

Commercial Regulations of Islam with Special Reference to the Prophetic Traditions

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Abstract

Pre-Islamic economic practices such as gharar, munābadhah, bay‘ al-ḥaṣāh, muḥāqalah, muzābanah, mulāmasah, ḥabal al-ḥabalah, mu‘āwamah, among others, were causes of disputes and feuds among families, clans, and tribes. Islam prohibited those and many other economic transactions, and regulated commercial activities, giving birth to the early economic law in Islam. Undoubtedly, Islamic economic law tackled two major problems coming from the jāhiliyyah period, which were still in practice at the beginning of Islam: one to avoid tribal feuds and the other to protect the weaker participant in any commercial transaction. This essay analyses these Islamic commercial regulations as contained both in the Qur’ān and the sunnah. In order to acquire a more general view of some social activities at the time of Prophet Muḥammad, this paper also deals with Prophet Muḥammad’s recommendations for all travellers, whether or not they moved from one place to another in search of economic transactions.

Keywords

trade, traders, pre-Islamic commercial transactions, Islamic commercial regulations, *sunnah*.

Introduction

An old Arabic proverb says, “*Fī ’l-ḥarakah barakah*,” which literally means, “There is a great blessing in the movement,” and more freely can be translated as “he who travels harvests goods.” These ideas of a blessing or the benefits expected seem to have been some of the main reasons for Arabs to travel. Among Arabs, journeys were very common even before Islam for a variety of motives such as commerce, wars, and religious purposes (pilgrimage). With the

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rise of Islam, travels among Muslims were also common and constantly practiced. Islam also regulated these movements in many ways.

There is no doubt that commerce has always been important in all societies. Merchants have played a significant role in any community, since some of them have profited as a result of their activities. Merchants have also contributed to the flow of produce from the countryside to the cities, and vice versa, as well as to the long-distance commerce, for which local governments had to guarantee trade, the free movement of people, merchants, pilgrims, and so on. Muslim societies have not been an exception in this process.¹

Before we go into detailed explanations in this essay, a clarification is necessary. The term commerce usually refers to long-distance commerce, the most profitable, while trade refers to short-distance commercial transactions, such as the flow of produce and other goods from the countryside to the cities.² The long-distance commerce in the *dār al-Islām* involved very dynamic merchants who carried expensive merchandise from one place to another site located in distant areas. These expensive products include but not limited to silk, gold, fine *ṭirāz* (embroidery),³ expensive textiles, and slaves. The result of the activities of commerce and trade were often profitable for many people to the point that some successful businessmen could climb up in the social ladder. These profitable activities resulted in wealth that could have helped some merchants to improve their social status. Arabic sources, however, explain that the society was divided only in two groups: *al-ḵbāṣṣah* (the elite) and *al-ʿāmmah* (the commoners). According to the sources, this means that those in the *al-ʿāmmah* were equal because they did not form part of the elite. However, a close study of medieval Muslim society reveals that there were many economic

¹ For the importance of commerce in the *dār al-Islām* (Muslim empire), see Jaʿfar b. ʿAlī al-Dimashqī, *Kitāb al-Ishārah ilā Maḥāsīn al-Tijārah* (Cairo: Dār al-Kitāb al-Miṣrī, 1900), passim, especially 50ff.

² For more details, see Rachel Arié, *España Musulmana, en Manuel Tuñón de Lara, Historia de España* (Barcelona: Editorial Labor, 1987), passim.

³ For more information concerning the expensive *ṭirāz* in the *dār al-Islām*, with special reference to the city of Bukhara, see Muḥammad b. Jaʿfar al-Narshakhī, *Taʾriḵh Bukhārā (The History of Bukhara)*, trans. Richard Frye (Cambridge, MA: Medieval Academy of America, 1954), passim, especially 19–20. Narshakhī explains in his book that in the city of Bukhara there was a special market, named Makh, where these fine *ṭirāz* were sold. For more details, see Yāqūt b. ʿAbd Allāh al-Rūmī, *Muḥjam al-Buldān*, ed. F. Wüstenfeld (Leiden: E. J. Brill, 1866–1873), 4:380. Muḥammad b. Abī Bakr al-Zuhrī, *Kitāb al-Jaʿrafiyyah*, ed. and trans. M. Hadj Sadok (Damascus: French Institute, 1968), passim; R. B. Serjeant, “Material for a History of Islamic Textiles up to the Mongol Conquest,” *Ars Islamica*, nos. 11–12 (1946): 121. For other regions of the *dār al-Islām*, see Olivia Remie Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900–1500* (Cambridge: Cambridge University Press, 1996), passim.

differences between the various members of the *al-‘ammah*. In this social group there were some merchants who had their shops in the markets with economic success, whose income made them different from other members of the same social group, such as peasants, frequently poor *fallāḥīn*, or in the cities the extreme case of beggars. Some successful merchants, who for particular reasons, could not make it to the *al-khāṣṣah*, were rich and as such acquired a prestigious social status, despite the fact that they did not obtain a position in the political administration.

The well-to-do merchants, as well as some *‘ulamā’* (scholars) and writers, who did not form part of the elite, were different from the rest of the commoners. This difference was so remarkable that it is possible to notice the existence of a middle group, or a middle class—for lack of a better term—despite what Arabic sources say about the social classification in only *al-khāṣṣah* and *al-‘ammah*. Undoubtedly for some people trade and commerce could have contributed in their social mobility. It is important to bear in mind that medieval Muslim society was almost all the time very dynamic, meaning that social mobility was possible and that some poor people, belonging to the group of *al-‘ammah*, were able through specific activities to make their way to the *al-khāṣṣah*. The elite was not a close group, but rather it was open to those who, through various mechanisms, improved their social status and entered the elite. For many people social mobility was possible through education, contacts, connections, wealth, skills in certain activities such as in the military, poetry, law, music, sciences, and so on, and finally also through marriage.⁴

⁴ For details, see Roberto Marín-Guzmán, *Popular Dimensions of the ‘Abbasid Revolution: A Case Study of Medieval Islamic Social History* (Cambridge, MA: Fulbright-Laspau, 1990); Marín-Guzmán, “Ethnic Groups and Social Classes in Muslim Spain,” *Islamic Studies* 30, nos. 1–2 (1991): 37–66; Marín-Guzmán, “Crusade in al-Andalus: The Eleventh Century Formation of the Reconquista as an ideology,” *Islamic Studies* 31, no. 3 (1992): 287–318; Marín Guzmán, “La literatura árabe como fuente para la historia social: El caso del *Kitab al-Bukhala’* de al-Jahiz,” *Estudios de Asia y África* 28, no. 1 (1993): 32–83; Marín-Guzmán, “Social and Ethnic Tensions in al-Andalus: Cases of Ishbiliyah (Sevilla) 276/889–302/914 and Ilbīrah (Elvira) 276/889–284/897; The Role of ‘Umar Ibn Ḥafṣūn,” *Islamic Studies* 32, no. 3 (1993): 279–318; Marín-Guzmán, “La rebelión muladí en al-Andalus y los inicios de la sublevación de ‘Umar Ibn Hafsun en las épocas de Muhammad I y al-Mundhir (880–888),” *Estudios de Asia y África* 33, no. 2 (1998): 233–84; Marín-Guzmán, “*Al-Khassa wa al-‘amma* [La élite y el pueblo común] en la historia social de al-Andalus: Una aproximación al estudio de las clases sociales y la movilidad social en la España Musulmana (711–1090),” *Estudios de Asia y África* 34, no. 3 (1999): 483–520; Marín-Guzmán, *Kitab al-Bukhala’ [El Libro de los Avaros] de al-Jahiz: Fuente para la historia social del Islam Medieval* (México: El Colegio de México, 2001), passim; Marín-Guzmán, “Un cuento sufi en *Las Mil y Una Noches*: La historia de Abu l-Hasan con Abu Ya‘far el leproso: Análisis del contexto social y religioso del Islam Medieval,” *Miscelánea de Estudios Árabes y Hebraicos* 51 (2002): 91–111; Marín-Guzmán, “Algunas reflexiones sobre el impacto social de los precios y los salarios en la historia de al-Andalus,” *Estudios de Asia y África* 39, no. 2 (2004): 387–410; Marín Guzmán,

The purpose of this essay is to analyse the Islamic regulations contained both in the Qur'ān and in the *sunnah* of the Prophet Muḥammad (peace be on him), regarding trade, traders, and the regulations, prohibitions, and recommendations for vendors, purchasers and for other commercial transactions. In justification of this essay, we point out that it analyses various commercial recommendations and regulations of Prophet Muḥammad as contained in the *sunnah*. We gathered these commercial regulations mainly from the *ḥadīth* collections of Bukhārī, Muslim, and Nawawī among others. Since Prophetic traditions found in these collections are generally accepted and followed by all four schools of the Islamic law, we do not interpret these commercial regulations according to any particular school of Islamic law.

