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# Rulings on the Sale of Gold and Silver through *Istijrār* Contracts - A Comparative Jurisprudential Study -

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## Abstract:

This study examines the rulings governing the sale of gold and silver through *istijrār* contracts, as a form of transaction whose applications continue to evolve in contemporary practice and which requires a precise determination of its jurisprudential characterization and legal ruling, particularly because transactions involving gold and silver are subject to specific rules relating to *ribā* and mutual possession (*qabḍ*). The study aims to explain the nature of *istijrār* sales, distinguish them from similar contracts and transactions, identify their practical forms, and then provide their jurisprudential characterization and rulings, ultimately determining the Sharī'ah ruling on the *istijrār* of gold and silver according to the nature of the countervalue and the manner in which it is paid.

The study adopts an inductive approach to tracing the views of jurists and the various forms of *istijrār* sales, an analytical approach to examining their evidence and discussing the grounds of their arguments, and a comparative approach to presenting and weighing the views of the different schools of Islamic jurisprudence. It then applies the relevant rulings and jurisprudential maxims to the contemporary forms under study. The study concludes that *istijrār* sales encompass multiple forms whose rulings differ according to the manner in which the price is paid and the extent to which it is known. In cases where payment of the price is deferred, the determining factor is not merely the deferment itself; rather, it is related to the degree of

knowledge of the price and the benchmark by which it can be determined. The study also gives preference to the permissibility of the *istijrār* sale where no price is agreed upon at the outset, provided that the price can be determined by reference to the equivalent price (*thaman al-mithl*) or the customary market price at the time the goods are taken, thereby removing ignorance (*jahālah*) and *gharar* while meeting the needs of the contracting parties.

With regard to the *istijrār* of gold and silver, the study further concludes that it is impermissible when the countervalue consists of gold, silver, or money, because the legally required mutual possession in the sale of monetary items (*athmān*) is not realized, resulting in *ribā al-nasi'ah*. If, however, the countervalue consists of non-monetary goods (*'arḍ*) rather than monetary items (*athmān*), the ruling varies according to the form of the contract and the time at which each of the two countervalues is taken into possession. Some forms may be characterized as *salam* contracts, subject to their relevant conditions and regulations and to the juristic disagreement concerning them. The study thus emphasizes the importance of precise jurisprudential characterization when applying Sharī'ah rulings to newly emerging forms of transactions, particularly transactions involving gold and silver.

Keywords: *Istijrār* sale; gold; silver; *ribā*; financial transactions.

## 1. Introduction:

Praise be to Allah, Lord of the worlds, and may peace and blessings be upon our Prophet Muhammad, and upon all his family and Companions. To proceed:

Islamic Sharī'ah is an enduring and timeless law, founded primarily upon securing benefits (*maṣāliḥ*) for people and perfecting them, while repelling harms (*maḥāsib*) and reducing them. Accordingly, Islamic Sharī'ah has devoted considerable attention to financial transactions because of their profound impact on people's lives. It has regulated their rulings and firmly established their principles in order to achieve justice, prevent injustice, and eliminate all causes of dispute and discord, so that the preservation of wealth has become one of the five essential universals (*al-kulliyāt al-khams*) that the Sharī'ah came to safeguard. This is hardly surprising, as wealth constitutes the foundation of human life and the basis for the development and cultivation of the earth.

Among the most prominent areas of financial transactions regulated by Islam are the rulings governing the sale of gold and silver. It is therefore particularly important to investigate the jurisprudential issues related to transactions involving these two forms of money, especially by studying and clarifying newly emerging situations and cases (*nawāzil*) that require clarification of their Sharī'ah rulings.

Accordingly, this study seeks to clarify the Sharī'ah ruling on buying and selling gold and silver through *istijrār* contracts, thereby distinguishing what is lawful from what is unlawful. This is particularly important because departing from the Sharī'ah regulations governing this field leads to falling into *ribā*, which is among the gravest sins and most serious transgressions.

## Research Problem:

Gold and silver are two precious metals to which the Sharī'ah has attached specific rulings. Classical jurists discussed the rulings governing transactions involving them in light of the circumstances that existed in their respective periods. However, numerous new situations have

emerged in the present age that require investigation and clarification of their rulings, including transactions involving gold and silver through *istijrār* contracts.

Although *istijrār* sales are among the forms of sale whose rulings were discussed in detail by classical jurists, new forms of such transactions have emerged in the contemporary period as a result of the development and increasing complexity of people's transactions. This makes it necessary to examine these newly emerging forms in order to determine their Sharī'ah rulings, particularly when they involve gold and silver, given the special attention accorded to them by the Sharī'ah.

This study seeks to answer several questions, the most important of which are:

- What is meant by an *istijrār* sale?
- What is the Sharī'ah ruling on engaging in such transactions?
- Is it permissible under Sharī'ah to enter into contracts for the *istijrār* of gold and silver?

Significance of the Study:

There is no doubt that research into contracts governing financial transactions is of great importance, and the need for such research continues to increase as the forms of contracts evolve in the contemporary era. This requires further study and systematic clarification of the contractual rulings formulated by classical jurists, so that newly emerging circumstances can be properly characterized within the framework of those contracts.

Given the recent emergence of some forms of *istijrār* involving gold and silver, their study and the clarification of their Sharī'ah rulings have become particularly pressing. This further demonstrates the vitality and flexibility of Islamic Sharī'ah through its engagement with the rulings applicable to contemporary novel cases and its provision of complete and well-regulated answers that serve people's interests and keep them away from doubtful matters (*shubuhāt*).

Objectives of the Study:

- To enumerate the forms of *istijrār* involving gold and silver in the contemporary era.
- To clarify the position of Islamic Sharī'ah regarding the *istijrār* of gold and silver.
- To draw researchers' attention to the need for further research on this topic, as, despite its importance, I have not found any previous study that has addressed it.

Structure of the Study:

The study is structured as follows:

Section One: Definition of the *istijrār* sale and its relationship to certain related forms of sale.

Section Two: The ruling on the *istijrār* sale.

Section Three: The Sharī'ah ruling on the *istijrār* of gold and silver.

