

Analysis of Underlying Cause of (Riba) in Islamic Law The Opinions of Muslim Jurists.

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Abstract Prophet (ﷺ) explained six usurious properties as a sample of interest such as gold, silver, wheat, barley, date and salt and when these are exchanged by homogenous with stipulated excess of property or time or these are exchanged by homo-estimation in weight or measurement with stipulated excess of time this excess is riba and the riba al fadl is found in these six properties as well in all those weighable and measurable properties where underlying cause of riba is found and wherever its underlying cause is not found such as non-weighable and non-measurable properties though these are fungible {mithly} or non-fungible {qiemi} properties the riba al fadl is not found.

The riba al nasia may be found in properties wherever the underlying cause of riba al nasia is found though these are weighable or measurable properties or non-weighable and measurable properties and it is on the basis of analogy and this analogy based on the underlying cause of interest {riba}, so this article aims to define underlying cause as a general and to explain the ingredients of this definition and then discusses about the underlying cause of riba specifically and elaborates the dispute of Muslim jurist regarding to underlying cause of interest {riba}.

Key Words: Jurisprudence ,Economics, Interest {Riba},Muslim Jurists

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Introduction

There are two different systems of banking and financing. First is conventional banking system and second is Islamic banking system. The basic difference between both based on riba and almost transactions in conventional banking system based on the interest while all transactions concluded by Islamic banking system are free from the element of interest {riba} because it is prohibited by definitive way in Islamic theory of transactions while it is back bone of economy according to capitalist theory of transactions.

The interest is basic element which distinguishes the capitalist theory of transactions from Islamic theory of transactions and riba based contract is lawful and valid in capitalist theory of transactions while it is prohibited in Islamic theory of transactions. It is appropriate to define interest {riba} before analyzing its underlying cause.

Definition of {Riba} Interest

The riba is discussed in detail in other article namely: Analysis of riba in Islamic law. Now the definition of riba is repeated for ready reference regarding this article, so Interest {riba} is an increase without consideration according to Sharia standard, stipulated for either one contracting party in exchange of properties.¹

The riba is divided into two types: riba al fadl and riba al nasia and each one of them is defined separately:

1- Riba al fadl is an increase of property without consideration according to Sharia standard, stipulated for either one contracting party in exchange of weighable or measureable properties by homogeneous.²

2- Riba al Nasia is an increase of time period without consideration according to Shariah standard, stipulated for either one party in exchange of property by homogenous or in exchange of property homo-estimation in weight or measurement.

Prohibition of Riba

The Interest is prohibited by Quran, Sunnah, {Ijma} consensus of Muslim jurists and also by analogy and the rule of text of Quran and hadith can be extended to other provisions by analogy provided the underlying cause of rule is found in provisional case and if underlying cause is not common between original and provisional cases then the rule of original case

cannot be extended to provisional case at all, so it is appropriate to define underlying cause and then explain what is underlying cause for the {Riba} generally and underlying cause of each type of riba as a specifically.

Definition of Underlying Cause as a General

The underlying cause {Illah} is defined by scholars of Usool al Fiqh and It is constant clear attribute having compatibility with the rule, being acknowledged by lawgiver.

Illustration

- a- The attribute means: quality and quality is always immaterial thing as intoxication is quality and it is immaterial and it is quality of intoxicant material and it is observed in drunken person.
- b- The clear means: It is such obvious which known to each one as when a person took intoxicant material then the quality of intoxication is clearly observed in drunken person and each one can understand that he has taken intoxicant material and it is due to his abnormal movement observed by watching and abnormal conversation observed by listening.
- c- The constant attribute means whoever, wherever and whenever took intoxicant material for example and he became intoxicated then this attribute is found in that person and this attribute does not vary from person to person, place to place and time to time and it is meaning of being constant because it is observed in such person though he is young or aged or child and every where he became intoxicated and whenever he became intoxicated in past or in present or in future the quality of intoxication is observed in that person.
- d- Having a compatibility with rule of Shariah. Shariah has given the rule of prohibition to consumption of intoxicant material because intoxicated person destroyed his intellect by taking intoxicant material while intellect is very necessary element for mankind and intellect means: that power of understanding in mankind by which he can understand those things which are immaterial as four plus four is eight and this power distinguishes the human being from other animal and it is having compatibility with the rule of prohibition. This rule should be given to each material causing for destruction of such power of mankind.
- e- This attribute of intoxication is acknowledged by lawgiver for the rule of prohibition and it means: the lawgiver has considered it by

declaration of prohibition for intoxicant material while commanding the believers to avoid from wine.

