

Glossary of terms

Absentes – a contract where the parties are not present at the time of agreement

Al-kharaj bi al-daman – the concept that reward should correspond to risk involved

Amanah - It refers to deposits in trust. A person can hold a property in trust for another, sometimes by express contract and sometimes by implication of a contract. Amanah entails absence of liability for loss except in breach of duty. Current Accounts are regarded as If the bank gets authority to use Current Accounts funds in his business, Amanah transforms into a loan. As every loan has to be repaid, banks are liable to repay full amount of the Current Accounts.

Key principles of Amanah

- Requires a true and honest disclosure of the cost price in all Amanah-based sales.
- Establishes liability on trustees only in cases of negligence and misconduct.

'Aqd - contract

Arbun - down payment

Asham - shares

Bay' mu'ajjal - deferred payment sale

Bay' - sale

Bay' al-dayn - the sale of debt

Bay' al-murabahah - sale of a commodity at cost price plus a known profit

Bay' al-tawliyah - sale at cost without profit or loss

Bay'al-wadiah - sale below the cost price or at a discounted price

Bayt al-mal - government treasury

Dayn - a debt or the obligation to deliver

Diminishing Musharakah - see Musharakah Mutanaqisah

Fiqh -Islamic substantive law

Fiqh al-muamalah - Islamic commercial law

Gharar - uncertainty

Gharar fahish - major uncertainty

Gharar yasir - minor uncertainty

Halal - acceptable

Hanafi - particular school of law

Hanbali - particular school of law

Haram - unacceptable or prohibited

Hasuna - pleasing, appealing or nice

Hiba - gift

Hiwalah - transfer of debt/right to claim

Hukm - a ruling in the Qur'an or the Traditions of the Prophet Muhammed.

Ibra' - can be defined as a discount or rebate. An example of Ibra' in practise might be where a bank which is owed a set amount from one of its clients and accepts less for early payment. This practice of discount or rebate avoids unjust enrichment and maintains the competitiveness of the bank.

Ijab - offer, in a contract; see also qabul

Ijarah - letting on lease. Sale of any asset in exchange of definite reward. It refers to a contract of land leased at a fixed rent payable in cash and also to a mode of financing adopted by Islamic banks. It is an arrangement under which the Islamic banks lease equipments, buildings or other facilities to a client, against an agreed rental.

Ijarah-wal-Iqtina' - A mode of financing, by way of Hire-purchase, adopted by Islamic banks. It is a contract under which the Islamic bank finances equipment, building or other facilities for the client against an agreed rental together with a unilateral undertaking by the bank or the client that at the end of the lease period, the ownership in the asset would be transferred to the lessee. The undertaking or the promise does not become an integral part of the lease contract to make it conditional. The rental as well as the purchase price are fixed in such a manner that the bank gets back its principal sum along with some profit, whichdetermined in advance.

Ijtihad - refers to an endeavor of a qualified jurist to derive or formulate a rule of law to determine the true ruling of the divine law in a matter on which the revelation is not explicit or certain, on the basis of Nass or evidence found in the Holy Qur'an and the Sunnah. Express injunctions have no room for Ijtihad. Implied injunctions can be interpreted in different ways by way of inference from the accepted principles of the Shariah

'Illah - is the attribute of an event that entails a particular Divine ruling in all cases possessing that attribute. 'Illah is the basis for applying analogy for determining permissibility or otherwise of any act or transaction

Ijma' - consensus of all or majority of the leading qualified jurists on a certain Shariah matter in a certain age

'Inah - Double sale by which the borrower and the lender sell and then resell an object between them, once for cash and once for a higher price on credit, with the net result of a loan with interest.

