

البيع

Bay'

Definition:

An exchange of goods for either cash or other goods.¹

Terms:

Bay' (Sale),

Bā'i (seller),

Mushtari (purchaser),

Mabī' (purchased/sold item),

Thaman (purchase price)

Ijaab (proposal/offer)

Qubool (acceptance)

Example: Muhammad purchases a vehicle from Ebrahim for \$50,000.

The Bā'i is Ebrahim.

The Mushtari is Muhammad.

The Mabī' is the vehicle and

The Thaman is the \$50,000.

¹ Shaykh Mufti Imran Uthmani has also defined the "Bay'" in these terms with one addition. He mentions in the Meezan Bank's Guide of Islamic Banking, *"the exchange of a thing of value by another thing of value with mutual consent"* (pg. 68). In definition of Bay', this addition is not an integral point of mention. In Majallah al ahkam al 'adaliyyah bay' is defined as *"Exchange of valuables with valuables"* (pg. 29). The difference of having this part in the definition would show its affect where a sale is enacted in which one or both of the transactors are not consensual rather forced into acceptance of such sale. One would suggest that such a sale is valid and the other would suggest that it is not.

How is a Bay' concluded?

1. If the Bā'i (Seller) makes a proposal to sell an item for a particular price and the Mushtari (Purchaser) accepts the proposal, the deal will be concluded.



2. Alternatively, if the Mushtari makes a proposal to purchase an item for a particular price and the Bā'i accepts the proposal, the deal will be concluded.



The Conditions for the validity of Bay’:

1. The Bā’I (Seller) must be the owner of the Mabī’.

Example: One cannot sell an item, a vehicle for instance, belonging to someone else without the owner’s permission.²

2. The commodity must be recognized as a commodity in Shari’ah.

Example: One cannot sell an item such as pork since it is not recognized as a commodity in the Shari’ah.³

3. The Mabī’ must be specified. If the Mabī’ is not specific, the Bay’ will not be valid.

Example: If a shopkeeper states, “I will sell you any one item in this shop” without specifying the item, the Bay’ will not be valid.⁴

4. The Thaman must be specified.

² Or think of other scenarios. Ahmed approaches Muhammad and tells him that he wants to sell him a Rolex watch in his hand for \$100. Muhammad seems interested so he agrees. Now we have proposal, acceptance, a seller, a buyer and a mabee’ (commodity being sold) at a particular price. BUT Ahmed is not the owner of the watch. He has borrowed it from Bakr and is merely thinking of buying it if only he could confirm it sale, before even purchasing it himself! Such a sale is not valid.

Mufti Imran Ashraf Uthmani writes “The subject matter of sale must be in the ownership of the seller at the time of sale. Thus what is not owned by the seller cannot be sold. If he sells something before acquiring its ownership and risk, the sale is void. Eg. ‘A’ sells to ‘B’ a car which is presently owned by ‘C’ but ‘A’ is hopeful that he will buy it from ‘C’ and shall deliver it to ‘B’ subsequently. The sale is void, because the car was not owned by ‘A’ at the time of sale. The speculation in shares is another example.” (Guide to Islamic Banking pg. 73)

³ Reality Check: Since pork is not considered as commodity in Shari’ah, sale of pork in one’s store will not be permissible. I had mentioned in one of the fatawa : “In principle sale of any item, which is not considered “wealth” according to Shariah, is impermissible. Examples of these items include things like wine, pork and haram food etc. Hence, selling of Pizza and other products containing pork is not permissible and income from such a sale will be impermissible as well. This ruling is regardless of who you sell these products to” (please see : [Fatwa.ca: Sale of pork in pizza store](#))

⁴

“The subject of sale must be specifically known and identified either by pointing or by detailed specification that can distinguish it from other things, which are not sold. Eg. There is a building comprising of a number of apartments built in the same pattern. ‘A’ – the owner of the building says to ‘B’, ‘I sell one of these apartments to you’; ‘B’ accepts.” (Guide to Islamic Banking pg. 72)

Example: If a person is selling his vehicle, the price of the vehicle must be specified, for example at R50, 000. If the Thaman is not specified, the Bay' will not be valid. For instance the Bā'i says that the vehicle is between R30,000 and R50,000. ⁵

5. The Bā'i must be able to hand over the sold item after the Bay'.

Example: A fisherman cannot sell a fish he has not caught as yet as he is not in a position to hand over the fish. If one concludes a deal to sell a 5kg Salmon to the Mushtari and he has not caught the fish, the deal will be invalid. ⁶

6. The Bay' must not be suspended on a future event.

If the Bay' is suspended on a future uncertain event, for example, if the Bā'i tells the Mushtari, "I will sell you this car on Eid day," the Bay' will be

⁵ Think about how many deals we make with our friends and acquaintances by saying, "Consider it sold, we will sort out the pricing later on." Such ad-hock sales are not valid. The price must be known for a valid ijaab (offer) to be placed.

