

ISLAMIC FINANCE

BY SHAIKH RIAZ ANSARY

PART 1

FROM THE SERIES: ISLAMIC FINANCE

COURSE TOPICS

1. What are Maqasid Ash Shariah? What are the sources of Shariah?
2. Features of the Shariah text
3. Rulings wherein the 'Allah' is not explicitly stated
4. Purposes and goals of the Shariah
5. Wealth is a bounty and an Amanah from Allah (swt)
6. Legitimacy of seeking sustenance
7. Maintaining balance and proper attitude towards wealth
8. Man's love for wealth and other bounties
9. Objectives of the Shariah regarding wealth
10. Contracts used in Islamic finance
11. Different kinds of sales
12. Murabahah lil Aamir Bish Shira
13. Salam sales – legal rulings, conditions and use in modern times

COURSE OBJECTIVES

1. Understanding the Maqasid Ash Shariah and the wisdom behind them
2. Knowing about the different types of sales and their Islamic rulings
3. Understanding how certain sales have been tweaked to benefit Islamic banking

QUESTION & ANSWER BUCKET

TRANSCRIPTS

ASSESSMENT

Multiple Choice Questions

Match the Columns

True or False

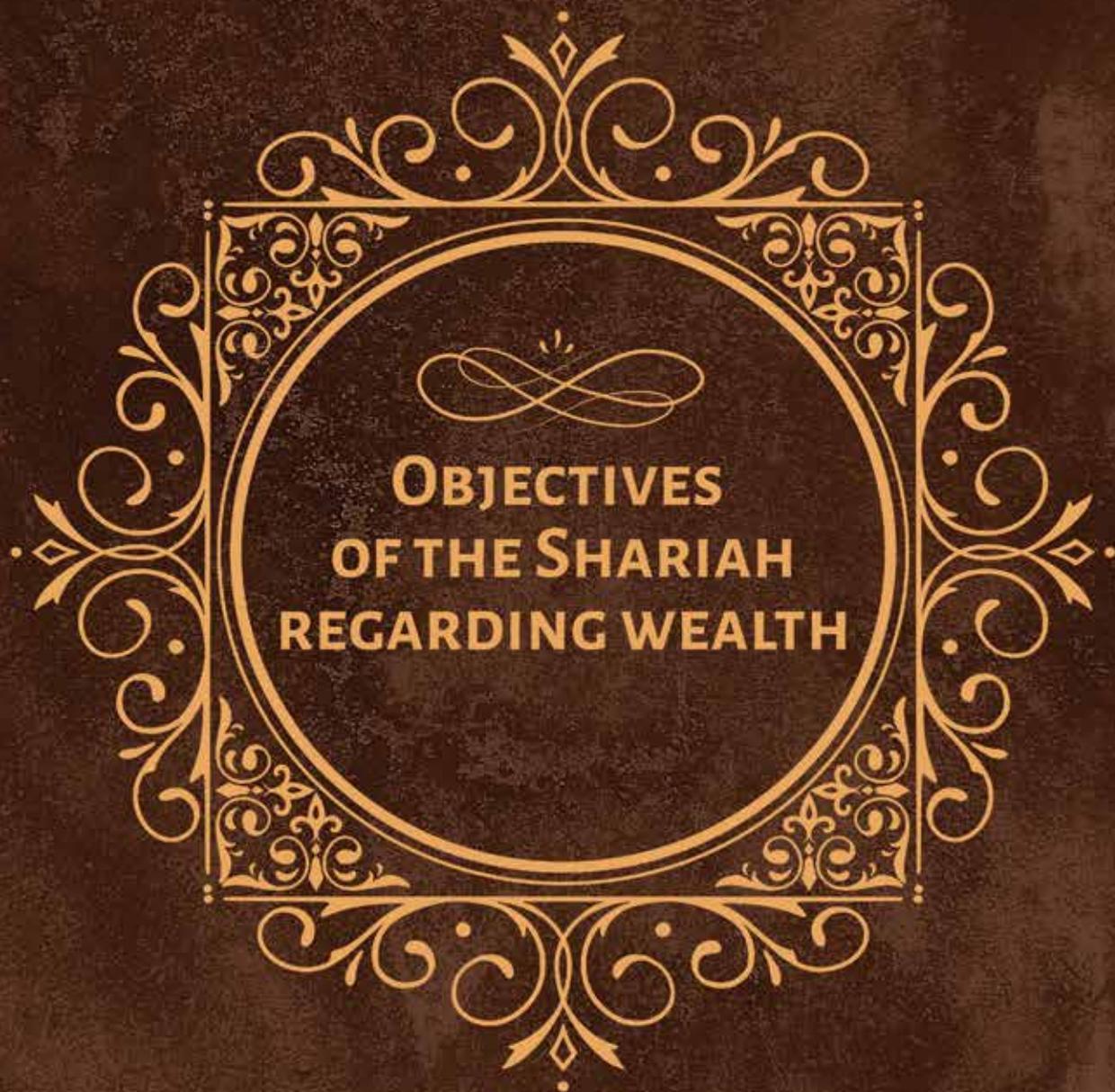
COURSE DURATION

Video – 2 hours 20 min

Study Guide – 45 min

Assessment – 10 min

Total Duration – 3 hours 15 min



**OBJECTIVES
OF THE SHARIAH
REGARDING WEALTH**

LESSON 1

1. WHAT ARE MAQASID ASH SHARIAH? WHAT ARE THE SOURCES OF SHARIAH?

Maqсад comes from the word 'Qasada', to intend or to head for something with an aim or a goal.