In this paper, we explain the commercial regulations and the recommendations by Prophet Muḥammad. The regulations are very clear as such, that is, as orders. The recommendations, since they come directly from Prophet Muḥammad, in time they became regulations, that is, orders to be followed.

“Las fuentes árabes para la reconstrucción de la historia social de la España Musulmana: Estudio y clasificación,” *Estudios de Asia y África* 39, no. 3 (2004): 513–72; Marín-Guzmán, “Unity and Variety in Medieval Islamic Society: Ethnic Diversity and Social Classes in Muslim Spain,” in *Cultural Symbiosis in al-Andalus: A Metaphor for Peace*, ed. Sanaa Osseiran (Beirut: UNESCO-Beirut, 2004), 91–108, 352–60; Marín-Guzmán, “Political Turmoil in al-Andalus in the Time of the *Amir* ‘Abd Allah (888–912): Study of the Revolt of Daysūm Ibn Ishāq, Lord of Murcia and Lorca and the Role of ‘Umar Ibn Ḥafṣūn,” *The Muslim World* 96, no. 1 (2006): 145–74; Marín-Guzmán, “Los grupos étnicos en la España Musulmana: Diversidad y pluralismo en la sociedad islámica medieval,” *Revista Estudios* 17 (2003): 169–216; Marín-Guzmán, “Some Reflections on the Institutions of Muslim Spain: Unity in Politics and Administration (711–929),” *The American Journal of Islamic Social Sciences* 21, no. 1 (2004): 26–56; Marín-Guzmán, *Introducción al Estudio del Medio Oriente Islámico: Trayectoria histórica, continuidad y cambio*, 3rd ed. (San José: Editorial de la Universidad de Costa Rica, 2004); Marín-Guzmán, “Arab Tribes, the Umayyad Dynasty and the ‘Abbasid Revolution,” *The American Journal of Islamic Social Sciences* 21, no. 4 (2004): 57–96; Manuel Enrique López-Brenes, *Los Aportes Culturales del Egipto Islámico a la España Musulmana* (San José: Editorial de la Universidad de Costa Rica, 2015); López Brenes and Roberto Marín Guzmán, “Algunos apuntes sobre los primeros *shuhada’ fi sabil Allah* (Mártires en la senda de Dios) en el Islam,” *Revista Estudios* 31 (2015): 1–29 (digital version); López Brenes and Marín Guzmán, “El fraude con los *al-Anfal* (los botines) de guerra en los primeros tiempos del Islam,” *Revista Estudios* 28 (2015), 5–29; López Brenes and Marín Guzmán, “El *Zakat* en el *Sabih Muslim*: Ensayo sobre la limosna obligatoria y la caridad en el Islam,” *Revista Estudios* 33 (2016): 1–48, revistas.ucr.ac.cr; López Brenes and Marín Guzmán, “*Kitab al-ru’ya* (El Libro de los Sueños) en el *Sabih Muslim*,” *Revista Estudios* 34 (2017) (digital version); López-Brenes and Marín-Guzmán, *De nuevo sobre el movimiento Mahdista en Sudán: Estudio de sus fuentes y discusiones historiográficas* (México: El Colegio de México, 2016); López-Brenes and Marín-Guzmán, *La Batalla de Hunayn y las interrogantes que suscita: Reflexiones en torno al problema de la tradición musulmana y las fuentes árabes* (San José: Edinexo, 2017).

There are many recommendations in Prophetic traditions concerning commercial activities, as well as many regulations regarding commerce in general “and the duties of the good and the punishment of the wicked merchant and the prohibitions of certain transactions (generally the taking of interest and speculation).”⁵ One of the Prophet Muḥammad’s general recommendations for travelers was to begin a trip on Thursdays in the morning.⁶ This could be applied to those merchants who traveled long distances to sell their products, and also to buy other merchandise to bring it back and to sell it in their lands of origin. It is reported that Ṣakhr b. Wadā’ah heard the Prophet saying, “Oh my God, please bless my nation in the early hours of the morning.”⁷ It is also reported that Ṣakhr b. Wadā’ah was a merchant who used to dispatch his merchandise in the early hours of the morning. He became very rich and obtained great profits from his commercial activities.

The Prophet Muḥammad also recommended that whoever needs to travel should seek for company first. This is to discourage traveling alone. One possible reason for this advise was to seek protection against any unexpected events. The Prophet once said, “Who travels alone is accompanied by the demon, and if there are two on a journey, they are accompanied by two demons, but if three travel together, they form a real and immune group for a trip.”⁸ The general conclusion from this *ḥadīth* is that the Prophet recommended to travel in groups of at least three people. Abū Sa’īd and Abū Hurayrah reported that the Prophet said, “When three people travel together they should appoint one of them in command of the group.”⁹ However, this should not lead one to speculate that Muslims never travelled alone. In fact, Muslims interpreted this regulation as a recommendation (*istiḥbāb*) as well as conditioned with certain circumstances. That is why, certain literary and historical works indicate that many Muslims used to travel alone throughout the history.¹⁰

Another general recommendation of the Prophet Muhammad was to pray during the trip, which was valid to all travelers, regardless of the purpose

⁵ See Joseph Schacht, “Bai’,” in *Shorter Encyclopaedia of Islam* ed. Hamilton A. Gibb and J. H. Kramers (Ithaca, NY: Cornell University Press, 1953), 56–57.

⁶ Yahyā b. Sharaf al-Nawawī, *Riyād al-Ṣāliḥīn min Kalām Sayyid al-Mursalīn*, ed. Māhīr Yāsīn al-Fahl (Damascus: Dār Ibn Kathīr, 2007), 287.

⁷ Abu Zakariya Yahya al-Nawawī, *El Paso hacia el Paraíso, Dichos del Enviado de Dios* (Spanish), trans. Ahmad M. Safi (Maryland: Amana Publications, 1995), 146.

⁸ *Ibid.*, 147.

⁹ *Ibid.*

¹⁰ For instance, see ‘Amr b. Baḥr al-Jāhīz, *Kitāb al-Bukhalā’*, ed. Ṭāhā al-Ḥājīrī (Cairo: Dār al-Ma’ārif, n.d.), passim.

of their journey. Among them were, obviously, the merchants. Abū Hurayrah reported that the Prophet said, “There are three prayers to God which indeed will be answered: the petition of the oppressed, the travelers’ prayer, and the prayer of a father for his son.”¹¹

The Prophet also recommended all travelers to return home as soon as the purpose of the trip was accomplished. Abū Zakariyyā Yaḥyā b. Sharaf al-Nawawī (d. 1277 CE) reported the *ḥadīth*: “As soon as the purpose of the trip is accomplished, the traveler should return to his family.”¹² Muḥammad b. Ismā‘īl al-Bukhārī also recorded in his *Ṣaḥīḥ* the Prophet’s *ḥadīth* that recommends travelers to return home in the morning or in the afternoon, but never at night.¹³

Recommendations and Regulations for Commercial Transactions in Prophetic Traditions

Both the Qur’ān and the *sunnah* of the Prophet Muḥammad ordered in general terms to be honest and to be just in all commercial transactions. The Prophet Muḥammad approved commercial transactions and considered selling and buying products legitimate activities. However, he constantly said that all commercial transactions should be based on truth and justice. At the same time he also rejected all injustices and/or deceits in these commercial transactions, both for the merchant or for the purchaser of the products. Throughout the centuries of Islamic history, many jurists explained and also interpreted the various forms of commercial transactions and the different regulations contained in the *sunnah*, as part of the *sharī‘ah*. Abū Ḥāmid Muḥammad al-Ghazālī (d. 1111 CE), who was a well-known philosopher, theologian, and jurist, asserted that Muslims must learn the *sharī‘ah* rules on commercial transactions and economic activities, before they practically engage in commerce. Among these commercial rules, Muslims must know the following:

- a. Any merchandise to be sold, as well as the money to buy it, must have been acquired legally.
- b. It is forbidden to sell goods that the merchant does not possess, that is, that the vendor is not the owner. For example, to sell cereals, dates, or any other produce before the harvest, because at that moment the merchant is not in

¹¹ Al-Nawawī, *El Paso hacia el Paraíso*, 150.

