



Series of the Writings of His Eminence The Shaykh (12)

Debt Contract

By His Eminence Shaykh

Muhammad ibn Sālih Al-'Uthaymīn

May Allah forgive him, his parents, and all Muslims

Published by

Shaykh Muhammad ibn Sālih al-'Uthaymīn Charity

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***In the Name of Allah, the Most Compassionate,
the Most Merciful***

All praise is due to Allah, we praise Him, seek His help and forgiveness, and repent to Him. We seek refuge with Allah from the evils of our souls and from our bad deeds. Whoever Allah guides, none can lead astray, and whoever He leads astray, none can guide. I bear witness that there is no deity worthy of worship except Allah alone, Who has no partner, and I bear witness that Muhammad is His slave and messenger, may Allah's peace and blessings be upon him, his family and Companions and those who follow them with good conduct until the Day of Judgment.

Islam is a perfect and comprehensive religion that addresses all acts of worship that the slaves offer to their Lord, as well as their habits and their dealings with each other. Islam has explained all the relevant rulings generally and in detail. One of the dealings that has been common among people is debt. It means selling something that is not in hand at the moment for an immediate price, or selling something that is not in hand for another that is not in hand either. I shall explain the rulings on some of these cases in the following study.

Types of the Debt Contract

First type: When someone needs to buy a commodity but he does not own its price in hand. So, he buys it for a deferred payment to a fixed term with a higher price. This is permissible. Example: someone buys a house, to live in or rent it, for a one-year deferred payment of 10000. But, if he pays immediately, the price will be 9000. Similarly, when one buys a car, to use or rent it, for a one-year deferred payment of 10000. But, if he pays immediately, the price will be 9000. This is included in Allah's statement, {O you who believe, when you contract a debt for a specified term, write it down.} [Al-Baqarah: 282]

Second type: When someone buys a commodity for a specified term for the purpose of trade. For example: someone buys wheat for a deferred price higher than its immediate price so as to trade in it in another country, or wait for a higher market price, etc. This is permissible as well as it is included in the previously mentioned verse.

Shaykh al-Islam Ibn Taymiyyah (may Allah have mercy upon him) said about those two types: "They are permissible based on the Qur'an, the Sunnah and the scholars' consensus." This is cited by Ibn Qāsim in Majmū' Al-Fatāwa [page 499/ volume 29] ⁽¹⁾

(1) There is no difference to defer the payment to one, or multiple fixed dates. Example: someone says: "I sell it to you for such-and-such price, to be due in such-and-such installment every month." [The author]

Third type: When someone needs money, so he borrows a sum of money from another in return for a certain commodity to be delivered later to the lender. Example: someone asks another to lend him 50 Riyals in return for 20 Sa's of wheat to be delivered after one year. This is permissible too. It is what is known as Salam sale mentioned in the Hadith narrated by Al-Bukhāri and Muslim on the authority of Ibn 'Abbās (may Allah be pleased with him) who said: "When the Prophet (may Allah's peace and blessings be upon him) came to Madinah, they used to pay in advance for fruits, a year or two in advance. He (may Allah's peace and blessings be upon him) said: 'Whoever pays in advance for anything, let him pay for a specified measure and a specified weight, to be delivered in a specified period of time.'"

Fourth type: When someone needs money, but finds none to lend him. So he buys a commodity from a person for a deferred payment then sells it to the one from whom he bought it for a lower price to be paid immediately. This is 'inah sale, which is prohibited, for the Prophet (may Allah's peace and blessings be upon him) said: "When people become stingy with dinar and dirham, engage in 'inah sale, follow the tails of cows (get engrossed in agricultural wealth), and leave Jihad in Allah's cause, Allah inflicts upon them humiliation which will not be removed until they return to their religion." [Narrated by Ahmad and Abu Dawūd] That is because this type of sale is an obvious trick to deal in Riba. In reality, it is not but selling immediate dirhams for deferred ones, with a commodity involved. Imam Ahmad and others stated that it is impermissible.

When someone needs money, but finds none to lend him. He buys a commodity for a deferred payment, then sells it to a third party. This is what is known as Tawarruq.

Scholars have different views on the permissibility of this transaction. Some view that it is permissible since one buys a commodity, seeking thereby to own the commodity itself or its price. Both purposes are valid.