"For a sale to be valid, the price should be ascertained and specified eg. the total amount etc. If the price is uncertain, the sale is void. Eg. 'A' says to 'B': 'If you pay within a month, the price is Rs.50 but if you pay after two months, the price is Rs.55'". 'B' agrees. The price in this case is uncertain and therefore the sale is void unless anyone of the two alternatives is agreed upon by the parties at the time of sale." (Guide to Islamic Banking pg. 73)

⁶ This condition is somewhat similar to the very first one, the seller should be the owner of the item being handed over. While it is similar, there still remains a reasonable difference. Having ownership of something does not necessarily means that one is now capable of making its delivery. The fisherman may own all the fish in the pond, and still he cannot be certain of selling a particular fish, since it is not caught yet.

Consider selling a bird in the cage. Normally we purchase these birds from pet store by indicating to the particular bird and then paying for it. The birds are in possession of the pet store, but does merely point suffice to single out the bird, and concluding the sale? If we say that the sale is concluded, then it would mean that I own the bird now, and if the bird were to die while the person is trying to catch it, it would be my loss!

This is not what happens though. So how does this sale actually transpire? We point out the mabee' (commodity), i.e. the bird. The bird is caught and then brought to the teller. Up until here there is no sale. At this moment the seller makes an offer of sale. We accept this proposal and pay for the bird which is already caught and ready for delivery. The sale is concluded and I take possession of the bird.

Now, something to think about! How then are the online sales permissible?

invalid.⁷

7. The Bay' must not be conditional.

For example, the Bā'i tells the Mushtari, "I will only sell you this car if you agree to allow me to drive it occasionally." In this instance also, the Bay' will be invalid.⁸



⁷ The sale must be immediate

"The sale must be instant and absolute. Thus a sale attributed to a future date or a sale contingent on a future event is void. If the parties wish to effect a valid sale, they will have to effect it afresh when the future date comes or the contingency actually occurs. Eg. 'A' says to 'B' on the first of January: "I sell my car to you on the first of February". The sale is void, because it is attributed to a future date." Similarly, if 'A' says to 'B': "If x party wins the elections, my car stands sold to you", the sale is void because it is contingent on a future event." (Guide to Islamic Banking pg. 72)

This should not be confused with a normal credit sale. In a credit sale, the proposal and acceptance is done immediately as per above condition, however the payment for that sale is made into a debt payable at a later stage. Hence, a credit sale facilitates in transferring the ownership of the commodity.

⁸ This is to say that the sale should not be dependent on another condition being fulfilled.

for eg. 'A' buys a car from 'B' with a condition that B will employ his son in his firm. The sale is conditional and hence invalid. (Guide to Islamic Banking pg. 71)

How do we explain Buy one, get the second for half price? Isn't the sale of second at half price dependent on the sale of the first one?

المراجحة

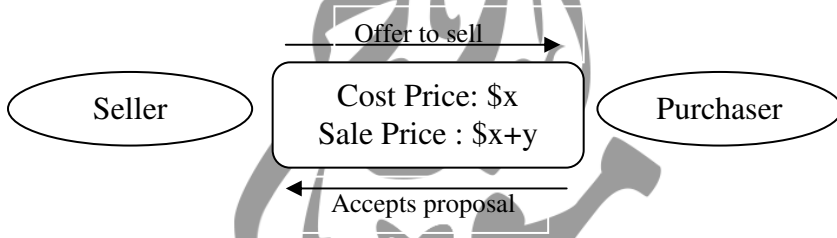
Murābahah

Definition:

A sale on profit with reference made to the cost-price

Example:

Zayd purchased a house for R100,000. He then sells the house to ‘Umar for R150,000 after informing ‘Umar of his cost-price. The R50,000 above the cost-price is Zayd’s profit.