Maqasid Ash Shariah are the objectives of the Shariah, the objectives of the Lawgiver from His legislation.

The sources of the Shariah are the Qur'an and the Sunnah.



2. FEATURES OF THE SHARIAH TEXT

AMONG THE FEATURES OF SHARIAH TEXT IS THAT SOMETIMES THE ILLAH IS MANSOOSAH AND OTHER TIMES IT IS GHAIR MANSOOSAH.

I. ILLAH MANSOOSAH

Illah Mansoosah is when Allah (swt) identifies the reason for the ruling. For example, the ruling regarding the distribution of Fai (a form of Ghaneemah – war booty). It mentions various categories, who are recipients for this form of wealth, and also mentions the reason behind it.

“So that it (the wealth) will not be a perpetual distribution among the rich amongst you.” (Al Qur’an 59:7)

II. ILLAH GHAIR MANSOOSAH

Illah Ghair Mansoosah is when Allah (swt) does not identify the reason for the ruling.

Like for instance with the Riba (interest), the reason for the prohibition is not explicitly stated.

3. RULINGS WHEREIN THE 'ILLAH' IS NOT EXPLICITLY STATED

When an 'Illah' is not explicitly stated in the text, it requires exertion of legal reasoning in order to arrive at a reasoned deduction about what the 'Illah' would be in that case.

When you use Maqasid Ash Shariah along with Usool Al Fiqh, we get detailed evidence, because Maqasid gives you the framework by which one can understand the place of particular detailed rulings in the overall picture of the Shariah and the objectives of the Lawmaker, and if you don't use Maqasid Ash Shariah in Ijtihad, then you end up having these ultra-literalist rulings.

And if you abandon the detailed evidence and the rules of Usool Al Fiqh, and only use Maqasid Ash Shariah to make Ijtihad, you end up trampling over things which are settled issues and take great liberties with the Shariah, which could involve disregarding Shariah texts or just overriding them based on terms like Maslahah and Daroorah.



4. PURPOSES AND GOALS OF THE SHARIAH

If we look at some of the divisions of the goals of the Shariah, or the purposes of the Shariah, there are four ways to categorize them.

01

OBJECTIVES OF THE LAWGIVER AND THE THE MUKALLAF (THE SUBJECT OF THE LAW).

The Shariah doesn't deny that the Muka'llaf has valid objectives, but if there's a conflict between the two, then the objectives of the Lawgiver have precedence over the objectives of the subject of the law.

02

PRIMARY AND SECONDARY (TAB'IYYAH) OBJECTIVES OF THE SHARIAH

In case of a conflict between primary and secondary objectives, the primary objectives would take precedence.



