

Al-Sanhūrī on *Riba*
From: *The Sources of Rights in Islamic Jurisprudence*
(*Maṣādir Al-Ḥaqq fī Al-Fiqh Al-Islāmī*)

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June 5, 2019

Preamble

The body of this paper is a translation of the last section (vol. 3, pp. 124–174) of a three-volume book based on lectures that Dr. Al-Sanhūrī delivered to law students in 1953-4. This version was published by Dār Ihyā’ Al-Turāth Al-‘Arabi, Beirut, 1997.

About ‘Abdul-Razzāq Al-Sanhūrī

The late Egyptian Dr. ‘Abdul-Razzāq Aḥmad Al-Sanhūrī was the greatest and most influential Arab civil law jurist of his generation. He was born in Alexandria CE 1895, where he started his career as a customs clerk. He received his undergraduate law degree in Cairo in 1917, then went on scholarship to France in 1921, receiving his Doctorate in Law, Economics, and Politics in 1926. He served several terms as Egypt’s Education Minister, received the title of Pasha, and was elected a member of the Arabic Language Council in 1946. He served as Head of the Egyptian Council of State (*Majlis Al-Dawla*; one of the three pillars of the Egyptian judiciary) from 1949 to 1954. He was the lead author of a number of civil codes in Arab countries, including Egypt (1948), Syria (1949), Iraq (1951), Libya (1952) and Kuwait (1962), and participated in writing the civil codes for Sudan, Bahrain, and the United Arab Emirates.

About the book (Author’s Preface, vol.1, pp. 7–8)

The sources of rights are the causes that establish a legal right. A legal right is a benefit of financial value protected by the law. Therefore, our study does not encompass universal

rights or family-law rights, which do not have financial value. The study, hence, is limited to studying legal rights with financial value, which Western jurisprudence classify as personal or *in rem* (pertaining to a thing) rights.

In this regard, the distinction between personal and *in rem* rights is central to Western jurisprudence. One might say that it is the equivalent of a spine for Western laws derived from Roman law. Nonetheless, the topic of sources of rights, personal or *in rem*, is one of the most subtle and intricate topics in Western jurisprudence. In comparing these concepts in Islamic and Western jurisprudence, we are thus dealing with topics that are both centrally important and subtle. We study Islamic jurisprudence using the methods of Western jurisprudence, thus asking if the former contains the concepts of personal and *in rem* rights in the same manner that they are contained in the latter. We ask if it is possible to trace the sources of these personal and *in rem* rights, and whether it is possible to reduce all those sources to legal acts and legal facts in the same sense and within the same boundaries known in Western laws.

Method of Study

1. It is not our concern to amass juristic and legal information, except to chart a valid scientific method of analysis.
2. Although we conduct our analysis using the methods of Western jurisprudence, we will rely for our sources on Islamic jurisprudence texts. These include the earliest and most prominent jurisprudence texts canonized in various schools of Islamic jurisprudence, but also, as needed, some books of contemporary jurists, as well as books by Orientalists who wrote about Islamic jurisprudence.
3. It is not our concern in this analysis to hide the stylistic and substantive differences between Islamic and Western jurisprudence. On the contrary, we will be careful to highlight the substantive differences because of which Islamic jurisprudence has maintained its distinctive features. We will not try to find artificial similarities between Islamic and Western jurisprudence based on imaginative or false foundations. In this regard, Islamic jurisprudence is a great legal system with its own distinctive craftsmanship that distinguishes it from all other legal systems. Scientific honesty and precision thus require that we preserve the foundations and characteristics of this distinguished jurisprudence. In this endeavor, we are more careful than many contemporary jurists, who have exhibited an inclination to bring Islamic jurisprudence closer to Western jurisprudence. In contrast, we do not care if Islamic jurisprudence is close to Western jurisprudence, because such closeness would not make Islamic jurisprudence any stronger, and may, indeed, make the latter less serious and innovative, thus depriving it of one of its greatest characteristics.
4. We shall attempt, to the extent possible, to trace the direction of juristic inference (*al-ijtihād*) in successive periods. Thus we may see how this chain of inference has evolved until its last steps in our current era, and to extrapolate where it would have reached had it continued to evolve. We shall exercise an abundance of caution when conducting this extrapolation.

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I Specifying *Riba* In Islamic Jurisprudence (vol. 3, p.125)

There are two types of *riba* in Islamic law: the *riba* of contemporaneous inequality (*riba al-faḍl*) and the *riba* of deferment (*riba al-nasī'a*). In what follows, we define the goods for which *riba* is a concern, and then define carefully the two types of *riba* listed herein.

I.I Specifying Goods Susceptible to *Riba* (*Ribawi* Goods)

I.I.I prophetic Tradition (*Ḥadīth*) Specifies *Ribawi* Goods

The noble Qur'ān does not contain specification of *ribawi* goods, but the latter were explained in the traditions of the Prophet (p). Muḥammad narrated on the authority of Abū Ḥanīfa on the authority of 'Aṭīyya Al-'Awfi on the authority of Abū Sa'īd Al-Khurdiy that the Prophet (p) said: "Gold for gold, same for same, hand to hand, and any difference is *riba*; silver for silver, same for same, hand to hand, and any difference is *riba*; wheat for wheat, same for same, hand to hand, and any difference is *riba*; salt for salt same for same, hand to hand, and any difference is *riba*; barley for barley, same for same, hand to hand, and any difference is *riba*; dates for dates, same for same, hand to hand, and any difference is *riba*; but if the genera are different, then trade as you wish as long as it is hand to hand."

In explaining this tradition, Al-Sarakhsi wrote in *Al-Mabsūt* (12/110-111): "In saying gold for gold, he (p) meant trading gold for gold, and in saying in equal amount, he meant equality of amount regardless of characteristics. The tradition on the authority of 'Ubada ibn Al-Ṣāmit (r) states that raw and purified gold are equivalent in this regard, making it clear that equality must be measured by weight alone, regardless of characteristics. In saying hand to hand, this could mean physically exchanging at the same time, or simply pointing by hand to the amount being traded, and the latter is the more correct interpretation; otherwise he would have said 'from hand to hand.' The exception in this regard is money, which must be received physically because it cannot be received in contracts by merely identifying it. In saying any difference is *riba*, it is possible that the difference is in quantity, and possible that it is in condition, for example, one being delivered immediately while the other is deferred. Both meanings are intended. When he said *riba*, he meant that it is forbidden, because of imbalance in the transaction, either manifestly certain when quantities are different, or imagined to be likely due to imbalance in proportionality between the two monies. The same applies to his statement about silver for silver. With regard to wheat, equality may be in volume or in characteristics. However, in the section on currency exchange (*al-ṣarf*), the author replaced the phrase 'same for same' with 'volume for volume,' making it clear that equality is intended in terms of quantity. In the tradition on the authority of 'Ubada ibn Al-Ṣāmit, he said explicitly: 'equally for good and bad quality commodities.' As for his statement hand to hand, we understand it here as trading specific identified volumes of wheat, without requiring simultaneous physical exchange. And in saying that any difference is *riba*, this may refer to quantity or quality, and both are intended. This is also what was understood from the tradition of 'Ubada ibn Al-Ṣāmit, which included the phrase 'whosoever gives or takes more has committed *riba*.' The rules for barley, dates, and salt follow the rules for wheat."

1.1.2 Extending the Scope of *Riba* Beyond the Six Commodities (pp. 126–7)

The Dhāhirīs restrict *ribawi* goods to these six commodities listed in the tradition: gold, silver, wheat, barley, dates, and salt.

However, the majority of jurists extend the prohibition beyond those six commodities, based on varying inferences. This is because the tradition does not say that there are only six goods wherein *riba* may exist, but merely mentioned the ruling for *riba* in those six, which were the most commonly used during that time.

The jurists thus differed in extending the ruling to other goods. The Ḥanafīs and majority of Ḥanbalīs argued that the legal rationale by which *ribawi* goods are known are two:

1. That the good is measured by weight, such as gold and silver, or by volume, such as wheat, barley, dates, and salt. This is the quantification criterion using weight or volume.
2. That the genus is the same in the two exchanged goods.
 - Thus, the Ḥanafīs and Ḥanbalīs concluded that the legal rationale for identifying *ribawi* goods is quantity and genus.
 - For the Shāfi‘īs, the legal rationale in wheat, barley, dates and salt is that they are foodstuffs, whereas the rationale for gold and silver is their use as monetary numeraire for pricing other goods.
 - For the Mālikīs, the legal rationale in gold and silver is their monetary nature, but for the other four was that they are storable foodstuffs.

The most prominent disagreement in this regard has been between the Ḥanafī demarcation by amount and genus, and the Shāfi‘ī demarcation by foodstuffs or moneys. Therefore, we shall focus on those two demarcations. In this regard, Ḥanafīs have extended the rulings of *riba* to anything measured by weight or volume of a specific genus, whether or not the objects are edible or used as money. In contrast, the Shāfi‘īs extended the rules of *riba* to all foodstuffs, including ones that are not measured by weight or volume, such as watermelons, eggs, etc. Also, the Shāfi‘īs differ from the Ḥanafīs in applying the rules of *riba* to gold and silver as moneys, not because they are measured by weight. Therefore, they do not apply the rules of *riba* in iron, lead, copper, jewels, and pearls, because those are not used as monies. [Tr: large footnote with schematic diagram omitted.]

1.1.3 The Ḥanafīs’ Proofs for Their Rulings (p. 128)

The Ḥanafīs reasoned as follows: When the Prophet (p) said “wheat for wheat,” he meant trading wheat for wheat, and this could not be done by trading single kernels of wheat, which would not be considered measured property. Thus, what was meant must have been measured amounts of wheat, which is measured by volume. The characteristic of measurement by volume is thus implied by the text. It is as if he (p) had said: “weighed gold for gold, and volumes of wheat for wheat.” In this regard, characteristics of nouns

used in the text serve as legal rationales, and whatever is implied by the text has the same authoritativeness of the explicit text.

Now, the Prophet (p) said “wheat for wheat, same for same,” thus requiring sameness for validity of the contract. In other words, the ruling is predicated on sameness of the traded commodities, and whatever cannot be characterized by sameness cannot be *ribawi* good. For example, apples cannot be similar, and, therefore, are not *ribawi* goods. The proof, therefore, is that the legislator (p) did not list the ruling for *riba* without specifying how to avoid it, and any legal rationale that does not allow for means of avoidance is an invalid rationale. A good being edible is one such characteristic, which would apply to pomegranates and oranges, making it impossible to find a way to avoid the prohibition [through equality].

Thus [the Shāfi‘ī and Mālikī] rationale of foodstuffs and monetary characters is defective, both in terms of complicating the primary prohibition and making it impossible to extend to other objects. Moreover, edibility and monetary characteristics highlight the necessity of those commodities, and necessity should be invoked for permissibility, not for prohibition – e.g. consuming a dead animal is permissible based on necessity. Finally, if our interlocutor argues that the Prophet (p) has listed those four commodities, we say that he has listed all six, one following the other, thus suggesting that there should be a single rationale for prohibition, which we argue to be similarity and measurability [by weight or volume]. In contrast, there is no similarity between one commodity being used as money and the other being foodstuff that would justify listing them in one sequence of prohibitions. (For all this, see *Al-Mabsūṭ*, 12/116–120).

1.1.4 The Shāfi‘īs’ Proofs for the Foodstuffs and Monies Rationale

Al-Shāfi‘ī argued based on the fact that the law has put two conditions to allow trading these commodities: equality and simultaneity (hand to hand). This informs us that those two conditions were added because of particularly dangerous potential in such trades. The added danger in trading gold and silver cannot be any other than their monetary usage, which is their purpose for existence, and all goods would vanish were it not for their prices denominated in such monies. For the other four commodities, the additional danger cannot be anything other than edibility, because food sustains life. Thus, we see that the legal rationale is edibility and monetary use, while the traded items being of the same genus is a condition for prohibition, not a legal rationale. Consequently, we can conclude that the legal rationale based on quantity is defective, because it does not relate to excessive danger in the subject of prohibition. In this regard, gypsum is measured by volume, but it is used to beautify buildings and has no significance in preserving life or property.

Moreover, when the law explained the rulings of *riba*, it mentioned all monies used for pricing, which are gold and silver, together with the most valuable foodstuffs: wheat, which is the most valuable human food; barley, which is the most valuable animal food; dates, which are the most valuable fruits; and salt, which is the most valuable spice. To emphasize the importance of the rulings of *riba*, and given that all foodstuffs could not be listed, the text listed the best and most valuable foodstuffs, to show that the legal rationale

is edibility. In contrast, were the legal rationale based on quantity, there would be no value in listing all four of those foodstuffs, because quantification does not vary across the four. Needless to say, it is better to assume that the Prophet's (p) words are all useful. Then, if we accept that the legal rationale is edibility and monetary function, it becomes impermissible to argue by analogy from foodstuffs to non-foodstuffs or from monetary metals to non-monetary commodities, because the legal rationale would no longer apply. (For all this, see *Al-Mabsūṭ* 12/115-6, wherein the authors covers the Shāfi'ī school's views).

1.1.5 Weighing the Ḥanafī and Shāfi'ī Proofs (p. 129)

We can summarize the Ḥanafī proofs as follows:

1. The six commodities mentioned in the tradition cannot be deemed property without weight or volume, thus rendering measurability by weight or volume implied in the text, which is equivalent in authoritativeness to the explicit components of the text.
2. The ruling for *ribawi* goods requires the possibility of similarity to avoid the prohibition. For goods that have no similarity metric, such as pomegranates or apples, it is impossible to imagine a way to avoid the prohibition, and thus they may not be deemed *ribawi* goods in the first place. Thus, there are edible commodities that are not *ribawi* goods, and there are *ribawi* goods that are not edible. This makes edibility an excessively broad legal rationale, which would apply to objects that violate the original rules of *riba*, and also excessively strict in its non-coverage of some *ribawi* goods. In this regard, Al-Zayla'ī (4/87) wrote regarding the condition of similarity in *ribawi* goods: "The issue is settled by the Prophet (p) stipulating the condition of similarity by saying same for same, and similarity cannot be measured except by weight and volume, excluding anything that is not measured by weight or volume from *ribawi* goods. It is in this context that the jurists ruled that *riba* would not apply for quantities too small relative to the standardized measuring units, such as a handful of wheat or barley, or an atom of gold or silver."
3. The greatest benefit from any good comes from eating it. Financial values of property likewise highlight the need for monetary numeraires to denominate prices. In this regard, necessity is relevant when determining permissibility rather than prohibition. Thus, given the necessity for food and money, edibility and monetary property cannot be legal rationales for prohibition. In this context, Al-Zayla'ī has written (4/86-87): "Eating, pricing, and saving are all among the greatest benefits derivable from property, and the needs for these goods are among the most important. In this regard, God has shown His tendency to create ease in our lives rather than hardship, thus allowing consumption of a dead animal in case of necessity, as well as using spoils of war before their distribution when necessity may require it, in contravention of the rules for joint properties. So, the greater the need, the greater the ease in law. Consequently, making an inference for restriction based on conditions that merit ease renders such inference defective."
4. The six commodities were listed consecutively in the tradition, which requires that

the legal rationale for the prohibition is one: genus and amount. In this regard, amount being measured variably by weight or volume suggests only a difference in form. In contrast, if the rationale for monies was their use as numeraire and for the other four commodities was their edibility, the consecutive listing would not be justifiable, because monetary properties and edibility have nothing in common.

Likewise, we can summarize the Shāfi‘ī proofs as follows:

1. The reason for adding two conditions to allow trading *ribawi* goods (similarity and simultaneity) is the increased danger in such trades. In this regard, the monetary characteristics of gold and silver allow them to be used for pricing other goods, which is essential for trading the latter. Likewise, the edibility of the remaining four commodities makes them necessary for preserving life. In contrast, using quantification as a legal rationale, as the Ḥanafīs do, would not relate to potential danger or essential features of the commodities; and gypsum is measured by volume even though it has no significance.
2. If the legal rationale is monetary or food characterization, we can see the reason that the legislator listed those six commodities, which encompass all the monies (gold and silver) and the most important four types of food (wheat is the best for humans, barley is the best for animals, dates are the best fruits, and salt is the best spice). In contrast, if the legal rationale was amount, as Ḥanafīs say, there would be no reason to list all four commodities, and we should assume that all the legislator’s words are useful.

1.1.6 Preferring The Shafi‘ī Opinion (p. 130)

Upon contemplating the proofs of the two schools, we can see that the Shāfi‘ī criteria were social and economic, thus addressing the substance of the prohibition. In contrast, the criteria invoked by the Ḥanafīs were merely logical, and more concerned with form than substance. Therefore, we do not hesitate to endorse the Shāfi‘ī position, which makes the best sense of the six items mentioned in the prophetic tradition, without expanding the scope unnecessarily.

With regard to gold and silver, it is apparent that the main criterion is their use as monetary numeraires for prices. In this regard, Ibn Al-Qayim wrote in *I‘lām Al-Muwaqqi‘īn* (2/101): “With regards to dirhams and dinars, some, including Abu Ḥanīfa and one opinion for Aḥmad, have argued that the legal rationale is their measurability by weight. Others, including Al-Shāfi‘ī, Mālik, and the other opinion of Aḥmad, have opined that it is their use as monetary numeraires for prices; and this is the valid opinion. In this regard, choosing measurement by weight as a legal rationale seems inappropriate, because it is incidental. In contrast, the legal rationale based on monetary use as numeraires for prices is essential, because prices are necessary to evaluate goods, and should thus not be allowed themselves to fluctuate in value, otherwise all commodities would be the same. In this regard, if money was just another commodity with fluctuating prices, then it would be impossible to know the values of other commodities based on their prices denominated in that money. This would corrupt all financial transactions, leading to discord and harm.

We have witnessed in the past when money was treated like a commodity traded for profit, and this resulted in harm and injustice; but if it is given a fixed value that does not fluctuate, then welfare would be enhanced. It is thus that if the inequality *riba* is allowed in dirhams and dinars, by allowing trade in different weights of silver and gold, then they would become commodities like any others, and deferment *riba* is sure to follow. Rather, money used as numeraire for prices should never be desired for its own sake, but rather to buy other commodities. When money becomes desirable in itself, corruption ensues. This analysis is convincing for monies, but cannot be expanded to cover other goods measured by weight.”

