

# VERDICTS ON AT-TAWARRUQ AND ITS BANKING APPLICATIONS

by

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In the name of Allah, the Beneficent, the Merciful. Praise is due to Allah, Lord of the worlds. May blessings and peace be showered upon our master Muḥammad, the last Prophet and the noblest among the Messengers of Allah, on his Households, Companions and those who follow them righteously, till the Day of Judgement.

In this short discussion, I aim at gathering the verdicts regarding *tawarruq* and its practical forms, which can be applied in Islamic financial Institutions. I therefore, pray to Almighty Allah to guide me to appropriateness, correctness and safety from errors and unreasonable lapses. He is surely Great in remembrance, the Guider and the Helper.

## **Literal and technical meaning of *tawarruq***

The word *tawarruq* is taken from the word *al-wariq*, which means minted Dirham. Abu 'Ubaydah said, “*Al-Wariq* is the silver minted like Dirhams initially<sup>1</sup>.”

*Tawarruq* and the verbs derived from *al-wariq* are not directly traceable in the Arabic language, as what the linguists only cited are confined to the verbal nouns, like *al-'irāq* and *al-'istīrāq*. The first is applied to a man when he is monetarily rich, while the latter is designated for a man in search of leaves or Dirham. The scholars might have invented the term *tawarruq* for the one who may be burdening himself on how to acquire *al-wariq*. The term *tawarruq* in the juristic technical meaning of it is ‘the act, whereby a person purchases a commodity on credit and sells in cash to another third person at a lower price than the price in which he/she bought it, so that he may acquire cash’<sup>2</sup>.

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<sup>1</sup> - Lisān al-‘Arab by Ibn Manẓūr : 10/375 (Qum, Iran 1405AH).

<sup>2</sup> - Al-Mawsū‘at al-Fiqhiyyah al-Kuwaytiyyah: 14/147.

However, this designation was not in use for this term, except by the Hambali jurists, as Imām Shamsu ad-Dīn ibn Muflīḥ (May Almighty Allah have mercy upon him) said, "If he is in need of cash to such an extent that he purchases what is equivalent to one hundred with two hundreds, it is tolerable as it is cited on it, and it is the term *at-tawarruq*"<sup>1</sup>. The erudite scholar, Ibn al-Qayyim al-Jawzīyyah (May Almighty Allah have mercy upon him) also cited a statement of Abdul Azīz (May Almighty Allah have mercy on him), "*Tawarruq* drags to *ribā* (i.e. Interest)"<sup>2</sup>. If this statement is confirmed that 'Umar bn Abdul Azīz said as it is cited (though I have not come across the statement in any of the books of authentic transmitted aḥādīth), it is an indication that the word had been in use in that meaning since the first century. It is a surprise then that the linguists, even those who wrote in the juristic terms, like Al-Fayūmī and Al-Maṭrazī etc. could not mention the word. Al-Fayūmī only mentioned an illustration of *tawarruq*, but rather named it as *'inah* (credit sale). On this concept, the majority of jurists stand to only mention it as a form of *al-'inah*, except those of the Ḥanbali School of Thought, as will be discussed *in shā'a Allahu ta'ālā*.

The difference between *al-'inah* and *tawarruq* - on the Ḥanbali usage - is that *al-'inah* implies the act, where a person sells a commodity on credit, then buys it at a current price lesser than the selling price. But as for *tawarruq*, the buyer is not the seller himself, but rather the first buyer will have to sell the commodity to the third person. The third party has no connection with the first seller. In case of *al-'inah*, the commodity will go back to the first seller, while in the case of *tawarruq*, it will not return to the first seller, but rather in the free disposal of the buyer, in what he possesses to sell it in the market at a current price, so as to acquire cash, except that those who mentioned it among the forms of *al-'inah*, only viewed that it shares things with *al-'inah* in commons. First similarity: The first seller will sell the commodity on credit, at a price higher than the current market price. Second: The aim in both is to acquire cash. Third: Both transactions adopt a trick or way out to avoid any involvement in loaning connected with interest.

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<sup>1</sup> - Al-Furū'ū Li Ibn Muflīḥ: 4/171.

<sup>2</sup> - Tahdhīb as-Sunan by Abī Dawūd:5/108.

### **Juristic verdicts on *tawarruq***

To the Ḥanbali Jurists, the verdict on *tawarruq* that is apparent through the consultation of their books is that there are two views for Imām Aḥmad, in which the first indicates *al-karāhat* (i.e. detestation) and the second, which indicates *al-jawāz* (permissibility) is their choice. Ibn Muflīḥ has therefore mentioned this while saying, "If he is in need of cash to such an extent that he purchases what is equivalent to one hundred with two hundreds, it is tolerable as it is cited on it and it is the term *tawarruq*. It was also reported from him that it is detested and our scholar forbade it"<sup>1</sup>. Shaykh al-Islām Ibn Taymiyyah (May Almighty Allah have mercy upon him) said, "If the target of the buyer is the Dirham and he so buys the commodity to a certain time, in order to sell it and take its price, then this is known as *tawarruq*, in which there are two narrations from Aḥmad on its detestation."<sup>2</sup>

But Al-Mardāwī (May Almighty Allah have mercy upon him) said, "If he is in need of cash to such an extent that he purchases what is equivalent to one hundred with one hundred and fifty, it is tolerable as it is cited on it, the supported view of our School of Thought and the followers are firm on it, as it is the issue of *tawarruq*"<sup>3</sup>. By this, Al-Mardāwī affirmed that the supported view in their School of Thought is that it is permissible, as well as the majority of the Ḥanbali followers are also on that opinion, and that is the reason why Al-Bahūtī said, "Whoever is in need of cash to such an extent that he purchases what is equivalent to one thousand with the higher price, in order that he can make great profits with its price, it is tolerable, as it is stipulated"<sup>4</sup>. He also said in *Al-Kashshāf*, "If a person is in need of cash to such an extent that he purchases what is equivalent to one hundred with one hundred and fifty, it is tolerable, since it has been stipulated on and the issue is known as *tawarruq*"<sup>5</sup>.

Even Al-Bahūtī never disagreed, since the permissibility is the adopted view of the *madhhab*, which is also apparent in the statement of Ibn Qudāmah, despite the fact that he did not mention the issue of *tawarruq* verbally and explicitly. However, Ibn Qudāmah referred to it during his discussion on *al-'inah*, where he affirmed that *al-*

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<sup>1</sup> - Al-Furū'ū by Ibn Muflīḥ: 4/171.

<sup>2</sup> - Fatāwā Shaykh al-Islām Ibn Taymiyyah: 29/30.

<sup>3</sup> - Al-'Inṣāf Li al-Mardāwī: 4/337, Dar at-Turāth al-'Arabī, 1400 AH.

<sup>4</sup> - Sharḥ Muntahā al-'Iradāt: 2/158, Dar al-Fikr.

<sup>5</sup> - Kashshāf al-Qanā': 3/175, Maṭba'at al-Ḥukūmah, Mecca, 1394AH.

