

Leasing One's Premises to
**CONVENTIONAL BANKS &
OTHER HARAAM BUSINESSES**



Published by: Madrasah Ta'leemuddeen

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The author, editors and typesetters humbly request your duas for them, their parents, families, Mashaayikh and Asaatizah.

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Q: I recently purchased a property in partnership with two friends. Many prospective tenants have requested that the property be leased to them, including a bank. I refused to accept a bank as a tenant as I always understood it to be wrong. However, my partners have received a ruling that it is permissible to have a bank as a tenant. The ruling states that though according to other Imaams it is impermissible, however Imaam Abu Hanifa رَحْمَةُ اللَّهِ has allowed it. I am now confused. Please clarify this issue for me. It will also be appreciated if you could state the ruling with regard to the following:

1. Can the premises be let out to an insurance company, liquor store or betting outlet?
2. Is it permissible to have an ATM on one's premises?
3. If the tenant did not disclose the details but later trades in impermissible items, is the income permissible?
4. I would appreciate if you could explain the reasons for interest being so abhorred and detested in Islam.

حامداً ومصلحاً

A: Your question refers to the permissibility or impermissibility of leasing one's premises for an impermissible activity. In order to fully understand the Shar'ee ruling (primarily pertaining to leasing

to conventional banks, as well as all other activities mentioned in your question) in its proper context, it is necessary to first understand the underlying Shar’ee principles pertaining to aiding in sin.

In the Noble Qur’an Allah تَبَارَكَ وَتَعَالَى declares:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

“Assist one another in righteousness and piety, and do not assist one another in sin and transgression”

In another verse the declaration of Sayyiduna Moosa عَلَيْهِ السَّلَام is related:

قَالَ رَبِّ بِمَا أَنْعَمْتَ عَلَيَّ فَلَنْ أَكُونَ ظَهِيرًا لِلْمُجْرِمِينَ

Hazrat Musa عَلَيْهِ السَّلَام said: *“O Allah! On account of You bestowing Your grace upon me, I shall never be an assistant and support for the sinners.”*

From the above verses it is clear that aiding any act of sin is impermissible. The important question nevertheless is: What constitutes “aiding in sin” in terms of the Shari’ah. Is a remote action, that indirectly through a series of other actions eventually become the means of a sin, included in the abovementioned prohibition, or is it restricted to only direct assistance in committing a haraam act? The fuqaha have categorised this into various categories and explained the ruling of each category.

CATEGORIES OF AIDING AND ABETTING IN SIN

Primarily there are two ways of aiding in sin:

1. إعانة – Facilitating the commission of a sin.
2. تسبب – Becoming the cause for the commission of a sin.

إعانة Facilitation

With regards to aiding in sin in the course of trade, facilitation could occur in one of the following three ways:

1. Selling an item that can only be used for sin.

It is totally forbidden for one to sell an item which is haraam (e.g. carrion, wine, swine, etc.)¹ or which can only be used for an impermissible cause (e.g. musical instruments, etc.)². If the item can be used for both permissible and impermissible purposes, it will be permissible to sell it to a person whose intention for purchasing it is not known.

¹ ولا يجوز بيع الحر والخمر والخنزير والميتة كذا في التهذيب (الفتاوى الهندية ١١٦/٣)

² قال ولا يجوز الاستئجار على الغناء والنوح وكذا سائر الملاهي لأنه استئجار على المعصية والمعصية لا تستحق بالعقد (الهداية ٣٠٣/٣)

2. The purchaser intending sin through purchasing the item

If the seller knows that the purchaser is purchasing the item for an impermissible purpose, this will render the sale impermissible in Shari'ah. The obvious reason is that through selling the item one will be aiding in sin. For instance the fuqaha have prohibited the selling of weaponry and ammunition to the Ahle-harb (those who are at war with the Muslims) as this would be aiding in the destruction of Islam and the Muslims. Though there was no intention of aiding sin or explicit mention in the transaction, but having knowledge of the prevailing circumstances is treated as though the purpose of waging war against Muslims was explicitly mentioned at the time of the transaction.³

3. Explicit mention by the purchaser of his intention for purchase

At the time of the transaction if the purchaser explicitly mentions that he is purchasing or hiring the premises, etc. for an impermissible cause, it will be impermissible for the seller or lessor