The Underlying Cause of {riba} Interest {riba}

When there are two types of riba and each one of them is defined with different definition the underlying cause of each one of them is also different but common feature between underlying cause of both types of interest is that the stipulated excess is without consideration though it is excess of property as in riba al fadl or excess of time as in riba al nasia.³

The Muslim jurists are having different opinions in the underlying cause of interest {riba} and their conflict of opinions is mentioned below.

Opinions of Muslim Jurists

There are three opinions of classical muslim jurists:

1-Opinion of Hanfi and Hanbli Jurists

Hanfi⁴and Hanbli jurists hold: that the underlying cause of riba al fadl is weighable or measurable property plus homogenous such as exchange of weighable or measurable property by homogenous and it means both exchanged properties are homogenous plus homo-estimation in weight or measurement such as gold and silver and wheat, barley, date and salt.If gold is exchanged by gold or silver is exchanged by silver or wheat by wheat or barley by barley then stipulated excess of property in this exchange is riba al fadl because both exchanged properties are weighable or measurable plus homogenous and wherever this underlying cause is found the stipulated excess of property is riba and it is prohibited due to being without consideration and it is devouring the property of other without any right according to Islamic law.

Situations for the Occurrence of Riba al Fadl

There are three situations for the occurrence of riba al fadl as follows:

- a- When ten grams of gold is exchanged by fifteen grams of gold or ten grams of silver are exchanged by fifteen grams of silver then excess of property is riba al fadl because both exchanged properties are weighable plus homogenous.

b- When one sack of wheat is exchanged by two sacks of wheat or one sack of wheat is exchanged by one sack of wheat plus three hundred rupee then excess of property is riba al fadl because both properties are measurable plus homogenous.

c- When any measurable property other than wheat, barley, date and

salt is exchanged by homogenous with stipulated excess of property as one sack of rice is exchanged by two sacks of rice the excess of property is riba al fadl and it is prohibited due to analogy based on underlying cause of riba al fadl because both properties are measurable plus homogenous. Whenever this underlying cause is found in other weighable or measurable properties exchanged by homogenous with stipulated excess of property it is considered riba al fadl and it is on the basis of analogy depending on underlying cause, so underlying cause of riba al fadl is an exchange of weighable or measurable property by homogenous. It is in other words is an exchange of: Homo-estimation in weight or measurement + homogeneous.

Situations wherever Riba al Fadl is not found

There are three situations as whole where riba al fadl is not found because the underlying cause of riba al fadl is not found.

- a- If both exchanged property are simple homo-estimation in weight or measurement but not homogenous then riba al fadl is not found such as exchange of gold by silver or exchange of wheat by barley. If ten grams of gold is exchanged by one thousand grams of silver or one sack of wheat is exchanged by two sacks of barley then there is no riba al fadl because underlying cause of riba al fadl is exchange of weighable or measurable property by homogeneous and it is not found here.
- b- If both exchanged properties are simple homogenous but not homo estimation in weight or measurement then riba al fadl is not found such as exchange of one cow by two cows or exchange of one Honda city car by one Honda city car plus two hundred thousand rupee because underlying cause of riba al fadl is not found here and it is exchange of weighable or measureable property by homogenous and cow and car are evaluated {Qimi} properties and these are not estimated properties by weight or measurement.
- c- If both exchanged properties are neither homogenous nor homo-estimation in weight or measurement then riba al fadl is not found

because underlying cause of riba al fadl is an exchange of weighable or measurable property by homogenous as purchasing Honda car by fifteen hundred thousand or purchasing one sack of wheat by three thousand rupee.

Underlying Cause of Riba al Nasia

Hanfi and Hanbli jurists hold that the underlying cause of Riba al Nasia is any one of two parts of underlying cause of riba al fadl and the underlying cause of riba al fadl is exchange of weighable or measurable property + homogenous, so the underlying cause of riba al nasia is one of these two attributes namely: weighable or measurable and homogenous.

