

Bay' al-Murabahah in Islamic Commercial Law

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Abstrak

Bay' al-Murabahah ialah penjualan sesuatu barang kepada pembeli dengan kos asal barang tersebut. Kadar keuntungan yang dipersetujui berserta bersama pembayaran harga boleh dilakukan secara tunai atau bertangguh. Artikel ini membincangkan tentang legitimasi bay' al-Murabahah dalam undang-undang perdagangan Islam serta perkara-perkara yang berkaitan dengannya seperti syarat-syarat barang, kos asal barang yang dibayar oleh penjual dan margin keuntungan yang dibayar oleh pembeli.

Definition

The word *murabahah* is derived from *rihb* which means gain, profit or addition.¹ Legally, *Bay' al-Murabahah*² means a resale of goods or merchandise at a specified surcharge or rate of profit on the stated original cost which represents the profits and is mutually agreed upon between the purchaser and the vendor (seller).³ The payment of the sale price, inclusive of the agreed profit margin, may be immediate or deferred and either in a lump sum or instalments.⁴ This type of transaction, which was often practised in pre-Islamic times⁵ was not mentioned by the Prophet and he did not say whether it was permitted or not. However, some of the Companions initiated a discussion about *bay' al-murabahah*. Basically partnership between investors and borrowers in profit-sharing re-sales was allowed by the Companions. But 'Abd Allah b. Mas'ud held that in this contract, the idea of taking profits by putting a high price on goods in order to cover the cost of maintaining them is disliked.⁶

Furthermore, the legality of a *murabahah* is not questioned by any of the jurists mentioned in the fiqh literature. In this regard this type of contract is unanimously

agreed by them without any rejection.⁷ However, the use of *murabahah* transactions as a credit vehicle by the contemporary Islamic financial institutions has been regarded with apprehension by some scholars, for instance, M. N. Siddiqi, who contends that the simple fact that *murabahah* enables a buyer to finance his purchase with deferred payment, as against accepting a mark-up on the market price of the commodities, means that the financier earns a predetermined profit without bearing any risk.⁸

It is said that the only factor which, in the opinion of the jurists, might transform *murabahah* into a legal device (*hilah*) used to circumvent the prohibition of taking interest is pricing the time factor. That occurs when, in addition to the initial price of the commodities and other recognized expenses and legitimate profit, an increase is accounted in order to compensate for the delayed payment of the *murabahah* purchase price; otherwise *murabahah* should not, in principle, become suspicious for it is a universally recognized concept under Islamic law.⁹

According to Udovitch, it may be speculated that the practice of *bay' al-murabahah* was limited to particular circumstances, for example, a purchaser may have been willing to pay a retailer, who was at hand, a specified surcharge on the cost of certain goods in order to prevent himself from any trouble of buying them from a wholesaler. It may also serve as a form of commission sale, when the purchaser is permitted to obtain commodities on credit and resell them with the surcharge at either a fixed price or a fixed rate of profit based on the original price.¹⁰

Conduct of *Murabahah*

The conditions lawful *murabahah* transactions pertaining to the commodities, the original price paid by the vendor, any additional costs to compute the total costs serving as the basis of a *murabahah* transaction and the margin of profit charged on the cost as follows.

It is a pre-condition that the cost (price) paid to the vendor must be expressly mentioned prior to the contract. In this regard, the vendor should say: “*My capital is so much*” or “*This commodity has cost me (for example RM100.00) and I sell it to you for the cost plus a profit (for example RM10.00)*”.¹¹ The vendor is also required to state the additional expenses incurred on the sale item and he must be just and true to his words. The additional expenses such as transportation, processing and packing charges and so on that enhance the value of the commodity in any way and these are added as a customary practice of merchants at original price, can be added to the purchase price to form the basis of a *murabahah* transaction. It is however, required that the vendor, in including such additions, should say, “*This article has cost me so much*”.¹²

It is a pre-requisite that the cost (price) paid to the vendor must be expressed in identical units such as *dirhams* and *dinars* or specific articles of weight or measurement. If the original price is an article of which all the units are not similar such as slaves or cattle, the exact price at which the vendor has become owner of the article will remain unknown (*majhul*). Any goods with unknown price cannot become a basis for

murabahah as it involves the semblance of uncertainty which renders *murabahah* sale unlawful.¹³

