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TABLE OF CONTENTS

LESSON 1 – ISLAMIC ECONOMIC SYSTEM.....	1
INTRODUCTION	1
NATURE OF SHARIA’H RULING	1
SOURCES OF SHARIA’H	1
INTRODUCTION TO ISLAMIC ECONOMICS	3
DISTRIBUTION OF WEALTH – AN ISLAMIC PERCPECTIVE.....	4
IMPORTANCE OF ECONOMIC GOALS	4
NATURE OF WEALTH AND PROPERTY IN ISLAM	5
 LESSON 2 – FACTORS OF PRODUCTION IS ISLAM.....	8
CAPITALISTIC VIEW	8
SOCIALISTIC VIEW	9
ISLAMIC VIEW	9
SOCIALISM AND ISLAM	10
CAPITALISM AND ISLAM	10
TYPES OF CAPITAL INVESTMENT.....	11
 LESSON 3 – INTRODUCTION, HISTORY AND E VOLUTION	14
ISLAMIC BANKING	14
HISTORY OF ISLAMIC BANKING.....	14
EVOLUTION OF ISLAMIC BANKING IN PAKISTAN	15
 LESSON 4 – RIBA, DEFINITION, PROHIBITION AND TYPES.....	17
PROHIBITION IN QURAN.....	17
PROHIBITION IN HADITH.....	19
CLASSIFICATION OF RIBA	19
LAWS OF RIBA AL FADL	22
 LESSON 5 –ISLAMIC CONTRACTS	24
UNILATERAL PROMISE	24
BILATERAL PROMISE	25
CONTRACT AND TYPES.....	25
ESSENTIAL OF CONTRACT.....	26
OTHER ISSUES IN CONTRACT	27
 LESSON 6 – SALE AND ITS TYPES.....	29
VALID SALE AND ESSENTIALS	29
BAATIL, FAASID AND MAKROOH SALE	32
OTHER TYPES OF SALE	32
PROHIBITED SALE.....	33
OPTIONS TO SALE(KHIYARS)	34
 LESSON 7 – BANKING FRAMEWORK	35
UNDERSTANDING THE DIFFERENCE	35
PRODUCT WISE COMPARISON (ISLAMIC VS CONVENTIONAL)	37
NEW CHALLENGES FOR THE INDUSTRY	40

LESSON 8 – LIABILITY SIDE ON ISLAMIC BANK.....	41
DEPOSIT SIDE OF ISLAMIC BANKS	41
MUDARABAH.....	41
TYPES OF MUDARABAH	42
INVESTEMENT IN MUDARABAH	42
CONDITION FOR PROFIT SHARING, EXPENSES IN MUDARABAH.....	43
ROLE OF ISLAMIC BANK IN MUDARABAH	44
MANAGEMENT OF DEPOSIT POOL	44
PROFIT CALCULATION AND DISTRIBUTION	46
ASSIGNING OF WEIGHTAGES	47
PROFIT SHARING MECHANISM	47

ISLAMIC ECONOMIC SYSTEM**Lesson - 1****Introduction**

The Islamic Economic system is defined as a system which is governed in conformity with the rules of Sharia'h. Sharia'h can be explained as a "Way to be followed" and can be explained as a set of divine commands and laws that controls every aspect of human beings in their individual and collective lives. Individual and collective life aspects can be divided into five parts. Thus, Sharia'h provides a pathway to be followed in all these five classes.

The five categories are:

- 1) Beliefs (Aqaid)
- 2) Acts of Worship (Ibadaat)
- 3) Dealing with others (Muamlaat)
- 4) Manners (Ikhlaqiat)
- 5) Economics (Maishat)

The nature of Sharia'h rulings are as follows

Sharia'h rules can be divided into Dos (orders to undertake any act) and Don'ts (prohibition from some acts), which can further be divided into the Ibadaat (matters of worship) that are considered as rights of Allah (SWT) and Muamlaat (the matters for disciplining human life) that constitute the rights of human beings. Ibadaat (worship) govern the relationship between man and Allah the general principle in Ibadaat is that "nothing is permitted unless explicitly permitted by Sharia'h, the acts have to be accomplished strictly according to the Sharia'h principles, the latter matters that pertain to socio-economic rights and obligations are governed by the rule of "General Permissibility", all acts are permitted unless clearly prohibited by Sharia'h. it is important to note that, Allah may forgive us on any lapse in respect of Ibadaat, while lapses in respect of the Muamlaat would have to be forgiven only by the aggrieved person.

- 1) Halaal: All those actions that are allowed and declared permitted by Sharia'h.
- 2) Haraam: All those actions that are forbidden and declared unlawful by Shariah and their impressibility are derived from either the Holy Quran or Hadiths or Ijma. Sunnah e Mutawaatirah as the strongest narrations of the Holy Prophet in terms of their narrators, i.e. the narrators is in such a large number that it is impossible for all of them to have agreed on a false issue.
- 3) Faraiz: All those actions that are declared mandatory by either Quran or Sunnah.
- 5) Sunnah: All those actions that are recommended to be performed by Muslims, based upon the association of those actions with Holy Prophet (PBUH).

Sources of Sharia'h:

Rule and regulation of Islamic Sharia'h can be driven from following sources.

- 1) Quran
- 2) Hadiths
- 3) Ijma

4) Qiyas

5) Ijtihad

Quran:

Quran is the word of Allah Ta'ala revealed over Prophet Muhammad (PBUH). Holy Quran is the first and main source of Sharia'h for Muslims. The commands mentioned in the Holy Quran are obligatory to follow and anyone who denies commands of the Holy Quran is considered to be a non-Muslim. Most of the ruling mentioned in Holy Quran is rigid in nature such as for offering Salah just order are mentioned in Quran but information about method and other detailed information about offering Salah may be obtained from other sources of Sharia'h such as Sunnah.

وَاطِيعُوا اللَّهَ وَرَسُولَهُ إِن كُنْتُمْ مُؤْمِنِينَ ﴿١﴾ (سورة الانفال آية ١)

“And obey Allah and His Messenger, if you are believers.” (8:1)

Sunnah:

Sunnah can be defined as the sayings of and the actions done and/or ratified by the holy Prophet (PBUH), is an equally significant source of information in Islamic law. Sunnah provides detailed information about the code of conduct for every spheres of life and is also considered as Divine Revelation. The significance of obeying Sunnah can be judged from the following verse of Holy Quran,

“Indeed you have in the Messenger of Allah an excellent example for the one who hopes in Allah and looks to the Last Day” (33: 21). All Muslims consider obligatory to observe to the order of the holy Prophet (PBUH), it is necessary for being a Muslim. The details about Sunnah are preserved in the form of Ahadiths. On the basis of clear injunctions of Holy Quran, Sunnah can thus be regarded as the second source of Islamic Shariah after Quran e.g. Rules for Riba al Fadl has been extracted from Sunnah.

Ijma:

The consensus of scholar of Ummah on a particular issue is termed as Ijma. After Sunnah it is considered as most authoritative source of Islamic Sharia'h since it involves the unanimous opinion of the scholars of a particular era with the interpretation of Holy Quran and Hadiths on a particular issue. The status of Ijma as an authoritative source of Shariah has also been established from the following saying of Holy Prophet (PBUH).

"My Ummah shall never be combined on an error."

Qiyas:

Qiyas means to apply a familiar rule of Sharia'h specifically mentioned in the Holy Quran and Sunnah, to a similar thing or situation by way of analogy. Qiyas, or finding solutions through analogy in the light of the text of the Qur'an and Sunnah, are the secondary sources for derivation of rules and regulation for any upcoming events or issues.

Meaning of Qiyas can further be explained with example; one law derived from Qiyas is the ruling on drinks like beer, whisky or brandy. Neither the Qur'aan, nor the Hadith, names these. However, Quran mention that khamr (date wine) is Haraam, on this ground, that all the aforementioned drinks cause intoxication, all sorts of alcoholic beverages are declared Haraam.

Ijtihad:

Ijtihad literary means “Ultimate Effort” and precisely it means to apply utmost effort to ascertain the ruling of Sharia’h about a particular situation. The practice of Ijtihad has been duly endorsed by the Prophet Muhammad in following narration:

“When the Holy Prophet intended to send his companion Mu’adh, to Yemen as a ruler and as a judge, He asked him: How will you adjudicate a matter when it will come to you?”

He said, "I shall decide on the basis of Allah's Book (the Holy Quran)."

The Holy Prophet asked, "If you do not find it in Allah's Book (what will you do)?"

He said: "then, on the basis of the Sunnah of Allah's Messenger".

"If you do not find it even in the Sunnah of Allah's Messenger (what will you do)?" The Holy Prophet asked.

He replied: "I shall make Ijtihad on the basis of my understanding and will not spare any effort (to reach the truth)."

On this, the Holy Prophet tapped the chest of Hazrat Mu'adh with happiness and said, "Praise be to Allah, who has let the messenger of the messenger of Allah to do what pleases Allah's messenger". (Abu Dawood, Hadith No. 3592).

Now days the implementation of Ijtihad is misunderstood most of Shaira’h scholars. Ijtihad cannot be done on those issues where there are clear injunctions of Holy Quran, Sunnah and Ijma. All those new issues and situations where clear commands of Sharia’h are not prescribed or some changes required on particular issues by the scholar, these can only be done by Ijtihad. Ijtihad is not just one’s own opinion based on rational judgment but it is indeed the result of un-biased and ultimate effort of Mujtahid on the basis of principles laid down by Shariah and it must not contradict with any clear defined rule of Islamic Shariah. Just because of complex nature of Ijtihad, the most senior, learned and pious scholar of sharia’h are eligible for Mujtahid and perform Ijtihad. A Mujtahid must have in-depth knowledge and understanding of Quran, Tafasir, Arabic, Background of the revelation of verses of Quran, Ahadiths, Usool e Fiqh etc.

Introduction of Islamic Economics:

In non-Islamic societies of the world the interest based economic system has been flourished, is one of the form of Capitalism. In such economic system there are usually two parties to the financial transaction, one is the investor who provides the funds on interest and other is the person who manages the funds to run business. The person who invests the funds has no concern over the profitability of business, whether business turned into profit or loss, he will get interest in both outcomes at fixed or variable rate on his invested capital. Islam forbids this kind of business and the Holy Prophet (PBUH) enforced the ruling, not in the form of some moral teaching, but as the law of the land in Islam. It is very important to understand the definition and forbiddance of Riba and the commands relating to its unlawfulness in all respects. It is important to note that on one hand, Quran and Sunnah have strictly warned against Riba, on the other it has become an integral part of today’s economy. The desired liberation from Riba seems to be infested with difficulties as the problem is very complex, important steps and has to be taken up in all possible aspects. First of all, we have to deliberate into the correct understanding of the Quranic verses on Riba and what has been said in authentic Ahadith and then determine what Riba is in the terminology of the Quran and Sunnah, which transactions it covers, what is the fundamental wisdom behind its prohibition and what sort of wrong it brings to the society. First we will look where interest stands in economic philosophy of Islam.

The economic philosophy of Islam and Interest:

There is no concept of Riba in the economic philosophy of Islam, because according to Islam, Riba is that curse in society, which causes wealth to mount up among handful of people and it results unavoidably in creating monopolies, inequality and oppression, opening doors for selfishness and greed.

In world of trade and business dishonesty and fraud flourish in interest based economy. However Islam does not allow interest based economy rather it primarily encourages highest moral ethics such as universal brotherhood, collective welfare, prosperity, social fairness and justice. Due to this reason, Islam renders Riba as absolutely haram and strictly prohibits all types of interest based transactions. The prohibition of Riba in the light of economic philosophy of Islam can be explained vis-a-vis distribution of wealth in a society.

Distribution of wealth:

In economic system of human beings the most important and controversial question is regarding distribution of wealth among factor of production. Distribution of wealth has given birth to global revolutions in today's world and has affected every field of human activity from international politics down to the private life of the individuals. For many centuries now, the question of distribution of wealth lead different nation not only in fervent debates, but also in warfare. The fact, however, remains that whatever has been said on the subject without seeking guidance from Divine Revelation and relying just on human reason has had the only and unavoidable result of making the confusion worse confounded.

Distribution of wealth – An Islamic perspective:

Rulings regarding distribution of wealth are extracted from the Holy Qur'an, the Sunnah and the writings of the Sharia'h research scholars. But before explaining the point, it is very important to clarify certain basic principles which distinguish the Islamic point of view about economics from the non-Islamic point of view.

1. The importance of the economic goals:

No doubt, Islam is opposes monasticism, and views the economic activities of man quite lawful, meritorious, and sometimes even necessary and obligatory. Islam acknowledges the economic progress of man, and also accounts for lawful and honest livelihood an obligation for every Muslim. Apart from all this, it is not justifiable to say that Islam does not consider "economic activity" to be the basic purpose of man, nor does it consider the economic progress as end purpose of life.

There is confusion between two facts in Islamic economics and many misinterpretations prevail in current scenario i.e. economic progress is considered as ultimate goal of life and further considering it as a necessity in order to have a successful life through lawful means. Even human logic can understand to show that an activity being lawful, or meritorious or necessary is different from it being the ultimate goal of human life and the center of thought and action. It is therefore, from very beginning it is deemed necessary to make this distinction as clear as possible. In fact the intense, basic and far-reaching difference between Islamic economics and materialistic economics can be summarized as:

According to materialistic economics:

"Livelihood is the fundamental problem of man and economic developments are the ultimate end of human life."

While we find in the Holy Quran, the disapproval of monasticism and the order to:

وَابْتَغُوا مِنْ فَضْلِ اللَّهِ (سورة الجمعة آيت ١٠)

"Seek the grace of Allah."(62:10)

While according to Islamic economics:

"Livelihood is necessary and indispensable, but cannot be the ultimate purpose of human life."

At the same time, we also find in the Quran has forbidden from temptations of worldly life. All these worldly things as a whole have been labeled as "Ad-Dunya" ("the mean") – a term which, in its literal sense does not have a pleasant implication.

Apparently, one might feel that the these two commands are contradictory, but the fact is that according to the Quran, all the means of livelihood are no more than just stages of man's journey, his final destination lies beyond them. A man can achieve this ultimate goal through rightful means of earnings livelihood and with good intention is this world.

The attainment of these two goals is the real problem and fundamental purpose of a man's life. Dealing with the worldly life is fundamental headway in attaining these two goals. So, all those things too which are essential for his worldly life, become necessary for man. With above mentioned discussion one can easily understand that the means of livelihood is a path leading towards the final and ultimate destination, but as soon as man gets lost in the networks of this pathway and allows himself to forget his real destination, the very same means of livelihood turn into a "temptation" or into a "trial":

وَأَعْلَمُوا أَنَّمَا أَمْوَالُكُمْ وَأَوْلَادُكُمْ فِتْنَةٌ (سورة الانفال آية ٢٨)

"And be aware that your possessions and your children are but a trial." (8:28).

The Holy Quran has articulated this basic truth very precisely in a brief verse:

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ (سورة القصص آية ٤٤)

"And seek the (betterment of the) Ultimate Abode with what Allah has given to you." (28:77)

This principle has been stated in several other verses too. This attitude of the Holy Quran towards "the economic activity" of man and its two aspects would be very helpful in solving problems of man in Islamic economics.

2. Nature of wealth and property in Islam:

The concept of 'wealth' in Islam is another fundamental principle for solving the problem of distribution of wealth. According to the illustration of the Holy Quran, 'wealth' in all its possible forms is a thing created by Allah, and is, in principle His "property". Allah grant right of His property to use, men are answerable to Him over His property. The Holy Quran explicitly says:

وَأَتَوْهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ (سورة النور آية ٣٣)

"Give to them from the property of Allah which He has bestowed upon you." (24:33).