1- If both exchanged properties are homo-estimation in weight or in measurement then excess of time is riba al nasia though both are not homogenous such as exchange of gold by silver.

2- If both exchanged properties are homogenous then excess of time is riba al nasia though both are homo-estimation in weight or in measurement or not such as exchange of gold by gold or gold by silver or wheat by wheat or wheat by barley with stipulated excess of time or exchange of cow by cow with stipulated excess of time.

3- If both exchanged properties are neither homogenous nor homo-estimation then excess of time is not riba al nasia such as purchasing wheat by currency with stipulated excess of time in delivery of subject matter such as advance payment sale {bay al salam} or with stipulated excess of time in the payment such as deferred payment sale {bay al Muajjal} and these both types of sale are valid in Islamic law.⁵

Question

Question is raised by Shafei jurists against to Hanfi jurists and it is related to old ages when coin of Dirham and Dananir were used as a currency that: the cotton is weighable property as Dirham and Dananir are weighable and these both are homo-estimation. When both are homo-estimation in weight the excess of time should be riba al Nasia because the underlying cause of riba al nasia is found here, so advance payment sale {bay al Salam} and deferred payment sale {bay al muajjal} both will not be valid in cotton by Dirham and Dananir due to occurrence of riba al nasia, while these both sales are declared valid in these properties by Hanfi jurists.⁶

Answer

It is answered by Hanfi jurists that there are two types of instruments of weight:

- a- The instrument of weight for gold and silver. b- The Instrument of weight for other weighable properties such as cotton, iron. The instrument of weight for gold and silver is totally different from the instrument of weight for other properties and this difference is found between both in shape as well as in name because the instrument of weight for gold and silver is named in Arabic language with Misqal while instrument of weight for other weighable properties is named with Qubban and difference between both in shape and name is very clear and gold & silver and other weighable properties are not considered homo-estimation in weight, so the excess of time in either one of them will be valid because both exchanged properties are not homogenous nor homo-estimation in weight and it is on the basis of tradition. Prophet {blessing of Allah and peace be upon him} has granted the rule of general permissibility to debt based sale though it is advance payment sale or deferred payment sale.⁷

Definition of Property {mal}

There are two view points of Muslim jurists: 1- Hanfi and Malki jurists defined property that it is each legally valuable material thing desired by people.⁸ Mustafa Ahmad al Zarqa defined property according to Hanfi Jurists and said: {المال هو كل عين ذات قيمة مادية بين الناس.} The property is substance having a material value among the people.

2- Shafei jurists defined: It is every legally valuable entity desired by people.¹⁰

The difference between both definitions is as follows.

- 1- The profit and benefit taken from property is property according to Shafei jurists while it is not property according to Hanfi and Malki jurists.
- 2- The tangible and intangible both are properties according to Shafei jurists while only tangible is property according to Hanfi jurists.
- 3- Corporeal and incorporeal both are properties according to Shafei jurists while only corporeal is property according to Hanfi and Malki jurists.

- 4- Material and immaterial both are properties according to Shafei jurists while only material is property.
- 5- The rights are also property according to Shafei jurists while rights are not property according to Hanfi and Malki jurists unless these are written on any material thing.

Types of Property

There are two types of properties:

a- Moveable property and b- immoveable property as piece of land, house and shop and the immoveable property is not riba able property.

Moveable property is divided in two types:

a- Fungible {mithly} property as all those properties which are sold and purchased by estimation.

b- Non fungible {qeimi} property which is value able property sold and purchased by evaluation assessment not by estimation as animal and other determine able properties as car, furniture and other electronic commodities are non fungible properties and non fungible property is not riba fadl able property, so it is lawful to sell one horse by two or three horses and one buffalo by one or two or three buffalos because of the difference in the value of each one of them,

Types of Fungible Property

There are four types of fungible property based on the method of estimation and there are four types of methods as follows:

1- Weight: The property which is sold and bought by weight is called weighable property such as gold and silver.

2- Measurement: the property which is sold and bought by measurement is called measurable property such as wheat, barley, date, slat and all different types of grain.

