

RULING ON SELLING AN SAMPLE SALE

Mohammed Hammad Khalil Ibrahim

Prof. Dr. Najm Abdel Nasser Al-Makdami

College of Islamic Sciences, Tikrit University

Introduction

Praise be to God, and prayers be upon my master, the Messenger of God, and after,

One of the most important things that jurisprudence does is to cut off disputes between people in their financial dealings. Therefore, he had an advantage over all other Sharia sciences.

Perhaps the subject of bail or guarantee is one of the issues in which there are many disputes because man is innate to love money, so the jurists have devoted themselves to clarifying all the partial details related to this subject.

Ruling on ⁽¹⁾ selling ⁽²⁾ the sample sale

The sayings of the jurists:

The opinions of the jurists differed regarding the validity of the sale of the sample sale on three sayings:

The first saying: It is not valid to sell the sample sale, whether it was described or not, and it is the saying of

⁽¹⁾Judgment linguistically: prohibition, it is said that you judged him: if you prevented him from opposing him, then he was not able to deviate from that.

Judgment also: and the judiciary, it is said: I judge between people: if I judge between them and separate. Al-Fayoumi, Al-Misbah Luminir, Scientific Library, Beirut, (1/145). Al-Fayrouz Abadi, Al-Qamous Al-Muheet, Al-Resala Foundation for Printing, Publishing and Distribution, Beirut, 8th Edition, (1/1095).

*- In the custom of the fundamentalists: the speech of God Almighty related to the actions of those charged with necessity, choice, or situation. Al-Shawkani, Irshad Al-Fahul, Dar Al-Kitab Al-Arabi, Damascus, 1st edition, 1999 AD, (1/5).

*- In the custom of jurists: the impact of the street's speech, such as obligating prayer and prohibiting adultery and usury. Islamic jurisprudence and its evidence, Wahba al-Zuhaili, (1/30). Zaidan, Al-Wajeez fi Usul al-Fiqh, p. 25.

⁽²⁾Selling is the source language of selling, which is the exchange of money for money, or the exchange of something for something. And it is one of the names of opposites, i.e. it is applied to buying and selling, as in His saying (and they bought it for a low price, a few dirhams, and they were among the ascetics in it) Surah Yusuf, verse (20). They bought him at a low price: i.e. his brothers sold him for a small price. Ibn Katheer, Interpretation of the Great Qur'an, Dar Taibah for Publishing, Distribution, 2nd Edition, 1999 AD, Part 4, p. 377. Ibn Manzoor said: Selling is a source of selling, against buying. And selling is also buying, Ibn Manzoor, Lisan Al-Arab, Dar Sader, Beirut, 3rd edition, 1414 AH, part 8, p. 23. Sale idiomatically: Shafi'i defined it: "A financial exchange contract that benefits the property of a property or a benefit on perpetuity, not on the face of kinship." Ahmed Al-Qalyubi and Ahmed Amira, Hashita Al-Qalyubi and Amira, (2/191).

the Shafi'i's ⁽³⁾ in the new ⁽⁴⁾.

The second saying: It is valid to sell an sample sale absolutely, even if it is not described. And the buyer has the choice if he sees it, which is the saying of the Hanafis ⁽⁵⁾ and the Shafi'i's in the old ⁽⁶⁾, and Ahmad in a narration ⁽⁷⁾

The third saying: It is valid to sell if it is described, and if it is not described, the sale is not valid, and this is the opinion of the Malikis ⁽⁸⁾ and the Hanbalis in the most correct narration in the school ⁽⁹⁾.

Jurists' evidence for their sayings:

Each group of jurists inferred their statements with a number of evidences, which I will mention successively as follows:

First team:

First: From the book:

The point of evidence: If the buyer does not see the thing sold, then he will not be satisfied, and therefore it has become food.

The money of others is wrong and it is forbidden, according to the text of the words of God Almighty ⁽¹⁰⁾. He was objected to by those who permitted the sale by saying that they suspended the permissibility with the option of seeing ⁽¹¹⁾.

Secondly, from the year:

- What is authentically reported on the authority of Abu Hurairah, may God be pleased with him, that the Prophet, may God's prayers and peace be upon him (the Messenger of God, may God's prayers and peace be upon him, forbade the sale of pebbles, and the sale of deception) ⁽¹²⁾.

⁽³⁾ See Al-Nawawi, Al-Majmoo' (9/301).

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⁽⁵⁾ See, Al-Zailai, Explanation of Facts (4/24)

⁽⁶⁾ See, Al-Mawardi, Al-Hawi Al-Kabir (5/18).

⁽⁷⁾ See, Ibn Qudamah, the great explanation, Ibn Qudamah, (2/322).

⁽⁸⁾ See Al-Hattab, Mawahib Al-Jalil (4/297), Ibn Rushd, Bidayat Al-Mujtahid (3/174).

⁽⁹⁾ See, Ibn Qudamah, Al-Mughni (3/494)

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The way of inference: The sale of an sample sale that has not been seen involves ignorance and deception, and this is forbidden by the text of the hadith, and the reason for the prohibition is two things:

The first: He does not know whether the thing sold is safe or perishable

The second: He does not know whether the thing sold reaches him or not ⁽¹³⁾.