Expenses in Relation to *Murabahah*

According to Maliki law, expenses which can be added to the capital (price) and constitute a basis for the calculation of the profit are those which have affected the commodity itself, such as dyeing or tailoring a piece of material.¹⁴ However, the vendor is not allowed to add expenses to the capital which do not affect the commodity itself and are incurred for services that the *murabahah* vendor could not provide personally, such as the cost of transportation or storing the commodity in a warehouse or in storage rented for the purpose mentioned.¹⁵

If the expenses do not affect the commodity itself and are incurred for services that the *murabahah* vendor is in a position to render personally, such as a commission paid to broker (*simsar*; *dallal*) or wages for folding pieces of material, the vendor can neither add nor take into account for the calculation of the profit.¹⁶

The Hanafi jurists have a different approach to this case. According to them, a *murabahah* vendor is entitled to add to the capital (price) all expenses accepted normally by the customary practice of the merchants, whether such expenses have affected the commodity itself such as dyeing or tailoring a piece of material or are incurred on account of such commodity such as transporting goods, feeding animals or paying a commission to a broker (*simsar*).¹⁷

The Hanbali jurist, Ibn Qudamah, holds that all actual expenses incurred as regards the commodity can be added to the original capital (price), provided that the purchaser is made aware of the amount of those expenses and the original price.¹⁸

The Shafi'i jurists, in this case, appear to have a similar opinion to the Hanbalis with the requirement that the fee earned by the vendor or the fee that should have been paid to the third party and is not voluntarily performed, cannot be added to the *murabahah* price unless that is specifically accepted by the purchaser.¹⁹

It is unanimously agreed by the jurists that the margin of profit on the price so reached should be mutually agreed upon between vendor and purchaser.²⁰ If the contracted goods (merchandise) in a *murabahah* transaction belongs to two investors, the profits will be shared between them in accordance with the different amounts of capital they have invested.²¹ It is also held that if two investors provide the capital in a *murabahah* transaction, the profits may be divided equally between them provided the parties involved run the business collectively.²² However, if the business is run individually, the profits could be divided equally between the parties or in accordance with the capital invested by them.²³ It is held that if a man buys some goods on credit, and then sells them on the basis of *murabahah*, and the first vendor later discovers this, he (the first vendor) is entitled to claim the profits.²⁴

The purchaser in a *murabahah* contract has the right of option either to accept or

reject the bargain if he wishes in the following circumstances:

- a. He discovers that the vendor has defrauded him by giving false statements concerning the particulars of the goods, the price and additional expenses.²⁵
- b. The vendor himself has bought the commodity on a deferred payment basis and sold it to his customer on prompt payment without informing him.²⁶
- c. A practice on the part of the vendor involves the semblance of an illegal sale.²⁷

Option When a *Murabahah* Price May Be Inflated

If purchaser discovers that the *murabahah* price he has paid to the vendor (seller) was unduly inflated, he has the option of either accepting the sale at the stated price or rescinding (*khiyar*) it and taking back his money.²⁸ However, it is held that if the purchaser is no longer in possession of the *murabahah* goods, he will have no option but to confirm the sale.²⁹

Some Hanafi jurists such as Abu Yusuf hold the view that the purchaser is, in any circumstances, entitled to confirm the *murabahah* contract and claim back the undue increase.³⁰ The Maliki view on this case is that the purchaser has the option either of keeping the *murabahah* goods in consideration of its real cost, i.e., the price after devaluation of the undue increase, or of relinquishing the goods to the vendor.³¹ The Shafi'i view on this case is that if the *murabahah* goods are still in the *murabahah* purchaser's possession, he is entitled to give them back to the vendor and have money in return or he can keep it and claim the undue increase.³²

If the purchaser in a *murabahah* contract detects fraud after he has used the commodity or it has been destroyed in his hands, he is not entitled to make any deduction from the price on the grounds that the commodity against which he has to practise his right of option (*khiyar*) does not exist.³³ The other opinion held is that deduction will be made even after destruction of commodity.³⁴

The main purpose of *murabahah* contract (sale) is to protect unskilled general consumers, lacking expertise and skill in various kinds of goods or commodities, from the wiles and stratagems of shrewd businessmen.³⁵ In this contract, the purchaser is under the necessity of placing absolute confidence in the word of the seller, who is skilful in the business. Therefore, it is incumbent on the seller to be just and true in his word and to abstain from any fraud or its semblance.³⁶ In other words, by basing the sale price on the original cost of the commodities and goods to the vendor (seller), the purchaser is provided with a medium of protection against unfair exploitation by unscrupulous merchants.³⁷

Notes

1. Abu al-Fadl Jamal al-Din Muhammad b. Mukarram, Ibn Manzur (d. 711/1311-12), *Lisan al-'Arab*, Vol. II, Beirut, n. d., pp. 442-443; al-Sayyid Muhammad Murtada (d.

