

Combination of Contracts in Islamic Finance Practices in the Light of Hadith on Prohibition of ‘Two Contracts in One Contract’ (Bay’atan fi Bay’ah): A Shari’ah Investigation

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Abstract

To cater the dramatic changes in market demands, Islamic financial institutions supply various types of Islamic financial products and services. Some of them are categorized as a hybrid in nature, which combines more than one contract. Essentially this would be assumed to trigger the shari’ah compliant issue because, in more than one narration, the Prophet (SW) prohibits the combination of two contracts in a single agreement. As reported in many sources, the Prophet (SW) prohibited two sales in one sale (bay’atan fi bay’ah) and two agreements in one agreement (safqatan fi safqah). Also, he prohibited the combination of sale and loan contracts (bay’ wa salaf) in a single arrangement. Thus, this study investigates the shari’ah status of Islamic financial hybrid products in light of these prophetic narrations. This study is qualitative, and a method of document analysis, both classical and contemporary, has been followed to achieve the study's objective. The study concludes that the combination of more than one contract in a single arrangement is not prohibited in general; it shall be subject to the nature and essence of the contracts instead. A combination of partnership with the lease contract is not prohibited as both contracts are not inconsistent with each other. While a combination of a loan contract with another contract that begets benefit for the loan is not permissible as such combination converts the arrangement into a usurious transaction.

Keywords: *combination of contracts, hybrid products, bay’atan fi bay’ah, bay’ wa salaf, Islamic finance*

Introduction

By virtue of being shari’ah based, Islamic financial products are developed based on underlying contracts that are recognized in shari’ah. This, further, signifies one of the key differences between Islamic and conventional banking system. Any kind of Islamic banking product or service shall be based on a permissible contract, be a debt, partnership, fee or commission based. In some context, a single contract is found not enough to meet the market demands and thus it had to be combined with another compatible contract in the same agreement. Combination of contracts in one arrangement has become a potential mechanism of Islamic financial product development to cater the dramatic change of banking sector (Arbouna 2007).

However, combination of contracts in a single deal has been controversial among the Muslim jurists as it apparently contradicts with the explicit notion of the Prophetic narrations (*ahadith*) that prohibit two contracts in one agreement. Pertinent to the combination of multiple contracts in one agreement, notably three narrations have been reported from the Prophet (SW). As reported, the Prophet (SW) prohibited combination of sale and loan (*bay' wa salaf*) in one agreement (al-Sijistani 2009, al-Tirmizi 2007, al-Nasa'i 1999, Ibn Majah 2011, Ibn Hanbal 2003 & Ibn Anas 2005b). Also, as reported, the Prophet (SW) prohibited (*bay'atan fi bay'ah*) two sales in one sale (al-Tirmizi, al-Nasa'i, Abu Daud & Ibn Anas 2005b). Additionally, in another *hadith* the Prophet (SW) prohibited (*safqatan fi safqah*) two agreements in one agreement (Ibn Hanbal, al-Bazzar 2009, al-Tabrani).

Thus, this effort undertakes to investigate the shari'ah status of combination of contracts in one deal. Achieving this, the study strives to figure out the real notion of the *ahadith* that prohibit the combination of two contracts in one contract. The paper analyses the Muslim (*fuqaha*) jurists' interpretations of these *ahadith* and highlights the difference between lawful and unlawful combination of contracts in one agreement.

The upcoming section of the paper reviews the relevant literature which includes the Muslim Jurists' (*fuqaha*) interpretations and opinions on the Prophetic narrations (*ahadith*) related to the combination of two contracts in agreement, followed by another section on methodology of the paper. The fourth section of the paper discusses the legal ruling and parameters of combination of the contracts. This section also provides a discourse on valid and invalid combination of contracts in a single deal. The last section of the paper contains concluding remark and future direction of the study.

Literature review

Definition of Combination of Contracts

The consent of two parties on an agreement which includes two or more contracts, such as sale, lease, *hibah*, sharecropping, loan, marriage, *mudarabah*, partnership, etc. This combination could be either on the basis of consolidation or on the basis of a conditional form. In the earlier one would say, I have sold you my house and leased you my car with such amount. While, in the later one would say, I have purchased your house with \$100,000 provided that you will buy my car with \$20,000. Thus, in a single agreement more than one contracts would be combined as such that they would be considered a single contract and one would not detach from the other (Hammad 2001).

Meaning of *Safqatan fi safqah*

Pertinent to combination of contracts, one of the well-known *ahadith* is whereby the Prophet (SW) prohibited '*safqatan fi safqah*', i.e., two agreements in single deal. Lexically, *safqah* and sale denote the same sense. Thus, *safqatan fi safqah* means two sales in one sale (al-Qurah Daghi, 2001). *Safqah* means putting one's hand into other's, and it refers to agreement, contract, and transaction, etc. Any type of sale contract could be introduced as *safqah* as well, because during agreement normally the contracting parties shake hands with each other (Al-Fayyumi, 2008).

Also, *saḥqah* is used for the sale per se once it becomes irrevocable without having any option (Qari 2001). Thus, ‘Umar R. says, the sale is *saḥqah* (agreement) or *khiyar* (option), i.e., sale is either irrevocable or revocable subject to an option (al-Nasafi, 1997). In addition, al-Sarakhsi says, *saḥqah* is irrevocable and binding contract. Al-Mawardi (1999) says, *saḥqah* refers to the contract (*aqd*), because normally after successful completion of the contract the contracting parties shake hands with each other. From classical to current, Muslim scholars provided different interpretations of this hadith, as follows:

Making two offers with different prices in one arrangement:

Ibn Mas’ud and Simak, say that *saḥqatan fi saḥqah* is not permissible, for example one says: this item is for such and such on credit, and for such and such on cash. Simak further says, two agreements in one agreement (*saḥqatan fi saḥqah*) is *riba*. Abdul Wahhab bin Ata’, Abu Ubayd, Ibn Sirin state, it means this is for you \$10 on cash and \$20 on credit (al-Bayhaqi 2008, al-Zayla’i 1997).