Other scholars, however, state that it is impermissible since its purpose is to get cash in return for cash, with the commodity involved by way of circumvention. It is pointless to legalize something unlawful through ways that do not ward off the resulting harm. The Prophet (may Allah's peace and blessings be upon him) said: "Verily, the reward of deeds depends upon the intentions, and indeed, each one will be rewarded according to his intention."

The view that Tawarruq is impermissible is the one chosen by Shaykh al-Islam Ibn Taymiyyah. It is also one of the opinions reported from Imam Ahmad, who included this opinion in Abu Dawūd's narration on 'īnah sale. It is also cited by Ibn al-Qayyim in Tahdhīb As-Sunnan (801/5).

However, owing to people's need nowadays, and the scarcity of lenders, we would adopt the view of its permissibility according to some conditions:

1- One should be in need of cash, otherwise, it is not permissible, like the case of one who resorts to this deal in order to lend someone else.

2- One cannot find lawful means to get the money such as loan and Salam sale. If he can get the money through another means, then it (Tawarruq) becomes impermissible because he is in no need of it.

3- The contract should not include anything that resembles Riba, such as saying: "I sell you the ten for eleven" and so on. If it includes the like of this, then the sale will either be disliked or prohibited.

It was reported from Imam Ahmad that he said about this case: "It is like selling cash for cash, which is invalid." These are the words of Imam Ahmad.

Accordingly, the right action for the creditor is to know the price of the commodity as well as his profit, then say to the debtor: "I sell it to you for such-and-such price to be paid after one year."

4- The debtor should not sell the commodity except after receiving and owning it, because the Prophet (may Allah's peace and blessings be upon him) forbade traders from selling commodities before having them in their caravans.

If these four conditions are met, then the permissibility of Tawarruq becomes a well-founded view, providing for people a way out of hardship.

It should be known that it is not permissible for the debtor to sell it to the creditor for a price lesser than the one he bought it for, since this features the *'inah* sale, which we discussed in the fourth type.

Sixth type: The debt contract that many people use now. It comprises an agreement between the debtor and the creditor to take money; ten for eleven, or more or less. Then they go to a store, where the creditor buys stuff equal to the amount of money they agreed upon. Then he sells the stuff to the debtor. Then the debtor sells it to the store owner after deducting an amount which they define as “sa’y” (efforts). This is prohibited without doubt. Shaykh al-Islam Ibn Taymiyyah stated that it is impermissible several times without transmitting any controversial views, although he reported controversial views on the issue of Tawarruq.

Places where Ibn Taymiyyah stated the impermissibility of this issue:

1- P.74/vol.28: “A transaction involving three parties, like when a third person engages in a transaction for the purpose of legalizing interest. He sells the commodity to the one who received the interest, who sells it for a deferred payment to the one who paid the interest, then gives it back to its owner with a decreased amount that goes to that third person. Some of these transactions are unlawful by the scholars’ consensus, like those including a condition for that, or where the commodity is sold before being received by the seller as per Shariah directive, or those lacking Shariah conditions, or those where the debt is transferred to an insolvent person. There are other transactions where the scholars have different opinions regarding its permissibility. But, it is authentically reported from Allah’s Messenger and his Companions that they are impermissible.”

2- P437/vol.29, he said: “And when someone says to another: ‘I lend you each 100 with such-and-such interest rate.’ All this is unlawful.”

He then added: “Anyway, this transaction and similar ones where the purpose is to sell dirhams for dirhams with an excess for a fixed term are invalid Riba-based transactions.”

3- P.439/vol.29: He said: “If the borrower’s intention is to take dirhams in return for a deferred payment of more than them, and the lender has the same intention, then this is Riba that is undoubtedly impermissible. If they resort to trickery, whatsoever, then deeds are judged according to the intention, and everyone will be rewarded according to what he intended.”

Ibn Taymiyyah said similar words in p. 430, 433 and 441 from the same volume, and also in his book *Ibtāl At-Tahlīl* on p.109.