## 2. The *Istijrār* Sale and Its Relationship to Certain Related Forms of Sale:

Since a ruling on something is contingent upon having a proper understanding of it, it is necessary to begin by explaining the meaning of the *istijrār* sale and then distinguishing it from closely related terms. This is what will be addressed in this section.

## 2.1. Definition of the *Istijrār* Sale:

I will not address the linguistic and technical definitions of “sale” because its meaning is clear and well known. Instead, I will focus solely on defining *istijrār*.

### Linguistic Definition of *Istijrār*:

Linguistically, *istijrār* is the verbal noun of the form *istifʿāl* derived from the verb *jarra* (ج ج). It is said: *istajjarra, yastajirru, istijrāran*. *Jarr* means to pull or draw (Ibn Manẓūr, 1994, vol. 4, p. 125).

The connection between the linguistic and technical meanings of *istijrār* may lie in the notion of deferring payment for purchased goods and settling accounts between the two contracting parties, since among the linguistic meanings of *istijrār* is deferment. Thus, it is said: *ajrartuhu al-dayn*, meaning “I deferred the debt for him” (al-Jawharī, 1987, vol. 2, p. 612). This is also reflected in the expression *wa-halamma jarran*, meaning “extending up to the present time,” derived from *ajrartu al-dayn*, meaning that the debt was left outstanding against the debtor (al-Fayyūmī, 2002, vol. 1, p. 96).

### Technical Definition of the *Istijrār* Sale:

A review of the writings of Muslim jurists shows that most jurists of the various schools discussed *istijrār* sales, their forms, and their rulings. The designation *istijrār* is used by the Ḥanafīs (Ibn ʿĀbidīn, 1992, vol. 4, p. 517) and likewise by the Shāfiʿīs (Ibn Ḥajar al-Haytamī, 1983, vol. 4, p. 217). The Mālikīs, however, refer to it as the “sale of the people of Madinah,” because it was commonly practiced there. Ibn Rushd al-Jadd stated: “Because this was well known as their practice, it was called the sale of the people of Madinah” (Ibn Rushd al-Jadd, 1988, vol. 17, p. 208). Some Ḥanbalīs referred to it as “sale at the rate at which the market price settles (*bayʿ bimā yanqaṭiʿu bihi al-sīr*)” (Ibn al-Qayyim, 1991, vol. 4, p. 5). The following are some of their definitions of this type of sale:

The Ḥanafīs stated: “What a person takes from a seller when he settles with him the prices of the goods after consuming them” (al-Ḥaṣḥafī, 2002, p. 395).

The Shāfiʿīs stated: “Taking one's needs from a seller time after time without any verbal sale agreement (*mubāyaʿah*) or *muʿāṭāh*, and then, after a period of time, settling the account with him and giving him the countervalue” (al-Nawawī, 1999, vol. 9, p. 164).

The Mālikīs stated: “Purchasing from one who continuously practices the trade, with a price paid immediately or deferred” (al-Dusūqī, 2014, vol. 3, p. 216).

The Ḥanbalīs stated: “That he enters into a salam (advance-payment) contract for something of which he takes specified portions every day” (al-Buhūtī, 2000, p. 358).

The definition that appears closest to the correct one is that of the Mālikīs, because the Ḥanafī and Shāfiʿī definitions are not all-inclusive (*ghayr jāmiʿ*), as they are limited to cases in which the *istijrār* sale involves a deferred price. However, as indicated by the forms of *istijrār* identified by the jurists, it is not limited to such cases; it also includes transactions in which the price is paid immediately. The Ḥanbalī definition is likewise not all-inclusive because it is limited to cases in which the price is paid in advance.

The Mālikī definition, however, may be criticized for their expression “purchasing from one who continuously practices the trade,” as this may suggest that this type of sale is valid only with a

tradesperson, such as a butcher or baker, and the Mālikīs gave examples of this kind when explaining their definition. It would therefore have been preferable to use wording that conveys a more general meaning.

Based on the foregoing, the *istijrār* sale may be defined as follows: the purchase of goods from their seller incrementally, at a price paid either immediately or on a deferred basis.

In other words, the buyer takes the goods he needs from the seller little by little, with the understanding that he will settle their prices at a later time—which is the common practice among people—or that the seller will deduct their price from an amount previously deposited with him by the buyer.

## 2.2. Distinguishing the *Istijrār* Sale from Certain Related Forms of Sale:

To clarify the meaning of the *istijrār* sale, it is necessary to distinguish it from certain closely related forms of sale. The most important of these are *salam*, *bay' al-mu'āṭāh*, and supply contracts. These will be discussed below.

### *Salam*:

Linguistically, *salam* and *salaf* have the same meaning. It is said *sallama* and *aslama*, and *sallafa* and *aslafa*, all conveying the same meaning. This is the view of all linguists (al-Azharī, 1997, p. 145). *Salam* is the term used by the people of the Hijāz, whereas *salaf* is the term used by the people of Iraq (al-Tahānawī, 1996, vol. 1, p. 968). Linguistically, it denotes advancing and delivering payment. It is called *salam* because the capital is delivered at the contract session, and *salaf* because the capital is advanced (al-Nawawī, 1988, p. 187).

Technically, it is “a contract concerning a described item held as an obligation, to be delivered at a deferred time, in exchange for a price received at the contract session” (al-Ba‘lī, 2003, p. 293).

The relationship between a *salam* sale and an *istijrār* sale lies in the fact that in both cases the delivery of the sold item is deferred.

However, they differ in several respects, the most important of which are (al-Shabīb, 2009–2010, p. 73):

First: *Salam* is restricted to situations in which the price is paid in advance, whereas this is only one form of the *istijrār* sale, which may also involve a deferred price, as explained above.

Second: The time for delivery of the sold item in *salam* must be known; indeed, this is a condition of the contract. In an *istijrār* sale, however, this need not be the case. The parties may agree that whenever the buyer needs any of the goods, he may take them without specifying a particular delivery date.

Third: The deadline in a *salam* contract is generally a single one, whereas in an *istijrār* sale there are multiple deadlines.

Fourth: The sold item in *salam* must be described by characteristics that affect its price, whereas this is not necessarily the case in an *istijrār* sale. At the time of contracting, the goods may not be known; only their kind (*jins*) may be specified, without mentioning their other characteristics.