This is as same as ‘*bay’atayn fi bay’ah*’. Entitling the chapter with ‘*bay’atayn fi bay’ah*’ Imam al-Nasa’i states that it means to say ‘I have sold you these goods with 100 dirhams on cash, and with 200 dirhams on credit (al-Nasa’i). Ibn Hibban also opines the same while mentions that there is prohibition from the sale whereby the seller says I have sold you this commodity with \$100 dinars on credit and \$90 dinars on cash (Ibn Balban 2004).

In case of two unidentified offers are made, the lesser price for the longest term would be considered; otherwise, it is *riba*:

Sufyan al-Thawri says, if one says I sell it to you on credit for such and such, and on cash for such and such, then if the buyer accepts the offer, he will have the option to accept any of the offers, as long as the sale is not concluded on any offer in particular. If the sale is concluded in this way it would be considered two sales in one sale and that is prohibited. If the seller finds the goods, he should return it, and if it is destroyed, he would get the lesser price and longest term (Abu Bakr 2015). Tawus says, if the offer is made with \$X for Y period, and with \$A for B period, and the contract is concluded on this offer, hereby the lesser price for the longest term will be taken into account (Abu Bakr). As al-Khattabi (1991) mentions, Imam al-Awza’i is asked, if the contract is concluded with these two conditions, what would be done? He replied: the contract is concluded with the smaller price until for the longest term.

Making offer with one currency and receiving payment with the other:

Masruq says, two agreements in one agreement means as if someone says, I sold you this dress with one gold currency, provided that you pay ten silver currency (Abu Bakr, 2015).

Meaning of *Bay'atayn fi Bay'ah*:

Scholars explained this *hadith* as same as the *hadith* of '*saqatan fi saqah*' as follows: Entitling the chapter with '*bay'atayn fi bay'ah*' Imam al-Nasa'i states, it means to say 'I have sold you these goods with 100 dirhams on cash, and with 200 dirhams on credit (al-Nasa'i). Imam Malik made a chapter with the title 'the prohibition of *bay'atan fi bay'ah*' and reported, one tells the other: sell to me this camel on cash, and then I will buy it from you on credit. Thereafter, when Abdullah ibn Umar was asked about that he replied: this sale is prohibited (Ibn Anas 2005b). Al-Qasim ibn Muhammad was asked about a man who purchases a commodity with \$10 on cash, or \$15 on credit, and then he disallowed and prohibited it (Ibn Anas 2005).

Imam al-Tirmizi says, Muslim scholars explained this *hadith*, as if someone says, I have sold you this cloth with \$10 on cash and \$20 on credit, and the contracting parties do not confirm any of these two offers. This is an invalid contract because if contract is concluded without confirming any offer, the price becomes unknown, and this induces dispute and invalidates the contract. However, no prohibition arises if they disperse after confirming one offer, and thereafter the contracts will be concluded accordingly (al-Mubarakpuri 2005).

Al-Shawkani (2000) also explains it as making two unidentified offers in one arrangement, with two different prices for cash and deferred payment. For example, as mentioned, I have sold you this item with \$10 on cash and \$20 on credit, and this is prohibited. This ruling of prohibition is applicable only when the buyer accepts it with uncertainty, i.e., without specifying any of the offer. However, if the buyer accepts one offer specifically as if he says: I accepted the offer of \$10 on cash, or says: I accepted the offer of \$20 on credit, the contract becomes valid and permissible.

Al-Shafi'i says, the prohibition of two sales in one sale means, as if one says I have sold you this house of mine with such amount provided that you sell your slave with such, and thus if I find your slave you will find my house. On this, the contracting parties disperse from contracting session with an identified price, and nobody knows on which the contract is concluded (al-Mubarakpuri 2005).

Meaning of the Prohibition of *Bay' wa Salaf* (sale and loan):

Imam Ahmad says, prohibition of sale and loan means, to lend someone an amount and then to sell him an asset with a price higher than the normal rate. Also, there is possibility to lend money by saying to the borrower, if you are not ready to pay back then it would be considered sold (al-Mubarakpuri 2005).

Thus, based on the first interpretation, the *hadith* refers to the prohibition of using any legal trick (*hilah*) to receive *riba*. This basically means the lender charges an extra amount out of loan by adding that with price of the sale. Though, it is a price of the sale, it is *riba* in disguise. Also, it falls under the *hadith* 'any loan that begets benefit is *riba*.'

On second interpretation, the contract becomes conditional between sale and loan. In this arrangement, a person gives the other an amount of money as loan, and then takes an asset from him saying that, if you cannot pay back the money, your asset would be considered sold. It means,

the asset that the lender has taken earlier will be considered exchanged with the amount of loan (al-Mubarakpuri 2005).

Al-Baghawi says, in addition to this, *salaf* could be in the meaning of *salam*, which is forward delivery sale. As if someone says, I have sold you this asset of mine for \$1000, provided that you do *salam* contract with me in such and such asset. Thereafter, if *salam* commodity is not ready to you, it would be considered sold (al-Shawkani, 2000).

Al-Shawkani (2000) says: the scenario of (*salaf wa bay'*) loan and sale is: a person wants to buy an asset with more than the usual price due to the deferred payment, yet it is not permissible to him. Then he makes a trick and takes a loan equal to the price from the seller to pay him on spot.

