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## Sale in Installments between Law and Sharia (A Comparative Study)

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### Abstract

This type of sale has become very common in our time, and the various commodities are represented by the interests in it for both parties to the contract (the seller and the buyer) and when the delay of the price from the date of payment is accompanied by an increase in the price in compensation to the seller for the delay, this type of sale has sparked and is still raised Discussion of controversy among the people of knowledge in terms of its legitimacy because of the increase in the price, perhaps due to what some people suspected of usury.

**Keywords** :*Installment, Terms of Sale in Installments, Advances and Sale, The Two Pledges of Allegiance, The Pledge and The Condition.*

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### Introduction

Sales are the most widely traded fields , as a person is inseparable from it in most days of his life, and a poor or rich person does not dispense with it , and one of the sales that people have known since ancient times ,and Muslims dealt with in the old days of their eras, is what is known as “term sales” In it, one of the two substitutes recently left the contract council , in violation of the established principles that require their presence when entering into the sale contract in order to achieve the purpose of the contract ,and to settle the dispute.

However, Islam, which is the religion of reality, and the approach of facilitating and removing embarrassment, saw the need to deviate from the general rule in order to reach an ideal goal, and a noble good goal, so it was permissible to delay the delivery of the appraiser or the price from the contracting board.

If the price is the backside, it might be delayed once to order indefinitely ,or to differentiate batches result in successive seasons certain ,and while it is also installment sale .

This type has become very common in our time, and it includes various commodities, both subtle and great, because of the benefits that it brings to both the seller and the buyer, and since the postponement of the price from the time of the contract is accompanied by an increase in the price as compensation to the seller for delaying a hold and depriving him of his investment, and a contribution from the buyer in alleviating these effects with What he received from the grace of

facilitating access to the goods he needs despite the narrowness of his hand .Therefore, this type of sale was and still is the subject of research and debate among scholars regarding its legality, due to the increase in the price that may be suspected by some people of usury.

On the other hand, this type of sale gives rise to problems between the buyer and seller are the fruit to go with the delivery and receipt of conservation rights, in particular ,and that one of beneficiaries - a price - delayed a little or a lot in delivery.

From here, I found an urgent need to single out this issue with a research that gathers its various parts, in light of the absence of the Islamic library from an integrated jurisprudential study of this subject - within the limits of my awareness.It has paved the way for the discussion of installment sale by clarifying its meaning in language and terminology from the legal and legal perspectives, and clarifying its scientific image.In the first topic, this issue was clarified in the books of hadith and jurisprudence, as there are no separate chapters dealing with this topic, and I talked about the meaning of the Prophetic hadiths in “two allegiances in one allegiance” and “two deals in a deal” and “two conditions in a sale” ... which is the problem of research in this sale, as reflected on the lips of modern scholars and jurisprudence, which scholars have stated not to legitimacy and sanctity. Then I extracted from these expressions the reason for the prohibition of these sales, as I mentioned by text or implication, and in light of that I mentioned the extent of congruence between term sales, including installment sale and these sales, which paved the way for clarifying the ruling on installment sale. In the second topic ,the views of the scholars regarding the installment sale - an increase in the price in exchangefor the term - were clarified and presented to the evidence of those who allow it and those who prevent it. In the third topic, I dealt with the hadith of the provisions of installment sale in terms of the terms and controls of dealing with it so that it is a way to bring benefit and ward off the evils of fraud, unfairness and exploitation.It also clarified the requirements of ownership and ownership, and the matters that were legislated to protect the rights of the contracting parties from wastage and loss, embodying the goal of Islam from contracts, and eliminating what contradicts and prejudices it.

In all worked on revenue view of positive law ,what I can afford it,a manifestation of the originality of Islamic law, and distinguish the rulers, and to him - either direct its provisions or the stability of the total assets and the elucidation of the spirit Tcheraath- gave precedence in establishing the system and legislation Sdaha of truth, justice, compassion, and sheltered the accuracy, depth and comprehensiveness of the organization.

In conclusion, I will put what Al-Imad Al-Isfahani said when he said :No person writes a book in his day, but he will say on the next: - If this had been changed, it would have been better, and if such and such had been added, it would have been better. The greatest lesson, and it is evidence of imperfection taking over the whole of humankind and that it is a human action in which perfection is certain, because perfection is for God, the One, the Subduer, and praise be to God, Lord of the Worlds.

### **Search problem**

That the installment sale achieves an interest for both the seller and the buyer ;The seller’s interest is to facilitate ways, and open doors to spend his commodity and its popularity, while the buyer’s interest appears in obtaining the commodity that he needs, and he does not have the price for it immediately, by paying that price deferred in payments commensurate with his financial

capabilities, in addition to what the term gives him from An opportunity to grow or earn money and pay the price without suffering or fatigue.

Based on this, the image of installment sale - which has taken on a common and widespread character in our time - is done by referring to the consumer - especially the person with limited income who needs a commodity that meets one of his needs or provides him with means of a decent living, or brings him income and development sometimes from a washing machine or A refrigerator or a car and other electrical and mechanical tools and machines and furniture - he means the merchant who sells these tools in installments, so he tells him their price if he wants to pay immediately and their price if he wants to leave in installments, which is naturally higher than the current price, if the buyer chooses the deferred price in installments and the agreement is reached So that was the picture of the installment sale that we are going to talk about.