According to the Holy Quran, all a man can do is devote his labor into the process of production, is the main reason for this philosophy. But Allah alone, and no one else, can cause this exertion to be productive and actually fruitful. Man can do no more than sow the seed in the soil, but to bring out a seedling from the seed and make the seedling grow into a tree is the work of someone other than man. The Holy Quran says:

أَفَرَأَيْتُمْ مَا تَحْرُثُونَ ﴿٦٣﴾ أَأَنْتُمْ تَرْزُقُونَهُ أَمْ نَحْنُ الزَّارِعُونَ ﴿٦٤﴾ (سورة الواقعة آية ٦٣-٦٤)

"Well, tell Me about that (seed) which you sow:[63] Is it you who grow it, or are We the One who grows?[64]" (56:63-64)

In another verse:

أَوَلَمْ يَرَوْا أَنَّا خَلَقْنَاهُمْ مِمَّا عَمِلَتْ أَيْدِينَا أَنْعَامًا فَهُمْ لَهَا مِلْكُونَ ﴿٣٦﴾ (سورة يسين آية ٤١)

"Did they not see that We have created for them cattle, among things made (directly) by Our hands, and then they become their owners?" (36:71)

Above mentioned verse throw the ample light on fundamental principle that 'wealth' in every form is the 'property' of Allah, and it is He who has conferred upon man the right to exploit it. So Allah has the right to demand that a man who is granted the right to use His property to exploit it according to the instructions of Allah.

Thus, man has the "right of property" over the things he exploits, but this right is not absolute or arbitrary or boundless, certain limitations and restrictions are rooted upon these rights, which have been imposed by the real Owner of the 'wealth'. We must spend it where Allah has ordered it to be spent, and refrain from spending it where Allah has forbidden. This point has been explained more clearly in the following verse:

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا وَأَحْسِنَ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ وَلَا تَبْغِ الْفُسَادَ فِي الْأَرْضِ ۚ إِنَّ اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ ﴿٢٨﴾ (سورة القصص آية ٤٤)

"And seek the (betterment of the) Ultimate Abode with what Allah has given to you, and do not neglect your share from this world, and do good as Allah did good to you, and do not seek to make mischief in the land." (28:77)

This verse fully explains the Islamic point of view on the question of property. It places the following guidelines before us:

1. Allah has given all the wealth what a man possess.
2. Man has to use it in such a way that his ultimate purpose should be to seek the bounties and blessings of Allah in this world and hereafter.
3. Use of wealth by man must be necessarily being subject to commandment of Allah, since Allah has bestowed wealth to men.

Two divine commandments have been formed:

a) Allah may command man to spend a specified production of "Wealth" to another man. This Commandment must be obeyed, because Allah has done good to you, so He may command you to do good to others – "do good as Allah has done good to you."

b) Allah may forbid you to use the "wealth" in any of the way where He wants. Because the primary right belongs to Allah, He cannot allow you to use "wealth" in a way which is likely to produce mutual harms or spread chaos in this world.

That's how Islamic economics differentiates the view of property and wealth from capitalistic and socialist viewpoints. The rational background of capitalistic and socialistic is materialistic and it gives man unconditional and arbitrary power over property they held and all allow them to exploit these resources as

they wish. Islam has adopted an attitude of disapproval of these theories of property, can be revealed in Holy Quran, in quoting the words of the nation of Hazrat Shu'aib (A.S). They used to say:

أَصْلُوْتُكَ تَأْمُرُكَ أَنْ تَتْرِكَ مَا يَعْبُدُ آبَاؤُنَا أَوْ أَنْ نَفْعَلَ فِي أَمْوَالِنَا مَا نَشَاءُ (سورة الهوديه آيه ٨٧)

"Does your Salah (prayer) command you that we should forsake what our fathers used to worship or that we should not deal with our wealth as we please?" (11:87)

These people used to consider their property as really theirs or "Our property", and hence the claim of "doing what we like" was the necessary conclusion of their position. But the Holy Quran has, in the chapter "Light" substituted the expression "Our possessions" for the term "the property of Allah", and has thus struck a blow at the very root of the Capitalistic way of thinking. And at the same time, by adding the qualification "what Allah has bestowed upon you", it has cut the roots of Socialism as well, which starts by denying man's right to private property. Similarly,

"Thus they acquired the right property over them."

- A verse in the Chapter "Seen", explicitly affirms the right to private property as a gift from Allah.

FACTORS OF PRODUCTION IN ISLAM

Lesson – 2

Conventional economic theory practices particular classification of factors of production. The classification is arbitrary and has no scientific purity attached to it as such. Now the attempts are being made to review and reformulate the theories of production and distribution in Islamic framework, it is high time to review the nature of factors of production. It is the need of the hour to have our own Islamic directions to develop the theories of production and distribution of wealth

In this chapter a new classification of factors of production which is not only derived from the Islamic concepts but may be considered more rational even for the conventional theoretical framework. A brief analysis of the factor of production in non-Islamic and Islamic framework is carried out in this chapter.

In order to get complete understating on factor of production in Islamic view, we need to compare all factor of production in their associated economic systems including socialism and capitalism.

The Capitalist View

Capitalistic economic system can be defined as an economic and political system in which a country's trade and industry are controlled by private owners for profit, rather than by the state. In this system private property rights provide individuals with the freedom to produce goods and services they can sell in the market.

Before we go further in exploring factor of production in Islamic economy we must have developed and understanding on capitalistic economic view. Distribution of wealth on capitalistic economy can be better understood by looking on the following statement.

“Wealth should be distributed only among those who have taken part in producing it, and who are described in the terminology of economics as the factors of production.”

There are four factors that are considered to be useful in any production process.

1. Capital:

Which has been defined as "the produced means of production" - In other words, capital includes commodity which has already gone through one process of human production, and is again being used as a means of another process of production. Sometimes semi-finished goods are further used for process of production; for example in textile industry finished goods of one company is used as raw material in other company (e.g. thread manufactured in one concern is further used in process of production of cloth).

Examples of capital are Money, Machinery, material, semi-finished goods.

2. Labor:

It is defined as, any exertion on the part of man.

3. Land:

Land can be defined as the “natural resources”. It refers to those things which are used in process of production without having previously been through any process of production. According to the definition of land it will include land and other natural resources like mines etc.

4. Entrepreneur or Organization:

Entrepreneur is the fourth factor of production under capitalistic view because it brings the other three factors together, exploits them in the process of production and bears the risk of profit and loss in production.

It is considered that wealth is produced by the combination of all four factors, so only these factors have direct right over the wealth because they directly took part in actual process of production and in generating wealth. Wealth generated by process of production is allocated between these four factors in following forms; one share is given to Capital in the form of interest, the second share to Labor in the form of wages, the third share to Land in the form of rent (or revenue), and the fourth share (or the remainder) is kept for the Entrepreneur in the form of profit.

The Socialist View

Socialistic economy can be defined as a political and economic system which advocates that the means of production, distribution, and exchange should be owned or regulated by the state as a whole. This system does not allow private ownership over wealth or resources rather state owns all resources of a country.

The major difference in socialist and capitalist view is that Socialism stresses equality rather than achievement. Under socialist economy the citizens are fully dependent on the state for everything like food, health and accommodation.

Capital and land instead of being private property, these belong to the state and considered as collective property in Socialist economy. So under the philosophy of this system no question arises for distribution of wealth in term of interest and rent on Capital and land respectively.

As far as the entrepreneur is concerned, under socialist economy entrepreneurship is also done by the state itself, so, payment of profit is also out of question here. Under socialist economy the state owns everything including land, capital entrepreneurship, there is only one factor left in this philosophy i.e. labor. Labor alone is considered to have a right to wealth under the Socialist system, which it gets in the shape of "Wages".

It is pertinent to mention here that although actual practice in socialist countries is quite different from the basic philosophy and theory of socialism, we are just concerned here with the basic concept of the socialistic theory.

The Islamic View

Under Islamic economics the system of the sharing of wealth is different from both the Capitalist and Socialist economic system. According to Islamic point of view, there are two kinds of people who have right to wealth:

1. Primary Right to Wealth

The primary right denotes the right to wealth of those people who have directly taken part in the process of production. In other words, primary right is for those factors of production that have directly contributed in the process of producing some kind of wealth.

2. Secondary Right to Wealth

The Secondary right holders are those who have not directly contributed in the process of production, but it has been made compulsion upon the producers to make them co-sharers in their wealth (e.g. beneficiaries of Sadaqat-ul-Wajibaat).

Islamic Theory

The primary right to wealth is enjoyed by those factors of production which directly take part in process of production, technically Islamic theory has not specifically define the factors of production, but all factors which are directly involved in are neither deprived of their share nor they exploit any. From the Islamic point of view, the actual factors of production are three instead of four.

1. Capital:

It can be defined as those means of production which cannot be used in process of production until or unless they either wholly or completely consumed or changed in form during the process of production, these means cannot be leased or fetch any rent (for example, liquid money or food stuff etc.). The share of capital is in the form of profit and not interest. So the profit on any capital is the remaining revenue of a business conducted with that capital after making payment to all other parties; if the residual is negative, the capital owner has to suffer a loss that is the shortfall in the principal employed in the business.

2. Land:

In Islamic perspective land can be termed as those means of production, that are used in the process of production in such a way that their corpus and original form remains unaltered, and which can hence be let or leased (for example, land houses, machines etc.), and their compensation is rent. For example, an owner of a factory would claim rent of land and that of the installed machinery and plant; similarly, owners of houses, vehicles, machines, etc. are entitled to rent.

3. Labor:

That is, human exertion, whether of the physical, mental or heart. Organization and planning are also included in these exertions. The share of labor comes in the form of wages.

An entrepreneur who, for example, brings together factors like land, labor, machinery and uses his own capital, has to pay wages and rental for the labor and the use of land or machinery as per decided terms; the reward for his entrepreneurship will be earned in the form of profit on his capital provided that there must be some residual after payment of the rental, wages and other expenses on raw materials.

Difference between Socialism and Islam

After discussing factors of production in detail we can say, the Islamic economic system of the distribution of wealth is different from Socialism and Capitalism both. We can easily make a distinction between Islamic economy and socialist economy, which is quite clear. The concept of private property is not considered in socialism, under socialistic economy labor is the only factor that is entitled to wealth in form of wages. On the other hand, according to the Islamic principles of the distribution of wealth, which we have discussed above, all the things that exist in the universe are in principle the property of Allah Himself. Then, the greater part of these things has been given equally to all human beings as a collective trust. It includes earth, air, light, fire, water, wild grass, hunting, fishing, mines, un-owned and un-cultivated lands etc., nobody can claim over all these things because they are not the property of any individual, but a common trust. Everyone is equally entitled to exploit it; every human being is the beneficiary of this trust.

On contrary in socialism there are certain things where the right to private property is necessary to be recognized in order to efficiently establish the real economic system. If all resources like land, capital and organization are totally surrendered to the state, like it is adopted in socialist economy, then eventually it will result as, everyone would be discharging a large number of smaller Capitalists and putting the huge resources of national wealth at the disposal of a single big Capitalist - the state, which can deal with this reservoir of wealth quite arbitrarily, thus would lead to the worst form of the concentration of wealth.

Moreover, another evil that is caused by socialism is that, human labor is deprived of their natural right for individual choice and control, compulsion and force becomes inevitable in order to make use of this labor, such pressure effects directly on effectiveness of process of production and on mental health of labor.

All this goes to show that the Socialist system harms two out of the three objects of the Islamic theory of the distribution of wealth i.e. the establishment of a natural system of economy, and restricting everyone from what rightfully belongs to them.

In unnatural system of socialist economy many evils are inherent to this system, Islam has not chosen to forbid the right to private property altogether, but has rather acknowledged the right to private property on those things of the physical universe which are not held as a common trust. A separate status is given to land and to capital in Islamic economy, and at the same time Islam made use of the natural law of "supply and demand" too in a true spirit. Therefore Islam does not distribute wealth merely in the form of wages, as does Socialism, but in the form of profit and rent as well. Along with this, Islam has also put a prohibition on the category of 'Interest', and also given us a long list of the people who have a secondary right to wealth. The great evil of concentration of wealth on handful people is eradicated in Islam, which is an essential characteristic associated in Capitalism. Islamic view has a clear distinction of distribution of wealth as compared to socialism, which sets apart it from socialistic economy.

Difference between Capitalism and Islam

It is equally essential to understand fully the difference that exists between the Islamic view of the distribution of wealth and the Capitalist point of view. This distinction being rather delicate and complicated, here we will discuss the difference in greater detail. Differentiation between Islamic and capitalist system can be drafted in the following manner.

1. In Islamic view the reward for 'capital' is different from capitalist economy; here 'profit' is paid over capital while pre-agreed 'interest' on capital is given in capitalist economy.
2. The factors of production have been defined in a different manner in Capitalism and Islam. Capitalism defines "Capital" as "the produced means of production." Whereas, in addition to money (Gold, silver or paper currency) and foodstuff the capital is supposed to include machinery, building, vehicles etc. as well. Under Islamic law the definition of "Capital" has been defined in a different manner, it includes only those things which cannot be utilized unless they are wholly consumed or altered their original form, in other words, which cannot be let or leased - for example money (gold, silver and paper currency). According to this definition machinery, land and vehicles are excluded from capital.
3. All such things which do not have to be wholly consumed or altered their original form during a process of production have been taken under the head of "Land". Hence, vehicles, building and machinery fall under this category.
4. The definition of "Labor" has been generalized too, so as to include mental efforts such as planning and organizing.
5. Under Islamic view only three factors are considered as factors of production instead of four, the entrepreneur has been excluded from the list of factor of production as a regular factor. This does not mean that the very existence of the entrepreneur has been denied. It implies that Islam does not recognize the entrepreneur as an independent factor; rather it includes it in any one of the three factors.

We will look into the detail of above point. The most important characteristic under capitalistic economy is of the entrepreneur (which gets the profit). Here the entrepreneur is supposed to bear the risk of business whether it gains profit or it turns into loss. Under Capitalist point of view, "profit" is a kind of compensation for his courage to enter into a commercial venture where he alone is considered to bear the burden of a possible loss. The other three factor of production will remain immune from loss; pre-agreed 'interest' is given for Capital, Land will get the specified rent and Labor will be entitled to wages they earn. On contrary, according to Islamic view the ability to take the risk of loss, is the inherent characteristic of capital itself, therefore no other individual factor should be made liable to bear the burden of risk of loss. Consequently, the capitalist, in most of the cases provides capital and takes the risk of loss, is an entrepreneur too, and the man who is an entrepreneur is a Capitalist as well.

Capital can be invested in different ways, under Islamic view the capital can be invested in following ways. Moreover we will understand from below mention discussion regarding types of capital investment in pre and post Islamic society.

Types of Capital investment (Business Venture):

1. Sole Proprietorship:

Private business is the most common way to invest capital and perform business activities, in such concerns the man who provide capital may manages the funds himself and runs the business without any help of any partner or co-sharer. In such kind or business ventures the return received from business activity will be call "profit" from legal point of view. But, in economic terms, this "reward" would be made up of

- (i) "Profit", in as much as Capital has been invested, and
- (ii) "Wages", as earnings of management.

2. Partnership:

The second most common form of investment is that few persons may jointly invest capital; they may decide to jointly run the business and will jointly bear the risk of profit and loss. In Fiqh terminology, such jointly operated business venture is called "Shirkat-ul-Aqd" or Partnership in contract. According to the terminology of Islamic economics, business run through Shirkat-ul-aqd, if all partners are managing the business, all partners will be entitled to share "profit" as per agreed ratio, and also entitled to "wages" because they have taken part in management of business. Islam

has authorized such form of business association as well. Partnership (Shirkat-ul-Aqd) was common before the time of the Holy Prophet (PBUH) until he allowed people to continue the practice of it, and since then there has been a consensus of opinion on its permissibility.

3. Co-operation of Capital and Organization (Mudarbah)

The third type of business venture is that where one person provides capital while another using his skills and exploit the funds, manage the business, and each may have a share in the profit as per agreed sharing ratio. In the terminology of Fiqh, it is called "Mudarbah". In Mudarbah according to the terminology of Islamic economics, the person who invests his capital is called "Rabb-ul-Mal", and will get his share in the form of "profit", while the person who is managing the business is called "Mudarib", he will be compensated in the form of "wages".