As for the other four commodities – wheat, barley, dates, and salt – the apparent legal rationale is their edibility, as stipulated by Al-Shāfi‘ī, or storability and edibility, as stipulated in the Mālikī school. In this regard, Al-Ḥaṭṭāb wrote (4/246): “The meaning of edibility is that the food can be consumed to nourish, and the meaning of its storability is that it does not spoil through normal storage. The second legal rationale stipulates that the commodities must be customarily used for nourishment and can be stored, as the author of *Al-Tanbīhāt* has written. Many of our teachers stipulated that the commodities need not be necessary for sustenance, as long as they are customarily stored and can be eaten.” Ibn Al-Qayyim chose this opinion of Mālik – edibility and storability – as his favored view. Thus, he wrote in *I‘lām Al-Muwaqqi‘īn* (2/100): “The legislator forbade inequality *riba* in six specific commodities, which are gold, silver, wheat, barley, dates, and salt. Thus, people have agreed unanimously that those cannot be traded in the same genus and different quantities, but disagreed over other goods. Some restricted the prohibition to those six alone, starting with Qatāda, and this is the opinion of the Dhāhir (apparent meaning) school, and also of Ibn ‘Aqīl in his latest books, even though he accepted reasoning by analogy, because he found the legal rationales given by those who reasoned by analogy in this domain to be too weak, and therefore did not accept analogies with such weak rationales. Another group forbade it for trading the same genus of any commodity measured by weight or volume, and this is the view of ‘Ammār, Aḥmad in the majority view of his school, and Abū Ḥanīfa. Yet another group restricted the ruling to foodstuffs that are measured by weight or volume, and this is the expressed view of Sa‘īd ibn Al-Musayib, one reported opinion of Aḥmad, and the opinion of Al-Shāfi‘ī. Finally, a group have restricted it to foodstuffs and whatever sustains them, and this is the opinion of Mālik which I find most valid.”

Nonetheless, the Ḥanafīs’ strong logical arguments require careful consideration:

1. There is no doubt that when the legislator said wheat for wheat, he considered the characteristics of wheat, which can only be either edibility or measurability by volume. Edibility seems more appropriate, due to its importance, rather than measurability by volume, which seems minor. Moreover, edibility distinguishes between the four commodities: wheat for humans, barley for animals, salt as a spice, and dates as fruit, whereas measurability by volume is common to all four, and it would have sufficed to mention only one of the four. Likewise, when the legislator said gold for gold, he doubtlessly considered the characteristics of gold, which can only be either its use as money or measurability by weight. The use as monetary numeraire for prices is the stronger criterion for gold and silver, the two monies mentioned

together, which distinguishes them from other commodities measured by weight.

Thus, even though the value of all six goods cannot be determined except by weight or volume, there is no objection to the legislator ignoring these criteria, and caring only for their edibility or use as monetary numeraires, as we have argued. Thus, other *ribawi* goods would be those that share with these six their edibility or use for pricing, rather than their measurement by weight or volume.

2. It is not necessarily true that goods for which similarity is impossible cannot be considered *ribawi*. For example, walnuts, eggs, watermelons, pomegranates, and oranges are all foodstuffs that cannot be similar to one another, and yet, there is nothing to prevent them from being considered *ribawi* goods. The consequence of considering those *ribawi* is that they cannot be traded in the same genus, walnut for walnut, or egg for egg, etc., because similarity cannot be guaranteed. The means of avoiding the prohibition of *riba* in such cases are to sell one good for money and use the latter to buy the other good of the same genus.
3. Given that necessity is apparent for the six listed commodities, and notwithstanding the argument that necessity is used to argue for permissibility not for prohibition, one may argue likewise that necessity may require prevention of monopoly or market manipulation. It is thus possible to argue that necessity may induce prohibition rather than permission, in order to prevent the means to greater harm.
4. Finally, it is not necessary that the legal rationale is one for all six commodities simply because they are listed in succession. Rather, it is reasonable to categorize them under two or more legal rationales, or even to have one rationale for each, even if they are listed in succession. It is apparent in our case that there are two legal rationales: use for pricing, which regulates trading in gold and silver; and edibility, which regulates trading in wheat, barley, dates, and salt.

1.2 Contemporaneous Inequality *riba* (*Al-Fadl*, p. 132)

1.2.1 Ḥanafī School

For Ḥanafīs, the *riba* of contemporaneous inequality is effected when the two conditions of *riba* are present: difference in quantity (measured by weight or volume) of traded quantities of the same genus. Thus, trading different volumes of the same genus would constitute *riba*, regardless of edibility. In this view, any trade of different volumes of the same genus, for example, of wheat for wheat or gypsum for gypsum, would be deemed defective because of inequality *riba*. In this regard, equality of quantity is the criterion, regardless of quality. Of course, it would be meaningless for parties to trade the same quantities of the same quality of the same genus. The same rule applies for goods measured by weight, which may thus be traded for the same genus only in the same quantity, whether or not it is monetary or edible. The rule would apply equally to trading gold for gold and iron for iron, wherein any difference in quantity would render the sale defective.

1.2.2 Shāfiʿī School

For Shāfiʿīs, inequality *riba* would be effected based on their legal rationale of monetary use or edibility of goods traded for the same genus. Thus, trading food for food of the same genus, whether or not it is measured by weight or volume (e.g. wheat for wheat, ghee for ghee, watermelons for watermelons), the quantities must be the same, otherwise the sale is deemed defective. As we shall see, equality cannot be determined in any way for trading watermelons for watermelons. When monetary goods are traded for other monetary goods of the same genus, which we call currency exchange (*ṣarf*), such as gold for gold or silver for silver, then the quantities must be equal, otherwise the sale would be deemed defective.

1.2.3 Contrasting Ḥanafī and Shāfiʿī Criteria for Applying Inequality *riba* Rulings

For these examples, see *Al-Badāʾiʿ* (5/183 onwards).

We have seen that when trading goods of the same genus, Ḥanafīs use weight or volume to determine if inequality *riba* is effected, while Shāfiʿīs consider whether the goods are monetary or edible. This leads to the following differences in application of the prohibition of inequality *riba*:

1. Trading different quantities of a non-edible and non-monetary good measured by volume or weight, such as one measure of gypsum or iron for two measures, is not allowed for the Ḥanafīs who deem it *riba*. In contrast, those examples would be allowable for the Shāfiʿīs, because the goods under consideration were neither edible nor monetary.

Trading different quantities of edible goods measured by volume or weight, e.g. a measure of rice for two measures, or a silver coin for two coins, is disallowed unanimously by all schools. The rationale for the Ḥanafīs would be difference in measure and unity of genus, and for the Shāfiʿīs, the rationale would be edibility or monetary use and unity of genus.

There is also a consensus on the permissibility of spot (hand to hand) trading of goods measured by volume or weight in exchange for goods of a different genus and different quantity, regardless of edibility. Thus, trading one measure of wheat for two measures of barley or one measure, or trading one gold coin for one hundred silver coins, would be allowed, because the rationale for inequality *riba* does not exist, given the difference in genus.

There is also consensus on the permissibility of spot trading heterogeneous goods measured by area or number, such as one piece of cloth for two, one sheep for two, one sandal for two, and so on. The rationale for Ḥanafīs is measurability by a metric other than weight or volume, and the rationale for Shāfiʿīs is that these are neither monies nor foodstuffs.

2. Different rulings emerge for the case of trading edible goods that are not measured by weight or volume for goods of the same genus but different quantity, e.g. one watermelon for two, or one egg for two. Ḥanafīs allow this trade because the goods

are not measured by weight or volume, even if genus is the same, while the Shāfi'is forbid it because of edibility and unity of genus.

Ḥanafis also allow trading goods of the same genus in equal quantities if they are not measured by weight or volume, such as one watermelon for another watermelon, because of the method of measurement (count). However, Shāfi'is would forbid this trade because of edibility of goods traded for the same genus. In this regard, they would consider equality of weight or volume (but not number) to be a way out of the prohibition, but because such measurement is not in effect, the original prohibition of trading foodstuffs of the same genus applies.

1.3 Deferment *riba* (*Al-Nasī'a*, p.134)

1.3.1 Ḥanafi School

We have seen that the Ḥanafi school considers inequality *riba* in effect if the two components of its rationale are in place: inequality of measure by weight or volume, and unity of genus. In contrast, they consider deferment *riba* in effect based only on one of the two components: either unity of genus or difference in weight or volume.

Therefore, deferment *riba* would be in effect in two cases:

1. If both traded goods are measured by weight or both are measured by volume, regardless of genus, the measures may not be unequal with deferment.
2. If both traded goods are of the same genus, whether or not they are measured by weight or volume, they may not be traded in unequal amounts with deferment.

The first case would include, for example trading wheat for wheat or wheat for barley, or trading gold for gold or gold for silver. In all such cases, deferment of either component of the sale is not allowed, but spot (hand to hand) trade is allowed. However, this general rule would render impermissible trading a deferred amount of iron for a spot amount of gold or silver, which, in turn, would render invalid a type of pre-paid deferred payment sale (*salam*), which the Prophet (p) had allowed. Conversely, it prevents the sale of commodities measured by weight for a deferred price [which is also allowed]. For that reason, the Ḥanafis classified goods measurable by weight into monetary goods, i.e. gold and silver, weighed by particular measures, and all other goods measured by weight, such as iron, copper, cotton, ghee, etc., for which they used a different weight measure. Thus, they allowed trading goods from one of these two weighed categories for a deferred amount of the other – thus allowing *salam* or credit sales of iron, sugar, cotton, etc.

For the second case, if the two traded goods are of the same genus, even if they are not measured by weight or volume, e.g. animals or pomegranates, then only spot (hand to hand) sale is allowed, and deferment is impermissible.

It follows from this analysis that deferred sales are allowed if one good in the transaction is measured by volume while the other is measured by weight or any means other than volume, e.g. wheat for silver or pomegranates; or if one good is measured by weight while

the other is measured by volume or any means other than weight, e.g. gold for wheat or oranges. Thus, deferred trading for goods measured by volume in exchange for others measured by weight, or vice versa, are all allowed.

In summary, the Ḥanafis apply the prohibition of *riba* as follows: Trading goods of the same genus that are measured by weight or volume is eligible both for inequality and deferment *riba* prohibitions. Trading goods of different genera but measured in the same way by weight or volume is eligible for deferment *riba* but not inequality *riba*. Finally, trading goods that are measured in different ways (weight, volume, or otherwise) are not eligible for the rules of either types of *riba*.

The source of the deferment *riba* prohibition for the Ḥanafis is the Prophet's (p) statement at the end of the well-known tradition: "As long as the types of goods are different, then trade as you wish as long as it is hand to hand." It was narrated that Ibrāhīm Al-Nakhī said: "The safest and most valid trades for goods measured by volume is to exchange them for goods measured by weight, and vice versa. You cannot assume validity when trading goods measured by volume for others measured by volume, or goods measured by weight for others measured by weight. If one trades different goods that are both measured by weight or volume, then difference in quantity is valid as long as it is hand to hand, but no deferment is allowed in these cases."

1.3.2 Shāfi'ī School

The Shāfi'īs consider the trade of money for money or foodstuff for foodstuff eligible for deferment *riba*, whether or not the goods are of the same genus. Thus, deferred sales of dates for dates or dates for wheat are not allowed. Likewise, deferred trading of gold for gold or gold for silver is not allowed. Moreover, deferment is not allowed when trading foodstuffs for non-foodstuffs, e.g. wheat for iron, or non-foodstuffs for non-foodstuffs, e.g. gypsum for gypsum or gypsum for lead, regardless of unity of genus.

However, they do allow deferment when trading goods for a price, whether or not the good is a edible, e.g. rice for silver or iron for gold.

1.3.3 Contrasting Ḥanafī and Shāfi'ī Criteria for Applying Deferment *riba* Rulings

We have seen that the Ḥanafis apply the rules of deferment *riba* if either of the two conditions of inequality *riba* are satisfied: unity of genus or measurement by weight or volume. We have also seen that the Shāfi'īs apply the rules of deferment *riba* when trading foodstuffs for other foodstuffs or money for money. Consequently, the two schools differ in their applications of the rules of deferment *riba*, as illustrated by the following examples:

1. The Ḥanafis invalidate credit sales of one good measured by volume for another measured by volume, regardless of edibility or unity of genus. Thus, they apply the rules to edibles of the same genus, such as wheat for wheat, or of different genera, such as wheat for barley. They also apply it for non-edibles whether they are of the same genus, such as gypsum for gypsum, or different such as gypsum for flowers.

They base this ruling on measurability by volume for both commodities, which is one of the two criteria they apply for inequality *riba*. The Shāfi'is, on the other hand, invalidate the credit sale if both goods were foodstuffs, whether they are of the same genus or different genera, such as wheat for wheat or wheat for barley. However, they do validate credit sales if both goods were non-edibles of the same or different genera, such as gypsum for gypsum or gypsum for flowers, because their criteria for prohibition of deferment sale is edibility.

2. The Ḥanafis invalidate credit sale of one good measured by weight for another measured by weight, whether they are edible or not, and whether they are of the same genus or different genera. Thus, they forbid credit sale of sugar for sugar or sugar for saffron, iron for iron or iron for copper, and gold for gold or gold for silver. In contrast, the Shāfi'is invalidate the credit sale of foodstuffs for foodstuffs, such as sugar for sugar or sugar for saffron, and for monies such as gold for gold or gold for silver. However, they allow credit sales for goods that are neither edible nor monies, such as iron for iron or iron for copper.
3. The Ḥanafis permit credit sales if one good is measured by volume and the other by weight, or vice versa, whether or not they are edible. Thus, they allow credit trading of sugar for salt, or gypsum for iron, and vice versa. In contrast, the Shāfi'is invalidate the credit sale for foodstuffs, such as sugar for salt, or vice versa, but allow it for non-foodstuffs, such as gypsum for iron, or vice versa.
4. There is a consensus of forbidden credit sales of foodstuffs that are not measured by weight or volume in exchange for goods of the same genus, such as pomegranate for pomegranate or eggs for eggs. The Ḥanafis forbid credit sales of non-foodstuffs of the same genus, such as animal for animal, whereas the Shāfi'is allow it. As for credit sales of goods of different genera, both schools allow them for non-edibles, such as animals for clothes, but the Shāfi'is forbid them and the Ḥanafis allow them for foodstuffs, such as pomegranate for eggs.

1.3.4 Explaining Some Subtle Examples of Deferment *riba*

This means that there are cases wherein the logical rationale [tr: or wisdom, *ḥikma*; as opposed to legal rationale, or '*illa*] for prohibition of deferment *riba* may not be obvious, of which we list some examples:

1. Both Ḥanafis and Shāfi'is invalidate the credit sale of one gold coin for ninety-five silver coins, but allow the spot trade for the same price. [tr: The Ḥanafis invalidate the sale due to measurability by weight, and the Shāfi'is forbid it due to the monetary nature of both goods.] It appears that the logical reason for this is the absence of exploitation of neediness when someone trades one gold coin for ninety-five silver coins on the spot. It appears in this case that he wanted to break a gold coin into lower denomination silver coins, and was willing to forego a small percentage of the gold coin's value to get the silver. Thus, the trade is allowed on the spot. However, when someone buys ninety-five silver coins on the spot for a deferred payment of one gold coin, the transaction is very similar to borrowing ninety-five

silver coins for a repayment of one gold coin, which is of greater value. In this instance, he would be paying for the (time value) preference of current money over deferred money, thus raising suspicion that he might have a need that is exploited in this transaction. Hence, the credit sale is forbidden in this case.

2. Both Ḥanafīs and Shāfi‘īs invalidate the credit sale of one measure of wheat for two measures of barley, but allow the spot trade at the same ratio. [tr: The Ḥanafīs invalidate the sale due to measurability by volume, and the Shāfi‘īs forbid it due to edibility of the goods.] It appears that the logical rationale for these rulings is the same as we have seen in the previous case. There is no suspicion of exploitation, one way or the other, when trading one measure of wheat for two measures of barley on the spot. Each party needs the good that the other possesses, and they agree on this price ratio. However, when there is deferment of the two measures of barley, then there is suspicion that the first party borrowed a measure of wheat and repays with a larger amount of barley, which is conducive to exploitation of need.
3. The Shāfi‘īs invalidate spot and credit trading of an egg for an egg, whereas the Ḥanafīs allow the spot trade and forbid the credit trade. [tr: For the Shāfi‘īs, edibility invalidates both sales, whereas the Ḥanafīs allow the spot trade because of unity of the genus in a good that is neither measured by weight nor by volume.] It appears in this case that both the Ḥanafīs and Shāfi‘īs have forbidden deferment in this case because they treat the credit sale of one egg for another as tantamount to a [tr: charitable or goodly] loan (*qard*) with a specific term, and it is not permissible to specify a maturity date for such [goodly] loans.

2 Various Approaches to Tightening of *riba* Regulation. In All Epochs, The Scope of *riba* Expands and then Contracts Under Economic Pressures (p. 137)

2.0.1 *Riba* In Ancient, Jewish, and Christian Law

Riba has been recognized since antiquity. The ancient Egyptians recognized it, as evidenced by the law of the Fourteenth Dynasty King Bocchoris (BCE 722–715), which stipulated that interest totals cannot exceed the principal. It is an irony of fate that Egypt returned to this rule three thousand years later, as Article 232 of the Egyptian Civil Code stated that “it is not permissible under any circumstances that the total interest collected by a creditor should exceed the principal.” Likewise, *riba* was known in Babylonian, Assyrian, Greek, and Roman laws.

However, religious laws – Jewish, then Christian, then Muslim – expanded the range of *riba* considerably, and forbade it categorically.

In the context of Judaism, *riba* was forbidden only in intra-Jewish dealings. Thus, a Jew was not allowed to lend another Jew with *riba*, but may lend with *riba* to a gentile.

Christianity also forbade *riba*. Thus, The Gospel of Luke (6:34,5) states: “If you lend to those from whom you expect compensation, what virtue is that for you? . . . Rather, . . . do good and lend without expecting repayment, then your reward will be generous.” In this regard, St. Thomas argued in Summa (1:78) that collecting interest on debt is unfair, because it is tantamount to receiving repayment of a nonexistent debt. . . This follows because anything that only generates benefit through its consumption is inextricably mixed with its usufruct. Therefore, he argued, whoever lends such a thing cannot at the same time demand its return as well as demand rental value for its usufruct, because its usufruct and itself are one, and it is unfair to demand the same thing twice.