*'inah al-mamnū'ah* (the prohibited credit sale) is that when the seller himself purchases the commodity which he sold on credit. He also said, "At every place, we said that it is not allowed for him to purchase and not allowed for his representative/agent, as he represents him (the seller), but rather it is permissible for other than him among people, whether his father, son or any other, because such person is not the seller. He only buys on credit as an external person"<sup>1</sup>.

This is an indication that if the second buyer is a stranger to the first seller, it is then lawful and that is in the issue of *tawarruq*.

Therefore, what is clear is that the supported chosen view by the Ḥanbali School of Thought is one of permissibility. However, the erudite scholar Ibn Taymiyyah and his student, Ibn Al-Qayyim al-Jawziyyah tended to forbid it. So, Ibn Taymiyyah, while talking about various types of purchase, said:

And the third is that his intention should be no this and no that (i.e. that the intention of the buyer is neither the issue of benefitting nor trading from the commodity), but rather his target is on Dirham, because he needs it and cannot borrow. Therefore, he will buy a commodity to sell and take its price; that is actually *tawarruq*, which is disliked in the most apparent one in the two different statements of the scholars, and is one of the two narrations from Aḥmad<sup>2</sup>.

The great scholar Ibn Al-Qayyim said, "If asked, what will you say if the commodity does not return back to him, but rather to a third person? Will you name it as *'inah* (i.e. credit sale)? It will be said, 'This is the issue of *tawarruq*, because the aim from it is *al-wariq* (searching for Dirham), which Imām Aḥmad had stated in the narration of Abu Dāwūd that it is from *al-'inah* and designated its name to it. However, the predecessors had disagreed in the ruling whether is disliked or not; 'Umar bin Abdul Azīz made a verdict to make it a disliked act by saying: "*Tawarruq* is capable of dragging one to *ar-ribā* (Interest)", while 'Iyās bin Mu'āwiyah legalized it.

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<sup>1</sup> - Al-Mughnī by Ibn Quddāmah: 4/46, Dar al-Kutub al-'Ilmiyyah, Beirut.

<sup>2</sup> - Fatāwā Ibn Taymiyyah, 29/442.

There are two stated reports from Aḥmad; he justified the ruling for the detestation in one of them, i.e. it is a compelled sale, whereas Abu Dāwūd reported from ‘Ali that the Prophet pbuh had forbade the compelled sale. So, Aḥmad pointed to the fact that *al-‘inah* can only occur when a man is forced to cash, because as the affluent will grudge to him in loaning, he will rather be forced to purchase a commodity, and then sell it. If the seller buys it from him, it is then *al-‘inah*, but if he buys it from another person, then that is *tawarruq*, and his intention in the two subjects is the price. Therefore, the delayed price is a financial obligation on him, instead of an immediate price that is lesser than it. In that case, there is no meaning for *ar-ribā* (Interest), except this, but it is the *ribā ailm* (faultless interest), as his purpose has not been achieved, except through hardship and if he did not intend it, that is simply *ribā*"<sup>1</sup>.

### **Ash-Shāfi‘ī School of Thought**

But Imām Ash-Shāfi‘ī (May Almighty Allah have mercy on him) clearly authorized what is generally known as *al-‘inah*, in which the seller himself will buy the commodity from the buyer, i.e. at a lesser price. He had even supported the permissibility of *Al-‘Inat Aṣ-Ṣarīḥah* (explicit credit sale) strongly in his book *Al-‘Ummu*, then said, "If this commodity is like any other monetary property, why can't I sell my property with whatever I and the buyer want?"<sup>2</sup>.

Imām Ash-Shāfi‘ī had even elaborated on his view in giving evidences on the lawfulness of *al-‘inah*, and thus, had never mentioned any ruling on its detestation<sup>3</sup>. On that path, the predecessors in the Shāfi‘ī School of Thought moved and tread, and they also ruled in support of its permissibility, without any detestation or aversion. Al-Baghawī said, "If he sells something to a certain period of time and such thing remains good, and then buys it before the setting in of the period, then it is permissible whether he buys it at the same price in which he sold it, or less or higher, as it is also permissible after the setting in of the period"<sup>4</sup>.

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<sup>1</sup> - Tahdhīb As-Sunan by Ibn Al-Qayyim: 5/108-109, Al-Maktabat Al-Athriyyah, Pakistan.

<sup>2</sup> - Mukhtaṣar al-Maznī.

<sup>3</sup> - Kitāb Al-‘Ummu, Bāb bay‘i al-‘Ājāl 3/78, Maktabat al-Kulliyāt al-‘Azhariyyah, & 6/249 wa mā Ba‘dahu fī Ṭab‘at Dār Qutaybah.

<sup>4</sup> - At-Tahdhīb Li al-Baghāwī: 3/489.

Likewise, Imām Al-Māwardī had overstated in his controversial discussion with the person that ruled to disallow *al-ʿinah* and responded to those who inferred on that from the Ḥadīth of ‘Ā’ishah and Zayd bin ‘Arqam (May Almighty Allah be pleased with both of them). At the end, he said, "But as for the answer on their statement that it is a means to *ar-ribā al-harām* (the unlawful interest), that is an error and blunder. It is rather a factor that prevents the unlawful usury, and whatever *harām* it prevents is a lamentation". He used the Ḥadīth of the Khaibar dates as proof<sup>1</sup>.

Imām An-Nawawī also ruled for the permissibility, saying, "The *Al-ʿInah* sale (i.e. credit sale) is not among the prohibited things, as it is whereby a man sells and delivers something to another at a delayed price, then buys it again before taking the price with the cash price lesser than that of the previous price. Whether *Al-ʿInah* has become his manner mostly in town or not, this is the famous genuine view in the books of the collectors. ‘Ustādh Abū ‘Ishāq Al-‘Isfrā’īnī and Shaykh Abū Muḥammad had also passed *fatwā* (a formal legal opinion) that if the second sale has become his manner as stipulated in the first, then both sales are then invalid"<sup>2</sup>.

But some contemporaries among the Shāfi‘ī followers ruled in favor of *Al-Karāhah* (detestation) with authenticity of the contract. Al-Qāḍī Zakariyyā’ Al-‘Anṣārī said, "Sale of *Al-ʿInah* (Credit sale) is disliked because of what it contains, like defeating on the person in need, as it is the situation where he will sell a property at an enormous delayed price, delivers it to him, and then buy it from him with insignificant cash, that is good, even if that has mostly become his habit"<sup>3</sup>.

Ash-Sharbīnī Al-Khaṭīb and Ar-Ramlī (May Almighty Allah have mercy on both of them) also mentioned in their commentaries on *Minhāj* that *Al-ʿInah* is among the bulk of detested sales<sup>4</sup>.

But as for *At-Tawarruq*, they neither mentioned it independently nor as a form of *Al-ʿInah*. But the obvious truth is that wherever they ruled to allow the first seller to buy

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<sup>1</sup> - Al-Ḥawā al-Kabīr li al-Māwardī: 5/287-290, Maktabat Dār Al-Bāz, Makkah Al-Mukarramah.