But if the person who has been managing the business ("Mudarib") eventually suffers a loss in the business, his labor will go wasted just as the capital of the investor would go wasted. This form of business organization too is permissible in Islam. The Holy Prophet (PBUH) made such an agreement with Hakzrat Khadijah (R.A) before their marriage. Since then, there has been a complete consensus of opinion on this among the jurists of Islam.

4. Money Lending Business

Before the advent of Islam investing capital on loan had been practiced ever since from the beginning, money lending is the fourth form of investing Capital. In this business, one person lends money in form of loan or debt on interest, second person accepting that debt and utilizes the amount in running a business, and bears the risk of loss or profit. If there is a loss, it has to be borne by person who is managing the business with borrowed money, but regardless of profit or loss, interest does accrue to Capital in any case. Islam has prohibited this form of venture.

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ ﴿٢٧٨﴾ (سورة البقرة آية ٢٧٨)

"O you, who believe, fear Allah and give up what still remains of riba, if you are believers." (2:278)

The Holy Quran also says:

فَإِنْ لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۖ وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ
أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾ (سورة البقرة آية ٢٧٩)

"But if you do not (give it up), then listen to the declaration of war from Allah and His Messenger. However, if you repent, yours is your principal. Neither wrong, nor be wronged." (2:279)

In these two verses, the phrases "what is still due to you from the interest" and "you shall have the principal" makes it quite explicit that Allah does not forgive the least quantity of interest, that "giving up the interest" implies that the creditor should get back only the principal. Thus, one thing to be noted here that Islam prohibits all sort of interest either calculated on high or low rate.

People of certain Arab tribes used to carry on their business on borrowed money; on borrowed money certain amount of interest is paid to lender (i.e. other Arab tribes); this practice was excessive in market of Arab before Islam. After Islam such transactions were strictly prohibited.

“After the conquest of Makkah, the holy Prophet (pbuh) had declared as void all the amounts of Riba that were due at that time. The declaration embodied that nobody could claim any interest on any loan advanced by him. Then the holy Prophet (pbuh) proceeded to Taaif, which could not be conquered, but later on the inhabitants of Taaif, who belonged mostly to the tribe of Thaqif, came to him and after embracing Islam surrendered to the holy Prophet (pbuh) and entered into a treaty with him. One of the proposed clauses of the treaty was that Banu Thaqif would not forego the amounts of interest due on their debtors but their creditors would forego the amounts of interest. The holy Prophet (pbuh) instead of signing that treaty simply ordered to write a sentence on the proposed draft that Banu Thaqif will have the same rights as other Muslims have. Banu Thaqif, having the impression that their proposed treaty was accepted by the holy Prophet (pbuh), claimed the amount of interest from Banu Amr Ibnal- Mughirah, but they declined to pay interest on the ground that Riba was prohibited after embracing Islam. The matter was placed before Attaab ibn Aseed (God be pleased with him), the Governor of Makkah. Banu Thaqif argued that according to the treaty they were not bound to forego the amounts of interest. Attaab ibn Aseed placed the matter before the holy Prophet (pbuh) on which the following verses of Surah al-Baqarah were revealed:

‘O those who believe fear Allah and give up what still remains of the Riba if you are believers. But if you do not do so, then listen to the declaration of war from Allah and His Messenger. And if you repent, yours is your principal. Neither you wrong, nor be wronged.’ (278–279)

Let us be very clear about the trade of Arab, tribes of Arab were like a joint company, they carried on their trade on collective capital of individuals. Sometimes one tribe in need of money borrow collectively from other tribe, in such cases the lending was done on interest, and the borrowed money ultimately used in trade activities. The Holy Quran has prohibited even this practice. Thus, under Islamic system of economy, there are two ways for lending the money for business purpose; one is to help the businessman with Qard without interest or Riba or to share in profit with the businessman. If one wants to earn the share in the profit by lending money, then two options are available for lender to adopt the mode of "partnership" (Musharakah) or that of "Co-operation" (Mudabah), where lender will have to bear the risk of profit or loss as well. If the business concern earns the profit, the lender will have a share in the profit; in case of loss, it will be borne by all parties according to their investment.

This discussion makes it clear that Islam stressed on the responsibility of "taking the risk of loss" on Capital. The man who provides capital in a risk-bearing business enterprise will have risk of loss or profit.

Lesson - 3

Islamic Banking:

The banking activity that is consistent with Sharia'h Ruling (Islamic Laws) and its practical application through development of Islamic Economics. In more appropriate form we must say that banking with Sharia Compliant activities is called Islamic Banking.

Sharia'h prohibits the giving and taking of interest on loan or debt or any kind of fee for provision of loans whether the payment is fixed or floating. All those business activities that involve buying and selling of goods or services that are prohibited in Islam is also void (Haram). In late 20th century most of the Islamic countries tried to prevent non-Islamic means of financing and number of Islamic banks is formed. The contemporary movement of Islamic Banking is based on the belief that all financial transaction must be free from Riba.

Furthermore Sharia'h prohibits Maysir (gambling) and Gharar (uncertainty) in financial transactions. Maysir exist in all those contracts in which performance of a transaction depend upon the occurrence of an uncertain event in future. This can be exemplified in the case of insurance where a person pays a little sum with the hope of claiming a larger amount in the event accidental loss, which is uncertain. Maysir is regarded by most Islamic scholars as gambling or any games of chance (including lotteries, casino-type games and betting on the outcomes of animal races), whereas gharar means uncertainty in transitions, it is described as a risky or hazardous sale, where details concerning the item on sale are unknown or uncertain (e.g. The Prophet (pbuh) has forbidden the purchase of the unborn animal in its mother's womb). Islamic bank has the same purpose as the conventional banks have that is to make money for banking institution by lending out the funds as financing according to the rules of Sharia'h.

The last decade has seen a sharp growth in Islamic banking sector, in which banking institutions starting to offer a real and attractive alternative parallel to conventional banking products. Across the Middle East, Africa, and Asia, Islamic banking has grown to become a prominent means of financial management, while it is also emerging in Western economies that have not typically been associated with it in the past.

As of 2014, 1% of total world assets are held by Sharia'h compliant financial institutions. Whole world's banking sector is now turning their operation on Islamic basis, currently there are numerous Banks and several Mutual funds were working on Sharia compliant financing techniques. Islamic banking is an emerging field and growing fastly as compared to conventional institutions.

History of Islamic Banking:

- Islamic Banking can be said to come in existence with the advent of Islam, in the time of Prophet Muhammad (PBUH). Prophet Muhammad (PBUH) started trading based on the basis of Mudarbah for His wife. "MUDARBAH" a term used for Islamic way of Partnerships has been the primary and most appreciated way for Muslim business community to carry out their trading operations. However, because the conventional banking system plays a very critical role in any country's economy and businesses, now a days it is very difficult to decide by the most of the businessmen that which conventional banking product they can use in their business or other day-to-day activities. This is exactly where Islamic Banking plays a role for providing the customers with a solution that not only solve their financial problems but also to make sure that the solution observes the Islamic teachings as well.
- Very first proper Islamic Banking model came into existence in Egypt in 1963. The main philosophy of this bank was to provide Riba-Free banking products to the society. Ahmed Al Najjar was the founder and the actual visionary of this bank. This bank offered products that were

completely according to the Sharia'h ruling about the trade, and was completely different from the conventional banks as it was completely interest free.

- Tabung Haji (TH) is the Pilgrims management and fund board of Malaysia. It started its operation in 1963 to assist the Muslim in Malaysia with the financial cost of performing the hajj to Saudi Arabia on Islamic financial model.
- In 1974, Islamic Development Bank (IDB) was formed with the efforts of the Organization of Islamic Countries (OIC) and the support of the king of Saudi Arabia, it began its activities on 20 October 1975, and it was the first officially registered Islamic Bank in the history. The main objective of IDB is to provide all Banking financial solution on profit sharing ratio basis instead of interest.
- In 1975, the first privately held commercial Islamic Bank was formed in Dubai, UAE. In the same year, an agreement was signed to re-establish the Islamic Development Bank as an Inter-Governmental Plan Islamic Bank. The major purpose of this bank was to offer financial facility to the development projects through the Muslim world, and make sure that all financial solution adheres to the Sharia'h Principle.
- In 1977, Faysal Islamic Bank was formed in Egypt, which was followed by the formation of Bahrain Islamic & Jordan Islamic Banks in 1978.
- The first Islamic bank in Malaysia was established in 1983. In 1993, commercial banks, merchant banks and finance companies were allowed to offer Islamic banking products and services under the Islamic Banking Scheme (IBS).
- Mid 1980s witnessed an irresistible awareness in Islamic Banking and numerous banks were formed just to provide Islamic Law based financial products to their customers globally. The major improvement in this trend was seen in Middle East and South Asia. Also such financial institutions begin establishing their own market in countries where Muslims are in minorities, such as: UK, USA, Denmark, India, Australia, etc. This gave the customers an ultimate relief, as they knew; now they can enjoy financial services which are free from Riba (interest), which is strictly prohibited in Islam.

Evolution of Islamic Banking in Pakistan

- Pakistan is the country which achieves its independence on basis of Islamic ideology. Being an Islamic Republic, flexibility exists in its constitution to develop Islamic economic system with socio-economic justice. As per Article 2 of the Constitution, Islam is the State Religion of Pakistan.
- Mohammad Ali Jinnah, while inaugurating State Bank of Pakistan on July 01 1948 has advised State bank of Pakistan to help develop Islamic Economic system which based on equality and brotherhood.
 - "We must work our destiny in our own way and present to the world an economic system based on true Islamic concept of equality of manhood and social justice"
- Constitution of Pakistan also laydown the objective to eliminate Riba from the society. Article 38(f) of 1973 constitution of Pakistan quoted as under.
 - "The state shall eliminate **Riba** as early as possible".
- The Objectives Resolution was agreed by the first Constituent Assembly in 1949, it was the preface of the Constitutions of 1956, 1962 and 1973. It provided that no law should be passed that is objectionable to the injunctions of Islam. It was made substantive part of the Constitution in 1985.
- In continuation of the constitution of Pakistan, the Eighth Amendment of the 1973 Constitution, adopted by the National Assembly in 1985, also made room for creation of the Federal Shariat Court (FSC).
- Creation of the Council of Islamic Ideology (CII) in 1962. The report of the CII on Elimination of Interest (June, 1980) is genuinely considered to be first major comprehensive work in the world undertaken on Islamic banking and finance.

- In the era of 1970s early efforts were made to eliminate Riba from financial system of Pakistan for this purpose Council of Islamic Ideology (CII) was appointed the task to prepare a draft of Interest free economy in 1977.
- In February 1979 President of Pakistan announced that interest will be removed from the economy in a period of 3 years. At the first step House Building Finance Corporation (HBFC), National Investment Trust (NIT), and Mutual Funds Investment Corporation (MFIC) were selected for removal of interest in their operations.
- Council of Islamic Ideology (CII) advised reduction of dependence on interest bearing foreign loans as it was not possible to eliminate interest in it, techniques of PLS and Qard e Hasna.
- In 1981 government ordered banks to offer separate counters for deposit on PLS basis; and it continued till June 1985. All the banks were turned into the all deposit account in PLS accounts but later Government announced the discontinuation of the adopted systems from July 1985 since it was just a change of nomenclature. The movement towards the interest free economy suffered a setback when in August 1985 banks were allowed to invest even their Profit and Loss sharing deposits in interest bearing government securities.
- In 1991 the Federal Sharia'h Council declared the procedure adopted by the banks in 1985 as un-Islamic. In response the government and some banks made appeals to the Sharia'h appellate Bench of the supreme court of Pakistan. In 1999 the Sharia'h Appellate Bench of Supreme court rejected the appeals and directed all laws on interest banking to be ceased. However in 2001 Sharia appellate bench allowed dealing with foreign parties on basis of interest.
- State Bank of Pakistan has developed the following three point strategies relating to development of Islamic Banks
 - Full-fledged banks can be established in Pakistan.
 - Islamic Banks can set up their subsidiaries.
 - Stand-alone Islamic Banking branches can be opened by conventional banks in Pakistan.
- The government set up a high level commission, task forces and committees to institute and promotes Islamic Banking on a parallel basis with the conventional banking system. After that in 2002 State bank of Pakistan issued its first ever Islamic banking license to Meezan bank Limited to start its operations as a full-fledged Islamic Bank.
- We can say that officially and practically Pakistan has started on operating of Islamic banks after 2002. After this many of the Islamic banks started working in Pakistan, and operating on Islamic sharia'h laws.

RIBA – DEFINITION, PROHIBITION AND TYPES

Lesson - 4

Riba (Interest):

The word "Riba" means excess, increase or addition. According to Sharia'h terminology, it implies any excess compensation without due consideration, it is pertinent to note here that this consideration does not include time value of money.

Riba can also be defined as giving and taking, paying and receiving of any excess amount in exchange for a loan at an agreed rate, regardless of whether being calculated at a high or low rate.

According to above definition of riba, we can conclude that transaction involving Riba has three main factors i.e. any excess given or taken, there must be contract of loan or debt, excess that is given or taken must be pre-agreed.

Prohibition of Riba in Quran

In Quran Riba was not forbidden at once; rather Quran made prohibition on riba gradually. Four verses of Quran that were revealed gradually and make riba prohibited are described below.

First Revelation (Surah al-Rum, verse 39)

وَمَا آتَيْتُم مِّن رَّبٍّ لَّيْرٍ بَّوْافٍ أَمْوَالِ النَّاسِ فَلَا يَرْبُوْا عِنْدَ اللَّهِ ۚ وَمَا آتَيْتُم مِّن زَكَاةٍ تُرِيدُونَ
وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ ﴿٣٩﴾ (سورة الروم آیت ۳۹)

"Whatever Riba (increased amount) you give, so that it may increase in the wealth of the people, it does not increase with Allah; and whatever zakah you give, seeking Allah's pleasure with it, (it is multiplied by Allah, and) it is such people who multiply (their wealth in real terms)." (30: 39)

It was the first verse revealed against riba and revealed in Makkah.

According to different jurists prohibition of riba is not directly mentioned in this verse, but is simply elaborate that riba does not increase your wealth and also not accounted for with Allah, it does not carry any reward and benefit in the life hereafter. However charity does your wealth near Allah.

Different sharia'h scholar added that here the word Riba does not mean interest or usury. But here it means any gift offered by one person to another with the intention to get greater in return.

Second Revelation (Surah al-Nisa', verse 161)

وَأَخْذِهِمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ وَأَكْلِهِمْ أَمْوَالِ النَّاسِ بِالْبَاطِلِ ۖ وَأَعْتَدْنَا لِلْكَافِرِينَ مِنْهُمْ
عَذَابًا أَلِيمًا ﴿١٦١﴾ (سورة النساء آیت ۱۶۱)

"And for their charging Riba (usury or interest) while they were forbidden from it, and for their devouring of the properties of the people by false means. We have prepared, for the disbelievers among them, a painful punishment." (4: 161)"

This verse was revealed before 4th year of Hijra. It was revealed in answer to the argument of the Jews who came to the Holy Prophet (PBUH) and asked him to bring down a book from heavens like the one given to them by Prophet Musa (A.S.)

According to Sharia'h scholars the word Riba in this verse, definitely, denotes to usury or interest.

In this verse the evil deed of Jews were mentioned as they were used to take ribe, and riba was prohibited for them, on the other hand, we cannot determine the prohibition of interest for Muslims as well. However one can infer that giving and taking of riba is sinful act for Muslims too. So, the prohibition of riba for Muslims was still not clearly mentioned in the verse.