However, under economic pressures, the scope of forbidden *riba* in Christianity contracted gradually, allowing interest in some exceptional cases. In this context, Prof. Shukri Qirdāhī has included a list of those exceptions in his French language book *Law and Ethics*, vol. 2, pp. 167–171:

1. A lender was allowed to collect compensation from the borrower for any losses incurred because of the loan (*damnum emergens*). Thus, goodly (interest-free) loan associations were allowed to receive small interest on lent funds, as compensation for the expenses incurred to pay employee wages and conduct their business.
2. A lender was also allowed to collect from the borrower compensation for any profits foregone because of the loan (*lucrum cessans*). It was necessary that the lender and borrower would have agreed on this provision in advance, and that the compensation did not exceed the net profit (after deducting any costs to receive that profit) that the lender would have earned had he kept his money. It was also necessary that the lender must show that there was no other way to earn this profit, for example, by investing funds other than the ones lent to the borrower. These conditions were rarely satisfied, because medieval economies were not capitalist in nature, and large partnerships that needed financial capital for production were not prevalent.
3. A lender was allowed to receive a small profit from the borrower to compensate for the credit risk of losing the lent funds (*periculum sortis*). This exception was only accepted at the end of the fourteenth century, because of the dangerous precedent that it set in violating the early teachings of the Church.
4. A lender and borrower were allowed to agree on a late payment penalty provision (*poena conventionalis*). Church leaders hesitated in allowing this provision, and then resolved to distinguish between excessive penalty provision, which was impermissibly tantamount to exorbitant *riba*, and a warning provision that does not exceed the minor profit margin allowed by the Church in some instances, which was deemed valid as long as its objective was to incentivize the borrower to pay on time.
5. Finally, a lender was allowed to collect a real interest on his capital if civil codes or customary practice allowed it. In this case, interest was based on legal grounds (*titre légal*). In this exception, it was noted that laws or customary practices that allowed interest had taken into consideration the prevalent economic conditions, thus allowing the lender to collect this interest in compensation for foregone profits due to the loan he extended. In this case, interest rates needed to be moderate and not exaggerated. A dissenting opinion maintained the early Church doctrine

that such interest is not allowed, but the opinion of permission prevailed, with the provision that whoever collects unreasonably high interest that he does not deserve must, religiously rather than legally, return it, otherwise he would be in sin.

Thus, the range of *riba* prohibition shrank gradually according to the Church doctrine, allowing the collection of interest in one instance after another, as economic pressures dictated.

Laws followed juristic theories that permitted the collection of interest. Thus, legal scholars argued that although money as metal was unproductive, it became a factor of production in the form of credit. In this regard, with labor as the first factor of production and capital as the second necessary factor, the latter earns a return in the form of interest just as the former earns a return in the form of wages. It was also argued that the capitalist is a partner for the business owner, and thus the former is entitled to a share of any profit that the latter collects, which takes the form of interest on capital. These theories agreed on the point that money, which Aristotle had described as unproductive property, had become productive, and, indeed, one of the primary factors of production. As every productive property deserves its return, so does money. Thus, interest was not deemed forbidden *riba*, but rather legitimate return on productive invested property.

In addition to the theories that legitimized interest, a number of legal stratagems were developed to allow dealing with *riba*, of which Qirdāhī listed two (2, 181–8):

1. The first is to set up a silent partnership in which the capitalist provides money and the entrepreneur provides work, sharing in profits and losses. The silent partnership is followed by an insurance contract between the same two parties, by virtue of which the capitalist concedes part of his potential profits in exchange for insurance against losses. Thus, the capitalist is still entitled to some potential profits, but is not liable for any financial losses. A third contract follows the first two, and characterized as a sales contract, by virtue of which the capitalist sells the potential profit for which he is entitled in exchange for a fixed amount, which is the interest on his principal. For example, if the capitalist had a chance of 30% profit, he uses the second contract to insure against losses and to be entitled to a chance of 20% profit. Then the third contract is used to exchange this chance at 20% profit for a guaranteed 10% interest. [tr: This is equivalent to a fixed vs. variable interest swap in today's financial markets.]
2. The second stratagem was adopted from Islamic jurisprudential ruses, borrowing its Arabic name *mukhāṭara* (risk taking) into a Spanish word *mohatrae*. In this transaction, a man may sell another a commodity worth four hundred for a deferred price of five hundred payable in two years. Then, the buyer, who now owns the commodity, sells it back to the original seller for the cash price of four hundred. Thus, the net effect is exchanging four hundred now for five hundred in the future, which is the exact same *riba* hidden under two consecutive sales. A similar transaction is known as fulfillment sale (*bay' al-wafā'*), which may be a stratagem for camouflage of exorbitant *riba* in the form of mortgage. For example, the usurer may buy a good for less than its market value, and keep the rent for himself as disguised interest. Then, if the seller repays him the price he had collected and takes back the

good, the buyer/lender would have collected interest on this loan/price in the form of rent. Of course, if the seller were not to return the price and retake ownership of the good, then the lender would have kept the double advantage of the good below its market price in addition to consuming the interest in the form of rent.

Thus, the scope of *riba* was reduced gradually in Europe through exceptions and legal stratagems, until the French Revolution allowed the collection of interest. This permissibility was codified by Napoleon in 1804, and continues to serve as the basis of the modern French Civil Code. On September 3, 1808, France passed a law restricting interest to 5% in civil transactions and 6% in commercial transactions. The latter ceiling was revoked in commercial transactions by another law on January 12, 1886, and the former ceiling for civil transactions was revoked by another law on April 16, 1918. Thus, interest rates were no longer restricted by any legal limits. However, a law issued on August 5, 1935 stipulated that any loan at 50% higher interest than the market rate for similar loans would be considered excessively usurious. Thus, the increment over normal accrued interest would be deducted and repaid to the borrower. Similarly, the new Italian law listed interest rates at 5%, but allowed agreement without limit on any higher rate. However, the Italian criminal code (article 644) stipulated penalties for excessive usury, which was defined as exceeding reasonable limits of interest rates in cases wherein the usurious lender exploits the borrower's need for funds.

2.0.2 The Two Competing Currents on *riba* In Islam (p. 140)

As we have seen, the scope of *riba* was very large in the beginning, but it was subsequently diminished under economic pressures.

This was preceded by numerous legal stratagems that were implemented to collect forbidden profits. Ibn Qayyim denounced these legal stratagems in *Ii 'lām Al-Muwaqqi 'in* (2/106) as follows: “Thus, the people of legal stratagems permit trading ten for fifteen with [an intermediate] piece of cloth worth a penny, arguing that the [difference of] five is exchanged for the cloth . . . it is thus extremely surprising that they go to this extent in forbidding the *riba* of contemporaneous inequality . . . and then allowed numerous avenues for circumventing deferment *riba*, this time by allowing same item sale resale, that time with a third-party intermediary, and a third time by agreeing on a precondition but documenting the contract without the condition. God, the noble angels that document actions, and the parties to the contract all know that this is merely a *riba* contract in intention and spirit: to trade fifteen deferred for ten on the spot, with [the intermediate] commodity introduced and removed like a letter introduced in one word to affect the meaning of another.” In this regard, same item sale resale (*al-'īna*) is what we have described earlier as a *mukhāṭara* (risk taking) contract.

Similarly, Ibn Rushd characterized these stratagems thus in *Bidāyat Al-Mujtahid* (2/122): “A man tells another give me ten dinars and I will pay you double at such and such later date. The other man says that this would not be valid, but proposes to sell him a commodity (with value close to the desired ten) that he does not possess for the credit price of twenty, then he proceeds to purchase the commodity and deliver it after the sale had been

concluded, [with the net effect of giving him something worth ten for a later payment of twenty].”¹

Consequently, we read in *Al-Fatāwā Al-Hindiya* (3/202–3): “Likewise, it is reprehensible for one man to lend another dirhams or dinars so that the borrower may buy from the lender at a higher price. . . provided that the loan precedes the sale. However, if the sale precedes the loan – for example if one man asks another for a loan to be repaid later by one hundred dinars, then the latter bought a suit worth twenty for a price of forty, and lent him sixty, so that the lender is now owed one hundred dinars by the borrower, and the latter received eight dinars – then Al-Khaṣṣāf ruled that the transaction is permissible. This is the ruling according to the school of Muhammad ibn Salama the Imam of Balkh, who traded in commodities, and when asked to lend a person, he would first sell him commodities at an inflated price and then lend him the balance of what he wanted to borrow. However, many scholars found this reprehensible, and labeled it a loan with benefits to the lender. Some other scholars ruled that this stratagem is reprehensible if conducted in a single contract session, but allowed if conducted in two different contract sessions. The great scholar Al-Ḥalawānī agreed with the fatwā of Al-Khaṣṣāf and Muhammad ibn Salama, as listed in *Al-Muḥīṭ*.” More stratagems were invented to allow the forbidden *riba* along similar lines, until royal decrees from the Sultanate were issued to regulate interest rates and specify their levels.²

Starting in the earliest days of Islam, there were two conflicting currents on the issue of *riba*: Stricter interpreters expanded its scope to the point of encompassing most transactions, while other more lenient interpreters restricted its applicability firmly to a limited scope. Like wine, *riba* was forbidden in stages, rather than all at once. Moreover, the three stages of prohibition of *riba* parallel those for prohibition of wine. Thus, the first verse on *riba* was Meccan: “Whatever you seek as *riba* to grow in the properties of others will not grow with God, but that with which you seek God’s favor in the charitable way of wealth purification would be multiplied.” [Romans:39] Later, in Madīnah, the second verse on *riba* was revealed: “O, people of faith, do not devour *riba* doubled and multiplied, and be God conscious so that you may succeed. Seek refuge from the hellfire prepared for those who reject faith.” [Family of Imram: 130–1] The last verse regarding *riba* was revealed in Madīna and forbade it strongly: “Those who devour *riba* rise only like the one afflicted by satanic insanity; that is because they say that trade is like *riba*, but God has permitted

¹Translator note: This is almost exactly how so-called “Islamic finance” has been conducted at the retail level for the past few decades, variously under the names *murābaba* or *tawarruq*.

²See Ibn ‘Ābidīn (4/195–266). See also the article by Prof. Zaki Al-Dīn Badawī published in *Law and Economics*, year 9, p. 356, footnote 1. He wrote at the end of this footnote: “The summary of this discussion is that some jurists permitted buying something for more than its market value with the intention of receiving a loan, and this fatwā was used as a legal stratagem for lending with interest. This stratagem was abused by increasing this hidden interest to the point that would be considered excessive exploitation and burden on the borrowers. Thus, a Sultanate decree was issued to regulate interest rates at 5%, and later to regulate them at 15%. Likewise, it was described as necessary to issue decrees to regulate the permissible contract of *salam* [prepayment forward sale], which was likewise abused to the point that its harm was greater than the interest-bearing loan that the stratagem was constructed to circumvent.” See also the discussion of Prof. Imam Muhammad ‘Abduh’s permissibility of profits from certificates of deposit (551–5), and insurance (562), and the opinions of Mr. Rashīd Rida in permissibility of deferred exchange contracts, trading financial instruments, and trading on exchanges (555–562). See also on *riba* in Islamic jurisprudence the analysis of Prof. Shukrī Qirdāhī in the aforementioned book *Law and Ethics* (2/200–210), recounting how *riba* evolved in Christianity and Islam (210–221).

trade and forbidden *riba*. So, whoever has received [this] admonition from their Lord and have thus desisted, then their past earnings are theirs, and God will judge them. But those who persist in this practice [will be] assigned to the hellfire in which they will live eternally. God wipes out *ribā* and multiplies charity; and God loves not those who reject faith and commit sins. Verily, those who have faith and commit goodly acts and establish prayers and pay charity will have their reward with their Lord; no fear shall afflict them, nor shall they know sadness. O, people of faith, be God conscious and abandon whatever remains of *riba* if you truly have faith. But if you do not, then you have been warned of war from God and his messenger; and if you repent, then you shall keep your principals without inflicting or suffering injustice.” [The Cow: 279] This was one of the very last verses of the Qur’ān to be revealed. Thus, ‘Umar said: “The verse of *ribā* was one of the last to be revealed in the Qur’ān, and the Prophet (p) was taken from us before he had had a chance to explain it, so avoid *riba* and suspicions thereof.” Likewise, he said: “There are three issues in revelation on which we have wished the Prophet would have given us clear instructions to which we can refer: “[inheritance issues] involving grandparents and those who die without leaving behind parents or children, and some chapters of *riba*,” by which he meant problems wherein there is suspicion of *riba*.

Thus, *riba* and its suspicion led stricter interpreters, who were unsure about *riba*, to expand its scope, so that they may be safe from committing the forbidden *riba* or anything similar. It was ‘Umar himself who said: “By God, we do not know whether we are ordering you to do incorrect things or forbidding you from doing correct things. The verses of *riba* were among the last of the Qur’ān to be revealed, and the Prophet (p) died before he could explain them to us, so avoid that in which you have suspicion for that in which you do not.” He then said: “I worry that we have expanded the scope of *riba* ten-fold out of fear.” He also said: “We have avoided nine-tenths of permissible transactions for fear of *riba*.”

In opposition to this strict current that expanded the scope of *riba*, there was a second current that was much milder, restricting the scope of *riba* to a narrow circle. The leader of this second current was ‘Abdullah ibn ‘Abbās and a group of other companions of the Prophet (p), who restricted the forbidden *riba* to that which was known in the pre-Islamic age of ignorance, and on which the Qur’ān has opined. However, the first stricter current soon overpowered the opposing milder one. Thus, the overwhelming majority of jurists have supported the stricter current and it subsequently dominated Islamic jurisprudence.

2.0.3 Three Approaches To Restricting The Scope of *Ribā*

Nonetheless, a group of jurists, led by Ibn Rushd and Ibn Al-Qayim, tried to reduce the excesses of those who pursued the stricter current by distinguishing between deferment *riba*, which they opined was clear and definitively forbidden for its own sake, and inequality *riba*, which they deemed hidden and less definitive, albeit still forbidden. The latter was not forbidden for its own sake, but rather to prevent it from serving as a ruse for deferment *riba*.

Later, this approach was strengthened when the scope of *riba* was further restricted, deeming both inequality and deferment *riba*, which were the categories mentioned in the

prophetic tradition, to be forbidden not for their own sake. Rather, this opinion suggested, only the Pre-Islamic *riba* was forbidden for its own sake, and the other two categories were forbidden to prevent it from being effected indirectly.

Thus, starting with the original approach of Ibn ‘Abbās, we have three progressive stages of restricting the scope of *riba*. The least restrictive was the approach of Ibn Rushd and Ibn Al-Qayim which distinguishes between (the manifest) deferment and (hidden) inequality *riba*. More restrictive was the approach that distinguished between the (hidden) *riba* mentioned in prophetic tradition and the (manifest) one mentioned in the Qur’ān. The most restrictive of the three approaches is that of ‘Abdullah ibn ‘Abbās, which forbade only the pre-Islamic *riba* mentioned in the Qur’ān, and did not forbid other forms of deferment or inequality *riba*.

2.1 The Approach That Distinguishes between (The Hidden) Inequality *Riba* and (The Manifest) Deferment *Riba* (p. 143)

This approach is exemplified in the writings of Ibn Al-Qayim, who distinguished clearly and at great length between deferment *riba*, which is manifest and definitive, and inequality *riba*, which is hidden and not definitive.

Ibn Rushd did not deviate significantly from this same view. Thus, he wrote in *Bidāyat Al-Mujtahid* (2/106): “Scholars have agreed that *riba* can exist in two financial situations: (1) sales, and (2) established debts based on trade, loans, and the like. In turn, the latter *riba* on established debts is of two kinds: The first, which is pre-Islamic *riba*, was unanimously and categorically forbidden; this is the transaction wherein the matured debt was deferred further with a stipulated increase for additional time. This is the *riba* that the Prophet (p) meant in his last pilgrimage sermon when he said: ‘The *riba* of pre-Islamic ignorance is voided, and the first *riba* that I void is that of Al-‘Abbās ibn ‘Abdulmuṭṭalib.’ The second category of debt *riba* is discount for pre-payment, on which scholars have disagreed.”