'Inan (A type of Shrikah) - is a form of partnership in which each partner contributes capital and has a right to work for the business, not necessarily equally

Istihsan - is a doctrine of Islamic law that allows exception to strict legal reasoning, or guiding choice among possible legal outcomes, when considerations of human welfare so demand

Israf - refers to immoderateness, exaggeration and waste and covers spending on lawful objects but exceeding moderation in quantity or quality; spending on superfluous objects while necessities are unmet; spending on objects which are incompatible with the economic standard of the majority of the population. *See also Tabzir*

Istisna'a - it is a contractual agreement for manufacturing goods and commodities, allowing cash payment in advance and future delivery or a future payment and future delivery. A manufacturer or builder agrees to produce or build a well described good or building at a given price on a given date in the future. Price can be paid in installments, step by step as agreed between the parties. Istisna'a can be used for providing the facility of financing the manufacture or construction of houses, plants, projects, and building of bridges, roads and highways.

Jahl or Jahala - ignorance, lack of knowledge; indefiniteness in a contract, sometime leading to Gharar.

Juaalah or Ji'alah - literally, Joalah constitutes wages, pay, stipend or reward. Legally, it is a contract for performing a given task against a prescribed fee in a given period. A similar contract is 'Ujah' in which any work is done against stipulated wage or fee

Kali bil-Kali - the term Kali refers to something delayed; appears in a maxim forbidding the sale of al-Kali bil-Kali i.e. the exchange of a delayed counter value for another delayed counter value

Al- Kafalah (Suretyship) - literally, Kafalah means responsibility, amenability or suretyship, Legally in Kafalah a third party become surety for the payment of debt. It is a pledge given to a creditor that the debtor will pay the debt, fine etc. Suretyship in Islamic law is the creation of an additional liability with regard to the claim, not to the debt or the assumption only of a liability and not of the debt

Kharaj bi-al-Daman - gain accompanies liability for loss; a Hadith forming a legal maxim and a basic principle

Khiyar - option or a power to annul or cancel a contract

Khiyar al-Majlis - option of the contracting session; the power to annul a contract possessed by both contracting parties as long as they do not separate

Khiyar al-Shart - a right, stipulated by one or both of the parties to a contract, to cancel the contract for any reason for a fixed period of time

Mal-e-Mutaqawam - things the use of which is lawful under the Shariah; or wealth that has a commercial value. Legal tenders of modern age that carry monetary value are included in Mal-e-Mutaqawam. It is possible that certain wealth has no commercial value for Muslims (non Mutaqawam) but is valuable for non-Muslims. Examples are wine and pork

Maisir - ancient Arabian game of chance played with arrows without heads and feathering, for stakes of slaughtered and quartered camels. It came to be identified with all types of hazard and gambling

Mithli (Fungible goods) - goods that can be returned in kind, i.e. gold for gold, silver for silver, US \$ for US \$, wheat for wheat, etc.

Mubah - object that is lawful (i.e. something which is permissible to use or trade in)

Mudarabah - form of partnership where one party provides the funds while the other provides expertise and management. The latter is referred to as the Mudarib. Any profits accrued are shared between the two parties on a pre-agreed basis, while loss is borne by the provider(s) of the capital

Murabaha - Literally it means a sale on mutually agreed profit. Technically, it is a contract of sale in which the seller declares his cost and the profit. This has been adopted by Islamic banks as a mode of financing. As a financing technique, it can involve a request by the client to the bank to purchase a certain item for him. The bank does that for a definite profit over the cost which is stipulated in advance.

Musawamah - Musawamah is a general kind of sale in which price of the commodity to be traded is bargained between seller and the purchaser without any reference to the price paid or cost incurred by the former.

Musharakah - Musharakah means a relationship established under a contract by the mutual consent of the parties for sharing of profits and losses in the joint business. It is an agreement under which the Islamic bank provides funds which are mixed with the funds of the business enterprise and others. All providers of capital are entitled to participate in management, but not necessarily required to do so. The profit is distributed among the partners in pre-agreed ratios, while the loss is borne by every partner strictly in proportion to respective capital contributions