### **Introduction To the Meaning of Installment Sale**

#### **The meaning of installment sale, linguistically and legally:**

##### **First: in language:**

In the language, installments are given meanings:

1- **Separate and make a thing into parts** , it is said: qatat a thing: that is, separate it and make it into parts, and religion makes it into known parts that are performed at specific times.

2- **Sharing by settlement** :Al-Layth says: Take the thing between them, that is, divide it equally .And in the doorsteps on equity and justice .And in the tongue on justice and equality<sup>(</sup>

In this sense, it is dividing a thing into similar parts, such as postponing a debt of five hundred dinars to five weeks, provided that one hundred dinars is paid from it every week.

3- **Strictness** :it is said: a premium on his family alimony in installments if it is sparse for them .Al-Tarmah said:A palm is a palm that does not see its tail \*\*\* in proportion to the dread of her execution.

4- **And the installment is the share and the share** ,it is said: We made the thing between us: that is, each took his share and his share .And it is said: He paid his installment: that is, his share and his share.

Through our review of these meanings, it appears that the first and second meanings are the closest to the legal and idiomatic meaning of installment sale, as they indicate that dividing the thing into parts in a manner of justice and equality, and if the installment thing is religion, then what is meant is to make it known parts that are performed at certain times.

##### **Second: in the legal terminology:**

Among the meanings that can be considered as an indication of what is meant by installment sale in the Shariah concept: “The merchant sells the commodity for which the price is paid immediately at a price, and deferred or in installments at a higher price“.

“Installment: Postponing the payment of the debt separated by certain times” “The price in installments is what is stipulated for payment of known parts at certain times” It seems to the observer of these meanings that the installment sale from the legal perspective is the sale of the commodity at a deferred price that is higher than the current price, provided that the payment of that price is divided into certain parts .It is performed at specific times.

### **Between Deferment and Installment:**

When it is clear to us in the light of the legal meaning of installment sale that the term factor is an essential element in it appropriate to the place, we should show the relationship between postponement and installment.

Postponement is the delay in paying the price of a commodity to a future time, whether that time is a month or a year, and whether the seller receives the price in whole or in installments .As for the installment, it is the postponement of the payment of the price, provided that the buyer receives it in installments.

Accordingly, it can be said that there is an absolute general and specific relationship between postponement and installment. In every installment, postponement is absolute generality, and delay may or may not be .Installment is better than deferment.

### **Installment in Positive Law:**

Law specialists mentioned several definitions of installment sale, including: “It is one of the types of credit sale in which it is stipulated that the payment of the price be in equal and regular parts within a reasonable period of time.”

Including “it is a sale in which the payment of the price is divided into several installments, provided that it is part of these installments later on the purchaser’s receipt of the sale.”

Including “it is a contract whose subject is the seizure of something in return for the payment of certain installments in a certain period, at the end of which the buyer becomes the owner of the thing”.

It is noted that the legal meaning of installment sale is consistent with the legal meaning in the presence of an element of delay in paying the price, and that the price is in installments .However, he added some restrictions and conditions that were not mentioned in the legal meaning of them:

- 1- Requirement that the buyer pays the seller equal amounts in each payment.
- 2- The requirement that the full payment of the commodity be completed within a reasonable period of time.
- 3- A requirement that the first installments be paid after the buyer has taken possession of the commodity.
- 4- Restricting the transfer of the buyer's ownership of the commodity by paying the full price at the end of the period of time required to pay the premiums .These conditions and others will be

the subject of research, analysis and discussion in the light of the Sharia ruling, when discussing the provisions and conditions of installment sale in a later place in this study..

## **The First Topic**

### **The legal basis for sale in installments and its assets**

The term “sale in installments” was not known to scholars of Sharia and Islamic jurisprudence before the present century, as this type of sale was known and common. It is obvious that this term does not exist in the books of the Prophet’s hadith, and it is one of the main sources from which jurisprudence derives its rulings.

And since that was the case, it was necessary that we clarify the citizen and point out the assumptions in which the roots of this issue and its origins in the sources of hadith and jurisprudence.

In the books of hadith, we find the origin of this type of sale mentioned in the following places:

First: The hadith forbidding the Prophet( ρ )for two sales in one.

Second: The hadith forbidding the Prophet( ρ )for two deals in a different wording deal.

Third: Hadiths that include the prohibition of the Messenger of God ( ρ )for two conditions in a sale, or a sale and a condition, or a sale and advances.

It was mentioned in the explanations of these hadiths that one of the images that these hadiths mean is that a man sells a commodity for such-and-such, and offends him with such. This meaning is considered the origin of the issue of installment sale.

In the books of Islamic jurisprudence, we find the origin of the issue of installment sale under the title “Corrupt Sales” or “Prohibited Sales” in the sales books, or in the chapter “Perpetual sales”. These books dealt with their talk about the prohibited sales, the sales that were mentioned the above in the books of hadith, and the jurists’ clarification of the meanings of those hadiths, which include the previous picture, which is that the seller says to the buyer: This commodity is now so-and-so, and delayed with such-and-such. Hence, giving the issue its right of clarity and clarity requires the following steps:

1- Mention of the honorable prophetic hadiths, which are considered the most important aspects of the issue of installment sale, with their different expressions, and their degree of validity..