<sup>2</sup> - Rawḍat Aṭ-Ṭālibīn by An-Nawawī: 3/416-417.

<sup>3</sup> - ‘Asnā Al-Maṭālib Li Al-‘Anṣārī: 4/104.

<sup>4</sup> - Muḡhnī Al-Muḡtāj: 2/39, Dār ‘Iḡyā’ At-Turāth, Beirut; and Nihāyat al-Muḡtāj: 3/ 460, Nafs al-Maṭba’ah.

the commodity with lesser cash, then the sale to a stranger is more appropriate with respect to its permissibility. Even Imām Ash-Shāfi‘ī mentioned the permissibility of this form as a unanimously agreed upon issue between him and the opponents of *Al-‘Īnah*, and forced them on that opinion. While discussing with them, he said, "Asked: Is it unlawful on him to sell his property for cash, even if he has bought it temporarily? If he said no, if he sells it to another, it should then be asked: who will then forbid him from it?"<sup>1</sup>.

For this reason, Al-Fayūmī stated on *Al-‘Īnah*, "That is *ḥarām* (unlawful) if the buyer makes a condition on the seller that he would buy it from at a specific price. But if there is no condition between them, Imām Ash-Shāfi‘ī then ruled to permit it, in as much the contract can come up safely protected from imperfections. However, one of the predecessors forbids it, as he said, "It is the sister of *Ar-Ribā* (interest). If the buyer sells it to another than its seller in the gathering, it is then *Al-‘Īnah* also, but allowed with consensus"<sup>2</sup>.

### **Mālikī School of Thought**

But Mālikī School of Thought incorporates what both Shāfi‘ī and Ḥanbalī Schools of Thought named *Al-‘Īnah* under *Buyū‘u al-‘Ājāl* (fixed sales) which is outwardly permissible but can lead to the prohibited act<sup>3</sup>. Their manner of prohibiting is the hardest, in terms of imposition of the defeasance of this type of sale, as long as the commodity is available<sup>4</sup>, but they had not incorporated the likeness of *At-Tawarruq* in the types of these prohibited sales, but rather it appears in their statement that *At-Tawarruq* is allowed to them. Ibn Rushd said, "Mālik was asked about a man among those assisted by him, who sells the commodity to a man at a specific price for a period of time, if he takes it from him, another man who was present with them would show interest to buy it and he would sell it to him. Then, the person who firstly sold it

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<sup>1</sup> - Al-‘Ummu Li Ash-Shāfi‘ī:6/250, Dār Qutaybah.

<sup>2</sup> - Al-Miṣbāḥ Al-Munīr Li Al-Fayūmī, 2/441.

<sup>3</sup> - Al-‘Īnah in their usage is a transaction with other person; it resembles shared profit for the one who orders for the purchase, which Islamic banks operate nowadays.

<sup>4</sup> - Ibn Rushd said: "If man sells a commodity at a price till a period of time, then it is bought from him at a price lesser than that price in cash, then the two sales will be invalidated altogether, according to Ibn Al-Mājšūn and it is the authentic" (Al-Muqaddimāt Al-Mumahhidāt by Ibn Rushd: 2/53, Dār Al-Gharb Al-Islāmī).

would buy it from him later at this same place. He said: ‘No goodness in this. He saw it as undeserved legalized method between them’<sup>1</sup>.

With this, it is clear that Imām Mālik (May Almighty Allah have mercy upon him) only ruled to prohibit this form of sale because of the third man adopted a legalizing device for the first seller. If not for the fact that he sold the commodity to the first seller, then the contract would have been valid for him. He also said in another topic, "‘Īsā said: ‘And I heard Ibn Al-Qāsim saying when he was asked about a man who bought from another a commodity at a specific price till a certain period of time, then the seller ordered another man to buy the commodity for him in cash, he paid his dinars to him and the ordered man thereafter bought it from the buyer with lesser price whether knowingly that the person who requested him to do this, sold it to him or unknowingly, the commodity has already slipped by, he said: No goodness in it’<sup>2</sup>.

For that, Ad-Dasūqī mentioned that the conditions of *Buyū‘u Al-‘Ājāl* (fixed sales), which have been accused are five. Among them: Firstly; Availability of the seller. Secondly; He should be the buyer in the first instance or his agent. And the seller in the first instance is also the buyer secondly or his agent’<sup>3</sup>.

Al-Qurāfī said: "Surely, we only forbid the possibility of the second contract from the first seller"<sup>4</sup>. It is clear that *At-Tawarruq* is permissible to them without any detestation. Allah Knows best.

### **Ḥanafī School of Thought**

But as for Ḥanafī School of Thoughts, majority of them name *At-Tawarruq* as *Al-‘Īnah*. Then, there are some among them who ruled for its detestation, like Imām Muḥammad (May Almighty Allah have mercy on him), and among them who ruled in favor of its permissibility, like Imām Abu Yūsuf and others. Imām As-Sarkhisī said, "It has been cited from Ash-Sha'bī that he used to dislike the statement of man to man saying: Loan me, while the response will be: No, until I sell to you. He intended with this, the affirmation of the ruling of detestation on *Al-‘Īnah*, which is the act of selling

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<sup>1</sup> - Al-Bayān wa At-Taḥṣīl by Ibn Rushd: 7/89, Dār Al-Gharb Al-Islāmī.

<sup>2</sup> - Al-Bayān wa At-Taḥṣīl: 7/176.

<sup>3</sup> - Ad-Dasūqī ‘Alā Ash-Sharḥ Al-Kabīr: 3177, Dār Al-Fikr.

<sup>4</sup> - Al-Furūq by Al-Qurāfī: 3/268.



to him what is equivalent to ten with fifteen so that the borrower can resell it to him in ten. In that case, the lender would get more. This is what is termed as 'loan leading to benefit'. However, loaning is legally recommended, while *Al-Gharar* (deception) is ḥarām. But the stingy people penetrate through this cessation to what is close to it, whereas venturing onto what has been prohibited is part of deception"<sup>1</sup>.

Al-Ḥaṣkafī said in the interpretation of *Al-Īnah* sale (credit sale), "Property sale with profit in credit is for the borrower to sell at a lesser price, so as to repay his debt. It was invented by the beneficiaries of *Ar-Ribā* (usury/interest), with the fact that it is disliked and dispraised in Islamic law , because of the renunciation of the loaning charity that it contains".

Ibn ‘Ābidīn said under it, "His statement" which is "And it is disliked" i.e. according to Muḥammad, as also asserted in *Al-Hidāyah*. He said in *Al-Fath*, “Abu Yūsuf said, ‘This type of sale is not disliked, because it was practised by many of the Prophet’s Companions, who were praised over it and did not count it as *Ar-Ribā* (usury), even if he sells an inferior thing at one thousand, it is permitted and not disliked, Muḥammad said: This sale in my heart is, like mountains, reprehensible as it was innovated by the beneficiaries of *Ar-Ribā* (usury)"<sup>2</sup>.