Thus, there is no doubt the *hadith* prohibits the combination between loan and sale in single contract. This combination would be in a conditional form such as someone says, I have sold you this house provided that you lend me such amount of money, or I will lend you such amount of money provided that you sell me your house. Also, the combination would be without being a conditional form, just like one agreement combines sale and loan contracts, or sale and *salam* contracts, etc. The reason of this prohibition is to fall into *riba* as the loan or *salam* contract is embedded just to make some extra amount out of lending, which would not be possible without the combination of loan, or *salam*, or any other similar contract (al-Qurah Daghi, 2001).

Stands of the Muslim Jurists on Combination of Two Contracts in Single Deal:

Two sales in one sale:

As reported, the Prophet (SW) prohibited two sales in one sale. Thus, Hanafi, Shafi'i & Hanbali Schools are with the view that combining two sales in one sale, with two different subject matters and consideration, is invalid. For example, if someone says to a man: I sold you my garden with such provided that you sell me your house with such and such amount, the contract is void (Ibn Qudamah 2004, al-Shafi'i 2008, al-Khattabi 1991, al-Sarakhsi 2013). Mentioning the reason for this prohibition of two sales in one sale, Imam al-Tirmizi says, such arrangement is invalid because in this case the contracting session ends with an unidentified price, and none of the contracting parties knows on which the contract is concluded (al-Mubarakpuri 2005). In addition, if each of the subject matter is sold with a separate sale, the contracting parties would not agree on the price that they agreed thereof in the arrangement of two sales in one sale (Ibn Rushd 1996).

However, Maliki School and Ibn Taymiyyah of Hanbali School hold a different view which says that it is permissible to arrange two contracts in one contract with two different subject matters. Ibnul Arabi says, when someone says I have sold you my slave with \$1000 provided that you sell me your car with \$1000, such arrangement is permissible. Also, if says I have sold you my slave with the condition that you sell me your slave with the same price, the agreement is permissible because being subject matter the slave from each side is known (al-Mubarakpuri 2005).

Similarly, as discussed in *al-Mudawwanah*, if X buys an asset from Y with \$100, provided that Y will also buy an asset from X with \$100, the contract is valid. Also, if X buys an asset from Y with

\$100, provided that Y will buy similar asset from X with \$200, the contract is permissible as the exchange of an asset occurs with another asset along with additional \$100 (Ibn Anas 2005).

Holding the same view Ibn Taymiyyah (1960) says, if a person sells his cloth with \$100 on a condition that the buyer will sell his cloth to him with \$100, and each of them wants to sell his cloth, the contract is valid and concluded. No legal text (*nass*) or scholars' agreement (*ijma'*) is found to make this contract invalid and unlawful. He further says: the most preferred view is sale and lease can be combined in one contract. Also, if the seller combines two contracts of different ruling with different consideration, then the buyer is not permitted to accept anyone of them with one consideration (al-Khattabi 2006).

Hammad (2001), however, prefers the view of Ibn Taymiyyah and the stand of Maliki School. The legality of combining more than one contract in a single agreement would bring ease and remove hardship in the financial dealings. Moreover, it will not be tantamount to usurious (*ribawi*) transaction as long as no extra amount is charged thereof. As reported from the Prophet (SW), whoever conducts two sales in one sale, he would either charge extra amount and then it will be interest (*riba*), or would continue with the earlier price without any increase, and then no objection will be arisen thereof (al-Sijistani 2009).

Thus, if one combines two agreement of selling on spot and on credit in a single arrangement relating to one subject matter, and asks a higher price for the deferred payment, then it will be a usurious (*ribawi*) sale, and he does not deserve except his capital amount. Therefore, in a narration the Prophet (SW) prohibited combination of sale and loan in one agreement, because this combination leads to *riba*. The arrangement of combining a sale and loan is apparently a sale agreement, while in fact is a usurious transaction (Ibn Qayyim 2007).

Furthermore, there is another explanation of conducting two sales in one sale. This is, as if someone says, I have sold you this asset with 10 dinars (gold currency) provided that you settle the payment in dirham (silver currency). Thus, Imam Abu Hanifah, Shafi'i, Ishaq, Abu Thawr etc. are with the view that this arrangement is invalid as it is a combination of sale and currency exchange (*sarf*). While, Imam Malik says, here the seller does not intend for currency exchange, rather he just firstly mentions dinar and then replaces it with dirham. Since he denies the gold currency the transaction will be concluded with silver currency. As if someone says, I have sold my land in exchange for your land, provided that you settle it with your house instead. So, this is in fact an exchange of land with house, and that is permissible (Ibnul Arabi 1997).

Two agreements in one agreement.

As reported, the Prophet (SW) prohibited conducting (*safqatan fi safqah*) two agreements in one agreement (reported by Ibn Hanbal 2003 & al-Bazzar 2009). Simak, one of the narrators of this *hadith*, elucidates and says, the *hadith* means if the contract is on credit then it will be with such, while if on spot then it will be with such and such (Ibn Qayyim 2007; al-Shawkani 2000). Thus, parties in the contract disperse without identifying on which price the contract is concluded. Imam Ahmad, al-Shafi'i and Abu Ubayd al-Qasim ibn Sallam are also agreed with the elucidation (Ibnul Humam 2003).

Kamal Ibnul Humam (2003) further mentions the 'two agreements in one agreement' is more general than two sales in one sale. The sale is one kind of agreement while an agreement may contain other than the sale contract as well.

Al-Shawkani (1988 & 2000) opines that 'two agreements in one agreement' is as of the meaning of 'two sales in one sale'. Ibn Qayyim (2007) has also the same view that the sense of 'two agreements in one agreement' and 'two sales in one sale' is the same. Both of them denote selling a commodity with \$100 of deferred payment provided that the seller buys it with \$80 on cash, which is known as *bay' inah* or buy back agreement. Further he says, basically in this arrangement both types of credit and spot sales are combined into a single agreement and single sale. The motive here is to earn more by offering credit sale, and if so, the seller does not deserve anything but the capital invested. This sense is mentioned in the *hadith* states, the seller shall suffice with the lesser amount and if he claims any additional amount, due to the deferment', then as if he receives *riba*. This elucidation is further supported by another *mawquf hadith*, reported by Ibn Hibban, which states, 'the two agreements in one agreement is *riba*' (Ibnul Humam 2003 & Ibn Qudamah 2004).

