Debt and Loan

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Q1743. A friend of mine, who owns a factory, borrowed from me a sum of money. After a while, he returned the money with an extra amount which he paid of his own free will. It is worth mentioning, though, that we did not sign an agreement to the effect that he should give me that extra money. For my part, I didn't expect him to give me extra. Is it shar'ī to take that additional amount of money?

A: If, after the owner had sanctioned the very sale, he sanctioned the receipt of the money as well, the person who concluded the deal should pay the price plus inflation to the original owner. If the owner had rejected the sale, the seller should try his best to return the same property to its owner if possible. Otherwise, he should compensate the owner whether with a similar property or with its value. As based on caution, however, he must reach a settlement with the owner about the difference between the price at the time of payment and the price at the time of transaction.

Q1744. A person who borrowed a certain amount of money refused to pay it back. The lender took him to court to recover the debt. The court ruled in favor of the lender. Accordingly, the borrower had to pay back the debt; he also paid a tax for law enforcement. Is the lender responsible for that according to shar'?

A: If the procrastinating debtor has to pay the tax of law enforcement, the creditor is liable to nothing in this regard.

Q1745. I gave my brother a loan. On moving to a new house, he gave me a carpet which I, in retrospect, mistook for a present. When I demanded the money back, he claimed that he had given me the carpet in settlement of the debt. Is he justified in his action, despite the fact that he didn't inform me of his intention at the time?
If I don't agree with him, should I return the carpet to him? And due to a decline in purchasing power of the currency, can I ask him to pay me back the debt plus an additional amount to make up the difference in the purchasing power of the currency?

A: For settling the loan, it is not sufficient to give a carpet or other things which are not of the same kind as the loan. As long as you do not consent to have the carpet in return for the loan, you should return it to him, as it still belongs to him. As to the decrease in purchasing power, you may demand compensation for it plus the original loan.

Q1746. What is the view on paying off a debt with ill-gotten money?

A: The debt is not considered settled by paying it off with other people's money. Accordingly, the debtor remains indebted.

Q1747. A woman borrowed a sum of money equivalent to one-third of the value of the house she bought. Both the parties, lender and borrower, agreed that the borrower should return the money when she could afford it. However, the woman's son gave the lender a check for the amount of the debt as surety. In the past four years, both parties died. Their respective heirs want to settle the matter. How should they go about it? Is it by way of relinquishing possession of one-third of the property to the lender's inheritors or would the amount written in the check do?

A: The lender's heirs have no right to the property. They are entitled to get the amount of the debt (considering compensation for the decrease in purchasing power of the money) from the borrower's heirs if she has left sufficient money to settle it.

Q1748. We borrowed a sum of money from a person. After some time, he disappeared so that we no longer know his whereabouts. What can we do?

A: You have to wait and enquire [to try to locate him] to pay him or his heirs the money they owe. If it is beyond hope to find them, you can approach the authorized religious authority or give it as alms on behalf of the owner.

Q1749. Is it permissible to ask the debtor to pay the expenses of the law suit to prove the case and to recover the debt?

A: According to the law of Islam, the debtor is not required to compensate the expenses borne by the creditor.

Q1750. Should the debtor spare no effort to pay back the debt owed to other people, is it permissible for the creditors to recover the debt from his property, e.g., in secret?

A: If the debtor denies the debt owed or avoids payment without any excuse, the lender has the right to recover his debt from the debtor's property.
However, if he does not know that he owes or doubts that; it is problematic – or rather impermissible – for the lender to recover his debt from the debtor's property.

Q1751. Is the debt of the deceased considered among the right of people so that his heirs have to pay it from the deceased's estate?

A: Irrespective of whom he owes to, i.e., be it to a real or legal entity, their rights have to be upheld. Therefore, it is obligatory on the heirs to pay the creditors or their heirs the debt from the deceased's estate. Furthermore, they have no right to make use of the estate before they have settled the outstanding debts the deceased owed to other people.

Q1752. Someone is owed a sum of money. He owns a plot of land. The building on the land is not his. Is it permissible for the creditors to seize both the land and the property to recover their debt?

A: They have no right to seize any property which does not belong to the debtor.

Q1753. Suppose a person is in debt. Is the property he and his family live in excluded from seizure to pay the debt?

A: All that which the debtor needs — according to his status — in his day-to-day life, such as a house, furniture, car, and telephone, remain out of bounds insofar as paying the debt off.

Q1754. A businessman became bankrupt. All what is left for him is a building that he put in the market for sale. The proceeds from the sale of the building would not be sufficient to pay off half of the total debt. Is it permissible for the creditors to force him to sell the property, or should they wait for him to settle his debts gradually?