Qabul - Acceptance, in a contract; *see also Ijab*

Qard (Loan of fungible objects) - literal meaning of Qard is 'to cut'. It is so called because the property is really cut off when it is given to the borrower. Legally, Qard means to give anything having value in the ownership of the other by way of virtue so that the latter could avail of the same for his benefit with the condition that same or similar amount of that thing would be paid back on demand or at the settled time. It is that loan which a person gives to another as a help, charity or advance for a certain time. The repayment of loan is obligatory. The Holy Prophet is reported to have said ".....Every loan must be paid.....". But if a debtor is in difficulty, the creditor is expected to extend time or even to voluntarily remit the whole or a part of the principal. Qard is, in fact, a particular kind of Salaf. Loans under Islamic law can be classified into Salaf and Qard, the former being loan for fixed time and the latter payable on demand

Qimar - qimar means gambling. Technically, it is an arrangement in which possession of a property is contingent upon the happening of an uncertain event. By implication it applies to a situation in which there is a loss for one party and a gain for the other without specifying which party will lose and which will gain

Qiyas - literally it means measure, example, comparison or analogy. Technically, it means a derivation of the law on the analogy of an existing law if the basis ('illah) of the two is the same. It is one of the sources of Islamic law.

Riba - an excess or increase. Technically, it means an increase over principal in a loan transaction or in exchange for a commodity accrued to the owner (lender) without giving an equivalent counter-value or recompense ('iwad) in return to the other party; every increase which is without an 'iwad or equal counter-value

Riba Al-Fadl - Riba Al-Fadl (excess) is the quality premium in exchange of low quality with better quality goods e.g. dates for dates, wheat for wheat, etc. – an excess in the exchange of Ribawi goods within a single genus. The Concept of Riba Al-Fadl refers to sale transactions while Riba Al-Nasiah refers to loan transactions

Riba Al-Nasiah - Riba Al-Nasiah or riba of delay is due to exchange not being immediate with or without excess in one of the counter values. It is an increment on principal of a loan or debt payable. It refers to the practice of lending money for any length of time on the understanding that the borrower would return to the lender at the end of the period the amount originally lent together with an increase on it, in consideration of the lender having granted him time to pay. Interest, in all modern banking transactions, falls under purview of Riba Al-Nasiah. As money in present banking system is exchanged for money with excess and delay, it falls, under the definition of riba. A general accord reached among scholars about its prohibition

Ribawi - goods subject to Fiqh rules on Riba in sales, variously defined by the schools of Islamic Law: items sold by weight and by measure, foods, etc

Al- Rahn - pledge, Collateral; legally, Rahn means to pledge or lodge a real or corporeal property of material value, in accordance with the law, as security, for a debt or pecuniary obligation so as to make it possible for the creditor to recover the debt or some portion of the goods or property. In the pre-Islamic contracts, Rahn implied a type of earnest money which was lodged as a guarantee and material evidence or proof of a contract, especially when there was no scribe available to put it into writing. The institution of earnest money was not accepted in Islamic law and the common Islamic doctrine recognized Rahn only as a security for the payment of a debt

Salaf or Loan / Debt - the word Salaf literally means a loan which draws forth no profit for the creditor. In wider sense, it includes loans for specified periods, i.e. short, intermediate and long-term loans. Salaf is another name of Salam as well wherein price of the commodity is paid in advance while the commodity or the counter value is supplied in future; thus the contract creates a liability for the seller. Amount given as Salaf cannot be called back, unlike Qard, before it is due. (see Qard)

Al-Sarf - basically, in pre-Islamic times it was exchange of gold for gold, silver for silver and gold for silver or vice versa. In Islamic law such exchange is regarded as 'sale of price for price' (Bai al Thaman bil Thaman), and each price is consideration of the other. It also means sale of monetary value for monetary value – currency exchange.

Shariah - the term Shariah refers to divine guidance as given by the Holy Qur'an and the Sunnah of the Prophet Muhammad (PBUH) and embodies all aspects of the Islamic faith, including beliefs and practice

Shirkah - contract between two or more persons who launch a business or financial enterprise to make profits. In the conventional books of Fiqh, the partnership business has been discussed under the option of Shirkah that, broadly, may include both Musharakah and Mudarabah

Sunnah - custom, habit or way of life. Technically, it refers to the utterances of the Prophet Muhammad (PBUH) other than the Holy Quran known as Hadith, or his personal acts, or sayings of others, tacitly approved by the Prophet