In contrast, Ibn Al-Qayim considered deferment *riba* to be forbidden for its own sake, because he considered it the *riba* mentioned in the Qur’ān, which was practiced before Islam, and which is manifestly *riba* without any doubt, as Aḥmad ibn Ḥanbal had opined. He also deemed inequality *riba* to be forbidden, but only because it is a vehicle for deferment *riba*. Thus, he deemed trading five silver coins for six deferred to be forbidden deferment *riba* and for six on the spot to be forbidden inequality *riba*. His reasoning was that forbidding the deferred price trade while permitting the spot trade with unequal price would make it easy for people to use the spot trade as a vehicle for the desired deferred one that was forbidden. Thus, someone may sell five for six claiming that it was a spot sale, but with agreement that the price would be delivered later.³

³Ibn Al-Qayim also reasoned differently about using what is ostensibly permissible to effect what is forbidden. For example, if five coins or measures of wheat were traded for six on the spot, the resulting profit from spot trade would prompt the trading parties to add another increment to seven for delay. In this regard, he argued that the contracting parties may write the contract as a spot trade when they customarily defer the larger compensation, as those who use legal stratagems frequently write the contract in one form while they have another intention. For example, they may sell a commodity in a contract with a deferred price when they have agreed that the buyer would re-sell the same commodity later at a lower spot price. Thus, if the spot sale with unequal compensations is

Thus, Ibn Al-Qayim wrote in *I‘lām Al-Muwaqqi‘īn* (2/99-100): “There are two types of *riba*, manifest and hidden. The manifest was forbidden due to the great harm therein, whereas the hidden was forbidden because it can be a conduit for the manifest. The first is forbidden for its own sake, and the second as a vehicle for the first. The manifest is deferment *riba*, which is what they committed during the pre-Islamic age of ignorance, for example by deferring the repayment of debt in exchange for an increase, with further increase upon every additional deferment, until an initial debt of one hundred can become thousands. Thus, when the debtor found that the creditor would defer his demand of principal repayment as long as he pays him an increase, he would pay it to avoid demand of principal repayment and potential jail time. This continues periodically, allowing the harm to double and multiply until the debt exceeds the value of the debtor’s assets. It is thus that the needy could get deeper in debt without receiving any benefit, and the usurer’s wealth increases without providing a benefit to his brother, whose property he just devours unjustly, causing his brother great harm. Thus, it was out of the mercy of the Most Merciful and His wisdom and generosity to his creation that He forbade *riba*, cursing its devourer as well as its payer, documenter, and witnesses, and declared a war from Him and His messenger upon anyone who does not drop it. This level of warning was not revealed on any other great sin, thus making *riba* one of the greatest of sins. In this regard, Imam Aḥmad was asked about the *riba* in which there is no doubt, and he answered that it is the situation wherein the creditor offers the debtor the option to pay his matured debt or to defer and increase its amount. It was narrated in Bukhari and Muslim on the authority of Ibn ‘Abbās on the authority of Usama ibn Zayd that the Prophet (p) said: “There is no *riba* except in deferment,” meaning that the most complete form of *riba* must include deferment. This figure of speech is similar to the verse: ‘Believers are none but those whose hearts tremble upon the remembrance of God, and when His verses are recited, their faith increases, and they rely upon their Lord... those are the true believers.’ [Al-Anfal: 2] The figure of speech is also similar to the statement of Ibn Mas‘ūd that ‘scholars are none but those who fear God.’ As for inequality *riba*, it was forbidden to prevent an avenue for the manifest *riba*, as narrated on the authority of Abu Sa‘īd Al-Khudriy that the Prophet (p) said: ‘Do not trade one silver coin for two, because I fear that you would commit *riba*.’ Thus he forbade them from inequality *riba* for fear of falling into deferment *riba*, as they progress from trading unequal amounts due to differences in quality, to collecting an immediate profit, and eventually collecting deferred profits, which are the essence of deferment *riba*. Thus, it was wise of the Legislator to block this avenue and forbid them from trading one coin for two, whether it is on the spot or with deferment, as a logical means to prevent the harmful *riba*.”

Ibn Al-Qayim proceeded to write (2/102–3): “The Legislator was merciful and wise in forbidding them from deferred *riba* in other commodities as he forbade it for monies, otherwise they would have applied the rule of increase for deferment in foodstuffs and other commodities. It was thus that they were weaned off deferment, and then they were weaned off inequality in spot trade, because profitability in such trade may lead them to

allowed without both compensations being received during the contract session, they would write a spot sale and defer the demand for compensation in order to collect or pay the desired but forbidden profit. Thus, they were forbidden from this form of inequality *riba*, and were forbidden in currency exchange contracts from leaving the contract session without exchanging the compensations (*I‘lām Al-Muwaqqi‘īn* 2/103).

progress to profiting in its deferred trades. The rule does not apply if the traded goods are of different genera, because those have different natures, characteristics and uses, and thus cannot be traded in equal amounts without causing harm. Thus, when trading proximate goods of different genera, He forbade them from deferment, to avoid their use as a vehicle for increase due to deferment, but allowed them to trade them in unequal amounts on the spot to gain from the benefits of exchange. In this regard, we note that deferment was forbidden when trading goods of the same kind or similar kinds, such as gold for silver, wheat for barley, or dates for raisins. However, when trading goods with different uses, such as wheat for clothes, or iron for oil, then deferment for one payment was permitted. This is in contrast to the potential of trading one measure of wheat for two, in which deferment had to be forbidden for fear that greed might prompt them to introduce deferred profits.”

2.1.1 Consequences of Distinction between Deferment and Inequality *Riba*

It follows from this distinction between deferment *riba*, which is forbidden for its own sake, and inequality *riba*, which is forbidden as a potential vehicle for effecting the former, that the degree of prohibition of deferment *riba* is higher than its counterpart for inequality *riba*. Thus, deferment *riba* cannot be allowed except in cases of extreme necessity, such as those which allow eating dead animals or trapped blood [to preserve life or health.] In contrast, inequality *riba* may be allowed for a need that does not rise to the level of necessity. In particular, the scope of forbidden inequality *riba* may be restricted for certain forms wherein the potential for use as a vehicle for deferment *riba* is limited, thus the prohibition can cease to exist as its reason is eliminated.

Conversely, inequality *riba* may be expanded in scope if the potential for its abuse as a vehicle for deferment *riba* is more pronounced.

Thus, two concepts are essential for flexibility of opinion on inequality *riba*: potential abuse and need. The scope of prohibition for this type of *riba* expands with potential for abuse and shrinks with need.

2.1.2 Expanding The Scope of Inequality *Riba* Prohibition Due to Potential for Abuse

Examples of the expansion of inequality *riba* prohibition due to potential for abuse include the prohibition of trading high quality for low quality goods of the same genus conducive to *riba*, or trading one of those goods for its like with a monetary increment.

An example of trading different qualities of goods conducive to *riba* may be imagined as follows: “A quantity of middle quality of the good (e.g. dates) may be traded for half the amount of higher quality and half of lower quality. Imam Mālik forbade such trading due to suspicion that the intention was to sell two measures of the average quality for one measure of the high quality, and the addition of the low quality dates was used merely as a vehicle to effect that which is forbidden.” (*Bidāyat Al-Mujtahid* 2/116).⁴

⁴Translator note: This quote from Ibn Rushd refers implicitly to the prophetic tradition wherein the Prophet (p) forbade Bilal from trading high quality dates for double the quantity of his lower quality dates from Khaybar.

An example of trading a good conducive to *riba* in exchange for a similar good with added goods or money can be problematic if the latter good is of lower quality, or if the two sides of the transaction are of different amounts and each supplemented with some other good. “An example of the first case is trading two volumes of dates for one volume of dates plus a silver coin. An example of the second case is trading two volumes of dates plus a cloth in exchange for three volumes of dates and a silver coin. Imams Mālik, Al-Shāfi‘i, and Al-Layth all opined that this is not permissible, while Abu Ḥanīfa and the Kufi scholars ruled that it was permissible. The grounds of disagreement in these rulings pertain to whether the two amounts of the good conducive to *riba* must be equal in value, or whether consent of the trading parties is sufficient. Those who relied on equality of value did not allow the examples above, because it is impossible to determine such equality, as the added good may compensate for the difference in values. For example, if two volumes of dates are traded for one volume and a cloth, then the value of the cloth must be equal to the value of one volume of dates, otherwise making inequality of the two compensations necessary. In contrast, Abu Ḥanīfa stipulated that consent of the trading parties would be sufficient. Mālik’s reasons for prohibition include prevention of a vehicle for trading the same genus in different quantities. This is one of the famous problems in trading goods of the same genus in the different schools of jurisprudence.” (*Bidāyat Al-Mujtahid* 2/116).

Ibn Rushd proceeded to discuss other trades intended as vehicles to effect the forbidden *riba*, although the inference is less obvious than in the preceding cases, but relies on suspicions and suspicions thereof (*Bidāyat Al-Mujtahid* 2/116–9).

One example is same item sale resale, sometimes known as ‘*īna* or *mukhāṭara* sales. Thus, a man sells another a good with a deferred price, and then buys it back at a lower spot price. “Mālik and the majority of Madīna scholars forbade this trade, while Al-Shāfi‘i, Dawud, and Abu Thawr allowed it. Those who forbade it combined the two sales, and accused the trading parties of having the intention of selling a certain amount of money for more money in the future, which is the forbidden *riba* disguised in this form of trade. Thus, one person asks another to lend him ten gold coins for a month to be repaid as twenty, and the latter says that he cannot do that, but he can buy some good for twenty deferred and then sells it back for ten on the spot. As proof for prohibiting this transaction, they cite the tradition on ‘A’isha being told by a slave woman who had born a child to Zayd ibn Arqam: ‘O, mother of the faithful, I bought from Zayd with a deferred price of eight hundred, but needed the price, so I sold it back before the price’s term of deferment for six hundred.’ Then, ‘A’isha chastized her: ‘What a terrible trade, tell Zayd that he has thus voided the merit of his fighting with the Prophet (p) if he does not repent.’ The woman asked her if she can abandon the trade but still collect the six hundred, and ‘A’isha said yes [citing the verse] whoever received admonishment from his Lord and has repented, then he may keep what he had collected previously. In contrast, Al-Shāfi‘i and those who agreed with his view denied the authenticity of this tradition on the authority of ‘A’isha, and noted that Zayd disagreed with her view within the same tradition, thus establishing disagreement among the Prophet’s companions, and prompting those who followed their school to rely on analogical reasoning. There is a narrated opinion on the authority of Ibn ‘Umar that agrees with Al-Shāfi‘i’s ruling. For the case where the sold object diminishes in the possession of the first buyer, then Al-Thawri and some Kufi scholars allow the first credit seller to buy it back at a lower spot price, whereas Mālik has two conflicting

opinions narrated for this case. Thus, it is Mālik’s fear in such cases that they may be used as vehicles for forbidden *riba*, such as increase for deferment, selling goods conducive to *riba* in different quantities or with deferment, or sale and loan in one contract, or trading gold for gold and some other good, or discount for prepayment, or selling unreceived foodstuffs, or mixing sales with currency exchange, all of which are considered principal forms of *riba* in his school.” (*Bidāyat Al-Mujtahid* 2/118).

Discounting debt for prepayment before its maturity is likewise considered suspiciously conducive to forbidden *riba*, because the creditor thus assigns a value for the time between prepayment and the term of the debt, which is similar to the creditor assigning a value for additional term of deferment. Ibn Rushd wrote: “With regard to prepayment discount, it was permitted by the Prophet’s companion Ibn ‘Abbās and the scholar Zufar, Al-Shāfi‘i’s opinion was unclear on this matter, which was also permitted by Mālik . . . Those who did not permit discount for prepayment based their opinion on its similarity to increasing the amount for further deferment, because time value was included in the price increase or discount in the two situations. Those who permitted prepayment discount based their opinion on the narration on the authority of Ibn ‘Abbās that when the Prophet (p) ordered expulsion of Bani Al-Naḍīr, they complained to him that they were owed debts that had not yet matured, and the Prophet (p) ordered them to take discounted prepayments for these debts.” (*Bidāyat Al-Mujtahid* 2/119).

Thus, we have seen that the greater the suspicion that inequality *riba* may be used as a vehicle for the forbidden *riba*, the more it is itself forbidden based on that suspicion. Conversely, when the suspicion is diminished, the practice becomes permissible, especially if there is need for it, which is the subject to which we now turn.

2.1.3 Restricting The Scope of Inequality *Riba* Prohibition in Cases of Need

We note, again, that “need” in this context is a lower criterion than necessity, which would allow eating otherwise forbidden meat. Thus, the criterion of need can be established by a legitimate net benefit that would be foregone if exchanging two goods in different quantities is forbidden. “Need” in this context is avoidance of this opportunity cost.

There are four applications of this important principle:

1. *Bay’ Al-‘arāyā* (trading a quantity of dried dates or grapes for dates or grapes on a palm tree or vine).⁵
2. Sale of jewelry made of precious metals.
3. Sale of manufactured goods.
4. Sale of minted silver coins.

⁵Translator note: *Al-‘arāyā* is the plural of the Arabic word *‘urya*, which refers to a palm tree. The category of *bay’ al-‘arāyā* refers to trading a limited quantity of fresh dates on the palm tree in exchange for dried dates on the ground, which is an exception to the forbidden category of *bay’ al-muzābana*, which refers to the generally forbidden practice of “contentious sales” of knowns for unknowns. This particular practice was permitted based on a prophetic tradition on the authority of Jābir, and restricted to the specific quantity due to being permitted as an exception to the general prohibition of the broader category of trades.

2.1.4 Bay‘ Al-‘arāyā

Ibn Al-Qayim wrote in *I‘lām Al-Muwaqqi‘īn* (2/104): “Within the category of inequality *riba*, transactions that are needed, such as ‘*arāyā*, were permitted, because that which was forbidden as a vehicle for another is less forbidden than that which was forbidden for its own sake.” He continued (p. 105): “As we have seen, inequality *riba* was forbidden to disable a vehicle for a greater evil, and that which is forbidden as a vehicle for another can be permitted based on net benefit, as ‘*arāyā* was permitted as an exemption from the rules of inequality *riba*. Similar exemptions to general rules were applied to prayers after dawn and afternoon prayers; ability to see members of the opposite sex where permitted as an exemption when seeking marriage, or acting as a witness, physician, or contracted worker; and men wearing gold or silk, which was forbidden to prevent a vehicle for mimicking women, which may thus be permitted in cases of need.”

Likewise, the author of *Al-Sharḥ Al-Kabīr ‘lā matn Al-Muqni‘* wrote (see *Al-Mughnī*, 4/151): “*Bay‘ al-muzābana*, which is trading dates on their palm for dates on the ground, was forbidden except in the case of ‘*arāyā*, which is trading fresh dates on their palm in exchange for a similar volume of dried dates, as long as it is less than five measures of volume, in case someone needs to eat fresh dates and does not have money with which to pay. In this regard, there is a consensus that *bay‘ al-muzābana*, which is general trade of fresh dates for dried dates, is not allowed, as it was explicitly forbidden by the Prophet (p). However, most scholars, including Mālik in Madīna, Al-Awzā‘ī in Syria, and Al-Shāfi‘ī and Ibn Al-Mundhir, have opined that ‘*arāyā* is generally permitted. In contrast, Abu Ḥanīfa opined that this sale is not permissible based on the prophetic tradition, because it constitutes trading an unmeasured amount of fresh dates for a measured volume of dried, which is not permissible if both were on the ground. But we can rely on the prophetic tradition narrated by Bukhari and Muslim on the authority of Abu Hurayra that the Prophet (p) permitted ‘*arāyā* in five or fewer measures of volume (*ausuq*). Thus, Ibn Al-Mundhir said that it was he who had forbidden *muzābana* who permitted ‘*arāyā*, and obeying the Prophet (p) has priority over reasoning by analogy. Indeed, the prophetic tradition makes it clear that he (p) gave a license in ‘*arāyā*, which means that it was an exception from a general rule of prohibition, but if the reason for permissibility were no longer to exist, then the license would likewise vanish.”

Thus, we may conclude that ‘*arāyā* is permissible based on five conditions:

1. That the amount traded does not exceed the five measures of volume. There is disagreement over the rule for exactly five measures of volume, and consensus that it is not allowed for any more than five.
2. That the buyer needs to eat the dates fresh. Thus, if the buyer does not to eat it fresh, then he may not buy it in exchange for dry dates. The seller’s need is not considered in this case. Thus, a seller to more than one buyer each of whom needed the fresh dates may sell a total that exceeds the five measures of volume. This is in contrast to the opinions of Abu Bakr and Al-Qaḍī who ruled that this is not permissible. However, we conclude that the rationale for permissibility is the buyer’s need, and use as proof the narration that Maḥmūd ibn Lubayd narrated that he asked Zayd ibn Thābit about their practice of ‘*arāyā*, and the latter reported the names of needy

men from the Anṣār who had complained to the Prophet (p) that fresh dates arrive when they have no money with which to buy it, while they have an excess of dried dates, and he gave them a license to buy the fresh dates to eat them in exchange for the dry dates that they possess. Thus, the reason for the license is the buyer's need, and not the seller's, which means that the latter is not restricted to five measures of volume. Needless to say, if we have considered the need to be the need of both the buyer and the seller, we would have virtually no instances when both needs coincide, and the license would be pointless.

3. That the buyer is not in possession of money with which to buy the fresh dates.
4. That it is traded for an approximately equal amount of dried dates, and the latter must be a known volume, because the narration in Muslim stipulated explicitly that the fresh dates to be eaten by the buyer should be exchanged for an approximately equal amount of dry dates. The meaning of approximate volume here means that the assessor should consider how much a volume of the fresh dates would be once dried, thus trying to approach equality to the extent possible, because approaching equality is the goal in all sales, and the original rule would have been to trade dry dates for dry dates in equal volumes and hand to hand, and not to permit trading fresh dates for dried dates. The last general rule was relaxed in the license, but the other restrictions remain. Al-Qāḍī opined that the first opinion is better, because the one-tenth tax is based on approximate value of dried dates, and the equality in trading dried dates for dried dates was intended for the cases where they were used as store of value, which is not the case when the dried dates are traded for dates meant to be eaten fresh.
5. The exchange must take place during the contract session, as ruled by Al-Shāfi'i, and we do not know of any dissenting opinion, because it is trading dates for dates, which must be subject to all legal rules except those explicitly specified in the *'arāyā* license. Receipt of the two sets of dates is effected by handing over the specified volume for the dried dates and by providing access to the palm trees for the fresh dates. In this regard, it is not necessary to bring the dried dates to the same location as the palm trees. Thus, they can agree on the trade terms, then walk together to the palm trees to give the buyer access thereto, and then walk to where the dried dates are so that the seller may receive them, then it is still considered a single contract session because the two parties have not separated before receipt. In this latter case, one may tell the other that he has sold him the fresh dates on this palm in exchange for a described amount of dried dates, or the other may give him the approximate volume of dried dates and say I bought the fruits of this palm in exchange for this, or any similar procedure. In this regard, receipt of a specific amount is effected through its transport and change of possession, and receipt of a described amount is effected by volume.

We can conclude from the preceding discussion that trading unequal amounts of dates is allowed in the case of *'arāyā* as needed, because the buyer pays in dried dates an amount approximately equal in volume to the fresh dates on the palm tree after they have dried. It is clear that exact equality between the fresh dates and the dried dates cannot be assured, and approximate guesstimates are used in this transaction, making it highly likely that the

traded quantities are not equal. Nevertheless, the transaction was allowed due to need, and based on a prophetic tradition.

2.1.5 Sale of Jewelry (p. 149)

Inequality may also be allowed in this case based on need. Thus, permissible jewelry, such as silver rings or women's gold or silver jewelry may be traded for a different amount of matching gold or silver. In this case, the difference in amount is compensation for the workmanship in making the jewelry. Otherwise, no sane person would trade gold jewelry for the same weight of gold, because the value of workmanship would thus be wasted.