In general, the unlawfulness of this type of debt contract, which we referred to in the first lines of this section, could not be doubted by anyone who is free of personal inclination and greed for the following reasons:

1- Both the creditor and the debtor’s purpose is to exchange dirhams for dirhams, that is why they estimate the amounts in dirhams and the profit in dirhams, even before determining the commodity that is used by way of circumvention. They initially agree on the sum of money: the ten for such-and-such. Then at the store, the creditor buys whatever commodity he might find there, be it sugar, rice,

cardamom, or the like. Then the lender buys it. Thus, it is clear that they both look for the money, while the commodity is of no consideration for them both. The Prophet (may Allah's peace and blessings be upon him) said: "Verily, the reward of deeds depends upon the intentions, and indeed, each one will be rewarded according to his intention."

This is supported by the fact that neither the creditor nor the debtor examines the commodity or checks it the way the interested buyer usually does. It could even be defective or damaged, but they do not care.

This means that the sale is fictitious, not real. What is fictitious cannot change reality, nor can it cancel rulings.

I was even told that if the money with the store owner is less than what the borrower needs, they redo the sham transaction involving the same commodity, and at the same time. If the store owner takes it from the borrower, he sells it to the creditor who sells it to the borrower with the profits they have previously agreed upon, then the borrower sells it to the store owner. Then, the creditor buys the commodity once more from the store owner, then sells it to the borrower in return for the agreed upon profit, and so on, until there is no more cash. It could be that the commodity the store owner has does not equal the needed sum, but through this trick, they can collect it.

2- What further proves the impermissibility of this debt contract is that if the money is the very purpose of the creditor and the debtor, then the sale is but a trick to deal in Riba in a way that

does not prevent the objective of Riba. Surely, circumvention regarding the ordinances of Allah involves two violations:

- Committing a prohibited act, that is not waived by the trick anyway.
- Cheating and fraud regarding the rulings and verses of Allah Almighty Who knows that which deceives the eyes and what the breasts conceal.

Allah Almighty tells us that those cheaters seek to deceive Allah, yet it is He Who is deceiving them by beautifying for them going further in their deceit and plans. But they plan, and Allah plans and Allah is the best of planners.

Ayyūb as-Sakhtiyāni said: "They seek to deceive Allah just as they deceive little boys, and if they do the prohibition directly, it would be less in gravity."

The Prophet (may Allah's peace and blessings be upon him) warned his Ummah against circumventing Allah's prohibitions as he said: "Do not commit what the Jews committed and violate Allah's prohibitions using simple deceitful tricks." The Prophet (may Allah's peace and blessings be upon him) also said: "May Allah curse the Jews; for they were forbidden (to eat) fat, so they sold it and consumed its prices."

3- In this transaction, the creditor gains profit from the borrower before he buys the commodity. He even gains profits through a commodity whose nature and kind are unknown to both of them, so he gains profit from something that is not in

his possession. The Prophet (may Allah's peace and blessings be upon him) forbade gaining profit through something one does not possess, as he said: "Profit follows responsibility." He (may Allah's peace and blessings be upon him) further said: "Do not sell what you do not possess."

This is to be said if we primarily ensure that the sale involved in the debt contract is valid. However, it is not so in reality, rather it is a sham sale. That is because the buyer does not examine the commodity, or negotiate its price. In fact, if it is sold for more than its real value, he will not care.

4- The dealing involves selling the bought commodity, although it has not yet been transferred from the store and not delivered to the buyer. The Messenger of Allah (may Allah's peace and blessings be upon him) forbade selling commodities where they are bought until the tradesmen take them to their houses. Zayd ibn Thābit (may Allah be pleased with him) reported: "The Messenger of Allah (may Allah's peace and blessings be upon him) forbade selling the goods where they are bought until the tradesmen take them to their houses." [Narrated by Abu Dawūd]

Ibn 'Umar (may Allah be pleased with him) said: "People used to buy food in the upper part of the market in the same spot without measuring or weighing it. The Messenger of Allah (may Allah's peace and blessings be upon him) forbade them from selling it there before moving it." [Narrated by Al-Bukhāri, Muslim, Abu Dawūd, and Ahmad]

Seventh type of the debt contract: When someone owes another person a deferred sum of money. When the debt becomes due and the debtor is insolvent. The creditor offers that he gives the debtor another debt so that he can repay the first debt. This is Riba about which Allah says: {O you who believe, do not consume usury, doubled and multiplied, but fear Allah that you may be successful. And fear the Fire, which has been prepared for the disbelievers. And obey Allah and the Messenger that you may obtain mercy.} [Āl ‘Imrān: 130-132]

This type of debt contract belongs to the pre-Islamic era of ignorance, where someone would say to the insolvent debtor when payment was due: “Whether you pay or accept the addition of interest.” However, those people used to add interest to the debt without trickery, but nowadays they resort to trickery in doing the same.