Nevertheless, as mentioned, Imam Abu Hanfiah, Thawri and Ishaq provided the same explanation for 'two sales in one sale' as that of Simak. Ibn Qayyim and Shawkani prefers the view that basically both Prophetic narrations 'two agreements in one agreement' and 'two sales in one sale' denote that same sense.

Combining Sale and Loan in a Single Contract:

Hanafi School:

Al-Marghinani (2000) of Hanafi School says: if someone sells a slave with the condition that the buyer shall release him and make him free, the contract is voidable (*fasid*), as it is sale and condition and the Prophet (SW) prohibited it. Similarly, if somebody sells a slave provided that he can utilize him one month, or sells a house provided he lives there, or with the condition that the buyer shall lend him an amount of money, such contracts are invalid. The reason is, these conditions are not naturally required by the contract while only one of the contracting parties gets benefit from it. Also, the Prophet (SW) prohibited sale and condition, sale and loan, and two contracts in one contract.

Kamal Ibnul Humam (2003) says, combining sale and loan means to sell something with the condition that the buyer shall lends an amount to the seller. This is stipulated in the sale contract in a way it benefits to one of the contracting parties only (Fath al-Qadir, 6/446).

Maliki School:

Maliki School also explains the two agreements (*safqatan*) with the same meaning, which refers to having confusion between two prices or two commodities in the sale contract, or two rentals or two houses in the lease agreements. The effective cause (*illah*) here is the *gharar* (uncertainty) and *jahalah* (ignorance), resulted from the confusion in price or in subject matter. Having said that, if combination of contracts in a single agreement does not create any confusion that will be permissible. For example, if someone buys a slave from other person for \$10 with the condition

that the buyer will sell his slave to the seller for \$10 as well, that is permissible as this would be a trade-off (Ibn Anas, 2005a). Also, if one sells his slave to other person with \$10, provided that the buyer will sell his slave to the seller with \$20, such contract is permissible to Imam Malik, as this is slave for slave with an addition of \$10 (Ibn Anas, 2005).

Ibnul Qasim says: similarly, if one says: I have sold you this dress of mine with ten dinars provided that you give me your donkey for such and such agreement, the contract is permissible. The dress is exchanged with donkey and dinars becomes meaningless in the contract. He further says: Imam Malik allows combination of sale and lease in one agreement (Ibn Anas, 2005a). Furthermore, Ashhab from Maliki School permits the combination of sale with partnership, currency exchange, commission-based contract, marriage, sharecropping, silent partnership, lease as well as with tenancy agreement (Tasuli, 1998).

Shafi'i School:

Shafi'i School also considered 'two contracts in one contract' within the ambit of prohibited contracts in Islamic law. Imam Nawawi provides two explanations of this *hadith*: first, to say I have sold you this asset with one thousand provided that you sell me your house with such and such, or you purchase my house with such and such, this is invalid. Second: to say I have sold you with one thousand on cash, or with two thousand on credit, so you can take whatever you want, the contract is invalid. However, if he says, I have sold with one thousand on cash and two thousand on credit; or says the half of the subject matter with one thousand while another half is for two thousand, the contract is valid (al-Nawawi 2002). He further says, among the prohibited sales is also combination of sale and loan. This is a sale with the condition of a loan. Thus, if says I have sold you my house for one thousand provided that you lend me two thousand, the contract is void (al-Nawawi 2002).

Hanbali School:

Hanbali School explains the *hadith* of two contracts in one contract or two agreements in one agreement as, the combination of two contracts in one contract with different prices, and thus this type of combination is void. In this regard, Ibn Qudamah (2004) mentions two explanations. First, making one contract conditional with another contract, for example, I have sold you this provided that you lend me such amount, or you sell me your house, the contract is invalid. Second, as same as the view of majority scholars, the combination between spot sale and credit sale in one contract, and accordingly the contract is void.

Methodology of the Study

This study follows the qualitative research method. The qualitative research utilizes documents, policy papers and interpretation that might contribute to form a new theory, or to evaluate an existing practice, or to understand and explain something in any particular context (Hancock, et al. 2009). To achieve the objectives, the study relies on discourse analysis approach. This approach explores the related discourses to figure out experts' interpretation and viewpoints on any particular matter (Hancock, et al. 2009).

This study investigates the issue of combining multiple contracts in single deal in the context of some related Prophetic narrations (*ahadith*). These narrations are also known to be *sunan*, a plural form of *sunnah*, which is one of the primary sources of *shari'ah*, i.e., Islamic law. The primary sources of *shari'ah* are known as the *Qur'an*, *sunnah*, scholars' consensus (*ijma'*) and *qiyas* which is deductive analogy (al-Zuhayli 1986). In discussion on relevance of the issue of combining two contracts in one contract, the study considers the secondary source of *shari'ah* as well, which are notably *istihsan* (juristic preference), *istishab* (presumption of continuity), *sadd al-zarai'* (blocking the evil means), *'urf* (customary practice), *maslahah mursalah* (irregulated public benefit) and so forth (al-Zuhayli 1986).

Findings and Discussion

Shari'ah Ruling on Combination of Contracts:

The agreement that contains more than one contract could be valid and legal, while it could also be invalid and illegal. The shari'ah ruling of combination would be varied subject to the nature and essence of the contracts being combined. Al-Shatibi (2017) says: it is known by induction in shari'ah that the combination has an effect in ruling that is not present in the case of being not combined. Thus, the Prophet (SW) prohibited the combination of sale and loan, yet each of them is valid at alone.