Ibn Al-Qayim wrote the following on this problem in *I'lam Al-Muwaqqi'in* (2/104–7): “If gold or silver was manufactured into [forbidden] pots, then its sale for money of the same or other genus is forbidden. This is what 'Ubāda had criticized Mu'āwiya for doing, i.e. trading forbidden items for money.⁶ In contrast, if the jewelry was permissible, such as silver rings or women's jewelry, or permissible ornaments on weapons, and the like, then no sane person would trade such jewelry for its equal in weight, because that would waste the workmanship. The Legislator was much wiser than this, and the Law would not forbid such trade, because people need it. The only obvious way around this is to say that it cannot be traded for money in the same genus, but should be sold for another genus, which would introduce hardship that the Law would also avoid, because most people may not have gold with which to buy silver jewelry, and the jeweler would not accept wheat, barley, or clothes as price for his work. Moreover, creating such roundabout ways to circumvent prohibition would introduce legal stratagems to help those facing such hardships, and the legal stratagems are themselves forbidden.

In this regard, the Legislator has permitted trading fresh dates for dried dates when the former was desired, and this is a lesser need than the need to trade jewelry. Thus, the only reasonable opinion that remains is to permit trading jewelry like other goods, because forbidding their purchase with silver coins would spoil people's business. Thus, permissible jewelry is treated like other permissible manufactured products and goods, and was no longer subject to the rules of money. It is for this reason that no *zakāh* is obligatory on such jewelry, and the rules of *riba* are not applied when trading them for money... This is further illuminated by the fact that none of the Prophet's companions forbade trading jewelry except for other genera or in the same weight, and all narrations that we have relate to currency exchange.⁷

⁶It was narrated in *Al-Rawḍ Al-Naḍīr* (3/229): Abi Al-Ash'ath narrated that we engaged in a battle with Mu'āwiya leading, and we won many spoils, including silver pots. Mu'āwiya ordered someone to sell the latter, but when 'Ubāda ibn Al-Ṣāmit heard that, he stood up and said that he had heard the Prophet (p) forbid selling gold for gold or silver for new silver. When Mu'āwiya heard of this, he gave a speech in which he expressed his surprise that some men speak on the authority of the Prophet (p) with words that his companions including Mu'āwiya had never heard from him. 'Ubāda stood up and repeated the narration, saying that he will narrate what he had heard from the Prophet (p) even if Mu'āwiya does not like what is said, and that he does not care to accompany his army any more. It was narrated that 'Umar then wrote to Mu'āwiya ordering him not to sell silver except in equal weight, and told 'Ubāda to return home, because the land was not the same without him and his like.

⁷However, it was narrated in *Al-Rawḍ Al-Naḍīr* (3/226): Al-Bayhaqī narrated in his *Sunan* on the authority of Mujāhid that the latter was circumambulating with Ibn 'Umar, when a jeweler came and told him that he

This is further explained by the fact that inequality *riba* was forbidden to block an avenue for greater sin, as explained earlier, and that which is forbidden to block the avenue for another may be permitted due to net benefit, as *‘arāyā* was exempted from the rules of prohibition of inequality *riba*. The only new addition in this case is making the increment compensation for permissible workmanship that are assessed monetarily. In this regard, how can the scholars that allow legal stratagems to sell ten plus a worthless piece of cloth for fifteen, and argue that the extra five are in exchange for that piece of cloth, how can they criticize selling jewelry for its weight plus an amount to compensate for workmanship? How can the Law that is virtuous and complete in its wisdom, justice, and mercy permit the first and forbid the second? Is this not the opposite of what is logical, and to benefit or any other form of analysis? Others may argue that characteristics of goods cannot justify an increase, and that if it were, then high quality silver or dates could be traded for more of the same genus but lower quality. They argue, thus, that the prohibition of the latter makes it impermissible to increase price based on characteristics of the good. We reply that the difference in this case is that human workmanship deserves a wage, and thus monetary compensation, in contrast to differences in quality due to forces beyond human control or action. The Legislator wisely forbade compensation for the latter difference, because it would be conducive to the forbidden trading in different amounts, because exact equality of quality is impossible, and wise people will only trade one good for another because of the differences (why would they trade goods that are identical?). Thus, if the law allowed compensation for any natural difference in quality, then it would not forbid inequality *riba*. This is to be contrasted with human workmanship, for which compensation was allowed. The Legislator does not order the jeweler to waste his workmanship by receiving no compensation thereof, nor does He order him not to work as a jeweler, nor does He tell him to find a legal stratagem to effect selling it for more than its weight. Moreover, He never ordered the jeweler to trade his product for a different genus, nor forbid trading anything for another in the same genus.”

2.1.6 Sale of Other Manufactured Goods (p. 150)

One may reason by analogy from permissibility of selling jewelry for a different weight of the same precious metal, when needed, to conclude that any other good containing human workmanship may be traded for a different quantity of the same good.

For example, some schools of jurisprudence allow trading loaves of bread for other loaves in different quantities. Ibn Rushd wrote the following in *Bidāyat Al-Mujtabid* (2/114–5): “Scholars have disagreed in this chapter over trades that are originally forbidden due to *riba*, such as trading bread for bread. Abu Ḥanīfa opined that there is no harm in trading bread for bread of equal or different amounts, arguing that workmanship has changed its genus away from the original one conducive to *riba*. Al-Shāfi‘i opined that trading bread for bread is not allowed in equal or different quantities, because its transformation through

makes gold jewelry and then sells it for more than its weight, considering the difference to be compensation for his workmanship. ‘Abdullah ibn ‘Umar forbade him from doing this, but the jeweler kept asking and ‘Abdullah kept forbidding him, until they reached the doorway of the mosque, or to his ride, then ‘Abdullah ibn ‘Umar said: “A dinar [gold coin] for a dinar, and a dirham [silver coin] for a dirham, with no difference in amount, this was what the Prophet (p) ordered us to do, and this is what we order you.”

workmanship has made it impossible to determine equality. Two opinions were reported for Mālik, the more common one allows trading in equal quantity, and the less common one allows it in equal or different quantities. Mālik also opined that bread dough may be traded in equal quantities. The main point of disagreement is whether or not workmanship transforms the good away from one conducive to *riba*. Abu Ḥanīfa chose the former view, whereas Mālik and Al-Shāfi‘i chose the latter. Scholars also disagreed over whether or not equality can be ascertained when trading bread for bread. Thus, Mālik allowed equality in trading bread or meat to be determined approximately based on weight. If a good conducive to *riba* is traded in its original form for a quantity that was manufactured, then Mālik opined that the genus is thus transformed by workmanship in most cases, allowing trade in different quantities, but not in all cases. Details of Mālik’s views on this are difficult to spell out in detail. For example, he deemed roasted and cooked meats to be of the same genus, but fried wheat and unfried to be of different genera, and his students have tried to explain the differences. What is apparent in this school is that there is no general rule that can be applied to all cases. Therefore, Al-Bāji sought to enumerate all cases in *Al-Muntaqā*. It is also difficult to determine what benefits determine genera – e.g. animals, plants, and merchandise – for which trading is permissible, and genera for which it is not. The reason for this complexity of opinions is that a person may be asked about similar problems at different times, and if there is no general law to apply to all cases, then he gives his opinion in each case, and may thus issue different opinions. Later, someone may try to combine all of those opinions under some general rules, but this may be very difficult, as we can see in their books.”⁸

Ibn Al-Qayim writes on this topic in *I‘lām Al-Muwaqqi‘in* (2/108): “On the four commodities [tr: in the tradition of the six commodities conducive to *riba*], inference can be made that any transformation that makes them inedible makes them not conducive to *riba*. If the transformed commodity is still edible, then it is considered a genus in itself, and cannot be sold for its same genus in different amounts, such as flour for flour or bread for bread. In contrast, if two new genera are generated from one genus, then trading them in different quantities is allowed, such as bread for pastry, because the workmanship has value that should not be wasted for the worker, and there is no legal proof to prohibit such trades in the Qur’ān, prophetic tradition, consensus, or valid analogical reasoning. In this regard, only what God forbade is forbidden, just as no worship is valid unless legislated by God; and forbidding that which is permissible is equally wrong to permitting that which is forbidden.”

⁸It is appropriate for Ibn Rusd to write this, because he had paid great attention to covering the root causes for opinions as briefly and generally as possible in his book *Bidāyat Al-Mujtahid wa Nihāyat Al-Muqtaṣid*, which is one of the most respected books on Islamic jurisprudence. In his view, a jurist was not one who memorized many answers, but one who could determine [tr: via induction] the general rules for answers and use them to infer new opinions [tr: via deduction]. We can read this view in his book: “We have written this book to assist the jurist to reach the station of inference in this craft once he has attained sufficient knowledge in grammar, language, and legal theory. The volume of this book should be more than sufficient for the scholar to reach this station, thus earning the title of jurist (*faqīh*) not by memorizing juristic problems, however many, like some in our time who pretend to be jurists weigh the degree of scholarship by the number of memorized problems. The latter are like one who thinks that the best cobbler is the one who owns many shoes, not the one who knows how to make shoes. Needless to say, the one who has many shoes may face a person with sufficiently irregular feet and have to approach a proper cobbler to make a shoe for that person. This is the example of most pretenders to jurisprudence in our time.” (*Bidāyat Al-Mujtahid* 2/162–3)

2.1.7 Trading Minted Silver and Gold Coins

On this subject, Ibn Al-Qayim determined that the public benefit from minting coins does not increase the monetary value of the metal. Thus, he opined that it is not permissible to trade minted silver coins for a different weight of silver, because minting does not merit compensation. Thus, he wrote in *I‘lām Al-Muwaqqi‘in* (2/107): “Minting as workmanship for public benefit does not merit financial value, because the ruler mints it for public interest, even if the minter collects a wage for the work, but not to create additional value that may be traded. Thus, minting has conventionally been deemed not to add value to the minted metal, and any increase in trade would invalidate it, and undermine the benefit for which it was minted, by making the minted coins yet another commodity for which value must be determined by another money. Thus, silver and silver coins are all deemed the same, and should be traded for equal weight.”

In contrast, Ibn Rushd wrote in *Bidāyat Al-Mujtahid* (2/163–4): “The majority of scholars have agreed that precious metals in raw form or as jewelry should not be sold for the same genus in different quantities, based on the prophetic traditions listed above. However, Mu‘āwiya allowed trading the metal and its jewelry in different quantities to compensate for workmanship. It is also narrated that Mālik was asked about a man who brings silver to the mint, and pays them a fee for minting, immediately collecting coins of the same weight as the silver that he brought, and he replied that this is permitted if it is needed to avoid missing the market, and his student Ibn Al-Qāsim agreed with this opinion. However, Mālik’s student Ibn Wahb, and ‘Issa ibn Dīnār and the majority of scholars disagreed.”

We note that Ibn Rushd has reported that Mālik and his student Ibn Al-Qāsim had permitted trading silver coins for a different quantity of silver, with the difference being stipulated as a fee for minting even though he does not wait for the actual minting of his own silver, lest he may miss the market. Thus, this need to avoid wasting a net benefit justified trading minted silver for a different amount of silver.

Al-Qurṭubī explained this in his exegesis *Al-Jāmi‘ li-Abkām Al-Qur‘ān* (3/351): “We should not pay attention to the claim that necessity permitted the practice that was narrated on the authority of many of Mālik’s students, some of whom attributed the opinion to Mālik himself, about a merchant who needs minted coins and fears missing the market, so he goes to a mint and asks them to take his silver or gold and give him silver or gold coins, and pays them a fee for their work. Ibn Al-‘Arabi reported a similar opinion in other contexts, claiming that Mālik was lenient on this practice, which essentially allowed one to sell silver that weighs the same as one hundred and five minted silver coins in exchange for one hundred coins, but this is exactly the forbidden *riba*. Rather, Mālik permitted this practice because had the merchant told the worker to mint his coins for a fee and waited for him to mint the coins and then paid him the fee, it would have been permitted. Thus, all that Mālik has done was to allow the exchange that would thus take place after the minting to take place before the minting. Mālik thus ruled based on the consequence of the transaction, but other jurists rejected his opinion. Ibn Al-‘Arabi concluded that Mālik’s argument was valid. However, Abu ‘Umar said that this was precisely the *riba* that the Prophet (p) had forbidden by saying that any increase or diminution would constitute *riba*, and Ibn Wahb likewise criticized Mālik for this opinion and rejected it. In the

meantime, Al-Abhari considered this permissible leniency to enable commerce and help the merchant not to miss the market.”

Thus, we have shown a number of applications wherein the scope of prohibition of inequality *riba* expands with suspicion, as well as other cases wherein need for certain transactions has led to permission of inequality *riba*, such as in trading fresh dates for dried dates, trading jewelry for the same metal, trading manufactured goods, and trading minted silver and gold coins.

2.2 The Approach that Distinguishes between *Riba* Mentioned in The Qur’ān and That Mentioned In prophetic Traditions – The Former Is Manifest and the Latter Is Hidden (p. 153)

As noted previously, there are three types of *riba*:

1. The *riba* of pre-Islamic Arabian age of ignorance, which is the *riba* mentioned in the Qur’ān. In its primary form, this transaction takes the form of the creditor telling the debtor at the time the debt matures: “Either pay now or increase the debt for further deferment.”
2. The deferment *riba* mentioned in the prophetic tradition. It is much broader in scope than the pre-Islamic *riba*, and differs substantially in its forms, as we have seen, because it applies for Ḥanafīs to deferred sales of goods measured by volume for others measured by weight, goods measured by weight for others measured by weight, or goods of the same genus, with deferment, whether or not the quantities are equal. For Shāfi’īs, this type of *riba* invalidates deferred trading of foodstuffs for foodstuffs or money for money, even in equal amounts.
3. Inequality *riba* mentioned in the prophetic tradition. For Ḥanafīs this *riba* invalidates trading unequal amounts of goods measured by weight or volume. For the Shāfi’īs, it invalidates trading unequal amounts of the same genus in food or money, as detailed above.

2.2.1 Ibn Al-Qayim’s Distinctions between The Three Types of *Riba*

As we have seen, Ibn Al-Qayim distinguished between the manifest and hidden types of *riba*. He defined the manifest *riba* in *I‘lam Al-Muwaqqi‘in* (2/99) thus: “Deferment *riba* is what they practiced before Islam, for example, by deferring a person’s matured debt and increasing its amount, with further increases for further deferment, until an initial debt of one hundred becomes multiplied to thousands.” Thus, it is clear that Ibn Qayim considered the manifest *riba* to be the deferment *riba* that they customarily practiced before Islam. In contrast, the hidden *riba* was forbidden because it was a vehicle toward the manifest *riba*, i.e. the inequality *riba*” (2/100).

Now we see that Ibn Al-Qayim makes the first (pre-Islamic) of our three forms of *riba* the manifest type, and the third (inequality) *riba* the hidden type. But what of the second form

of *riba*, which is the deferment *riba* mentioned in prophetic tradition? Does he classify it as manifest, and hence similar to the pre-Islamic *riba*, or hidden, and hence similar to inequality *riba*? It appears that Ibn Al-Qayim classified both the second deferment *riba* and the first pre-Islamic *riba* in the same category of manifest *riba*, without explicitly saying so. This follows because he wrote about deferment *riba* as the manifest *riba*, which is the term that he used for pre-Islamic as well as the deferment *riba* mentioned in prophetic tradition.

2.2.2 Ibn Al-Qayim's Implicit Legislation via Classification

We have no choice but to point out the legislative nature of Ibn Al-Qayim's classification. By classifying deferment *riba* with pre-Islamic *riba*, he has inferred a single legal status for both types, even though the sources of prohibition are different: the Qur'an for pre-Islamic *riba* and the prophetic tradition for deferment *riba*. By doing so, he has also distinguished between the legal statuses of deferment and inequality *riba*, making the former manifest and the latter hidden, even though the two were forbidden in the same prophetic tradition.

There is no doubt that this is unjustified legislation. Either all three types of *riba* should be given the same legal status, if the prohibition based on prophetic tradition is equal to that derived from the Qur'an, as some jurists of various schools have opined, or he should have distinguished between prohibition derived from the Qur'an and that derived from prophetic tradition, making pre-Islamic *riba* the only type that is manifest, and rendering the other two hidden. Indeed, this last opinion, which distinguishes between the pre-Islamic *riba* mentioned in the Qur'an, on the one hand, and the other two forms of deferred and inequality *riba* mentioned in prophetic tradition on the other, is the one expressed by a number of modern jurists, led by the respected teacher Rashīd Riḍa.

2.2.3 Distinguishing between *Riba* Mentioned in Qur'an and *Riba* Mentioned in prophetic Tradition (p. 154)

In his treatise on *riba*, Rashīd Riḍa opined that the only forbidden *riba* is pre-Islamic *riba*, which was mentioned in the Qur'an, and which can ruin the debtor when he is given the option to pay or increase the debt, most often forcing him to increase the debt. Thus, the debt continues to grow until the debtor is bankrupt. This is the malignant *riba*, which makes understandable the extreme warning that accompanied its prohibition in the Qur'an. This is, therefore, the manifest *riba* that was forbidden for its own sake, not to prevent means for effecting another. It is therefore not permissible to use except in cases of extreme necessity that rises to the level which allows consuming otherwise forbidden meat.