3- Scale: The property which is sold and bought by rod meter and scale is scale able property such as cloths and carpets.

4- counting: The property which is sold and bought by counting and dozens is called count able property such eggs, banana.

The riba fadl able property is only weighable and measurable property while it is exchanged by homogeneous, So underlying cause of riba al fadl is Homo-estimation plus homogenous according to Hanfi and Habli jurists.

The riba al Nasia able property is having one of two attributes mentioned in riba al fadl properties and it is: 1- Homo-estimation property in weight or measurement. 2- Homogenous, so underlying cause of riba al nasia is each one of these two attributes separately is underlying cause of riba al nasia.

1- Wherever two homo-estimation properties are exchanged together with stipulated excess of time there is riba al nasia though both exchanged properties homo-estimation in weigh or homo-estimation in measurement and though these are homogeneous or not homogeneous such as gold by gold by or gold by silver.

2- Wherever two homogenous properties are exchanged together with stipulated excess of time there is riba al nasia though both properties are homo-estimation or both properties are not homo-estimation such as exchange of gold by gold and barley by barley or exchange of cow by cow. The last property is value able property, so it is not fungible property and when it is not fungible property it is not homo-estimation property.

Question

If someone wants to exchange date of inferior quality by date of superior quality with an excess in quantity due to difference in value and quality of both types of date. Is it lawful?

Answer

It is answered that it is not valid because there is an excess in quantity and this excess is considered riba, so it is suggested for that person to sell out his inferior date by cash and then buys by this cash a superior quality of date and it is approved by Holy Prophet {blessing of Allah and peace be upon him} and there are two different traditions of Prophet {blessing of Allah and peace be upon him} as follows:

a- Bilal the companion of Prophet {blessing of Allah and peace be upon him} came to Holy Prophet and asked: can I sell my inferior quality of date with double quantity by superior quality of date with single quantity? Holy Prophet {blessing of Allah and peace be upon him} answered no,

but you sell your inferior quality of date by cash and then purchase superior quality of date by this cash.¹¹

b- It is narrated by Abu Saeed al Khudri and also by Abu Hurairah {Allah be pleased with them} that Prophet {blessing of Allah and peace be upon him} appointed a person as a governor in Khaiber and he came to Prophet {blessing of Allah and peace be upon him} with high qualitative dates of Khaiber and Prophet {blessing of Allah and peace be upon him} asked: All the dates of Khaiber are with such high quality the person replied: No but we exchange {saa} four kilo of superior date with {Saain} eight kilo of inferior dates and eight kilo of superior with twelve kilo of inferior date. Prophet {blessing of Allah and peace be upon him} forbidden him to do so and said: sell all inferior dates with price and then buy superior quality date by this price.¹²

Agreed upon cases

a- It is agreed upon that homo-estimation is always a fungible property as gold and silver These both are weighable properties and wheat and barley both are measureable properties and Qimi property is not estimated property by any method of estimation.

b- It is agreed upon also that all homogenous from fungible properties are always homo estimation but it is not necessary that all homo-estimation properties are homogenous as wheat and barley.

e- It is agreed upon that wherever excess of property is prohibited due to riba al fadl the excess of time is also prohibited due to riba al Nasia as exchange of wheat by wheat.

d- It is also agreed upon that wherever the excess of time is valid the excess of property is also valid in this exchange as in bay al {muajjal} deferred payment sale and {bay al salam} advance payment sale and this excess is profit though it is in shape of property or in shape of time.

f- It is agreed upon that: when weighable property is exchanged by measureable property then riba is not found between them neither al fadl nor al nasia as selling wheat by gold or by silver or by money with an excess of property or with an excess of time.

2-Underlying cause of Riba according to Shafei Jurists

Shafei jurists divided the usurious property into two types: currency and foodstuff property and underlying cause of riba in each one of them is different from the underlying cause in other type of property as mentioned below:

a- The underlying cause of riba al fadl in currencies is exchange of currency by homogenous and the underlying cause of riba al nasia in currencies is only currency though both are homogenous as dollar is exchanged by dollar or not homogenous such as dollar is exchanged by rupee.¹³

b- The underlying cause of riba al fadl according to Shafei jurists in foodstuff properties is exchange of foodstuff by homogenous and underlying cause of riba al nasia in these properties is only food stuff and it means: when foodstuff property is exchanged by foodstuff property then excess of time is riba al nasia though both are homogenous are not homogenous as exchange of wheat by wheat or exchange of wheat by barley then deferred delivery of either one is riba al nasia.