Fifth: *Salam* is permissible only with respect to items that can be precisely specified through their characteristics, whereas an *istijrār* sale may apply both to such items and to others.

From the foregoing, it becomes clear that the relationship between *salam* and *istijrār* sales is limited to the fact that delivery of the sold item is deferred in both, while they do not otherwise share the various features associated with each contract.

#### *Bay' al-Mu'āṭāh:*

Linguistically, Ibn Fāris said: "The letters 'ayn and ṭā' with the weak letter form one sound root that indicates taking and handing over, and the chapter does not depart from these two senses; thus *al-ʿaṭw* is taking by hand" (Ibn Fāris, 1979, vol. 4, p. 353).

Technically, it means that the buyer hands the price to the seller, whereupon the seller hands the goods to the buyer without an explicit offer and acceptance (Qalʿajī and Qunaybī, 1988, p. 114).

In other words, possession is exchanged between the seller and buyer without any verbal or written contractual formula expressing the sale; rather, the sale is concluded merely through the mutual exchange of possession (see: Ibn Baṭṭāl al-Rukbī, 1988, vol. 1, p. 235).

The relationship between the *istijrār* sale and *bay' al-mu'āṭāh* lies in the fact that an *istijrār* sale may sometimes be concluded through *mu'āṭāh*, without any verbal or written contractual formula between the contracting parties. Nevertheless, they differ in several respects, including the following:

First: The *istijrār* sale is broader than *bay' al-mu'āṭāh* in that an *istijrār* sale may be concluded through verbal offer and acceptance, rather than merely through taking and handing over, as is the case with *bay' al-mu'āṭāh*.

Second: In an *istijrār* sale, the price is not necessarily paid when the goods are taken. Rather, the price may be paid immediately or deferred. In *bay' al-mu'āṭāh*, however, the price may be paid when the goods are taken.

Third: In *bay' al-mu'āṭāh*, goods are generally taken on a single occasion, whereas in an *istijrār* sale, goods are taken on multiple occasions.

#### Supply Contract:

Linguistically, *tawrīd* (supply) is the verbal noun of *warrada-yaridu-wurūdan*, meaning "to bring." *Awradahu* and *istawradahu* likewise mean "he brought it," while *awrada fulān al-shay'* means "so-and-so brought the thing" (al-Rāzī, 1999, p. 336).

Technically, the Islamic Fiqh Academy defined a supply contract as follows: "A contract under which a first party undertakes to deliver specified goods periodically, on a deferred basis, over a specified period to another party, in return for a specified amount, all or part of which is deferred" (Islamic Fiqh Academy, 2000, Issue 12, vol. 2, p. 571).

The definition of the supply contract clearly shows that the *istijrār* sale is broader than the supply contract, because under a supply contract the value of the goods is paid after they have been delivered, whereas in an *istijrār* sale the price may be paid either immediately or on a deferred basis, as established above.

### 3. Forms of the *Istijrār* Sale and Its Sharī'ah Ruling:

Since the *istijrār* sale takes various forms, it is necessary to explain them in order to clarify how this type of sale is conducted, and then to provide its jurisprudential characterization and determine its Sharī'ah ruling. This will be addressed in this section through the following two subsections.

#### 3.1. Forms of the *Istijrār* Sale:

The jurisprudential characterization of an *istijrār* sale varies according to the time at which the buyer pays the prices of the purchased goods. The buyer may advance an amount of money to the seller and then obtain from him whatever goods he needs, or he may take goods from the seller little by little and subsequently settle their prices. Accordingly, two forms of *istijrār* sale may be distinguished: one involving an advance payment and the other involving a deferred price. The two forms and their respective jurisprudential characterizations are discussed below.

##### First Form: *Istijrār* Sale with an Advance Payment:

Although this form is relatively uncommon in actual practice, as *istijrār* sales generally involve a deferred price, jurists have nevertheless mentioned it and discussed its rulings. Imām Mālik, may Allah have mercy on him, stated: "There is nothing wrong with a man placing a dirham with another man and then taking from him, for a quarter of it, or a third, or a known fraction, a specified item of goods" (Mālik, 2004, vol. 4, p. 941).

Jurists have differed concerning the jurisprudential characterization of this amount of money paid in advance, holding several views:

First view: It is an advance payment of the price. However, it can only be regarded as an advance payment of the price subject to two conditions. First, the sold item, its quantity, and its characteristics must be known when the amount is paid to the seller, because the price depends on the sale, and one of the conditions of a valid sale is that the sold item be known in terms of its identity, characteristics, and quantity. Second, the sold item must be something in respect of which *salam* or *istisnā'* is applicable, with the conditions for their validity being fulfilled, although the jurists differ regarding some of these conditions. This is because a purchase involving an advance payment can only take place through *salam* or *istisnā'*, and the contract must therefore satisfy their conditions. In actual *istijrār* transactions, however, these two conditions are not found. The person who pays the amount to the seller may not know, at the time of payment, what he will purchase from him over time. Even if he does know, it is not possible to specify at the same time the quantity, characteristics, and delivery time of each item to be taken, and thus the conditions of *salam* are not fulfilled. Moreover, the items may not be things that require manufacture such that *istisnā'* would apply (al-'Uthmānī, 2003, p. 69).

Second view: It is a trust held by the seller. Upon examining this amount, however, it becomes clear that after the seller receives it, he may dispose of the money itself, such as by purchasing something with it, giving it as a gift, or the like. Therefore, it cannot be characterized as a trust held by the seller. If it were a trust, the money would have to remain deposited with the seller in its original form, and he would not be permitted to use it for his own needs, because a trustee may not dispose of property held in trust. Besides being problematic, this characterization is also practically unfeasible and contrary to the customary practice in *istijrār* sales, since sellers do

not retain the very money paid to them in advance; rather, they record its amount in the account of the person who paid it and then dispose of the funds (al-Shabīb, 2009–2010, p. 132).