The creditor, in case of the debtor’s insolvency, is required to give him respite. Allah Almighty says: {And if someone is in hardship, then [let there be] postponement until [a time of] ease.} [Al-Baqarah: 280] If he totally absolves him of the debt, that will be even better.

In case the debtor is well off, the creditor may force him to repay, since it is unlawful for a rich debtor to procrastinate. The Prophet (may Allah’s peace and blessings be upon him) said: “Delay in payment by a rich man is injustice.” It is known that injustice is impermissible, and the unjust person should be prevented and forced to do what removes injustice.

Eighth type of debt contract: When someone owes another a debt, and when it is due, the creditor says to him: "Either you pay the debt, or go to so-and-so to lend you money to pay my debt." This deal involves a prior agreement between the first and second creditors that each of them gives a debt to the other's insolvent debtor in order to pay the debt, then, the creditor gives the debtor another debt so as to pay the new creditor, or says: "Go to so-and-so to get a debt from him and pay me my debt," with an agreement between the first creditor and the second lender to lend the debtor. If he pays the debt to the first creditor, he restructures the debt for him, then he pays the other lender. In fact, this is but a trick to restructure the debt through a three-party deal, which is impermissible, given the impermissibility of resorting to trickery and the Prophet's (may Allah's peace and blessings be upon him) warning his Ummah against it.



To conclude:

These are eight types of the debt contract, some of which are permissible and lawful, having much goodness and blessing therein. Other types are unlawful and prohibited, incurring evil and loss, and removing blessing. It is enough to indicate its evil that it beautifies for the doer his bad deed, so he persists in it, never realizing that he is doing wrong. Thus he is included in Allah Almighty's saying: {Is the one to whom the evil of his deed has been made attractive so he considers it good [like one rightly guided]? For indeed, Allah sends astray whom He wills and guides whom He wills.} [Fātir: 8] Allah Almighty also says: {Say, [O Muhammad], "Shall we [believers] inform you of the greatest losers as to [their] deeds? [They are] those whose effort is lost in worldly life, while they think that they are doing well."} [Al-Kahf: 103-104]

The lawful of these types are:

- 1- Someone needs a commodity or a real estate, so he buys it for a deferred payment in order to fulfill his need.
- 2- Someone buys a commodity or a real estate for a deferred payment for trade purposes, and in anticipation of increase in the price.
- 3- Someone needs money, so he borrows from another in return for a defined commodity, which the borrower would deliver later.

These three types are lawful without doubt, which are explained in detail above.

The unlawful types of the debt contract are:

1- Someone needs money, but finds none to lend him. So he buys a commodity from another for a deferred payment that exceeds its current value. Then, he sells it to another. This is what is known as Tawarruq, regarding which scholars have different views as previously highlighted.

2- Someone needs money, but finds none to lend him. He buys a commodity from another for a deferred payment, then sells it to him with a price lesser than that he bought it for. This is what is known as 'inah sale.

3- The debtor and creditor agree that 10 dirhams are exchanged for 11, or the like. Then, they go to a third person where the creditor buys from him a commodity, in a sham sale. Then he sells it to the debtor, who, in turn, sells it to the one who sold it to the creditor.

This method is used by many people now, although it is impermissible as we have previously cited from Shaykh al-Islam Ibn Taymiyyah, with no disagreement about its prohibition, unlike the issue of Tawarruq.

4- Someone owes another a debt to be paid in a fixed term. When it is due, the debtor has no money to pay it, so the creditor says to him: "I give you another debt so that you can pay me." This is the method of the pre-Islamic era of ignorance. This type constitutes consumption of Riba doubled and manifold. It used to be practiced openly back then, but nowadays it is practiced by way of trickery. So, it involves two violations.