If foodstuff is exchanged by non foodstuff property then riba al fadl and riba nasia both are not found, so excess of property is valid as well as excess of time is also valid.

3- Underlying Cause of Riba according to Malik jurists

Maliki jurists divided riba able properties in two types as Shafei jurists hold:

1- The underlying cause of riba al fadl in currencies is currency plus homogenous.¹⁴

2- The underlying cause of riba al Nasia in currencies is only currency, so excess of time in exchange of currencies is riba al nasia though both exchanged currencies are homogenous as exchange of Dollar by Dollar or not homogenous as exchange of Dollar by Euro.

3- The underlying cause of riba al fadl in foodstuff property is preserve able foodstuff property plus homogenous and when preserve able foodstuff property is exchanged by homogenous with an excess of property then it is riba al fadl.

4- The underlying cause of riba al nasia in food stuff properties is only preserve able foodstuff property though both are homogenous or not. If there is excess of time then it is riba al nasia. for example:

i- If one sack of wheat is exchanged by one sack of wheat and both are delivered at the time of contract then there is neither riba al fadl nor riba al nasia.

ii- If one sack of wheat is exchanged by one and half sack of wheat and delivery of either one is deferred then both types of riba are found because there is excess of property as well as excess of time.

iii- If one sack of wheat is exchanged by one and half sack of wheat and delivery of both is made promptly then there is only riba al fadl.

iv- If one sack of wheat is exchanged by one sack of wheat but delivery of either one is deferred then there is only riba al nasia provided there is no intention for Qard Hassan.

v- If one sack of wheat is exchanged by two sacks of barley but delivery of either one is deferred then only riba al nasia is found because both are preserve able foodstuff properties while riba al fadl is not found because both properties are not homogenous.¹⁵

Preference

There are three view points of Muslim jurists regard underlying cause of riba. And these are mentioned but what is preferable?

Hanfi and Hanbli opinion is preferred due to reasons mentioned below:

a- The underlying cause is defined in the beginning that: it is clear, constant attribute having compatibility with the rule, being acknowledged by law giver. Being constant is very important element of underlying cause according to all scholar of Usool al Fiqh and if it is not constant the rule of original case cannot be extended by analogy to provisional case on the basis of underlying cause because it is not capable to be underlying cause.

The homo-estimation in weight or measurement plus homogenous is constant attribute and it is constant and capable to be underlying cause of riba al fadl without differentiating between weighable and measureable properties and one of them is underlying cause of riba al nasia and the

consistency in underlying cause is maintained according to Hanfi and Hanbli jurists while this consistency in the underlying cause is not maintained according to Shafei and Malki jurists because the underlying cause of riba al fadl in weighable property is currency plus homogenous while underlying cause of riba al nasia is only currency and the underlying cause of riba al fadl in measurable properties is foodstuff plus homogenous while only foodstuff is underlying cause of riba al nasia, so the underlying cause of riba in weighable properties is currency while underlying cause of riba al nasia in measure able properties is foodstuff and the attribute of currency is totally different from the attribute of foodstuff, so the consistency in the underlying cause is not maintained according to Shafei.

The same position of Malki jurists in the underlying cause of riba in weighable & measurable properties and when underlying cause of riba is not constant then it is not capable to be cause for the analogy extending the rule from original case to provisional case.

b-The basic reason for the prohibition of riba is stipulated excess without corresponding consideration and this excess is checked by Shariah standard and Shariah standard is weight and measurement and this Shariah standard is constant while currency is not constant due to two reasons: a- Some time it is inflated and common people do not know such matters.

b- Some people evaluate commodities by their price in currency. It varies from the evaluation of other people in the same currency and this evaluation is not constant while weight and measurement is constant.