¹² Ibid.; also see Muhammad Ibn Ismā‘īl al-Mughira al-Bukhari, *Saḥīḥ al-Bukhari* (Spanish), trans. Isa Amer Quevedo (Kuwait: Fundación Benéfica Abdullah Rashid al-Zeer, n.d.), 179.

¹³ Bukhari, *Saḥīḥ al-Bukhari*, 179.

- possession of those products. There is a risk (*gharar*) in this activity and Islam prohibits the *gharar*.
- c. All products should be sold in an open market so that merchants would know the activities in the market before purchasers offer to buy.
 - d. Islam forbids the commerce of certain products, for example wine, pigs, dogs, cats, or animals found dead. Therefore, it is not permissible to sell or buy such goods, which have no market value (*māl ghayr mutaqaawwim*).¹⁴

It is important to keep in mind that monopolies, speculative businesses for good profits, and all transactions with interest (*ribā*) are forbidden in Islam. However, this should not lead one to assume that these regulations completely eradicated monopolies, speculative businesses, and *ribā* from Muslim society, because many Muslims failed to comply with these regulations and involved in commercial activities forbidden by Islam.

Both the Qur'ān and the *sunnah* of the Prophet recommend all Muslims to be benevolent and honest in all commercial transactions, as well as to keep their promises and never brake them. Muslims should be just in all measures and weights.¹⁵ In this respect, it is important to keep in mind that in the Qur'ān there are numerous references to Allah knowing and being aware of any good or evil a person does. "Whatever good ye do, lo! Allah is aware of it" (2:215). The Qur'ān also orders the people, mainly the merchants, to "give no short measure and short weight. Lo! I see you well-to-do, and lo! I fear for you the doom of the besetting Day" (11:84). It also quotes the Prophet Shu'ayb (peace be on him) imploring his nation, "Oh my people give full measure and full weight in justice, and wrong not people in respect of their goods. And do not evil in the earth, causing corruption [with the intention to do mischief]" (11:85).¹⁶ Yet the Qur'ān insists on these issues and clearly states,

Woe unto the defrauders: those who when they take the measure from mankind demand it full, but if they measure unto them or weigh for them, they cause them loss. Do such (men) not consider that they will be raised again unto an

¹⁴ Schacht, "Bai'," 56–57.

¹⁵ Qur'ān 2:275. For explanations and more details about this Qur'ānic verse, see Jalāl al-Dīn Muḥammad b. Aḥmad al-Muḥḥallī and Jalāl al-Dīn b. 'Abd al-Raḥmān b. Abī Bakr al-Suyūṭī, *Tafsīr al-Jalālayn* (Cairo: Maktabat al-Ṣafā, 2004), 46–47; Muḥammad b. Sīrīn, *Tafsīr al-Aḥlām* (Cairo: Dār al-Fajr li 'l-Turāth, 2004), passim; Schacht, "Bai'," 56, where he wrote the following convincing lines: "Commercial law must have been already at a high level of development in pre-Muhammadan Mecca; the trade on which alone the existence of the town depended, occupied such a predominant position there that the Kur'an not only shows an interest in it throughout but uses a series of terms of the language of commerce to reproduce religious ideas."

¹⁶ For explanations about this passage from the Qur'ān, see al-Muḥallī and al-Suyūṭī, *Tafsīr al-Jalālayn*, 231; Ibn Sīrīn, *Tafsīr al-Aḥlām*, passim.

awful Day, the day when (all) mankind stand before the Lord of the Worlds? (83:1–6).¹⁷

The order contained in the Qur’ān is clear, that is, to give just measure and weight and not cheat others. A Prophetic tradition reports that on one occasion the Prophet bought a pair of trousers, and the merchant had a person in charge of weighing the gold and silver coins. The Prophet then stated, “Weigh them [and determine] their exact weight, and add some weight to them.”¹⁸

Related with these issues is the Prophet Muḥammad’s recommendation to give more time and to be considerate towards those having a difficult economic situation. Because of economic grievances, some people could not meet the payments for the products bought in installments, or the payments for any debts.¹⁹ The Prophet recommended to be benevolent with them and to give them more time. In Islamic law, it is permissible to buy products on credit, but it is clearly established that the transaction must not involve *ribā*. It is informed that

A man to whom Allah had granted wealth, finally appeared before Him, and God asked him: “What did you do in the world?” The man—due to the fact that it is impossible to hide anything from God—²⁰ answered, “Oh my God, with all you granted me I made profitable businesses with men, and it was my practice to tolerate. I was considerate with those in a good situation and I exempted those in economic difficulty from payment.” Allah then said, “I value your virtues more than you do,” and ordered, “Leave in peace this servant of Mine.”²¹

Islamic Prohibition of Certain Pre-Islamic Commercial Practices

Islam prohibited many commercial transactions of the time of the *jābiliyyah*, because they were considered absurd or unjust. Among them were the pre-Islamic common practices of the *mulāmasah* and the *munābadbah*. Islam also prohibited to buy any merchandise through the practice of the *bay‘ al-ḥaṣāh* (the commercial transaction of the little stone), and the *gharar* (risk).²² The

¹⁷ For more details and explanations of this passage from the Qur’ān, see al-Muḥallī and al-Suyūṭī, *Tafsīr al-Jalālayn*, 587–88. For more details about Qur’ānic studies, see John Wansbrough, *Quranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977), passim.

¹⁸ Al-Nawawī, *El Paso hacia el Paraíso*, 198; Bukhari, *Sabih al-Bukhari*, 205.

¹⁹ Al-Nawawī, *El Paso hacia el Paraíso*, 197–98; Bukhari, *Sabih al-Bukhari*, 201.

²⁰ For example, Qur’ān 50:16. For more information and explanations of this passage from the Qur’ān, see al-Muḥallī and al-Suyūṭī, *Tafsīr al-Jalālayn*, 518–19.

²¹ Al-Nawawī, *El Paso hacia el Paraíso*, 198; Bukhari, *Sabih al-Bukhari*, 201; Wansbrough, *Quranic Studies*, passim.