Actually, the combination of more than one contract in a single agreement is valid, as per the fundamental of contracts in Islamic law is concerned. The basic principle in contracts and *mu'amalat* is that of permissibility as long as they do not contrary to any tenet of Islamic shari'ah. Hereby, the relevant *fiqhi* maxim says, *al-asl fi al-mu'amalat al-ibahah*, i.e., the fundamental ruling of financial dealings is permissibility. Thus, people enjoy full freedom to design any product and to develop any agreement as long as there is no violation of shari'ah while all the related parties agree thereon. Yet, if there is any legal text or evidence that disallows any specific combination of contracts, then it shall be judged accordingly (Ibn Taymiyyah 1991).

While discussing some financial transactions, the classical jurists also with the view that the original ruling is whatever is permissible at alone would also be permissible at combination. Thus, as long as any contract is valid alone, it also permissible when it comes with another valid contract, provided such combination is not prohibited explicitly in any legal source of Shari'ah. Al-Zayla'i says, the restricted *hawalah* is valid. It contains matters that are permissible at alone. Matters combined in restricted *hawalah* are, donation of payer in terms of being committed to the liability and settlement, appointing transferee as agent to receive the debt or asset from the payer, instructing the payer to pay the debt or asset for the transferee, etc. While, all of them are valid at alone, they would be valid at combination as well (al-Zayla'i 2000).

Al-Bahuti says, if someone says to a man: buy for me such item that is in your custody, and get the price on behalf of me from your wealth, such arrangement is valid. Also, if says, buy some food for me up to \$100 on credit, and get the price on behalf of me from your asset, or if says get the price from the debt you owe me, this type of arrangement is valid as this is authorization in

buying, lending, selling on credit, getting payment from the debt and settling that. Since all of these contracts are valid at alone, they would be valid at combination as well (al-Bahuti 1982).

Ibn Qayyim says, there is no shari'ah prohibition to combine more than one contract in a single agreement, while all of them are permissible individually. For example, one buys a commodity and then leases him his house for one month in return for \$100. This is based on what Ibn Taymiyyah propagates, with regard to the financial dealings, the original ruling is nothing will be prohibited thereof except what Allah swt has prohibited, and no religious ruling except what Allah swt has made lawful in shari'ah.

Ibn Qayyim says, the original ruling is in contracts and conditions is the validity, except what has been made unlawful in shari'ah, and this is most accurate stand (Ibn Qayyim 2016). He further says, whatever contracts and conditions have not been prohibited by shari'ah, none is authorized to prohibit them. Shari'ah has made clear on what is prohibited and what is not. Thus, what is not prohibited by shari'ah none can make it illegal, and what is prohibited by shari'ah none can legalize it (Ibn Qayyim 2016).

Al-Shatibi says, this is the norm that the way of dealing with the rituals and financial dealings will be dissimilar. The key objective of rituals is submission towards the commands of shari'ah, and thus they shall be followed exactly what has been prescribed. Rituals shall be understood and followed without considering the meaning and objective thereof. This is the opposite of *mu'amalat*, i.e., financial dealings, in which the key objective is to pursue the public benefit. Thus, it is allowed to develop any financial products associated with any condition, as long as they achieve the public benefit while they are not prohibited by the explicit tone of shari'ah (al-Shatibi, 2017).

Having said that, Muslim scholars have looked at the legal texts of shari'ah that exceptionally prohibited the combination of more than one contract in a single agreement. Accordingly, they come along with some parameters for the prohibition of combining more than one contract in a single agreement.

Shari'ah Parameters for The Prohibition of Combination of Contracts:

First The combination among contracts in a way that is prohibited in shari'ah:

As mentioned, the Prophet (SW) prohibited combining sale and loan in one agreement. Imam al-Shafi'i says, since the norm of sale contract is both the price and commodity shall be known, yet when the buyer says I purchased your asset with \$100 provided that I lend you \$100, the price becomes unknown. In this case the price could be neither \$100 nor \$200, and \$100 that has been lent becomes a loan in return for an unknown benefit (al-Shafi'i, 2008).

Al-Mawardi (1999) further explains, when the purchaser stipulates for him a loan, as if he buys the commodity with the said price along with the benefit of stipulated loan. Since the stipulation becomes void, the benefit of such stipulation, eventually what is a part of the price, becomes void as well. As the benefit is not known, thus after deducting an unknown benefit what remains from

the price becomes unidentified, and essentially a contract becomes invalid with an unknown amount of price.

There is no dispute among the Muslim jurists on prohibition of combining the loan contract with the sale contract in a single agreement (Ibn Rushd, 1996; Ibn Qudamah, 2004; al-Sarakhsi, 2013). This ruling of prohibition is applicable into, for example, the combination of loan with forward sale (*salam*) contract, loan with currency exchange (*saraf*) contract, and loan with lease contract, because all of them are combination of sale with loan contract (Hammad 2001).

Yet, scholars have disputed on combination of loan with other type of contract. Hanafi School allows the combination of loan with partnership. Al-Sarakhsi (2013) says: if one gives \$1000 to a person and says, half of it is loan for you while another half will be my partnership portion, such arrangement is valid.

Ibn Taymiyyah (1991) says: pursuant to hadith that prohibits the combination, the meaning is, exchange and donation contracts shall not be combined in one agreement. In such combination the donation will be only due to the exchange, and hence it will not be a free donation, it will be part of the consideration instead. Since the parties agreed that it shall not be part of consideration, they combined between two dissimilar items. Though Hammad (2001) argues prohibition of the combination between sale and donation cannot be compared with prohibition of the combination of sale and loan. The donation associated with the sale is just for the purpose of mentioning which does not have any legal effect. Thus, when one says sell me your asset with \$100 provided you donate me your dress, if other party agrees on it the asset will be sold with \$100 and the dress together.