Third view: It is a loan advanced by the buyer to the seller. Accordingly, the seller is permitted to use it. The problem with this characterization, however, is that it is a loan conditioned upon a subsequent sale. The buyer did not lend the money to the seller merely as an act of benevolence; rather, he lent it so that a sale would subsequently take place using that money. Thus, the sale becomes a condition stipulated in the loan contract. Since this condition conflicts with the requirement (*muqtaḍā*) of a loan contract, the transaction should therefore be considered defective (al-‘Uthmānī, 2003, pp. 69–70).

Fourth view: It is a payment on account. This is the most accurate characterization. Although, according to the jurists, such a payment is in effect a loan, insofar as the recipient is permitted to use it for his own needs and is liable for it, it nevertheless appears to be a loan in which a subsequent sale may validly be stipulated because such a condition is customary. Payments made on account are not intended as loans; rather, their purpose is to discharge the buyer from the obligation of paying the price when the subsequent sale takes place and to facilitate the purchase of needed goods without requiring him to pay the price in cash on every occasion (al-Shabīb, 2009–2010, pp. 132–133).

Second Form: *Istijrār* Sale with a Deferred Price:

This is the form most commonly practiced by people. In essence, the buyer agrees with the seller to provide him with whatever goods he needs. The buyer uses the goods and, at the end of the month, for example, settles the account for everything he has taken and pays the entire amount in a single payment (al-‘Uthmānī, 2003, p. 59).

By examining the actual practice of *istijrār* sales involving a deferred price, their cases may be classified as follows (see: al-Shabīb, 2009–2010, pp. 114–115):

First case: The buyer agrees with the seller to take whatever goods he needs, and the two parties agree on a specific price for them—for example, thirty or fifty—and also agree to pay the accumulated price of the goods taken at a specified time.

Second case: The seller states the price each time the buyer takes an item, and the parties subsequently settle the total amount at a later time.

Third case: The buyer takes whatever goods he needs and agrees with the seller to pay their price after a specified period at the market price prevailing on the day the goods are taken.

Fourth case: The buyer takes whatever goods he needs and agrees to pay their price after a specified period without agreeing on a specific price or linking the determination of the price to any particular benchmark.

Upon examining these forms, it becomes apparent that the features they share—namely, the deferment of the price and the piecemeal receipt of the sold goods—have no effect on the ruling. Rather, what affects the ruling is whether knowledge of the price is achieved or impaired in these forms. It is well established that merely deferring the price does not render a sale impermissible in principle. The issue therefore remains whether the price is known. Since this is the factor that affects the ruling, it requires further discussion in the following subsection.

3.2. The Ruling on the *Istijrār* Sale:

Jurists in general agree that an *istijrār* sale is permissible when the price is known. The following are some statements from the jurists of the various schools:

Ḥanafīs: Ibn ‘Ābidīn's *Ḥāshiyah* states: "If he gives him dirhams and begins taking five *manns* from him every day, without saying at the outset, 'I have purchased from you,' it is permissible, and this is lawful ... The reason is that the price of the bread is known. Thus, if a sale is concluded as a sale by *mu‘āṭāh* at the time of taking it, with the price having been paid beforehand, then it is even more appropriate that the same should apply when payment of the price is deferred. This is evident where the price is known at the time of taking the goods, such as bread and meat. But if the price is unknown, then no sale is concluded by *mu‘āṭāh* at the time of taking them, because the price is unknown" (Ibn ‘Ābidīn, 1992, vol. 4, p. 516).

Mālikīs: Ibn Rushd al-Jadd stated: "Mālik related to us from ‘Abd al-Raḥmān ibn al-Muḥabbbar, from Sālim ibn ‘Abd Allāh, who said: We used to purchase meat from butchers at a known price, taking two or three *ratls* each day, stipulating that we would pay the price when the stipends were distributed. He said: I consider that good. Mālik said: I do not see anything wrong with it. This applies when the food is known; and if the price is deferred, I do not see anything wrong with it" (Ibn Rushd al-Jadd, 1988, vol. 17, p. 207).

Shāfi‘īs: Al-Khaṭīb al-Shirbīnī stated: "Taking one's needs from a seller occurs in two forms. The first is that he says, 'Give me meat or bread, for example, for such-and-such a price,' and this is the usual practice. The seller then gives him what he requested, he takes possession of it and accepts it, and after a period of time he settles the account and pays what has accumulated against him. This is considered definitively valid according to those who permit *mu‘āṭāh*, as I understand it. The second is that he requests what he needs without mentioning a price, such as saying, 'Give me a *ratl* of bread or meat,' for example. This is open to more than one possibility" (al-Khaṭīb al-Shirbīnī, 1994, vol. 2, p. 326).

Ḥanbalīs: In *Masā’il Abī Dāwūd* it is stated: "I heard Aḥmad being asked about a man who sends someone to the grocer and takes items from him one after another, then settles the account afterward. He said: I hope there is nothing wrong with that" (Abū Dāwūd, 1999, p. 265). Ibn Taymiyyah commented: "The apparent meaning of this is that the two parties agreed on the price after possession of the sold item had taken place" (Ibn Mufliḥ, 1984, vol. 1, p. 298).

Jurists have differed concerning the ruling on an *istijrār* sale when the price is unknown, holding two views:

First view: It is prohibited. This is the view of the majority. It was adopted by the Ḥanafīs (see: Ibn ‘Ābidīn, 1992, vol. 4, p. 516), Mālikīs (see: al-Bājī, 1914, vol. 5, p. 15), Shāfi‘īs (see: al-Ramlī, 1984, vol. 3, p. 375), Ḥanbalīs (see: al-Mardāwī, 2012, vol. 4, p. 310), and Ṣāḥirīs (see: Ibn Ḥazm, 2001, vol. 7, p. 367). They relied on the following:

- The statement of Allah, the Exalted: "O you who believe, do not consume one another's wealth unjustly, except that it be a trade conducted by mutual consent among you" (The Qur'an, Sūrat al-Nisā', 4:29). The point of evidence (*wajh al-dilālah*) is that the verse requires mutual consent for the permissibility of commercial transactions, and consent can only relate to something known (al-Dibyān, 2011, vol. 2, p. 288).

