

Reciprocal Loans*

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Abstract. The reciprocal loan simply means that in return for a loan for a specific period, the lender receives an equivalent amount of loan for a similar period of time. Some contemporary scholars believe that reciprocal loans are legitimate, if they are not tied, that is if the lending of one loan does not depend on the lending of the other. But they stipulated that tying could take place through a promise or a memorandum of understanding. The loan is granted without the above stipulation, but an understanding may take place apart from the contract. This constitutes an illegitimate maneuver around proper contracting, since what is unlawful in contract is also unlawful in promise or collusion, even if not binding, let alone when binding.

I. Synopsis

I lend you, provided you lend me.

II. Basic Form

I lend you 1000 for 1 year, provided you lend me 1000 for 1 year. In this case the loans are equal as regards amount and term.

I lend you 1000 for 1 year provided you lend me 500 for 2 years. In this case equality is numeric (based on numbers):

$$\begin{array}{rcl} \text{Amount} & \times & \text{Term} \\ 1000 \times 1 & = & 500 \times 2 \end{array}$$

III. Elaborate Form

The elaborate form of a reciprocal loan is that: I lend you provided you lend me with the two loans being equal in present value. That is because even if the two loans are equal as to amount and term or yields (i.e. numbers), a spot loan is still more

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valuable than a deferred loan. This conclusion has been long-established in both jurisprudence and economics on the grounds that whoever borrows now 1000 for 1 year is better-off than he who borrows a year from now 1000 for 1 year, as the former thus commits against the latter deferment usury (*Riba Nasa'* .i.e. selling a loan with a deferred payment of the price).

IV. The Reciprocal Loan in Islamic Jurisprudence

Some jurists have prohibited the reciprocal loan, such as the *Hanbali* and *Maliki* schools. For instance, *Al-Mughni*, 4/360, affirms that "if a loan is made contingent upon the borrower lending the loaner in turn, it is not permissible", while *Al-Dusuqi's Commentary (Hashiyat)*, 3/364, states that "I lend you on condition that you lend me, constitutes a loan that brings a benefit [to the lender] (*salaf jarra naf'*)". Thus, every jurist who addressed the reciprocal loan has prohibited it.

V. The Reciprocal Loan is Unquestionably Usurious

I am of the view that the reciprocal loan, whatever form it may take, is inadmissible, because a loan in Islam is a gift, whereas if it is made contingent upon another loan it turns into a sale ("do ut des" commutative contract, or *mu'awada*) and thus deviates from its *raison d'être*.

The fact is the reciprocal loan is based on two equal benefits, or interests, and their mutual set-off. If the interest I gain from you is equal to the one you gain from me, could interest then be permissible (*Halal*)? If interest is proscribed for one party, could it then be admitted in the event it is applied to the two parties? If interest is forbidden, does it become permitted if it is made reciprocal? If I lease you my land provided you lease me yours and neither of us receives rent, would that mean that the land was leased for no rent? If I sell you my car and you sell me yours and neither of us receive a cash payment, would that mean that the car was sold for no price? If a lender required a borrower to pay him the loan in another country and this involved the procurement of provisions by the borrower for his journey (*mu'na*) while the lender did not gain any tangible, material and explicit interest or benefit for his loan, would that mean such a loan is interest-free (*qard hasan*)? If a current account (with interest) is held at a usurious bank and its credit and debit sides are evenly balanced so that credit payments are equal to debit payments or moneys paid in to moneys paid out, whereas the moneys paid in had credit interest and the moneys paid out had debit interest and if the account did not have interest credited or debited, would that mean that the current account with interest became free of interest? The latter case constitutes a common practice in usurious banks and is indeed based on usury. So, how could it be said that there is no usury involved here?

The difference between reciprocal loans and loans with interest is like the difference between a barter deal (*muqayada*) and a cash sale, do they entail different rulings? Is a barter not a sale?

VI. Is the Reciprocal Loan Analogous to a Bill of Exchange (*saftaja*)?

The bill of exchange is a loan that is granted in one country and repaid in another country, so that the lender gains the benefit of transferring the money and eluding the risk because the borrower guarantees payment in the other country. The vast majority of jurists prohibit such a transaction if it is conditional, whereas a few others (Ibn Taymiya, Ibn Al-Qayim) allow it if it does not involve the procurement of provisions by the borrower for his journey (*mu'na*).

Since the reciprocal loan is a loan that is conditioned upon another loan and the bill of exchange involves the procurement of provisions, the two are at variance.

VII. Is the Reciprocal Loan Analogous to a Society (*Jam'a*)?

Jam'a (society) for past jurists is analogous to a present-day society (*ta'awuniyat*), but this case involves a particular type of society, which is the mutual loan society, or cooperative. Thus Qaliyubi's *Commentary (Hashiyat)*, 2/258, reports that "*Jam'a* is a very common practice among women, whereby one woman may borrow from others a given amount each week or month and then repays the amount to each of them following the other until the last one, and this is admissible as Abu Zar'a, the Iraqi holy man (died 826H), said".

The word *jam'a* or *jam'iyat* (society), may itself be derived from the word *jum'a* (Friday), which is the day on which the money is collected from the members. The word may also be derived from *jama'a* (group) or *jam'* (plural, group), or perhaps from the act of *jam'* (collection).