³ قوله (وكره بيع السلاح من أهل الفتنة لأنه إغانة على المعصية) قيد بالسلاح لأن بيع ما يتخذ منه السلاح كالحديد ونحوه لا يكره لأنه لا يصير سلاحا إلا بالصنعة نظيره بيع المزامير يكره ولا يكره بيع ما يتخذ منه المزامير وهو القصب والخشب وكذا بيع الخمر باطل ولا يطل بيع ما يتخذ منه وهو العنب كذا في البدائع وذكر الشارح أن بيع الحديد لا يجوز من أهل الحرب ويجوز من أهل البغي والفرق أن أهل البغي لا يفرغون لعمله سلاحا لأن فسادهم على شرف الزوال بخلاف أهل الحرب اه ... وسيأتي إن شاء الله تعالى في الحظر والإباحة تمامه أطلق في أهل الفتنة فشمّل البغاة وقطاع الطريق واللصوص قوله (وإن لم يدّر أنه منهم لا) أي لا يكره البيع لأن الغلبة في الأمصار لأهل الصلاح وظاهر كلامهم في الأول أن الكراهة تحريمية لتعليقهم بالإغانة عن المعصية والله أعلم بالصواب (البحر الرائق ١٥٤/٥)

to sell or lease the property, as he will be aiding and supporting in the sin that will take place on his premises. For example the purchaser or lessee reveals to the seller or lessor that he wishes to purchase or lease the premises for a winery, piggery, casino, escort agency, insurance company or a conventional bank. In all these cases it will be impermissible to sell or lease the property.

All the four Imaams (Imaam Abu Hanifa, Imaam Shaafi'ee, Imaam Maalik and Imaam Ahmad bin Hambal رَحِمَهُمُ اللَّهُ) are unanimous upon the impermissibility of the above mentioned three types of transactions as they all aid others in the commission of sinful actions.⁴

⁴ مسألة : قال (موفق الدين الحنبلي) : (وبيع العصور ممن يتخذ خمر باطل) وجملة ذلك أن بيع العصور لمن يعتقد أنه يتخذ خمر محرم وكرهه الشافعي وذكر بعض أصحابه أن البائع إذا اعتقد أنه يعصرها خمرًا فهو محرم وإنما يكره إذا شك فيه (المغني لابن قدامة ٩٠٨/١) وكذا يمنع بيع كل شيء علم أن المشتري قصد به أمرا لا يجوز كبيع جارية لأهل الفساد أو مملوك (حاشية الدسوقي على الشرح الكبير ١٠/٤)

قال العلامة المحقق محمد بن أحمد بن محمد في تقريراته على حاشية الدسوقي لمذهب المالكية: (قوله: كبيع جارية لأهل الفساد) أي أو بيع أرض لتتخذ كنيسة أو خمارا والخشب لمن يتخذها صليبه والعنب لمن يعصره خمرًا والنحاس لمن يتخذ ناقوسًا، وكذا يمنع أن يباع للحريين آلة الحرب من سلاح أو كراع أو سرج وكل ما يتقون به في الحرب من نحاس أو خباء أو ماعون ويجبرون على إخراج ذلك، وأما بيع الطعام لهم فقال ابن يونس عن ابن حبيب يجوز في الهدنة، وأما في غير الهدنة فلا يجوز، والذي في المعيار عن الشاطبي أن المذهب المنع مطلقًا وهو الذي عزاه ابن فرحون في التبصرة وابن جزري في القوانين لابن القاسم وذكر في المعيار أيضًا عن الشاطبي أن بيع الشمع لهم ممنوع إذا كانوا يستعينون به على إضرار المسلمين، فإن كان لأعيادهم فمكروه، انظر بن. (قوله: وأجر المشتري من غير فسخ للبيع على إخراج) هذا هو المشهور كما قال المازري: وهو مذهب المدونة ومقابله أنه يفسخ البيع إذا كان المبيع قائمًا. ونسبه سحنون لأكثر أصحاب مالك قال ابن رشد: والخلاف مقيد بما إذا علم البائع أن المشتري كافر أما إذا ظن أنه مسلم، فإنه لا يفسخ بلا خلاف ويجبر على إخراجها من ملكه ببيع ونحوه (حاشية الدسوقي على الشرح الكبير ١٠/٤)

تسبب Becoming the cause for the sin materialising

Becoming the cause of sin is classified into three types:

1. السبب القريب المحرك – A direct means that leads to the sin

The first category is where the cause directly results in the sin taking place. The example of this is a woman who leaves her home without adopting purdah and without being veiled from the eyes of strange men. Though the woman may not intend to cause people to fall into sin, however since she is not clad properly and Islamically, she is the direct cause for spurring the emotions of people and causing them to fall into sin. Hence, just as they will be sinful for casting lustful glances towards her, she will be equally sinful for becoming the direct cause for the sin taking place. Therefore the fuqaha have ruled that such a cause is in the category of haraam. Thus, Allah تَبَارَكَ وَتَعَالَى instructs the women:

وَقَرْنَ فِي بُيُوتِكُنَّ وَلَا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الْأُولَى

Remain within the confines of your homes and do not leave your homes displaying your beauty and attraction as the women of the days of ignorance used to display.