2- Proving the statements of the mothers of the hadith books that dealt with these hadiths with explanation and explanation.

3- Referring to the expressions of the fuqaha” in their explanation of these hadiths when talking about the prohibited sales.

4- Extracting the reason for the prohibition of these sales as explicitly stated in the statements of scholars of jurisprudence and hadith ;Which means that the existence of the cause necessitates the effect, which is prohibition, and its negation necessitates its negation, so it is permissible..

5- Concluding to the conclusion that the installment sale is permissible in light of those premises, or is it not permissible. ?

### **The first requirement**

#### **The text of the hadiths of the Prophet and their graduation**

**The first hadith :**What Abu Hurairah narrated( τHe said: “The Messenger of God forbade( ε (About two pledges of allegiance.

**The second hadith :**What Abdullah bin Masoud narrated ( τHe said: “The Messenger of God forbade( ε(for two deals in a deal”

**The third hadith and the fourth hadith :** The Messenger of God forbade ( ε“ : )About a sale and a condition” and“ Two conditions in a sale” and “Advance in a sale.

### **The Second Requirement**

#### **Meaning of Hadiths**

When I was in the process of seeking the origins of the issue of installment sale and its implications. I found this as a justification to explain what the scholars” statements – whether explaining the Prophetic hadith or explaining its meanings from the jurists – carry the meanings, so that in their light I can identify those principles and assumptions.However, it is worth noting in this field that these honorable hadiths have many meanings that have been explained by books of hadith and jurisprudence, and since the field of this research is installment sale, I will limit myself to the closely related meaning of it ;To avoid prolongation and overstatement, and given that these meanings are distant or irrelevant to the subject of the research .This is with the knowledge that those meanings have been referred to by the sources that I will rely on in the same place, so whoever wants to look at them can do so by referring to the same sources and on the same pages in most cases.However, I will mention only one of these meanings, which is what he went to explaining the meanings of these hadiths from modern men and jurisprudence from their saying that they mean: the seller says to the buyer: I sell you this commodity for such-and-such on the condition that you sell me such-and-such or lend me such-and-such ... for the following considerations:

1- This meaning is the most frequently mentioned in addition to the meaning related to installment sale.

2- It is closely related to some of the hadiths in question, especially the hadiths that contain the prohibition of the Messenger of God.ε )for two conditions in a sale, or a sale and advance, or a sale and a condition.

3- Because this meaning clearly highlights the greatness and authenticity of Sharia and Islamic jurisprudence by comparing it with the position of positive law on this issue, which is that the contract includes more than one deal .

**First: Phrases of hadith scholars, and texts written by him in explaining the meanings of the advanced hadiths :**

## 1- The hadith forbidding the Messenger of God (ﷺ) About two pledges of allegiance:

Tirmidhi said in the right university " : Some of it has been interpreted by scholars ,said: Biatan in the pledge of allegiance that Obaek this dress critique of ten, and b Nsaih certain Rennes, and leaves him on one of the selling n, if left him on one of them there is nothing wrong if the node on one who are they .Al-Shafi'i said: And from the meaning of the Prophet's prohibition(ﷺ)On the authority of two pledges in one allegiance to say: I will sell this house to you for this on the condition that you sell me your slave for such, and if your slave becomes obligatory for me, then I will have my house for you, and this differs from a sale without a known price, and each one of them does not know what his deal was signed for". It came in Al-Muwatta and Al-Zarqani's explanation on it: Malik said about a man who bought a commodity with a dinar in cash or a sheep described for a term, and he said that he was obligated - that is, obligated - by one of the two prices: This is disliked and should not ;Because the Messenger of God (ﷺ)He forbade two sales in one, and this is from two sales in one ;It is forbidden[<sup>(xvii)</sup>].

Women and interpreted it as Bob him in his Sunan , saying: "In two transactions is to say the pledge of allegiance: Obaek this item hundred dirhams in cash, two hundred dirhams Nsaih[<sup>(xviii)</sup>].

Al-Khattabi said in Ma'alim al-Sunan: "The interpretation of what was forbidden from two sales in a sale in two ways: one of them is to say I sold you this garment for ten cash and a credit for fifteen. This is not permissible, because he does not know which of them is the price he chooses from them, so the contract is signed, and if the price is unknown, the sale is invalid. .

The second: to say: I sold this slave to you for twenty dinars on condition that your maidservant sell me for ten dinars. This is also corrupt, because he made the price of the slave twenty dinars, and he stipulated that he sell it to his maidservant for ten dinars, and that does not oblige him, and if he does not oblige him, some of the price falls, and if some of it falls. The rest became unknown[<sup>(xix)</sup>].

Sheikh Ahmed Alsharengwra was quoted in his book " , the effort to solve the father of David " , the words of rhetoric , which is considered by stating its approval[<sup>(xx)</sup>].