The foodstuff is also not Shariah standard for commodities to check by it because it varies in price and value due to genus and genus.

c- It is stipulated for the validity of exchange of homogenous usurious commodities that there is equality between both properties: Holy Quran says: Do not devour the property among yourselves by false unless it is business among yourselves with consent from yours and this equality is checked by estimation though method of estimation is weight or measurement and it is maintained as a Shariah standard for excess which is without consideration while currency or foodstuff is not capable to be Shariah standard for checking excess which is without consideration.

d- Hanfi and Hanbli view point is also supported by the text of Quran: There is destruction for those people who when take bake from the people

they take with complete measure and when they pay to people with measures or weight then they cause loss for the people.¹⁶

Question

There are some questions raised against to view point of Muslim jurists and these are as follows:

Qard Hassan is not simple valid but it is recommended by lawgiver and it is exchange of weighable or measurable property by homogenous with deferred delivery of either one and it is riba al nasia and riba is prohibited while Qard hassdan is valid and recommended.

Two answers are given for this question:

a- First answer is given by majority that Qard Hassan is validated as an exceptional case to facilitate the needy person and exemptions are not objected.

b- Second answer is given by Hanfi Jurists that Qard Hassan is valid but stipulation of time in the payment of Qard Hassan is not valid while it is contractual condition in riba, so Qard Hassan itself without any such condition is valid and when condition of time is not valid the creditor can demand his loan from loaner at any time after providing loan to loaner though it is after passing one hour as borrowing property can be demanded at any time and condition of time period is null and void in both.

Question

The question is raised against to this answer that loan is recommended to facilitate the loaner who is needy person on the basis of Istihsan and when creditor can demand his loan from loaner at any time then it is not causing for facilitation of loaner.

Answer

It is answered that when creditor demands from loaner to return his loan and loaner excuses that I expended this loan and I do not have money to return your loan now then creditor may grant him specific time for the payment of loan on the basis of verse of Holy Quran: If loaner felt difficulty to return the loan then you facilitate debtor till he is capable to pay off the loan easily.¹⁷

Effects of Dispute in Underlying Cause of Riba

The conflict of opinion in the underlying cause of riba is resulted in the dispute among them in the following cases.

1- Selling pearls and diamonds by homogenous with stipulated excess of property as well as stipulated excess of time is not valid according to Hanfi and Hanbli jurists because both exchanged properties are weighable plus homogenous, so excess of property is riba al fadl and excess of time is riba al nasia while it is valid according to

Malki and Shafei jurists because both properties are neither currencies nor foodstuff.¹⁸

2- Selling eggs, water Melon, pomegranate, pineapple and walnut by homogenous with stipulated excess of property is allowed according to Hanfi and Hanbli jurists and there is no riba al fadl because these properties are neither weighable nor measurable properties while it is not allowe according to Shafei jurists because both properties are foodstuff and same is held by Malki jurists in those properties which are preserve able.

3- Selling one sack of gypsum {jass} by one sack of lime{norah} with deferred delivery of either one is not valid according to Hanfi and Hanbli jurists because both properties are measureable while it is valid according to Shafei and Malki jurists because both are neither currency nor foodstuff.¹⁹

4- Selling one cow by another cow with deferred delivery of either one is not valid according to Hanfi jurists because both are homogenous, so excess of time is riba al nasia while it is valid according to Shafei and Malki jurists because both are neither foodstuff nor currencies.

5- Selling one sack of wheat by forty kilos of cooking oil with deferred delivery of either one is not valid according to Shafei and Malki jurist because both are foodstuff while it is valid according to Hanfi and Hanbli jurists because both are neither homogenous nor homo estimation because wheat is sold by measurement while oil is sold by weight.²⁰

Conclusion

The underlying cause is that: It clear constant attribute having compatibility with the rule, acknowledged by lawgiver. Riba is found in six properties by text and it is found in other properties by analogy.

Definition of riba al fadl according to Hanfi and Hanbli jurists is: It is excess of property without consideration according to Shariah standard, stipulated for either one party in exchange weighable or measurable property by homogeneous. According to Hanfi jurist Riba al nasia is an excess of time without consideration according to Shariah standard, stipulated for either one party in exchange of property by homogenous or by homo-estimation in weight or measurement.

Riba al fadl according to Shafei jurists is an exchange of currency by homogenous or exchange of foodstuff property by homogenous with stipulated excess of property for either one party. Riba al Nasia according to Shafei jurists is an exchange of currency by currency or an exchange of foodstuff by foodstuff with stipulated excess of time for either one party.