- Abū Hurayrah, may Allah be pleased with him, reported that the Messenger of Allah ﷺ "forbade the sale by throwing pebbles and the sale involving gharar" (Muslim, 2000, *Kitāb al-Buyūʿ*, "Bāb Buṭlān Bayʿ al-Ḥaṣāh, wa-al-Bayʿ alladhī fihī Gharar," no. 1513). The point of evidence is that ignorance of the price is gharar that leads to dispute, and the rulings governing transactions were legislated only to cut off disputes that lead to corruption (al-ʿAynī, 2000, vol. 8, p. 15).
- Abū Hurayrah, may Allah be pleased with him, reported that "the Messenger of Allah ﷺ forbade *mulāmasah* and *munābadhah*" (al-Bukhārī, 2001, *Kitāb al-Buyūʿ*, "Bāb Bayʿ al-Munābadhah," no. 2146; Muslim, 2000, *Kitāb al-Buyūʿ*, "Bāb Ibtāl Bayʿ al-Mulāmasah wa-al-Munābadhah," no. 1511). The point of evidence is that they were prohibited because they involve a lack of knowledge concerning the sold item (see: Ibn Baṭṭāl, 2003, vol. 6, p. 275). Since the price is one of the two countervalues, knowledge of it is likewise required, just as knowledge of the sold item is required (al-Buhūtī, 1993, vol. 2, p. 17).
- The scholars have reached a consensus that a sale is defective when the price is unknown. Ibn al-Mundhir stated: "They unanimously agreed that whoever sells goods for an unknown price, neither known nor named, nor a specific existing item (*ʿayn qāʿim*), the sale is defective" (Ibn al-Mundhir, 2004, vol. 6, p. 131).

Second view: It is permissible. This is a *wajh* (an opinion of the Shāfiʿī authorities) within the Shāfiʿī school (see: al-Nawawī, 1999, vol. 9, p. 333), adopted by al-Ghazālī (see: al-Ramlī, 1984, vol. 3, p. 375), and a narration (*riwāyah*) within the Ḥanbalī school (see: al-Mardāwī, 2012, vol. 4, p. 310), which was adopted by Ibn Taymiyyah (see: Ibn Taymiyyah, 1995, vol. 29, p. 345) and his student Ibn al-Qayyim (see: Ibn al-Qayyim, 1991, vol. 4, p. 5). They relied on the following:

- The statement of Allah, the Exalted: "O you who believe, do not consume one another's wealth unjustly, except that it be a trade conducted by mutual consent among you" (The Qur'an, Sūrat al-Nisāʾ, 4:29). The point of evidence is that Allah has stipulated mutual consent for the validity of a sale. If the sale takes place between the two parties without specifying the price, it nevertheless takes place with their mutual consent to the equivalent price (*thaman al-mithl*) and the price at which people generally sell the goods. If they subsequently agree on a particular price, [the sale proceeds]; otherwise, they may rescind the transaction (see: Ibn Taymiyyah, 1949, p. 171).
- The statement of Allah, the Exalted: "There is no blame upon you if you divorce women before you have touched them or stipulated for them an obligation" (The Qur'an, Sūrat al-Baqarah, 2:236). The point of evidence is that the verse indicates the permissibility of marriage without specifying the dower (*mahr*). Ibn al-ʿArabī stated: "When Allah, the Exalted divided the situation of a divorced woman into two categories—one whose obligatory dowry had been specified and one whose obligatory dowry had not been specified—this indicates that *nikāḥ al-tafwīd* is permissible, which is every marriage contract concluded without mentioning the dowry; and there is no disagreement concerning it" (Ibn al-ʿArabī, 2003, vol. 1, p. 292). Since marriage without a specified dowry is permissible, with the equivalent dowry being established, a sale concluded without a specified price is analogized to it, with the equivalent price being established (see: Ibn Taymiyyah, 1995, vol. 29, pp. 231–232). Ibn al-Qayyim stated: "The Muslim community (*ummah*) has unanimously agreed on the validity of marriage with the

equivalent dowry, and most of them permit concluding a contract of hire (*ijārah*) for the equivalent wage, such as in the case of marriage, a washer, a baker, a sailor, the attendant of a bathhouse, and a carrier; and [they permit] sale at the equivalent price, such as the sale of bathhouse water. Thus, the most that can be said of a sale at the prevailing market price is that it is a sale at the equivalent price; therefore, it is permissible, just as commutative exchange (*mu'āwadah*) at the equivalent price is permissible in this and other cases. This is the sound analogy, and people's interests cannot be properly maintained without it" (Ibn al-Qayyim, 1991, vol. 4, p. 5).

- The statement of Allah, the Exalted: "And if they breastfeed for you, then give them their compensation" (The Qur'an, Sūrat al-Ṭalāq, 65:6). The point of evidence is that the verse indicates the permissibility of hiring for the equivalent customary wage. A sale may likewise be analogized to it on the basis of the common element of exchange. Ibn al-Qayyim stated: "Commutative exchange (*mu'āwadah*) at the equivalent price is established by explicit text (*naṣṣ*) and consensus in marriage, and by explicit text concerning the hiring of a nursing woman, in the statement of Allah, the Exalted: 'And if they breastfeed for you, then give them their compensation,' and people's practice, both in the past and present, has followed this in many contracts of hire, as well as in selling at the rate at which the market price settles, which is a sale at the equivalent price" (Ibn al-Qayyim, 2005, vol. 4, p. 51).
- 'Abd Allāh ibn 'Umar, may Allah be pleased with them both, reported: "We were with the Prophet ﷺ on a journey, and I was riding a difficult young camel belonging to 'Umar. It would get the better of me and move ahead of the people, so 'Umar would rebuke it and bring it back. It would then move ahead again, and 'Umar would rebuke it and bring it back. The Prophet ﷺ said to 'Umar: 'Sell it to me.' He said: 'It is yours, O Messenger of Allah.' He said: 'Sell it to me,' and he sold it to the Messenger of Allah ﷺ. The Prophet ﷺ then said: 'It is yours, 'Abd Allāh ibn 'Umar; do with it whatever you wish'" (al-Bukhārī, 2001, *Kitāb al-Buyū'*, "Bāb Idhā Ishtarā Shay'an fa-Wahaba-hu min Sā'atihi Qabla an Yatafarraqā," no. 2115). The point of evidence is that the Prophet ﷺ purchased 'Umar's camel and gave it to 'Abd Allāh ibn 'Umar without specifying the price (al-Dibyān, 2011, vol. 2, p. 289).
- General need is treated as equivalent to necessity in order to remove hardship and difficulty. Ibn al-Qayyim stated: "A man deals with the butcher, baker, and grocer, taking each day what he needs from one of them without determining the market rate at which the price settles. The same applies to the regular provisions of jurists and others. People's need for this matter is comparable to necessity, and when something is like this, the Sharī'ah can never prohibit it absolutely. Indeed, it has permitted it in a contract whose fulfillment is more emphatically binding than in other contracts, namely marriage" (Ibn al-Qayyim, 2005, vol. 4, p. 51).