Another example of this category which is cited in the Qur'an is that we are prohibited from swearing the idols of the disbelievers as

this will incite them to swear Allah تَبَارَكَ وَتَعَالَى in retaliation. Hence we will become the cause for them swearing Allah تَبَارَكَ وَتَعَالَى.

Allah تَبَارَكَ وَتَعَالَى says:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

Do not swear the gods whom they (the kuffar) call upon besides Allah, lest they out of spite begin to swear Allah in their ignorance.

Similarly the Qur'an had prevented the Azwaaj-e-mutahharaat and the women of the ummah from speaking sweetly to strange men (i.e. at the time of need when speaking is necessary) as this will spur up the feelings and emotions within the hearts of the strange men and incite them upon shameful deeds. Allah تَبَارَكَ وَتَعَالَى says:

فَلَا تَخْضَعْنَ بِالْقَوْلِ فَيَطْمَعَ الَّذِي فِي قَلْبِهِ مَرَضٌ

So do not be soft in speech, lest the one in whose heart is a disease should be moved with desire.

In all these examples, since the cause directly results in the sin, the cause itself has been completely prohibited.

2. السبب القريب الموصل إلى المعصية (غير المحرك)

The second category is where the cause itself does not directly result in sin. However it has the potential to facilitate the commission of the sin. The example of this category is hiring out one's premises to someone. The premises can be used for a halaal or a haraam purpose. It all depends on the usage of the one who is

leasing the premises. However, in the case where one has prior knowledge that the premises is being leased for a conventional bank, then in this case the aspect of aiding in sin comes into effect. Though the sins perpetrated on the premises will be entirely the doings of the managers, directors and staff of the bank, however one becomes the cause for the sin taking place by making one's premises available to the bank. Hence, according to Imaam Maalik, Imaam Shaafi'ee, Imaam Ahmad and the two leading students of Imaam Abu Hanifa (Imaam Abu Yusuf and Imaam Muhammad رَحِمَهُمُ اللَّهُ), this type of leasing is totally impermissible (makrooh-e-tahrimi) and the income accrued therefrom is impermissible. This is regardless of whether one had prior knowledge of the purpose for which the premises is being leased or one only discovered the impermissible usage after the contracting of the lease. In this situation what is the viewpoint of Imaam Abu Hanifa رَحِمَهُمُ اللَّهُ? Imaam Abu Hanifah رَحِمَهُمُ اللَّهُ concurred with the majority scholars in the case where explicit mention was made of hiring one's premises for an impermissible cause. Hence there is no difference of opinion between the four imams in this issue. However, since the mazhab of Imaam Abu Hanifah رَحِمَهُمُ اللَّهُ differs slightly with the mazhab of the other imams in certain situations we deem it appropriate to expound on this issue.

The Mazhab of Imaam Abu Hanifa رَحِمَهُمُ اللَّهُ

Imaam Abu Hanifa رَحِمَهُمُ اللَّهُ differed with the majority scholars in two cases:

Case One: A Muslim is hired by a non-Muslim to transport wine. There can be one of two situations in this case:

1. The Muslim porter was clearly aware that the wine was for consumption. All the Fuqaha including Imaam Abu Hanifa رَحْمَةُ اللَّهِ are unanimous that this is impermissible.
2. The Muslim porter did not know the purpose of the hirer.

According to Imaam Maalik, Imaam Shaafi'ee, Imaam Ahmad, as well as Imaam Abu Yusuf and Imaam Muhammad رَحْمَةُ اللَّهِ, such hiring is impermissible. These jurists contend that generally wine is transported for the purpose of consumption.⁵ Hence though there was no explicit mention of consuming the wine, however the circumstantial evidence will be treated as though one was aware of the purpose of the hirer.

Furthermore they explain that the Hadith curses the one who carries wine. Therefore such a person will enter under the purview of the curse mentioned in the Hadith. Hence the income accrued therefrom will be impermissible.