The Practical Use of Murābahah:

Zaid wishes to purchase a house for R100,000. However, he does not have the finances to purchase the house. He approaches ‘Umar who has the finances. ‘Umar purchases the house for himself for R100,000 and resells it to Zaid for R150,000 on deferred payments, for example, R2,000 per month. Zaid will then fully pay off the R150,000 over a period of 75 months. Generally, Islāmic Banks offer finances through Murābahah and deferred payments.⁹

⁹ Zaid is happy because he is able to buy the house. Umar is happy because he knows that over 8 years he will make a profit of almost R50000.

Apply your knowledge of conventional banking, and assess how is this any different from conventional mortgage? **Hint:** The sale price of R150,000 in above example is fixed, and becomes a debt upon Zaid and cannot change!

التولية

Tawliyah

Definition:

A sale on the cost-price (i.e. no profit)

Example:

Zayd purchases his house for R100,000 and resells it to ‘Umar for the same price of R100,000. Zayd does not make any profit from ‘Umar.¹⁰



¹⁰ There evidence of Tawliyah is from the hadeeth of hijrah of Rasulullah salallahu alayhi wasallam. When Rasulullah salallahu 'alayhi wasallam was about to make hijrah to Madeenah al Munawwarah, Sayiduna Abu Bakr radiallahu anhu wished to give one of his conveyance, i.e. the camel, to Rasulullah salallahu 'alayhi wasallam. Instead Rasulullah salallahu 'alayhi wasallam purchased this camel on Tawliyah. (Bukhari Shareef, Chapter on Hijrah, #3905)

المساومة

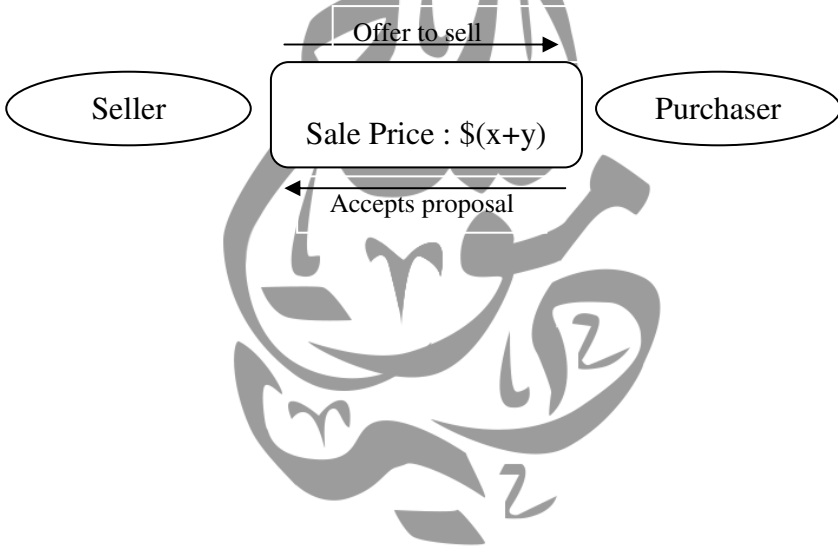
Musāwamah

Definition:

A sale on profit without any reference to the cost-price

Example:

Qāsim purchases a vehicle for R50,000. He then sells the vehicle to Salīm for R70,000 without informing him of the cost-price of the vehicle.¹¹



¹¹ This is the last type of sale being discussed. Technically there are other types as well, but they are beyond the scope of our discussion. We will however discuss Bay' Salam and Bay' Istisnaa' in the coming chapters.

خيار الشرط

Khiyār al-Shart

Definition:

Khiyār means “choice” and *Shart* means “condition.” Thus, *Khiyār al-Shart* means on condition of having a choice/option. In simplified terms, it means that a Mushtari purchases with an option of repudiating (withdrawing), or a Bā’i sells with a similar option. Such an option will automatically expire after 3 days.¹²

Examples:

1. Ebrahim wishes to sell a book to Ismail. Ebrahim is the Bā’i and Ismail is the Mushtari. Ismail purchases the book with an option to decide on the matter. Hence, Ismail exercised *Khiyār al-Shart*.