This leaves the two types of deferment and inequality *riba* mentioned in the prophetic tradition. Rashīd Riḍa opined that those types of *riba* were forbidden in prophetic tradition to prevent avenues for effecting the definitively forbidden *riba* of pre-Islamic Arabia, and noted that this avenue is probabilistic, not definitive. Thus, he ruled that trading the six commodities for the same genus in equal or different quantities, and on the spot or with deferment, in addition to investment in commercial corporations, which does not require

juristic conditions, he considered all this not to be part of the forbidden *riba*: “It appears, as he wrote, that the reason for prohibiting these trades was to block avenues for effecting the definitively forbidden *riba*, and such avenues are probabilistic, not definitive. In this regard, we must note that some admonitions in prophetic tradition indicate prohibition, while others indicate reprehensibility, and others still are merely advisory, not religiously legislative. To differentiate between these different types, we rely on specific proofs, general legal principles, or considering conflicting texts and choosing the stronger. Examples of this include prohibition of eating carnivorous animals and birds, even though the Qur’ān has made it clear that the only forbidden meats are those of dead animals, dried blood, pork, and that which was dedicated to a deity other than God. According to the school of Mālik, therefore, it is established that the prophetic prohibition of these other meats merely indicates that their consumption is reprehensible, in order to combine this text with the definitive texts of the Qur’ān. We have further explained that some narrations that indicate prohibition may merely suggest that the narrator understood admonition to mean prohibition. Examples of this include the tradition on the authority of ‘Ubāda, which admonishes against trading monies or foodstuffs mentioned in this tradition except hand to hand and in equal amounts if they are of the same genus, and hand to hand only if they are of different genera. As proof that this admonition was not meant as a prohibition for the transaction in itself is the established tradition that permits ‘arāya sales (of fresh dates for dry dates), and trading a small amount of high quality dates for a larger amount of low quality dates by specifying their monetary prices in the contract.”⁹

Thus, it is clear that Rashīd Riḍa considered only pre-Islamic *riba* to be the manifest one, forbidden for its own sake, and thus allowed only under extreme necessity equivalent to that which allows eating otherwise forbidden meat. This means demotion of the other two types of *riba*: deferment and inequality, which were mentioned in prophetic tradition, to a lower level of prohibition. In this regard, his discussion suggests that he considered the latter two types of *riba* to be deemed reprehensible by the prophetic tradition, rather than forbidden, as admonition against consumption of carnivore meat was considered. This means that Riḍa’s view was much closer to that of Ibn ‘Abbās, as shown below.

Needless to say, this view that admonishment against deferment and inequality *riba* in the prophetic tradition was an indication of reprehensibility rather than outright prohibition disagrees with the consensus of juristic schools over the centuries. Indeed, Prof. Zakiuddin Badawi correctly disagreed with this opinion in his article in *Law and Economics Journal* (year 9, p. 387 onwards), writing: “In summary, Rashīd Riḍa’s opinion, as discussed above, restricts the forbidden *riba* to its pre-Islamic form, which excludes loans on which interest is stipulated at inception, trading any of the six goods in the prophetic tradition for the same genus, and other transactions that the scholars of the four dominant [Sunni] schools of jurisprudence forbade by analogy to the six commodities tradition. We note that although this opinion is correct for the case of interest-bearing loans and transactions that jurists in various ways inferred by analogy to the six commodities, in various ways and with many disagreements, which suggests that such legal analysis cannot reach definitive conclusions on which one can feel comfortable regarding religious prohibition, we still

⁹Rashīd Riḍa’s treatise on *riba* (80–84) as cited in the article of Prof. Zakiuddin Badawi (432–3) in *Law and Economics journal*, year 9.

disagree with him on the inclusion of the six commodities themselves in forbidden *riba*. The last conclusion follows from the fact that even though we agree that the prohibition of trading those six commodities one for the same was forbidden as a means for another, they were prohibited explicitly in prophetic traditions that are not conducive to misunderstanding. In this regard, his claim that the prophetic tradition forbade this trading of the six commodities to indicate its reprehensibility rather than outright prohibition is contrary to the clear meaning of the text and the understanding of the Prophet's companions. In this regard, the tradition explicitly forbade those transactions and used the term *riba*, which was known to have been deemed sinful and its transactors were warned severely. If we were to accept that the term *riba* was used in this context metaphorically, because such trading is used as avenues for *riba*, but are not *riba* in themselves, we should still accept that the legislator has wise intent in assigning to it the prohibition of *riba*, even if its prohibition is deemed lower than that of the true *riba*, thus allowing us to excuse it in cases of need, as argued by Ibn Al-Qayim.”¹⁰

It appears that we need to go further than Prof. Zakiyuddin's analysis, to argue that deferment and inequality *riba* are not restricted to the six commodities listed in traditions, and we should accept the inferences of jurists of various schools on the extension to other goods. Indeed, this is what juristic consensus has reached, that *riba* in all these forms is forbidden as a religious prohibition, rather than merely reprehensible. However, we argue that it was forbidden as a prohibition of means not ends. Thus, inequality *riba* is undoubtedly, as we have shown, a vehicle for deferment *riba*, and the latter is a vehicle for pre-Islamic *riba*, for example, whenever a creditor extends the debt at its maturity in exchange for additional interest. Thus, both inequality and deferment *riba* are vehicles for pre-Islamic *riba*, which were forbidden by the Prophet (p) to prevent the latter detestable kind. Thus, their prohibition is one of means and not ends.

2.3 The Approach That Only Forbids Pre-Islamic *Riba* Mentioned in the Qur'ān

2.3.1 There Is No *Riba* Without Deferment

Those who follow this view, led by Ibn 'Abbās, who narrated on the authority of Usama that the Prophet (p) said: “there is no *riba* except with deferment,” forbid only deferment *riba*, and do not forbid inequality *riba*.

Some have argued that Ibn 'Abbās had not originally heard the *riba* tradition narrated by Abu Sa'īd Al-Khudriy, and changed his view on non-prohibition of inequality *riba* once he heard it. However, this is doubtful, as we shall see that Al-Sarakhsī narrated in *Al-Mabsūt* that Abu Sa'īd himself went to Ibn 'Abbās, and a vigorous debate ensued between them on this issue of inequality *riba*, which the former forbade based on his narrated tradition and Ibn 'Abbās permitted based on the tradition on the authority of Usama, that “there is

¹⁰*Journal of Law and Economics* (year 9, pp. 433-4). Note in this context that the argument of the President of the Islamic Council in Bandung, Java, that the traditions of *riba* were contrived to prevent them from trading in the most common commodities, and thus to cause them economic harm, was thoroughly debunked by Profs. Al-Jaziri and Zakiyuddin, *ibid*, pp. 436-446.

no *riba* except with deferment.” This debate resulted in Abu Sa‘id boycotting Ibn ‘Abbās as long as he held this opinion.

It appears that the correct view is that narrated by Al-Subki in *Takmilat Al-Majmū‘ Sharḥ Al-Muhadhdhab* (10/38) on the authority of Al-Shāfi‘i that the opinion of Ibn ‘Abbās not to forbid inequality *riba* was the opinion of the people of Makka, perhaps because they conducted their trade in a manner that made inequality *riba* prohibition very difficult. There is no doubt that residents of Makka would have learned of the tradition regarding inequality *riba*, but they understood it to indicate reprehensibility rather than prohibition.

2.3.2 In This Approach, Deferment *Riba* Is Only Pre-Islamic *Riba*

Moreover, followers of this approach restrict deferment *riba* to its pre-Islamic form, to the exclusion of the form indicated at the end of the prophetic tradition: “If the genera are different, then trade as you wish, as long as it is hand to hand.” The latter indicated that inequality was permissible when trading different genera one for another, but deferment was not allowed.

As we have seen earlier, the other form of deferment *riba*, which is different from that indicated in this tradition, is the pre-Islamic kind explained as follows by Ibn ‘Abbās: “When a debt had matured and the creditor demanded repayment, the debtor would say give me more time and I give you more money. If someone complained that this was *riba*, they would say that increasing the price in sales and for deferment of debt are the same,” (Al-Jaṣṣās, *Aḥkām Al-Qur’ān*, 1/464). In this regard, the *riba* that is mentioned in Qur’ān is exclusively the latter pre-Islamic kind. The Qur’ān pointed to their equation of price increments in sales and debt increment for deferment: “That is because they said that trade is the same as *riba*, but God has permitted trade and forbidden *riba*” [The Cow: 275].

Thus, Ibn ‘Abbās and a number of the Prophet’s companions and followers, including ‘Abdullah ibn Mas‘ūd, ‘Abdullah ibn Al-Zubayr, Usama ibn Zayd, ‘Aṭā’ ibn Rabaḥ, Sa‘id and ‘Urwah, all deemed pre-Islamic *riba* to be the only forbidden kind. This is the form of *riba* that was known among Arabs, and to which the Prophet (p) referred in his farewell pilgrimage when he said: “Every *riba* is voided, and the first *riba* that I void is that of Al-‘Abbās ibn ‘Abdulmuṭṭalib; you may keep your principals, without inflicting or suffering injustice.” The Prophet (p) also referred to this type of *riba* when he said in the tradition narrated by Usama: “There is no *riba* without deferment.” The Qur’ān referred to “the” *riba* that was familiar before Islam. Ibn ‘Abbās argued in this regard that the Qur’ān clearly referred to deferment in various verses “then he may keep his principal,” “leave whatever remains of *riba*,” “if the debtor has difficulty, then defer his debt until he can pay,” “if you repent then you may keep your principals,” all of which refer to the type of deferment *riba* that was known before Islam, and other types of transactions retain their default status of permissibility. He further rejected the view that other transactions were forbidden in prophetic tradition, because that would narrow the scope of the apparent meaning of the Qur’ān based on a single-person narration, which is not allowed; Al-Fakhr Al-Rāzī, *Mafātih Al-Ghayb* (352).

2.3.3 Jurists' Responses to Ibn 'Abbās (p.157)

There have been numerous and multifaceted responses to the approach of Ibn 'Abbās, of which we shall be content to list those listed by Ibn Rushd in *Bidāyat Al-Mujtahid* and Al-Subki in *Takmilat Al-Majmū' Sharḥ Al-Muhadhdhab*.

Ibn Rushd wrote the following in *Bidāyat Al-Mujtahid* (2/163): “Scholars have reached a consensus that trading gold for gold or silver for silver is only allowed in equal quantities and on the spot. The only exceptions are the narrated opinions of Ibn 'Abbās and his Meccan followers, who allowed such trades in different quantities, while still forbidding deferment. Ibn 'Abbās chose this opinion based on the narration of Usama Ibn Zayd that the Prophet (p) said: “There is no *riba* except with deferment,” and this is a valid tradition. Thus, Ibn 'Abbās adopted the apparent meaning of this tradition, and applied the prohibition of *riba* only in cases of deferment. However, the majority of scholars have followed the tradition narrated by Mālik on the authority of Nāfi' on the authority of Abu Sa'īd Al-Khudriy that the Prophet (p) said: “Do not trade gold for gold except in equal quantities, without difference, and without deferment,” and this is one of the most valid traditions narrated in this area.

The tradition on the authority of 'Ubādah ibn Al-Ṣāmit is also valid in this area, and, thus, the majority of scholars followed these texts, because they are explicitly addressing this issue [of inequality *riba*], while both narrations of the tradition of Ibn 'Abbās do not directly address inequality without deferment. The first narration is “*riba* is only in deferment,” and permissibility of inequality without deferment may only be inferred from the import of the omission in this text. This method of inference is weak, especially when there is another text that contradicts that inference. The second narration is “there is no *riba* except with deferment,” which is stronger than the first, because it states explicitly that any transaction without deferment cannot constitute *riba*. However, it is possible that he meant to say that the vast majority of *riba* includes deferment, and this uncertainty together with the other explicit texts suggest interpreting this text in a way that eliminates contradiction.”

We can summarize what Al-Subki wrote in *Takmilat Al-Majmū' Sharḥ Al-Muhadhdhab* (10/50–) as follows:

1. The prophetic tradition that prohibits inequality and deferment *riba* is explicit, definitive, and well known. The preponderance of this tradition is thus sufficient to restrict the apparent meaning of the Qur'ān. Thus, there is no difference between pre-Islamic, deferment, and inequality *riba*, because they are all forbidden in the Qur'ān, which used the term *riba* in a general sense that is specified and defined in prophetic tradition, c.f. Al-Jaṣṣāṣ, *Aḥkām Al-Qur'ān* (1/464) and Al-Fakhr Al-Rāzi, *Mafātiḥ Al-Ghayb* (357).
2. It is possible to reinterpret the tradition of Usama “*riba* is only with deferment” using the argument of Al-Shāfi'i that it is possible that the narrator heard the Prophet (p) being asked about *riba* in two different genera, such as gold for silver, or dates for wheat, and said “*riba* is only with deferment,” then Usama memorized and narrated the tradition without narrating the specific problem in which this was the ruling. It

is also possible to reinterpret it the way Al-Mawirdi did, for the case of trading equal quantities of the same genus, which is allowed on the spot but not with deferment. A third reinterpretation would be that the question related to trading goods not conducive to *riba*, such as trading debts for debts, “deferred for deferred,” which the Prophet (p) forbade. Finally, it is possible to argue that the tradition narrated by Usama was abrogated by the one narrated by Abu Sa‘id Al-Khudriy.

3. Even if the tradition “there is no *riba* without deferment” cannot be reinterpreted or deemed abrogated, it may still be reconciled with the tradition of Abu Sa‘id Al-Khudriy following the argument of Al-Ḥafīz ibn Ḥajar in *Fath Al-Bāri Sharḥ Ṣaḥīḥ Al-Bukhārī*. The latter reported that scholars agreed that Usama’s tradition is valid, but disagreed on how to reconcile it with that of Abu Sa‘id: Some said that it might have been abrogated, but abrogation cannot be probable. Others argued that the statement “no *riba*” referred to the worst types of *riba* for which warnings were issued of severe punishment, as Arabs sometimes say “there is no man or no scholar except Zayd,” to indicate figuratively that he is the ultimate in masculinity or scholarship. Finally, denial of the prohibition of inequality *riba* in the tradition of Usama is inferred rather than explicit, thus the tradition of Abu Sa‘id is given priority because it was explicit, and we reinterpret the tradition of Usama to be referring to the worst types of *riba*, as argued above.
4. Some of the Prophet’s companions who had initially accepted the opinion of Ibn ‘Abbās were established later to have changed their minds, including Ibn ‘Umar and Ibn Mas‘ūd, and there are even some disputed narrations that Ibn ‘Abbās himself had changed his mind. Al-Sarakhsi reported in *Al-Mabsūṭ* (2/111–2) the story that Ibn ‘Abbās may have changed his mind: “The prohibition of inequality in exchange [of goods conducive to *riba*] is the view of the majority of the Prophet’s companions (r), except for the narration that Ibn ‘Abbās (r) allowed it. This view should not be given weight, because the companions (r) did not accept his juristic inference on this point, based on the opinion and narration of Abu Sa‘id Al-Khudriy confronting him and saying: ‘O, Ibn ‘Abbās, how long will you continue to allow people to devour *riba*? Have you spent time with the Prophet (p) when we were not there, or heard from him something other than what we have heard?’ Ibn ‘Abbās replied that he had heard from Usama ibn Zayd that the Prophet (p) said ‘there is no *riba* except with deferment.’ Abu Sa‘id said: ‘By God, I will not be in the same building with you as long as you persist on this opinion.’ Jabir ibn Zayd said that Ibn ‘Abbās (r) changed his mind before he died on the two issues of currency exchange and timed marriage. Even if he had not changed his mind, the consensus of the followers in the next generation would negate his view, and that is why we said we should not give it any weight. The preferred reinterpretation of the tradition on the authority of Usama ibn Zayd (r) is that the Prophet (p) was asked about trading wheat for barley, or gold for silver, and said ‘there is no *riba* without deferment’ based on the context of the question. So, it appears that the narrator may have heard the last statement without hearing the question, or he may not have paid attention to narrate the question.”

It is clear that Ibn ‘Abbās’s reversal of opinion on the prohibition of inequality *riba* is

doubtful. In this regard, Sa‘id ibn Jubayr narrated that Ibn ‘Abbās said: “There was never any *riba* in take this and give me that,” and Sa‘id ibn Jubayr swore an oath by God that Ibn ‘Abbās never changed his opinion on this.

3 The Appropriate Attitude of Islamic Jurisprudence toward *Riba* in The Current Era (p. 159)

There have been a number of divergent views on the position that Islamic jurisprudence should take regarding *riba* in the current era. It shall suffice for us to review two opposing trends: the first keeps the scope of *riba* as broad as it has been in classical jurisprudence, and the other restricting its scope almost to the point of eliminating it. Next, we review what we deem to be a reasonable position for contemporary Islamic jurisprudence on the issue of *riba*. Finally, we close the chapter by explaining the actual position that Arab civil codes have taken regarding *riba*.

3.1 Two Conflicting Views on *Riba* in The Current Era

3.1.1 The Issue of *Riba* at The Paris Islamic Jurisprudence Conference, 1951

The issue of *riba* was one of the important topics discussed at the Paris Islamic Jurisprudence Conference in 1951. Two opposing approaches emerged at the event. The first aimed to continue the classical juristic approach, which does not distinguish between different types of *riba*, and deems them all to be categorically forbidden. This approach was represented by Prof. Muhammad Abdullah Draz during his lecture at the conference. The opposing approach, which argued that economic conditions under which *riba* had been forbidden have been transformed fundamentally, and thus the contemporary rulings on *riba* must be different from historical ones, was represented by Prof. Ma‘rūf Al-Dawālībī in his lecture.

3.1.2 The Approach that Aims to Preserve Classical Juristic Rulings on *Riba*

Prof. Draz narrated the well known prophetic tradition on *riba*, and noted that classical schools of jurisprudence deemed the six commodities mentioned therein to be examples of a general rule that applies to all materials necessary for life – classified by most jurists into monies and foodstuffs.

He proceeded to argue (pp. 14-15 of his lecture notes): “Regardless of the differences in opinions on detailed rulings, the general principle considers three different types of transactions: (i) exchanges of two goods of the same genus, such as gold for gold, for which two conditions must apply – equality in amount and spot exchange without any deferment; (ii) exchanges of two goods of different genera but in the same category, such as gold for silver or wheat for barley, in which only the condition of spot exchange must hold, but inequality is allowed; and (iii) exchanges of goods of different genera and categories, such as

silver for food, in which case there are no restrictions. Thus, the more different the goods being exchanged, thus reducing suspicion that the intention was interest-based lending, the greater the freedom in exchange that are afforded by Shari‘a, ultimately allowing free exchange subject only to the general principles of truthfulness and honesty. In contrast, the more similar the goods being exchanged, the more we find the Legislator taking reasonable precautions based on the possibility that the intention was to effect *riba*. For example, while allowing differences in quantity when trading goods of different genera, deferment was forbidden to prevent the means to effecting forbidden *riba* under the guise of sales. It is even clearer when the two goods in exchange are of the same type, possibly of different characteristics and values, otherwise trade would be meaningless, to see that the wisdom from prohibition of deferment is to avoid the forbidden idea of allowing loans under the guise of sales.”