²² For more information regarding *gharar* and the legal discussions in the four schools of Islamic

mulāmasah was the pre-Islamic practice that either the vendor or the purchaser could touch with his hand the robe of the other person, during the day or at night, as a sign of agreement in the business negotiation.²³ The major problem of this pre-Islamic practice was the lack of a cautious examination of the merchandise. In the commercial transaction of the *mulāmasah*, due to the fact that the purchaser did not pay close attention to the goods, many disputes and conflicts broke out after the negotiation. The arguments between the two parts started after the purchaser took the merchandise home and if it was produce, he realised that on the bottom of the container the produce was rotten. Therefore, the Prophet Muḥammad prohibited the pre-Islamic practice of the *mulāmasah*, as a way to avoid social and economic conflicts.²⁴

The *munābadhab* was the agreement between two men, one the vendor and the other the purchaser. This pre-Islamic practice reached an agreement if during the negotiation one of the two men involved in the process threw a piece of cloth to the other man, and if his counterpart did the same, the action was considered a sign of agreement and the commercial transaction then took place.²⁵ In the *munābadhab*, as it also happened in the *mulāmasah*, the purchaser did not carefully examine the merchandise. The commercial transaction of the *munābadhab* also caused conflicts and serious disputes between the two parts involved. Because of all these problems and disputes, the Prophet Muḥammad prohibited the *munābadhab* as well. Abū Hurayrah informed that “the Prophet Muḥammad—peace be on him—prohibited two types of commercial transactions: *al-mulāmasah* and the *al-munābadhab*.”²⁶

The pre-Islamic commercial practice of the *bay‘ al-ḥaṣāh* was the common use of a little stone in some commercial transactions. Either the merchant or the purchaser of certain goods could throw a little stone over various piles of products, and the pile where the little stone landed was considered mandatory to buy and to sell in the price already agreed upon. It is important to add to these explanations that there was a previous agreement between the two parts

law, see Ziaul Haque, *Landlord and Peasant in Early Islam: A History of the Legal Doctrine of Muzār‘a or Sharecropping* (Islamabad: Islamic Research Institute, 1984), passim, especially 268–70, mainly for the *muzār‘ah* institution in Islam. Also see Marín-Guzmán, *Kitab al-Bukhala‘*, passim, especially 70–71. Marín-Guzmán, *Popular Dimensions of the ‘Abbasid Revolution*, passim, especially 102–103. For more details, see Aḥmad b. Yahyā al-Balādhurī, *Futūḥ al-Buldān*, ed. M. J. de Goeje, 2nd ed. (Leiden: E. J. Brill, 1968), 273; Claude Cahen, *El Islam* (Madrid: Editorial Siglo XXI, 1974), passim, especially 141.

²³ Schacht, “Bai‘,” 56–57.

²⁴ For example, see Muslim Ibn al-Hajjaj al-Qushayri al-Naysaburi, *Sahih Muslim* (Spanish), trans. ‘Abd al-Rahman Colombo al-Jerrahi (Buenos Aires: Oficina de Cultura y Difusión Islámica Argentina, 2004), 4:111–12; Bukhari, *Sahih al-Bukhari*, 210.

²⁵ Schacht, “Bai‘,” 56–57.

²⁶ Muslim, *Sahih Muslim*, 4:111–12; Bukhari, *Sahih al-Bukhari*, 210.

(vendor and purchaser) to cast the little stone and to let it decide the dimension of the business.²⁷ However, because there was not a close examination of the goods, and because of the risk and the uncertainty this pre-Islamic commercial practice led to disputes between merchants and purchasers. These are the reasons why the Prophet Muḥammad also forbade this practice. Abū Hurayrah reported that “the Messenger of Allah (peace be upon him) prohibited the commercial transactions in which a little stone is thrown, and those transactions in which there is uncertainty and/or risk (*gharar*).”²⁸

Related to the same kind of pre-Islamic commercial practices, the Prophet Muḥammad also prohibited the *ḥabal al-ḥabalāh*, which means the pregnancy of the recently born one. This is explained in the following tradition: “Before Islam people used to sell the meat of a camel up to *ḥabal al-ḥabalāh*, and *ḥabal al-ḥabalāh* means that the she-camel has to give birth and after that the recently born camel has to grow and eventually get pregnant. The Messenger of Allah (peace be upon him) prohibited this commercial practice.”²⁹ This prohibition took place because the commercial transaction of the *ḥabal al-ḥabalāh* falls into the uncertainty and the *gharar* (risk). According to the Prophetic traditions, the negotiations must be about what a person possesses at the time of the transaction.

The general pattern of these prohibitions is to have a more strict control of all businesses and to protect the consumer. In Islamic law, the consumer is considered the weak part in the commercial transaction.³⁰ The Prophet Muḥammad’s intention was to avoid disputes and serious social conflicts due to commerce, as well as to prohibit the uncertainty and the *gharar* in any negotiation, which eventually could lead to social confrontations. With the same intention were all Islamic regulations regarding land transactions, which were enforced in the *dār al-Islām* to keep the lands producing through the *iḥyā’ al-arḍ al-mayyitah* (the revivification of the dead land), meaning the reclamation of lands. In order to comply with these regulations, the owner of the land usually signed contracts with peasants using one of the three different Muslim institutions for these contracts: the *muzāra‘ah*, the *mughārasah*, and the *musāqāh*,³¹ with the purpose to keep the lands producing. These

²⁷ Schacht, “Bai‘,” 56–57.

²⁸ For more details concerning these pre-Islamic commercial practices, see Muslim, *Sahih Muslim*, 4:112; Bukhari, *Sahih al-Bukhari*, 207.

²⁹ See Muslim, *Sahih Muslim*, 4:113; Bukhari, *Sahih al-Bukhari*, 207.

³⁰ Schacht, “Bai‘,” 56–57.

³¹ See Balādhurī, *Futūḥ al-Buldān*, passim, especially 134, 273; Aḥmad b. Abī Ya‘qūb al-Ya‘qūbī, *Kitāb al-Buldān*, ed. M. J. de Goeje (Leiden: E. J. Brill, 1891), passim, especially 324; Ziaul Haque, *Landlord and Peasant in Early Islam*, 268–70; Cahen, *El Islam*, passim, especially 141–45. Marín-Guzmán, *Popular Dimensions of the ‘Abbasid Revolution*, 102–03; Marín-Guzmán, *Kitāb*

institutions were discussed and approved by the all four schools of the Islamic law.

Islamic Prohibition of Certain Commercial Practices

There are many prohibitions in Islamic law concerning commercial practices. For example, one important prohibition was on pushing [raising] the price of a product with an intention to deceive people. Such a practice is called *al-najsh*. The Prophet Muḥammad “banned raising the price of products to deceive people.”³² However, this should not be confused with *bay‘ man yazīd* (auction), which is permissible in Islamic law.³³ Muslim society in the *dār al-Islām*, both in al-Mashriq and in al-Andalus, often used auctions to sell some products. For al-Andalus, the sources contain information that books, for example, were sold in a public auction in which there was a push for the price (auction), until someone offered the highest price.³⁴

Among many other prohibitions, both the Qur’ān (33:58)³⁵ and the *sunnaḥ* of the Prophet Muḥammad prohibited deceit and fraud in any activity, especially concerning commercial transactions. In commerce, any deceit is clearly condemned by the Prophet Muḥammad. A man commented before the Messenger of Allah (peace be upon him) that he had been the victim of deceits in commerce. The Messenger of Allah (peace be upon him) said, “Tell the merchant that deceit cancels the commercial transaction.”³⁶ The *ḥadīth* collection of al-Bukhārī contains numerous examples of the Prophet’s prohibitions of deceit in any business negotiation. It narrates a *ḥadīth* in which the Prophet Muḥammad considered despicable the action to deceive people in any commercial transaction.³⁷

al-Bukhala’, 70ff; Marín-Guzmán, *Introducción a los Estudios Islámicos* (San José: Editorial Nueva Década, 1983), passim, especially 123–27; Marín-Guzmán, “Arab Tribes, the Umayyad Dynasty and the ‘Abbasid Revolution,” 57–96; Marín-Guzmán, “Some Reflections on the Institutions of Muslim Spain,” 26–56.

³² Al-Nawawi, *El Paso hacia el Paraíso*, 237; Muslim, *Sahih Muslim*, 4:114; Bukhari, *Sahih al-Bukhari*, 204.

³³ Muḥammad b. ‘Īsā al-Tirmidhī, *Sunan*, Kitāb al-buyū‘ ‘an Rasūl Allāh ṣallā Allāh ‘alayhi wa sallam, Bāb mā jā’ a fi bay‘ man yazīd.

³⁴ For more information, see Marín Guzmán, “Las Fuentes árabes para la reconstrucción de la historia social de la España Musulmana,” 513–72; Marín-Guzmán, *Sociedad, Política y Protesta Popular en la España Musulmana* (San-Jesé: Editorial de la Universidad de Costa Rica, 2006), 29; Fernando Díaz-Plaja, *La Vida Cotidiana en la España Musulmana* (Madrid: Edaf, 1993), passim, especially 69ff.

