

Market Price of *Salam* on the Date of Delivery: Is it Permissible?

RAFIC YUNUS AL-MASRI
Islamic Economics Research Centre
King Abdulaziz University
Jeddah, Saudi Arabia

ABSTRACT. *Al-Salam* is a kind of deferred sale, in which advance payment is made for goods to be delivered later on. There is consensus among the *fuqaha* on its permissibility if contracting parties agree on the price. However, some *fuqaha* have said that 'the price' means the one prevailing in a market on the day of contract, while others have allowed the market price on the date of delivery. Even some *fuqaha* think that agreement on the latter price is possible provided a specific amount or a proportion of it is deducted from it. For example, if you pay 100 *Saudi Riyal* now and get after a year a commodity whose price in the market exceed by 10 over 100 *Saudi Riyal*, then this extra amount will be a kind of *riba'l-nasihah*, because the process is more akin to lending than sale. The sale contract in this case is free from any risk. And most probably the buyer will transform the sale of the commodity to exchange to get 110 *Saudi Riyal*. Thus, in spite of the fact that increasing price in credit sale is permissible to majority of *fuqaha* and similarly decreasing the price is also permissible in deferred sale, in which delivery of the commodity is delayed, the sale in the above mentioned case shall be invalid as it will be a subterfuge to earn interest.

The Messenger of Allah (Blessings and prayers of Allah may be upon him) said: "Whoever enters into *Salaf*, should stipulate a determined weight and measurement, and a determined date of delivery" The word '*salaf*' of the Hadith has the meaning of '*salam*', which means a sale contract involving the immediate payment of the price and admitting a delay in the delivery of the commodity bought. It is, for instance, like paying you now 100,000 *dirhams* on condition that you deliver to me 50,000 kgs of rice of a described quality a year later.

But the question that arises is: can I pay you now 100,000 *dirhams* on condition that you deliver me rice of a described quality after a year, the quantity of which would be determined on the date of delivery by dividing the capital (i.e. price of the rice) based on the market price of a kilogram of rice on the day of delivery, with a specific amount or percentage of discount from this price?

In a deferred sale, it is permissible from the perspective of *Shari'ah* to give time a share in the price. For example, it is permissible to sell you an article of trade for an immediate cash price of 10 *dirhams* or for 11 *dirhams* to be paid after a year. In other words, it is permissible to increase the price in return for deferment of its payment. This is in regard to a deferred sale in which the price is the deferred element. Regarding a deferred sale in which the article of trade is the deferred element (i.e. *Salam* or *Salaf* sale), it is permissible to discount the price in return for early payment of the price (known in Islamic Law as "*Hateetah*").

The additional element in our question is embodied in not specifying the price through negotiations and mutual agreement between the contracting parties on the date of sale (i.e. contract date) and in not determining the price on the basis of the market price on the contract date, but rather on the basis of the market price on the date of delivery. This is what some scholars held to be permissible in opposition to the majority of opinion of Muslim jurists. Ibn Taimiyyah says "Sale is permissible (...) at the price determined by the market, or at the price people sell at, which is one of two opinions in the Hanbali School of Islamic Jurisprudence" (*Al-ikhtiyarat al-fiqhiyyah*, p.121). This is in regard to sale transactions in general, but as regards *Salam* sale contracts, Ibn Taymiyyah says "If he (the buyer) advances a specific amount of money against delivery (of a commodity) on a specific future date on condition that, on the date of delivery, he would purchase the commodity on the basis of a price less than that prevailing on the market by a specific amount, then the transaction would have been as valid as that of purchase at market price" (*Al-ikhtiyarat al-fiqhiyyah* p.131). This is in regard to fungibles, that is articles of trade amenable to accurate description that prevents the occurrence of a degree of ignorance that might give rise to a dispute, known in Islamic *Shari'ah* as (*mithliyyat'*), as opposed to (*qeemiyyat'*), or non-fungible goods. Jurists have deducted their evidence from the fact that if the sale contract becomes void, they revert it to the price of an equal article without having to have the mutual consent of the contracting parties. If this is done with their mutual consent, then it is more worthy of being a permissible measure. One could add that the market price (whether on the date of delivery or on the date of contract) is not the price on which the two parties agree, as this is impermissible as it would lead to disputes; the seller would tend to charge a higher price, whereas the buyer would tend to lower the price. It is rather the price, which is determined by market forces irrespective of the contracting parties' opposed wills and desires. Should either party hold a monopoly power over the market, this would not have been valid, for a monopolist controls the price. If we compare the market price on the date of the contract and the market price on the date of delivery, we would find the latter is better and more equitable to the contracting parties, for the price might increase or decrease during the interval between the contract date and the delivery date, and because the commodity to be delivered might be either from the seller's own personal produce or bought from the produce of the market. What is of consideration then is the price on the date of delivery. There might seem to be no value for the market price on the contract date as such price could be easily ascertained and adopted by both parties as the price for the contract, should they wish to do so.