It was objected to: that the hadith is concerned with a definite sale, and this is a sale in which we have proven that the buyer has the option of seeing, which prevents and protects from deception ⁽¹⁴⁾.

- What was narrated on the authority of Hakim bin Hizam (may God be pleased with him) who said: I said: O Messenger of God, a man comes to me asking me to sell, I do not have anything to sell, then I sell it from the market, and he said: "Do not sell what you do not have" ⁽¹⁵⁾.

The point of evidence: The thing sold is not in the possession of the seller, in the sample sale, so it is included in the sentence of selling that is forbidden, as in the hadith ⁽¹⁶⁾.

He objected: The hadith is limited to what the seller does not own, and this thing sold is owned by the seller, so it is not included in the aforementioned prohibition ⁽¹⁷⁾.

Third: It is reasonable, by analogy, to sell in opposition and in touch

- What is authentically reported on the authority of Abu Hurairah, may God be pleased with him, that the

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Prophet, may God's prayers and peace be upon him, forbade the sale of touch ⁽¹⁸⁾ and Al-Munabadhah ⁽¹⁹⁾.
Evidence: The Prophet, may God's prayers and peace be upon him, forbade this type of sale due to ignorance of the sale, even though it was present, so the sale of the absentee was first to be invalidated because of the ignorance involved ⁽²⁰⁾.

He objected: that the sale of contact and disobedience is present, not absent, but the prohibition was because this is a sale of ignorance ⁽²¹⁾.

The second team

First: From the book:

The aspect of the indication: the lam in the word selling is to absorb, so it takes all types of selling except for what is excluded with special evidence ⁽²²⁾.

I answer him that the presence of the option here for the buyer prevents deception and dispute between them ⁽²³⁾.

The aspect of evidence: the condition of mutual consent is achieved in the sale, whether the sale is present or

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absent between the contracting parties ⁽²⁴⁾.

He objected: that mutual consent is restricted by the hadeeth of the Prophet, may God bless him and grant him peace, about the prohibition of deceitful sales ⁽²⁵⁾ .

Second: From the year:

- What was narrated on the authority of Makhoul (may God be pleased with him) that the Messenger of God, may God's prayers and peace be upon him, said: "Whoever buys something that he has not seen, he has the choice if he sees it, if he wants to leave it, and if he wants to take it" ⁽²⁶⁾.

The point of evidence: If the buyer buys something he has not seen, he has the choice between holding and returning ⁽²⁷⁾.

He objected that the hadith of Makhoul is attributed to him and the specialists have weakened it ⁽²⁸⁾.

- What al-Tahawi narrated on the authority of Alqamah al-Laithi, he said: "Talha bin Ubaid Allah bought money from Uthman bin Affan, and it was said to Uthman: You have defrauded yourself, and the money was in Kufa, and it is the money of the Talha family now in it. Uthman said: I have the choice, because I sold what I did not see.

Talha: I have the choice, because I bought what I did not see. So Jubair bin Mutim ruled between them, and

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he ruled that the choice is for Talhah, and there is no choice for Othman ⁽²⁹⁾ .

The face of evidence: the validity of the sale that took place, although it was not seen or described ⁽³⁰⁾ .

He objected: that this narration is weak attribution. Al-Nawawi said: “On the story of Othman, Talha, and Jubair bin Mutim, that this was not widespread among the Companions, may God be pleased with them (and it is correct) with us that the saying of the Companions is not an argument unless it spreads and no one finds a contradiction to it ⁽³¹⁾ .”

The third team:

Analogy on the validity of marriage without seeing, testifies to that what was authentically reported on the authority of Abdullah bin Masoud (may God be pleased with him) that the Prophet, may God’s prayers and peace be upon him, said: “A woman does not have intercourse with a woman, so she describes her to her husband as if he is looking at her” ⁽³²⁾ .

The aspect of evidence: The Messenger of God, may God’s prayers and peace be upon him, made the description of a woman tantamount to seeing her, and this testifies to the permissibility of selling the described without seeing it ⁽³³⁾ .

Objected to him that it is an analogy with the difference because the contracted upon in marriage is the permissibility of enjoyment, and it is not possible to see in that, then the characteristic is not intended in marriage, so ignorance of its characteristics did not prevent the validity of the contract on it, unlike the characteristics of the seller in the contract, because ignorance in it with its description is ignorance that prevents

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its validity ⁽³⁴⁾ .

- By analogy with the buying and selling of the blind ⁽³⁵⁾ .

- The sale of the unseen with the description is known to the two contracting parties, because the quality is achieved by knowing the seller, so it is valid like peace ⁽³⁶⁾.

He objected that the difference is vast between the two types, and it is required for peace to be obligatory Other than selling the sample ⁽³⁷⁾.

Weighting:

By presenting the sayings of the jurists and their evidence, it appears to the researcher that the most correct opinion is the permissibility of selling in the event of description, for the following reasons:

- The inclusion of this sale in the Qur'anic text (and God permitted the sale), and the claim of specialization by forbidding deceit, so the generality remains in its generality An adjective takes the place of a vision, and perhaps a description may be more accurate than a fleeting vision.

The presence of a vision option that protects the buyer from unfairness, deceit and damage.

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