From the foregoing, it becomes clear to us ,beyond any room for doubt, that one of the most prominent meanings, and indeed the most likely one according to many scholars, for the hadith that forbids two sales in one sale is that the seller mentions to the buyer two prices, one of them is immediate and the other is deferred, and the deferred payment is more than the immediate, and there is no doubt that this The image, regardless of its cause and the extent of its applicability to installment sale, is the basis for the idea of this sale, which makes this noble Prophetic hadith valid for being one of the citizens in which the search for the rule of installment sale is sought, noting that the matter will become clearer when researching a topic on the prohibition and what if Was it a sale in installments or not ?.

## 2- The hadith forbidding the Messenger of God (ﷺ) for two deals in a deal:

It came in Al-Fath Al-Rabbani with Musnad Ahmad: Aswad said, Shrek said, Sammak said: The man sells the sale and says: He is with women for such-and-such, and he is with cash for such-and-such".And the owner of „Awn al-Ma'bood included Sammak's interpretation of the meaning

of two deals in a transaction, as he commented on al-Khattabi's interpretation of the parameters of the Sunan for the meaning of two pledges in an allegiance, as he had previously said: With this, Sammak interpreted what Ahmed narrated and his wording: Sammak said: He is the man who sells the sale, he says: He is with women for such and such, and he is with cash with such and such. as well.

In Muntaqat al-Akhbar, which al-Shawkani explained: On the authority of Sammak bin Abdul Rahman bin Abdullah bin Masoud, on the authority of his father, he said: The Messenger of God forbade ( ε )For two transactions in a deal, said fishmonger: is the man selling is selling ,says women with such a critique of such and such, narrated by Ahmed.

Al-Shawkani said: Sammak interpreted it according to what the compiler narrated on the authority of Ahmad, and he agreed with him on that of al-Shafi'i, so he said: By saying: "I sold you for a thousand in cash or two thousand for a year, so take whichever you like and what I like." In fact, the interpretation that al-Shawkani attributed to Imam al-Shafi'i is for the meaning of two pledges of allegiance, and Sammak's interpretation is for the meaning of two deals in a transaction, so al-Shawkani's speech is acceptable considering the union of the meaning, not the pronunciation. And it came in erecting the banner: It was narrated that the Prophet ( εHe forbade two deals in a transaction, I said: It was narrated by Ahmad in his Musnad, so we were told by Hasan, Abu Al-Nadr, and Aswad bin Amer. They said: Shareek narrated to us on the authority of Sammak on the authority of Abd al-Rahman bin Abdullah bin Masoud on the authority of his father, he said: The Prophet forbadeε )for two deals in a deal .Aswad said, Shrek said, Sammak said: It is for a man to sell a sale, and he says, "It is for such and such money, and we offended him with such ." Ibn Abi Shaybah said in his "Musannaf" after mentioning the hadith: If a man says, "If it was in cash, then with what, and if it was bad for him, then with what." From the foregoing, we see that the statements of those who explained the hadith that the Prophet forbade (ε )about two deals in a transaction applied to that what is meant by it: that the seller says to the buyer: the commodity is in cash for such and such and bad for him with such, and that they were confined to mentioning the phrase "smak" in explaining the meaning of the hadith, as we note that they were limited to this meaning in contrast to what was passed in the interpretation of two allegiances in one allegiance.

Thus, the hadith is one of the speculations in which one can search for the meaning of installment sale and the ruling on dealing with it according to Islamic law.

### **3- The Messenger of God forbade( ε )About“ a sale and a condition” and “two conditions for a sale” and “a sale and a condition:”**

It came in Al-Muntaqa, explaining Al-Muwatta' on the meaning of his saying( ε...“ :(and there are no two conditions in a sale”: to say that this commodity was sent for cash with such and such as debit. An-Nasa'i titled in his Sunan the hadiths of this chapter by saying: "Two conditions in a sale, which is to say: I will sell you this commodity for one month for such, and for two months for such." The owner of „Awn al-Ma“bood quoted al-Baghawi as saying in the meaning of "there are no two conditions in a sale" that he says: I sold you this slave for a thousand in cash, and for two thousand on credit. This is one sale that included two conditions in which the meaning differs according to their difference, and there is no difference between two conditions and conditions.". Al-Shawkani also quoted in Nayl al-Awtar the saying of al-Baghawi regarding the



meaning of “there are no two conditions in a sale.” As for the meaning of advance and sale, he said, “In the books of a group of Ahl al-Bayt, peace be upon them, that advances and sale are a form of it: that a person wants to buy a commodity for more than its price for the sake of women, and he has that it is not permissible, Venstkarzh price from the seller urging him to him trick. he commented Shawkaani on this by saying: "the first interpretation of the modern , as required by the fact legitimate, linguistic or customary or metaphor when you cannot load the truth is not what is known in some doctrines is unknown in the other. Al-Shawkani"s saying this indicates the exclusion of what those who say that explaining the sale and advance as an increase in the price for the sake of delaying payment are excluded.

## **The Second Topic**

### **Ruling on selling in installments**

#### **The first requirement**

#### **Evidence for those who say that installment sale is not permissible**

Those who say that installment sale is not legally valid are inferred by evidence from the Qur’an, Sunnah, antiquities, and reasonable ones. From the Holy Qur’an, they infer from His saying, Glory be to Him: “And God has permitted selling and forbidden usury[<sup>( xxxi, )</sup>]it indicates the prohibition of sales in which an increase in consideration for the term is taken because it is included in the generality of the word usury.