Second: The Combination Shall Make the Unlawful Things Lawful.

Contracts that are being combined in a single arrangement could be lawful at individual stage, but when they become together in one agreement, they may create a sense which is prohibited in Shari'ah. Thus, such combination does fall within the ambit of prohibition propagated in the *hadith*, such as the combination between sale and loan contracts.

Ibn Qayyim says, the combination between loan and sale is prohibited because it leads to involve with *riba* by taking more than what one gives as loan, using sale or lease contracts in disguise, as it has been practiced (Ibn Qayyim, 2004).

Thus, if one lends a \$1,000 and sells him a commodity for \$1,000 which is equal to \$500 in fact. So, the lender does not want to lend except with the additional price for the commodity, and the buyer does not pay the extra amount as price, except due to the \$1,000 that he has lent. Thus, there is neither actual buying the commodity with \$1000 nor the mere lending without benefit, rather it is giving \$1000 and that commodity of \$500 value in return for \$2000 (al-Shatibi 2017, Ibn Taymiyyah 1991). Scholars have no dispute on the prohibition of this arrangement and such invalidity is extended also to the combination of loan and forward sale (*salam*), combination of loan and currency exchange (*sarf*), combination of loan and lease because all of them are sale contracts with the loan agreement (al-Shatibi 2017, Ibn Taymiyyah 1991).

Furthermore, another example of the prohibited combination is *bay' al-inah* (sale and repurchase). This is to sell a commodity with \$100 on credit with the condition that he will buy it with \$80 on cash. So, this combination of two sale contracts ultimately ends with a usurious transaction. Though they are apparently two sale contracts, but a usurious arrangement in essence. The commodity does not have any function here, except to facilitate a usurious transaction. Thus, the underlying benefit of a sale contract, due to which the sale is legalized in *shari'ah*, is not found in this transaction (al-Shatibi 2017, Ibn Taymiyyah 1991, Ibn Qayyim 2016).

Third Parameter: The Two Contracts, or More, Shall Be Contradictory in Form and Conflicting in Ruling.

The combination between the two contradictory contracts is not allowed. Scholars of Maliki School listed the contracts that are not allowed to be combined with the *bay'* (sale contract), and they are *ju'alah* (commission), *sarf* (currency exchange), *musaqah* (sharecropping), *shirkah* (partnership), *nikah* (marriage), *qard* (loan) and *qirad* (silent partnership). As these contracts is not permitted to be combined with the sale contract, they are also not allowed to be combined with each other in one arrangement because they are different from each other in nature and in rulings (al-Qarafi, 1925). Al-Qarafi (1925) mentions, contracts are legalized as a means of achieving their underlying benefits. Thus, in a single arrangement the conflicting contracts shall not be combined, particularly when they are related to a single context.

Qadi Ibnul Arabi (1997) says: the Maliki School deduces an important principle from the *hadith* prohibits combination of sale and loan in one transaction. The principle is, if two contracts are inconsistent in nature and incompatible in ruling, they are not allowed to be combined in a single transaction. The original case (*asl*) here is the combination of sale and loan, and thereafter all other relevant cases are understood thereof such as combination of sale and marriage, etc. Sale and loan are different in nature because sale is subject to bargaining and making wealth, far away from kindness and compassion, while loan depends on caring and kindness, thus they cannot be combined in one arrangement (Hammad 2001).

Furthermore, if contracts are different being binding and revocable, for example sale and *ju'alah*, i.e., commission-based contract, they cannot be combined in one transaction as they are incompatible in ruling. In sale contract the commodity and price shall be known, while in *ju'alah* contract the consideration shall be unknown, otherwise it will be identical to a lease agreement (Hammad 2001).

On the other hand, if contracts are not different and not contradictory with each other, then they can be combined in one transaction, such as combination of sale with lease, with donation (*hibah*), etc. Actually, contracts like lease or donation, etc. are identical to the sale contract in terms of provisions and conditions, and they do not contradict with each other. Accordingly, they can be combined with sale contract as same as they can be combined with any other compatible contracts (al-Qarafi, 1925).

However, majority scholars do not agree with Maliki School on the prohibition of combining the incompatible and different contracts in one agreement. They validate this combination as it does not lead to any contradiction in rulings and inconsistency in effects. Rather, some of the Maliki School such as Sahnun and Ashhab validated the combination of some contradictory contracts in single agreement (Ibn Rushd, 2002).

Hanafi School validates the combination of loan and partnership in one agreement. Al-Sarakhsi (2013) says, if one pays \$1000 to other person, with the condition that half of it will be a loan while another half will be his portion of capital in the partnership venture, will be permissible.

The more valid stand of Shafi'i School is that, the combination between sale and lease, or between sale and *salam* (forward delivery sale), or between lease and *salam* contract, is permissible. Also, if contract is concluded on two subject matters with different rulings, for example, one has option and another is without option, such combination is valid. In this case, the value will be distributed proportionately because it is nothing but the difference in ruling of the contract, and this does not invalidate the contract (al-Nawawi, 1925).

Hanbali School opines the validity of combining two contracts that are different in form and in ruling with a single countervalue. Ibn Qudamah (2004) says: if two contracts of different rulings have been combined with single countervalue, such as combination of *sarf* (currency exchange) and sale of something in which dispersing is permissible before possession, combination of sale and marriage, or combination of sale and lease contract, is permissible.

Ibn Qayyim (2016) says, there is no prohibition to combine two contracts while both of them are permissible at alone, such as one sells a commodity and leases his house to the buyer for one month in return for \$100.