³⁵ For more information and explanations of this passage from the Qur’ān, see al-Muḥallī and al-Suyūṭī, *Tafsīr al-Jalālayn*, 426; Wansbrough, *Quranic Studies*, passim.

³⁶ Al-Nawawi, *El Paso hacia el Paraíso*, 237; Bukhari, *Sahih al-Bukhari*, 204.

³⁷ See Bukhari, *Sahih al-Bukhari*, 204.

Another important regulation regarding commerce and trade is the prohibition to break promises. Since any commercial transaction is considered a promise, to break it is banned as well. The Qur'ān says, "Oh you who believe! Fulfill (all) obligations (contracts)" (5:1) and "Fulfill every contract (engagement), for every contract (engagement) will be enquired into"³⁸ (17:34). According to a Prophetic tradition, "In the Day of Judgment there will be a sign for those who unfulfilled their promises and it will be said, 'This is the sign for those who unfulfilled their promises.'³⁹

The Prophet Muḥammad also prohibited that a Muslim enters in a commercial transaction in which another Muslim is already negotiating. The *ḥadīth* clearly states, "No one of you should enter in a commercial transaction in which another Muslim is already negotiating."⁴⁰ This *ḥadīth* has been complemented by another one that says, "A Muslim must not bargain against his brother."⁴¹ There is another *ḥadīth* that has a close relation with these same issues. It says, "The believer is brother of another believer, that is, all Muslims are brothers in their faith. Because of this it is forbidden for any Muslim to push for the price of some merchandise when his brother has already agreed to buy it."⁴²

The Prophet Muḥammad in his *sunnah* strictly prohibited to sell certain things, such as wine, pigs, dogs, cats, animals found dead, among many other things that were ritually impure, hence without market value (*māl ghayr mutaqaawwim*). These prohibitions obviously regulated and limited the commercial transactions. The Prophet also banned selling a free man as a slave, which was another important prohibition in these business activities.⁴³ Al-Nawawī reports the following *ḥadīth*: The Prophet Muḥammad (peace be on him) said, "Allah says, 'In the Day of Judgment I will oppose the man who sells a free man as a slave and appropriates the price.'⁴⁴

The Prophet Muḥammad also in his *sunnah* clearly establishes the prohibition to contract a labourer and after the worker has finished his job the employer does not pay him. The Prophet reported Allah saying, "In the Day of Reckoning, I will punish the man who hires a laborer and after the worker has finished his job, he does not pay him."⁴⁵ This prohibition clearly attempts

³⁸ For more information and explanations of this passage from the *Qur'an*, see al-Muḥallī and al-Suyūṭī, *Tafsīr al-Jalālayn*, 285; Wansbrough, *Quranic Studies*, passim.

³⁹ Al-Nawawī, *El Paso hacia el Paraíso*, 237.

⁴⁰ See Muslim, *Sahih Muslim*, 4:113.

⁴¹ See *ibid.*, 4:113–14.

⁴² Al-Nawawī, *El Paso hacia el Paraíso*, 258; Bukhari, *Sahih al-Bukhari*, 207.

⁴³ Bukhari, *Sahih al-Bukhari*, 211.

⁴⁴ Al-Nawawī, *El Paso hacia el Paraíso*, 237.

⁴⁵ *Ibid.*; Bukhari, *Sahih al-Bukhari*, 211.

to stop social conflicts and avoid an injustice of not paying people for their work. The logic in these prohibitions is to protect the weak.

Related with commercial transactions there are many other prohibitions prescribed in the *sunnaḥ*. It is forbidden to withdraw a donation or a gift before or after it is given to someone. The Prophet also forbade to buy back a donation or a present from the person to whom it was given. The Prophetic traditions also prohibited the purchase of *zakāh* goods. ‘Umar b. al-Khaṭṭāb says, “On certain occasion, I gave my mare as charity to a soldier who had fought for the cause of Allah. However, that man did not give the animal the appropriate care. Because of that I wanted to buy it back, hoping that he would sell it back to me in a reasonable price. I consulted this matter with the Prophet (peace be upon him), who said, ‘Do not buy it and do not retract from your charity, even if he would give it back to you for one dirham! because the man who retracts from his charity is like the one who swallows again his own vomit.’”⁴⁶

As part of many regulations that the *sunnaḥ* contains regarding business activities, that is, to sell or buy goods, the Prophet Muḥammad prohibited carrying out commercial transactions inside a mosque, or other such activities, as well as looking for lost objects in a mosque. A companion Buraydah explains that on certain occasion a man entered the mosque yelling, “Who has seen a red camel?” The Messenger of Allah (peace be upon him) answered, “I hope you won’t find it! because mosques were built for a different and very specific purpose.”⁴⁷

Among the many other regulations concerning commercial transactions, Islam discourages becoming an intermediary between a merchant coming from a rural area and a person from a city, who wants to buy the products. The companion Anas explains that the Messenger of Allah (peace be upon him) prohibited that an urban resident be in charge (for a commission) of selling the merchandise as an intermediary (*simsār*) for a non-resident man, even if he were his own brother.⁴⁸ This was forbidden because the urban resident has a more advantageous position than the person coming from the rural areas. Due to his more favourable position, he could manipulate the prices of the merchandise for his own benefit. The manipulation and possible speculation could be detrimental to the *fallāḥ* (peasant), hence the prohibition. This prohibition again shows the Prophet’s desire to protect the weak.

The Prophet Muḥammad also regulated other commercial activities, as it is contained in the *sunnaḥ*. He said, “Do not come forward to the reception of

⁴⁶ Al-Nawawi, *El Paso hacia el Paraíso*, 241–42.

⁴⁷ *Ibid.*, 250.

⁴⁸ For more details, see Muslim, *Sahih Muslim*, 4:114–15; al-Nawawi, *El Paso hacia el Paraíso*, 257.

merchandise before the products arrive to the markets.”⁴⁹

Related to these same issues, the Prophet Muḥammad prohibited the urban people from going out of the city to meet the caravans and carry out commercial transactions with the caravan merchants. The Prophet was very consistent in his opinions on all commercial transactions, in order to stop all pre-Islamic practices, which could lead to confrontations. His idea was that the vendor and the purchaser should arrive to the market and examine all the products, all the conditions, even the prices, and then make their decisions. If agreements take place out of the market, because merchants leave the city to meet the caravans, these actions could lead to confusion, deceit, and fraud, all of which could provoke conflicts. That is why, this practice was prohibited. The Prophet Muḥammad said, “Do not go out [of a city] to encounter the caravans for commercial transactions with them, nor negotiate opposing another Muslim, nor bargain against another Muslim.”⁵⁰

The Prophet Muḥammad also prohibited selling or giving away the *al-walā'* (the right to the inheritance of a slave). This means, according to Muslim tradition and Islamic law, that the relation between a slave and his master, who liberated him from slavery, is very close, similar to a blood relation or lineage. Therefore, his *al-walā'* cannot be sold or bought. The relation between a liberated slave and his master who freed him cannot be transferred. Hence, the right to the inheritance cannot be transferred to anyone else either.⁵¹ To all of this, it is important to keep in mind that Islam elaborated a very detailed and complicated inheritance law, regarding the relation between a freed slave and the master who liberated him. Islamic law establishes the inheritance right for the master but only if the freed slave is a Muslim, since according to Islamic law, a Muslim cannot inherit a non-believer (*kaḥfir*). According to Islamic law, a Muslim cannot enslave another Muslim.⁵²

The *sunnaḥ* also prohibited selling any merchandise that the owner does not have its complete possession at the time of the commercial transaction. A

⁴⁹ Al-Nawawi, *El Paso hacia el Paraíso*, 257; Bukhari, *Sahih al-Bukhari*, 207.

⁵⁰ Muslim, *Sahih Muslim*, 4:113; Bukhari, *Sahih al-Bukhari*, 207.

⁵¹ Muslim, *Sahih Muslim*, 4:105.

