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Criteria for inferring legal objectives in financial transactions: A study of models

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Abstract---This study highlights the importance of applying legal objectives in contemporary jurisprudential efforts. However, this application is not unrestricted: researchers have imposed a set of regulations to ensure that the implementation of these objectives aligns with legal texts rather than serving as a means to undermine or evade legal rulings under the pretext of interests.

Keywords---Legal objectives, Regulations, Hierarchies of objectives, Contemporary jurisprudence.

Introduction

Praise be to Allah, the Lord of all creation. The best prayers and complete peace be upon our Master, Muhammad; his family; his companions; and all who follow him until the Day of Judgement. Islamic Sharia is the final message and is therefore suitable for all times and places. It encompasses the interests of this world and the Hereafter. Its legal rulings have clear and evident objectives: the achievement of benefits and the prevention of harm. Scholars have emphasised these objectives and applied them in contemporary jurisprudential efforts because they recognise that they highlight the comprehensiveness of Islamic law and its suitability for all contexts.

However, this growing interest in objectives and their application in contemporary jurisprudence has not followed a uniform path. There has been exaggeration in applying these objectives to the extent that it has harmed the legal texts. The once harmonious relationship between objectives and texts, which revealed their aims and goals, has transformed into a tool for undermining texts and evading legal rulings under the pretext of applying objectives.

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Therefore, there is an urgent need to establish regulations for applying objectives in contemporary legal efforts to fulfil their intended purpose. This paper aims to explore the topic of the regulations governing the application of legal objectives in contemporary jurisprudence.

Research objectives:
Theoretically, this research aims to establish a set of regulations to guide the application of objectives in contemporary jurisprudential efforts. The practical aspect will examine two contemporary transactions in which objectives have been applied and evaluate how well the evidential reasoning adheres to the regulations set out by scholars to ensure the jurisprudential process remains on the right track.

Methodology:
In writing this paper, I took a descriptive analytical approach to the theoretical aspect. In the practical aspect, I used a comparative methodology to examine contemporary jurisprudential cases.

Research plan:
The research comprises an introduction, two main sections, a conclusion and a list of sources and references, organised as follows:

Introduction
Section One: Definition of Legal Objectives, Types and Regulations for Their Application.
Section Two: Examples of Certain Financial Transactions and Consideration of Objectives in Justifying Their Permissibility.
- Conclusion
- List of Sources and References

Section One: Definition of Legal Objectives, Types and Regulations for Their Application
Subsection 1: Definition of Legal Objectives in Language and Terminology
Paragraph 1: Definition of legal objectives in language
The term ‘objectives’ is the plural of ‘maqṣid’, a verbal noun derived from the root word ‘qaṣada’, meaning ‘to intend’. The letters qaf, sad and dal form the basis of this term and have various meanings, including:
- The straightness of the path
- A clear and straightforward manner
- Justice

In matters of speech and action, it refers to moderation between extremes.
- The intention to attain something and its target.

In contrast to excess, it represents balance between extravagance and stinginess[1].

Paragraph Two: Definition of Legal Objectives in Terminology
Several closely related definitions of legal objectives have been provided by scholars. Among them are:
Muhammad al-Tahir al-Ashour defined it as: ‘The meanings and purposes intended by the legislator in all or most circumstances of legislation.[2]’ These meanings and purposes are what Allah, the Almighty, intends with legislation.
- Ahmed Raissouni defined it as: ‘The objectives of Sharia are the goals that Sharia is established to achieve for the benefit of humanity.[3]’
- Al-Yubi defined it as: ‘Objectives are the meanings and purposes, among other aspects, that the legislator considers in legislation, both generally and specifically, in order to serve the interests of the people.[4]’

1- See: Dictionary of Language Scales by Ibn Faris (Vol. 5, p. 95); Lisan al-Arab by Ibn Manzur (Vol. 3, p. 353); Al-Qamus Al-Muhit by Al-Fayrouzabadi (p. 396).
2- Maqasid al-Sharia by Al-Tahir Ibn Ashour, p. 183.
3- The Theory of Objectives in Imam Al-Shatibi by Al-Raisuni, p. 7.

These definitions make it clear that the aims and goals of legislation revolve around achieving the benefit of humanity in this world and the next.

Subsection Two: Types of Legal Objectives
Legal objectives can be classified into several categories based on different considerations.

First: based on generality and specificity.
Legal objectives are divided into three categories according to their relationship with general and specific rulings:
1. General objectives:
These are the objectives and principles observed in most areas of Sharia law, such as the principle of ease, alleviating hardship, allowing prohibitions in cases of necessity, achieving servitude to Allah alone and promoting noble morals.
2. Specific objectives:
These are the objectives considered within a specific area of Sharia. Examples include the intention to prevent uncertainty and harm in financial transactions, the intention to deter in the realm of punishments, and the aim to achieve justice and fulfil rights within the judiciary.
3. Particular objectives:
These are the reasons for and wisdom behind rulings in a specific legal branch. Examples include the objective of achieving purity in the context of tayammum (dry ablution), the intention of maintaining chastity and avoiding adultery in marriage, and the aim of protecting property in the ruling on theft.