To wrap up the above-mentioned different views among the scholars, it is found the fundamental rule of Maliki School is great and unique, which says if two contracts are contradictory in nature and conflicting in rulings they cannot be combined in single contract. However, most of the examples they mentioned do not fall within the ambit of this principle. Combination of sale and partnership, sale and marriage, sale and *mudarabah*, etc. are different in rulings, but not contradictory and not conflicting. So, there is no shari'ah prohibition to combine them in a single arrangement and thus majority of the scholars allow them to be combined, as discussed above.

In addition, Muslim jurists agree on permissibility of combining security contracts with debt contracts, for example, combination of credit sale with *hawalah* (transfer) and *kafalah* (guarantee), or combination of *salam* contract with *kafalah*, etc. These contracts are permissible in combined mode because they are not conflicting with each other albeit different in nature and conditions (Hammad 2001).

Thus, the main reason for prohibition of combining more than one contract in single agreement is having inconsistency among the contracts. Maliki School advocates this rule as combining two incompatible contracts in one transaction is not possible. On other hand, what the other Schools including Ibn Taymiyyah and Ibn Qayyim opine, the validity of combining the contracts of

different ruling with varied conditions, is compatible with the essence and spirit of shari'ah. The view of such validity begets facility and removes hardship from the people as mostly they require to combine different contracts in single arrangement in order to meet diverse demands. Providing such ease and facility is intended in shari'ah, and thus Imam Abu Yusuf says "whatever provides ease is preferred to be taken into consideration; because hardship is removed" (al-Sarakhsi, 2013).

Shari'ah Provisions derived from *ahadith* that Prohibited Combination of Contracts:

No doubt, the Prophetic narrations prohibited combination of more than one contract in a single agreement. To denote this prohibition, there are several expressions mentioned in the *hadith*. They are like, '*naha*' means prohibited, '*la yahillu*' i.e., not legal, and '*la yajuzu*' i.e., not permissible. This prohibition is mostly applicable when the combination occurs between two contradictory contracts, which leads to violate any tenet of Islamic commercial law, such as combination of sale and loan that converts the transaction into a usurious dealing.

First: Prohibition of two agreements in one, two sales in one and two conditions in one sale:

The prominent companion of the Prophet Abdullah ibn Mas'ud, the narrator of the *hadith* that prohibits combination, Simak, followed by other well-known Muslim jurists like al-Thawri, Masruq, Abu Sulayman, Ibn Sirin, Tawus, al-Awza'i, al-Nasa'i, Ibn Hibban, Ibnul Athir, and Abu Ubayd, unanimously agreed that '*saftatan fi saftah*' means to sell something by saying: this item is for such amount (\$10) on cash, and for such amount (\$20) on credit (al-Khattabi, 1991; al-Qurah Daghi, 2001).

Also, other *hadith* that prohibits two sales in one sale denotes the same meaning. The same sense is also intended in the *hadith* that prohibits sale along with condition in single agreement. Thus, when Imam al-Awza'i was asked about the contract concluded with conditions of different price for different modes of payment he replied: the contract shall be concluded with the smaller amount for the longest term. Imam al-Nasa'i also replied by the same (al-Khattabi, 1991).

So, all the three related *ahadith* denote the same sense, though the articulation is different. Based on these narrations, in a single offer if the contract contains two different prices while one is for cash settlement and another is for deferred payment, such contract is impermissible, as far as the view of majority scholars is concerned. Nevertheless, this ruling is not confined only to the scenario mentioned in the *hadith*. Rather, other related scenarios would be understood and judged accordingly as the ruling of financial dealings is subject to the essence and underlying intention of the transaction (al-Qurah Daghi, 2001).

The reason (*illah*) for the prohibition of two agreements in one is as al-Shawkani (2000) says: the effective cause (*illah*) for prohibition of two sales in one sale is the instability of the price. The price becomes unstable and unidentified in the form of selling one item with two prices, or making the sale stipulated with a future condition in the form of if you sell me this, I will sell you that.

Majority scholars agreed, in the case of selling one item with two prices while one price is offered for spot and the other is for delayed payment, the reason of prohibition is the instability of the price

and involvement with *riba*. While in the case of making the sale conditional, the reason of prohibition is the instability of ownership as there is uncertainty on whether or not the condition is met in the future.

Thus, every contract which involves two unidentified prices and/or is subject to a condition that could happen in future is prohibited and invalid. The reason of this prohibition is not knowingness (*jahalah*), uncertainty (*gharar*), and excessive risk. (al-Qurah Daghi, 2001).

Second: Prohibition of combining sale and loan in a single contract.

This is prohibited due to the same reasons (*illah*) mentioned in the case of two sales in one sale contract. Additionally, there is also possibility of getting involved with *riba*. If loan is combined with sale contract, there would be discount in the price due to the loan. Thus, it implies the sense of loan that begets benefit which is *riba*. Thus, if any contract, be a sale or lease or donation with exchange, comes together with a loan arrangement, would fall into the ruling of prohibition (al-Qurah Daghi, 2001).

Various Types of Combination of Contracts:

Basically, not all combination of contracts is invalid in general and vice versa. In this space the paper discusses various types of combination of contracts in a single deal from both valid and invalid categories as follows:

Invalid Combination of Contracts:

Combination of Loan and Partnership: this is an invalid combination. It happens in a scenario in which one gives a loan to the other and then makes a partnership with him and gives him an amount of money for his portion as a partner. Thereafter, they agree if the business venture makes profit the financier will receive the profit out loan, and if venture fails the financier takes back his amount of loan. This is invalid because this constitutes two sales in one and receiving benefit out of a loan which is *riba*. Also, it involves *gharar* (uncertainty) as there is a confusion on whether the financier here is a creditor or a partner (Arbouna 2007).