- 1145/1791), *Taj al-'Arus*, (eds.) Mustafa Hijazi, et al., Vol. VI, Kuwait, 1965-1973, p. 380; E. W. Lane, *Arabic-English Lexicon*, Vol. I, Cambridge, 1984, p.1009.
2. There are four types of *bay'* that may be described from the point of view of their original cost or price (*ra's al-mal*). Such classification of *bay'* includes *bay' al-musawwamah*, *bay' al-tawliyah*, *bay' al-wadi'ah* and *bay' al-murabahah*. Among them, the most common and popular form of *bay'* is *bay' al-musawwamah* which is an ordinary sale and signifies sale for a price which is mutually agreed upon between the vendor and the purchaser without any form of reference to the purchase price. The second is *bay' al-tawliyah*, i. e., resale at the stated original price (cost) with no profit or loss to the vendor. The third is called *bay' al-wadi'ah* which means resale at a discount from the original cost. The fourth is *bay' al-murabahah* or fixed profit sale since the original cost or purchase price is the starting point in this kind of *bay'*. 'Abd al-Rahman al-Jaziri, *Kitab al-Fiqh 'Ala al-Madhabih al-Arba'ah*, Vol. II, Cairo, 1969-1970, p. 148.
 3. Abu Walid Muhammad b. Ahmad, Ibn Rushd (d. 595/1198), *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Vol. II, Lahore, 1984, p. 161; Muhammad al-Sharbinī al-Khatib, *Mughni al-Mutajila Ma'rifat Alfaz al-Minhaj*, Vol. II, Cairo, 1958, p. 77; Kamal al-Din Muhammad b. 'Abd al-Wahid al-Siwasi, Ibn al-Humam (d. 861/1457), *Sharh Fath al-Qadir*, Vol. VI, Cairo, 1980, pp. 494 and 496; cf J. Schacht, *An Introduction to Islamic Law*, Oxford, 1964, p. 154.
 4. Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law*. Cambridge, 1986, p. 94.
 5. Jawad 'Ali, *al-Mufasssal fi Tarikh al-'Arab Qabl al-Islam*, Vol. VII, Beirut, 1976, p. 398.
 6. Abu Bakr 'Abd al-Razzaq b. Hammam al-San'ani (d. 211 A.H.), *al-Musannaf*, Vol. VIII, (ed.) Habib al-Rahman al-A'zami, Beirut, 1972, pp. 231-232; al-Khatib, *op.cit.*, Vol. II, p. 77; cf Abdullah Alwi Haji Hassan, *Sales and Contracts in Early Islamic Commercial Law*, Islamabad, 1994, pp. 94-95.
 7. 'Abd al-Salam b. Sa'id b. Habib al-Tanukhi, Sahnun (d. 240/854), *al-Mudawwanah al-Kubra li al-Imam al-Malik b. Anas*, Vol. X, pp. 226-241; Ibn Rushd, *op.cit.*, Vol. II, pp. 161-164; Abu Muhammad 'Abd Allah b. Ahmad b. Muhammad, Ibn Qudamah (d. 620/1223), *al-Mughni*, Vol. VI, (ed.) Muhammad Salim Muhaysin and Sha'ban Muhammad Ismail, Cairo and Riyad, n. d., p. 199; al-Khatib, *op.cit.*, Vol. II, p. 77; Burhan al-Din Abu al-Hasan 'Ali b. Abi Bakr al-Marghinani (d. 593/1197), *al-Hidayah Sharh Bidayah al-Mubtadi'*, Vol. III, Cairo, n. d., pp. 56-57.
 8. Siddiqi, *Issues in Islamic Banking*, Leicester, 1983, pp. 49 and 137ff. See also Muhammad Ayub, "Bay' Murabahah As an Islamic Mode of Financing", *Islamic Order*, Vol. VII (2), 1985, pp. 50-58.
 9. Nabil A. Saleh, *op.cit.*, p. 95.
 10. A.L. Udovitch, *Partnership and Profit in Medieval Islam*, Princeton, 1970, pp. 220-221.
 11. Sahnun, *op.cit.*, Vol. XX, p. 179; See also Ibn Rushd, Abu al-Walid Muammad b. Ahmad (d. 520/1126), *Kitab al-Muqaddimat al-Mumahhidat*, (A supplement to *al-Mudawwanah al-Kubra* of Sahnun), Vol. II, Cairo, 1323 A.H., p. 592.