03

'AAMMAH AND KHAAS OBJECTIVES

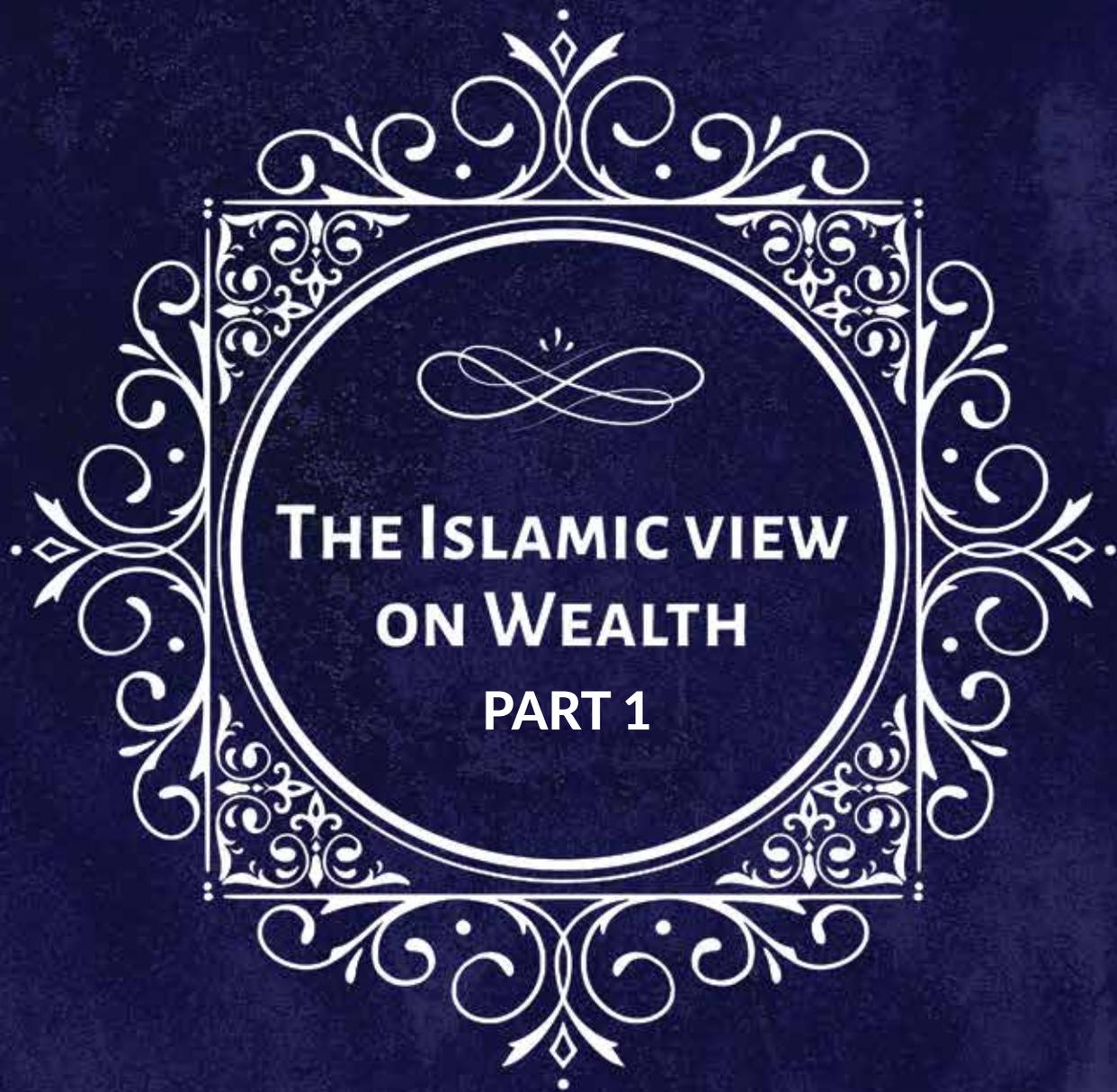
There are certain objectives which are 'Aammah, present throughout the objectives that run through the whole Shariah, and there are certain objectives which are particular to a particular aspect of the Shariah. In case of a conflict between the two, the 'Ammah (overall comprehensive purposes) would have precedence.

04

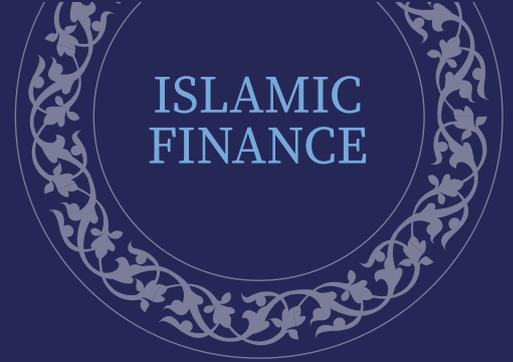
QATA'EE AND ZANNI OBJECTIVES

In case of a conflict between the two, the Qata'ee objectives would take precedence over the Zanni objectives.





LESSON 2



5. WEALTH IS A BOUNTY AND AN AMANAAH FROM ALLAH (SWT)

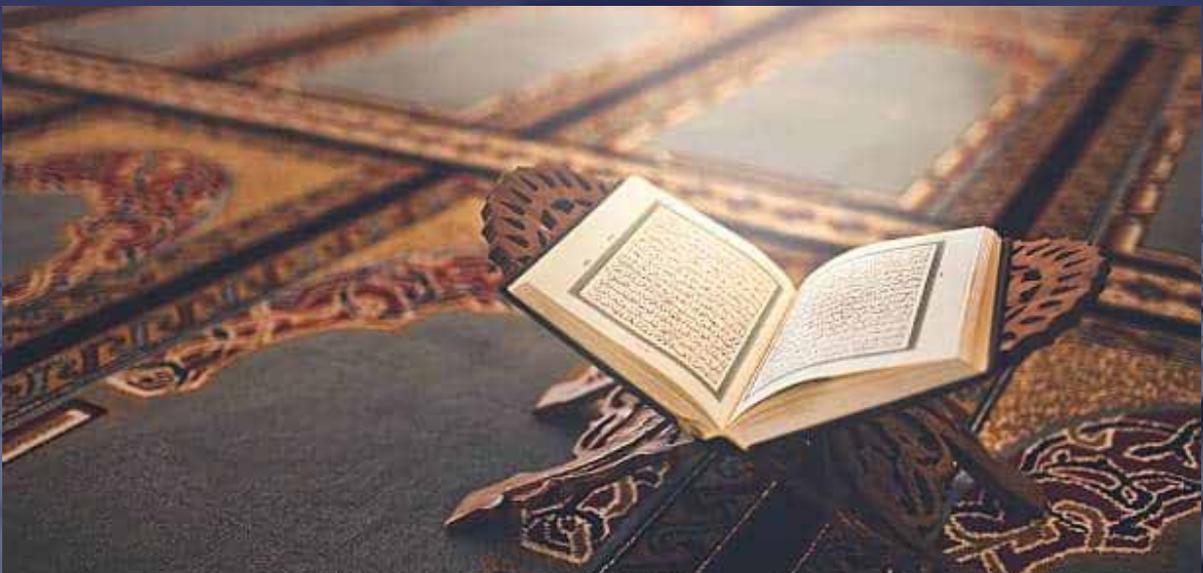
ONE MUST UNDERSTAND THAT WEALTH IS THE BOUNTY OF ALLAH (SWT) ENTRUSTED UPON HUMANITY.