Second: Based on the Source of the Objectives
Legal objectives can be divided into two categories based on their source.
1. Objectives of the legislator:
These are the objectives intended by the legislator when establishing Sharia law. They generally represent the pursuit of benefits and the prevention of harm in both worlds, and are designed to be comprehensible so that those obligated can fulfil their legal duties[5].
2. Objectives of the Obligorately Responsible Individual (Mukallaf):
These are the intentions behind an individual's actions, whether they are acts of worship or customary practices. They help to distinguish between valid and invalid actions, as well as between acts of worship, transactions, religious matters, and judicial matters.[6]

Thirdly, legal objectives can be categorised into three sections based on the necessity for their existence.
1. Necessary objectives: These are objectives that are essential for establishing the interests of religion and the world. Without these objectives, the interests of this world cannot function properly; rather, corruption and disruption to order result, leading to loss and misery in the Hereafter. Scholars have classified these objectives into five categories: the preservation of religion, life, intellect, wealth and lineage.
Al-Shatibi stated: 'The Ummah, along with all religions, has unanimously agreed that Sharia was established to protect the five necessities. This has not been established for us through specific evidence, nor do we have a unique origin that distinguishes it; however, its suitability to Sharia is evident through numerous pieces of evidence that cannot be confined to one category.[7]'
2. Need-Based Objectives
Imam Al-Shatibi defined need-based objectives as follows: 'Those that are needed for expansion and to alleviate constriction that leads to hardship and difficulty due to the loss of the desired.' If not

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[4]- Maqasid of Islamic Sharia and Their Relationship with Legal Evidence by Muhammad Al-Yubi, p. 37.
[5]- See: Al-Muwafaqat by Al-Shatibi, Vol. 2, p. 7.
[6]- See: Al-Muwafaqat by Al-Shatibi, Vol. 2, p. 8.
[7]- See: Al-Muwafaqat by Al-Shatibi, Vol. 2, p. 8.

considered, hardship and difficulty befall the obligated individuals, but it does not reach the level of normal corruption expected in general interests.[8]'

Accordingly, need-based objectives do not attain the level of necessity; their absence does not disrupt the order of life or hinder benefits, but they may cause annoyance and hardship, affecting people's worship and transactions[9]. Examples include allowing people to break their fast during Ramadan, allowing travellers to shorten their prayers, and establishing contracts such as renting and partnerships to meet people's needs in these transactions.

3. Enhancement objectives:

Imam Al-Shatibi defined enhancement objectives as follows: 'Adopting what is appropriate from good customs and avoiding disgraceful conditions that rational minds reject. This includes the category of noble morals"[10].

Al-Ghazali defined them as follows: 'What does not relate to necessity or need, but serves to improve and beautify, facilitating virtues and excellence while adhering to the best methods.[11]'

Thus, enhancement objectives do not disrupt the order of life or cause hardship; however, their absence results in life not aligning with what is deemed honourable and noble by people of good character. Examples include covering one's private parts, adhering to eating and drinking etiquette, and avoiding impurities.

Fourth: Based on Their Rank in Intention

Legal objectives, considering their rank concerning intention, can be divided into two categories:

1. Primary objectives:

These are objectives that are primarily sought, such as the obligation to pray, which necessitates its performance and the conditions for doing so, such as purity. Similarly, the demand for marriage necessitates the aim of achieving it, as well as the requirements, such as dowry[12].

2. Secondary objectives:

These objectives serve as a supplement to the primary objectives. For example, the secondary intention of prayer includes prohibiting disgraceful and immoral actions and pursuing sustenance. In the case of marriage, these include enjoyment, companionship and having children[13].

Subsection Three: Regulations for Applying the Objectives of Sharia in Contemporary Jurisprudence

Considering the objectives of Sharia in the jurisprudential process is one of the most important ways in which scholars can understand legal texts and derive rulings. Wahba al-Zuhayli emphasises the importance of considering the objectives of Sharia in this process, stating: 'Understanding the objectives of Sharia is essential for everyone, always. For scholars, this is important when deriving rulings and understanding texts; for non-scholars, it is important for grasping the secrets of legislation. If a scholar wishes to know the ruling on a specific incident, they must understand the texts in order to apply them to the cases at hand. When reconciling conflicting evidence, they must consider the purpose of the legislation. If they need to clarify Allah's ruling on a new matter through analogy, public interest or preference, they must accurately uphold the objectives of Sharia"[14].

Al-Shatibi considered an understanding of the objectives of Sharia to be a necessary quality for a jurist, stating: 'The degree of ijtihad (juristic reasoning) is attained by two qualities: the first is a complete understanding of the objectives of Sharia; the second is the ability to derive rulings based on that

[8]- Al-Muwafaqat by Al-Shatibi, Vol. 2, p. 21.
[9]- See: Maqasid of Islamic Sharia and Their Relationship with Legal Evidence by Al-Yubi, p. 318.
[10]- Al-Muwafaqat by Al-Shatibi, vol. 2, p. 22.
[11]- Al-Mustasfa by Al-Ghazali, vol. 2, p. 485.
[12]- See: Maqasid al-Shari'a and Their Relationship with Legal Evidence by al-Yubi, p. 353.
[13]- See: Al-Muwafaqat by Al-Shatibi, Vol. 2, p. 397.
[14]- Principles of Jurisprudence by Wahba Al-Zuhayli, Vol. 2, p. 1017.

understanding.' This is because Sharia is based on considering the interests established by the legislator rather than what is merely understood by the obligated individual[15].'
Furthermore, emphasising its importance, he warned against neglecting it in jurisprudence, saying: 'Most errors of scholars occur when they neglect to consider the objectives of Sharia in the context of the matters they are addressing[16].'
However, while it is important to consider these objectives in the jurisprudential process, a set of regulations must be in place to prevent the consideration of objectives from becoming a means to evade legal rulings and suspend texts under the pretext of interests.
Researchers have outlined several regulations governing the application of objectives in contemporary jurisprudence. These are as follows:

Regulation One: The application of objectives must not contradict a legal text or consensus.
The principle is that legal objectives should not contradict texts of divine revelation, since both sources are unified, and objectives are derived from these texts, either directly or indirectly.
Therefore, sound reasoning necessitates that there be no conflict between the objectives and the texts, and that the objectives do not undermine the texts upon which they are based. Therefore, scholars have established that a legal cause must not invalidate the original text in order to be valid. Muhammad Sa'id Ramadan al-Bouti stated: 'Those who advocate the necessity of seeking the spirit of legislation and its texts overlook the fact that the meanings of linguistic texts must be observed with the same necessity as the body needs the soul. There is no point in the spirit of legislation or the spirit of a text if its intended linguistic meaning is rendered dormant and void. Therefore, all principles of jurisprudence require that the cause derived from the original text must not invalidate it.[17]"
If a contradiction occurs, it is the jurist's responsibility to investigate. The contradiction may stem from the invalidity of the text or the objective, or the fact that the opposing objective refers to another text or is restricted to the text assumed to contradict it[18].
Therefore, any juristic reasoning that contradicts and undermines legal texts is considered invalid and relies on an illusory interest. Legal texts are established to safeguard interests, so whenever a contradiction arises between the texts and the interests, this indicates that the interest in question is illusory rather than genuine.

Regulation Two: Verifying the Validity of the Intended Objective
This regulation requires the jurist to verify that the legislator intended this objective or that it falls within what is permissible. Scholars have warned about the dangers of being lax in this area. Ibn Ashour stated: 'The researcher of Sharia objectives must engage in deep reflection and diligently verify the establishment of a legal objective. They should avoid being lenient or hasty because identifying a legal objective can have significant consequences, as it branches out into many pieces of evidence used in deriving rulings. Therefore, one should not designate a legal objective without thoroughly surveying the actions of Sharia in the area from which they intend to extract the legislative objective"[19].
Thus, researchers should not settle for the general objective of achieving benefits, as there are interests that are neither legally recognised nor intended. It is imperative to verify that this interest is indeed intended by Sharia and has been acknowledged through the correct methods stipulated by scholars[20].

Regulation Three: Defining the Degree and Rank of the Objective
This regulation stipulates that the jurist must be aware of the degree of the objective, including whether it is necessary, need-based or enhancement-based, definitive or speculative, and whether it is general or specific.

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[15]- Al-Muwafaqat by Al-Shatibi, vol. 5, p. 41.
[16]- Al-Muwafaqat by Al-Shatibi, vol. 5, p. 135.
[17]- Standards of Interest by Al-Bouti, p. 138.
[18]- See: Standards for Implementing the Objectives by Al-Yubi, p. 61.
[19]- Maqasid of Islamic Sharia by Al-Tahir Ibn Ashour, p. 231.
[20]- See: Standards for Implementing the Objectives by Al-Yubi, p. 36; Standards of Objective Consideration in the Implementation of Legal Texts by Ibrahim Rahmani, p. 16.

The purpose of applying this regulation to the jurisprudential process is to ensure that the appropriate rulings are assigned to the objectives and that the resulting judgement best fulfils the legislator's intent. It also enables the jurist to prioritise conflicting objectives.
Failure to apply this regulation can result in errors when deriving the appropriate ruling or when prioritising and arranging objectives[21].

Regulation Four: Considering the consequences of objectives
When applying legal objectives, it is essential for the jurist to consider their outcomes. Rulings that lead to corruption and harm instead of achieving the intended benefit hold no significance.
Imam Al-Shatibi emphasised the importance of this principle when applying objectives, stating: 'Considering the consequences of actions is an objective intended by Sharia, whether the actions are compliant or contradictory.' A jurist should not judge an action performed by obligated individuals as permissible or impermissible without reflecting on the outcome of that action. An action may be permissible due to an interest it secures or harm it prevents; however, it may have an outcome contrary to that intention. Conversely, an action may be impermissible due to a harm arising from it or an interest it obstructs, yet it may have an outcome contrary to that intention[22]." Therefore, hastily declaring the former as permissible could inadvertently lead to corruption equalling or exceeding the benefit, thus preventing the outright declaration of its permissibility. Similarly, hastily declaring the latter as impermissible could prevent harm that equals or exceeds it, so a blanket denial of permissibility is not sound. This is a challenging area for the jurist, but the impact is rewarding.
The Sunnah also instructs us to consider the consequences of our actions. In one hadith, the Messenger of Allah, peace be upon him, said: 'If your people had not recently reverted to polytheism, I would have rebuilt the Kaaba on Ibrahim's foundations.[23]' He also stated: 'If it were not for the potential difficulty for my community, I would have commanded them to use a miswak before every prayer.[24]'
Therefore, an action that is lawful but fails to achieve its intended objective is considered unlawful, especially if it leads to corruption, even if it was originally lawful. Al-Qarafi stated: 'Any action that does not yield its intended outcome is not legislated[25].'
For example, the aim of imposing penalties on a battlefield is to deter the offender from engaging in reprehensible conduct. However, administering punishment on the battlefield may lead to the opposite of this aim, such as the punished individual escaping into enemy territory or secrets about Muslims being exposed — significant corruptions that outweigh the harm of not enforcing the penalty in such exceptional circumstances.
Not every consequence is considered valid; specific regulations govern this.
- The anticipated harm must be certain or likely, rather than merely speculative.
The expected situation must be explicitly defined in terms of the ruling and context.
- It should not lead to a greater consequence than that which is currently assessed[26].