A: If the debtor and members of his family do not take the building as a residence, there is no objection to forcing him to sell it to pay off his debt, even though the proceeds would not be sufficient to settle the debt. For this part of the debt, it is not obligatory on the creditors to give him a period of grace. Nevertheless, they should wait for him to pay them back when he can afford it as far as the rest of the debt is concerned.

Q1755. Is it obligatory on one government department to pay the debt it owes to another?

A: Such a debt has the same ruling as any other debt insofar as its settlement is concerned.

Q1756. If a person pays off the debt of another person without telling them, is it incumbent on the debtor to compensate the person who paid off their debt?

A: The person, who paid off the debt of the other person, without telling him, has no right to demand compensation from the debtor. For his part, the debtor does not have to pay compensation in return for settling the debt.

Q1757. Should the borrower postpone the payment of a loan, is it permissible for the lender to ask him to pay an extra amount over and above the amount of the loan?

A: He can demand the loan plus compensation for decrease in purchasing power of the money.

Q1758. In a bogus transaction, my father gave a person a sum of money. In reality it was a loan. Every month, the borrower used to pay a sum of money, ostensibly, in the form of profits. After the death of my father, the borrower continued paying the money regularly until his death. Should such money be deemed ribā and, therefore, refunded to the borrower's heirs from the estate of the lender, i.e., my father?

A: Assuming that the money he received was a loan, if the amount paid as profit was not more than inflation, it is no problem. Otherwise, the amount, which is more than inflation, is considered as ribā which is ḥarām in Islam. They should pay the surplus plus its inflation to the debtor or his heirs from the creditor's estate.

Q1759. Is it permissible for any person to deposit funds with others and charge monthly interest?

A: If the deposited money was with the intention of investment in accordance with a shar'ī contract, there is no harm in that, nor is there any objection to receiving the profit as a result of the investment. However, should it be intended as a loan, the loan deed is correct in principle. Yet, the stipulation of earning ribā is invalid. Accordingly, any interest thus earned amounts to ribā which is ḥarām.

Q1760. Someone borrowed a sum of money to set up a business. If the business proved a success and made profits, is it permissible for the borrower to give the lender a share of the profits? And is it permissible for the lender to demand from the borrower a share of the profits?

A: The lender has no right in the profits generated by the business. Nor has he any right in demanding from the borrower any share of these profits. However, if the borrower decides, of his free will, i.e. without any prior agreement with the lender, to pay him some money over and above the amount of the debt as a favor, there is no objection to that, rather, it is mustaḥabb.

Q1761. A person bought merchandise from another. They agreed that the buyer should pay for the goods in three months' time. However, the buyer could not pay the debt on time. Both the parties agreed that the debtor should be given another three months to come up with the money provided that an additional amount is paid on top of the original debt. Is this transaction shar'ī?

A: Such an increase is deemed ribā which is ḥarām.

Q1762. Ali takes a ribā-bearing loan from Muhammad. A third person writes down the deed and its terms. A fourth one keeps the accounts. Is the accountant considered as the accessory to the fulfillment of the ribā-bearing loan so that his job and the

compensation he gets for it are ḥarām as well? Also, there is a fifth person, the auditor, to check the account book to see whether there has been a mistake in the ribā-bearing transaction to inform the accountant without writing down anything or transferring anything to the account book.

A: The work that contributes, in any way, to a ribā-bearing loan, such as finalizing the transaction, collecting the ribā from the borrower, is ḥarām; and the worker is not entitled to a wage for such work.

Q1763. Because of lack of funds, the majority of Muslims find themselves forced to borrow money from non-Muslims and pay it back with interest. Is this sharʻī?

A: The ribā-bearing loan is absolutely ḥarām even if it is procured from a non-Muslim. However, the loan deed is correct in principle.

Q1764. Someone borrowed a sum of money for a year on the condition that he meets the expenses arising from the lender's travel, e.g., for performing hajj. Is this transaction valid?

A: To stipulate a condition in the contract to bear the expenses arising from the travel of the lender or the like is the very stipulation of ribā in the loan deed. Therefore, it is both ḥarām and invalid. However, the loan deed is correct in principle.

Q1765. When giving loans, ribā-free loan institutions make the condition that if the borrower falls behind with his repayments for two or more installments, the lender has the right to demand the settlement of the remaining debt at one go. Is it permissible to lend money stipulating such a term?

A: There is no objection to doing so.

Q1766. A cooperative society is set up with joint capital from its members. The society provides ribā-free loans to its members. The objective of the society is to help the individuals. What is the view on the work carried out by its members in order to help and to maintain ties of kinship among the blood relatives?