It was also mentioned in *Al-Fatāwā Al-Hindiyyah ‘An Al-Muḥīṭ* that the scholars disagreed in the interpretation of *Al-Īnah*, which was prohibited. The interpretation narrated from some scholars is what is known as *At-Tawarruq* according to the Ḥanbalī School of Thought. So, they said, "So, the lender shall sell it to him at twelve Dirham. Then, the buyer shall resell it in the market at ten Dirham, in order that the owner can achieve the profit of two Dirham through that transaction, while the borrower will eventually get a ten dirham loan."

"Some of them said: Its interpretation is that the third party will be brought in to intervene, and then the lender shall sell his garment to the borrower at twelve Dirham and deliver it to him, after which the borrower shall sell it to a third person, which they brought in at ten Dirham and hand over the garment to him. Likewise, the third

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<sup>1</sup> - *Al-Mabsūṭ* by As-Sarkhisī: 14/36, Dār Al-Ma‘rifah, Beirut.

<sup>2</sup> - *Ad-Durru Al-Mukhtār* with Ḥāshiyat Ibn ‘Ābidīn: 4/310, Kitāb Al-Kafālah, Maṭlab Bay‘i al-‘īnah.

man shall surely sell the garment back to its owner, who was the lender of ten, as the garment will be handed over to him and take ten from him, so as to pay it to the borrower. Therefore, the borrower will get ten Dirham, while the garment owner will get twelve Dirham. That is how it is in *Al-Muḥīṭ*. It is reported from Abu Yūsuf, “*Al-‘Īnah* is allowed; whoever practise it shall be rewarded. That is how it is in *Mukhtār Al-Fatāwā*”<sup>1</sup>.

Verily, Ibn Al-Hammām made an agreement between the two statements of detestation and permissibility. Therefore, he imposed *Al-Jawāz* (ruling for permissibility) on the first type, which is *At-Tawarruq* and *Al-Karāhah* (ruling for detestation) on the second type, which is *Al-‘Īnah*, according to the majority of the jurists.

He said, "Then, what has come to my mind is that whatever is produced out by the payer, if anyone of them is done, will return to him fully or partially, like the return of the garment or silk, such is detested. If not, then there is no detestation, except against the first one, according to some possibilities. For example, if the debtor is in need and the answerable person (the potential lender) refuses to give out a loan, but rather wants to sell what is equivalent to fifteen till a period of time, while the debtor should buy and sell it in the market with ten instantly. There is nothing bad in this, because the fixed time has been corresponded by a part of the price as loan is always not compulsory on him, but rather recommendable. So, if he abstains from it only because he is not interested so as to achieve more worldly materials, it is then *makrūh* (disliked), or because of any incident, in which he has excuses, then he should not. That is only identified in the confidentialities of subjects and whatever the cash cannot return into, as it came out from, will never be named *bay‘u al-‘inah* (credit sale), because it is part of *Al-‘Ayn Al-Mustarji‘ah* (recuperative cash) not *Al-‘Ayn* absolutely<sup>2</sup>. If not, the entire sales would have been *bay‘u al-‘inah* (credit sale)"<sup>3</sup>.

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<sup>1</sup> - *Al-Fatāwā Al-Hindiyyah*: 3/208, Maktabah Mājdīyyah Kū’ithah.

<sup>2</sup> - This is based on the fact that the Ḥanafī School of Thought defined *Al-‘Īnah* as the profit making sale of cash in credit, as in *Ad-Durru Al-Mukhtār*. So, Ibn Hammām said, "Verily, the reprehensible credit sale can never be realized with cash sale absolutely, but rather it can be realized if the cash returns to the seller until it will be established that the seller only adopts the cash as an assumed trick. If not, the aim will be increment, with the remainder of the cash with him.

<sup>3</sup> - *Fatḥ Al-Qadīr*: 6/224, *Al-Maktabat ar-Rashīdiyyah Ka’tah*.

And what has been stated by Al-Hammām is very much substantial, good and acceptable. Therefore, many Ḥanafī followers opted for it and even passed *fatwā* with it. Al-‘Aynī said in *Al-Bināyah*, "Verily, the ruling of detestation on this type of sale happened from everybody, because loaning renunciation and stinginess that comes over from the demand for profit in businesses are not *Makrūh* (disliked), if not, the act of shared profit making would have *Makrūh* (disliked) as well"<sup>1</sup>.

Then, Ibn ‘Ābidīn said after the citation of the view of Ibn Hammām: "And he upheld it in *Al-Baḥr wa An-Nahr wa Ash-Sharanbalāliyyah* and that is clearly evident. Abu Su‘ūd made it inference of the statement of Abu Yūsuf, while considering the statement of Muḥammad as a form of reversion"<sup>2</sup>.

The statement of Abu Su‘ūd in consideration of the word of Muḥammad on the forms, in which the commodity returns to the first seller in support of what Qāḍī Khān mentioned, while saying, "Another trick: is that the lender will sell a commodity to the loan seeker at a delayed price, while handing over the commodity to him (i.e. loan seeker). Then, the loan seeker shall sell it to another person at a lesser price than the price in which he bought it. Then, that third person would also sell it to the lender with what he had bought it, so that the commodity can reach him. He will then take the price, pay it to the loan seeker who will thereafter get the loan and the profit will eventually be realized by the lender. This trick is *Al-‘Īnah* (credit sale), as mentioned by Muḥammad (May Almighty Allah have mercy upon him)"<sup>3</sup>.

However, it is known that Qāḍī Khān is one of the perfect Ḥanafī scholars; he died in the sixth century, as the most knowledgeable person, in terms of the statements of the Ḥanafī scholastic leadership.

It is now apparent with this that the types disliked by Al-Imām Muḥammad bn Al-Ḥasan Ash-Shaybānī are the types of *Al-‘Īnah*, where the commodity will return to the first seller himself. But what is known as *At-Tawarruq* to the Ḥanbalī School of Thought, where the man will buy a commodity for a certain period of time, then sell it

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<sup>1</sup> - He stated it in *Al-Baḥr Ar-Rā’iq*: 6/395, Beirut 1418 AH and affirmed it.

<sup>2</sup> - Ibn ‘Ābidīn: 4/311, (And this issue is cited in all previous Ḥanafī books in the book of Al-Kafālah).

<sup>3</sup> - Fatāwā Qāḍī Khān in the footnote of *Al-Hindiyyah*: 2/279.

in the market, in order to get cash at a lesser price. Nobody among the Ḥanafī leadership ruled to dislike it. Even Ibn Al-Hammām, Al-‘Aynī, Ibn Najīm, the writer of *An-Nahr* and *Ash-Sharanbalāliyyah* and Abu as-Su‘ūd ruled in favor of its permissibility, while Ibn ‘Ābidīn was pleased with it. Likewise, it is what is clearly affirmed in the statement of Qāḍī Khān, as he did not mention *At-Tawarruq* among the tricks that people resort to while escaping from *Ar-Ribā* and the way he shortened the statement of *Al-Karāhah* (detestation) attributed to Imām Muḥammad on the types in which the commodity will return to the seller.