As he quoted saying Ezz would: "O ye who believe !Eat not up your property among yourselves unjustly except it be a trade by mutual consent of you.

The verse made contentment a condition for disallowing gain and profit in commercial exchanges. Otherwise, that gain is forbidden and consuming people’s money unjustly, and the factor of satisfaction is not available in installment sales .Because the seller is compelled to do it in order to promote the commodity, and the buyer is compelled to desire to obtain the commodity that he urgently needs, and he does not have the price for it immediately, so he is forced to pay the extra in exchange for the term.

#### **Second Demand**

#### **Evidence for those who argue that installment sale is permissible**

Those who say that it is permissible to sell by installments have inferred evidence from the Qur’an, Sunnah, antiquities, consensus, custom and reasonable.

#### **It is the Quran quoted as evidence to come my:**

The generality of the evidence for permissibility, such as the Almighty’s saying: “And God has permitted selling and forbidden usury”. It is a general text that includes all types of sale, and indicates that they are permissible , except for the types that are prohibited by text . An immediate price and a deferred price, so it is permissible, taking from the generality of the verse[<sup>( xxxv. )</sup>] —

And His saying, the Mighty and Sublime, {unless it is a trade by mutual consent}, the increase in the price in exchange for the term is included in the general text, since the business of trade is based on selling on credit, and they must have fruit, and that fruit is included in the door of trade and is not included in the chapter of commerce .The price in a deferred sale is for the commodity, with due consideration being given to the term, and it is a legitimate trade that is subject to profit and loss/

On the other hand, satisfaction is constant in this sale, because the merchants who do that make it a way to promote his trade .He is the answer to his wish. Likewise, the one who received the asset without paying the price of his condition has received the asset, profiting from it, a subject of trade, and this does not contradict his consent.

And they also quoted as evidence the Almighty's saying: {O you who have believed, when you contract a debt for a specified term, write it down.

Selling the commodity at a deferred price with an increase from what this verse regulates, because it is one of the permissible debts, so it is legal according to the text of the verse .

#### **As for the Sunnah and the effects:**

In it there is evidence that the legislator has justified making the period instead of money, and that it is permissible for the deferred price to differ from the expedited price by an increase in the deferred payment, and that this increase is permissible and from that: What was narrated that "the Messenger of God ( ﷺ) Ordered Abdullah ibn Amr ibn al - Aas to equip an army, was bought for a camel Balbaaran which is a clear evidence that it is permissible to take an increase in the price against the term. And what was narrated on the authority of Ibn Abbas (رضي الله عنه) (that the Prophet ﷺ) When he commanded the expulsion of Banu al-Nadir, some of them came to the Prophet ﷺ. They said: O Prophet of God, you commanded us to be expelled, and we owe people unresolved debts ?He said ( ﷺ) „put down and hurry up“. The modern evidence that if the sale of u j E is on credit, and forced the buyer to repay before maturity may be reduced the price by commensurate with the period separating the date of repayment deed j from the date of maturity, if it may cut the meeting to accelerate must mind that it is permissible increase to meet Walt Agile ,which he said by Ibn Abidin. Among the effects indicating the permissibility of the deferred price being more than the expedited one, and the permissibility of increasing the price in deferred purchase .What Sheikh Abu Zahra transmitted from the book Al-Majmoo" and Al-Rawd Al-Nadheer in the Zaydi Shi" a jurisprudence ,on the authority of Abu Khaled, he said: I asked Zayd bin Ali about a man who bought a commodity for a term and then sold it for profit, and the buyer did not know that he had bought it for a term and then learned after that ?He said: He has the option, if he wants, he can take it, and if he wants, he can reply .He responded to this saying that it benefits a provision by text and another by commitment: As for the ruling that benefited from the text, it is that not mentioning the term in Murabaha if the seller has bought for a term is considered treason in Murabaha, and it is a betrayal that cannot be assessed like betrayal in the increase in price, and that the ruling in this situation is that the buyer has a choice between signing the contract and rescinding it .The obligatory ruling is that it is permissible for the deferred price to be more than the up-front price, and this is evident from the fact that leaving the seller's mention of the term in Murabaha is treason, because the issue of trade is that the immediate price is less than the deferred price, and leaving the mention of the term and selling at

an urgent price is deceit, because it has not been clear He did not benefit from deferment, and the profit with this deferment is not on a sound basis. His Rawd Nadeer said: "I know it is taken from the words of Imam -zad Ben Ali that the sale of thing more than the price of the day for women is permissible, and this proved to the other buyer option, as to not increase the price in buying term option does not appear to prove the face. And the consensus indicates that there is nothing wrong with selling in installments, as Muslims still use such a transaction, and it is like the consensus among them that it is permissible'Also, the custom has been that the current cash has a higher value than the deferred cash, and as long as the contract initially did not stipulate two prices, it is permissible.