¹² Mufti Ebrahim Desai Saheb db. has mentioned the duration to be 3 days. After three days the option automatically expires. However, Mufti Imran Uthmani mentions:

At the time of sale Buyer or Seller can put a condition that he has an option to rescind the sale within the specific 4 days. This option is called Khayar-e-Shart. Specification of the days is necessary for this Khayar. Within this period, he has the right to rescind/dissolve the sale without any reason. (Guide to Islamic Banking pg. 77)

Imam Abu Haneefah r.a is of the opinion of 3 days, beyond which the option will become detrimental to the opposite party, since he will have to wait for completion of the sale. This is also understood from one hadith (Daraqutni #2993). However, Imam Abu Yusuf and Imam Muhammad al Shaybani rahimahumullah are of the opinion that this option can be any specific number of days as long as it is specified. The contend that since it is a matter of bother buyer and seller, as long as they mutually decide on it, it should be fine. Their evidence is another hadith of Bukhari Shareef (#2107) which does not mention any condition for 3 days.

The latter position is more suitable to our current industrial trends where such options may be required to benefit from a fruitful transaction.

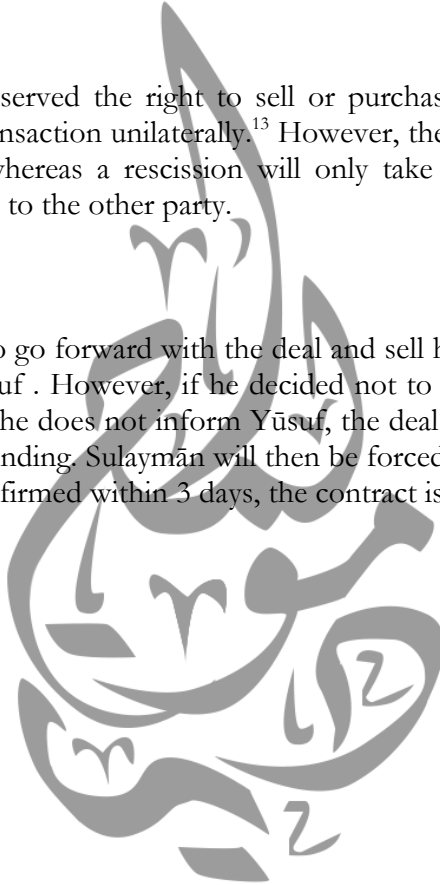
2. Yūsuf wishes to purchase a car from Sulaymān. Sulaymān is inclined to sell his car but wishes to ponder upon selling his car. He can then exercise Khiyār al-Shart, which will allow him time to ponder over the sale without losing the deal.

The Ruling:

The person who reserved the right to sell or purchase may approve or rescind from the transaction unilaterally.¹³ However, the approval will take immediate effect, whereas a rescission will only take effect once it has been communicated to the other party.

For example:

Sulaymān decided to go forward with the deal and sell his car, he does not have to inform Yūsuf . However, if he decided not to sell the car, he has to inform Yūsuf. If he does not inform Yūsuf, the deal between them will be concluded and binding. Sulaymān will then be forced to sell his car. If a rescission is not confirmed within 3 days, the contract is binding.



¹³ Essentially, only the one stipulating the option can carry out the option.

خيار الرؤية

Khiyar al-Ru'yah

Definition:

Ru'yah means “to see.” Thus *Khiyar al- Ru'yah* means the option to cancel the transaction after seeing the purchased item.¹⁴

Example:

Yazid saw an advertisement of a refrigerator in Walmart. He telephoned Walmart and purchased it. When he saw the refrigerator after its delivery, he realized it was not what he had in mind. Therefore, Yazid will have the right to cancel the purchase based on *Khiyār al-Ru'yah*.¹⁵

¹⁴ The option is specific to seller. This means that a buyer who may not have seen the commodity he is selling, may not set a option to cancel on seeing the item.

¹⁵ This right or option is to safeguard a buyer's anticipation from the commodity. If the flyer shows a certain type of fridge with, let's say, 6 trays while the one delivered only had four, then such a discrepancy is contrary to one's anticipation. However, if the buyer says that he thought it would be bigger while the quantity has been sufficiently mentioned in the advert, then such a discrepancy is not covered in this option.

Similarly, when we go into Walmart and check out a sample fridge in-store, and then order the fridge to be delivered, then there is no *khiyar al ru'yah*. If the fridge turns out to be different, then such sale will be rectified by giving the seller a choice to either accept this sale, or return the item.

خيار العيب

Khiyar al-'Ayb

Definition:

'Ayb means "defect" or "deficiency." Thus Khiyār al-'Ayb means the right to cancel the transaction based upon discovering a defect in the item.