Third Revelation (Surah Al 'Imran, verses 130-132)

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً ۖ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ ﴿١٣٠﴾
وَاتَّقُوا النَّارَ الَّتِي أُعِدَّتْ لِلْكَافِرِينَ ۖ وَأَطِيعُوا اللَّهَ وَالرَّسُولَ لَعَلَّكُمْ تُرْحَمُونَ ﴿١٣١﴾
(سورة آل عمران آیت ۱۳۰-۱۳۲)

"O you believe, do not eat up the amounts acquired through Riba (interest), doubled and multiplied. Fear Allah, so that you may be successful, [130] and fear the fire that has been prepared for the disbelievers. [131] Obey Allah and the Messenger, so that you may be blessed." [132]

This verse was revealed in the 2nd year after Hijra, near about the time of the battle of Uhud.

The reason behind this verse's revelation was that the invaders of Makkah had financed their army by taking usurious loans to be equipped against Muslims and it was feared that the Muslims might follow the same practice; prohibition of Riba for Muslims was clearly mentioned in this verse.

Fourth Revelation (Surah al-Baqarah, verses 275-281)

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَخْبَظُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۚ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ ۚ وَأَمْرُهُ إِلَى اللَّهِ ۚ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ ﴿٢٧٥﴾ يَمْحَقُ اللَّهُ الرِّبَا وَيُغْفِرُ الصَّدَقَاتِ ۚ وَاللَّهُ لَا يُحِبُّ كُلَّ كَفَّارٍ أَثِيمٍ ﴿٢٧٦﴾ إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ ﴿٢٧٧﴾ يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ ﴿٢٧٨﴾ فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ ۚ وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ ۖ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾ وَإِنْ كَانَ دُورُكُمْ قُضِيَ إِلَىٰ مَيْسَرَةٍ ۖ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ ﴿٢٨٠﴾ وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ۖ ثُمَّ تُوَفَّىٰ كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ ﴿٢٨١﴾
(سورة البقرة آیت ۲۷۵-۲۸۱)

"Those who take riba (usury or interest) will not stand but as stands the one whom the demon has driven crazy by his touch. That is because they have said: "Sale is but like riba", while Allah has permitted sale, and prohibited riba. So, whoever receives an advice from his Lord and desists (from indulging in riba), then what has passed is allowed for him, and his matter is up to Allah. As for the ones who revert back, those are the people of Fire. There they will remain forever. [275]

Allah destroys riba and nourishes charities, and Allah does not Surely those who believe and do good deeds, and establish Salah (prayer) and pay Zakah will have their reward with their Lord, and there is no fear for them, nor shall they grieve. [277]

O you, who believe, fear Allah and give up what still remains of But if you do not (give it up), then listen to the declaration of war from Allah and His Messenger. However, if you repent, yours is your principal. Neither wrong, nor be wronged. [279]

If there is one in misery, then (the creditor should allow) deferment till (his) ease, and that you forgo it as alms is much better for you, if you really know. [280]

Be fearful of a day when you shall be returned to Allah, then every person shall be paid, in full, what he has earned, and they shall not be wronged." [281]

Prohibition of Riba in Hadith:

A. General

1. Narrated by Jabir (R.A): "The Prophet (PBUH) cursed the receiver and the payer of interest, the one who records it and the two witnesses to the transaction and said: "They are all alike [in guilt]."
2. Narrated by 'Abdallah ibn Hanzalah (R.A)," The Prophet (PBUH), said: "A dirham of riba which a man receives knowingly is worse than committing adultery thirty-six times" (narrated in Musnad-e- Ahmed and Ad-Daruqutni). Bayhaqi has also reported the above hadith in Shu'ab al-iman with the addition that "Hell befits him whose flesh has been nourished by the unlawful."
3. Narrated by Abu Hurayrah(R.A) , The Prophet (PBUH)said: "Riba has seventy segments, the least serious being equivalent to a man committing adultery with his own mother."
4. Narrated by Abu Hurayrah (R.A), the Prophet (PBUH) said: "There will certainly come a time for mankind when everyone will take riba and if he does not do so; its dust will reach him."
5. Narrated by Anas ibn Malik (R.A) the Prophet (PBUH) said: "When one of you grants a loan and the borrower offers him a dish, he should not accept it; and if the borrower offers a ride on an animal, he should not ride, unless the two of them have been previously accustomed to exchanging such favors mutually."

Classification of Riba

Hence from the following verses riba can be defined as any excess, addition or increase over loan or debt which is predetermined. Riba can be classified into two categories by sharia'h scholar namely 'Riba Al Nasiyah and Riba Al Fadl.

Riba An Nasiyah

Any increased or excess amount which a lender (Ras ul Maal) receives over and above its principal through a pre-agreed interest (Sood) based transaction is called as Riba An Nasiyah. Verses of Holy Quran directly prohibit this form of interest directly hence technically it is the primary form of Riba, it is also known as 'Riba Al Quran' sometimes it is also known as Riba Al Jahiliyyah as this type was considered in early dark ages.

Imam Abu Bakr Jassas Razi has drawn a complete legal definition of Riba An Nasiyah in the following words:

"That kind of loan where specified repayment period and an amount in excess of capital is predetermined."

Surah al-Baqarah (Verse 278-281)

Surah al Baqarah renders this kind of interest in its verses of 278 to 281.

"O you who believe, fear Allah and give up what still remains of riba, if you are believers. [278] But if you do not (give it up), then listen to the declaration of war from Allah and His Messenger. [279] However, if you repent, yours is your principal. Neither wrong, nor be wronged. [279] If there is one in misery, then (the creditor should allow) deferment till (his) ease, and that you forgo it as alms is much better for you, if you really know. [280] Be fearful of a day when you shall be returned to Allah, then every person shall be paid, in full, what he has earned, and they shall not be wronged." [281] (2:278-281)

We can see from the above mentioned verses, that riba is considered in term of any excess or extra return over and above the principal in a loan transaction; however one can note that Allah has not forbidden all kind of excess, it is present in trade transactions as well, it is permissible there. Quran renders haram a special type of excess which is known as Riba. Before Islam the people of Arab used to take loans on interest which were payable with interest, also they considered riba as a type of sale and they used to say that Sale is just like as Riba. Islam has clearly mentioned that any excess which results from a sale transaction is different from interest; excess amount which results through sale agreement is permissible in Islam any loan which draws excess amount is forbidden and rendered Haram.

ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا (سورة البقرة آيت ٢٧٥)

"That is because they have said: 'Sale is but like riba', while Allah has permitted sale, and prohibited riba." (2:275)

Few Hadith are mentioned which tell us about Riba An Nasiyah

- Ali Ibn Abi Talib narrated that the Holy Prophet (PBUH) said, "Every loan that draws interest is Riba."
- The famous Sahabi Fazala Bin Obaid has also defined Riba in similar words: "Every loan that draws profit is one of the forms of Riba"

Hence we can easily draw a definition of Riba An Nasiyah as any additional amount which a borrower pay to the lender in transaction of loan or debt is termed as Riba. It is pertinent to note here that prohibition of Riba is not restricted to the religion Islam but also a major concern which have been confirmed in other revealed laws of all Prophets (A.S) Some of the old evidences has rendered Riba as haram (See Exodus 22:25, Leviticus 25:35- 36, Deutronomy 23:20, Psalms 15:5, Proverbs 28:8, Nehemiah 5:7 and Ezakhiel 18:8, 13, 17 & 22:12).

From definition of Riba An Nasiyah, we can infer that; giving and taking, paying and receiving of any excess amount without due consideration in a loan transaction with a pre-agreed rate. It has been proven in various ahadith that Holy Prophet (PBUH) repaid loan in a better way, it cannot be called interest hence the excess is not predetermined. The word 'draw' in hadith means that paying and receiving excess amount as a predetermined condition in loan transaction. Riba An Nasiyah is unconditionally prohibited and there is consensus among all Muslim jurist globally.

Why Riba An Nasiyah is prohibited?

Technically speaking nothing is described in Quran or narrated in Hadiths as the reason of prohibition of Riba. However some evils and faults appeared in the society due to prevalence of riba based activities, which are as follows:

Being a Muslim we must realize the fact that anything in this world have some goodness or utility, nothing is created without any utility. But it is commonly recognize in the book of Allah and religion that things imparts some harms and benefits to the society, those things which causes more benefit to society is considered more useful. However while declaring gambling and liquor to be haram the Holy Quran stated

that they do hold some benefits in it but the harm and sins they produce is far worse than the benefits they produce. Therefore taking these things is intensely harmful and destructive, it is necessary for a human to abstain from such things which are rendered Haram in Quran, same is the case with interest.

Practically the consumer of interest has some apparent or temporary benefits, but the curse of interest miles severe as compared to the benefits in this world and hereafter. Those who is indulged in giving and taking of interest does have some casual profit but in front of Allah he is losing his moral or spiritual character. Similarly, no sane and just person will say that personal and individual gain which causes loss to the whole community or group is useful. In theft and robbery for example, the gain of the gangster and the take (loot) of the thief is all too obvious but it is certainly harmful for the entire community since it ruins its peace and sense of security.

Riba Al Fadl

The second classification of Riba is Riba Al Fadl. The prohibition of this Riba has been established on the basis of

Sunnah, it is also called "Riba Al Hadees." It is defined as any excess given or taken in exchange of barter transaction or exchange of homogenous commodities in spot sale or purchase. It can be clarified by the following Hadith;

The Prophet (PBUH) said, "Sell gold in exchange of equivalent gold, sell silver in exchange of equivalent silver, sell dates in exchange of equivalent dates, sell wheat in exchange of equivalent wheat, sell salt in exchange of equivalent salt, sell barley in exchange of equivalent barley, but if a person transacts in excess, it will be usury (Riba). However, sell gold for silver anyway you please on the condition it is hand-to-hand (spot) and sell barley for date anyway you please on the condition it is hand-to-hand (spot)."

This hadith counts six commodities in which riba can occur in case of sale or purchase of commodities in exchange mode, which are gold, silver, wheat, barley, dates and salt.

These six can be exchanged in such a way that similar commodity must be exchanged in equal quantity and on spot, however unequal defer exchange of similar commodity will establish interest. In Fiqh terminology these six commodities which cause Riba in case of exchange is called **Amwaal-e-Ribawiyyah**.

After reviewing above hadith few questions arises in human mind that, Does this hadith apply only to the items mentioned in it? Does it concern sales of barley or wheat but not rice? or of dates but not raisins?

Complete legal definition of amwaal-e-ribawiyyah is different in every fiqh. Such as few scholars believed that amwaal-e-Ribawiyyah includes only these six commodities while majority believed that some other commodities should be included in these goods. How can we determine that other commodities should be included in Amwaal-e-Ribawiyyah, for this purpose some fiqhs explained, certain characteristics which must be present in a commodity to be considered as Amwaal-e-Ribawiyyah. The features which are common among these items can be used as foundation/illat for Riba Al Fadl.

Illat can be defined as the attribute of an event that requires a particular divine ruling in all cases holding that attribute; it can be said a process of analogy. Various schools define these attributes differently:

Imam Abu Hanifa

Imam Abu Hanifa affirms only two common characteristics as:

- Weight or Volume
- Exchange is between similar commodities

According to Imam Abu Hanifa all those goods which can be sold or purchased in term of weight or volume is included in Amwaal-e-Ribawiyah and all rules of Riba Al Fadl will be applicable to all such goods. Hence commodities which can be measured in units of weight or volume fall under this category.

Imam Shafi

The two attributes are observed by Imam Shafi are:

- Medium of Exchange
- Eatable (Edible)

According to Imam Shafi those things or goods which have the natural ability to be used as currency (medium of Exchange) fall under this category. Therefore, as per Imam Shafi finding this law will also apply on everything edible.

Imam Maalik

Imam Maalik identified the following two characteristics:

1) Eatables (Edibles)

2) Preserve-able

According to Imam Maalik eatables and all such goods which the people in society try to preserve it for future needs is included in Amwaal-e-Ribwiyah and subject to the rule of Riba Al Fadl in case of exchange.

Imam Ahmad Bin Hanbal

Three citations have been related to Imam Ahmad Bin Hanbal:

- First citation follows to the opinion of Imam Abu Hanifa
- Second citation conforms to the opinion of Imam Shafi
- Third citation includes three characteristics at the same time i.e. edible, weight and volume.

Why Riba Al Fadl is prohibited

The rationale behind prohibition of riba is to ensure justice and use of power of exploitation through biased or unfair exchange. It also renders back doors of Riba An Nasiyah closed, because in the Islamic Sharia'h, anything that serves as a means to the unlawful is also unlawful

The laws of Riba Al Fadl

Jurists have developed rules and laws that govern Riba Al Fadl on the basis of above narrated hadith and its interpretation with reference to issues raised by Hanafi Fiqh. Explanation of rules derived is as follows;

1. Now it is obvious the question for exchanging the homogenous commodities only arise when they differ in quality and in characteristic e.g. different species of wheat and rice, inferior quality gold or silver exchanged with superior quality of gold or silver, different genus of barley or sea salt is exchanged for mineral salt. It is prohibited in Sharia'h to exchange of all six commodities with itself with unequal quantity but differing in quality/type, in such case we must ignore quality and exchange in equal quantity. In unequal exchange there is fear for constituting interest if amount or quantity differs while exchanging, such transaction may lead to deceiving. In order to prevent this stage sharia'h has developed ruling for barter (exchange) transaction in any of these commodities with itself but differing in quality or type, is allowed only if the following conditions are adhered.

- a) Any difference in type/value/quality should be ignored and the commodities should be exchanged in equal amounts (equal weight and volume).
 - b) another way for transacting this exchange is, instead of direct exchange of commodities of the same kind, for this one should sell his commodity against cash at the market value and buy someone else's commodity in exchange of cash proceeds at the market value.
2. One another way for exchanging same type of commodity is that a person has material and other person have finished product made up of that material and both decided to exchange their goods. In such a case exchange transaction will take place in following way
- a) First we have to look whether characteristics of the product have been totally altered by the industry: For e.g. the cotton industry that convert raw cotton into cloth or iron into machinery. In this case, it is allowed to transact lesser amount of cloth against greater amount of raw cotton or raw iron having more weight against machinery having lighter weight.
 - b) In case where a little difference has been made to the original form after its making: For e.g. gold which changes its shape in the form of jewelry. In this case, the Sharia'h holds that such a transaction must not take place in a way that one provide raw gold less than the weight of jewelry, it should not happen in the first place or if it does, the exchange between two commodities should be in equal weights in order to discourage unfair deals. Another alternative can be used in such exchange, one will sell the gold in market against cash from this cash he buy the jewelry. Hence, the equivalent may be established only up to an approximate value thus leading to some injustice to one party or the other. The use of money could therefore help reduce the possibility of an unfair exchange.
3. Third rule for transacting good in exchange is, different commodities can be unequally exchanged but deferred payment is not allowed. For e.g. five kg wheat can be sold against two kg date or fifty gram of gold can be exchanged against one kilograms of silver on the condition that all exchange should be spot transactions.

The general condition of sale, however, that needs to be borne in mind while making a sale transaction is that the goods are specified in addition to the cash aspect of the transaction. The correct way of specifying is that gold and silver should be under the possession of the sellers or delivered at the place of contract.

To sum up, the Hanafi jurists maintain that in case of commodities that weigh or measure, it is illegal to transact unequally or on credit if the transaction is between two similar commodities. But in case of different commodities, unequal exchange is legal but credit remains illegal; the transaction in this case too should be spot.

Commercial Interest and Usury

In the 17th century, two new practical terms of interest arose after the formation of banking system, namely:

1. **Tijarti Sood (Commercial Interest):** Interest paid on loan taken for productive and profitable purposes, which is used in commercial transactions and for the purpose of business.
2. **Sarfi Sood (Usury):** Interest paid on loan taken for personal need and expenses.

ISLAMIC CONTRACT

Lesson - 5

The contracts used in Islam are the agreement and engagement between more than one party in a legally accepted and binding manner. There are many different types of contracts which suits to different needs and situations in Islamic economy, moreover legal and rightful relationship in these contracts involves a bilateral declaration from which flow legal consequences with regard to the subject matter and the price. These contracts execute the actual transaction and create the rights and obligation of the parties.

Under legal perspective the Islamic contracts are theoretically divided into two main categories i.e. unilateral and bilateral promise. These are the terminologies used in Islamic jurisprudence (i.e Fiqh) which are pertinent to be clearly understood at the outset of this course.