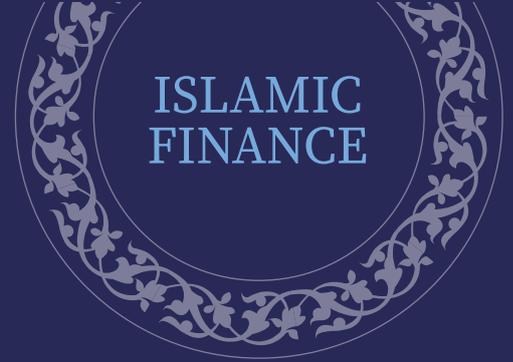
It is given to us to see how we deal with it, and to sustain ourselves.

“He is the one who made everything in the earth for you.”
(Al Qur’an 2:29)

A more detailed elaboration of that can be seen in the verses of the Qur’an –

“It is Allah who subjected to you the sea so that the ships may sail upon it by His command, and that you may seek of His bounty, and perhaps you will be grateful; And He has subjected to you whatever is in the heavens and whatever is on the earth all from Him. Indeed, in that are signs for a people who give thought”
(Al Qur’an 45:12-13)





The basic status of the world in Islam is not that it's evil, it is made by Allah (swt) and therefore, in its essence it's good and the normal condition of a human being is to be the recipient of a constant stream of blessings of Allah (swt).

This is also frequently reflected in the Dua's of the Prophet (pbuh),

“O Allah, whatever favour and blessing I'm enjoying this morning or any of your creation, is from You alone. Therefore, all praise and gratitude is your due.”

So, a person who reminds himself of this reality on a regular basis would be protected from Hasad because he knows that it was bestowed by Allah (swt).

On the other hand, one must also take note of the Hadith -

“The world is cursed, and everything in it is cursed except for the remembrance of Allah and that which supports it, and one who has acquired knowledge of the religion and one who's learning it.”

To be in a frame of mind where you can remember Allah (swt) without distractions, you need a certain level of comfort in your life.

The Prophet (pbuh) used to seek refuge from Allah and told people to take refuge from 'Faqrun Munsir' (poverty which makes you forget).

As a person who wakes up hungry and desperate, not knowing where his next meal would be coming from, would not be able to concentrate his time in the worship of Allah (swt), but rather he would be thinking and worried about finding ways to be able to feed himself.

6. LEGITIMACY OF SEEKING SUSTENANCE

The Prophet (pbuh) said:

“If you wake up, and you have your health, and you're secure and you have enough food for the day, then it's as if you're the king of the world.”

Also, the Prophet (pbuh) mentioned that a person who pursues his sustenance, to fulfil his needs and those of his family without having to beg somebody else, that person is in the path of Allah.

“When the prayer has ended, then disperse in the land and seek of Allah's bounty, and remember Allah much, that you may be successful.”
(Al Qur'an 62:10)

Thus, seeking Allah's bounty is not antithetical to remembering Allah.

7. MAINTAINING BALANCE AND PROPER ATTITUDE TOWARDS WEALTH

The Prophet (pbuh) said:

“This wealth is green and sweet, if someone acquires it lawfully and spends it lawfully what a blessed support it will be. But if anyone acquires it unlawfully, he is like one who eats but does not feel satisfied.”

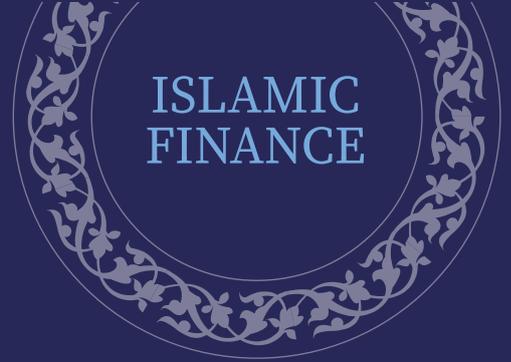
The Prophet (pbuh) said:

“What I fear most for you after my passing is that the world will open for you, and you will begin competing with one another over it, and that it destroys you as it destroyed the people before you.” One of the Sahabah (ra) asked, “O Messenger of Allah, can evil proceed from good.”

The Prophet (pbuh) said:

“Evil does not emerge from good, but is it really good.”





He (pbuh) further explained his words using the metaphor of cattle grazing by a stream.