Regulation Five: Balancing Between Benefits and Harms
It is the duty of the jurist in contemporary issues to fully grasp the foundations and principles of balancing between competing benefits and harms, clearly showing which is preferable and which is lesser. The preferable should be promoted, while the lesser should be set aside.
Al-Yubi emphasizes the importance of understanding this regulation in applying objectives in contemporary jurisprudence: "It is essential for one who engages in the application of legal objectives to know how to deal with conflicting interests. A person may recognize an issue as a benefit or harm, only

[21]- See: Standards for Implementing the Objectives by Al-Yubi, p. 38; Standards of Objective Consideration in the Implementation of Legal Texts by Ibrahim Rahmani, p. 18.
[22]- Al-Muwafaqat by Al-Shatibi, vol. 5, p. 177.
[23]- Reported by al-Bukhari in his Sahih, Book of Hajj, Chapter on the Virtues of Mecca and its Construction, no. 1585; and by Muslim in his Sahih, Book of Hajj, Chapter on the Destruction and Reconstruction of the Kaaba, no. 398.
[24]- Reported by al-Bukhari in his Sahih, Book of Friday, Chapter on the Miswak on Friday, no. 887; and by Muslim in his Sahih, Book of Purification, Chapter on Miswak, no. 252.
[25]- Al-Dhakira by Al-Qarafi, vol. 4, p. 341.
[26]- See: 'Considering the Outcomes and Accounting for the Consequences of Actions' by Al-Sanusi, p. 350.

to encounter another benefit or harm that may pose a greater danger or have a larger impact. Furthermore, the clarity of benefits and harms can vary greatly, all of which requires careful consideration in evaluating the benefit or harm and looking at the consequences of each[27]."

Scholars have mentioned several principles for balancing benefits and harms, or interests and harms, as follows:

First: in cases of conflicting benefits

When benefits conflict, the jurist should strive to achieve all the benefits. If this is not feasible, the jurist should prioritise the benefit that is most complete, important and sought after, as determined by Sharia[28].

Several methods exist to identify which benefit should take precedence.

1. Considering the value of the benefit: the necessary benefit takes precedence over the need-based benefit, and the need-based benefit takes precedence over the enhancement benefit.
2. Considering the universality of the benefit: the benefit that serves the general populace should take precedence over a benefit that serves an individual. Al-Izz ibn Abd al-Salam stated: 'The Sharia's concern for public interests is greater and more substantial than its concern for private interests.[29]'
3. Considering the likelihood of realisation: a certain benefit should take precedence over a probable one, and a probable benefit should take precedence over a speculative one.

Second: in cases of conflicting harms

If it is possible to prevent pure harms, we should do so. If it is impossible to prevent all of them, we should prevent the greater harm before the lesser harm and the more reprehensible harm before the less reprehensible one. This is in accordance with principles established by scholars, which include:

Prioritising the prevention of harm that is agreed upon as obligatory over harm that is disputed.

- When two harms conflict, the greater harm should be considered and the lesser harm permitted.
- One should bear specific harm to avert general harm[30].

Thirdly, when benefits and harms coexist, we should do so if achieving the benefits can occur while preventing the harms. However, if achieving the benefits necessitates engaging in some harms, we should assess which is predominant. If the predominant factor is the benefit, we should not consider the ensuing harm. Conversely, if the predominant factor is the harm, we should not regard the benefit. If the benefits and harms are equal, we should prioritise removing the harm, as preventing harm takes precedence over obtaining benefits[31].

Al-Izz ibn Abd al-Salam stated: 'It is clear to any rational person that achieving pure benefits and preventing pure harms for oneself and for others is commendable and praiseworthy.' Prioritising the most significant benefits is praiseworthy, as is preventing the worst harms. Furthermore, preferring more beneficial interests over less beneficial ones is commendable, as is preventing more likely harms over less likely benefits. The wise have concurred on this[32].'

Regulation Six: Holistic Consideration and Integration of Generalities and Specifics

When addressing contemporary issues, jurists must consider the general principles established through texts or reasoning alongside the specific cases confirmed by particular evidence from the Quran or Sunnah.

This regulation is important because it resolves apparent conflicts between general Sharia principles and specific cases, which could lead to the rejection of any case that does not conform to these principles.

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[27]- Standards for Implementing the Objectives by Al-Yubi, with slight modifications, p. 51.
[28]- See: The Key to Happiness by Ibn Qayyim al-Jawziyyah, vol. 2, p. 404.
[29]- Principles of Judgments by Al-Izz ibn Abd al-Salam, vol. 2, p. 75.
[30]- See: Principles of Judgments by Al-Izz ibn Abd al-Salam, vol. 1, p. 79; Standards for Implementing the Objectives by Al-Yubi, p. 53.
[31]- See: Standards for Implementing the Objectives by Al-Yubi, p. 54; Standards of Objective Consideration by Ibrahim Rahmani, p. 23.
[32]- Principles of Judgments by Al-Izz Ibn Abd Al-Salam, Vol. 1, p. 7.

Correct reasoning necessitates taking both generalities and specifics into account simultaneously. Al-Shatibi stated: 'If this is the case and the specifics — which are the roots of Sharia and what follows from them — are derived from those general principles, then it is obligatory to consider these specifics in relation to the general rules when applying specific evidence from the Quran, Sunnah, consensus and analogy.' It is impossible for specifics to become independent of their general principles." Anyone who adopts a text in a specific case while ignoring its general rule has erred, just as someone who adheres to the specific while ignoring the general has also erred. Similarly, someone who only considers the general rule while disregarding its specifics is also mistaken. Therefore, both must be considered together in every issue[33].