#### Preferred View:

Upon considering the evidence presented by both sides, the view that appears preferable—and Allah knows best—is that an *istijrār* sale is permissible even if the two parties do not agree on the price at the time of the transaction. In such a case, the applicable price is the equivalent

price (*thaman al-mithl*) and the market rate at which the price settles on the day the goods are taken from the seller. This is because the basic principle governing transactions is permissibility, and because this approach removes hardship from people. Requiring the price to be determined every time the buyer takes an item would cause evident difficulty, particularly when the price is known by custom. People continue to engage in such transactions to this day: a person takes what he needs from a grocer, baker, or the like without agreeing on the price at the time of taking the goods, and then settles the account at the end of the month, for example, without any dispute arising between them.

The evidence of the majority may be answered as follows:

- Mutual consent exists between the two parties according to customary practice. The buyer is customarily committed and consenting to take the goods at their equivalent market price. This therefore functions as a condition agreed upon between them, and what is customarily recognized is as if stipulated as a condition.
- *Gharar* is absent here because ignorance of the price constitutes *gharar* only when there is no benchmark to which reference can be made in determining the price. Once the customary or prevailing market price of the goods is adopted as the benchmark for determining the price, the ignorance and *gharar* are eliminated.
- It is not valid to analogize ignorance of the price in the present issue to the prohibited ignorance concerning the sold item in *mulāmasah* and *munābadhah*, because *gharar* is absent in the former while it is present in the latter.
- Reliance on consensus in this issue is not valid because a juristic disagreement has been established concerning it.

#### 4. The Sharī'ah Ruling on *Istijrār* of Gold and Silver:

The ruling on *istijrār* of gold and silver varies according to the countervalue paid by the purchaser in exchange for the gold and silver acquired through *istijrār*. The countervalue may be money, meaning gold, silver, or banknotes; or it may be non-monetary goods (*'arḍ*), such as wheat, a vehicle, or the like. This section addresses the ruling on these two forms through the following two subsections.

##### 4.1. The Ruling on *Istijrār* of Gold and Silver in Exchange for Money:

*Istijrār* of gold and silver is not permissible when the price is paid in gold, silver, or banknotes, whether the price is paid immediately or on a deferred basis, because the Sharī'ah requires immediate mutual possession (*qabḍ*) in the contract session in sales of gold and silver in such circumstances, in order to prevent falling into *ribā al-nasī'ah*. This condition is absent in the *istijrār* sale.

Numerous evidences establish the requirement of mutual possession, including the following:

- On the authority of 'Umar ibn al-Khaṭṭāb (may Allah be pleased with him), the Messenger of Allah ﷺ said: "Gold for gold is *ribā* unless [the exchange is] hand to hand; wheat for wheat is *ribā* unless [the exchange is] hand to hand; dates for dates are *ribā* unless [the exchange is] hand to hand; and barley for barley is *ribā* unless [the exchange is] hand to hand." (al-Bukhārī, 2001, *Kitāb al-Buyū'*, Bāb mā yudhkar fī bay' al-ṭa'ām wa-

al-ḥukrah, no. 2134; Muslim, 2000, *Kitāb al-Buyūʿ*, Bāb al-Ṣarf wa-Bayʿ al-Dhahab bi-al-Wariq Naqdan, no. 1586).

- Abū Saʿīd al-Khudrī (may Allah be pleased with him) narrated that the Messenger of Allah ﷺ said: "Do not sell gold for gold except in equal amounts, and do not give some of it an advantage over the other. Do not sell silver for silver except in equal amounts, and do not give some of it an advantage over the other. Do not sell any of it that is not present in return for something that is handed over immediately." (al-Bukhārī, 2001, *Kitāb al-Buyūʿ*, Bāb Bayʿ al-Fiḍḍah bi-al-Fiḍḍah, no. 2177; Muslim, 2000, *Kitāb al-Buyūʿ*, Bāb al-Ribā, no. 1584).
- ʿUbādah ibn al-Ṣāmit (may Allah be pleased with him) said: The Messenger of Allah ﷺ said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt: like for like, equal for equal, hand to hand. If these kinds differ, then sell as you wish, provided that it is hand to hand." (Muslim, 2000, *Kitāb al-Buyūʿ*, Bāb al-Ṣarf wa-Bayʿ al-Dhahab bi-al-Wariq Naqdan, no. 1587).
- Abū al-Minhal said: "A partner of mine sold silver on deferred payment until the season, or until the pilgrimage. He then came to me and informed me of this. I said: 'This is not permissible.' He replied: 'I sold it in the market, and no one objected to it.' So I went to al-Barāʾ ibn ʿĀzib and asked him. He said: 'The Prophet ﷺ came to Madinah while we were engaged in this type of sale. He said: "Whatever is hand to hand, there is no harm in it; and whatever is on deferred payment is ribā." Go to Zayd ibn Arqam, for he is a greater merchant than I am.' I went to him and asked him, and he said the same." (al-Bukhārī, 2001, *Kitāb al-Buyūʿ*, Bāb al-Tijārah fī al-Burr, no. 2060; Muslim, 2000, *Kitāb al-Buyūʿ*, Bāb al-Nahy ʿan Bayʿ al-Wariq bi-al-Dhahab Daynan, no. 1589).
- Al-Barāʾ ibn ʿĀzib and Zayd ibn Arqam (may Allah be pleased with them both) said: "The Messenger of Allah ﷺ prohibited selling silver for gold on deferred payment." (al-Bukhārī, 2001, *Kitāb al-Buyūʿ*, Bāb Bayʿ al-Wariq bi-al-Dhahab Naṣīʾah, no. 2180; Muslim, 2000, *Kitāb al-Buyūʿ*, Bāb al-Nahy ʿan Bayʿ al-Wariq bi-al-Dhahab Daynan, no. 1589).
- ʿAbd al-Raḥmān ibn Abī Bakrah narrated from his father that he said: "The Messenger of Allah ﷺ prohibited silver for silver and gold for gold except in equal amounts, and instructed us to purchase silver with gold as we wished, and to purchase gold with silver as we wished." He said: A man asked him, "Hand to hand?" He replied: "This is how I heard it." (Muslim, 2000, *Kitāb al-Buyūʿ*, Bāb al-Nahy ʿan Bayʿ al-Wariq bi-al-Dhahab Daynan, no. 1590).
- Mālik narrated from Nāfiʿ, from ʿAbd Allāh ibn ʿUmar, that ʿUmar ibn al-Khaṭṭāb said: "Do not sell gold for gold except in equal amounts. Do not give some of it an advantage over the other. Do not sell silver for silver except in equal amounts. Do not give some of it an advantage over the other. And do not sell silver for gold when one of the two is absent and the other is present. Even if he asks you to wait until he enters his house, do not grant him that delay, for I fear *al-rimāʾ* for you." *Al-rimāʾ* means *ribā*. (Mālik, 2004, *Kitāb al-Buyūʿ*, Bāb Bayʿ al-Dhahab bi-al-Wariq ʿAynan wa-Tibran, no. 2337).