⁵² For more details about all these issues regarding slavery in Islam and the ways a slave could gain his freedom, see Claude Cahen, *Les peuples musulmans dans l'histoire médiévale* (Damascus: French Institute, 1977), passim; Cahen, *El Islam*, passim; Gustav von Grunebaum, *Medieval Islam* (Chicago: University of Chicago Press, 1953), passim; Grunebaum, *Unity and Variety in Muslim Civilization* (Chicago: University of Chicago Press, 1979), passim; Hamilton Gibb, *El Mahometismo* (México: Fondo de Cultura Económica, 1963), passim; Abū al-Ḥasan b. Buṭlān, *Risālah fī Shirā' al-Raḥīq wa Taqlīb al-'Abīd*, ed. 'Abd al-Salām Muḥammad Harūn (Cairo: Dār al-Ma'ārif, 1954), passim; Muḥammad b. Abī Muḥammad al-Saqāṭī “*Kitāb fī Adab al-Ḥisba* (*El Libro del buen gobierno del zoco de al-Saqāṭī*),” *al-Andalus* 32, no. 2 (1967): 359–97; 33, no. 1, (1968): 143–95; 33, no. 2 (1968): 367–434.

ḥadīth says, “Whoever buys foodstuffs, should not sell them before he has complete possession of the products.”⁵³ Later on jurists (al-Shāfi‘ī and Abū Ḥanīfah following the authority of Ibn ‘Abbās) added that the same regulations for foodstuffs should also be applied to all other goods. In this respect, the *ḥadīth* collection of Muslim includes the following: “Ibn ‘Abbās added, ‘What the *ḥadīth* orders about foodstuffs is also valid for other goods.’”⁵⁴ These regulations were given because in the time of the Prophet it was a common commercial practice to buy foodstuffs in bulk, and very often without having the goods in the presence of the purchaser. The merchandise, obviously, was not weighed. The regulation consists in making mandatory that the purchaser, if he buys in bulk—with the purpose to sell the goods later and get a profit—he should not sell the foodstuffs without weighing the produce, and not before he acquires complete possession of the products. This regulation went even beyond this scope when the Prophet established that the following commercial transaction should be arranged in another place, so that commerce is improved. Besides, it was understood that there was speculation in the price of merchandise sold without the merchant having its complete possession. At that time it was common to sell a product to another merchant without having complete possession of the goods, and this person to another one and so on, only through the use of documents. It was only the last purchaser who really gained complete possession of the merchandise. In the whole process, the goods’ price was increased. This was considered *ribā*, which was forbidden in the Qur’ān. Therefore, it was also forbidden by the Prophet Muḥammad, who ordered to weigh the products, to gain real and complete possession of the goods bought in bulk, transport them to another place, and then sell the merchandise in another *sūq* (market). In the Prophetic traditions, there are references that some people were punished, usually through physical beating, for not having followed these regulations.⁵⁵

In close relation to the previous prohibition, a *ḥadīth* banned the sale of a pile of dates whose weight is unknown.⁵⁶ It was ordered to weigh the dates, and by extension many other products, with the purpose to avoid any uncertain element involved in a commercial transaction and to be exact in the amounts sold. This had the intention to avoid further social and economic conflicts. There are some other Prophetic traditions related to this last one, aimed to regulate many other issues in the commercial transactions. For example, a *ḥadīth* that prohibited selling or buying any fruit or dates that were

⁵³ Muslim, *Sabih Muslim*, 4:117. For more information, see Schacht, “Bai’,” 57.

⁵⁴ Muslim, *Sabih Muslim*, 4:117.

⁵⁵ *Ibid.*, 4:118–119.

⁵⁶ *Ibid.*, 4:119.

still unripe. This means that the fruit is not ready for consumption. According to Islamic law, the commercial transaction should take place when the fruit has started to ripen. With the same objective, the Prophetic traditions prohibited selling or buying dates, and by extension any other fruit, which were still on the palm-trees, or on their trees. It is also forbidden to sell any fruit that is not in a good condition. This means that the fruit is rotten, or it has been hit by a plague.⁵⁷ Ibn ‘Abbās says, “The Messenger of Allah (peace be upon him) prohibited the sale of dates still on the palm-trees, and not until one could eat them and not until they could be weighed.”⁵⁸

It is possible to infer the reasons for all these prohibitions and regulations. The Prophet Muḥammad wanted to avoid further conflicts because of deceit, fraud, or any other illegal practices. That is why, he prohibited selling or buying dates—or other fruit—not yet harvested. He suggested that the purchaser should inspect the fruit and be sure that it was in a good condition. The purchaser has to examine that the dates or other fruit are eatable, and that they have not been hit by a plague. To verify all of this and pay careful attention to the produce, besides the regulations to buy or sell fruit only after it has started to ripen, are important issues in commercial transactions in Islamic law. All these regulations always had the purpose to avoid any further conflicts and social tensions.

The Prophet Muḥammad also prohibited the commercial practice of the *mu‘āwamah*, which is to sell the production in advance, one or two years ahead of time. This practice is forbidden because the vendor sells something that he does not possess at the time of the commercial transaction and the purchaser is buying with *gharar* (risk), which is a practice forbidden by the Prophetic traditions as this has been explained earlier. The whole idea is to prohibit the commercial transactions in which the purchaser does not receive what he bought. In this particular case of the *mu‘āwamah*, the product does not even exist at the time of the transaction.⁵⁹

One *ḥadīth* banned the sale of surplus water in dry areas, because it is considered common property.⁶⁰ The Prophet Muḥammad also ordered not to retain surplus water either, because it impedes the growth of forage.⁶¹ The Prophetic traditions prohibited many other daily-life issues concerning commercial transactions. For example, the Prophet Muḥammad banned

⁵⁷ For more information, see *ibid.*, 4:122–23; also see Schacht, “Bai’,” 57.

⁵⁸ Muslim, *Sahih Muslim*, 4:123, 128–29.

⁵⁹ *Ibid.*, 4:129.

⁶⁰ See Schacht, “Bai’,” 57, where there is a detailed discussion of all the things that Islamic law forbade for commerce, “the exclusion of certain things from commerce, ritually impure or forbidden as well as things which, like surplus water, are common property.”

⁶¹ Muslim, *Sahih Muslim*, 4:147–48.

paying a prostitute, or providing her with a dowry. This is forbidden and if she is given a dowry, this would be tantamount to paying her for her services. The Prophetic traditions also forbade selling a dog or a cat, or providing sweets to the foretellers. In Islam, to consult a foreteller is considered a superstition. It is important to bear in mind that dogs were not accepted as pets in Islam. They were used only as trained animals for hunting or to help shepherds to protect the cattle.⁶² In this respect, a *ḥadīth* says, “Abū Zubayr explained, ‘I asked Jābir about pricing a dog or a cat and he answered, “The Prophet—peace be upon him—disapproved it.””⁶³

The Prophetic traditions also prohibited the commercial transactions of many other products especially wine. The Prophet said, “Indeed He Who prohibited wine⁶⁴ also prohibited its sale.”⁶⁵ Pigs and idols are also banned from commercial transactions. The Prophet Muḥammad also added the prohibition to sell dead animals not slaughtered according to Muslim rituals. Jābir b. ‘Abd Allāh asserted that in the Year of the Victory, the Messenger of Allah (peace be upon him) while he was still in Makkah⁶⁶ said, “Allah and His Messenger have prohibited the sale of wine, dead animals [not slaughtered according to Muslim rituals], pigs, and idols.”⁶⁷

⁶² Bukhari, *Sahih al-Bukhari*, 220.

⁶³ Muslim, *Sahih Muslim*, 4:148; Bukhari, *Sahih al-Bukhari*, 220.

⁶⁴ See Qur’ān, 2:219. For more information and explanations of this passage from the Qur’ān, see al-Muḥallī and al-Suyūṭī, *Tafsīr al-Jalālayn*, 34–35; Wansbrough, *Quranic Studies*, passim.

⁶⁵ Muslim, *Sahih Muslim*, 4:153.