Section Two: Examples of Certain Financial Transactions and the Consideration of Objectives in Justifying Their Permissibility

Subsection One: Forward Contracts for Currency Exchange at Current Rates

First: Types of Currency Exchange at Current Rates and Their Forms

Among the operations conducted by Islamic banks, which are increasingly seen as a means of expanding their scope of activity, is the exchange of foreign currencies for national currencies.

This encompasses two cases:

1. Exchange based on current rates

This occurs when two different currencies are traded, such as converting Algerian dinars into another foreign currency. The only requirement in this case is that the exchange must be completed within the same session before the parties part ways. The person exchanging the dinars hands them to the bank employee and receives the foreign currency in return. Scholars agree on this condition. Ibn al-Mundhir stated: 'All those from whom we have preserved knowledge agree that if the parties involved in the exchange separate before completing it, the transaction is invalid.[34]' Additionally, Ibn Rushd remarked: 'Scholars have agreed that one of the conditions for currency exchange is that it must be executed immediately[35].'

2. Forward Agreement for Exchange Based on Current Rates

This occurs when the two parties agree on a specific exchange rate at the time of the contract, which will apply to the future settlement and delivery. There is no immediate exchange; instead, it is deferred to a specified future date. For instance, if an Algerian importer opens[36] a line of credit for a UK supplier to import woollen fabrics, the exchange rate between the British pound and the Algerian dinar may fluctuate from when the credit is opened until the documents are received and payment is made. To avoid the costs associated with purchasing pounds or a drop in their value, the importer may enter into a forward agreement to exchange currencies, finalising a deal to purchase the equivalent amount of the line of credit at the rate set on the day it was opened.

Thus, the agreement is based on current rates, as neither party will make any deliveries; rather, it is an agreement to purchase at a specified price on a predetermined future date. This type of transaction is known in banking terminology as a hedging operation[37].

Furthermore, this banking transaction is legally binding, as it is customary for financial institutions to honour their promises even if there is no explicit stipulation of obligation[38].

This is a view shared by many scholars in the field of Islamic banking. Ahmed Muhyi al-Din Ahmed stated: 'I want to stress that future exchange operations are binding contracts organised for dealing among various contractors, regardless of their beliefs. They are never merely promises; considering

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[33]- Al-Muwafaqat by Al-Shatibi, vol. 3, p. 173 and beyond.

[34]- 'Ijma' by Ibn Al-Mundhir, p. 133.

[35]- Bidayat al-Mujtahid by Ibn Rushd, vol. 2, p. 197.

[36]- See also: Al-Nawawi, Rawdat al-Talibin, vol. 3, p. 378. Documentary credit is a written commitment from a bank to a seller, provided at the request of a buyer, within a specified amount and set period. It is conditional upon the delivery of documents for the goods in accordance with the instructions. See: Accounting and Auditing Organisation for Islamic Financial Institutions, Sharia Standards, Bahrain, 1425 AH/2004 CE, p. 257.

[37]- See: Developing Banking Operations in Accordance with Islamic Law by Sami Hasan Hamoud, p. 318; The Stance of Sharia on Contemporary Islamic Banks by Abdullah Al-Abadi, p. 328.

[38]- See: Sharia Standards, p. 14.

them as such contradicts the philosophy behind establishing future exchange markets." Another expert in this field remarked: 'When an agreement is reached on a certain price, this price is binding and neither party can retract from it, regardless of the expected outcomes or losses that might result from adhering to it.[39]'

Therefore, it is crucial to understand that the promise in this operation is binding in practical terms when determining the ruling based on this foundation, although contemporary researchers have differed on this point.

Second: the ruling on forward agreements for currency exchange based on current rates with future delivery.

1. Divergent opinions on the issue

Scholars have differing views regarding the permissibility of forward agreements for currency exchange with future delivery. These views can be divided into two main categories:

First opinion: The first view holds that forward agreements for currency exchange with the condition of future delivery are not permissible. This view is supported by Al-Siddiq Al-Dharir, Ali Al-Salous, Ahmed Muhyi al-Din Ahmed[40] and Rafiq Yunus al-Masri[41]. This stance was also upheld in the resolution by the Islamic Fiqh Academy during its eleventh session in Manama, which stated: 'It is not permissible to engage in the deferred sale of currencies, nor to make forward agreements for their exchange, based on evidence from the Quran, Sunnah and the consensus of the community[42].' The Sharia Board of Al-Baraka Bank issued a similar fatwa[43].

Second opinion: The second view allows for forward currency exchange agreements with future delivery and is supported by Abdullah Al-Abadi[44] and Sami Hamoud[45].

2.1 Evidence for the opinions:

Evidence for the first opinion:

A. A forward agreement for currency exchange goes against the immediate exchange required by the contract, which is a condition for the validity of currency exchange. As noted previously, scholars have unanimously agreed on this condition.

B. Delaying the delivery of one or both currencies leads to riba (usury) due to deferral, which is universally prohibited. Ibn Qudamah stated: 'Riba occurs in two forms: riba al-fadl (excess) and riba al-nasi'a (deferred). All scholars agree that both forms are prohibited[46].'

C. The customary practice demands respect for this promise and the obligation to fulfil it so that both parties can have confidence that the intended purpose will be achieved. It is well known that the legal maxim states that what is customary is considered as binding as a condition[47]. Thus, the transaction would effectively turn into a mandatory deferred currency exchange contract, and the basis of the operation would be the contract itself rather than a mere promise, which is not permissible[48].

2.2 Evidence for the second opinion:

A. Forward currency exchange agreements do not fall under the prohibitions that forbid delaying the delivery of one or both items. With a forward agreement, neither item is delivered immediately; instead,

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[39]- Currency Speculations and Permissible Means to Avoid Their Economic Harms, by Ahmed Mohi Al-Din Ahmed, Islamic Fiqh Academy Magazine, No. 11, 1419 AH/1998 CE, Vol. 1, p. 456.