### **Summary of the juristic statements**

In light of what we have discussed from among the juristic citations of the four Schools of Thoughts, it can be summarized that the supported view in all the four *Madhāhib* is the ruling for the permissibility of *At-Tawarruq*, except that there is a view from the Ḥanbali and Ḥanafī Schools of Law to detest it. The case of *Al-Karāhah* (detestation) however, was a narration from Al-Imām Aḥmad which was also opted for by Imām Ibn Taymiyyah and his student Ibn Al-Qayyim. Likewise, some contemporaries from Ḥanafī School of Law, like Al-Ḥaṣkafī, the writer of *Ad-Durru al-Mukhtār* mentioned *Al-Karāhah* (detestation) while exploiting the statement of Imām Muḥammad. But in the Mālikī School of Thought, I could not see them mentioning *At-Tawarruq* explicitly, but they made the conditions for the detestation of *Al-‘Īnah* that if the commodity is sold to the first seller. So, *At-Tawarruq* is exempted from it. Also, there wasn't any direct mentioning of *At-Tawarruq* in the books of the Shāfi‘ī School of Thought, but they expanded the terms of their ruling to permit *Al-‘Īnah* more than others, though those succeeding scholars among them, like Ar-Ramlī and Al-Khaṭīb Ash-Sharbīnī asserted authoritatively with the ruling in favor of detestation of *Al-‘Īnah*. However, they did not mention *At-Tawarruq* among the types of *Al-‘Īnah* and the sales that are disliked.

Really, the restrictive issue of *Al-Karāhah* (detestation), as mentioned by the great scholar Ibn Al-Hammām to the types, where the commodity would return to the first seller is the accurate and correct view, because the trickery in those types is clear. This is so, because whenever the commodity returns to the first seller with an arrangement from the two contracting parties, where both payer of the lower price and receiver of higher price are one same person, it will then be clear that the sale of the

commodity is not real, but rather the seller tricked through the factor of this typical sale, so as to get more cash in credit, with less spot cash. This is actually the meaning of *Ar-Ribā* (usury/interest).

But in *At-Tawarruq*, the role of the first seller does not exceed the fact that he would sell his commodity for a limited time, at a higher price than the market price, as it is the legalized contract, according to majority of the jurists, which has no connection with whatever the buyer does with the commodity after the purchase, because he will not sell it to him again, he will rather sell it in the market. The person who will buy it from the first buyer is the one who will pay him a lower price and the one to whom the first buyer will pay the delayed price is the first seller. Therefore, the payer of the lower price is not the receiver of the delayed higher price. And *Ar-Ribā* is only identified if the payer of the lower and receiver of the higher price are one and the same. But if rather the payer and receiver are different persons, then the uncertainty about *Ar-Ribā* will definitely disappear.

Those who detest *At-Tawarruq* only do so in terms of the fact that the final result of it is that the first buyer will remain with lower cash, whereas there will still be a debt higher than that on him. But if this result happens to all the cash altogether, it will have been legal, as the one from whom the lesser is taken is not the one upon whom the higher is compulsorily due to. So, there will be no obstacle in implementing such a procedure. It even resembles what Allah's Messenger pbuh had allowed, according to Ḥadīth of Abu Sa'īd Al-Khudrī and Abu Hurayrah (May Almighty Allah be pleased with both of them), "That the Prophet pbuh employed a man on the land of Khaibar. The man brought *Janīb* dates, in which the Prophet pbuh said, 'Are all the dates of Khaibar like this? He said, 'No, I swear by the name of Allah! We surely take one *Ṣā'* (measurement) from this with two *Ṣā'*'s (measurements) of other types and two *Ṣā'*'s (measurements) of it with three from other types. The Prophet then said, 'Do not do that again. Sell all to take Dirham as price, and then buy the *Janīb* types of dates with Dirham"<sup>1</sup>.

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<sup>1</sup> - Ṣaḥīḥ Al-Bukhārī, Kitāb Al-Buyū', Chapter on "If he wanted the sale of dates with the better dates".

The result of the procedure, which was suggested by the Prophet pbuh is the same result as the purchase of one measurement with two measurements, where the owner of the whole will give two measurements and take one measurement of *Janīb* dates. But the Prophet pbuh has allowed and sanctioned it, based on the fact that this result happened through two legal independent contracts/agreements, where there are no connections between each other. It is therefore clear that the end result, like the one that results from the contract of *Ar-Ribā* will not prohibit the procedure, in as much as the result happens through real legal contracts.

For this, there is no clear text prohibiting *At-Tawarruq* and its incorporation among the types of *Al-Īnah*, as there is no explanation of *Al-Īnah* in any Ḥadīth or any report from the Prophetic companions, except that of ‘Ā’ishah (May Almighty Allah be pleased with her), which was narrated by ‘Abdur Razzāq, Ad-Dārquṭnī and Al-Bayhaqī (May Almighty Allah have mercy on all of them). This is the text, according to the narration of ‘Abdur Razzāq, "Mu‘ammar and Ath-Thawrī informed us from Abu ‘Ishāq, from his wife that some women came upon Ā’ishah (May Almighty Allah be pleased with her), one of them asked ‘Ā’ishah saying, "Oh mother of the faithful! I had a female slave that I sold to Zayd bin ‘Arqam at eight hundred for a particular period of time later I bought her from him at six hundred. So, I paid the six hundred in cash to him, on which I prescribed eight hundred on him. Then ‘Ā’ishah said: Wallahi! The business transaction that both of you had made is reprehensible!

Inform Zayd bin  
‘Arqam that he has spoilt his jihad with the Prophet of Allah, except if he repents"<sup>37</sup>.

This type was only vituperated and condemned by the mother of the faithful ‘Ā’ishah (May Almighty Allah be pleased with her), in terms of the fact that the female slave returned back to her seller to whom the fixed profit of two hundreds remained. If Zayd bin ‘Arqam had sold her in the market at six hundred to get cash, then the procedure would not have been categorized under the repudiation of the mother of the faithful. Almighty Allah Knows best.

