari now for this \$20 note now.
<b>Example for (2)*</b>	I will give you this Sahih AlBukhari tomorrow for this \$20 note which I will take tomorrow.
<b>Example for (3)</b>	I will give you this Sahih AlBukhari tomorrow for this \$20 note now (or vice versa).
<b>Example for (4)</b>	I will give you a copy of Sahih AlBukhari now for \$20 now.
<b>Example for (5)*</b>	I will give you a copy of Sahih AlBukhari tomorrow for \$20 which I will take tomorrow.
<b>Example for (6)</b>	I will give you a copy of Sahih AlBukhari tomorrow for \$20 now (or vice versa).
<b>Example for (7)</b>	I will give you this Sahih AlBukhari now for \$20 now (or vice versa).
<b>Example for (8)*</b>	I will give you this Sahih AlBukhari tomorrow for \$20 tomorrow (or vice versa).
<b>Example for (9)</b>	I will give you this Sahih AlBukhari now for \$20 to be given tomorrow (or vice versa).

## IV. Trading competence

<b>Trading competence</b>	<ol style="list-style-type: none"> <li>1. Puberty</li> <li>2. Maturity</li> </ol>
<b>Proof</b>	<p>﴿وَابْتَلُوا الَّذِينَ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ﴾</p> <p>And test the orphans when they have attained the age of puberty, if you find them mature, then give them their wealth. [AnNisaa: 6]</p>
<b>Note</b>	<p>Modern laws also prescribe to the concept of maturity for carrying out individual business transactions. The only difference between this and the Shariah, is that the Shariah has not put a definite age limit, whereas modern laws put the age limit at 18 or 21 years old.</p>

## Important

The scholars of Islam have discussed the legal capacity of the following types of people to agree to a business contract due to the presence of specific texts of the Quran and Sunnah pertaining to them:

1. A child who has reached the age of differentiation [الصَّبِيُّ الْمُمَيِّزُ].
2. Women.
3. Those faced with incidental causes for the removal of legal capacity [عَوَارِضُ الْأَهْلِيَّةِ].

<b>Child who has reached the age of differentiation</b>	<p>The transaction that such a child may deal in, can be either one of three types depending on whether the child benefits from it or not:</p> <ol style="list-style-type: none"> <li>1. There is complete benefit in it for him: Example: Acceptance of a gift. In such a case, it is permissible for the child to partake in the transaction even without the permission of his guardian.</li> <li>2. There is complete harm in it for him: Example: Giving a gift or giving a loan. In such a case, it is not permissible for him to partake in this transaction, even if his guardian permits him.</li> <li>3. There is incomplete harm or benefit in it for him: Example: Buying and selling. In such cases, the permissibility of the transaction is based on the permission of his guardian.</li> </ol>
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👍 This is also the same ruling for the one who has deficient mental capacity, the immature and the bankrupt.

<b>Women</b>	<p>Men and women are similar in their rights due <i>towards</i> them and <i>from</i> them, in matters of business and contracts, except in two matters:</p> <ul style="list-style-type: none"> <li>• A woman does not have the ability to agree to a marriage contract by herself according to the majority opinion, as against Abu Haneefah may Allah have mercy on them all. The Shariah has given men this responsibility.</li> <li>• The capacity of a woman to donate from her own money more than a third without the permission of her husband. The majority of scholars permitted her, whereas Imam Malik may Allah mercy upon them all, forbade it.</li> </ul>
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📌 All scholars agree by complete consensus that the sister has the right to make her own choice and it is not permissible for her guardian to force her to marry against her will.

<b>Incidental removal of legal capacity</b>	<p>This can happen due to one of two reasons:</p> <ol style="list-style-type: none"> <li>1. Pre-decreed Example: Madness, Deficient mental capacity, Coma, Sleep.</li> <li>2. Attained Example: Bankruptcy, Drunkenness and Immaturity.</li> </ol>
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<b>Pre-decreed</b>	
<b>Madness</b>	A person does not possess the legal capacity to agree to any transaction in the duration of his madness. However, this does not remove the obligation of Zakat on him. All matters are referred to his guardian in the case of complete madness.
<b>Deficient mental capacity</b>	In this case, the person has the ruling of the child who has reached the age of differentiation.
<b>Coma, Sleep</b>	This removes the legal capacity to authorize transactions due to the absence of sense in these states. It does not however remove the obligation of Zakat on him.

<b>Attained</b>	
<b>Bankruptcy</b>	<p>The scholars have differed as to what is to be done with such a person. The majority agree that he should be prevented from having control over the portion of his wealth that is encompassed by his debt. When the judge has judged him to be bankrupt, then we apply to him the same rulings as the child who has reached the age of differentiation. Thus, that which could bring benefit or harm for him, such as business transactions – then it would depend on the permission of his creditors.</p>
<b>Drunkenness</b>	<p>All the scholars agree that if the person became drunk due to an excusable reason, then it does remove obligation, as well as the legal capacity to agree to contracts.</p> <p>On the other hand, if the person became drunk due to a forbidden reason, then:</p> <ul style="list-style-type: none"> <li>• The majority of scholars believe that his legal capacity is still present (in order to punish him for what he will earn from his own doing).</li> <li>• The Maliki madhab as well as the opinion of Sheikhul-Islam Ibn Taymiyyah is that such a person is free of legal capacity. This opinion is stronger.</li> </ul>
<b>Immaturity</b>	<p>This takes the same rulings as the child who has reached the age of differentiation.</p>