The Prophet (pbuh) explained that the herbage and plants that grow right beside the irrigation ditch that can kill the animal because it keeps eating without knowing when to stop, and the belly swells until it bursts, and the animal dies. On the other hand, cattle that's grazing in the desert. The plants that grow are tougher and they're not as tasty. So, the animal eats for a while and then it doesn't taste that great, causing the appetite to falter, so it stops eating for a while and turns and faces the sun, chews its cud, and then defecates, and then it will return and eat some more. Some of the Hadith commentators have pointed out an analogy between the earning of the wealth and the spending of it. The concept that Zakaah represents a purification of a person's wealth, and that if the person doesn't spend it, it becomes like a poison inside the body. So, paying Zakaah becomes a purification. Thus, that metaphor here connects the getting rid of excess wealth with getting rid of poison from the body.





LESSON 3

8. MAN'S LOVE FOR WEALTH AND OTHER BOUNTIES

These are inherent or ingrained, built in tendencies in the human being, to love certain aspects of the bounties of this life. Allah (swt) is acknowledging that these things are built in your nature.

“Beautiful for mankind is the love of that which they desire, from women and offspring and stored up heaps of gold and silver, and fine branded horses, and cattle and tilled land. That is comfort of life of the worldly life. Allah has with Him the best abode (Jannah).”
(Al Quran 3:14)

Allah (swt) is the ultimate owner and provider of the wealth, so it must be spent the way He says:

“And give the relative his right, and the poor and the traveller. And do not spend wastefully. Indeed, the wasteful are the bothers of the devil, and ever has Satan been to his Lord ungrateful.”
(Al Qur'an 17:26–27)

“Seek through that which Allah has given you, the home of the hereafter, and do not forget your share of the world. And do good to others, as Allah has done good to you. And desire not to spread corruption in the land. Indeed, Allah does not like the corrupters.”
(Al Qur'an 28:77)

In the above verses, Allah (swt) gives clear instructions and advice for man, how to look at wealth and what to do with it, the relationship between this world and the hereafter.

9. OBJECTIVES OF THE SHARIAH REGARDING WEALTH

Circulation of wealth in the society

Circulation of wealth in the society is a really critical issue, which is becoming more and more critical as time goes by. We live in a world where the system is designed for wealth to be vacuumed up from the lower levels of society to the top, small percentage of elite. The richest of the rich continue to grow richer, while the poorest people continue to grow poor. It's built into the system, and what that means for society is that when that happens, it creates the condition for economic crises. Therefore, from the objective of the Shariah is that wealth should be circulated in all the sections of the society and not only amongst the rich. *“So that it will not be a perpetual distribution among the rich from among you.”*

(Al Qur'an 59:7)



Encouragement to undertake entrepreneurial activities or business

The encouragement for people to undertake entrepreneurial activities, to do business is well known in Islam. One of the aspects of the Islamic system is to penalize wealth that's just simply being saved, because if you look at the definition of money, the classic kind of things that economists talk about is that money is a 'medium of exchange, it's a measure of value, and it's a store of value'.

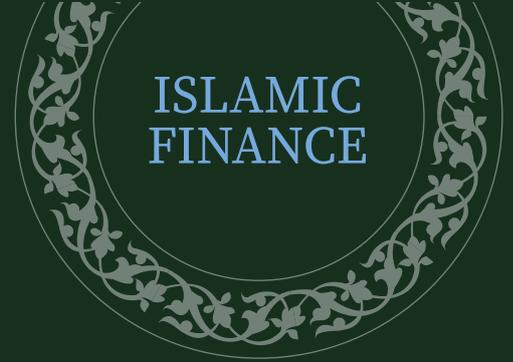
So, its function as a medium of exchange, and its function as a store of value are conflicting objectives.

It is a means of support



*“And do not give the weak minded your property, which Allah has made a means of support for you.”
(Al Qur’an 4:5)*

So, it's highlighting the role of wealth in human life. It is the means of support.



Fairness and transparency in financial practices

The basic rule of the Shariah is that every kind of transaction is lawful until proven otherwise, and the implications of contracts is that they create rights and responsibilities, and it becomes binding to fulfil the obligations that one has accepted by entering into the contract.

“O you believe, fulfil your contract obligations.” (Al Quran 5:1)

“Give full measure and weight, and do not deprive people of their due, and spread not corruption on Earth after its reformation.” (Al Quran 7:85)

The above verses are related to fairness in transactions and giving people what is their due. As for transparency, the classic evidence is the Hadith of Abu Hurairah (ra):

“When the Prophet (pbuh) was passing through the marketplace, and there was somebody selling a big heap of grain. The Prophet (pbuh) put his hand into the heap and found the grain on the inside to be wet, while the one on top was dry grain.

He asked the man, ‘Why is this stuff wet on the inside?’ And the seller replied, ‘Asabathus Samaa - Well, the rain got on it’. The Prophet (pbuh) said: ‘Why don't you put the wet part where people can see it? ‘Mann Ghashsha Fa Laisa Minna’ – Whoever deceives is not of us.”

Thus, it is a clear indication for the necessity for transparency, and forthrightness in transactions.

JUSTICE

Justice is a fundamental and an ongoing requirement in all contracts. The larger structure of the society has to support justice, creating what they call an equal and level playing field, so that everybody has a chance to earn a living by which they can support themselves, and turn down practices such as such as bribery, insider trading, and crony capitalism that would undermine this objective.