[40]- See: Islamic Fiqh Academy Magazine, No. 11, Vol. 1, pp. 455, 566, 575, 592.

[41]- See: The Comprehensive Guide on Usury by Rafiq Al-Masri, p. 148.

[42]- Islamic Fiqh Academy Magazine', No. 11, Vol. 1, p. 613.

[43]- See: Decisions and Recommendations of Al-Baraka Seminars on Islamic Economy by Abd Al-Sattar Abu Ghadah and Ahmad Mohi Al-Din Ahmed, p. 28.

[44]- See: The Stance of Sharia on Contemporary Islamic Banks by Al-Abadi, p. 329.

[45]- See: Developing Banking Operations by Sami Hamoud, p. 320.

[46]- Al-Mughni by Ibn Qudamah, vol. 6, p. 52.

[47]- See: Explanation of Jurisprudential Principles by Ahmed Al-Zarqa, Principle No. 42.

[48]- See: Rules for Currency Exchange in Islamic Jurisprudence and Its Contemporary Applications by Abbas Ahmed Al-Baz, p. 123; The Comprehensive Guide to Usury by Rafiq Al-Masri, p. 148.

both delivery and receipt occur simultaneously at a future date. The forward agreement merely involves an agreement to purchase at a previously specified price in the future[49].

B. It is essential to consider the benefit that this operation provides for both the client and the bank. Sami Hamoud states: 'When we consider the reality of the service that this operation provides to the importer during the forward purchase and to the exporter during the forward sale, we find that the assurance it provides to both the importer regarding the price they will pay and to the exporter regarding the amount they will receive is significant[50].'

C. They cite texts from scholars that permit forward currency exchange agreements, including:

- Al-Shafi'i: 'If two men agree on currency exchange, it is permissible for them to buy silver and then hold it with one of them until they trade it and do with it as they please.[51]'
- The statement of Ibn Hazm: 'Forward agreements in the sale of gold for gold, silver for silver, and trading of the four types of commodities are permissible, whether or not they trade afterwards, since the forward agreement is not a sale. Likewise, negotiation is permitted, whether or not they trade, since negotiation is not a sale[52].'

They cited Ibn Juzay's remarks on this issue, in which he mentioned three opinions among Maliki scholars. The first opinion is that forward agreements in currency exchange are disliked, as is commonly known. The second opinion is that they are permissible. The third opinion is that they are prohibited[53].

They used this disagreement among the scholars to inform their choice of view that aligns with the interest at hand. Sami Hamoud noted: 'In any case, given that this matter is not explicitly stated, it is possible to choose the opinion that aligns with the recognised interests in this context.[54]'

2.3 Preference:

The researcher favors the first opinion, which states that forward agreements for currency exchange with the condition of future delivery at a specified price are not permissible, due to the strength of the evidence presented and the argument that the anticipated benefit is illusory and not genuine.

As for the evidence supporting the permissibility opinion, it can be contested as follows:

A. Their claim that delivery and receipt will occur in the future, and that the agreement constitutes a purchase at a specified price, is countered by the fact that delivering both items in the future is simply a consequence of the agreement. Scholars require immediate delivery of both items at the time of the contract for currency exchange.

B. The emphasis on the benefits of this operation for both the client and the bank as a basis for permitting the condition is refuted by stating that the benefits considered legitimate by Sharia are those that do not contradict the legal texts; otherwise, such benefits would be invalid[55]. Any juristic reasoning that contradicts legal texts is deemed invalid and relies on an illusory interest. As legal texts are established to safeguard interests, any conflict between the texts and interests indicates that the interest is illusory, not real.

Evidence that the interest is illusory is that a binding forward agreement for currency exchange with delayed receipt can lead to disputes, deceit and denial. Currency exchange rates in financial markets can fluctuate significantly over short periods of time.

Their reliance on the statements of Al-Shafi'i and Ibn Hazm as evidence for permitting forward currency agreements can be refuted by pointing out that these texts clearly state that forward agreements are not legally binding. The dialogue merely indicates an intention to exchange currency. However, if the intention is to finalise the currency exchange contract, a new contract must be initiated and the delivery of both items must be completed during the contract period. Al-Shafi'i stated: '...Then they can acknowledge it with one of them until they trade it and do what they please.' Ibn Hazm stated: '...because the forward agreement is not a sale.'

49- See: Developing Banking Operations by Sami Hamoud (p. 318) and Currency Exchange Rules by Abbas Al-Baz (p. 123).
50- Developing Banking Operations by Sami Hamoud, p. 320.
51- Al-Um by Al-Shafi'i, vol. 3, p. 32.
52- Al-Muhalla by Ibn Hazm, vol. 9, p. 583.
53- See: Jurisprudential Laws by Ibn Juzi, p. 215.
54- Developing Banking Operations by Sami Hamoud, p. 320.
55- See: Standards of Interest by Al-Bouti, p. 291.