Example:

Imrān purchased a CD player wrapped in a box for R300. When he opened the box at home and tested the CD player, it did not play properly. It would play the CD partially and then start skipping tracks. This was the defect in the CD player. Imrān has the right to return the CD player, cancel the transaction and receive a refund of R300.¹⁶

¹⁶ The khyaar/option applies to defects in the commodity which were not known to the purchaser beforehand. If the purchaser was informed of the error, and still continued with the sale, then he cannot exercise this option.

It is the responsibility of the seller to supply goods free of error/defect or point out the defect to the buyer. No way is he allowed to cover the defect of the goods which constitutes as fraud. In one of the hadiths, Prophet salallahu 'alayhi wasallam has stated "He is not amongst us who indulges in fraud." Therefore the buyer has the right to return the good in case of a defect which is considered a defect in the market and which depreciates the value of the goods. Eg. 'A' buys batteries from 'B'. However, 'A' has the option to return them to 'B' if the batteries are found to be defective or not in working condition. (Guide to Islamic Banking pg. 78)

It also follows that it is Shar'i duty of a seller to inform the purchaser of any hidden defects in the commodity. If the buyer comes to know of such a defect at a later, then he can exercise the option.

The option gives the right to the purchaser to either accept the commodity along with the defect in lieu of the agreed price, or return the item. It **does not** give him the right to retain the item and seek the compensation or discount from the seller in lieu of the defect.

خيار الغبن

Khayar al-Ghabn

Definition:

Ghabn means “deception.” Thus, *Khayar al-Ghabn* will refer to the option to cancel the transaction after being a victim of deception. This option applies equally for the Bā’i as well as the Mushtari.

Example:

Zayd sold a pair of fake Adidas to ‘Amr for R200 whilst claiming they were genuine. ‘Amr later on discover that the Adidas were not genuine and that the Adidas logo was just placed there. In this situation, ‘Amr will have the right to cancel the transaction and collect a refund of his R200.¹⁷

¹⁷ This option has two main factors.

- a. Ghaban (commodity extremely overpriced)
- b. Taghreer (deception)

In order for this option to take effect, Taghreer must be found. If someone overprices an item, and the buyer knows of this overpricing, then there is no deception. Accepting such a transaction is his contentment towards the overpricing. Such a sale will be valid. However, if the item was overpriced, and the seller finds this overpricing later on, then this will be deception, just like finding out that one has been swindled out of money for fake Adidas. The option could be used.

Where the seller sells the goods at a price which is far expensive than the market price, a Buyer has the right to return it to the seller. Eg. a Parker pen is sold to ‘A’ by ‘B’ at a price of Rs.500/-. However after the sale, ‘A’ discovers its market price to be Rs.250/-, he has the option to return the pen to ‘B’. (Guide to Islamic Banking pg. 78)

الإقالة

Iqālah

Definition:

To mutually dissolve a transaction

Example:

Muhammad purchased a property from Ahmad for R1million. The deal was concluded and Muhammad had to pay Ahmad. Unfortunately, Muhammad experienced a robbery and was badly affected. He could no longer afford to pay for the property he purchased from Ahmad. He requests Ahmad to dissolve the deal. Ahmad is at liberty to refuse Muhammad and compel him to honour the deal. However, if he accedes to Muhammad's request, he will be great rewarded by Allāh Ta'ala. ¹⁸

¹⁸ While the example relays an incident of one of the transactors becoming unable to comply with the sale, that is not a requirement for Iqaalah. If a purchaser simply felt that he made a wrong decision entering into some sale, and in regret seeks the buyer to dissolve the transaction, then the seller may accept this request and reverse the transaction.

Iqaalah is based on mutual consent, for any reason. Rasulallah salallahu 'alayhi wasallam has expounded virtue of a seller who realizes the purchaser's regret, and concedes to reverse the sale.

“Neither the buyer nor the seller has the sole right to rescind the contract after execution of a contract. Often the buyer wants to rescind the contract after buying goods. In this case, it is necessary that he gets the seller's consent. Therefore this mutual agreement between buyer and seller to rescind the contract is called Iqala.

In one of the hadiths, Prophet salallahu 'alayhi wasallam has stated “He who does the Iqala (rescinding of the contract) with a Muslim who is not happy with his transaction, Allah will forgive his sins on the Day of Judgment.” [Abu Dawood #3460]

However, it may be noted that the price of the goods being returned under Iqala will remain unchanged.” (Guide to Islamic Banking pg. 78)



Consider this Iqalah has a completely new sale, enacted from inception with free will reversing the roles of the transactors.