Riba al fadl and Riba al nasia according to Malki jurists is similar to Shafei jurists with addition of word: preserve able to word food stuff in the definition of riba, so it is exchange of currency by homogeneous or exchange preserve able food stuff property by homogeneous with stipulated excess of property for either one contracting party.

The underlying cause of riba is consisted according to Hanfi and Hanbli jurists while it is not established according to Shafei and Malki jurists. The opinion of Hanfi and Hanbli jurists regarding to the underlying cause of riba is preferred on the opinion of Shafei and Malki jurists. The usurious properties regarding to riba al fadl are only weighable and measurable properties provided both exchanged properties are homogeneous. It is according to Hanfi and Hanbli jurists. The usurious properties regarding to riba al fadl are currencies and foodstuff provided both exchanged properties are homogenous. It is according to Shafei jurists. The usurious properties regarding to riba al fadl are currencies and foodstuff provided exchanged properties are homogeneous. It is according to Malki jurists. The riba al nasia able properties are two homogenous and two homo-estimation properties provided both are exchanged. It is according to Hanfi and Hanbli jurists. The riba al nasia able properties are currencies and foodstuff according to Shafei jurists though these are exchanged by homogenous or by other genus. The riba al nasia able properties are currencies and preserve able foodstuff according to Malki jurists though these are exchanged by homogenous or by other genus.

References and Endnotes

¹ Al Haskafi Ala ud Din/ la Durr –e- al Mukhtar with Hashiyah Ibn Abidin Mohammad Amin/ Istanbul: Dar Qahrman/ 1984/ 5: 168- 170. See also Ibn al Hummam Abdul Wahid/Fath al Qadir with other Hawashi/Beirut: Dar Ihya al Turath al Arabi/ 6: 146, al Baberti Akmal al Din Muhmmad Mahmud/al Inayah with Sharh Fath al Qadir/ 6: 146, Afindi Sadullah bin Easa/ Hashayah ala al Inayah/ 6: 146, al Kasani Ala ud Din/ al Baday wa al Sanay/ Beirut: Dar al Kitab al ArabiT/ hird Edition/192/ 5: 183, al Sarkhasi Shams al Aimmah/ al Mabsut/Beirut: dar al Marafah/ 186/12: 109, al Zailai / Tabyeen al HaqaiqFakhr al Din Uthman bin ali/Egypt: al Matbah al Kubra al Amiriyah/ First editiomn/ 1315 Hijriyyah/ 4: 87. See also Al Adavi/ Hashaya ala Sharh al khurshi/ 5: 56, Ibn Rushd Muhammad bin Ahmad bin MuhammadE/ Bidayyat ul Mujtahid/ gypt: Shirkah al Mustafa al Babi/ Fifth edition/ 1981/2: 129, al Dasuqi Ibn Arafah/ Hashyah al Dasuqi/ 3: 47, al Hattab/ Mawahib al Jalil/ 4: 346 al Qalyubi wa Umairah/ Hashyatuhma ala al Minhaj/ 2: 166, al Bajuri/ Hashyah ala Sharh Ibn al Qasim/ 1: 344, al Sharbini muhammad al Khateeb/ Mughni al Muhtaj/Shirkah al Maktabah wa al Matbah Mustaba al Babi/ 2: 21,al Ramli, Nihayat al Muhtaj/ 3: 39, al Subki/Takmilat al Majmua /10: 48, Ibn Qudamah Muwaq al Din/ al Mughni/ Beirut: dar al Kitab al Arabi/ 1972/ 4: 2, Ibn al Qayyim/ lalam al Muwaqqein/ 2: 135.

² The detail of this definition is discussed in other article namely: Analysis of types of interest in Islamic law.