Unilateral promise comprises of a transaction in which one party gets the benefit, such as promise to give loan, gift and wasiyyat etc. on the other hand bilateral promise or contract is more bound to follow strict ruling and guidelines on sharia'h because in bilateral promise consent of both parties is essential, it covers all other permissible commercial transaction, such as contract of exchange that primarily concern trading, buying and selling activities, contract of Security that deal with Kafalah, and many other contracts. Before we go for actual Islamic banking products we need develop a complete understanding of unilateral promise, bilateral promise and essentials of a contract.

- 1) Unilateral Promise (Wa'da)
- 2) Bilateral Promise (Muwa'adah or Muahaidah)
- 3) Contract (Aqd)

1. Unilateral Promise (Wa'da)

Unilateral promise refers to the one sided undertaking or promise by one person to execute a specific transaction or contract in future. For example one person promises to sell his furniture to Mr. B in future, since it will be termed as unilateral promise to sell his furniture. Since it is just a promise, no question arises for future sale or future contract hence in Islam future sale is prohibited.

For example 'Mr. A' promises to sell his house to 'Mr. B' within six months from now for rupees five hundred thousand only (Rs. 500,000.00) , now we can see in this example it is just one sided promise or Wa'da.

Enforceability

- Unilateral promise or Wa'da is enforceable under the present law.
- Under Hanafi School; unilateral promise is not enforceable by law, rather it is considered as a moral obligation on the promisor, it is a moral responsibility of a promisor whether he execute his promise or not . However, some of the Hanafi jurists argue that unilateral promises can be made enforceable in situation whereby it seems necessary.
- According to Imam Maalik unilateral promise is enforceable by law.
- In present days there is a consensus (Ijma) of sharia'h scholars that, unilateral promise is enforceable by law until or unless the promisor who has made the promise is not in a position to fulfil the promise. In this case, if it is not due to any of his negligence then he has to make good the loss to the promisee. For example, 'Mr. A' promises to sell a camel to 'Mr. B' and the camel dies despite of care taken by Mr. A, in this 'B' cannot claim damages are from 'A' for his loss. On the other hand if this happens due to the negligence of 'A' then he has to pay for the damages of promisee. There may be the situation where 'A' promises to sell his camel to 'B' for Rs. 10,000 within the next month and after making this promise 'A' sells it to another person 'C' before the month elapses, now we can see that this is willful act of the promisor that leads to his inability to fulfill his promise to the promisee, therefore, the promisor is liable to compensate the promisee.
- Consider another example 'X' made a promise to purchase a Horse from 'Y' for Rs. 10,000/-. As a result of promise which is made by 'X', to fulfil this promise 'Y' purchase a horse from market for Rs. 8,000 to sell it to 'X' for agreed price of Rs. 10,000/- . on the promise execution date 'X' refuses to purchase the horse from 'Y', he breaches his promise to purchase, as a result 'Y' sell that

horse in the market for Rs. 7,500/- and bears a loss of Rs. 500/-. Now it is clear that due to breach of promise from 'X', 'Y' suffers actual loss, in this case 'X' is liable to make good the loss of 'Y'.

2. Bilateral Promise (Muwa'adah or Mu'ahadah)/Agreement

A bilateral contract is opposed to a unilateral contract or Wa'da, this kind of promise generally comes to mind when we talk about contracts. It is a contract between two people or parties. Bilateral promise would be contract when the actual promise executed. In this case example would be the contract for the sale of a home. One person promises to sell his house for Rs. 500,000/- to 'Mr. A', 'A' also made a promise to purchase his house for same amount, this will be called bilateral promise. When both the parties execute the actual transaction it will become the contract. Bilateral promises are enforceable by law and if parties does not fulfil the promise, it is considered as the breach of contract and can be enforced by law, When the contract is not fulfilled there is a breach in contract.

Enforceability

- From above discussion it means bilateral undertaking (Mutual promise) or agreement is enforceable under law.
- According to majority of the present day Scholars of Islamic Jurisprudence, Muwa'adah (Bilateral promise) is not allowed in situations where contract is also not allowed (e.g. forward contracts), and thus is not enforceable by law. This view is adapted by majority of Islamic Financial Institutions of present day and even by AAOIFI (Accounting and Auditing Organization of Islamic financial institution).
- According to some Scholars of the Sub-continent (followers of Hanafi School), Bilateral promise is enforceable by law, however, Muwa'adah of transactions like short-selling of currencies or shares is not allowed (in which subject matter is not in a possession of seller at the time of sale).

3. Contract (Aqd')

An Aqd' or contract is that bilateral agreement which has been executed between two or more parties. A valid contract is binding on all parties and enforceable under court of law, all parties to contract are legally bound to perform the contract. If either party refuses to execute the contract, other can enforce through court.

Example:

Some examples of contracts are quoted below.

- 'A' promises to sell his car to 'B' for Rs. 200,000/-, and 'B' accepted his offer to sale. It is a legal agreement because it creates legal obligation. It is called contract.
- 'X' offers his horse to sale in market for rupees 10,000/-, one buyer came accepted his offer and purchase X's horse. It is a contract.
- Moreover contract of sale, contract of marriage, contract of agency are the example of contract.

Types of Aqd'

Contract or Aqd can be divided into two types with respect to compensation.

- 1) Uqood e Mu'awadah (Compensatory Contract)
- 2) Uqood e Ghaer Mu'awadah (Non Compensatory Contract)

Uqood e Mu'awadah (Compensatory Contract)

In Uqood e Mu'awadah all parties to the contract gets something in return as compensation. These are compensatory contract where one person sells something to someone else for a price or compensation, for example, sale of a pen by 'A' to 'B' for Rs. 50/-. In this contract 'B' will get the pen and 'A' will be compensated in term of money.

Uqood e Ghaer Mu'awadah (Non Compensatory Contract)

In Uqood e Ghaer Mu'awadah, it is not necessary that all parties to contract get something in return as compensation. These are non-compensatory contract where one person gives something to someone else without any compensation for example a contract of loan, contract of Hiba (gift), contract of Guarantee.

Essentials of Aqd'

Four essential elements are required to establish a valid contract (Aqd). 

- 1) Parties to Contract (Mutaa'qidain)
- 2) Wording of Contract (Alfaz e Aqd)
- 3) Subject Matter (Ma'qood Alaih)
- 4) Consideration (Ma'qood Bi'hi)

1) Parties to contract/Contractors (Mutaa'qidain)

The contracting parties must be competent to contract is the first essential of a contract. Every party to contract who is major, of sound mind and not a slave of his principal is competent to perform contract. However a minor, person of unsound mind are incompetent to contract. In Islamic contract the contractors must not be mahjoor i.e. restricted to make contract. Islamic Sharia'h identifies three types of people as mahjoor.

- An **insane** person

'S' agreed to sell his house worth Rs.25000 for Rs. 7000 only, later it was discovered that 'S' was insane by birth. He is incompetent to enter into a contract

- A child **not mature** enough to understand the nature of transaction

Example: 'A', a minor sold his shop to 'B', the amount was paid to 'A' but the sale deed could not be registered as 'A' was minor, on a suit made by 'B', it was held that as A was minor, so agreement/ contract was void from beginning.

- A **slave** not permitted by his master to enter into a contract

2) Wording of Contract (Alfaz e Aqd)

The wording of a contract should be absolute, immediate and non-contingent to a future event, future contracts are not allowed in Islam. Also the wordings should be unconditional. If the wordings of the contract are conditional, the condition must adhere to the following rules of Islamic jurisprudence.

Basic Rules for the Validity of Conditions in Contract:

There are four basic rules for judging the validity of conditions in a contract:

- 1) A condition which is not against the contract is a valid condition. For example ABC co. made a contract with xyz Co. to sell its inventory. ABC co put a condition that both company will use e-mail as a medium of communication. Such condition does not make the contract void.
- 2) A condition which apparently seems to be against the contract, but is in the market practice, these kinds of conditions is permissible unless specific prohibition is proven with clear rules of Sharia'h. For example, Mr. Ahmad buys an air conditioner from Al-fateh store on a condition that the seller will provide him five-year guarantee and one year free service. This type of condition does not invalidate the contract hence contract is valid.
- 3) A condition that is against the contract and not in the practice of market but it is in favor of one of the contractors, this type of condition is void. For example, if 'A' says he sells a car with a condition that he will use it on a fixed date every month, this contract will be void.

4) A condition, which is against the contract, not in the market practice, and not in favor of any contractor, is not a void condition. For example, undertaking to give charity in case of willful default by the defaulting party.

Now the question arises regarding to the ruling of void condition, whether such conditions void the contract or not. In some cases a void condition makes a contract void and in certain situations it does not invalidate a contract.

To understand the ruling of void condition jurists and sharia'h scholars have laid down two rules, according to jurists in compensatory contracts (Uqood e Mu'awadah) such as sale, purchase and lease agreements putting a void condition will make the contract void. For example 'A' purchases a car from 'B' with a condition that 'B' will use this car twice a week. On the other hand in non-compensatory contracts (Uqood e Ghaer Mu'awadah) like contract of loan, contract of hiba, or guarantee agreement a void condition will not affect the validity of contract. For example a father promised his son that he will give motorbike as gift if his son gets good position in class. Another example of void condition in non-compensatory contract, if 'A' gives loan to 'B' with a condition to repay it on interest, in this case the condition of interest is void but it does not invalidates the loan contract, therefore all activities performed by 'B' with this borrowed amount will be valid.

3) Subject Matter (Ma'qood Alaih)

Subject matter is the goods or services for which parties to the contract try to bargain, one party gets the goods or subject matter while the other will be compensated in term of cash or kind. To make a contract valid it is very important to describe the subject matter in sufficient detail so that a prudent person can identify the goods or services in order to avoid ambiguity, for this reason it is considered as most important essential of a contract. In a valid contract a subject matter must possess the following characteristics:

- Subject matter must exist at the time of contract; one cannot sell a thing which is not in existence at the time of contract. For example sale of unborn baby of camel is void, because camel baby not in existence.
- Subject matter should be of some value, so that it can be traded in business transaction. Goods which are being sold must have some economic and monetary value. For example sale of leaf or a useless stone on road, in this a stone on a road side does not have any monetary or economic value.
- Under Islamic contract it is very important that subject matter must not be prohibited under sharia'h. For example one person offer to sale Liquor in market. Liquor is prohibited in Islam.
- Subject matter must be capable of ownership, title, delivery and possession. Anything which is incapable of being owned, possessed or delivered cannot be subject matter. For example 'A' made a contract with 'B' to sell Arabian Sea for \$500,000.00. Now in this Example Sea as subject matter cannot be owned, possessed or delivered.
- Also at the time of contract subject matter must be specified and quantified in order to avoid ambiguity and certainty of contract.

4) Consideration (Ma'qood Bihi)

Consideration is one of the essential of a valid contract; an agreement without consideration is void. A consideration is something what a promisor demand from a promisee. It should be, specified, quantified and determined at the time of executing the Contract. At the time of contract consideration must be specified in term of currency and amount of currency is quantified. For example, a price of Rs. 300/-. It should be noted that Ma'qood Bihi (consideration) is not required in Uqood Ghair Mu'awadah.

Other Issues in Contract (Aqd)

We will discuss two more issues in Aqd' here.

- 1) Two contracts in one contract (Safqatain fi Safqatin)
- 2) Agency contract (Tawkeel fil Aqd')

Two contracts in one contract (Safqatain fi Safqatin)

It refers to the accumulation or mixing up two different contracts in such a way that the performance of one contract becomes contingent on the other. These kinds of contracts are not allowed in Islam and it renders a contract void, because execution of the contract becomes uncertain. This is the major reason why hire purchase contract is not allowed in Islam due to uncertainty (Gharar). Another example of Safqatain fi Safqatin, 'A' agreed to sell his house to 'B' if 'B' rents his Car to 'A', in this first contract is dependent on the second.

Agency or Wakalah contract (Tawkeel fil Aqd')

Wakalah refers to an agreement where one person appoints another to do a certain action on his behalf, in agency contracts the principal is responsible for all action done by the agent. An agent (Wakil) is someone who develops commercial and contractual relations between the principal and third party (contractor), against a nominal agency fee. In Wakalah contracts all action done by the agent will be deemed as action done by the principal himself. Wakalah contracts are needed by the fact that, where the principal cannot perform himself due to shortage of time or lack of knowledge and expertise all such tasks are performed by the agent on his behalf.

The main features of agency are service, representation and the authority to act for the principal. An agent (Wakil) may obtain a certain wage for services rendered within the incentive structure of the principal.

The contract of Wakalah is about the provision of services by the agent. Some of these services include sale and purchase, hiring, borrowing, lending, guarantee, pledge, gifts, taking and making payments in banks, admission and acknowledgment of rights. Islamic banks use the concept of Wakalah in various Islamic products such as Musharakah, Mudarabah, Murabahah, Salam, Istisna'a and Ijarah. Wakalah is widely used in payment and collection of trade bills, fund management. Banks normally charge a fee for agency services rendered by them on behalf of their clients.

For example, if 'A' appoints 'B' as his agent to facilitate him in his business transactions only 'B' buys a car for personal purpose from 'C' for Rs. 500,000/- on credit and he does not tell 'C' that he is acting as an agent for 'A', in this case 'A' is not liable to pay the amount because 'B' was appointed to make business contracts. 'C' will claim his money from only 'B'. However, if 'B' gets approval from 'A' before purchase then 'C' can claim his money from 'A'.

Investment Agency (Wakalah Istithmar)

It refers to a contract in which one person appoints another as his agent to carry out the trade business on his behalf. The difference between the Wakalah Istithmar contract and Mudarabah contract is that; in Mudarabah

Contract, both parties share the profit arising from business transaction, while in investment agency (Wakalah Istithmar) Wakil will only receive a fee for his services from the principal, in this case the agent (Wakil) will not share in the profit.

In the classical books of fiqh it is called "Ijaratul Ashkaas". The remuneration of the agent can be fixed, lump sum or on commission basis.

SALE AND ITS TYPES**Lesson - 5**

Sharia'h defines sale (Bai) as "the exchange of a thing of value by another thing of value with mutual consent". For example sale of a house in exchange of cash. Sale can be divided into four main types.

- A. Valid Sale (Bai Sahih)
- B. Void/Non Existing Sale (Bai Baatil)
- C. Existing sale but void due to defect (Bai Fasid)
- D. Valid but disliked sale (Bai Makrooh)

A. Valid Sale (Bai Sahih)

Valid sale is defined as a sale which has essential elements in it. There are following four elements which are essential for a valid sale.

- 1. Contract Aqd
- 2. Subject Matter (Mabee')
- 3. Price (Thaman)
- 4. Possession or delivery (Qabza)

1. Contract or Transaction (Aqd)**1.1 Offer & acceptance (Ijab-o-Qobool)**

In a contract of sale there must be offer and acceptance. Offer refers to the proposal made by one person either to sale his product or to buy a commodity of someone else. Acceptance refers to the approval of the proposal made by a person either to sale or to buy a commodity. Offer and acceptance must take place in order to have a valid sale. Offer and acceptance can be done verbally or implied.

a) Oral/Verbal (Qauli)

One way of offer and acceptance is done orally or verbally between parties in such a way that the sale executed on the spot. If offer and acceptance is communicated by saying or expressing, sale is valid. E.g. one can say "I have sold" but one cannot say "I shall sell to you".

b) Implied (Isharaa)

There is another way to offer and accept a proposal i.e. implied. Seller can impliedly offer to sale his product and buyer can accept that offer. There are two examples of implied offer and acceptance.

- o **Credit Sale (Istijrar)** Example of credit sale is the settlement of the utility or consumer bills at the end of the month after use of good or services.
- o **Hand to Hand Sale (Taati)** selling of goods without expressing offer and acceptance for procedure adopted in various supermarkets and departmental stores.