LESSON 4

10. CONTRACTS USED IN ISLAMIC FINANCE

The focus in this lesson would be on the contracts that are used in Islamic Finance, in order for Islamic banks to carry on their business, and to fulfil the objectives that we've been speaking about in the economy.

*“Allah has made Bai’a (trade) lawful, and he's prohibited Riba (interest).”
(Al Qur’an 2:275)*

‘Bai’a is a generic term that covers many kinds of exchange contracts. So, the nature of Islamic finance is that banks engage in some form of Bai’a, which Allah has allowed, as opposed to Riba which he has prohibited.

Bai’a can also be translated sometimes as sale, that is if I have a good and you give me a price for it, I exchange it with you, the good for the price. That is what is called as ordinary sale.



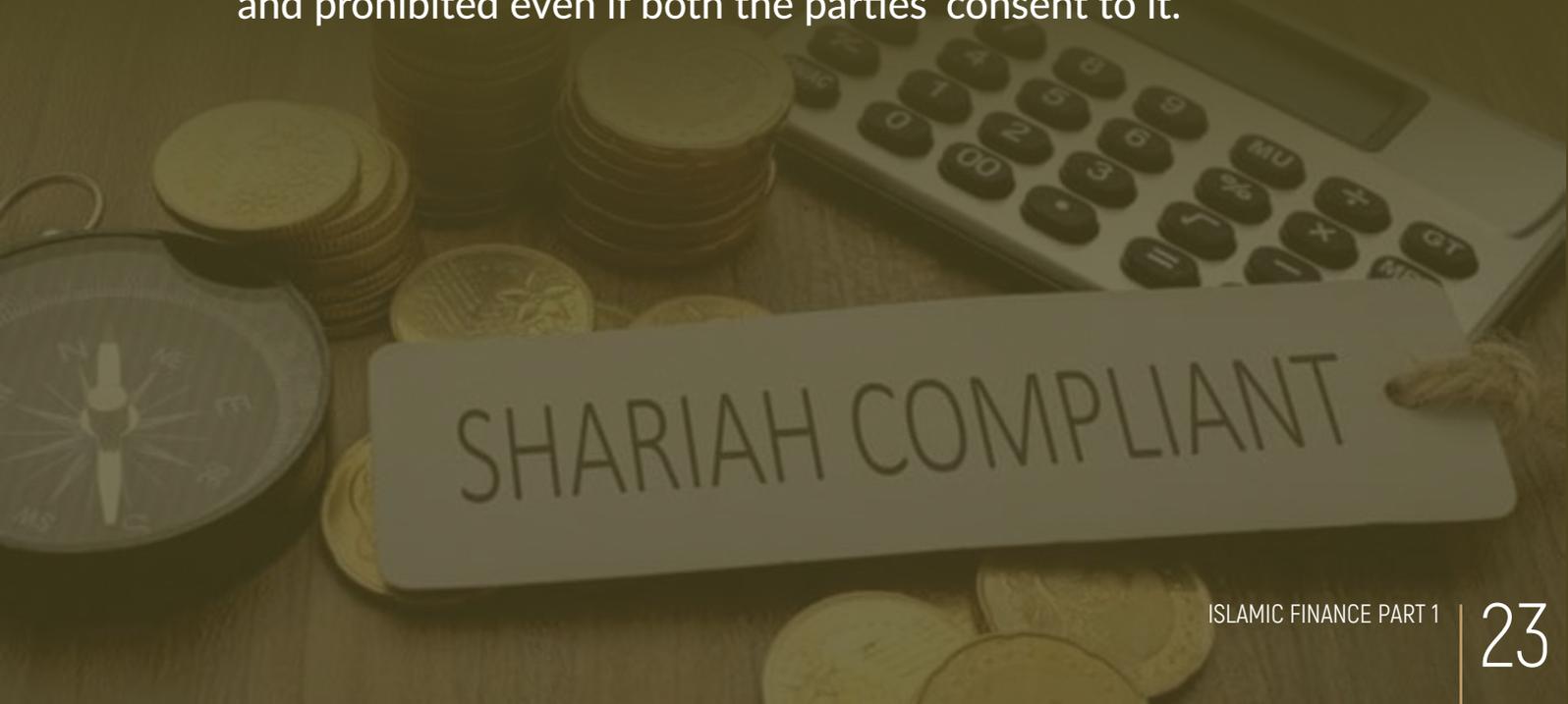
ISLAMIC
FINANCING

FOR SOMETHING TO BE VALID FOR BEING SOLD, IT MUST FULFIL TWO CONDITIONS.

- i. It must fulfil the Shariah definition of wealth
 - a. It must be something lawful for people to use, own and transfer.
 - b. It must be something useful and beneficial.
 - c. It must be something that people are willing to pay for.
- ii. Al Ijab wal Qubool: There must be an offer, and an acceptance of the offer.

In this case, it is necessary that the consent is freely given to the contract and not forced upon.

Another point to be noted in this case is that the contract should be free from factors like unlawful conditions or ambiguity being attached to it, because that would render the contract as unlawful and prohibited even if both the parties' consent to it.