5- Someone owes another a debt to be paid in a fixed term, then it becomes due. The creditor has a friend with whom he agrees to give a loan or a debt to the debtor so that he can pay the first debt, whereby they convert the old debt into a new one. This is the way of the pre-Islamic era of ignorance we have just explained, yet this one adds a third party, who also takes part in sin, aggression, plan and deceit.

These five types are prohibited, and we have already highlighted that there is different scholarly views regarding the first type.

In Shariah terminology, debt basically refers to whatever is to be paid later, whether it is a price of a product, loan, wage, dowry, compensation for Khul' (separation sought by wife), value of a damaged object, and so on.

It is not as what many of the commoners believe that the debt contract are what they know it to be. They take as evidence the statement of Allah Almighty: {O you who believe, when you contract a debt for a specified term, write it down.} [Al-Baqarah: 282] The verse is referring to lawful debts that Allah and His Messenger (may Allah's peace and blessings be upon him) declared as lawful, unlike the unlawful. Texts of the Qur'an and Sunnah are numerous in this regard. They are sometimes general and restricted in other times. However, when restricted, this should be supported by a proof indicating so.



Conclusion

Let us conclude this research by presenting texts from the Qur'an and Sunnah on the strict prohibition of Riba:

Allah Almighty says: {O you who believe, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger.} [Al-Baqarah: 278-279] The verse carries a severe and definite threat for those who refuse to give up Riba, as by doing so they become in war with Allah and His Messenger (may Allah's peace and blessings be upon him). What other sin can be graver than one whose perpetrator is in war with Allah and His Messenger? Therefore, some of the righteous predecessors said: "Whoever persists in dealing in Riba and does not repent thereof, it is a duty upon the Muslim ruler to ask him to repent, if he desists, it is fine, otherwise, he should be killed."

Allah Almighty also says: {and give up what remains [due to you] of interest, if you should be believers.} [Al-Baqarah: 278] The verse highlights the fact that if the consumer of Riba truly believes in Allah and His Messenger, hopes for Allah's reward in the Hereafter, and fears His punishment, he will never persist in consuming Riba.

Allah Almighty also says: {Those who consume interest will not be able to stand [on Resurrection Day] except like those maddened by Satan's touch. That is because they say, "Indeed, trade is like interest." But Allah has permitted trade

and forbidden interest. So whoever desists – after having received warning from his Lord – may have what is past, and his affair rests with Allah. But whoever returns, those are the people of the Fire; they shall abide therein forever.} [Al-Baqarah: 275] The verse describes those who consume Riba as they rise from their graves on the Day of Judgment before all the creation. They will be as if stricken by the devil causing them madness. In other words, they will seem as if they are epileptics who are strangled by the devils. Ibn ‘Abbās (may Allah be pleased with him) said: “The consumer of Riba will be resurrected on the Day of Judgment as a madman who is being strangled.”

Then, Allah Almighty explains the malicious allegation that blinded them away from distinguishing right from wrong. Allah Almighty says: {That is because they say, “Trade is [just] like interest.”} [Al-Baqarah: 275] It is probable that they said so on account of a misconception they had, and an invalid interpretation to which they resorted, like the ways people use to circumvent Riba. It is also probable that they said so out of obstinacy and rejection. In both cases, their attitude indicates their persistence in falsehood, indulgence in consuming Riba, and invalid argumentation to refute the truth thereby. We seek Allah’s refuge from this.

Allah Almighty also says: {O you who believe, do not consume usury, doubled and multiplied, and fear Allah that you may be successful. And fear the Fire, which has been prepared for the disbelievers. And obey Allah and the Messenger that you may obtain mercy.} [Āl ‘Imrān: 130-132] Allah Almighty forbids His believing slaves, being believers, to consume Riba.

He warns them of Himself as He says: {and fear Allah} and warns them of the Fire, which has been prepared for the disbelievers. Allah Almighty further emphasizes that fearing and obeying Him is a reason for success and obtaining mercy: {So let those beware who dissent from the Prophet's order, lest fitnah strike them or a painful punishment.} [An-Nūr: 63]

All this indicates the gravity of Riba, being a reason for incurring Allah's punishment and entering Hell. We seek refuge with Allah from that.

