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# Studies in Legal Hadith

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## CHAPTER 6

### Prohibition of *Ribā*

#### 1 Introduction

Prohibition of *ribā* is one of the most important principles in the Islamic contract law. *Ribā* is defined as “an excess claimed by one of the two contracting parties to an onerous contract for which no consideration is stipulated” (*al-faḍl al-mustaḥaqq li-ahad al-muta’āqidayn fī al-mu’āwada al-khālī ‘an ‘iwaḍ shurīḥa fihī*).<sup>1</sup> Over 500 hadiths related to this matter are recorded in hadith collections. In my work *A History of the Early Islamic Law of Property* (2004), I considered the origins of the prohibition of *ribā*, drawing primarily on early legal sources. Subsequently, a thorough examination of these hadiths revealed that the conclusions of this book should be modified in several respects.

Among these hadiths, the most exhaustive hadiths, say the final form of hadiths related to the prohibition of *ribā*, are represented by hadiths [6-15.YPN3]–[6-15.YPN5], according to which the Prophet stated:

Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, similar for similar, like for like, and hand to hand. If these species differ, then sell them as you please, if payment is made hand to hand.<sup>2</sup>

This hadith mentions six items as *ribā* goods (*māl ribawī*, pl. *amwāl ribawīyya*), i.e., goods to which the prohibition of *ribā* is applied: gold, silver, wheat, barley, dates, and salt. However, the four Sunnī schools of law do not limit *ribā* goods to these six items.<sup>3</sup> The Ḥanafīs divide the *ribā* goods into two categories: the class of things usually sold by weight, which are represented by gold and silver, and the class of things usually sold by measure, which are represented by the remaining four items.<sup>4</sup> Schools of law other than the Ḥanafī also divide *ribā* goods into two classes, but the definitions of *ribā* goods and the criteria on which the classification is based are not necessarily the same as those adopted

<sup>1</sup> Marghinānī, *Hidāya*, 3:61.

<sup>2</sup> Muslim, *Ṣaḥīḥ*, 3:221, no. 81 (1587).

<sup>3</sup> Ibn Rushd al-Ḥafīd, *Bidāya*, 2:229–130; *ibid.*, tr. Nyazee, 2:159–160; Linant de Bellefonds, *Traité*, 1:219–220. The Zāhirīs limit the *ribā* goods to these six item if they are exchanged in an ordinary sale or a *salam*. Ibn Ḥazm, *Muḥallā*, 8:467–468.

<sup>4</sup> Qudūri, *Tajrīd*, 5:2287–2289; Kāsānī, *Badā’i*, 5:183; Marghinānī, *Hidāya*, 3:61.

# Islamic Commercial Law

*Contemporariness, Normativeness and Competence*

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– Allowing diversity of opinions: Whenever scholars are in the process of studying matters related to Fiqh al Mu'amalaat, it is natural to find several opinions regarding one specific matter, stemming from several different schools of thought. Accepting the fact that there is a diversity of opinions and leaving certain matters open is a demonstration of providing ease and avoiding hardship.<sup>71</sup>

### 3-4 The Distinctive Precepts of Islamic Contract Law: The Prohibition of Riba, Gharar, Maysir

#### 3.4.1 The Precept of the Prohibition of Riba

"No two people in their sane minds would differ that Riba is one of the greatest sins prohibited by divine legislations". Their prohibition is as clear as the prohibition of alcohol, and both are banned practices since they were some of the most widespread violations that took place.<sup>72</sup>

##### 3.4.1.1 Definition of the Highly Debatable Term

This is the first and most widely known and quoted element in literature covering Islamic Finance and commercial transactions in general; it is this precept that lies at the root of the debates regarding the previously discussed principle of Freedom of Contract. Riba is not one that is only specific to Islamic Law, it had also been mentioned in the Torah, specifically under "*Ribbit Ketzuzah*" and "*agar nattar*", which refers to rented money, as well as "*Sechar' hamtana*" as a reward for waiting.<sup>73</sup>

The definition of the term Riba linguistically stems from the verb "*yarbu*", being "*increase*", "*excess*" or "*growth*". As for its legal definition, it can be defined as "*the increase of money but for no specific return for something else, and in case where exchange of money for money takes place*",<sup>74</sup> or "*an increase in capital for no legitimate return*".<sup>75</sup>

<sup>71</sup> See Qaradawi, Youssef. *Al Qawa'id al Hakima li Fiqh al Mu'amalaat (Governing Rules of Fiqh al Mu'amalaat)*. Dar el Shorouk. 2010. Pp. 107–109.

<sup>72</sup> See Ibid. P. 89.

<sup>73</sup> *The Oxford Handbook of Judaism and Economics*. New York: Oxford University Press, 2010. P. 481.

<sup>74</sup> See Ashour Abdel Gawad Abdel Hamid. *Al Badael Al Islami Lelfawaed Abmasrafia Alrebaweya (The Islamic alternative to Riba Financial (Banking) Interests)*. Dar Al Nahda Al Arabia 1990. Pp. 4–5.

<sup>75</sup> See Mohamed Sayed Tantawy. *Moamalal Al Bonouk wa Ahkameha Al Shareya. (Banking Transactions and their legal rulings)*. Fifth Edition, 1991. P. 89.