SHARIAH COMPLIANT

11. DIFFERENT KINDS OF SALES

i. Sale of corpus

A price is paid to the seller, and the buyer gets the good into his possession, and that corpus now belongs to the buyer.

Sale can be further divided into two categories:

a. depending upon time of delivery

b. depending upon price determination

c. depending upon the time of delivery

- Completion of delivery, delayed payment

In such sales, the seller hands over the product to the buyer upon receiving partial or no payment (deferred payment) and agree that the buyer would complete his payment on later date that is agreed upon by both the parties.

Also, in such cases it is at the option of the seller if he wishes to take some collateral from the buyer or a guarantor that would help him cover his losses in case the buyer isn't able to pay his dues.

*In such sales, it is important to note that the 'delayed payment sale' is lawful as long as the price agreed upon by both the parties is fixed and doesn't increase (interest charge) in case of a missed payment due to financial difficulties, etc. The basic rule is that the price is fixed.

- Salam (completion of payment, delayed delivery)

In such sales, the buyer pays the entire sum, but the delivery of his goods would be on a later date.

It is important that he has rigorously and adequately specified and provided the necessary information (the description of the goods he wants, the quantity, and the date he expects his delivery) to prevent disputes.



LESSON 5

12. MURABAHAH LIL AAMIR BISH SHIRA

When Islamic finance first started, there was a lot of experimentation because nobody knew which projects would be viable. There were certain theories, and there was the ground reality.

Murabahah lil Aamir Bish Shira was considered like the breakthrough contract in making Islamic Finance commercially viable back in the 70s. It is similar to a Murabahah contract with slight tweaks.

Since Murabahah is a trust-based contract, it allows the Islamic Banks to operate similar to the conventional banks by making it possible for them to conduct a sale with a markup delayed payment which is recognized by the Shariah as lawful.

Even though Murabahah is permitted, there are certain categories (gold and silver, or currency) outlined by the Prophet (pbuh) in which one must deal in spot transactions and Murabahah isn't permitted because those are governed by the rules of soft currency exchange.

WHAT IS THE DIFFERENCE BETWEEN THE CLASSICAL FIQHI MURABAHAH AND THE TWEAKED MURABAHAH LIL AAMIR BISH SHIRA?

	Murabahah	Murabahah lil Aamir Bish Shira
1	Involves only two buyers	It is a three-way Transaction (Seller - Bank - Buyer)
2	Can be a spot transaction or delayed transaction	It is based on a delayed payment basis

In the case of Murabahah lil Aamir Bish Shira, a customer approaches the bank with a proposal to buy a certain item specified by him from the seller, and then sell it to him for a fixed price (cost of the item plus the markup charged by the bank) agreed between them on a contract of delayed payment. In the initial stage, a two-sided contract is not allowed because the bank does not have in its possession the item that the customer wants.

The Prophet (pbuh) said: “Do not sell what isn’t in your possession.”

Thus, it is a one-sided contract (a promissory agreement) outlining the issues from the side of the customer, which would have contractual weight if the bank is successful in procuring the specified item/good etc.

A MURABAHAH LIL AAMIR BISH SHIRA CONTRACT CAN BE DIVIDED INTO FOUR STAGES:

- i. The first stage is the promise from the customer to the bank
- ii. The second stage is the bank taking possession of the good from the primary seller
- iii. The third stage is the sale
- iv. The fourth stage is the execution or delivery to the customer.





LESSON 6

13. SALAM SALES – LEGAL RULINGS, CONDITIONS AND USE IN MODERN TIMES

A Salam sale is when the payment is made upfront in the contract session, but delivery of the purchased good is delayed to a specific date. Until then, the good being sold is at the Zimmah (liability) of the seller.



BASIC PILLARS OF A SALAM CONTRACT

The basic pillars of a Salam contract are the same as that of any ordinary contract.

- A buyer/capital provider
- A seller
- the goods being sold
- the price

It is important to note that just like in the case of Murabahah, in Salam contracts too one isn't permitted to deal in certain categories – Sarf (gold and silver, or currency) outlined by the Prophet (pbuh) because they are governed by the rules of soft currency exchange and must be dealt in spot transactions.

“O you who believe when you deal with each other in transactions involving future obligations for a fixed period of time, reduce them to writing.”

(Al Qur'an 2:282)