Prof. Draz proceeded to argue that there are several strong foundations for the prohibition of *riba* of all forms. Among those is the moral principle that permits profits in commutative transactions, i.e. sales, but does not permit them in non-commutative dealings such as loans. In addition, there is a social argument that guaranteeing a profit margin for the lender without any guaranteed profit for the borrower would give an advantage to capital over labor, which expands the gap between social classes, and reduces the potential for equality of opportunity. In this regard, smaller socioeconomic gaps are more conducive to unity. Thus, he argued: “One of the clear principles in Qur’anic legislation, and in every social legislation worthy of such a title, is to prevent favoring capital at the expense of the toiling masses, and to aim for greater equality and harmony between members of society. Thus, the Qur’an has charted this policy with few words that have significant implications: ‘So that [wealth] would not be a circuit among your rich’ [The Crowding: 7]” (p. 20).

Finally, he argued, there is an economic principle that supports this view: Because “through the loan contract, labor and capital are held in the possession of the same person, without any connection between the lender and lent capital, which is managed by the borrower who takes full responsibility for profits or losses. Thus, even if the borrowed capital were to diminish or vanish, it would diminish the borrower’s property. Thus, if we insist to give the lender a share in the resulting profit, we must likewise give him a share in any potential losses, because every right must be balanced by an obligation, as the prophetic wisdom put it: ‘profit is commensurate with risk.’ The alternative of allowing the balance to tip on one side only would be contrary to nature. . . . Once we accept giving the capitalist a share in both profits and losses, then we have transitioned from the category of loans to a different contract, which is true partnership between capital and labor. This type of partnership was not ignored in Islamic jurisprudence, which regulated it under the titles of *muḍā‘araba* and *qirād*. For the parties to agree to these regulations, they must possess moral courage to face all future possibilities, which is a virtue that usurers lack, because they seek profits without risk, which is contrary to the norms of life. Thus, if we follow the strictest economic principles, we can choose one of two systems: one in which the capitalist stands with the worker, sharing in profits and losses; or one in which he shares in neither profits nor losses. No third possibility exists that would retain justice.” (p. 21)

Prof. Draz then progressed to the most important and practical issue in his lecture: “The second issue of rulings on *riba* in our current era is one of application, not prin-

ciple. . . Furthermore, I do not see this as an issue that should be decided by one person or few people. Rather, collaboration between experts in law, politics, and economics must contribute to study the issue carefully from each present and future angle. In this regard, I wish to present two short principles that I hope will be grounds for this detailed research:

1. Islam has put next to each law, and above every law, a greater law that necessity overrides prohibitions: ‘He has explained to you all that He has forbidden for you, with exceptions for necessity’ [Animals: 119].
2. For the law of necessity to be applied correctly, it is not sufficient to ensure knowledge of juristic principles. We also need to ensure piety that would prevent unwarranted expansion or haste in applying the license where it should not apply. Moreover, we should begin by exploring and exploiting all other legal solutions allowed in Islam, which may allow us entirely to avoid using licenses and exceptions, as God has made traditional for strong people of faith: ‘For whoever exercises God-consciousness, God will provide him with ease and sustenance from unexpected sources.’ (pp. 21–2)

It appears that Prof. Draz stipulated the general principle of forbidding *riba* in all its shapes and forms, without gradualism between forms that were forbidden for their own sake and those that were forbidden as means for those others. Thus, when he refers to necessity that might permit *riba*, he refers to the absolute necessity that would permit consumption of otherwise forbidden meat. He applied this view to all forms of *riba*, and did not apply the law of necessity to mere needs. Indeed, he enjoined the listener in his last sentences to be careful before advocating for application of the law of necessity, requiring not only knowledge of the principles of Islamic jurisprudence, but also piety to deter him from “unwarranted expansion or haste in applying the license where it should not apply. Moreover, we should begin by exploring and exploiting all other legal solutions allowed in Islam, which may allow us to avoid using licenses and exceptions.”

Nonetheless, we can see another aspect in Prof. Draz’s argument, which suggests that he had accepted the view that some forms of *riba* were forbidden as means rather than for their own sake. In this regard, he wrote (p. 15): “Thus we find the Legislator, while allowing for inequality in exchange, forbidding deferment of either compensation, to prevent the means that enable forbidden loans under the guise of sale.” He further wrote (p. 17): “It is clear that calling the profit earned in such transactions, which lack honesty and truthfulness, as *riba* is only metaphorical, in order to highlight its disagreement with ethical norms and principles of human kindness, thus drawing analogy to the true *riba* which is equivalent to grave injustice and unlawful devouring of property.” Thus, he distinguished, on the one hand, between true *riba*, which constitutes grave injustice and unlawful devouring of property, and, on the other, the metaphorical *riba*, called thus to highlight its disagreement with defiance of ethical norms of human kindness. Is this distinction between true *riba* and metaphorical *riba*, as Prof. Draz put it, the same as the distinction between manifest and hidden *riba*, in the language of Ibn Al-Qayim? We note that Prof. Draz agreed with the view of Ibn Al-Qayim on the permissibility of trading gold jewelry for a greater weight of gold (p. 16): “If we understand the objectives of the Shari‘a in this ruling, we find no difficulty in ruling, as Ibn Al-Qayim had explained in *I‘lām Al-Muwaqqi‘in*, which permits trading gold jewelry for more weight in gold or silver jewelry for a greater weight

in silver, based on the value of workmanship which is determined in such exchange clearly and precisely in a manner that does not leave room for falsification of the mutual consent of trading parties.” Did Prof. Draz then distinguish between the rulings for true *riba* and metaphorical *riba*, as Ibn Al-Qayim had done? Did he agree with Ibn Al-Qayim that true *riba* is only permissible in cases of extreme necessity, while the metaphorical *riba* may be applied based on need? Specifically, did Prof. Draz agree with Ibn Al-Qayim on allowing the exchange of gold jewelry for a greater weight in gold based on need that does not rise to the level of necessity? We do not think so. In this regard, Prof. Draz gave as rationale for allowing the exchange of gold jewelry for a greater weight in gold based on compensation for workmanship, without making any references to necessity or need. Moreover, his distinction between true and metaphorical *riba* did not aim to distinguish between legal rulings, but rather aimed at explanation. Rather, he applied the one ruling of categorical prohibition to all forms of *riba*, and did not allow any form of *riba* except in cases of absolute necessity, further expressing his wish that people would hesitate before applying this law of necessity!

Prof. Draz based his views on economic consideration, arguing that the capitalist and worker should share in profits and losses, as in contracts of *mudāraba* and *qirād*. However, in a capitalist economic system, as we have in most countries, it is permissible for capital to have a rental value similar to rental of fixed properties. In this regard, we are discussing the existing economic system. Therefore, if the aim is to give labor priority over capital, and to unify social classes without preference for capital over the working masses, as Prof. Draz expressed in his social consideration for his juristic preference, then we would argue that this constitutes a call for transitioning from the existing capitalist system to a socialist one, which has its own equally valid justifications.

3.1.3 The Approach To Abandon Classical Juristic Rulings on *Riba*

In his lecture at the Paris Islamic Jurisprudence Conference, Prof. Ma‘rūf Al-Dawālibi argued that the forbidden *riba* is that which takes place in consumption loans, and not in productive loans. In this regard, he argued that it is in the area of consumption loans that usurers can exploit the needs of the poor, and impose upon them exorbitant usury. In contrast, in today’s evolved economic systems, with corporations and loans that mostly finance production rather than consumption, our rulings should adapt, especially when large corporations and governments borrow from the mass of small savers. In the latter case, the power structure is reversed, with corporations and governments, who are the borrowers, having exploitative economic power, while the lenders, who are small savers, are the weak side that deserves legal protection.

Thus, productive loans should have their own rulings in Islamic jurisprudence, based on their own characteristics, which are entirely different from the nature of consumption loans. One solution is for the government to lend to producers, and the other is to allow loans with reasonable regulations and interest rates. The latter is the correct solution, which Prof. Al-Dawālibi argued can be derived from the rule of necessity, as well as the rule of giving priority to public benefit over individual benefits.

This opinion has two weaknesses. The first is that it is oftentimes difficult practically to distinguish between production and consumption loans, so that interest rates can be regulated at reasonable levels for the latter and left unregulated for the former. There may be some cases wherein loans can be identified as production loans for which reasonable interest rates should be allowed, for example, when governments or corporations are borrowing. However, there are many other loans that individuals take from banks and financial institutions, and it is not clear whether those are productive loans for which reasonable interest may be charged or consumption loans for which no interest should be charged. Can we investigate each case to determine its legal rulings? It is apparent that this is very difficult, and, therefore, we have to either allow reasonable interest to be charged on all loans or to forbid it for all. Second, if we accept the view that productive loans deserve their own rulings, basing this legal position on the rule of necessity is not legitimate, because we can only establish need, rather than necessity, in such dealings.

3.2 The Appropriate Position of Islamic Jurisprudence on *Riba* in The Current Era (p. 164)

3.2.1 Prohibition of *Riba* Is in Harmony with All Times and Civilizations

There is no doubt that prohibition of *riba*, as a general principle, is required in all times and all civilizations. Thus, Qur'an and prophetic tradition have combined to make the prohibition of *riba* a general principle of Islamic jurisprudence. The latter has forbidden *riba* in order to achieve multiple noble aims, as we can see in the following texts.

Ibn Al-Qayim wrote in *I 'lām Al-Muwaqqi 'in* (2/101–3): “The four foodstuffs [mentioned in the prophetic tradition prohibiting *riba*] are greatly needed for people's sustenance. Thus, it was for people's benefit that they were not allowed to trade them with deferment, whether in the same or different genera. They were also not allowed to trade in different quantities and the same genus, even if qualities differ. However, they were allowed to trade them in different quantities if genera are different. The hidden reason in all this, and God knows best, is that if trading these commodities with deferment was allowed, nobody would do so unless they can earn a profit. In this case, the merchant may be tempted not to sell the foodstuffs immediately in pursuit of profit, creating shortages for those who need those foods, thus resulting in great harm. In this regard, we note that most people do not possess monetary gold or silver, especially in nomadic areas, and thus trade foodstuffs for foodstuffs. Thus, the Legislator wisely and mercifully forbade them from trading those foodstuffs with deferment as He had forbidden them from trading monies with deferment, lest they would allow increase in debts for further deferment, eventually multiplying food indebtedness manyfold. . .

This is explained by the prophetic tradition, which required someone who wishes to trade one kind of those foodstuffs for another to sell them for monetary coins and use the latter to buy the kind they need, or to trade them for the same quantity, and in both cases conduct only spot sales. Otherwise, if deferment were allowed, then a person would sell his goods with deferment, and then would have to increase the price paid for the other goods, as he would have charged a premium, thus causing harm to both parties. . . The

crux of the matter is that they were not allowed to trade monies for other monies because that would have negated the purpose of money, and were not allowed to trade foodstuffs for their genus because that would have negated the purpose of food.”

Ibn Rushd wrote in *Bidāyat Al-Mujtahid* (2/109–110): “It is apparent in the law that what is intended from the prohibition of *riba* is the excessive injustice therein. In this regard, justice in exchange requires the pursuit of equality. For this reason, when it was deemed difficult to determine equality among different objects, monetary coins were used to determine their values. Thus, when exchanging objects that are not measured by weight or volume, justice is determined by proportion [to monetary prices]. Thus, if someone trades a horse in exchange for clothes, and the horse had a price of fifty, then the clothes traded for it must also have a price of fifty, which may be ten pieces of clothes. Thus inequality in the number of goods traded one for the other may be required to ensure justice in exchange [e.g. one horse for ten clothes]. However, for goods measured by weight or volume, because they are sufficiently homogenous and their benefits are similar, and given that someone who owns one has no need to trade it for the other of the same kind, except for purposes of luxury, justice in such trades is determined by equality of weight or volume, because the benefits are equal. Likewise, prohibition of trading such goods one for the other in different quantities means that there should be no trade, because trade is needed only when benefits are different. Thus, the prohibition of trading these goods in different quantities has two rationales: the first is to ensure justice in exchange, and the second is to prevent exchanges that are deemed merely luxurious. As for monetary silver and gold coins, the reason for prohibition is clearer, because such trading can only occur seeking profit, whereas the reason for having money is to determine prices of other goods that have necessary benefits. With regard to the four foodstuffs, Mālik narrated on the authority of Sa‘īd ibn Al-Musayib that he deemed the rationale for *riba* in such exchanges to be edibility and measurability by volume, which is reasonable analysis, because edibility is necessary for sustenance and preservation of life, and prevention of excessive charging for foodstuffs is more worthwhile than it is for other goods.”

We may extract from these texts three objectives for the prohibition of *riba*:

1. Prevention of monopoly for foodstuffs needed to sustain people.
2. Prevention of currency manipulation, so that prices would not fluctuate, and to prevent commodification of the money itself.
3. Prevention of injustice and exploitation in exchange of goods of the same genus, because inequality in quantity cannot be computed accurately to compensate for differences in quality, thus resulting in injustice for one of the trading parties. It is for this reason that the Prophet (p) said to the one who sold one volume of dates for two: this is *riba*, return it and then sell our dates and use the proceeds to buy the others. This is because the most accurate measure to ensure equality in exchanging two different volumes of the same genus is money: one of the volumes is sold for money and the proceeds are used to buy a different volume of the other. Of course, if the exchanged goods were equal in quantity and quality, then exchanging them one for the other would be a meaningless form of excess.¹¹

¹¹Prof. Muhammad Abdullah Draz argued in the above mentioned lecture (p. 17) that the reasons for

3.2.2 Maintaining the Distinction between Pre-Islamic *Riba* Mentioned in Qur'ān and the Deferment and Inequality *Riba* Mentioned in prophetic Tradition

However, while maintaining the general principle of prohibition of *riba* in all its forms, we must also maintain the distinction between the pre-Islamic *riba* on the one hand, and the deferment and inequality *riba* on the other. The latter distinction is sufficiently clear and consequential, and should thus never be contested, because pre-Islamic *riba* was forbidden for its own sake, whereas deferment and inequality *riba* were forbidden not for their own sakes, but only as avenues or means for the pre-Islamic kind.

Therefore, we also maintain the important consequence of this distinction: Pre-Islamic *riba* cannot be excused except in cases of extreme necessity similar to conditions that allow consumption of otherwise forbidden meat. In contrast, deferment and inequality *riba* may be permitted based on need that does not rise to the level of necessity.

3.2.3 Loans with Benefits

It may seem surprising that we have not dealt in our treatment of the various types of *riba* with the form that is most common today, which is interest-bearing loans. This is the case because all the types of *riba* considered so far, especially those mentioned in prophetic tradition, are classified as sales, not loans. We may now ask the question: Can a loan be considered in the category of contracts conducive to *riba*?

This question seems strange, because loans are the first categories of contracts conducive to *riba* that are considered in modern legislations. However, the reality is that loans are not among the original contracts conducive to *riba* in Islamic jurisprudence, because, as we have seen, sales are the original categories to consider for potential *riba*, and loans that bring benefits are ruled upon with analogy to *ribawi* sales. In what follows, we quote some of the writings in Islamic jurisprudence on the issue of loans with benefits.

In *Al-Bada'i'* (7/395–6) we read: “With regards to the loan itself, it is important that it does not bring a benefit, otherwise it is not permissible. For example, it is not permissible to lend low denomination coins on condition that they are repaid in higher denominations, or otherwise to stipulate a condition that it is of benefit to the lender. This impermissibility follows from the narration that the Prophet (p) forbade loans that bring a benefit, and because the stipulated increase without compensation is similar to *riba*. In this regard, it is required to stay clear of both manifest and suspected *riba*. This is the ruling if the increase was stipulated in the loan contract. However, if it was not stipulated in the loan, but the borrower returned better than what he borrowed, then there is no harm. In this regard, *riba* refers to an increase stipulated in the contract, which is not the case here, wherein the borrower merely was good in repayment, which is commendable, because the Prophet (p) said that the best people are the best in repaying their debts. Moreover, when

prohibition of *riba* are as follows: “We summarize our view on the principles established by prophetic legislation in exchange and receipt on the basis of two objectives: The first is to protect foodstuffs and monies, which are among the most important needs of society and its survival, by preventing their monopolization or hoarding, or allowing their prices to fluctuate sharply. The second objective is to protect the poor and naive from injustice and exploitation by greedy merchants.”

the Prophet (p) witnessed repayment of his debt, he ordered the merchant to weigh and add a generous increment.

Based on this, the bills of trade that merchants often employ are deemed reprehensible, because the merchant benefits by avoiding the dangers of transportation, and thus the transaction is similar to a loan with benefits. Others may argue that Abdullah ibn ‘Abbās (r) used to borrow in Madīna and repay in Kūfa, thus using the loan to gain the benefit of avoiding transportation risk. Our response is that the bill of trade may not have been stipulated in the contract itself, but may have taken place *ex post*, which is permissible as we have explained, and God knows best.”¹²

In *Al-Fatāwā Al-Hindiya* (3/202–3), we read: “Muḥammad wrote in his book on currency exchange that Abu Ḥanīfa deemed reprehensible any loan associated with benefits. Al-Karkhi said that this is the ruling if the benefit was stipulated in the contract, e.g. lending low denominations with condition of repayment in higher denominations, or the like. However, if it was not stipulated in the contract, and the borrower merely repaid with better than he received, then there is no harm. Likewise, if someone lent another silver or gold coins so that the borrower may buy from the lender some expensive goods, then the transaction is deemed reprehensible, provided that the loan preceded the sale. However, if the sale preceded the loan, for example, if a man sought a loan for one hundred, and the prospective lender sold the prospective borrower a dress worth twenty for a price of forty, and then lent him sixty, so that the borrower owed the lender one hundred [to be paid later,] and had received eighty coins’ worth, then Al-Khaṣṣāf ruled that this dealing is permissible. It was also stated in *Al-Muḥīṭ* that if the borrower paid more than he had borrowed, and the increase was not stipulated in the contract, then there is no harm.”