**As for the analogy and reasonableness, then infer the following:**

- Selling for a term with an increase in the price is a sale with a known price from the sellers by mutual consent, so a judgment must be made for the validity of the sale, as is the sale at an instant price[xlvi. ]
- The analogy with the Salam: The sale for a term is similar to the sale of Salam, and that is that the seller in Salam sells on his account grains or other things that are valid for Salam at a present price that is less than the price at which it is sold at the time of peace, so the Muslim is deferred and the price is accelerated, so it is the opposite of the issue of installment sale. And it is permissible unanimously, and the need for it is urgent, such as the need for peace, and an increase in peace, such as an increase in the sale to a term, is caused in both of them by delaying the delivery of the sold item in the matter of peace, and delaying the delivery of the price in the sale to a deadline.
- Measurement on the Murabaha sale: If the term information in the credit sale true sales and u j E in it because it is such as Murabaha, a type of sales award Sharia which may be a Requiring increase in the price in an interview term, because the term if not money really. However, in the case of profitability, it is a precaution against suspicion of treason, provided that the increase is not obscene, otherwise it is consuming people's money unjustly
- Because the term has a share of the price: therefore, the value of what is sold at a deferred price is increased over what is sold at an instant price .As long as the seller has specified the price and specified it for the one who buys at an instant price, and specified the price and specified the price for the one who buys at a deferred price, and the buyer chose to buy at one of the two prices, the sale is legally valid, and there is no suspicion of usury in it..An increase that is added to the premium is the share of term of the price which is the difference between the price of the item if sold for the price if its value if sold for a deferred payment, and Sharia Islamic law of meanings and facts not the law of words and names, deny the evil if named after, and made permissible if called another.
- The principle with regard to things, contracts and conditions according to the jurists is that they are permissible when they are with the consent of the contracting parties. It is permissible to order in what they have sold, and it is not prohibited from them or invalidated except what the Sharia indicates that it is prohibited, abrogated, restricted or specified by a text or analogy .And since there is no definitive proof and evidence for the prohibition of selling in installments, it remains on the principle that it is permissible, and whoever claims that has evidence. Rather, it has been mentioned in the Book and the Sunnah that the

command is to fulfill covenants, conditions, covenants and contracts and to fulfill the trust and to take care of that, and to forbid deceit, breach of covenants and betrayal, and if sex to meet and take care of Covenant enjoined him, aware that the original validity of contracts and conditions, it makes no sense to correct only the consequent impact and got its intended, and the purpose of the contract is fulfilled, if the street had ordered goes against the aim of contracts indicated that the original in which health and permissibility<sup>( li. )</sup> –

### The Third Study

#### Terms of installment sale

#### The first requirement

#### Installment Sale Terms

It is known that the absolute sale contract has conditions that are detailed in the books of Islamic jurisprudence, but the installment sale is concerned with some conditions related to its nature, the most important of which are the following ::

First , to be a term or time limits in which information: When the term was a key element in the sale Altk s j i because it is the absolute Koussim sale or case that pays the price it immediately, We shall speak about science finality in terms of the following considerations:

1- **Its meaning:** It is necessary that the time for the payment of each installment in this sale be known to both contracting parties, because his ignorance leads to conflict, and the sale is spoiled .What appears from the phrase of the majority of jurists is that if the payment term is unknown, then the sale is invalidated, whether the ignorance is slight or obscene, so if the payment of each share is specified at the end of the month, for example, it is valid, then agreement due to the knowledge that negates ignorance, but if the time of payment is unknown, it is obscene ignorance, as if he specified it by rain, for example. This is void by agreement .But if ignorance is simple, such as limiting the harvest, then the sale is also invalid according to the public, because the immorality in it is deception of existence and non-existence, and a small amount of what precedes the term is measured and delayed ;It leads to the dispute corruption of the sale .Some of the Hanafis said that it is permissible if ignorance is not obscene, given that the harvest does not occur at all times, but rather in a limited period of time that is frequented between the beginning and the end of it`

Maliki and Shafi'i and Hanbali has gone in the right doctrine to postpone the price for an unknown to invalidate the contract<sup>( liii )</sup> ]The Hanafi school is of the view that the sale is not invalidated by a slight ignorance, such as the arrival of the pilgrim and the harvest<sup>[· liv)–]</sup>

Ahmad went in a narration from him, which is what Ibn Shabrama said that the contract is valid and invalidates the delay.

It was stated in Article (246) of the Journal of Judicial Judgments: The period must be known in the sale by installments and postponement, and in Article 247: If the sale is concluded on deferring the price to such a day, a month, or a year, or to a time known to the contracting parties, such as the Qassim Day and the Day of Nowruz The sale is valid if Qasim or Nowruz is known to the parties involved, but if it is unknown to them or to one of them only, it is not valid.

And in Article 248: Postponing the price for an indefinite period, like rain from the sky, spoils the sale )\_][<sup>(</sup> The law situation is my fave the article (483) of the Jordanian law: the price in absolute sales worth an accelerated unless otherwise agreed upon or Itaref to be deferred or in installments for known and in Article (574) Civil Iraq the" true sale price For a known time".