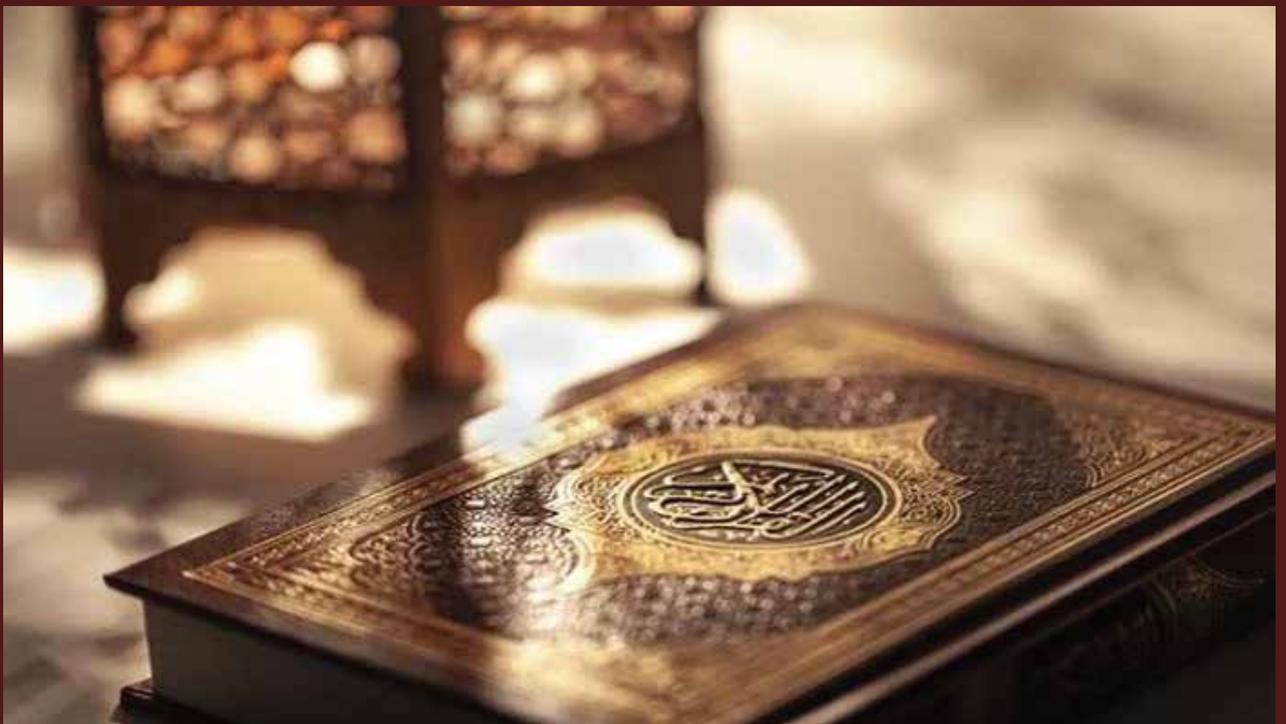
Abdullah Ibn Abbas (ra) said:

“I testify that a good sold with guaranteed delivery at a specified deferred date has been made lawful and permissible by Allah (swt) in His book, and then he recited the above verse.”

Abdullah bin Abbas (ra) said:

“When the Prophet (pbuh) came to Madinah, he found people transacting wherein a sale would be made for delivery of dates, two or even three years in the future.

The Prophet (pbuh) allowed it but said:“Whoever does that should contract for a specified volume, with delivery at a specified date.”



IT IS IMPORTANT TO NOTE THAT THERE ARE CERTAIN CONDITIONS FOR A SALAM CONTRACT.

- General description: In a Salam contract, the buyer is required to give a generic description of the good he desires, but he isn't allowed to pinpoint a specific good and ask for its delivery at a delayed date.
- Possession of the goods: It is not necessary in a Salam sale for the seller to own the good at the time of sale, but it must be available at the agreed time of delivery.



WHAT DIFFERENTIATES A SALAM SALE FROM A REGULAR SALE?

Among the things that make a Salam sale different from regular sale are:

- It requires upfront payment during the contract session
- Salam sales involves a debt obligation
- Delivery date of the sold item must be known
- Thorough description of the sold item
- It must be possible to deliver the item at the prescribed delivery date



SALAM SALES IN MODERN TIMES

An example of a modern manifestation of Salam sales could be wherein a farmer contracts with buyers in the city to deliver various kinds of fruits and vegetables, specific quantities on a weekly basis on upfront payment in the contract session.

When these are specified, the Salam sale would be perfectly lawful.

السَّلَامُ عَلَى الْكَلِمَةِ

ISLAMIC FINANCE





1. What is the Shariah definition of wealth?

Ans: The Shariah definition of wealth is that –

- i. It must be something lawful for people to use, own and transfer.
- ii. It must be something useful and beneficial.
- iii. It must be something that people are willing to pay for.

2. What is the Islamic attitude towards saved wealth?

If you have a lot of money, and you've saved it in the form of gold etc, and it's just sitting there in a safe somewhere, that is the money that has been taken out of circulation from the society. It cannot be used by people for their exchanges, so what happens?

Well, after a year you're going to have to pay 2.5% on it, and the second year and so on. And if you leave it around long enough, eventually Zakaah will eat up all that wealth. So, that's a penalty being imposed by the Lawgiver for monopolizing wealth and diverting it from its primary function, that is, that it is medium of exchange.





3. How is Riba (Interest) based economy not sustainable?

One of the impacts or the effects that's driving the world economy is the need to make a certain amount of profit to be able to cover the interest payment on debt. It's like an electric prod behind every enterprise in the world to increase to grow, but there are limits to growth. You can only grow big to a certain extent, and then when you've ripped out resources from here and there and depleted all the resources, the population will have to crash because there won't be enough resources to support the levels of human beings who are calling upon them. Therefore, a sustainable economic system cannot be achieved when the whole system is being driven by the internal logic of Riba.