In Al-Dardīr’s *Al-Sharḥ Al-Kabīr Ḥāshiyat Al-Dusūqi* (3/226–7), we read: “If the loan brings a benefit . . . , for example by stipulating that the repayment exceeds what was lent in quality (e.g. good for rotten) or convenience (e.g. returned in a different city, even to a pilgrim), then these dealings are permissible as long as the benefit was not stipulated in the loan contract. Then he drew analogy to the bill of trade, whereby a borrower sends a message to his agent in a different city to repay what he had received in his own city, which

¹²It also follows from the condition that loans should not bring any benefit that the term of a loan is not binding, because the loan without benefit is an act of charity, and the latter would be undermined by specifying a binding maturity term for the loan. This is further discussed in *Al-Badā’i* (7/396): “The term of a loan is not binding, whether it was stipulated in the contract or introduced later. This is in contrast to all other types of debts. The difference is twofold: The first is that a loan (unlike other debts) is an act of charity, because it includes no compensation for time, and is not possible for one who does not have the resources for charity. Thus, if the term is binding, the contract would no longer be charitable, and its stipulations would have thus changed. The second difference is that loans are similar to specific-item loans (*‘arīya*), in which maturity term is not binding. Proof of this claim is as follows: Either we treat loans like specific-item loans, in which case the item itself must be returned, or we treat them like exchanges wherein the lent good is owned by the borrower and the debt is for its equal. The latter analysis would deem the transaction impermissible, because it would exchange ownership of an item for its equal with deferment, which is not allowed. Thus, we must rule by analogy to specific-item loans. Using this analogy, repayment of the loan would be deemed akin to returning the lent object that was used for some time, even though in reality the borrower returns its equal. Thus, returning the equal of the lent good was deemed equivalent to returning the lent good itself, which is different from all other debts. That being said, there is one circumstance in which the maturity term of a loan may be binding, e.g. if someone lent another one thousand coins after his death for one year, then his will must be fulfilled, and the money must be lent from his estate as he specified, not allowing his heirs to demand repayment before the year’s end, and God knows best.”

may constitute an example of a loan with benefits. However, if there is danger along most routes of travel, then the transaction is not forbidden, and may be deemed desirable or even required in order for the merchant to protect himself and his property.”

In *Al-Mughni* (4/360–1), we read: “There is no disagreement over the prohibition of a loan contract in which an increase in repayment is stipulated as a condition. . . It was narrated on the authority of Aḥmad that stipulating in a bill of trade that repayment would take place in a different city is not permissible, but there is another narration that he permitted it because it is of benefit to both parties. In this regard, ‘Aṭā’ narrated that Ibn Al-Zubayr used to take silver coins from people in Makka and would write to Muṣ‘ab ibn Al-Zubayr so that he would repay them in Iraq. Ibn ‘Abbās was asked about this dealing and found no fault therein. It was also narrated that ‘Ali (r) was asked about the dealing and also found no fault therein. Ibn Sirīn and Al-Nakh‘ī ruled likewise. Moreover, if, by mutual consent, and without any conditions having been stipulated in the loan, the borrower repaid better (in amount, type, etc.) or worse than he had borrowed, then the dealing is permissible.”¹³

It is clear from the texts that we have reviewed here that an interest bearing loan is not originally considered a contract conducive to *riba*, and that its rulings are deduced by analogy to other contracts that were considered thus. First, therefore, it is permissible for a loan to include interest that was not stipulated as a condition in the contract, i.e. the borrower may repay more than he borrowed, as long as it was not required. Second, it is possible to hide interest in the loan, for example by selling an object at an inflated price and extending a loan thereafter for the balance of the debt, leaving no doubt that the difference in price was interest on the loan. Finally, an explicitly stipulated condition of interest on the loan is forbidden, not because the stipulated increase is *riba*, but because it is similar to *riba*, and it is required to avoid both *riba* and its suspicion.

Thus, because interest on loans is not true *riba*, but subject to rulings based on suspicion of *riba*, we must conclude that *riba* in loans inherits the rulings of deferment and inequality *riba*. The general ruling for all these types of *riba* is that they are forbidden, but as means, rather than for their own sake. Consequently, this prohibition may be overruled based on need [that does not rise to the level of necessity].¹⁴

3.2.4 The Default Ruling for *Riba* Is Prohibition, And It May Only Be Excused Based on Necessity Or Need (p. 169)

It is now appropriate to summarize the conclusions that we have reached in this study:

¹³See also Al-Sarakhsi’s *Al-Mabṣūṭ* (14/35 onwards), Ibn ‘Abidin (4/270), Al-Dardīr (3/226 onwards), *Al-Sharḥ Al-Kabīr ‘ala Al-Muqni’* (4/360–3).

¹⁴We note that classical jurists commonly discussed loans in historical times using language that makes them akin to charity. This deems historical loans different in nature from today’s loans, which are commonly used to provide a necessary production input to producers; namely, capital. In *Al-Mughni* (4/353), we read: “Loans are commendable for lenders and permissible for borrowers, based on the prophetic traditions that we have narrated. For example, Abu Hurayra narrated that the Prophet (p) said: ‘Whoever lifts a worldly hardship from a Muslim will have his other-worldly hardship lifted by God; and God remains in his servant’s assistance as long as he remains in his brother’s assistance.’ It is likewise narrated that Abu Al-Darda’ said: ‘I would prefer to lend two coins, receive them back, and lend them again, over giving them away in charity;’ because such loans relieve the hardship of his Muslim brother, fulfills his need, and assists him, and is thus as commendable as paying charity.”

1. The default ruling for *riba* is prohibition in all its forms: pre-Islamic, deferment, inequality, or loan *riba*. Reasons for its prohibition are, as we have seen, protection of mankind from monopoly of foodstuffs, from manipulation of the value of monies that they use, and from injustice or exploitation.
2. However, one form of *riba* is much worse than all others in its propensity to exploit the poor and needy. It is this form of pre-Islamic *riba* that the revealed Qur'an denounced with harsh warnings. In this dealing, the creditor gives the debtor the option to repay or to increase the debt for further deferment. This is what we would call today interest or interest, or compound interest, so that interest and its compounding would be added to the principal of the debt.

This form of contemporary *riba* (compound interest for additional deferment) is the one that corresponds to pre-Islamic *riba*, and it is prohibited definitively for its own sake, because it causes financial ruin for the debtor by multiplying the debt in a few years, allowing the creditor to devour *riba* in many multiples. This is the form of *riba* that God demolished in the Qur'an, and thus this form of *riba* cannot be permitted under any circumstances, because it is impossible to imagine a case of extreme necessity for both creditor and debtor that would require its excuse. Even if we can imagine extreme necessity on the part of the debtor, we cannot imagine it on the part of the creditor, who must only be driven to such exploitative behavior by his greed.

3. With regard to other forms of *riba*: simple interest, and deferment and inequality *riba*, they are also forbidden, but as means to another, not for their own sake. Some of these forms, for example for the six commodities and interest on loans, were mentioned explicitly in prophetic traditions.

Other forms, which pertain to other commodities that jurists joined with the six commodities in their *riba* rulings, was built on impeccable juristic craftsmanship. However, all these forms were forbidden as means, to prevent effecting the worst form of *riba*. Thus, the default ruling for these forms of *riba* is prohibition, but they may be excused under various exceptions in cases of need.

“Need” in this context, as Ibn Al-Qayim has argued, merely means net benefit from allowing a form of *riba*, which would be foregone if we enforced the prohibition. Thus, all such permissions of *riba* forms are deemed exceptions to the default rule of prohibition, and the extent of permissibility must be determined based on this need. If the need ceases to exist, then we return to the default ruling of prohibition.

4. The most basic need can be personal. For example, in trading fresh dates for dried, the buyer is the one in need of selling his dried dates for the fresh dates that he needs on their palm trees. There is an explicit prophetic tradition allowing this transaction, and jurists have all allowed it. Based on this text, analogical reasoning led to permission of selling minted gold and silver coins for larger weights, respectively, in gold and silver, even before the minting takes place, in case the merchant needs the coins in order not to miss the market. This is also a case of personal need. We have seen that these were the rulings according to Mālik.

At the other extreme, need may be at the public or social level, based on the nature of the transaction itself. For example, selling jewelry for a greater weight in gold or silver is based on a general need, which is to incentivize the jeweler's workmanship, which is thus compensated by a portion of the price. Otherwise, this craftsmanship would vanish. Thus, as long as the product of such workmanship is allowed, such as jewelry for women, silver rings, sword ornaments, and the like, all of which are needed by people in general, then this public need legitimizes trading jewelry for more than its weight.

In a capitalist economic system, such as the current system in many countries, most property is owned by individuals, private institutions, banks, etc., and not by the government. In this system, public need requires a mechanism by which workers can gain access to capital that they can combine with their labor [to produce goods]. Traditional partnerships using the classical forms of *mudāraba*, *qirād*, and so on, are no longer sufficient for workers to obtain the capital they need. Even though joint stock companies, trusts, and other corporations may allow capitalists to buy stocks by virtue of which they share in profits and losses, there is no denying that loans are the primary sources of capital in the current capitalist system.

Even the corporations mentioned above raise capital not only by stocks, holders of which share in profits and losses, but also through bonds, which are loans extended to those corporations. In these loans, as we have argued, the borrower is the more powerful side, and the lender the weaker party that we need to protect.

Thus, for as long as capital is needed through loans and other means, and capital is owned by individuals who have saved it based on work and effort, then the owner of this capital should be compensated fairly, without suffering or causing injustice. Consequently, as long as society needs this type of finance, reasonably restricted interest on capital should be allowed as an exception to the default ruling of prohibition of *riba*.

By "reasonably restricted" we mean:

- (a) Under no circumstances, regardless of the level of need, should compounding interest on matured interest be allowed, because this is the reprehensible pre-Islamic *riba*.
 - (b) Even simple interest must have legislated ceilings that it cannot exceed, in terms of its rate, its means of collection, and its total, among other aspects that legislators should study carefully, so that exceptional permissibility does not exceed the social need.
5. Despite these conclusions, we must note that the need for interest is predicated, as we have argued, on the existing capitalist system. Thus, following any change in this system, which seems to be on its way, toward a socialist system wherein the state holds capital, instead of individuals, we may reassess the extent of the need. If the need no longer exists in a socialist system, then the default ruling of *riba* prohibition would be enforced.

3.3 Actual Civil Code Legislation on *Riba* In Arab Countries (p. 171)

3.3.1 The Egyptian Civil Code's Position

The Egyptian Civil Code reached a similar position to the one discussed above. This law found collection of interest on capital to be quite reprehensible, and took a number of strong steps to restrict and regulate interest in important laws that we summarize below.

First, the law forbade charging interest on matured interest. Thus, Article 232 stipulated that “it is not permitted to collect interest on matured interest.” This plugs a major loophole for *riba*. The law thus forbade the type of *riba* that was prohibited for its own sake most definitively, without allowing any leeway. The earlier Civil Code had allowed collecting interest on interest with two conditions:

1. That the matured interest was not less than a full year's interest.
2. That the debtor and creditor agreed after the interest had matured in order to charge interest thereupon, or that the creditor demanded interest thereupon legally through the court system.

Second, the new Civil Code restricted significantly the permissibility of collecting simple interest, as follows:

1. A ceiling of 7% was stipulated for interest rates. Thus, creditors and debtors cannot agree on any interest rate above that level. Any agreement on a higher rate would be returned to 7%, and any amount paid above that rate should be returned (Article 1/227). The earlier Civil Code had set the interest rate ceiling at 8%.
2. If there was no agreement between creditor and debtor on charging interest, then the creditor may not charge any interest on the debt. This rule was applied to the loan contract, as stipulated in Article 542: “The borrower must pay the agreed-upon interest at the specified term of maturity; and if there was no agreement on interest, then the loan is deemed interest free.” However, if the debt is matured, and the debtor was late in repayment, then interest for late payment is charged at the rate of 4% in private loans and 5% in commercial loans (Article 226).
3. Interest for late payment is not required unless the creditor requests it legally through the court system, and no lesser action, including formal requests, suffices. It is not sufficient in this regard that the creditor demand repayment of principal through the court, but they must also demand the late payment interest, and the latter is only calculated from the day this legal demand is filed (Article 226).
4. Under no circumstances can the total of charged interest exceed the principal (Article 232). This is a highly honored principle of the prohibition of *riba*, which prevents the creditor from devouring *riba* doubled and multiplied. However, this restriction may be eased based on need in the cases of long-term productive loans.
5. Article 229 stipulated that: “If the creditor maliciously prolongs the dispute while demanding his right, then the judge may reduce interest charges, whether they were

agreed upon or stipulated in law, or he may choose not to charge any interest at all over the period during which the dispute was prolonged unnecessarily.”

6. Article 230 stipulated that: “When distributing the proceeds of a bankruptcy liquidation sale, eligible recipients of the auction proceeds are not entitled to interest over the shares to which they were entitled, unless such interest was required as part of the auction price, or if the court was obliged to pay such interest because the proceeds were deposited therewith. In all circumstances, the interest collected by creditors in such cases may not exceed interest accrued before the auction was concluded or the court treasury received the proceeds, and such interest must be distributed proportionately to all creditors.”
7. Article 544 stipulated that: “If interest is agreed upon in a loan contract, then the debtor has a right six months after the inception of the loan to announce his desire to void the contract and return the borrowed principal, and must fulfill the repayment within six months of the declaration of his intention to exercise this right to void the contract. In this case, the debtor must pay the interest over the six months after his announcement. It is not permissible in any manner to require the borrower to pay interest or any other compensation for prepayment of the loan. Moreover, it is not permissible for the contracting parties to agree to deny or restrict this right of the borrower to prepay.” This is a wise procedure to drop interest, even after it has been agreed upon between the creditor and debtor.

Needless to say, these restrictions must remain flexible, allowing the legislator to expand, restrict, or revoke them as needed. Thus, the legislator may choose to relieve or remove some of these restrictions if needed, and may increase the restrictions if the need is such that interest should not be allowed without those stronger restrictions. The central point in this analysis is that religious law does not permit interest except to the extent required by need.

Positions of Other Arab Civil Codes (p. 173)

Other Arab civil codes took a position vis a vis *riba* that are similar to the position of the Egyptian Civil Code.

First, these codes forbade collection of interest on accrued interest. This was codified in the Syrian Civil Code Article 233, the Libyan Civil Code Article 235, and the Iraqi Civil Code Article 174. The Lebanese law for obligations and contracts allowed collection of interest on accrued interest subject to the two conditions listed in the previous civil code, with the exception that the Lebanese Code Article 768 restricted accrued interest to six months rather than a full year.

Second, these codes stipulated a number of restrictions on simple interest that parallel the Egyptian Code as follows:

1. Ceilings were stipulated for interest rates upon which contracting parties may agree. The ceilings were set at 9% in the Syrian Code (Article 238/1), 10% in the Libyan Code (Article 230/1), and 7% in the Iraqi Code (Article 172/1). Thus, if contracts

included agreed upon interest that exceeded those ceilings, they must be returned to their maximum allowed levels and the excess interest paid must be given back to the debtor. The Lebanese Code did not stipulate a maximum rate of interest upon which agreement may be reached, but stipulated that the agreed upon interest must be written in the contract, otherwise interest must revert to the legal rate of 9% (Article 767/2), “and if the borrower voluntarily paid additional interest that was not specified in the contract or that exceeded what was specified, then he may not get it back or deduct it from the principal due” (Article 766/2).

2. If there is no agreement to collect interest, then none will be collected (Syrian Article 510, Libyan Article 541, Iraqi Article 692/1, Lebanese Article 766/1). The legal rate of interest for late payments is 4% for civil transactions and 5% for commercial transactions in the Syrian Civil Code (Article 227), and likewise in the Libyan Code (Article 229), and Iraqi Code (Article 171). In the Lebanese Code, the legal interest rate is 9% (based on the Ottoman *Murābaḥa* Code in civil transactions and Article 257 in commercial transactions).
3. Late payment interest is only calculated from the time of legal demand thereof in Syrian Code Article 277, Libyan Article 229, Iraqi Article 171. For the Lebanese Code, late payment interest is calculated from the time of warning of late payment, and legal demand through the court system is not required for those interest obligations to be established.
4. It is not permissible under any circumstances for the total interest accrued to exceed the principal (Syrian Civil Code Article 233, Libyan Article 235, Iraqi Article 174, and the Ottoman *Murābaḥa* Code in Lebanon).
5. If the creditor maliciously prolongs the dispute, then it is permissible to reduce the accrued interest or rule legally for zero interest (Syrian Civil Code Article 230, Libyan Article 232, Iraqi Article 173/3, and in Lebanon based on the general principle in Article 31 of the law of civil court cases, which requires ruling for compensation against anyone who maliciously initiates legal proceedings or objects to valid requests).
6. When distributing the price of a bankruptcy liquidation sale, eligible recipients of the auction proceeds are not entitled to interest over the shares to which they were entitled, unless such interest was required as part of the auction price, or if the court was obliged to pay such interest because the proceeds were deposited therewith. In all circumstances, the interest collected by creditors in such cases may not exceed interest accrued before the auction was concluded or the court treasury received the proceeds, and such interest must be distributed proportionately to all creditors. This is listed in the Syrian Civil Code Article 231 and Libyan Civil Code Article 233. This article is not stipulated in the Iraqi Civil Code. In Lebanon, executive procedures are in accordance with this rule, except that interest is calculated to the date of conclusion of the bankruptcy liquidation auction.
7. If interest is agreed upon in a loan contract, then the debtor has a right six months after the inception of the loan to declare his desire to void the contract and return the borrowed principal, and must fulfill the repayment within six months of the

announcement of his intention to exercise this right to void the contract. In this case, the debtor must pay the interest over the six months after his declaration. This is stipulated in the Syrian Civil Code Article 512 and the Libyan Civil Code Article 543, but is not stipulated in the Iraqi Civil Code. Article 762 of the Lebanese obligations and contracts code stipulates that it is not permissible to force the borrower to repay what is owed before the term of the contract as specified therein or in customary practice; but the borrower is permitted to prepay before the term, as long as this does not harm the lender.

3.3.2 [Religious] Law Is The Final Arbiter

This was the position taken in various Arab Civil Codes, including the Egyptian one, regarding interest in the current era. As we can see, this is a moderate position. These laws did not exceed bounds in permitting interest, but rather imposed numerous constraints. The ultimate arbiter, in any case, is the legislator. Therefore, if the Arab legislator has permitted interest within these strict bounds, in order to accommodate the capitalist system in existence in Arab countries, he did so because of need, and to the extent of this need. Thus, if the existing system were to change, eliminating the need in the new system, there is no doubt that the default ruling of prohibition of interest would be reapplied. In this regard, the prohibition of *riba* is a principle of religious laws that may be overruled based on need, but reinstated once the need ceases to exist.