⁶⁶ For more details regarding the Prophet in Mecca and later in Medina, see Muḥammad b. Jarīr al-Ṭabarī, *Ta’riḫ al-Rusul wa ’l-Mulūk*, ed. M. J. de Goeje (Leiden: E. J. Brill, 1879–1901), passim; al-Ḥasan b. Aḥmad b. Ya’qūb b. Yūsuf b. Dawūd al-Ḥamdānī, *Kitāb Ṣifat Jazīrat al-‘Arab*, ed. Heinrich Müller (Leiden: E. J. Brill, 1978), passim; Alfred Guillaume, trans., *The Life of Muḥammad: A Translation of Ishāq’s Sirat Rasūl Allāh* (Oxford: Oxford University Press, 1955), passim. See also the anonymous manuscript entitled *Qīṣaṣ al-Anbiyā’*, manuscript number 1668, El Escorial (Spain); Ismā’īl b. ‘Umar b. Kathīr, *Qīṣaṣ al-Anbiyā’*, ed. ‘Ādil Abū ’l-‘Abbās (Cairo: Maktabat al-Qur’ān, 2005), passim. For secondary works, see Montgomery Watt, *Muḥammad at Mecca* (Oxford: Oxford University Press, 1958), passim; Watt, *Muḥammad at Medina* (Oxford: Oxford University Press, 1958), passim; Watt, *The Formative Period of Islamic Thought* (Edinburgh: Edinburgh University Press, 1973), passim; Watt, *Islamic Philosophy and Theology* (Edinburgh: Edinburgh University Press, 1979), passim; Watt, *Mahoma: Profeta y Hombre de Estado* (Buenos Aires: Labor, S.A., 1973), passim; Carl Brockelmann, *History of the Islamic Peoples*, trans. Joel Carmichael and Moshe Perlman (New York: Capricorn Books, 1960), passim; Maxime Rodinson, *Mahoma: El nacimiento del Islam* (México: Era, 1974), passim; Leone Caetani, *Annali dell’ Islam* (Milano: Hoepli Editore, 1905–1926), passim. Also see Roberto Marín-Guzmán, *El Islam: Ideología e Historia* (San José: Editorial Alma Mater, Cooperativa de Libros de la Universidad de Costa Rica, 1986), passim.

⁶⁷ See Muslim, *Sahih Muslim*, 4:154. The dead animals not slaughtered according to Muslim rituals were those, which died because of natural causes, as a result of an illness, or because of the attack of beasts.

The Prophet Muḥammad also regulated the exchange of silver for silver or gold for gold.⁶⁸ Related to this business it is reported that ‘Umar b. al-Khaṭṭāb mentioned that the Prophet Muḥammad prohibited the exchange of gold for silver coins (*dirhams*) if the commercial transaction did not occur right away.⁶⁹ This means to give the gold and receive the *dirhams* at once. He forbade that this transaction could take place a few days later, meaning that the owner of the gold leaves his precious metal with another person and he returns to receive the silver coins (*dirhams*) a few days later. If such transaction occurs, it should be carried out right away and never some time later. The Prophet also forbade in this commercial negotiation of gold for silver to add or to request to add anything to it, because in Islamic law to add something in this business is considered *ribā*, which is prohibited in Islam.⁷⁰

Some Other Commercial Regulations

Prophetic traditions also contain many other commercial regulations. For example, a regulation is contained in the *ḥadīth* concerning the practice when the udder of a she-camel, or a she-sheep, or a she-goat, has been tied. What happens is that the animal retains the milk and the udder expands. When purchasers see an animal like that, they think about a profitable business. They also believe that it is a good deal to buy that animal, which supposedly would produce a lot of milk. However, after finding out that this was not the case, they have two options, according to the *ḥadīth*: either keep the animal or return it to its previous owner, for what he has to pay a *ṣā’* of dates as a compensation for the milk he obtained when he milked the animal.⁷¹

There is also another important regulation which establishes the possibility that either the vendor or the purchaser has the right of withdrawal (*khiyār*) from the commercial transaction during the negotiations and under certain circumstances,⁷² among which is clearly stated that it has to be before they leave the *sūq* (market, pl. *aswāq*) or the place where the transaction occurs. The Prophet said, “In a commercial transaction any of the two parts involved has the right of withdrawal from the transaction before they separate [before they leave the site where the transaction takes place], except in the *bay’ al-khiyār*.”⁷³

⁶⁸ Bukhari, *Sahih al-Bukhari*, 208.

⁶⁹ Ibid.

⁷⁰ Muslim, *Sahih Muslim*, 4:157–158; Bukhari, *Sahih al-Bukhari*, 200.

⁷¹ Muslim, *Sahih Muslim*, 4:114. The same *ḥadīth*, with minor modifications, appears also in 4:116.

⁷² For more information about these issues, see Schacht, “Bai’,” 56.

⁷³ Muslim, *Sahih Muslim*, 4:120.

It is then clarified that the *bay' al-khiyār* is the commercial practice in which it is established ahead of time the possibility that one of the two parts has the right of withdrawal from the transaction. This usually happens when one of the two parts withdraws from the negotiation after examining the merchandise offered in the business activity, or because of a disagreement in the price.

The previous *ḥadīth* of the Prophet Muḥammad is complemented with another one that says, “When two people initiate a commercial transaction any of the two parts has the right of withdrawal from it, unless they [have completed the transaction and] have separated, or if one of the two parts yields the other the right of withdrawal. However, if one part yields to the other the right of withdrawal, the transaction then takes place under those conditions. If they separate after finishing the commercial transaction and none of the two parts have used the right of withdrawal, the transaction is then approved.”⁷⁴

This means that after examining the merchandise one of the parts could cancel the negotiation. In the case of the *bay' al-khiyār*, the purchaser has the right of withdrawal from the commercial transaction. However, if he does not do it after examining the merchandise, the transaction is then in good terms. The purchaser cannot cancel it later.

This *ḥadīth* continues in another one, which establishes that the two parts involved in a commercial transaction should be honest and should explain everything about the merchandise.⁷⁵ It is also mandatory to describe the goods in detail, even their defects, if they exist. If the two parts are honest and everything is explained about the merchandise, the Prophet Muḥammad then said, “They will be blessed in their commercial transaction, but if they lie or if any of the two parts hides anything, they lose the blessing.”⁷⁶ Related to this *ḥadīth* is the other one that prohibits deceit in any commercial transaction.⁷⁷

Among the many other regulations concerning trade, traders, and commerce, it is also possible to find those about barter, which in Islamic law is allowed under certain and specific conditions, as prescribed in the Prophetic traditions. In pre-Islamic times, barter was a common practice, but Islam regulated it, and allowed it mainly for produce, because for other products barter frequently had a margin of risk (*gharar*), or uncertain conditions, which Islam forbade. The risky or uncertain conditions usually favoured one of the two parts involved in a business negotiation, and it was detrimental to the other part. This situation often caused conflicts. To avoid disputes and any

⁷⁴ Ibid.

⁷⁵ Bukhari, *Sahih al-Bukhari*, 201.

⁷⁶ Muslim, *Sahih Muslim*, 4:121; Bukhari, *Sahih al-Bukhari*, 201.

⁷⁷ Muslim, *Sahih Muslim*, 4:121; Bukhari, *Sahih al-Bukhari*, 204.

further confrontations, the Prophet Muḥammad established numerous and detailed regulations. For example, he prohibited bartering dried dates for fresh dates, still on the palm-trees.⁷⁸ As explained earlier, the Prophet Muḥammad also prohibited selling any fruit if it was not in a good condition.⁷⁹ This last regulation is closely related to the barter of dried dates for fresh dates, because the former can easily be weighed, or measured, while the later, still on the palm-trees, entail *gharar*.⁸⁰ This means a risky transaction because it is not possible to weigh or measure the dates not yet picked from the palm-trees. In this case, the quantity is only estimated and not exact. Because it entails *gharar* it is prohibited.