A: There is no doubt that it is both permissible and commendable to work jointly towards providing loans for the believers along the lines described in the question. However, if the money was provided by the member as a share in the capital of the company on the condition of giving the member a loan in the future, this is not permissible, even though the loan deed is correct in principle [so that the borrower owns the money and owes it is to the lender].

Q1767. Some ribā-free loan institutions deal in real estate. Since some depositors do not agree to their money being used for this purpose, is it permissible for such institutions to take possession of the deposited money? And are such dealings sharʻī?

A: If the money was deposited in trust with these lending institutions to lend it to others, using it to buy real estate and other things is considered as fuḍūlī* should be dependent on the owners' approval. But if the money was lent to the institution, there is no objection to its officials buying real estate and other things according to their responsibilities.

*** of a contract, e.g., a purchase or a marriage, concluded on behalf of somebody without their permission.**

Q1768. Some people borrow an amount of money from others and give them an amount monthly as profit without this being based on any Islamic contract. It is done on the basis of mutual agreement. What is the ruling in this regard?

A: Such transactions are considered ribā-bearing loans. The condition to get ribā is invalid. The increase is regarded as ribā and is, therefore, ḥarām and not permissible to be taken.

Q1769. A borrower paid off the loan he had taken from a ribā-free loan institution. He paid an extra amount to the institution of his own accord. Is it permissible for the officials of the institution to take possession of the money and use it in building work?

A: If, on paying back the loan, the borrower paid the amount of his own free will as a mustaḥabb action when settling a debt, there is no harm in taking it. As for spending it in building work and the like, it should be left to the officials to deal with according to their responsibilities.

Q1770. The administrative committee of a *ribā*-free loan institution bought property with money borrowed from a person. A month later, the institution paid back the loan with money deposited in its trust by other people without their permission. Is this transaction *shar'ī*? And to whom should the ownership of the property belong?

A: There is no harm in purchasing the property with the money lent to the institution if the members of its administrative committee were going about their business according to their brief. Thus, the purchased property should be in the ownership of the institution and its shareholders. Yet, they must return the money they used without the consent of their owners plus its inflation.

Q1771. What is the ruling in the matter of paying a fee when taking a loan from the bank?

A: If, at the time of taking the loan, the payment made by the borrower to the bank is considered a fee in return for the administrative work like to write it in the book, documentation, and other expenses of the bank such as water and electricity bills and does not amount to ribā on it, then there is no harm in paying the fee. Nor is there any harm in receiving and giving such a fee and taking the loan.

Q1772. A fund gives out loans on the condition that the member deposits a certain amount of money in the fund where it has to be left for three to six months. At the end of this period, the member can take a loan up to double the amount he deposited. After the member pays off the debt, his money is returned to him. What is your view?

A: If depositing the money in the fund was under the title of loan for a particular period, on the condition that the fund grants him the loan, or lending him some money was made conditional on his depositing a certain amount of money with the fund, this condition amounts to ribā and is, therefore, ḥarām and invalid. However, the very loan deed is valid for both parties.

Q1773. As part of their lending policy, ribā-free loan funds require potential loan borrowers to be members in the fund, i.e., to having savings accounts with it and deposit a certain amount in it, and to be resident of the area where the fund is located. Do these conditions amount to involvement in ribā?

A: There is no harm in making the condition of membership or residence in the area, and others which confine the granting of loans to certain people. There is also no harm in opening a savings account with the fund if the aim was to restrict granting the loan to certain people. However, if this condition was an attempt to link granting the person a loan, sometime in the future, with his depositing an amount of money with the fund, the condition amounts to demanding a return on the loan, in which case it is invalid.

Q1774. Is there a way out of ribā in banking transactions?

A: The solution lies in adopting Islamic contracts whereby all the conditions have to be upheld.

Q1775. Is it permissible to spend a loan that was procured for a particular purpose in other avenues?

A: If what the bank gives the individuals is really a loan and stipulates that it should be spent for certain issues, it is not permissible to violate the stipulation. Also, if one receives some money form the bank as silent partner to be invested in a certain project, he cannot use the money in another project.

Q1776. An ex-serviceman, who is now disabled, approached the bank with a view to obtaining a loan. Since such people enjoy certain privileges commensurate with the degree of their disability, in that the greater the disability the greater the concessions and privileges, the person in question wants to utilize this. Although they do not agree with the degree of disability, which was determined by people in the medical profession, can the disabled people use the certificate in enjoying the concessions and privileges?

A: Should the degree of disability have been determined by specialist doctors in accordance with their diagnosis, and according to the law this is the yardstick for the bank in granting the facilities, there is no objection to making use of the certificate outlining the degree of disability, which was determined by the doctors, although in the person's opinion his disability is less than what they think.