1.2 Buyer & Seller (Muta'aqiain)

In a sale contract buyer and seller must be capable of entering into a contract. Both must be sane and mature, any sale contract executed by insane or minor person is not valid.

a) Sane: both the buyer and seller must be mentally sound at the time of entering into contract.

b) Mature: both the buyer and seller must be major

1.3 Conditions of contract (Sharaet-e-Aqd)

1.3.1 Sale must be non-contingent.

The sale contract must be certain and should be non-contingent on any future event. For example 'A' promised 'B' to sell his car provided that the sale will execute if Pakistan win the cricket match.

(a) Unconditional contract

The sale must be unconditional. For example 'A' buys a car from 'B' with a condition that 'B' will employ his son in his firm. The sale is conditional and hence invalid.

(b) Under reasonable conditions

Sale is valid if there is a valid condition, such conditions does not invalidate the sale. For example, 'A' tells 'B' to deliver the goods within a month, the sale is valid.

(c) Under unreasonable condition but in market practice

A condition which seems to be against the contract but in market practice and not against the injunctions of Quran and Sunnah does not invalidate the sale. For example 'A' buys a refrigerator from 'B' with a condition that 'B' undertakes its free service for 2 years. The condition being recognized as a part of the transaction is valid and the sale is lawful in Sharia'h.

1.3.2 Sale must be immediate

There must be an absolute and immediate sale. As we discussed earlier that a sale which is dependent on future date or sale contingent on a future event is void. For example, 'A' says to 'B' on the first of January: "I sell my car to you on the first of February". The sale is void, because it is attributed to a future date."

Similarly, if 'A' says to 'B': "If PML party wins the elections, it will be considered that my car is sold to you.", the sale is void because it is contingent on a future event, which may or may not occur. However, in some specific cases, promise to sell on a future date, may be allowed.

2. Goods for Sale or subject matter (Mabee')

In a valid sale, at the time of sale subject matter must exist, something of value, capable of ownership/title, delivery and possession. It must be specified and quantified.

Existence

At the time sale the subject matter must exist. Thus a thing which is not in existence or which cannot be delivered or possessed by either buyer or seller, cannot be sold. If such things are sold with mutual consent then the sale is void.

For example 'A' sells the unborn calf of his cow to 'B'. The sale is void. However two cases where goods can be sold before existence, this exception is for Bai Salam and Bai Istisna.

Valuable

The subject matter of sale must be a property of value. Things which are useless according to usage of trade or intrinsic value cannot be sold. For example a leaf or a stone on a roadside cannot be sold or purchased.

Usable

The subject matter must be sharia'h compliant, sale of haram things is void, like pig meat and wine.

Capable of ownership/title and delivery/possession

Sale of things which cannot be owned is void. For example sea or sky.

Specific and quantified

For a valid sale the subject matter must be specifically known and identified in such a way that both parties can distinguish it from other things. Moreover things which are to be sold must be quantified clearly.

For instance, there is a building comprising of a number of apartments built in the same pattern. 'A', the owner of the building says to 'B', "I sell one of these apartments to you"; 'B' accepts the offer. The sale is void unless the apartment intended to be sold is specifically identified or pointed out to the buyer.

3. Price (Thaman)

Specified (Maloom)

For a valid sale the measuring unit of the price should be known e.g. currency such as USD, PKR, EUR etc.

Quantified & certain (Muta'aiyan)

In valid sale, the price should be determined and quantified such as the total amount. if the price is not certainly mentioned the sale is void. For example in a sale contract one person say that if you pay within one month, the price is Rs 50/- but if you pay after two months the price will be Rs55/- in this case the parties to contract must agree upon any of the alternative, if they do not agree any of the alternative the price will be uncertain and sale is void.

4. Delivery or possession (Qabza)

The subject matter of sale must be in the possession of the seller when the sale occur. Now possession can be termed in to ways, constructive or physical possession.

Physical (Haqiqi)

It refers to the actual possession of subject matter by seller. At the time of sale the subject matter is in physical or actual possession of seller. For example, 'A' has car in his garage; he made a sale contract to sale this car to 'B', the sale is valid because car was in actual possession of seller

Constructive (Hukmi)

It refers to a situation where the seller has not taken physical or actual possession of the goods but the commodity has come into his ownership, all risk and reward or that commodity is passed on to him, it will be said that subject matter is in constructive possession of seller. For example 'A' appoints 'B' his agent to buy a car from Suzuki showroom, 'B' being the agent of 'A' purchased the car, after purchasing the car 'B' takes the car. Now in this case car is in constructive possession of 'A'. 'A' is responsible of all risk and obligation of this car. In this situation 'A' may sell this car to third person because subject matter is in his constructive possession.

B. Void/Non Existing Sale (Bai Baatil)

In sale contract if any of the condition of offer and acceptance, buyer and seller, condition of subject matter (existence, valuable, useable, capable of ownership, delivery possession) are not complied with then the sale will be void. If the sale is void due to defect in above mentioned condition then the buyer does not have title to subject and seller will be not entitled to price. 'A' sells a house which is not in existence, the sale is void. In this case buyer will not be entitled to house and seller will not get price of it.

C. Existing sale but void due to defect (Bai Fasid)

Sale will exist but will be void due to defect if the conditions of contract (non-contingent, unconditional sale) subject matter conditions (specified and quantified) and conditions of price (quantified and specified) are not complied with. However if the fault is corrected the sale will be valid. In legal terminology Bai Fasid is also known as voidable sale, which can be valid if problem is rectified. In a fasid sale, the buyer must not take possession of subject matter, in case where buyer take the possession of goods then title or ownership will pass on him, usage of subject matter will be impermissible he must return the goods.

D. Valid but disliked sale (Bai Makrooh)

A sale will be valid but is considered disliked (Makrooh) in islam. In Makrooh sale the transaction is complete and one gets the possession of goods. For example sale after Juma Azaan, sale after hoarding or where a third party intervenes to buy something this was under negotiation of sale between other parties.

Other types of Sale

Following are the common types of sale:

1. **Bai Musawamah:** A normal sale in which cost and profit margin is not disclosed to buyer.
2. **Bai Murabaha:** kind of sale in which cost and profit is disclosed to the buyer. Goods are sold on cost plus profit basis.
3. **Bai Muqayada:** a sale which is restricted to barter transaction excluding currency exchange.
4. **Bai Surf:** It refers to the sale of gold, silver and currency.

5. **Bai Salam:** it refers to a sale in which full payment is made in advance spot while the delivery of the good is deferred to a future date.
6. **Bai Istisna:** a transaction of order to manufacture. It refers to a sale in which commodity is sold before it comes into existence.
7. **Bai Muajjal:** if the goods are delivered on spot but the price of commodity is deferred to future date, it will be called Bai Muajjal.
8. **Bai Taulia:** Goods sold in such a way that sale price is equal to cost. No profit is earned.
9. **Bai Waddiyah:** It is the type of sale where sale price is less than the cost of goods

Prohibited Sale Transactions

Some of the major types of sale transactions that are prohibited by Sharia'h are as follows:

1. Short Selling (Qabl as Qabza-Sale before possession)

It is the type of sale where the subject matter is sold by the seller without getting its possession is prohibited as per the following Hadiths of Prophet (PBUH):

"Whoever purchases food stuff, should not sell it until he takes its possession." (Bukhari)

Instruments in Equity markets, short selling in currency markets, commodity markets in the current world scenario falls under the same category.

2. Sale of Debt (Bai al Dain)

It refers to the sale of debt, in Arabic 'dain' means "debt" and 'Bai' means sale. Bai'-al-dain, therefore, means the "sale of debt". In discounting of bill of exchange one person has a debt receivable and want to sell this debt at discounted price in order to get the amount on spot, it is termed as Sale of debt. There is a consensus (Ijma) of Muslim jurist that Bai-Al-dain is not allowed and strictly prohibited.

There is logic behind prohibition of sale of debt. A "debt" receivable in monetary terms parallels to money, and every transaction where money is exchanged from the less amount is prohibited.

However if we talk about the trading of debt on face value, it is also prohibited because selling of debts includes greater degree of Gharar, as party to whom the debt is not certain to receive the amount from debtor.

Therefore, debt cannot be sold, however, it can only be assigned at face value and with recourse i.e. assigner of debt will be liable to fulfill its obligations even if the original debtor defaults in paying its obligations.

3. Bai al Innah (Buy Back)

It refers to a transaction of sale and buyback. A sale contract where a person sells an asset on credit and then buys back at a less price for cash. This transaction is deemed as similar to the earning profit over loan transaction, hence it is prohibited. For example: 'A' asks a loan of \$10 from 'B', instead of asking for interest on this loan 'B' applies a machine. He sells the machine to 'A' for \$12 on credit and then buys back from him the same machine for cash at \$10. The extra \$2 similar to interest which 'B' will receive.

KHIYARS (Option in sale)

It refers to the right or option of a seller or buyer to rescind the contract. There are five different ways where a sale contract can be cancelled the five khiyars are as follows:

- a. **Khiyar-e-Shart (Optional condition):** it refers to the option of condition in which at the time of sale, buyer or seller may put a certain condition that the sale can be rescinded by either party after a specific number of days (for example 5 days). This option will be called Khiyar-e-Shart. In this option number of days must be clearly mentioned in the sale contract. Within this specified period, either party has the right to withdraw/terminate the sale without any reason. If this condition is put by the buyer, it will be called Khiyar-e-Mushtari (option of buyer) and when put by the seller, it is called Khiyar-e-Bai (option of seller). Option to sell or Khiyars of sale cannot be transferred to heirs of parties.
- b. **Khiyar-e-Roiyyat (Option of inspecting goods):** the right or option of buyer or seller where the goods can be returned after inspection, if they are not according to required specification, as a result the sale contract is considered cancelled. Khiyar-e-Roiyyat is applicable to all types of contracts. For example, 'A' buys machinery from 'B' without seeing. However, 'A' has the option to return the machinery after inspection.
- c. **Khiyar-e-Aib (Option of defect):** it refers to the right or option of buyer where goods can be returned if found defective. Its seller's responsibility to disclose all defects in his product before selling it, or to supply the goods which are free from defects. In Islam seller is not allowed to hide the defect of the goods because it constitutes as fraud.

Therefore, the buyer has the right to return the good in case where there is deficiency in goods; such defects depreciate the value of the goods. For example, 'A' buys batteries from 'B'. However, 'A' has the option to return them to 'B' if the batteries are found to be defective or not in working condition.
- d. **Khiyar-e-Wasf (Option of quality):** Khiyar-e-wasf refers to the option of buyer to rescind the sale if he found a difference in quality. This happens when the seller sells the goods by specifying a certain quality which is absent in delivered goods. For example, 'A' buys a car from 'B' who has specified automatic transmission in the car. However, when 'A' uses the car, he finds the transmission to be manual. Therefore, he has the right to return the car to 'B' in the absence of that specific quality.
- e. **Khiyar-e-Ghaban (Option of price):** khiyar-e-Ghaban is available when the seller sells the goods at a price which is far greater than the market price provided that the market price is not known to the buyer; a buyer has the right to return it to the seller and cancel the contract. For example, a Parker pen is sold to 'A' by 'B' at a price of Rs.1000/-. However, after the sale, 'A' realizes its market price to be Rs. 250/-. In this case, 'A' has the option to return the pen to 'B'.

BANKING FRAMEWORK – ISLAMIC VS CONVENTIONAL**Lesson – 7****Islamic Banking & Finance - Global growth trends**

In recent years growth of Islamic banking and finance has produced considerable interest in financial world. Encouraging response received from different corner of the globe as the world discovers the concept and inception of Islamic banking. Islamic banking model seems to be the ethical and socially responsible banking model with an ability to provide basic financial need with innovative financial solutions in under-served markets especially in Muslim countries, Islamic banks have a substantial potential to grow to meet complex financial requirements in today's world. There is a significant increase of Islamic financing techniques in the west and in Muslim countries, many of the retail, institutional markets are adopting Islamic finance for their investment and financing need. Islamic financial system is directly involved in real economic transaction which draws its strength from asset backed investment; this mode is free from any interest or speculative activity.

Understanding the difference – Islamic vs Conventional

When we look at the differences between Islamic Financial Institutes and the Interest-based financial Institutes, we find out that the differences are on three levels:

- A. Conceptual and Socio-religious level
- B. Business model and Governing framework
- C. Product Level Implementation

At this point we have to differentiate Islamic banks with conventional banks on the basis of all three levels mentioned above, without clear understanding of above levels will make people to misunderstand the difference between Islamic and conventional banks.

A. Conceptual & Socio-Religious level

ISLAMIC BANKS	CONVENTIONAL BANKS
Islamic banks are not money lending institutes; rather they are working as trading or investment company.	Conventional banks are involved in a business of lending & borrowing of money on the basis of interest.
Islamic banks are working on the basis of socio-religious laws that prohibit giving and taking of interest. These banks also avoid those transactions which are declared haram in Islam such as gambling, speculation, short selling & Sale of debts & receivables.	There are no such restrictions in conventional banks. Interest based activities are common there in fact it is the backbone of this system, however conventional banks are involved in activities like short selling, sale of debts and speculative transactions.
Islamic banks do not undertake and support those businesses which are involved in trading of Haram products, and also cause harm to society such as alcohol, tobacco, pork etc.	Conventional banks usually finance all types of industries whether they are beneficial or harmful for society. Those businesses which are considered illegal by the law of the land are not supported.

B. Business Model & Governing Framework

ISLAMIC BANKS	CONVENTIONAL BANKS
Business model of Islamic bank is based on trading activities, Islamic banks actively participate in trade and production based processes. Islamic banks have governing framework based on Sharia'h. A strong sharia'h supervisory board or Sharia'h advisor board is established to approve all products and transaction of Islamic banks. Sharia'h supervisory board check and approve product development at every level	Conventional banks are only involved in lending money, they are acting as money lenders, and also they do not participate in any kind of trade or business. No such sharia'h board is present in Conventional banks. It is also termed a the litmus test to differentiate Islamic banks with conventional banks

C. Product Level implementation

ISLAMIC BANKS	CONVENTIONAL BANKS
The products of Islamic banks are usually asset backed and includes trading of assets, renting of asset and participation on profit & loss basis. In Islamic banks loan transactions are considered as non-commercial and excluded from domain of commercial transactions. In Islamic banks any loan given by the bank must be interest free.	The products of conventional banks are interest based, money is considered as a commodity and interest is charged as compensation commodity. Both deposit and financing side of conventional banks loan based. Interest is earned and paid.

The main relationship between banker and customer in conventional banks is of creditor and debtor, and any benefit driven from either side fall under the domain of interest because it is the compensation on loan or debt. However if we talk about Islamic banks, the relationship between banker and customer varies as per nature of product or facility. A brief introduction of banker-customer relationship in Islamic banks is mentioned below.

- If there is a sale transaction between bank and customer, Islamic Banks and the customer adopt the role of Seller and Buyer respectively and any benefit available to either party is profit on Sale Transaction.
- In Rental based modes, the relationship between Islamic bank and customer is that of Lessor and Lessee respectively and any benefit available to bank is in the form of Rent.
- In Participation based modes, the relationship between Islamic Bank and Customer is that of partnership and the gain taken by either party is Profit on Musharakah.
- In Service based modes, the relationship between Islamic Banks and Customer is of Mustajir (Service Provider) and Ajeer (To whom service is given) respectively and Islamic Bank gets remuneration in the form of fees (Ujrat).

As evident from above discussion one can easily infer that conventional banks only get compensation in the form of interest because they deal in loan or debt. Conventional banks do not assume any risk of trade or business activity, on the other hand Islamic banks are not involved in interest base loan rather they use trading for different products. The compensation of Islamic bank is different in every case; it can be in the form of rent, profit, sale price of asset. Moreover Islamic banks take full risk in the performance of business activity as most of the transactions are trade based.