There are many Prophetic traditions dealing with these issues. Most of them explain the same, with minor variations in the use of one or two words. For example, one of them reads,

The Prophet (peace be upon him) prohibited selling fruit if it is not evident that the fruit is in a good condition. He also prohibited bartering dried dates for fresh dates. Zayd b. Thābit explained that the Messenger of Allah (peace be upon him) made an exception when selling *al-‘arāyā*—which are the trees donated with the fruit.⁸¹

Barter was permitted for these particular trees, but under certain circumstances. It is important to explain that *al-‘arāyā* is the plural form of *al-‘ariyyah*, which literally means “naked” or “to be deprived of,” that is, the palm-tree naked or deprived of its fruit.⁸² *Al-‘arāyā* in the legal terminology means the fruit collected from certain trees that are devoted to help the poor. In this case, because it is a donation, or alms, the barter of fresh fruit for dried fruit is permitted.⁸³ Another *ḥadīth* is even more explicit and prohibits the barter of two different types of the same product. It informs that the Messenger of Allah (peace be upon him) prohibited the commercial transactions called *muzābanah* and *muḥāqalah*.⁸⁴ *Al-muzābanah* means to barter (sell) fresh dates still on the palm-trees, for dried dates, and *al-muḥāqalah* is to

⁷⁸ Bukhari, *Sahih al-Bukhari*, 208.

⁷⁹ Ibid.

⁸⁰ Regarding all these regulations about agricultural products and the *gharar* in some commercial transactions (mainly of produce), see Ziaul Haque, *Landlord and Peasant in Early Islam*, passim, especially 268–70; Marín-Guzmán, *Kitab al-Bukhala'*, passim, especially 70–72.

⁸¹ Muslim, *Sahih Muslim*, 4:123–124.

⁸² Bukhari, *Sahih al-Bukhari*, 209.

⁸³ Muslim, *Sahih Muslim*, 4:124; Bukhari, *Sahih al-Bukhari*, 208. The *ḥadīth* about this prohibits the barter of barley for barley, or raisins for raisins.

⁸⁴ Bukhari, *Sahih al-Bukhari*, 210.

barter (sell) the spike of wheat for [a measure of] wheat grain.⁸⁵

These Prophetic traditions clearly explain that Islam does not oppose barter in general, but prohibits barter between two different types of the same good such as barter between the spike of wheat and a measure of wheat grain, or between fresh dates and dried dates, because of the risk and the uncertain conditions involved in this kind of barter. This is due to the fact that in one case it is possible to count, weigh, or measure the product, and in the other it is not possible, because the fresh dates are still on the palm-trees, or in the case of wheat still in the fields as opposed to a measure of wheat grain. Because of the risk (*gharar*) it is forbidden. The reason for this prohibition was because of the conflicts that this kind of commercial transactions could provoke if the amounts gathered later (dates from the palm-trees or wheat from the spikes) were lower than expected. Under the same scope, the Prophetic traditions prohibit bartering grapes for raisins, or barley for barley. This means the barter of different types of the same good.⁸⁶ Following *ḥadīth* summarises the whole process:

The Messenger of Allah (peace be upon him) prohibited *al-muzābanah*, which means to barter fresh fruit in exchange for dried fruit, as well as fresh dates in exchange for a measure of dried dates, and grapes for raisins, and in the same way wheat still in the fields in exchange for [a measure] of wheat grain.⁸⁷ He forbade all these forms of commercial transactions.⁸⁸

For long time during pre-Islamic Arabia, Arabs had to artificially pollinate palm-trees in order to make them produce abundant dates. If pollination was left to insects and the wind, the production was then very low. Due to the fact that man-made pollination was a hard task, Islam regulated that if a man sold palm-trees which he had pollinated, the first production was for the vendor, unless the purchaser and the vendor had agreed otherwise. The Prophetic traditions in this respect are very clear and they regulate this commercial transaction:

The Messenger of Allah (peace be upon him) said, “Whoever sells a palm-tree that has been pollinated, its fruit belongs to the vendor, except if the purchaser has established as a condition that [the fruit is for him] [at the moment of the commercial transaction].”⁸⁹

⁸⁵ Muslim, *Sahih Muslim*, 4:124. This information is also contained in other Prophetic traditions in *ibid.*, 4:128–29. See also Bukhari, *Sahih al-Bukhari*, 210.

⁸⁶ Bukhari, *Sahih al-Bukhari*, 208.

⁸⁷ *Ibid.*

⁸⁸ Muslim, *Sahih Muslim*, 4:127. See also *ibid.*, 4:128–29; Bukhari, *Sahih al-Bukhari*, 208.

⁸⁹ Muslim, *Sahih Muslim*, 4:127.

The information contained in this *ḥadīth* is repeated in many other Prophetic traditions. For example, the Messenger of Allah (peace be upon him) said, “Any palm-tree that is bought from its roots, and that has been pollinated, its fruit belongs to the person who has pollinated it, except if the purchaser has stipulated another thing.”⁹⁰ Another *ḥadīth* concerning the purchase of a slave follows the same logic: “Whoever buys a slave, his goods [of the slave] belong to the person who sells the slave, unless the purchaser has stipulated the condition that the slave’s goods should be transferred to him along the slave [at the moment of the commercial transaction].”⁹¹

It is possible to infer that all these regulations were given in order to avoid further conflicts and to compensate either the labour (in the case of the pollination of the palm-tree), or the goods (in the case of the slave). In this last case, according to Prophetic traditions, the slave’s goods belong to the vendor of the slave, because it is the owner who has provided those goods to the slave. This is considered equivalent to the hard task of the pollination of the palm-trees. In Prophetic traditions and later in Islamic law, this is the logic in all these detailed regulations of some business negotiations. The idea to be fair and to keep a balance between the two parts involved in any commercial transaction, and to avoid conflicts are obvious in all these regulations by the Prophet Muḥammad.

Conclusion

Due to the importance of commerce and trade, and in general of all businesses in Islam, there is a detailed corpus of regulations, recommendations, and prohibitions in Prophetic traditions about commercial transactions. As explained in this essay, Prophetic traditions regulate many aspects of daily life regarding commerce. Some of the regulations are so detailed that, for example, even the day and hours to start a trip for business purposes are recommended, among many other regulations, recommendations, and prohibitions.

The Prophet Muḥammad firmly opposed and prohibited many pre-Islamic commercial practices, which he considered absurd and unjust. This essay analysed the cases of the *mulāmasah*, the *munābadhab*, the *muḥāqalah*, the *muzābanah*, the *bay‘ al-ḥaṣāh*, the *ḥabal al-ḥabalah*, the *mu‘āwamah*, as well as many other commercial transactions, which involved uncertain elements or *gharar* (risk). These prohibitions had the purpose to avoid social conflicts or serious confrontations.

⁹⁰ Ibid.

⁹¹ Ibid., 4:128.

Prophetic traditions supported by several passages from the Qur'ān, order Muslims to be honest in all businesses, to honour the measures, to keep the promises, to avoid pushing for a price to deceive people, and to avoid encroachment on a transaction in which another Muslim has been already involved in the negotiation. The Prophet Muḥammad also prohibited that urban residents become intermediaries for rural inhabitants who go to the city to sell their products. Islam also banned speculation and *ribā* (interest), and because of that it forbade any commercial negotiation in which the vendor is not in total possession of the product. Islam also prohibited the trade of many things, such as wine, pigs, dogs, cats, idols, and animals found dead, among other things without market value (*māl ghayr mutaḥawwim*).

It is possible to conclude that all these regulations, the numerous recommendations, and the prohibitions in Prophetic traditions had the purpose to protect the weak in the society and to avoid social tensions and eventually any confrontations. However, very often many of these regulations and prohibitions were not followed by numerous members of the Muslim society. This led, in the following centuries, Muslim jurists to regulate and even explain in detail the prohibitions in manuals related to *al-ḥisbah*. They also tried to make people obey the regulations through more drastic measures and more strict punishments, as revealed also in the regulations and controls performed by two important functionaries, the *ṣāhib al-sūq* and the *ṣāhib al-madīnah*, throughout the centuries of the history of the *dār al-Islām*. If jurists had to do this from time to time and over and over again, is an indication that many people often failed to comply with the regulations prescribed by Islamic law. This also refers to the existence of a gap between Islamic teachings contained in the religious books and the social realities of Muslim culture.