Tabarru' - is a donation/gift the purpose of which is not commercial but is seeking the pleasure of Allah. Any benefit that is given by a person to other without getting anything in exchange is called Tabarru'. Gracious repayment of debt, absolutely at lender's own discretion and without any prior condition or inducement for reward, is also covered under Tabarru'. Repaying a loan in excess of principal and without a pre-condition is commendable and compatible with the Sunnah of the Holy Prophet (peace be upon him). But, it is matter of individual discretion and cannot be adopted as a system because this would mean that loan would necessarily yield a profit. If such reward takes the form of a system, it would be considered Riba

Tabzir - Spending wastefully on objects which have been explicitly prohibited by the Shariah irrespective of the quantum of expenditure. See also Israf

Tijarah - private commercial transactions

Ujrah - fee

Ummah – Islamic nation

Umum balwa - common plight and difficult to avoid

Urf - customary practice

Urbun - is essentially a down payment made by a buyer to a seller after both parties have entered into a valid contract. The down payment represents the commitment to purchase the goods. If the buyer is able or decides to pay the remaining outstanding payment during a prescribed period, the amount paid as down payment will be counted as part of the purchase price. Otherwise, the down payment will be forfeited by the seller. This is the original version of 'Urbun in Islamic commercial law. This feature is often used to mirror the behaviour of conventional options by providing an opportunity to the buyer (the person making the down payment) to benefit from the market up-side (call option) of the underlying asset and by limiting the potential loss to the amount paid under the down-payment scheme.

Key principles of Urban

- Involves the payment of a down payment to secure an option or right to purchase something in the future.
- Mimics the economic benefits of purchasing conventional options. If the option to complete the purchase is not taken up the down payment is forfeited.

Usufruct - the right to use

Usul al-fiqh - Islamic legal theory providing principles and guidelines on interpretation

Wa'd - is a feature attached to a contract and is a unilateral promise made by one party to another, binding on the party that makes the promise. In financing transactions this feature provides assurance that the transaction will be executed as per the specifications of the contract. For example, an importer who has foreign exchange transaction exposure in terms of payment of imports in foreign currency upon delivery of goods might hedge the risk of appreciation of foreign currency by undertaking a promise to buy the foreign currency in the future that matches the real exposure to currency risk of import transaction upon delivery

Key principles of Wa'd

- Involves a unilateral promise made by one party to another
- Binds the promisor to fulfil some obligation in the future
- Ensures that the contract is fulfilled as set out in the terms

Wadiah - safe custody

Wadiah yad dhamanah - guaranteed safe-custody deposit contracts

Wakalah - is a contract between an agent and principal. This contract enables the agent to render services and be paid a fee (Ujrah). For example, in a case where the importer applies for a letter of credit based on Wakalah, the importer will authorise the bank to issue the letter of credit on his behalf to the exporter's bank. The issuing bank will act as the agent to process the issuance of the letter of credit and for this will impose a fee on the importer for the services rendered.

Key principles of Wakalah

- Involves an agency contract between an agent and principal
- Used as a facility to enable transactions to take place
- The agent earns a fee (Ujrah) for his services.

Wakil - agent

Waqf - permanent endowment

Wasiyyah - will contract

Zahiris - literalists

Zakat - is a form of religious levy on the wealth of Muslims. It is based on wealth that exceeds the specified quantum for a defined period (where relevant) and is meant for the poor and needy as well as other specified beneficiaries mentioned in the Quran. It is the third pillar of Islam and is made obligatory for Muslims who have the financial means to discharge such obligations. Methods of Zakat computation are prescribed to facilitate determination of Zakatable wealth as well as the prescribed rate. In the case of investment or deposit funds, there is no specific date set for the payment of zakat, but it should be paid on all accumulated wealth for the period twelve lunar months. Zakat is not payable on the value of the individual's home, furniture, transport or 'tools of trade', nor is it paid on personal jewellery

Key principles of Zakat

- Religious levy on wealth of Muslims who possess a certain amount of specific assets.
- Payable on all accumulated wealth held for the period of 12 lunar months.
- Not payable on specified items that are personal in character.