The clarifying aspect of these texts emphasizes the requirement for immediate delivery of both items at the time of the contract, without delay. The Al-Muhadhab states: "If they trade and hesitate in the session before completing the exchange, the sale is invalid because hesitation is akin to separation.[56]" The term "hesitation" implies the obligation of the contract before the exchange occurs[57].
Furthermore, Al-Muhalla states: 'Gold and silver ingots must be exchanged hand-to-hand without delay, not even for the blink of an eye.[58]'
Upon examining these texts, it becomes evident that the forward agreement referred to by the Shafi'i and Zahiri schools is non-binding until it aligns with other texts in their doctrines. Therefore, the evidence cited by supporters of the second opinion falls outside the scope of the dispute, since financial institutions customarily deem promises binding to stabilise transactions[59].
Finally, their reliance on differing opinions within the Maliki school, which waver between disapproval, prohibition and permissibility, and their selection of permissibility to align with their interests can be countered by asserting that the Malikis attribute every legal ruling to a specific situation.
For instance, if one person tells another: 'I will come to you tomorrow to exchange such and such', and they agree on the price without initiating a new contract, the Maliki position would be prohibition. However, views of dislike or permissibility depend on whether the promise of exchange constitutes a binding contract.
Malik stated: 'If he said to him, "I have dirhams," and the buyer responded, "Let us go to the market to weigh them and see their quality. If they are good, I will buy them from you for so-and-so many dirhams,' then Malik said, 'There is no good in this either; rather, let him accompany him without an appointment. If he likes something, he can take it; otherwise, he can leave it.[60]"'
Ibn Rushd remarked: 'Perhaps Ibn Al-Qasim's disapproval applies when they do not negotiate pricing, merely saying, "Come with me for exchange," while Asbagh's prohibition applies when he negotiates pricing, saying, "Come, I will exchange your gold for so much[61].'"

Subsection Two: The Accrual of Installments in Cases of Default in Installment Sales**
One restrictive condition that has become common in instalment sales is the stipulation that all instalments become due if the buyer fails to pay two or three instalments. Consequently, the buyer loses the right to defer payment and all debts become due immediately.
This condition exists because many debtors frequently delay settling their instalments on time, and it serves as a pressure mechanism to ensure that they fulfil their payment obligations within the specified time.

First: The Ruling on Stipulating the Accrual of Installments in Cases of Default
A debtor who delays payment may be either insolvent or solvent yet delaying unjustly, and each scenario has its own specific ruling.

Case One: The debtor is insolvent and justified in their delay
If the debtor is insolvent and unable to repay the debt when it becomes due, they cannot be compelled to pay the deferred instalments more quickly, nor can it be stipulated that the instalments become due if they fail to pay any of them. The obligation towards an insolvent debtor is to give them respite until they are capable of repayment, as stated in the Quran: "If the debtor is in hardship, then [let there be]

56- Al-Muhtaj by Al-Shirazi, vol. 3, p. 64.
57- See: Al-Mughni for the Needy by Al-Sharbini, Vol. 2, p. 23.
58- Al-Muhalla by Ibn Hazm, vol. 8, p. 493.
59- This is why I refrained from mentioning the differing opinions on whether the promise is binding or non-binding. In reality, it can only be binding, which is what the banks accept, and this classification is theoretical.
60- Al-Mudawwana by Malik ibn Anas, vol. 3, p. 6.
61- The Preliminaries for the Methodology by Ibn Rushd, vol. 2, p. 18; see: Muhammad ibn Abdul Rahman al-Hattab, Mahawib al-Jalil for Explaining Mukhtasar Khalil by al-Hattab, vol. 4, p. 361; Explanation of the Chosen Method to the Rules of the School by al-Manjur, p. 492.

postponement until [the time of] ease.[62]" Postponement is even more necessary for debts that are not yet due than for immediate debts, and this grace period should not be revoked due to insolvency.

Case Two: The Delaying Debtor is Solvent and Able to Pay

If the delaying debtor is solvent and able to fulfil their obligations, but has delayed payment of two or three instalments, scholars differ in their views on the permissibility of stipulating that the remaining instalments become due.

Secondly, opinions on the issue are divided among researchers, leading to two opinions:

1. First opinion: the stipulation is permissible. This viewpoint was affirmed in the resolution by the Islamic Fiqh Academy during its sixth session, which stated: 'It is permissible for the seller under deferred payment to stipulate that the instalments become due before their due dates if the debtor delays payment of some, as long as the debtor has agreed to this condition at the time of the contract[63].'
2. Second opinion: the stipulation is not permissible. Jamaluddin Atiyah[64] and Mustafa Al-Zarqa[65] support this view, which was also endorsed by the Permanent Committee for Scientific Research and Ifta in the Kingdom of Saudi Arabia[66].

Third: evidence for opinions.

1. Evidence for the first opinion:

A. The principle of contracts and conditions is that they are valid and permissible unless there is evidence to prohibit them. As there is no such evidence, this condition remains valid.

B. This condition is necessary due to frequent delays from debtors, providing an advantage for both parties involved in the contract. The creditor can receive what they are owed on time, and the debtor is encouraged to fulfil their obligations promptly to avoid the remaining instalments becoming due.

C. Some scholars have written texts that support this view:

It is stated in Bada'i al-Sana'i: 'If money is divided into instalments with or without a guarantor and it is stipulated that if the debtor does not repay each instalment on time, the entire amount becomes due, this condition is permissible as it establishes breaching the instalment as a condition for the entire debt to become due and this is valid[67].'

- In A'lam al-Muwaqqi'in, it is noted: 'If the creditor fears that the debtor will not repay each instalment on time, the solution is to stipulate that if an instalment is due and not paid, then the entire debt becomes due. If structured in this way, it is permissible, enabling the creditor to claim the debt immediately or in instalments[68].'

2. Evidence for the second opinion:

A. The stipulation that deferred instalments become due upon delay contradicts the nature of the contract, which is to maintain the deferred debt until its due date. This renders the condition invalid.