Allah Almighty also says: {And whatever you give for interest to increase within the wealth of people will not increase with Allah...} [Ar-Rūm: 39] And said: {Allah destroys interest and gives increase for charities.} [Al-Baqarah: 276] Riba does not increase with Allah, and its perpetrator never gets close to his Lord therewith, since it is ill-gotten money, devoid of goodness and blessing. If the perpetrator gives that money in charity, it will not be accepted, unless he repents to Allah Almighty of such a tremendous sin. So, he gives the ill-gotten money in charity so as to clear his liability if its real owners are unknown.

But, it is not accepted as a charity whereby he seeks a reward for himself, because Riba does not increase with Allah, whereas acceptable charity does increase with Him.

Even, if he spends that money, Allah will not bless it for him, instead, Allah will destroy it and demolish its blessing. Truly, there is neither good nor blessing in Riba.

Abu Hurayrah (may Allah be pleased with him) reported that the Prophet (may Allah's peace and blessings be upon him) said: "Avoid the seven destructive sins." and mentioned Riba among them. [Narrated by Al-Bukhāri and Muslim]

Samurah ibn Jundub (may Allah be pleased with him) reported that the Prophet (may Allah's peace and blessings be upon him) said: "This night I saw in a vision that two men came and took me to a sacred land whence we proceeded on till we reached a river of blood, where a man was standing, and on its bank was standing another man with stones in his hands. The man in the middle of the river tried to come out, but the other threw a stone into his mouth and forced him to go back to his original place. So, whenever he tried to come out, the other man would throw a stone into his mouth and force him to go back to his former place. I asked: 'Who is this?' I was told: 'The person in the river was a Riba-eater.'" [Narrated by Al-Bukhāri]

Jabir ibn 'Abdullah (may Allah be pleased with him) reported: "The Prophet (may Allah's peace and blessings be upon him) cursed the one who consumes Riba, the one who pays it, the one who witnesses it, and he said: 'They are all equal in sin.'" [Narrated by Muslim and others]

Al-Barā' ibn 'Āzib (may Allah be pleased with him) reported that the Prophet (may Allah's peace and blessings be upon him) said: "Riba is seventy two degrees (of evil), the least of which resembles (in its sinfulness) committing adultery with one's own mother." [Narrated by At-Tabarāni and it has other corroborative reports]

There are many Hadīths warning against Riba and stating its being prohibited and one of the gravest major sins.

So, let a wise believer beware of this tremendous matter, and repent to Allah Almighty before it is too late, when he leaves behind his wealth that will go to others, whereby he incurs its sin and loss, while others will have its profit and earnings.

Let him guard against resorting to trickery, for indeed, he seeks to make tricks with the One Who knows that which deceives the eyes and what the breasts conceal. Such tricks will be of no avail to him, because images never change facts. Shaykh al-Islam Ibn Taymiyyah said in his book *Ibtāl At-Tahlīl* p.(108): “Glory be to Allah! Is it acceptable that Riba, which Allah has highlighted its gravity in the Qur’an, made it obligatory to fight those who deem it permissible, cursed the one who consumes it, pays it, witnesses it and writes it down, and attached to it such threat as not attached to any other sin, is it acceptable that it returns to be practiced by the least efforts, through a fake contract that is nothing but nonsense and play? Is it not more befitting for a believer who affiliates himself to one of the prophets, let alone the chief of all messengers, and believes in the Lord of the worlds to deem unlawful such huge prohibitions, or to legalize them by way of play and tampering that is not meant by the contract parties?!”

He also said in p. (137): “The more one understands well his religion, and the more he is aware of its excellence, the more he keeps himself away from circumvention.”

He added: "I believe that trickery is mostly resorted to by those who fail to get the wisdom of the Legislator, while they still have to apparently abide by the ruling, so they apply the ruling in form, but not in essence. If they are rightly guided, they would submit to Allah and His Messenger, and obey him inwardly and outwardly in all their affairs."

I ask Allah Almighty, to awaken, by His grace and favor, His believing slaves from this deep heedlessness, protect them from the greed within themselves, and guide them to His straight path. Indeed, He is Oft-Giving and Generous. May Allah's peace and blessings be upon our Prophet Muhammad, his family and Companions, all of them.



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