- The jurists unanimously agreed that both countervalues must be taken into possession in the sale of gold and silver for items that share the same effective legal cause (*'illah*). Numerous jurists have transmitted a consensus that selling a *ribawī* item for another of the same kind, or for another item sharing the same *'illah*, on a deferred basis is prohibited. Imām al-Nawawī (may Allah have mercy on him) stated: "They unanimously agreed that it is not permissible to sell a *ribawī* item for another of the same kind when one of the two is deferred; that it is not permissible to exchange unequal amounts when it is sold for the same type on the spot, such as gold for gold; that it is not permissible for the parties to separate before taking possession of the exchanged items when it is sold for the same type or for a different type that shares the same effective legal cause, such as gold for silver and wheat for barley; and that unequal amounts are permissible when the types differ, provided that the exchange is hand to hand, such as one *ṣā'* of wheat for two *ṣā'*s of barley. There is no disagreement among the scholars regarding any of this." (al-Nawawī, 1972, vol. 11, p. 9).

#### 4.2. The Ruling on *Istijrār* of Gold and Silver in Exchange for Non-Monetary Goods (*'Arḍ*):

*Istijrār* of gold and silver in exchange for non-monetary goods may take two forms: the price is deferred, or it is paid immediately. The ruling on these two forms is explained below.

First: The Ruling on *Istijrār* of Gold and Silver in Exchange for Deferred Non-Monetary Goods:

This occurs when a person acquires gold or silver through *istijrār* and agrees with the seller to pay him at a later date with non-monetary goods, such as food, clothing, or other items that do not share the *'illah* of monetary function (*thamaniyyah*). This form is characterized as a *salam* sale if the goods are specified by description and established as an obligation in the debtor's *dhimmah* (*mawṣūf fī al-dhimmah*), since it involves immediate receipt of the monetary countervalue and deferred receipt of the goods. The scholars unanimously agreed that this is permissible when the other conditions of *salam* are fulfilled. Numerous evidences support this, including:

- Ibn 'Abbās (may Allah be pleased with them both) narrated: "When the Prophet ﷺ came to Madinah, they used to conduct *salam* transactions for dates for periods of two or three years. He said: 'Whoever pays in advance for something, let him do so for a specified measure, a specified weight, and a specified term.'" (al-Bukhārī, 2001, *Kitāb al-Salam*, Bāb al-Salam fī Wazn Ma'lūm, no. 2240; Muslim, 2000, *Kitāb al-Buyū'*, Bāb al-Salam, no. 1604).
- Ibn Abī al-Mujālid narrated: "'Abd Allāh ibn Shaddād ibn al-Hād and Abū Burdah differed concerning *salam*, so they sent me to Ibn Abī Awfā (may Allah be pleased with him). I asked him, and he said: 'We used to conduct *salam* transactions during the time of the Messenger of Allah ﷺ, Abū Bakr, and 'Umar, for wheat, barley, raisins, and dates.'" (al-Bukhārī, 2001, *Kitāb al-Salam*, Bāb al-Salam fī Wazn Ma'lūm, no. 2242).

Second: The Ruling on *Istijrār* of Gold and Silver in Exchange for Immediately Delivered Non-Monetary Goods:

This occurs when a person delivers non-monetary goods immediately in the contract session, while the other party undertakes to pay gold or silver in installments at an agreed time. This form falls under the issue of whether it is legally permissible for the capital of a *salam* contract

to consist of non-monetary goods, while the subject matter of the salam consists of gold, silver, or whatever serves as their equivalent among monetary items.

The scholars have differed over this issue and held two views:

The First View: The permissibility of using, as *salam* capital, something other than gold and silver that is not subject to *ribā al-nasī'ah* in gold and silver.