Product Wise Comparison of Conventional Bank and Islamic Bank

The conventional banking performs the following major activities on the basis of interest:

1. Deposit creation
2. Financing
3. Agency services
4. Issuing letter of Guarantees (LGs)
5. Advisory services
6. Other related services

1. Deposits (The liability side)**Deposit of Conventional vs Islamic bank**

It is a common misconception even in conventional bank that 'deposit' is accepted on the basis of 'Amanah' (trust). However if we look into the definition of loan/qard, we will see that deposit has more resemblance to qard rather than Amanah. According to the Sharia'h definition of 'Amanah', it must bear two special features; anything cannot be termed as Amanah if these distinct features are not present.

- Amanah cannot be used by the bank for its business or benefit.
- In Amanah the bank cannot be held liable in case of loss or any damage to the Amanah which is beyond its control.

However in banks the deposit is primarily used to earn profit, it is only possible when this deposit is used in business transactions by banks. If we look into the current deposit of banks, it cannot be termed as Amanah, it does not fulfill first condition of Amanah, that it cannot be used by the caretaker for his own business. Moreover, deposit held by banks is under responsibility of banks, even in case of damage or loss to deposit, the bank will be liable to pay on demand. Due to this feature deposits in banks cannot be termed as Amanah, because the asset held as Amanah will not be returned in case of any damage or loss to the asset which is beyond control of custodian.

According to above two features of Amanah in conventional banks, all three kinds of deposits namely current accounts, fixed deposits and saving accounts cannot be termed as Amanah, rather they all are governed on the basis of Qard. One school of thought says that only fixed deposit and saving accounts fall under the laws of Qard but current account is governed by Amanah. On the other hand the conventional bank is as much liable to current account as it is to saving and term deposit accounts, in Fiqh terminology is it called "guarantor".

From above discussion we can easily infer that depositors are not concerned with the terminology used in banks, rather they want to secure assets before putting it into banks, therefore the main aim of the depositors is not to put the assets in banks as Amanah, rather as qard by having collateral security by appointing the bank as guarantor.

Example of Sayyidnna Zubair bin Awwam

Hazrat Zubair bin Awwam (R.A) was famous and well known for his honesty and trustworthiness. Most of the people there used to leave their valuables and properties with him in trust as Amanah. The people there used to withdraw all or part of their properties based on their needs. It has been reported in Al Bukhari and Tabaqaat-e-Ibn-e-Saad in respect of Hazrat Zubair bin Awwan that "he declined to accept such property as Amanah (trust) but rather accepted them as Qard (loan)".

The reason of this action is the fear of losing the property, and it may be assumed that this damage or loss is due to the negligence of the custodian. Due to this fact he decided to consider it a loan so that the depositor felt more comfortable with him. Another reason for this decision is that he can easily use these funds or employ the properties to earn profit, where he is totally responsible for the loss of property. The

loan sum calculated at 2.2 million Dirhams at the time of his death by Sayyidnna Zubair bin Awwam's son. He specified it as Qard, not Amanah. Sayyidnna Zubair bin Awwam also used the term loan while instructing his son before his death "Son, dispose of my property to settle the loans".

Conclusion – Deposit in Conventional vs Islamic bank

A conclusion can be made with above discussion and example, in conventional banks all three types of deposit are governed by law of Qard, out of this Qard any part of amount can be withdrawn by depositor at any time, moreover any excess or additional profit paid on these deposits (Qard) will be Interest (Riba).

In previous lesson, it is already discussed that if lender is facilitating the borrower by providing financial assistance, then any excess driven by lender will be termed as riba, which is Haram in Islam. However there is a consensus of Muslim scholars that dealing in savings accounts, fixed deposit is prohibited because banks pays extra amount in these accounts as profit which is interest. On the other hand The Islamic Fiqh Academy Jeddah in their second session has further recognized such transactions (transaction conducted in Fixed and saving deposit) as interest based transaction. Therefore being a Muslim it is not permitted to keep their funds in these accounts. As far as current account is concerned, conventional bank does not pay any excess to depositors, therefor according to few jurists it allowed to hold funds in these account.

On the hand in Islamic banks Current account is based on Qard, no extra amount or profit is paid to customers, it can be payable on demand. The other types of saving and fixed deposits in Islamic banks are governed on Islamic principles of Mudaraba/Musharaka. To sum up the discussion, we conclude that if the banking system is based on Islamic principles, in which the depositor is the fund provider and acting as a partner with bank, the bank perform business activities on sharia'h compliant areas and profit generated from business activities is distributed among the depositors of bank according to agreed ratio. The procedure of Musharkah/Mudarabah based deposit structure will be discussed in detail in next lessons.

2. Financing Activities

The asset side of a bank includes financing activities in which a bank extends fund to finance different entities with different names like lease, running finance, overdraft, term finance, house finance and consumer finance etc. In a conventional bank all above mentioned activities are performed on bases of Qard/loan, bank extends loan to an entity on interest and finance different projects the only difference lies among them is in security and mortgage requirements. Since all the financing products of a conventional banks are based on loan, therefore interest is received as the compensation by Conventional Banks from these financing products.

While in Islamic banks financing side is totally different from conventional banks and it is the key distinct factor to differentiate between these two banks. Islamic banks use asset based financing techniques, which include either sale or rent agreement of underlying asset. For car financing Islamic bank uses Ijarah (Rent), for material acquisition Murabaha is extensively used in Islamic banks, moreover diminishing Musharaka, Istisna, and Salam are few examples of financing tools for Islamic banks. These financing products will be discussed in later lessons in detail.

Asset side of Islamic Banks

Islamic banks are providing financing facilities on following basis.

Sale Based Modes: in sale based modes Islamic banks instead of extending loans, sell actual asset to the client and gets the compensation in form of price of the asset which includes profit as result of transaction. In sale based modes it is necessary for a bank to first acquire the asset and sell it to the customer after taking all risk and reward of that asset. Examples of Sale Based modes are Murabaha, Musawama, Salam, Istisna, Istijrar etc.

Participation Based Modes: in this mode, Islamic bank enters into a partnership with its customer to perform a specified business activity. The profit is share among partners (i.e bank and

customers) as per agreed ratio and loss is borne as per investment. Examples of Participation based modes are Musharakah and Mudarabah.

Rental Based Modes: In Rental based modes, Islamic Bank acquires the asset and after assuming its ownership and risk, give the asset on rent to the customer for a definite period. In this form of financing Islamic bank gets its compensation in the form of rent for usage of asset by customer. Examples of rent based financing are Ijarah and Diminishing Musharaka.

3. Agency Based transactions

A bank under Islamic Sharia'h can act as an agent (on Al-Wakalah basis) of the customer and can carry out the transaction on his behalf. Moreover, it can charge agency fee for the services. The agency fee can be charged in the following cases:

- Inward bill of collection
- LC opening and acceptance
- Payment / receiving of cash on behalf of the customer
- Outward bill of collection
- Collection of export bills / bills of exchange. In this case, the undertaking or guarantee commission and take-up commission can be Islamized. Bank will charge an agency fee for accepting the bills, which is bought at face value.
- Underwriting and Initial Public Offering (IPO) services.

One major difference between Islamic Bank and Conventional Bank under this category is that Islamic Bank can only carry out such transactions which are Sharia'h Compliant, and which are allowed in Islam. Moreover Islamic banks do not support those industries which causes harm to society such as liquor, tobacco and pork industry.

4. Role of the Bank as Guarantor

In a contemporary banking industry banks usually providing guarantee services to their client in which they guarantee their customers and charge a guarantee fee. According to sharia'h fee cannot be charged on guarantee agreements, because guarantee is a non-compensatory contracts (Uqood e Ghaer Muwadah) and we cannot claim any income in non-compensatory contracts. However, if a bank is providing some extra services to customers, a fee can be charged in this case. Some of the common types of Guarantees issued by Banks are as follows:

- Bid Bonds
- Performance Guarantee
- Shipping Guarantee

5. Advisory Services

Most of the advisory services provided by the financial institutes can be carried out easily in compliance with Sharia'h as long as the nature of business is halal. These include:

- Equity placement
- Merger & acquisition advise
- Venture capital.
- Cash & portfolio management advice
- Brokerage services (Purchase & buying of share of companies involved in halal business, a fee could be charged for it).
- Financial advisory services
- Privatization advisory services

- Trading (Capital market operations)

6. Other Services

Other allowed Islamic financial services and products are:

- Demand draft
- Pay order
- Lockers & custodial services
- Sale & purchase of travelers checks (local & foreign currency)
- ATM services
- Electronic online transfer
- Remittance
- Zakat deduction
- Sale & purchase of foreign currency
- Telegraphic transfer (of cash)
- Opening of bank account (current & non-interest or no-markup)
- Clearing facility
- Collection of dividends
- Electronic banking window
- Telephone banking

New Challenges for the Industry

Although Islamic banking is growing with a satisfactory pace but with all its success and growth, Islamic Banking Industry is still in its infancy stage and there are lot challenges and obstacles in its way. Islamic banking industry has to overcome many challenges in order to achieve a larger market share and sustain its growth. Some of the challenges that the Islamic banking industry faces today includes:

- Lack of awareness and skepticism at different levels – including investors, bankers, regulators, researchers & customers.
- Being a new industry, a major challenge in its growth is the worldwide shortage of trained Human Resource in Islamic banking & finance.
- Limited number of Sharia'h Scholars that create over-reliance and raise questions about Sharia'h compliance of the institutes involved.
- The lack of awareness especially among Muslim people about the practicality and knowhow of Islamic banking is a widespread issue that needs to be addressed
- Focus efforts needed for New Product Development & Research.
- Lack of the solutions for Liquidity Management in Islamic banks & creation of Islamic Inter-bank Market and introduction of new benchmark (IIBOR).
- The lack of a uniform regulatory and legal framework globally is a major drawback within Islamic banking

LIABILITY SIDE OF AN ISLAMIC BANK**Lesson – 8****Deposits Side of Islamic Banks**

In developing world of banking and finance, Islamic banks are striving to introduce innovative and market compatible deposit products and to mobilize them, keeping in view the requirements of various customers.

In order to provide competitive products, Islamic banks need to develop a detailed profit and loss or pool management structure to secure the interest of depositor for better profit. The funds received in the form of deposit, thus used in Murabaha, Ijarah, Diminishing Musharakah operations, which will generate profit at the end of a period. The profit received in from financing techniques is then distributed among investors (depositors). Islamic banks of Pakistan are normally providing three types of deposits i.e. current deposit, saving deposit and certificate of investment (fixed or term).

Current Deposits

In current account banks generally do not give interest or any benefit to the current account holders, because it is in the features of current account that no profit will be given in these accounts. However in Islamic bank current account is based on Qard or loan, in which bank accepts deposit on the basis of loan from customer, this Qard must be interest-free. Banks keep these deposits as a debt payable on demand without any increase or decrease.

Most of the people consider current account as Amanah. As we discussed in previous lesson that Amanah cannot be used for business purpose and in the custodian is not liable in case of loss or damage. In case of Qard, one can use these in his own business also borrower is liable to return the whole amount in case of loss.

Bank is held 100% responsible for these deposits in all circumstances, even in case of loss or damage to the bank. This feature releases deposits from the ruling of Amanah where the assets will not be returned in case of any damage to the asset under any condition. According to this justification, current account of Islamic bank lies under ruling of Qard on which no profit or benefit given to the depositors.

Hence current accounts represents amount of loan which a bank can employ in its business with a guarantee to return the loan in any case. The relationship of debtor and creditor between the bank and the depositor will continue. The bank and the depositor shall agree at the time of account opening whether the bank is allowed to use the money in its business. There will be no need to develop and implement a weightage system for this type of account.

Savings Deposits/ Term Deposits

In Islamic banks all remunerative deposits including saving, term deposit, fixed and certificates of investments are accepted on profit and loss sharing basis. The ratio profit sharing ratio is agreed at the time of contract between bank and customer, in banks this ratio is usually decided at the time of opening of contract; however losses have to be shared strictly in the ratio of capital. Amounts received from saving accounts are used in asset based trading activity by the bank, sometimes banks use their own funds along with money raised through saving accounts, in business activity, profit arising from these business activity is shared between bank and customer as per agreed ratio. In Pakistan almost all Islamic banking institutions are running their remunerative accounts on Mudarabah basis.

MUDARABAH

It is a kind of partnership in which one person invests the funds to form a commercial enterprise and other person utilize his skills to run business. The person who provides capital is called 'Rab-ul-Maal', while the person who manages the funds and carryout business activity is called 'Mudarib'. Profit arises from this commercial enterprise is shared between these two as per agreed ratio.

Types of Mudarabah

There are two types of Mudarabah namely:

1) Mudarabah Al Muqayyadah (Restricted Mudarabah)

In Mudarabah Muqayyadah the investor may specify the Mudarib to restrict the investment in a particular business sector, Rab-ul-Maal may specify the area where he wanted to invest funds, a particular business place is restricted for Mudarib to carry out business. This kind of Mudarabah is known as ‘Mudarabah Al Muqayyadah’.

2) Mudarabah Al Mutlaqah (Unrestricted Mudarabah)

In certain situations where investor does not specify any area for investing his funds, Rab-ul-Maal may allow Mudarib to invest the funds in any of the business area where he deems fit, this kind of Mudarabah is called ‘Mudarabah Al Mutlaqah’ (Unrestricted Mudarabah). Full freedom is given to Mudarib to utilize funds in any business; further the Mudarib cannot lend funds to anyone without the consent of Rab-ul-Maal.

In unrestricted Mudarabah the Mudarib is authorized to do anything, which is usually done in business. However, if Mudarib wants to do an extraordinary work with funds, which are beyond the normal routine of the business (like lending funds to third person); he cannot do so without express permission of Rab-ul-Maal. Further Mudarib is not authorized to involve in following activities:

- Appoint another Mudarib to manage funds along with him as a partner
- Mix his own funds as investment in that particular Mudarabah without the consent of the Rab-ul-Maal.

Currently in Pakistan most of the Islamic banks are operating their remunerative deposits (saving, term, fixed deposit) on the basis of Mudarabah Al Mutlaqah (Unrestricted mudarabah). Customer or depositor of Islamic banks in Pakistan authorize banks to invest the funds where they deemed fit. From above two conditions in Mudarabah contract an Islamic bank cannot appoint any partner to manage funds and an Islamic bank cannot mix its own funds without consent of Rab ul Maal (i.e. depositors)

Investment

In Mudarabah contract Rab ul Maal provides funds and Mudarib manages his funds. Therefore Rab ul Maal must hand over funds to Mudarib to invest in any of the business where he deem fit, in Mudarabah Rab ul Maal must leave everything to Mudarib with no interference. Certain activities which a Rabu ul Maal can do are given below;

- Rab ul Maal can monitor Mudarib's activities
- He may work with the Mudarib, if Mudarib allow him to do so.

As far as the investment is concerned, one question arises, whether the investment in form of liquid or non-liquid form.

According to the definition of ‘capital’ under Islamic theory, capital can be those means of production that cannot be used in a process of production until and unless it is wholly consumed or completely altered its form, after process of production, they cannot be leased or let (for example all liquid assets like money, food stuff, raw material etc).

The basic principle is that the capital in Mudarabah is valid just the way it is in Shirkah, there is a difference of opinion in different school of thoughts, which according to Hanafi fiqh capital should be in liquid form (as defined in definition of capital). But, according to the other scholars, equipment and land etc. can also be included as capital Investment. However, all the scholars are unanimous on the following:

“Assets other than cash can be used as an intermediate step. However, this is subject to the determination of the exact value of the assets before they are used for the Mudarabah. If the assets are not correctly evaluated, the Mudarabah is not valid.”

Distribution of Profit & Loss

It is necessary for a valid partnership that contracting parties at the time of a contract must agree to a certain profit sharing ratio, which each partner will share his part of profit. The same practice must exist in Mudarabah contract that profit sharing ratio must clearly be ascertained at the time of contract. There are no prescribed sharing ratios laid down by sharia'h, rather it has been left on mutual consent of partners, they may agree to share profit in any proportion. Profit arising from business activity of Mudarabah can be shared equally or they can also distribute different proportions for the Rab-ul-Maal and Mudarib. However, in cases where parties to a contract have not decided any profit sharing ratio or they forgot to determine the profit sharing mechanism, the profit will be shared at the ratio of 50:50.