The reciprocal loan within the context of the mutual loan society is even more ambiguous than in the case of the bill of exchange and is therefore more difficult to unravel. That is because each member of the society lends, so long as he can borrow and this is the common denominator to the (reciprocal), loan and the loan society. However, the loan society was deemed admissible only by Abu Zar'a, the Iraqi holy man, among past jurists. Moreover, the loan society rests more on need, as the money is raised from the members and then given to those most in need and then to the progressively less needy. Therefore their benefits are not equal, because the first one to borrow in the queue is not a lender but one who borrows from all, the last one to borrow in the chain is not a borrower but one who recovers his loan from all of the members, whereas the middle one is a lender to those preceding him and a borrower from those following him in the queue, and so forth.

If members are required to remain in the society for two or more cycles so that the loan queue in the second cycle is reversed, then some contemporary scholars deem the condition inadmissible.

VIII. Could the Reciprocal Loan be Assimilated to Exchanging Debt for Debt (*al-kali' bel-kali'*)?

I did not find any jurist who judged it to be so. However, a loan for a loan may be considered as the sale of debt for debt, as the first case is a deferred loan for a deferred loan (*qard mu'ajjal biqard mu'ajjal*) and so is *al-kali' bel kali'*, deferred or delayed, debt for deferred debt (*mu'akhhkar bimud'akhhkar*). As each of the two cases constitutes a "do ut des" commutative contract, one argument for proscription may be that if there are two deferred loans, one being granted prior to the other, the earlier loan is more valuable than the later one, assuming that they are equal in amount and term. If we wanted their value to be equal, then we would have to rely on a rate of discount (*hatita*), which is in fact a rate of interest, and the loans would also have to be defined in advance in terms of amount, term and date of procurement. Such a transaction is intricate, and it would be easier and more straightforward to assess a loan at interest that is separate from the other.

The reciprocal loan is as complex as someone exchanging 1 kilogram of apples for 1 kilogram of apples by way of barter. Had the initial lender paid five Riyals (the cost of 1 kilo of apples) and had each of the two sales been independent of the other, the transaction would have been more practical and less complicated while fulfilling its function more effectively and at less cost.

The disconnection of the two loans unquestionably exposes the explicit interest that is associated with each of them and that was implicit when they were interconnected. This is exactly analogous to the sale of two commodities or two services: when money is involved in the sale, it uncovers the cost or rent of each commodity or service.

IX. Could the Reciprocal Loan be Assimilated to "Two Deals in One" (*safqtayn fi safqah*)?

I did not find any jurist who judged it to be so. However, the reciprocal loan conceals a reciprocal interest wherein a loan turns from assistance into a commutative arrangement and could therefore be classified under "two deals in one", or "two sales in one" (*bay'atayn fi bay'a*) on the grounds that another phrase for a usurious loan is a usurious sale, since a spot loan of 100 in return for a deferred loan of 120 is a forbidden transaction under loan usury (*riba al-qurud*) as well as under sales usury (*riba al-buyu'*) because it involves both excess usury (*riba fadl*) and deferment usury (*riba nasa'*).

"Two deals in one" or "two sales in one" are forbidden from a legal (*Shari'a*) viewpoint and complicated from a practical perspective whereas an independent deal or sale is more straightforward and less costly.

X. The Principle of Reciprocity

The principle of reciprocity has been practiced in old days as well as in modern times. It has also been a practice in Islam in some areas such as the customs tithe (*'ushur*) imposed on infidel enemies at war (*'ahl al-harb*). However, the application of a principle in one area does not necessarily imply that it is applicable in all areas. In fact, a loan is a beneficence and if we were to assimilate the reciprocal loan to the principle of reciprocity, as is the case in some Islamic Banks, with a condition of a beneficence for a beneficence, the deal deviates from its nature and purpose and thus turns into a commutative transaction.

XI. A Loan for a Bigger Loan

Example: To lend someone 100 for 1 year, provided he borrows from him (after 1 year) 105 for 1 year; or to lend someone 100 for 1 year, provided he borrows from him (after 1 year) 100 for 1 year and 1 month.

The non-specialist may surmise that the two loans are not inequivalent, but if we recall that a spot loan is of greater value than a deferred loan, then we realize that the basis for the increase in the amount or the term is to achieve equality between the present values of the two loans. This is known to financial analysis experts and also to jurists versed in deferment usury.

XII. The Reciprocal Loan in a Differing Currency

Example: To lend someone 1000 dinars for 1 year, provided he borrows from him 3000 dollars for 1 year. This transaction, which involves the added problem of forward exchange because of the difference in currencies (dinar, dollar), is inadmissible.

XIII. A Loan for a Loan under an Arrangement or Memorandum of Understanding (MOU)

Some contemporary scholars are of the view that the reciprocal loan is valid if there is no linkage between the two loans. In other words, if giving one is not contingent upon granting the other. So far this ruling is well-founded. However, they go on to say that the linkage can be agreed through an arrangement or MOU. Thus the loan is granted without a condition, but the condition is agreed upon outside the contract.

Such a transaction constitutes a circumvention, because where a contract is prohibited a quid pro quo or arrangement is also prohibited even if the arrangement is non-binding, let alone if it is.