³ Al Sarkhasi/ al Mabsut/ 12: 116, al Kasani / al Badaye wa al Sanaye/ 5: 184, Ibn al Hummam kamal al Din Muhammad bin abdul wahid / Fath al Qadir/ Dar Ihya al Turath al Elmi/ 5: 297, Ibn Abidin/ Rad al Muhtar/ 4: 193, al Baji Abu al Waleed/ al Muntaqa/ 4: 158, Ibn Rushd/ Bidayat al Mujtahid/ 2: 131, al Dasuqi Ibn Arafah/ Hashiyah al Dasuqi/ 3: 47, al Hattab/ Maqwahib al Jalil/ 4: 346, Ibn Juzai/ al qawanin al Fiqhiyyah/253, al Sharbini/ Mughni al Muhtaj/ 2:22-25, Hashyah Qalyubi wa Umairah/ 2: 167, Hashyah al Sharqavi/ 2:32, Ibn Qudamah/ al Mughni/ 4: 3-5, al Bahuti/ Ghayat al Munthi/ 2: 54, Ibn al Qayyim/ lalam al Muwaqqein/2: 136.

⁴ al Sarakhsi Shams al Aimah / al Mabsut/ Beirut: Dar al Marfat / 12: 113, Ibn al Hummam/ Fath al Qadir / 5: 27

⁵ Al Sanhuri/ Masadir al Haqq/3: 180, al Sarkhasi/ al Mabsut/ 12 : 114, Ibn al Hummam/ Fath al Qadir/ 5: 278, al Kasani/ al Badaye wa al Sanaye/ 5: 185/ Ibn Abidin/ Radd al Muhtar/ 4: 188, Ibn

Rushd/ Bidayat al Mujtahid/ 2: 136, Hashyah al Dasuqi/ 2/ 53, al Sharbini/ Mughni al Muhtaj/ 2: 23, Ibn Qudamah/ al Mughni/ 4: 32.

⁶ al Sarkhasi / al Mabsut / 12: 110- 120, al Kasani / al Badaye wa al Sanaye/5: 183-186, al Zailai/ Tabyeen al Haqaiq / 4: 86-87

⁷ Dr Abdul Razzaq al Sanhori/ Masadir al Haq/ dar Fikr/ 1953-53/ 190-191

⁸ Ibn Abidin/Radd al Muhtar/4: 3

⁹⁹ Mustafa Ahmad Al zarqa/al Madkhal al Fiqhi al Aam/ Syria/ 1967/ 3:118/ section: 73

¹⁰ Sharbini al Khateeb. Mughni al Muhtaj / 2: 3. See also: al Mustfa al Zarqa/ al Madkhal al Fiqhi al Am/ Damascus: matbah Tarbin/ 1968/ 3: 122.

¹¹ It is narrated by Imam al Bukhari which is stated by Mohammad Ali Showkani / Nail al Aowtar/5: 207

¹² It is narrated by al Bukhari and others: see: Sahih al Bukhari / Hadith: 2201, 2202, 2302, 2303, 4244, 4245, 4246, 4247, 7350, 7351.

¹³ Nowvi Yahya bin Sharf said: Muslim jurists are agreed upon that: it is permissible to sell usurious property by usurious property where the underlying cause is different with excess of property as well as excess of time as selling a gold by wheat and selling silver by barley and other measureable property and they also agreed upon that: it is not permissible to sell usurious property by homogenous with an excess of time or with an excess of property as gold by gold. See: Nowvi Muhyi al Din / Sharah Sahih Muslim/ Dar Ihya al Turath al Islami/ 9/ 11

¹⁴ Ibn Rushd/ 2: 131, al Dasuqi/ 3: 47, al Hattab / Mawahib al Jalil/ 4: 346, Ibn Juzai/ al Qawanin al Fiqhiyyah/ 253.

¹⁵ It is due to tradition: when genus of such property is different then sell as you want but hand to hand. It is narrated by al Bukhari and Muslim. See: Sahih al Bukhari/ hadith: 2170- 2175 and Sahih Muslim/ hadith: 4063.

¹⁶ Surah al Mutaffefin /1-3

¹⁷ Surah Baqrah/ 280

¹⁸ Al Sanhuri Dr Abdul Razzaq/ Masadir al Haq /3: 179.

¹⁹ Al Kasani /al Badaye wa al Sanaye/ 5: 186, al Sanhuri/ Masadir ul Haq/ 3: 192

²⁰ It is mentioned by Dr Abul Razzaq al Sanhori/ Masadir al Haq / Dar al Fikr/ 1953-1954/ 3: 178-180.