### **The true nature of *at-tawarruq*, as allowed by the jurists**

The outcome of what was previously mentioned that *At-Tawarruq* is a permissible procedure on itself and as the aim of the chapter - as said by Ibn Al-Hammām - that it

is different from the first type, i.e. if the seller knows that the buyer is in need of the cash for his personal goals and will not buy the commodity at a higher price, except if he is in need to it. If it is in the capacity of the seller that he could loan him the cash which he needs, then there is no doubt then that it is the best and most rewarding as the renunciation of the act of loaning/lending in this situation resorting to the selling of the commodity at a higher price is the opposite of the best. And whenever the need of the buyer becomes more intense because of his personal goals, the virtue of loaning will increase and *At-Tawarruq* will distant from magnanimity by that ratio. But there is no way for the statement that the lending is compulsory on him, except if the buyer has reached the status of urgent need, because this condition has special rulings, in which it may be compulsory for a man to give or make charity with what is in need to, instead of lending money. Likewise, if the seller knows that the buyer of *At-Tawarruq* (*Al-Mutawarriq*) is in need of cash liquidity for his commercial purposes, where his aim is to achieve the means of financing, then the best thing for the buyer is for him to engage in the contract of *Ash-Sharkah* (partnership) or *Al-Muḍārabah* (profit sharing ) with him, because both are the two ways preferred for financing and capitalization. So, deviation from them to *At-Tawarruq* is against the most appropriate approach, in as much as the best way is possible. However, there is no way for the saying that it is compulsory that he should engage in the contract of *Ash-Sharkah* (partnership) or *Al-Muḍārabah* (profit sharing) with the loan seeker, as it is not embodied in *At-Tawarruq*. But what we mentioned about the permissibility of *At-Tawarruq* according to the majority of the jurists is only feasible in the *At-Tawarruq*, which is a term used for the two simple procedures; first of which is the purchase of the commodity with time fixation and the second is selling it in the market instantly. However, *At-Tawarruq*, which was conceived and ruled in favor of its permissibility by the jurists, is that the commodity is available with the seller as his real owned possessions. Then, its possession right will transfer to the buyer by the term of real sale, which all the rules of sale will follow. But if some other circumstances are associated with this procedure, then it will not take long for the rule to change, whether to a complete impermissibility or to detestation (*Al-Karāhah*) or to the augmentation of its farness from the favorite procedures.

Our findings on the ruling of *At-Tawarruq* and the true nature of its permissibility is exactly what the Islamic Fiqh Assembly of the Muslim World League resolved to, as

their resolution at its fifteenth seminar in Mecca (in its fifth resolution) and the text of the resolution is as follows:

Firstly: It is that *At-Tawarruq* sale is the purchase of a commodity acquired and possessed by the seller, with a time fixed price, which the buyer will later sell to another person, who is not the first seller for cash, for the purpose of obtaining the cash (*Al-Wariq*).

Secondly: That according to the majority of the scholars, this *At-Tawarruq* sale is legally permissible, because the basic ruling on sales is *Al-'Ibāḥah* (legalization), as supported by the saying of Almighty Allah, “And Allah allows the selling but forbids *Ar-Ribā* (usury/interest)” (Sūrat Al-Baqarah: 275), and there is no trace of a *ribā* in this type of sale, whether deliberately or ostensibly, and because it is the need that calls for that for the refunding of debt, or for marriage and so on and so forth.

Thirdly: Permissibility of this type of sale is conditioned with the fact that the buyer should not sell the commodity at the price lower than the price of its purchase from its first seller, whether directly or through an intermediary. If he does, then both of them would eventually fall into the unlawful credit sale (*bay'u al-īnah*), according to the legal ruling, because of its embodiment of the trick of *Ar-Ribā* (interest), and it may so become an unlawful contract/agreement.

Fourth: The Assembly - while making the resolutions - admonishes the Muslims to practically abide by what Almighty Allah has legislated, in terms of good loan from good money, with which their souls will be well satisfied while seeking the pleasure of Allah that will never be followed by evil. In addition, it should be for the purpose of spending on the cause of Almighty Allah, which is manifested in cooperation, sympathy, showing mercy among Muslim brothers, relieving them of their suffering, supplying their needs, rescuing them from being burdened with debts and from falling into prohibited transactions. Surely, the legal texts on the reward of good loaning and incitement on it are numerously unhidden, as characterization with faithfulness, good judgement and procrastination is incumbent upon the loan seeker"<sup>1</sup>.

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<sup>1</sup> - Resolutions of the Islamic Jurisprudential Assembly, p. 321-322, Muslim World League 1421 AH.



Who thinks deep on this resolution will clearly discover that the ruling for the permissibility is conditioned that the commodity should be under the custody of the seller, as other circumstances must not be associated with *At-Tawarruq*. Likewise, the fourth paragraph of the resolution emphasizes virtue of good loan that it better and more appropriate than *At-Tawarruq*.

After the knowledge of the legal ruling on *At-Tawarruq* and the introduction of these principles, we shall now proceed to the form of *At-Tawarruq*, which is being practiced nowadays by Islamic banks.

### **Modern banking applications on *at-tawarruq***

Since various jurisprudential conventions and seminars had unanimously agreed to have consensus on the ruling for the permissibility of *At-Tawarruq*, thus Islamic financial Institutions have started the financial procedures. And the ratio of exploitation of the tool of *At-Tawarruq* is so incessantly increasing in the circles of those institutions that it requires a pause for the scholars who are taking care of the application of the legal rulings with all its requirements and cautiousness about the evils of what can be the result of its misuse. We hereby want to alert on some points which must be considered in the practical aspects:

#### 1- Expansion in the procedures of *at-tawarruq*

There is no doubt that *At-Tawarruq* is a legal trick and a lawful way out, which is a means to achieve cash, but despite the fact that is allowed, it has not been excluded from being a trick and way out. However, the tricks and ways out are only invented, so as to escape from the predicament during the time of the real needs on the level of the individuals or level of organizations. It is not valid to constitute the basic activity for big commercial institutions or to represent economical order which the Islamic *Shari'ah* aims at. So, the expansion in these tricks and ways out will impede the natural path for the Islamic economy, because whenever these institutions expand in these types of tricks and ways out, the scope will be narrow on the economical activities on which Islamic *Shari'ah* urges and paves the way to establish a desired economic community.

The ideal way for commercial financings in the *Sharī'ah* is financing on the basis of *Ash-Sharkah* (partnership) and *Al-Muḍārabah* (profit sharing), because it is the one that incorporates fair distribution of wealth among the people, guides the excess of money from the rich to balance with the generality of the people. So, the expansion in the procedures of shared profit, *At-Tawarruq* and the like, especially when the evaluation of those procedures are on the basis of the interest indication narrowing the domain of the partnership and *Muḍārabah* operations and encouraging the usurious mentality, which aims at profit seeking without bearing any risk where there will be no basic change in the current prevalent capitalistic method.

Verily, the jurisprudential assemblies, seminars and the organizations of legal monitoring for the Islamic financial institutions have all passed legal personal opinion (*fatwā*) in favor of the permissibility of the shared profit for one who commands purchasing and *At-Tawarruq*, and so on and so forth in the legal ways out in terms of the situations surrounding the Islamic banks at their inception. It started working in the market crowded with complete usurious procedures, as it is very difficult that its activities should be sincere in financing on the basis of partnership and *Al-Muḍārabah*, to the extent that it would resort to this type of procedures, in order to be able to adopt its fundamental steps to run away from clear usury and enable the general population of Muslims to benefit from the monetary channels that are included in clear prohibition. But it was not in the calculation of the jurists who ruled to permit these procedures that these institutions would sit contentedly satisfied with these way outs for an unlimited time, adopting it as the targeted goal for the establishment of Islamic banks and the basic activity, which centres around their dealings forever.