Combination of Two sales in One Deal: In the current context, this would be referred to the *bay' al-inah* which is basically a sale and buyback agreement. In this arrangement two contracts occurs concurrently while one is with deferred payment and the other is with spot settlement. This sale and buyback agreement is utilized basically to manage the liquidity once needed. The party who wants to offer liquidity will sell an asset to the debtor on deferred basis and simultaneously buys back the asset with spot payment. Thus, the debtor receives the needed liquidity, which will be due on him upon maturity with an additional amount, as essentially the price of deferred sale would be higher than that of spot sale. This is an unlawful combination and the vast majority of the Muslim jurists invalidate *bay' al-inah* (Wazarat al-Awqaf wa al-Shu'un al-Islamiyyah, 1986).

Combination of Rebate with Early Settlement: Rebate is a discount in the loan offered for the early settlement of credit. Rebate is invalid if it is offered contractually along with the credit

contract, as per the stands of majority classical and contemporary Muslim scholars (Usmani, 1998). However, if it is offered on discretionary basis upon the time of early settlement, then it becomes permissible (AAOIFI, 2017, SS-8).

Valid Combination of Contracts:

Combination of Loan and *Hawalah*: There is a financial instrument called Islamic Accepted Bills which is traded on secondary market and known to be operated on the ground of murabahah contract. Arguably, this is traded based on the contract of debt trading (*bay' al-dayn*). However, this would be an example of combination of contracts as this is a combination of loan and transfer of debt (*hawalah*) in one deal, which is valid. Actually, the financial institution provides loan facility through bill of exchange and then transfers this debt to a third party on discount basis (Arbouna 2007).

Combination of Loan and *Mudarabah*: In some jurisdictions, Islamic banks receive current deposits based on *qard hasan* (interest free loan). This is a safe keeping arrangement in which banks provide guarantee of deposits on no return basis. Depositors can withdraw deposits anytime they want. However, it may be stipulated if depositors do not withdraw funds for a certain period of time, let's say three months, the funds will then deserve return from the fourth month onward (al-Darir, 2000). Thus, a combination of contracts occurs with loan and *mudarabah* partnership, and this is accepted.

Combination of Exchange and Transfer of Money: In the case of remittance takes place with a different form of currency, then transfer of money contract (*hawalah*) combines with the exchange of money contract (*sarf*) that is permissible (AAOIFI, 2017, SS-7).

Conclusion:

Basically, there are two important issues to be discussed in relation to the Prophetic narrations on prohibition of two sales in one sale. First: the issue of association of conditions with the contracts. Most of the scholars discuss the issue of conditions in the context of *ahadith* on prohibition of two agreements in one agreement, or two sales in sale, irrespective of whether the condition attaches with any contract or anything else. Second: the issue of a single contract that contains two contracts in general, regardless of whether it is subject to any condition or anything else. All the *ahadith* on prohibition of two contracts in one contract, two agreements in one agreement, and prohibition of sale with condition denote the same sense. The intended meaning here is a single contract that contains more than one agreement, such as one says in single contract, this is for such on cash and for such on credit. However, if both contracts are offered separately and the contract is concluded precisely either on credit or on cash only, then the contract is valid.

As per the fundamental principle of *mu'amalat* in Islamic commercial law, the ruling of combining contracts or conditions in a single deal is permissible. The basic ruling of any contract is that of permissibility unless otherwise is proven. Muslims have the freedom to design the contract in whatsoever manner they prefer, provided no fundamental rules of shari'ah has been violated. As

mentioned, many scholars such as al-Shatibi, al-Zayla'i, al-Bahuti, Ibn Qayyim, Ibn Taymiyyah, etc., are with the view that the original ruling of combination is permissibility until any violation of shari'ah provision is verified in the deal. This is also in line with the doctrine of *maslahah mursalah* (unattested benefit) in the case of having no evidence that generally prohibits the notion of combining two contracts in a single deal.

As discussed, two agreements in one agreement and two sales in one sale are basically denoting the same sense. Yet, the former is more general than the latter as the agreement includes various types of contracts while the sale contract is one of them. The notable meaning of the phrase 'two agreements in one agreement' is to combine multiple prices and/or multiple subject matters in a single deal. If such a combination leads to uncertainty (*gharar*) and instability in determining the subject matter and/or defining the price, the contract becomes void. If the combination leads to take *riba* in a disguised manner, then such combination becomes impermissible. However, in the absence of any prohibited element such as uncertainty, instability, consuming *riba*, etc., the combination becomes valid. As mentioned, Maliki School and Ibn Taymiyyah advocate this view since no legal text (*nass*) and scholars' consensus is found, which makes this combination invalid.

Besides, there is another notable *hadith* that prohibits the combination of sale and loan in one agreement. This *hadith* provides a notion that if combination leads to any illegal practice, then it is invalid. If the combination is used to take *riba* in a disguised way and/or brings any benefit out of making a loan, then it is impermissible. As the Prophet (SW) instructed, each loan that brings any benefit, be in the form of sale, lease, or any other arrangement, is a usurious (*ribawi*) deal.

In Islamic finance, the combination of contracts has been practicing in various modes and ways. Nevertheless, no issue arises if combination takes place among compatible contracts, in which one contract does not conflict with the other, such as a combination of a loan and *hawalah*, a loan with *mudarabah*, money transfer and money exchange in one deal, etc. Yet, shari'ah objection appears when combination takes place among incompatible contracts whereby one contradicts with the other, such as a loan with a sale at a discount, a loan with a contractual benefit, financing with a contractual rebate, and so forth.

Thus, further study may be suggested to investigate each Islamic finance practice of combining two or more contracts in a single arrangement. This could further enhance Islamic financial products that would have been offered in a valid hybrid mode.

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