12. Muhammad b. al-Hasan al-Shaybani (d. 189/805), *Kitab al-Asl*, Part I, (*Kitab al-Buyu' wa al-Salam*), (ed.) Dr. Shafiq Shihatah, Cairo, 1954, pp. 155-156.
13. Al-Marghinani, *op.cit.*, pp. 282 - 285; Abu Bakr Muhammad b. Ahmad al-Sarakhsi, *al-Mabsut*, Vol. XIII, Cairo, 1324-1331 A. H., p. 184.
14. Malik b. Anas al-Asbahi (d. 179/795), *al-Muwatta'*. The version of Yahya b. Yahya al-Laythi, (ed.) Faruq Sa'ad, Beirut, 1983, pp. 556 - 557; Sahnun, *op.cit.*, Vol. X, p. 226; al-Marghinani, *op.cit.*, Vol. II, p.160.
15. Sahnun, *op.cit.*, Vol. XX, p. 226; Ibn Rushd, *Bidayah al-Mujtahid*, Vol. II, p. 161; Ibn Rushd (d. 520/1126), *Kitab al-Muqaddimat al-Mumahhidat*, Vol. II, p. 592.
16. Ibn Rushd, *Bidayat al-Mujtahid*, Vol. II, p. 161.
17. Ibn al-Humam, *op.cit.*, Vol. VI, p. 498; see also Jaziri, *op.cit.*, Vol. II, p. 281.
18. Ibn Qudamah, *op.cit.*, Vol. IV, p. 201.
19. Al-Khatib, *op.cit.*, Vol. II, p. 78; al-Jaziri, *op.cit.*, Vol. II, p. 280.
20. Sahnun, *op.cit.*, Vol. XX, p. 227; Ibrahim b. 'Ali al-Shirazi (d. 476/1083), *al-Muhadhdhab fi Fiqh Madhhab al-Imam al-Shafi'i*, Vol. I, Beirut, 1994, pp. 401-403; al-Sarakhsi, *op.cit.*, Vol. XIII, p. 91; Ibn Rushd, *Bidayat al-Mujtahid.*, Vol. II, p. 161; al-Jaziri, *op.cit.*, Vol. II, (Malikis View), pp. 278-280; (Hanafis View), p. 280; (Shafi'is View), p. 280; (Hanbalis View), pp. 280-281.
21. Sahnun, *op.cit.*, Vol. XX, p. 235.
22. Al-San'ani, *Musannaf*, Vol. VIII, p. 229.
23. *Ibid.*
24. *Ibid.*, p. 230.
25. Ibn al-Humam, *op.cit.*, Vol. VI, p. 500.
26. Al-Shaybani, al-Al, *Kitab al-Buyu' wa al-Salam*, p. 155.
27. *Ibid.*, p. 164; Ibn al-Humam, *op.cit.*, Vol. VI, p. 500.
28. Al-Jaziri, *op.cit.*, Vol. II, pp. 281-282.
29. *Ibid.*
30. Ibn al-Humam, *op.cit.*, Vol. VI, p. 500; al-Jaziri, *op.cit.*, Vol. II, pp. 281-282.
31. Ibn Rushd, *Bidayat al-Mujtahid*, Vol. II, p. 162.
32. Muhammad b. Idris al-Shafi'i (d. 204/820), *al-Umm*, Vol. III, Beirut, 1990, p. 93; cf. Ibn Qudamah, *op.cit.*, Vol. IV, p. 199.
33. This opinion is held by Abu Hanifah and his disciple al-Shaybani. See Al-Sarakhsi, *op.cit.*, Vol. XIII, p. 86.
34. This opinion held by Abu Yusuf and Ibn Abi Layla. See *Ibid.*
35. Al-Marghinani, *op.cit.*, Vol. III, p. 56.
36. 'Ala' al-Din Abu Bakr b. Mas'ud al-Kasani, *Kitab Bada'i' al-Sana'i' fi Tartib al-Shara'i'*, Vol. VI, Beirut, 1982, p. 223.
37. Udovitch, *Partnership*, p. 220.