More than thirty years have passed since the establishment of Islamic financial institutions, with an increase in its number, growth in shape and multiplicity of the number of those who transact with them during the time. The time has now come for the legal monitoring organizations of these institutions to emphasize on minimizing the procedures of shared profit and *At-Tawarruq*, and opting for more concentration on the preferred procedures of *Ash-Sharkah* and *Al-Muḍārabah*, as the origin of various procedures in the totality of their transactions should be under a permanent monitoring, so that the Islamic banks can move towards the purposes of Islamic legal

legislation that can portray the Islamic economy with its bright integrated form, not to appear to the world as absolute partnerships for the way outs and tricks, because that will lead to bad reputation or notoriety for these institutions and the Islamic economy that they represent.

It may even be suggested on the basis of *Sadd Adh-Dharā'i* (blocking the means to evil) that Islamic banks should be totally prevented from practising *At-Tawarruq*. At this juncture, the following has been asked by the Secretariat of the Islamic Fiqh Assembly:

"Are the impact resulting from the expansion of the banks in the act of financing through *At-Tawarruq*, like the growth of written off debts, weakening of the difference between Islamic banking practice and usurious banking practice, the oppression of this contract over the partnership contracts and the bearing the risk... possible to lead to the prohibition of this contract, even if it is allowed in terms of origin?"

In my opinion, the answer to this question is that the designation of 'prohibition' in this primary level is possible to cause some practical problems in some cases, where there will be real need for *At-Tawarruq*. However, it is compulsory that the legal monitoring organizations to emphasize in its monitoring on these types of procedures from two aspects:

First aspect: That it should not grant permission for these types of procedures, except in real cases and should urge the Islamic institutions to reduce the ratio from the totality of the exercises and practices.

Second aspect: That *at-tawarruq* should be excluded from other circumstances that may dig it out from the measure of *Al-Jawāz* (permissibility) or increase it more detestation or make it just ordinary imaginary procedure only. We shall point here to some of these circumstances, as follows:

## 2- Authorizing *al-mutawarriq* on the purchase of the commodity for the seller

We mentioned previously that *At-Tawarruq*, which was portrayed and ruled in favor of its permissibility by the jurists, consists of two simple contract agreements:

First: That the seller sells a commodity which is in his possession for a fixed particular period of time.

Second: That *Al-Mutawarriq* sells this commodity to a third party that has no connection with the first seller.

But many of the banks and the institutions add another agreement, which is *At-Tawkīl* (authorization). For instance, if one of the bankers requests for the financing on the basis of *At-Tawarruq*, surely the bank will not sell a commodity available under their possession, but rather will only be required to buy it from the market. But if the bank buys it themselves through one of their workers, then this may be possibly accepted. However, in most cases, the bank will not buy it themselves. It will authorize the agent who is himself *Al-Mutawarriq* to buy it from the market on behalf of the bank. Then, the *Al-Mutawarriq* will buy it from the bank at a delayed price. He will later sell it to a third party. The custom adopted in many banks is that the bank will not pay the price to the original seller, but rather pays the amount to *Al-Mutawarriq*, as he is an agent for them in buying and selling the commodity.

Because of the addition of this '*At-Tawkīl* (authorization)' to *At-Tawarruq*, the procedure becomes something similar to usurious financing, because the *Al-Mutawarriq* will take the smaller amount from the bank, while the higher amount will be paid to him when the fixed time lapses. If he takes it for a lesser amount, then that only occurs as a result of his being an agent for the purchase, and not as loan seeker. But this accurate difference cannot distance the procedure from the similitude of usurious finance, as this issue of *At-Tawkīl* (authorization) may turn the contract agreement to either *Mahzūr* (prohibited) or *Makrūh* (disliked).

If *Al-Mutawarriq* buys the commodity on behalf of the bank, then buys it for himself without returning to the bank yet, where the bank might have the opportunity to commence the issue of selling with him through a free contract. This type of

procedure is absolutely not permissible, because the agent should not take control of two sides of the sale, and it is compulsory to separate between the two collaterals in the commodity. But if the agent that stands as *Al-Mutawarriq* returns to the bank after the purchase of the commodity, then make a contract of sale with him through the principle of '*Al-’Ījāb wa Al-Qubūl* (offer and acceptance)', then the contract is valid, but it is still under the rule of *Karāhah* (detestation), as it draws the contract near to the imaginary.

So, it becomes necessary for the monitoring organizations to prevent this type of authorization, so that the procedure of *At-Tawarruq* can return to its original form.

### 3- Authorizing the seller *Al-Mutawarriq* with the selling of the commodity in the market

There is another form of *At-Tawkīl* (authorization), and it is that of an act of authorization made after the purchase of the commodity from the seller by the buyer, who happens to be the *Al-Mutawarriq* on the same seller that he should sell the commodity in market on behalf of *Al-Mutawarriq*. For example, if Zayd wants to request for financing from a bank, he will buy a commodity from the bank at a delayed price. Then, the bank will authorize him (the same person) to sell it in the market on their behalf, and after the commodity is sold to a third party, the bank will then collect the price from the buyer and pay it to Zayd. Then, Zayd will settle the excessive delayed price when the delayed time sets in.

Surely, if this type of authorization is conditioned in the first sale that Zayd bought the commodity from the bank, with a condition that its sale should take place in the market, then the contract is invalid, because he sells with the condition of authorization, and the type of such conditioned contract agreement is invalid according to majority of the jurists. But if the sale contract is void of this condition, then Zayd will authorize the bank with a free contract. Then, the contract will be valid, though it is still under *Karāhah* (detestation), because the bank is the one that pays the lesser amount to Zayd (in respect of his function as the agent for the sale), and he is the one who will receive the highest amount when the fixed time sets in, even if the 'give and take' principle has two different attributes and two different free contract agreements, to the extent that it can exclude the procedure from the explicit

usury/interest. But this accurate difference does not distance it from similitude with usurious finance. In most cases, this accurate difference does not appear, except in the form of a signature on papers, which has no big effect in the real world.

#### 4- *At-tawarruq* through the international stock market

Islamic banks have often been practicing *At-Tawarruq* through the international stock exchange, which transact with goods, because these stock exchange are the shortest way for processing the fast sales, as thousands of sales happen in a few minutes, i.e. through the use of computers.

(1) Surely, the international stock exchanges have many sales concluded, but they are not realistic, as the commodities are not delivered to the buyer, but rather many sales are consecutively circulated on computer. Then, the clearance occurs on the basis of the differences in price. Among them are future sales, which are prohibited in the Islamic legal system and others that are current sales, but without consideration of legal conditions, like the specification of the sold item and discharging it from unsold items and like when the sold item is being under the possession of the seller, as the various sales only occur with the exchange of paper money, which in many occasions, do not represent a specific commodity. In actuality, they represent the right of the paper holder to receive a quantity of warehouses, where thousands of tonnes of the same commodity are kept. The quantity represented in these papers is not distinguished from other quantities. So, the purchased quantity will not fall under the security guaranteed by the buyer, while the buyer can sell it to another person before it is distinguished and guaranteed under the buyer. Therefore, the prohibition of profiting from what is not guaranteed will occur.