And these two articles ,although we mentioned the term, but there is nothing in them to indicate that not mentioning it invalidates the contract, and this is supported by the fact that the general trend and general rules in the law permit the sale at a price deferred to an unknown term[<sup>(</sup>lvii. )\_]

And since we said with the stipulation that the term should be known, then the term should be one of the likely survival of the contracting parties to it, so deferring the debt to a thousand years is something that distances the survival of the world to him, so it is corrupt[<sup>(</sup>lviii. )\_]

**2- The beginning of the term :**If the eight is divided into terms, then it is not free from being denied, that is, its beginning and end do not have a specific date. He used to say, “You postpone it to a month, and then the beginning of the term and the installment mentioned in the contract will be from the time of delivery of the sale.” From a time like this and ending at a time like this, here it starts from the specified date.

The reason for this saying is: that the principle in the price is that it is legislated in view of the buyer to benefit immediately with the delay in claiming the price, and this purpose will not be achieved for him.

This is what Abu Hanifa said .The two companions said: The two cases are the same, and the buyer is not given a term in the second case, because the absolute year goes to a year following the contract without

chapter, and if the term has passed , the term ends , as if the term had been specified by text[<sup>(</sup>lix. )\_]

This is the view of the Hanafis, Shafi‘is and Hanbalis, who considered the beginning of the term from the time of the contract[<sup>(</sup>lx. )\_]

The Journal of Judicial Judgments has taken the opinion of Abu Hanifa .In Article (250), the beginning of the term and the aforementioned installment from the time of delivery of the sold item is considered[<sup>(</sup>lxi. )\_]

Article (484) of the Jordanian law stipulates that if the price is deferred or in installments, then the term starts from the date of delivery of the sold item, and in Article (574) of the Iraqi law, the aforementioned term and installment is considered the beginning of the term and installment, so the sale contract is concluded at the time of delivery of the sold item unless otherwise agreed upon.

What we have said about the beginning of the term from the time of delivery according to Abu Hanifa is conditional if the buyer has no choice. If in the sale there is the option of the condition for them or one of them, then the term begins from when the contract becomes obligatory, which is the time of the option’s fall, not when it exists, because postponement is to delay it from the time of its obligation and the time of its obligation is The time of the contract and its conclusion, not before it .This is what Abu Hanifa said .Imam Haramain and has said Shafi'i, because option

prevents from claiming the price was Kalogel soon and postpone the option to compel the king or transfer term and delay the claim, was in no way meant to double the collection.

The Shafi'is and Hanbalis said the beginning of the term and from the time of the contract - according to the most correct of their madhhab[<sup>(</sup> lxiv. )]To this point, article (250) of the magazine went.

**3 Expiry of the term :** If a man sells another commodity for a deferred price or in installments, the term shall fall in the following cases::

1- **Deadline :** If he sells the commodity on condition that the buyer pays a certain amount of the price at the end of each month, for example, then the term ends for each installment at the end of the month .Before that, the seller has no right to demand the buyer for the price because his consent to delay is satisfied by delaying his right to the specified date.

2- **The death of the buyer and his bankruptcy :** If the buyer dies, the deferred price is resolved, and it is not permissible with the death of the seller, because the term is invalidated by the death of the debtor, not the creditor, and the reason for this: that the benefit of delay appears in that the buyer trades and pays the price from the growth of money. It is worth postponing[<sup>(</sup> lxv. )] –

**4-Conditions for postponement: The following are** required for the validity of the postponement and installments:

1- That the price be of the type of debt, so if he postpones the delivery of the optimal sale to the specified price by saying: I bought with these dirhams on the condition that I deliver it at such and such time, then the sale is void .Because the postponement is only permissible due to the necessity of the non-existence of the price with the buyer and enabling him to acquire it within the term of the term, and there is no necessity in the objects, so the postponement was a change in the contract's requirements, so it was necessary to spoil it .

2- Instead the price should not be the exchange, or the price of a Muslim in the sale of peace, because it is required in which the price was arrested in the Council, it cannot be a pretext to delay a dam .

### **The second requirement**

#### **The requirement of installment sale and its consequences**

The contract of sale requires the transfer of ownership of the thing sold to the buyer, and ownership of the price to the seller .And since the price in the installment sale is deferred, it is not received upon contracting, but this does not give the seller the right to refrain from delivering the sale..According to the explanation of the total polite (Our companions said: buyer independence Bakd Sales without the permission of the seller if the payment of the price, or was deferred[<sup>(</sup>.. lxviii. )]

He said in another place " , if sold on condition that do not deliver Sales even met the price, the price was deferred contract champion, because it must be delivered Sales in the case, it is a condition contrary to go with[<sup>(</sup>" lxix. )]

It is known that the requirement of the contract is to own the thing sold as soon as it is completed. Al-Kasani said, in the context of his talk about the corrupt conditions in the sale contract.. Among them is the term of the term in the thing sold and the price in the eye, which is to strike a deadline for its delivery, because the analogy refuses to delay in the first place, because it is a change in the contract's requirement, because it is a contract of exchange of ownership and delivery by delivery .Postponement negates the obligation to deliver the money, so it changed the contract requirement .Rather, it is permissible for the owner of the term to postpone due to the necessity of the waiting period for entertainment and to enable him to acquire the price within the specified period, and there is no necessity in the objects, so the term remains in it as a pure change to the requirement of the contract, which requires the corruption of the contract<sup>( lxx. )</sup>

And he said in another place, and from the effects of the sale contract: The right of confinement is established for the sold to meet the price in the current price. If it is deferred, the right of confiscation is not established, because the mandate of confinement establishes a right for the seller to demand equality usually, and when he sold for a deferred price in cash, the right of himself fell, and the mandate was invalidated, as well as the ruling If the price was immediate, then the seller postponed it after the contract<sup>( lxxi. )</sup> and say "If another -Albania- price after the contract champion the right of imprisonment, because it is another right to receive the same price no later than the right of the buyer in the Sales arrested, as well as if the buyer was arrested by permission of the seller Sales champion the right of custody until the recovery does not have it invalidated his right to authorize the arrest.