Al Rajhi Banking and Investment Co. organized in Riyadh its Second *Fiqhi* Seminar on 26.07.1423 A.H. on this issue, but it did not explain in its memorandum how it was going to implement this form in the field of Islamic banking.

The problem lies in the fact that a *Salam* contract usually contains an element of discount (*hateetah*) on the price in return for early payment of the price. If you pay now 100 pound to get after a year a commodity the market price of which is equivalent to the discount agreed on with the seller, which we will assume to be 10 pounds, such an increase would be a form of interest known in Islamic Law as (*Riba Nasi'a* - Delay Usury), especially when we take into consideration that the transaction is free from the risk normally involved in sales and commercial transactions as a result of adopting the market price on the date of delivery instead of the market price on the date of the contract. This transaction might be complemented, in the field of banking, ; by the buyer re-selling the commodity bought to the seller and get 110 pounds, thus reverting the transaction into what is termed "*Eenah*" sale contract, an invalid contract based on a compound interest-based stratagem.

The Companion Abu-Sa'eed Al-Khudari narrated a hadith in which the prophet (P.B.U.H.) says "Salam at the market price is a form of *riba* (*Fath-al-Bari* 4/435, *Musannaf* Abdurrazzaq 8/7 and *Nayl-al-Awtar*, 5/256). One can not grasp the *riba* (interest) involved in such transaction unless one assumes that the price meant here is that of the market price at the time of delivery, after it has been discounted by a specific sum or a specific percentage. But since *Salam* can not be transacted except under this assumption, the narration of *Al-Khudari* is based on ellipsis. This assumption has requirements that are implicitly understood by the listener without any need to make them explicit.

Based on the above, I concur with Ibn Taymiyya's view that the market price of *Salam*, if it is meant to be the market price on the date of the contract, is valid. But if what is meant by it is the future market price on the date of delivery, it is not valid. The evidence on such invalidity is that when I say the cash immediate price of such and such a commodity is 10 Riyals and 12 Riyals for a year (that is with an increase of 2 Riyals), what I mean is that the increase in the price pertains to an increase over the current market price, not the future market price. It is true that increasing the price of a deferred payment over a spot payment is permissible, so too, in my opinion, is the offer of a discount on the price in return for early payment of a deferred price. However, such sensitive judgements do not afford such additions or such contemporary juristic engineering.

References

Al-Shawkani (n.d.), *Nayl-al-Awtar*, Cairo, Al-Babi Al-Halabi.

Ibn Hajar (n.d.), *Fath-al-Bari*, Beirut, Dar al-Marifah.

Abdul Razzaq (1403 A.H.), *Musannaf*, Beirut, Al-Maktabah Al-Islami.

Ibn, Taymiyah (n.d.), *Al-Ikhtiyat Al-Fiqhiyah* edited by Al-Bali, Riyadh: Maktabah al Riyadh.

السَّلْمُ بِسَعْرِ السُّوقِ يَوْمَ التَّسْلِيمِ هل يجوز ؟

رفيق يونس المصري

باحث بمركز أبحاث الاقتصاد الإسلامي

جامعة الملك عبدالعزيز - جدة - المملكة العربية السعودية

المستخلص: السَّلْمُ ضرب من البيع الآجل، يتم فيه تعجيل الثمن وتأجيل المبيع، وهو جائز بإجماع الفقهاء إذا تم الاتفاق على السعر في العقد . لكن بعض الفقهاء أجازوا الإحالة في العقد على سعر السوق يوم العقد، كما أجاز بعضهم الإحالة على سعر السوق يوم التسليم، ومنهم من رأى أن من الممكن الاتفاق على السعر الأخير مطروحاً منه مبلغ معلوم، أو نسبة معلومة . فإذا دفعت الآن ١٠٠ ريال سعودي، وحصلت بعد سنة على سلعة يزيد ثمنها في السوق بمقدار ١٠ ريال سعودي، كانت هذه الزيادة من باب ربا النسبنة، لأن العملية صارت أشبه بالقرض منها بالبيع، فالبيع هنا حال من المخاطرة، وربما يعيد المشتري بيع السلعة إلى المصرف ليحصل على ١١٠ ريال سعودي. فمع أن الزيادة في الثمن تجوز عند جمهور الفقهاء في البيع الآجل الذي يتأجل فيه الثمن، ومع أن الخطيئة من الثمن تجوز أيضاً في البيع الآجل الذي يتأجل فيه المبيع، إلا أن البيع على الصورة المبينة لا يجوز لأنه صار حيلة ربوية.