Verily, the real legal sale will not be realized in these stock exchanges, except if there is a profound attention from the side of dealer therein, with adherence to the Islamic legal conditions under the monitoring of some jurists specializing in that area. Mostly, that may not be possible, except with the creation of a special way, formulation of new methods of contracts by Islamic legal organizations and negotiation with stockbrokers and dealers in that market, so that they can abide by the Islamic legal conditions.

If this profound attention is not realized, then dealing in the International stock exchange market will not be allowed; either for *At-Tawarruq* or for any other purpose:

(2) If we assume that the dealing mechanism in the stock exchange market has been perfected with all determination and caution, in order that the sale can constitute real adherence to the Islamic legal conditions, then the procedure of *At-Tawarruq* adopts the shape that we have explained previously. It is then compulsory that the commodity comes under the possession of the *Al-Mutawarriq* after the purchase of it from the bank and before he could sell it to the last buyer. So, collection of it might be realized from him by himself or through his agent. It is allowed for the bank to be the agent for *At-Tawarruq* through collection, because the bank is the buyer. So, the commodity must diverge from its possession and guarantee the possession of the buyer or his agent/representative, who is not the seller.

(3) If we also assume that the agent of the buyer is the stockbroker, then he is the one that will collect the commodity from the bank on behalf of the buyer, and sell it to the last buyer. The problem here is that the stockbroker himself is also the agent for the bank. So, he will buy the commodity from the original seller on behalf of the bank and collect it on the bank's behalf to sell it to the *Al-Mutawarriq*. He is judged as the bank in terms of being an agent for it. Therefore, it is valid for him again to stand as an agent for the buyer in collecting the commodity.

There is no permission for the exit from that method, except if the release of the commodity from the bank occurs to the *Al-Mutawarriq* after the purchase of the commodity is perfected from the original seller. If the release which is in term of collection is realized, then the commodity will be removed from the liability of the bank. Then, it is possible now that the *Al-Mutawarriq* authorizes the bank or stockbroker to sell it to the last buyer. If the authorization is made as a condition during the time of purchase, then the contract is invalid, as discussed previously, and if the authorization is contracted before the release, then it is not permissible, since the commodity is under the liability of the bank.

There is no doubt that abiding with this mechanism in the fast sales of the international stock market is somehow difficult.

The second method is that the stockbroker that collects the commodity on behalf of the *Al-Mutawarriq* and sells it will be his agent. This stockbroker is supposed to be different from the stockbroker who bought the commodity for the bank. Therefore, there will be two stockbrokers; one as the agent of the bank and the other will stand as the agent of the *Al-Mutawarriq*. With the fact that the first method is in the form of single broker, it is difficult to implement. It may even not be realizable, no matter what the accuracy is, in terms of the monitoring. So, this second method is the appointed method and it is not necessary for the Islamic legal organizations to endorse the first method.

(4) Then, the sales in the new method of the stock exchanges only occur through the means of computers, and it is not clear to me till now that the mere appearance of the buyer's name on the computer monitor can transfer the right of possession, actualize the collection and transmit the guarantee to him. It is then compulsory that the current contracts through the method of computerization be the focus of an independent study, in light of the regulations and customs, before a decisive verdict on whether it is permissible or not.

(5) All what we have previously mentioned in the Islamic legal conditions are only conditions for the ruling in favor of the validity of the contract agreement. But from the angle of legal politics, we have seen that the adopted methods in Islamic banks are not on the ingenuousness of *At-Tawarruq*, which is being imagined by the jurists. If that ingenuous *At-Tawarruq* is against the best, then what will be your concern in regard of these complicated forms, to which many contract agreements with difficult legal conditions in implementation are inserted in the domain of the fast banking service?

As we have mentioned earlier, this emphasizes the necessity of desistance from expansion in the usage of *At-Tawarruq* in the banking services, its limitation to the real needs of individuals and carrying it out in a proper way, for the validity of the



contract agreements, so that that would not be an imaginary procedure construed to a usurious finance, with all its horrible effects and results.

### Summary of the research project

1. *At-Tawarruq* is an arrangement, where a person purchases a commodity on credit at a higher price and sells it to a third person at a lower price, so that he will get cash to satisfy his needs;
2. The difference between *Al-Īnah* and *At-Tawarruq* is that in *tawarruq*, the *Al-Mutawarriq* sells the commodity to a third party, while in *Al-Īnah*, the buyer resells it to the same seller from whom he had bought the commodity;
3. There are two versions reported from Imām 'Aḥmad ibn Ḥambal about the ruling on *At-Tawarruq*; the most apparently favored is 'permissibility'. To it, the facts finders among the scholars of the Ḥanbali School of Thought uphold. However, Ibn Taymiyyah and his student Ibn Al-Qayyim have ruled that *At-Tawarruq* is impermissible;
4. *At-Tawarruq* is permissible according to the principles of the Ash-Shāfi'ī School of Thought, as they permit the explicit credit sale (*Al-Īnah Aṣ-Ṣarīḥah*). So, *At-Tawarruq* is more appropriate to be permitted;
5. The Mālikī Jurists are very strict in the prohibition of *Al-Īnah*, but they made condition that for the realization of *Al-Īnah*, the commodity must return to the first seller. If not, the buyer only purchases it from the third party and in such case, there is no prohibition;
6. Some Ḥanafī jurists of later days have held that *At-Tawarruq* is also *Al-Īnah*. Hence, it is *Makrūh* (disliked). But majority of the Ḥanafī jurists have preferred the view of Ibn Al-Hammām that *Al-Īnah* is restricted to the situation where the commodity goes back to the original seller. But where the commodity is sold in the market, the transaction is valid and permissible without any detestation. However, it is different from the preferred view. This statement is the preferred view of majority of the Ḥanafī scholars;
7. On the basis of the preferred view in the four Schools of Islamic thought, *At-Tawarruq* is permissible. However, lending (without interest) is better;
8. This is so, when *At-Tawarruq* is not associated with other circumstances;
9. If the bank appoints the *Al-Mutawarriq* as their agent to purchase the commodity on their behalf, then buy it for himself, such transaction is invalid,

because the agent cannot manage the two sides of the sale. But if they authorize him for the purchase part only, then he buys it from the bank through an independent contract agreement through the principle of *'Ijāb wa Qubūl* (offer and acceptance), then this contract is then valid. But it still falls under *Karāhah* (detestation);

10. If the *Al-Mutawarriq* appoints the bank as his agent for the sale of the commodity to the third party on his behalf, if the authorization is conditioned in the contract of the sale, it is then invalid and not permitted. However, if the authorization is not conditioned in the sale, but rather, he only authorize the bank after the completion of the purchase, then the contract is valid, but still under *Al-Karāhah* (detestation);
11. *At-Tawarruq* carried out through international stock exchange markets is vulnerable to many violations, because of the loss of Islamic legal conditions for the validity of the contract; and
12. If all the Islamic legal conditions discussed in the paper are fulfilled, then surely the contract will be valid, but agitation for the expansion is encouraged in these types of procedures, in terms of the contingent evils.

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