Conditions for profit sharing ratio

- In Mudarabah, Rab ul Maal and Mudarib cannot allocate a specific amount out of profit for any of the party, nor can they determine a share for any party which represents a specific rate tied up with capital. For example, if the capital is Rs.200,000/-, parties cannot agree on a condition that Rs.20,000/- irrespective of the profit will be the share of the Mudarib, nor can they say that 30% of the capital will be given to Rab-ul- Maal. However, they can agree that 40% of the actual profit will go to the Mudarib and 60% to the Rab-ul-Maal or vice versa.
- It is also allowed in Sharia'h that different proportions could be agreed for different situations. For example both Rab ul Maal and Mudarib can agree on condition that "If you trade in wheat, you will get 50% of the profit and if you trade in flour, you will have 33% of the profit". Similarly, he can say "If you do the business in your own town, you will be entitled to 30% of the profit and if you do it in another town, your profit share will be 50%".
- Moreover apart from the agreed profit sharing ratio as determined in above mentioned methods, the mudarib cannot claim any extra benefit or salary or any kind of remuneration for the work done by him for Mudarabah.
- On above point scholars of all school of Fiqh Islamic Fiqh are unanimous on this point. However, according to Imam Ahmad it is allowed for the Mudarib to draw his daily expenses under Mudarabah account for his food only. But Hanafi jurists restrict this right of the Mudarib only to a situation where Mudarib is on a business trip outside his own city. In this case, he can claim his personal expenses for accommodation and food, etc. but he is not entitled to get anything as daily allowances when he is in his own city.
- The Mudarabah contract becomes void if the profit is fixed in any way. In such cases, Rab ul Maal will be entitled to entire amount (Profit + Capital). In these situations the Mudarib will be entitled to earn fee for his services i.e. employee earning Ujrat-e-Misl (market equal salary/wages). The remaining amount will be distributed as per agreed ratio.
- If there is loss in some transactions and profit in others, in such scenario the losses will be offset from the profit arising from second instances, then the remainder will be shared between Mudarib and Rab ul Maal as per agreed ratio.

Expenses in a Mudarabah Contract

- In a Mudarabah contract, Mudarib only shares in profit arising from business activity as per agreed ratio, Mudarib's personal expenses food, conveyance, medical care, clothing and residence are not borne by Mudarabah; he will bear these expenses on his own after receiving his share in profit. However according to Hanafi jurists, if Mudarib is on a business trip relative to Mudarabah then expenses like food, travelling and shelter will be covered from capital of Mudarabah. It is pertinent to mention here that, if the journey is not more than 48 miles and Mudarib is not overstaying the night, then these expenses will not be covered under Mudarabah.
- All direct expenses which are related to Mudarabah contract and incidental to the nature of business of Mudarabah, will be borne by capital of Mudarabah, expenses like salaries and wages of employees or commission in buying and selling of goods have to be paid by capital of Mudarabah. These expenses are direct in nature and can be included in cost of commodity, for example, if the

Mudarabah business is of selling ready-made garments then the stitching, dyeing, washing expenses etc. can be included by the Mudarib in the total cost of the garments.

- According to Hanafi jurists if Mudarib is doing business with in his city then he is only entitled to share in profit as per agreed ratio, he will not be allowed for any expenses. Similarly, if he keeps an employee, salary of this employee is covered by Mudarabah.

Roles of an Islamic Bank in Mudarabah

In Pakistan, Islamic banks govern all saving and term deposit on the basis of Mudarabah, in which customer are Rab ul Maal because they provide funds and bank acts as Mudarib and perform business. In Mudarabah contract there are different roles of Mudarib, few of them are mentioned below. Islamic bank being Mudarib acts as

Ameen (Trustee): Islamic banks are Responsible for safeguarding the investments of depositors,

Wakeel (Agent): It acts as agent of Rab ul Maal to make purchases from the funds provided by the Rab-ul-Maal.

Shareek (Partner): Bank will act as partner and sharing in any profit from the business.

Dhamin (Liable): To provide for the loss suffered by the Mudarabah due to any act of negligence on his part.

Ajeer (Employee): When the Mudarabah gets Fasid due to any reason; the Mudarib is entitled to only the salary, Ujrat-e-Misl.

Management of Deposit Pools and Investments

In Pakistan for the purpose of managing and investing funds received from depositors maintain some common and separate pools or general and individual portfolios. In pool management the volume of deposits defines the bank's investment strategies. If depositors are risk-averse, banks should also be risk-averse, investing in less risky modes and avenues. While keeping in mind the depositors' risk profiles, profitability and liquidity, Islamic banks should invest these funds through Mudarabah basis in different pool each pool have its own attributes and level of risk, the deposit from risk-averse customer will be placed in less risky pool. Islamic banks should also deploy funds in financial markets and make fee-based earnings through investment management and services.

The financing assets of Islamic banks are grouped into different investment pools with respect to nature of the source of funds. In general Islamic banks in Pakistan are maintaining different kind of pools which are as follows

- General deposit pool in PKR
- General deposit pool in FCY
- Equity Pool
- Special/specific customer's Pool
- Export refinance scheme Pools (like the Islamic export refinance scheme of the State Bank of Pakistan)
- Treasury/financial institutions pool

The above mentioned pools are usually managed at Head office of the banks. Sharia'h advisor or Sharia'h supervisory board strictly monitors the activity performed by pools and they authorize the investing

activity, if they totally comply with sharia'h ruling. Moreover State bank of Pakistan has laid down a set of rules and regulation to maintain and regulate deposit pools in Islamic banks.

General deposit pool in PKR

Pak rupee deposit pool is made up of funds from customers in remunerative deposit schemes such as saving accounts and term deposit and certificates etc.

Islamic bank uses the funds from this pool to invest in financing like Murabaha, Ijarah, Salam, Istisna and diminishing musharaka. The funds generated under this pool are utilized and invested in priority basis, because in remunerative deposit Islamic banks govern these deposit on Mudarabah basis and funds received under Mudarabah contract are utilized in business activity to earn profit, which will be distributed between bank and customers. In Pakistan practically Islamic banks may invest their own funds as an independent capacity in PKR pool in order to full utilization of funds.

General deposit pool in FCY

Foreign currency deposit pools are maintained by Islamic banks, funds in this pool comes from remunerative deposit of customers in foreign currency. Customers place funds in foreign currency on Mudarabah basis with bank, the bank will use these funds to carry out business transactions like Murabaha, Ijarah, Salam, Istisna and Diminishing Musharakah. Saving accounts in FCY and term certificates in FCY fall under this pool.

Equity Pool

Most of the Islamic banks in Pakistan are maintaining equity pools in order to full utilization of funds and to generate more profit. The equity pool consists of funds sources from banks equity. In most of the cases Islamic banks may utilize funds received under non-remunerative deposit, funds received under current account can be used in business purpose by Islamic banks because current accounts are governed on Qard basis.

Special/specific customer's Pool

Sometimes Islamic bank makes special arrangements with customers on Musharakah basis. Funds received under special purpose are placed under this pool on Musharakah or Mudarabah basis. These funds are invested in Islamic based financing.

Specific Customers' Pools are made mainly to give higher return than the general PKR/FCY pool return to corporate customers and high net worth individuals, based on Musharakah arrangements. The high earning assets are financed under Islamic modes with these funds, either by specifically disclosing the financing avenues to the depositors or not. Already booked assets may also be used for such purpose, by selling the assets from general pool to specific pool

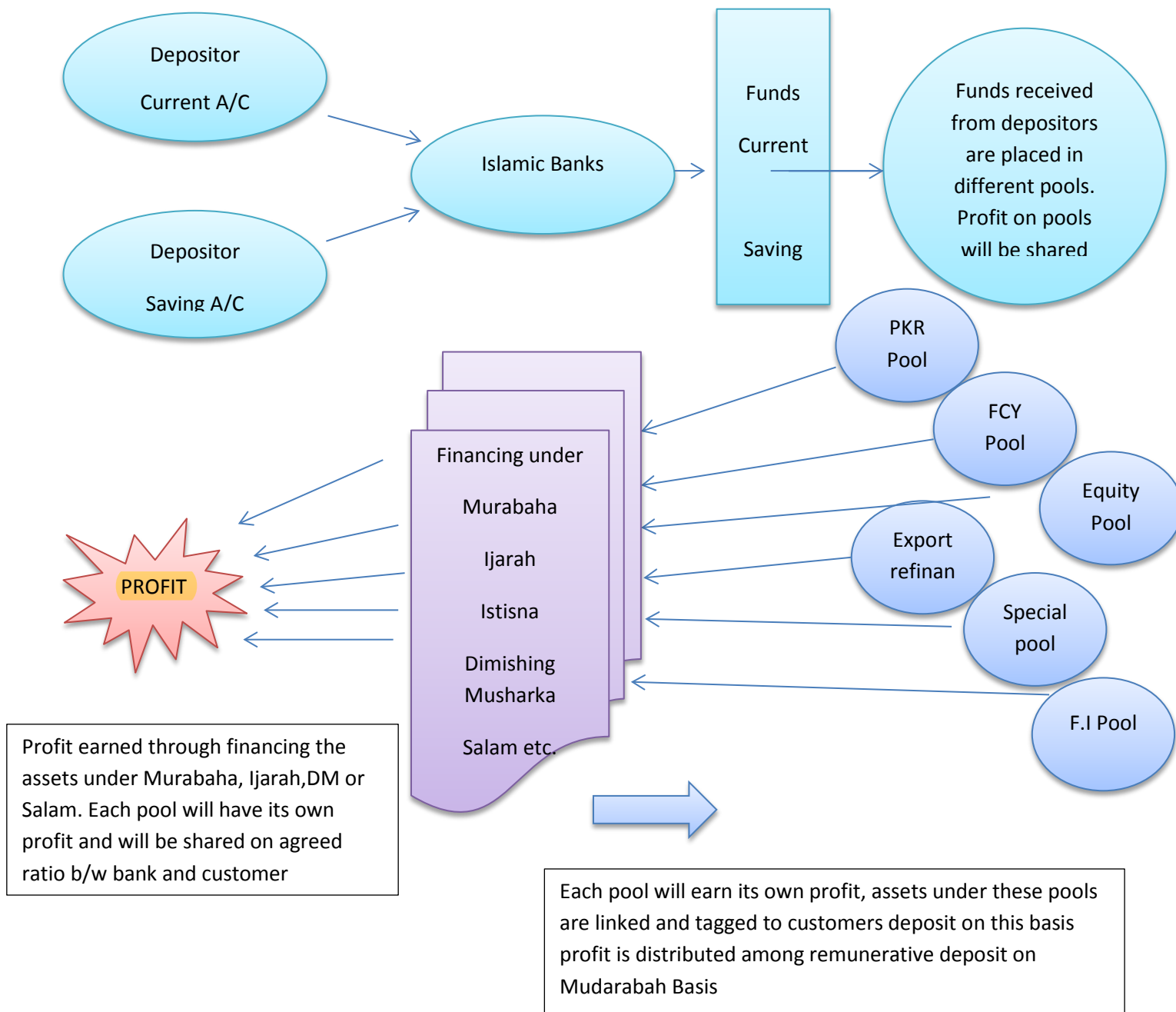
Export refinance scheme Pools

In Pakistan currently all Islamic banks have maintained export refinance pool as per direction of central bank i.e. State bank of Pakistan. In order to promote export activity and to encourage exporter SBP has directed all Islamic banks to maintain export refinance pool to facilitate exporter. The Islamic export refinance pool is made up of funds provided by SBP under its Islamic export refinance scheme, and funds provided by bank (either banks' own funds or on behalf of customer) under Musharka agreement. The funds are used to provide financing to exporter under Islamic export refinance scheme as directed by SBP.

Treasury/financial institutions pool

These pools are maintained in Islamic bank to manage its liquidity. Funds from different financial institution are held in these pools under Musharkah, Mudarabah and Wakalah basis, specific weightage or ratio is assigned to FI. Islamic bank will create treasury or financial institution pool comprising different assets on Murabaha, salam, istisna, or Ijarah basis. Asset booked under Ijarah should be atleast 51% to total assets in pool. Non-liquid assets should be less than 50%. Assets are traded under these pools; at maturity Islamic bank will calculate profit and distribute it as per agreed ratio.

Structure of Pool Management



Profit calculation and distribution

In Pakistan most of the Islamic banks calculate profit from pools on monthly basis. Islamic banks calculate profit on gross income level where all direct expenses are deducted from income, more over gross income of the pool is calculated by taking all assets which are books under specific pools and funds are utilized. Income received from pools will be included in profit calculation on the basis of number of days where an asset is linked to a particular pool. Usually Islamic banks announce gross profit on monthly basis.

Profit earned in a month is shared between customers and Islamic bank as per agreed ratio. Profit sharing ratio may vary from bank to bank In Pakistan gross profit from pools can be shared between bank (as Mudarib) and depositor (as Rab ul Maal) in a predetermined ratio on actual profit earned. It can be 50:50.

Assigning of weightages

Under Mudarabah contract weightages can be defined as the profit sharing mechanism among all depositors (Rab ul Maal). From this definition we can understand the concept of weightages in Islamic bank. Islamic banks accept remunerative deposit on the basis of Mudarabah, the bank acts as Mudarib and customer act as Rab ul Maal, profit sharing ratio between bank and customer is decided at the time of contract. Generally in practical situation deposit comes from many customers who all act as Rab ul Maal, deposit from customers is placed in different pools. Now in a particular pool, funds are placed which are received from different Rab ul Maal, the bank manage that pool, after completion of trade activity the profit is shared between customers (all customer who comprise the pool i.e. a pool) and bank. Now the profit which is distributed to a specific pool is further shared among all depositor in a certain manner based on following conditions

- Type of deposit
- Amount tiers
- Investment tenure
- Profit payment option

In Pakistan these conditions may differ from bank to bank.

Weightage do not provide the exact rate of return on any category of deposit; however it just provides banks' preference among all depositors during the month. Although at the time of assigning the weightages, bank have an idea for budgeted (expected) gross profit and expected rate of return in particular month. It is pertinent to note here that Islamic banks do not distribute expected profits; rather actual profit after performance of deposit pools is shared among depositors.

Illustration

Step by step, the process flow of the Mudarabah model of Islamic banks is as follows: The Islamic bank will create an investment pool having categories based on different tenors of deposits. We assume that the bank launches the following deposit tenors: three months, six months and one year. Each depositor of the bank will deposit its funds in a specific category of the investment pool that will be assigned a specific weightage. Weightage can only be amended at the beginning of the accounting period. Assume that the following investment is made by the depositors in pool A.

Category	Amount Rs.	Weightage
Three months	3,000	0.60
Six months	4,000	0.70
One year	3,000	1.00
Total funds in Pool A	10,000	

All members of the pool will have a Musharakah relationship with each other, i.e. they are partners in the pool with the above mentioned weightages. The bank may also invest in the pool as a depositor. Now the pool A is acting as Rab ul Maal because it provides capital to bank, and bank will act as Mudarib and will run business. It was decided to share profit on 50:50 basis between Rab ul Maal (depositors) and bank (Mudarib)

The bank would start business with funds from the pool and the profit earned would be shared between the parties in an agreed ratio. Assume that the profit sharing ratio is 50:50. The bank deploys Rs. 10,000 of the pool for a period of one month and earns a profit of Rs. 1,000 at the end of the month. This profit would be shared as follows: bank (500) and the pool (500). The Mudarabah contract would be completed at this stage.

Profit sharing mechanism amount depositors

Now Rs. 500 earned by the pool would be distributed as per the weightage assigned at the beginning of the month.

Category	Deposit (Rs.) (A)	Weightage (B)	Weighted average (C=A*B)	Profit (D=C*profit/ avg. weight)
Three Month	3,000	0.60	1,800	119
Six Month	4,000	0.70	2,800	184
One year	3,000	1.00	3,000	197
			7,600	500