And it says in Al-Mabsout: "If the seller does not reach all the price, he still has the right to withhold the thing sold, unless the price is deferred. In that case, he does not have the right to withhold the thing before the end of the term, nor after the end of the term, because before the end of the term he does not have the right to demand the price, but rather withholding. The seller is entitled to claim from the price, and as for after the expiry of the term, because the right of confinement was not established for him by the original contract, then it is not established after that, according to this right, what he had entitlement to him before the sale, and if that does not remain after the contract, it is not established starting with the expiry of the term<sup>( lxxiii. )</sup> ] Ibn Amin al-Hajjaj says, "The deferred sale has the price immediately, because the term is entered into the price in order to restrict the delay of the claim before the term, not on the sale. do not enter it. this means that the deferred sale price takes place right in force except as required by the income - term.

From these expressions, it becomes clear that the ownership transfers by mere contract and that the addition in Islamic jurisprudence has no effect on the existence of the obligation and that the seller may not refuse to deliver the commodity if the buyer takes possession of it with his permission, or if the price is deferred, he receives part of the price, or he does not take possession of it all, because it is forfeited. The right of himself by his own choice, so nothing is proven to him that contradicts the intent of the Shariah in the contract.

Just as the thing sold is transferred to the buyer as a requirement of the contract, it also moves to the seller accordingly, and this transfer is immediate if the price is immediate, and at the end of the term if the price is deferred. In positive law, it is also established that there is no connection between the transfer of ownership and the payment of the price. The ownership transfers if the

sale is a specific movable in particular. The sale contract creates an obligation to transfer ownership. If it is agreed to postpone the price or in installments due after a period of contract conclusion, the seller must deliver. The sale is done immediately after the conclusion of the sale, but the transfer of ownership as stipulated in Article (286), (269) and (374) of the Code of Provisions and to this referred to Article (346) of the Egyptian Civil Code, (356) Iraqi Civil and (397) Kuwaiti civilian. But the transfer of ownership takes place automatically in the particular sale that is owned by the seller, and the separation in the movable sale specified by type, and by registration in the property. The transfer of ownership takes place in exchange for the buyer's commitment to the price, whether the buyer paid it at the time of the contract, or whether it remained a debt owed by him, due for payment, whether it was deferred or in installments.

This is stipulated in Articles (204.205) civil Egypt j )393.394 ( , Lebanese civilians, 231 Iraqi civilians, (205.20 )6 Syrian civilians and (494) Jordanian civilians[<sup>( lxxvi. )</sup>] From the foregoing it appears that with regard to the specific movable in particular, its ownership transfers to the purchaser as soon as the contract is concluded, and the rule of Sharia and the code of judgments and man-made laws are equal in that .

And due to the nature of the installment sale, which facilitates the buyer to obtain the commodity on easy terms that tempts him to buy, thus he is burdened and unable to pay his debt, which affects the seller by losing his rights, and weakening his financial position with those who get his goods from them, so it was necessary for the legal legislator to make some arrangements in order to Preserving the rights of both the seller and the buyer in this transaction.

### **Conclusion**

The most important results that I reached after preparing the research are the following:

- 1- The sale by installments means that the seller offers the buyer a commodity at a price that he will pay at a later time to complete the contract, and in the form of separate payments to be paid at times agreed upon by the two contracting parties, noting that there is an increase in the price of the commodity over that for which it is sold if the payment for the price was present at the contract.
- 2- The implications of the issue of selling by installments lie in the folds of corrupt sales or sales that are forbidden in the books of the Prophet's hadith and Islamic jurisprudence, especially "The Messenger of God's prohibition"ε )about two allegiance in a sale "and his prohibition of two deals in a transaction" "and his prohibition of two conditions in the sale or advance and sale" because one of the most prominent meanings of these hadiths as mentioned by the phrases of the hadith commentators and jurists: that the seller says to the buyer, "I sell you this commodity for such a time or for such a deferred period, and it is closer." Pictures to the meaning of installment sale and sale on credit.
- 3- The mentioned sales are invalid or corrupt according to the majority of scholars, and the reason for their invalidity or corruption is that the price is unknown, and because it is a pretext for forbidden usury, and accordingly, the statements of the scholars have been explicitly or implicitly stated that if this reason was transferred by the purchaser choosing one of the two prices and specifying it before separating from the council, and no If the seller had obligated him to sell before choosing, the contract is valid, but corruption disappears according to the tap if the



desired price is specified after the contract, based on their saying that corruption is removed when the spoiler is removed.

4- The fatwas and sayings of most ancient and contemporary scholars announced the validity of installment sale.

5- The scholars of positive civil law have agreed with the scholars of Sharia to say the validity

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