This is the position of the majority of jurists: the Mālikīs (al-‘Adawī, 1994, vol. 2, p. 177; al-Qarāfī, 1994, vol. 5, p. 251), the Shāfi‘īs according to the stronger position (al-Anṣārī, 2002, vol. 2, p. 137; al-Nawawī, 1991, vol. 4, p. 27), the Ḥanbalīs according to the well-known position (Ibn Qudāmah, 1968, vol. 4, p. 226; al-Buhūtī, 2006, vol. 3, p. 291), and the Ṣāḥirīs (Ibn Ḥazm, 2001, vol. 8, p. 47). They based their position on the following:

- Ibn ‘Abbās (may Allah be pleased with them both) narrated: “When the Prophet ﷺ came to Madinah, they used to conduct *salam* transactions for dates for periods of two or three years. He said: ‘Whoever pays in advance for something, let him do so for a specified measure, a specified weight, and a specified term.’” (Agreed upon [narrated by both al-Bukhārī and Muslim]; its source was cited above.) The point of evidence is that the hadith indicates the permissibility of salam in weighed goods, and gold and silver are among the items measured by weight. (Ibn Ḥazm, 2001, vol. 8, p. 47; al-Qāḍī ‘Abd al-Wahhāb, 2008, p. 986).
- Whatever may validly be established in the *dhimmah* as a price (*thaman*) may likewise validly be established as a priced item (*muthamman*). (al-Ruwayānī, 2009, vol. 5, p. 128; al-Qarāfī, 1994, vol. 5, p. 251).
- The permissibility of using something other than gold and silver as *salam* capital for gold and silver is analogized to the permissibility of *salam* in food, on the basis that both may validly be established in the *dhimmah* as a dower; therefore, they may validly be established in the *dhimmah* as the subject matter of salam. (Ibn Qudāmah, 1968, vol. 4, p. 226).
- It can be precisely specified through description by stating the kind of its silver, its minting (*sikkah*), its lightness or heaviness, its weight, and whether the pieces are whole (*ṣiḥāh*) and of good quality; therefore, *salam* in it is permissible. (al-Qāḍī ‘Abd al-Wahhāb, 2008, p. 987).
- The permissibility of using non-monetary goods as salam capital for gold and silver is analogized to using non-monetary goods as salam capital for other non-monetary goods, on the basis that neither category is subject to *ribā al-faḍl* (excess) or *ribā al-nasā’* (deferral). (Ibn Qudāmah, 1968, vol. 4, p. 226). Moreover, the basic principle is permissibility, since there is no impediment preventing it. (al-Ghazālī, 1996, vol. 3, p. 437).

The Second View: The impermissibility of using, as *salam* capital, something other than gold and silver that is not subject to *ribā al-nasī'ah* in gold and silver.

This is the position of the Ḥanafīs (al-Samarqandī, 1994, vol. 2, p. 11; al-Kāsānī, 1986, vol. 5, p. 212), the Shāfi‘īs according to the opposing view to the *aṣaḥḥ* (*muqābil al-aṣaḥḥ*, the less-preferred view) (al-Ghazālī, 1996, vol. 3, p. 437; al-Nawawī, 1991, vol. 4, p. 27), and the Ḥanbalīs

according to one narration (Ibn Muflīḥ, 2003, vol. 6, p. 329; al-Mardāwī, 2012, vol. 5, p. 89). They based their position on the following:

- The subject matter of *salam* must necessarily be something that is sold as a priced item (*muthamman*), whereas gold and silver are monetary items by their very nature and therefore cannot constitute the subject matter of *salam*. (al-Marghīnānī, 2003, vol. 3, p. 70).

Response: This argument is refuted by the counterexample of dirhams exchanged for dinars, for such a transaction is valid, and one of the two must necessarily be the priced item (*muthamman*). (Ibn Qudāmah, 1968, vol. 4, p. 226).

- If *salam* in gold and silver were deemed permissible, this would result in the price itself becoming the subject matter of the sale. (Ibn Qudāmah, 1968, vol. 4, p. 226).

Response: The price is that which is delivered as the *salam* capital, while the subject matter of the sale is that which is described; consideration is given to realities rather than names. (al-Shīrāzī, 1987, vol. 2, p. 79).

- *Salam* consists of advancing the price and deferring the sold item. If delivering non-monetary goods immediately in exchange for money were permissible, the arrangement would be reversed and would therefore cease to conform to the essential nature of *salam*. (al-Zaylaʿī, 1895, vol. 4, p. 111).

Response: The same response given to the preceding evidence applies here.

- One of the conditions of the subject matter of *salam* is that it must be something that can be specified through designation. If it is something that cannot be specified through designation, such as dirhams and dinars, *salam* in it is impermissible, because the subject matter of *salam* is a sold item, and a sold item must be capable of being specified through designation. Dirhams and dinars, however, are not specifically designated in contracts of exchange and therefore do not constitute sold items; consequently, *salam* in them is impermissible. (al-Kāsānī, 1986, vol. 5, p. 212).

Response: There is no evidence for this condition from the Qur'an, Sunnah, consensus, or the statement of a Companion. The basic principle is permissibility until evidence establishes prohibition. (al-Dibyān, 2011, vol. 8, p. 173).

Preferred View: The position that appears stronger—and Allah knows best—after presenting the foregoing views is the first view, because the basic principle is permissibility and no evidence has been established in the Sharīʿah that contradicts it. The evidence advanced by the Ḥanafis and those who agreed with them on this issue is weak in its basis and has been answered.

## 5. Conclusion:

In conclusion, the findings of this study may be summarized as follows:

1. The *istijrār* sale is defined as: purchasing goods from their seller incrementally, at a price paid either immediately or on a deferred basis.
2. Jurists in general agreed that the *istijrār* sale is permissible when the price is known. They differed regarding its ruling when the price is unknown, holding two views: permissibility and impermissibility. The preferred view is that it is permissible, with the price to be

determined according to custom, the equivalent price (*thaman al-mithl*), and the price prevailing in the market on the day the goods are taken from the seller.

3. *Istijrār* of gold and silver takes two forms:

- In exchange for money: This is unanimously impermissible because the condition of mutual possession (*qabḍ*) in the contract session is absent.
- In exchange for non-monetary goods: This takes two forms:
  - When the non-monetary goods are deferred: The transaction is constituted as a *salam* sale and is therefore permissible by agreement among the jurists, provided that the other conditions of *salam* are fulfilled.
  - When the non-monetary goods are delivered immediately: The transaction is likewise constituted as a *salam* sale and is permissible based on the preferred view that the capital of a *salam* contract may consist of non-monetary goods, while the subject matter of the *salam* may be gold, silver, or whatever serves as their equivalent among monetary items.

And Allah is Most High and knows best. Praise be to Allah, Lord of the worlds, and may peace and blessings be upon the Master of the Prophets and Messengers, and upon all his family and Companions.

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