B. The parties entered into this contract based on deferment and a price increase in exchange for the delay. Stipulating that instalments become due upon delay without considering the forfeiture of the corresponding price increase constitutes unjust enrichment, as the stipulator receives the price increase without rightful compensation under this condition. This makes the condition invalid.

3. Preference:

Having considered the evidence presented alongside the various opinions, the second opinion appears to be the preferred view. This states that it is not permissible to stipulate the accrual of instalments upon the delay of two or three payments. The seller only has the right to demand payment for the instalment that has become due for the following reasons:

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[62]- Surah Al-Baqarah, verse 280.

[63]- Islamic Fiqh Academy Magazine, No. 6, Vol. 1, p. 448.

[64]- See: Islamic Banks: Between Freedom and Regulation, Assessment and Ijtihad: Theory and Practice' by Jamal al-Din Atiah, p. 108.

[65]- See: On the Legitimacy of Compelling a Delaying Debtor to Compensate the Creditor by Mustafa al-Zarqa, p. 32.

[66]- See: 'Fatwas of the Permanent Committee for Scientific Research and Ifta', Vol. 13, p. 182.

[67]- Bada'i al-Sana'i by al-Kasani, vol. 6, p. 45. See also: Hashiyat Ibn Abidin, Vol. 7, p. 54; Darur Al-Hukam: Explanation of the Code of Rules by Ali Haidar, Vol. 1, p. 85.

[68]- The Reliance of the Signatories on the Lord of the Worlds by Ibn Qayyim al-Jawziyyah, vol. 4, p. 39.

1. This condition is unfair to the client because when instalments accrue without reduction, it means the seller has collected their dues before the agreed time. The buyer has not benefited from the agreed payment grace period. Clearly, the client only accepted the price increase in consideration of the deferred payment.

Jamaluddin Atiyah states: 'If the Islamic bank is allowed to terminate its relationship with the client before the agreed time, it will have collected the price of the deferred sale without granting the buyer the agreed time for payment, even considering the grace period. This situation is undoubtedly unacceptable under the law, not to mention the principles of justice and Sharia. It is imperative that legislative and banking authorities review this situation, which is reminiscent of usury practices from the Middle Ages.[69]"

The injustice is further compounded if the debtor struggles with the initial payments and there are numerous instalments. Based on this condition, the seller could demand a total amount higher than the immediate price solely based on the instalment plan.

Mustafa Al-Zarqa remarks, 'The condition imposed by the bank that all instalments become due, with the right to demand them all at once, is debatable, and I do not find it permissible in this absolute form.' Installments in deferred prices, especially in large transactions, are fundamental to the contract of exchange, and the price increases beyond the usual cash price in exchange for the installment plan. Installments could extend to twenty over several years, and the debtor might default after the first or second installment throughout the outlined period. How can the seller claim them all at once and demand the higher price estimated under the instalment plan without actually providing the instalments? What greater injustice to the debtor could there be than this? It is akin to slaughtering them without a knife. The fact that they are delaying debtors does not permit us to oppress them; rather, we should guide them back to their rightful state.[70]"

2. Stipulating this condition undermines the instalment sale, as the client pays the price as if they had made instalment payments, despite not actually being on an instalment plan due to this condition.

3. The benefit to the seller from the immediate accrual of instalments is offset by a disadvantage to the buyer: the lack of benefit from the grace period, for which they agreed to an increased payment in exchange for that grace period. Preventing harm is prioritised over obtaining benefits, as the harm is more evident than the benefit, and the seller's benefit can be achieved by allowing them to demand payment of the instalment.

The texts of the scholars cited to support the permissibility of this condition do not pertain to instalment sales where an increase in price is considered in exchange for deferring payment. Rather, they refer to immediate debts owed by the debtor which are agreed to be structured into instalments, stipulating that all instalments become due if the instalment is not paid on time.

Evidence for this can be found in the author of Al-Makhraj's prior discussions of the issue regarding legal stratagems, where he mentioned the following: 'I said: What if a man has a debt owed to him for the price of a commodity, and the debt is immediate, but the debtor wishes to delay payment for a year, agreeing to pay a certain amount each month?" The creditor fears that the debtor will not fulfil this agreement. How can this be handled?' He replied: 'Let it be witnessed that he has delayed the immediate debt for a few months in exchange for paying a set amount each month. If he delays an instalment beyond its due date, the entire debt shall become due. I asked: Is that permissible?' He replied: 'Yes, it is permissible, as I have described.[71]'

Conclusion

This study has established the regulations for applying the legal objectives (maqasid) in contemporary jurisprudence, and has presented examples of transactions that utilise these objectives to demonstrate their permissibility. The following findings have been reached:

69- Jamal al-Din Atiah, Islamic Banks, p. 108.
70- Mustafa Al-Zarqa, On the Legitimacy of Compelling a Delaying Debtor to Compensate the Creditor, p. 32.
71- Al-Makharej fi Al-Hil by Muhammad ibn al-Hasan al-Shaybani, p. 81.

The application of legal objectives in contemporary jurisprudence plays a significant role in interpreting legal texts and resolving conflicts between interests and harms.

The application of legal objectives in contemporary jurisprudence is governed by regulations similar to those of other legal evidence, as follows:
Regulation One: The application of objectives must not contradict a legal text or consensus.
- Regulation Two: verification of the validity of the objective to be applied.
- Regulation Three: Determination of the degree and rank of the objective.
- Regulation Four: Consideration of the consequences of the objectives.
Regulation Five: Balancing benefits and harms.
Regulation Six: Holistic consideration and integration of generalities and specifics.
All thanks and praise are due to Allah, at both the beginning and the end. May peace and blessings be upon our Prophet Muhammad, his family, and all his companions.

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