According to Imaam Abu Hanifa رَحْمَةُ اللَّهِ such hiring is permissible. He argues that the Muslim porter does not know the intention of the one hiring his services. In addition, just as wine is transported from one place to another to be consumed, similarly it could be

⁵ فصل : استئجار ما منفعته محرمة

ولا يجوز الاستئجار على كتابة شعر محرم ولا بدعة ولا شيء محرم لذلك ولا يجوز الاستئجار على حمل الخمر لمن يشرها ولا على حمل خنزير ولا ميتة لذلك وبهذا قال أبو يوسف ومحمد و الشافعي وقد روي عن أحمد فيمن حمل خنزيرا أو ميتة أو خمرًا لنصراني أكره أكل كرائه ولكن يقضى للحمال بالكراء فإذا كان لمسلم فهو أشد (المغني ص ١٢٩٣)

transported for some permissible purpose, such as making vinegar, etc. Hence, due to the Muslim porter **NOT KNOWING THE INTENTION** of the one hiring him, this transaction will be permissible and he will be entitled to a wage. Imaam Abu Hanifa رَحِمَهُ اللهُ avers that the curse mentioned in the Hadith was in regard to the person who knowingly carries wine to someone for the purpose of consumption.⁶

⁶ وكذلك لو أن ذميا استأجر مسلما يحمل له خمرا فهو على هذا عند أبي يوسف ومحمد رحمهما الله لا يجوز أن العقد لأن الخمر يحمل للشرب وهو معصية والاستئجار على المعصية لا يجوز والأصل فيه قوله صلى الله عليه وسلم: "لعن الله في الخمر عشرا" وذكر في الجملة حاملها والمحمولة إليه وأبو حنيفة رحمه الله يقول يجوز الاستئجار وهو قول الشافعي رحمه الله لأنه لا يتعين عليه حمل الخمر فلو كلفه بأن يحمل عليه مثل ذلك فلا يستوجب الأجر ولأن حمل الخمر قد يكون للإراقة وللصب في الخل ليتخلل فهو نظير ما لو استأجره ليحمل ميتة وذلك صحيح فهذا مثله إلا أنهما يفرقان فيقولان الميتة تحمل عادة للطرح وإمالة الأذى فأما الخمر يحمل عادة للشرب والمعصية. وذكر هشام عن محمد رحمهما الله قال ابتلينا بمسئلة وهو أن مسلما استؤجر على أن ينقل جيفة ميتة من المشركين من بلد إلى بلد فكذلك قال أبو يوسف رحمه الله لا أجر له لأنه أنما يحمل حمل الجيفة إلى المقبرة لإمالة الأذى فأما حملها من بلد إلى بلد فهو معصية لا يجوز الاستئجار عليه وقلت أنا إن كان الأجير علما بما أمر بحمله فلا أجر له أيضا وإن لم يعلم بذلك فله الأجر لمعنى الغرور واستئجار الذمي الدابة من المسلم أو السفينة لينقل عليها خمرا على الخلاف الذي بينا.

وإن استأجر ذمي ذميا لشيء من ذلك فهو جائز وكذلك لو استأجره يرعى له خنازير لأن الخمر والخنزير مال متقوم في حقهم بمنزلة الشاة والبعر في حقنا وإن استأجره لبيع له ميتة أو دما لم يجز لأن هذا ليس بمال في حق أحد فحكمهم فيها كحكم المسلمين. (المبسوط للسرخسي ٣٩/١٦-٣٨)

ومن استأجر حمالا يحمل له الخمر فله الأجر في قول أبي حنيفة وعند أبي يوسف ومحمد لا أجر له كذا ذكر في الأصل وذكر في الجامع الصغير أنه يطيب له الأجر في قول أبي حنيفة وعندهما يكره لهما أن هذه إجارة على المعصية لأن حمل الخمر معصية لكونه إعانة على المعصية وقد قال الله عز وجل { ولا تعاونوا على الإثم والعدوان } ولهذا لعن الله تعالى عشرة منهم حاملها والمحمول إليه ولأبي حنيفة أن نفس الحمل ليس بمعصية بدليل أن حملها للإراقة والتخليل مباح وكذا ليس بسبب للمعصية وهو الشرب لأن ذلك يحصل بفعل فاعل مختار وليس الحمل من ضرورات الشرب فكانت سببا محضا فلا حكم له كعصر العنب وقطفه والحديث محمول على الحمل بنية الشرب وبه نقول إن ذلك معصية ويكره أكل أجرته ولا يجوز إجارة الإمامة للزنا لأنها إجارة على المعصية وقيل فيه نزول قوله تعالى ولا تكرهوا فتياتكم على البغاء إن أردن تحصنا لتبتغوا عرض الحياة الدنيا وروي عن رسول الله أنه نهي عن مهر البغي وهو أجر الزانية على الزنا (بدائع الصنائع ١٩٠/٤)

It is clear from the above discussion that Imaam Abu Hanifa رَحْمَةُ اللَّهِ concurred with the majority scholars and did not allow the hiring of a Muslim porter for transporting wine in the case where it was clearly stated or one had knowledge that the transportation is taking place for the purpose of consumption, as this will be aiding in sin.

The clear distinction that Imaam Abu Hanifa رَحْمَةُ اللَّهِ made between the situation of knowing the intent of the hirer and not knowing his purpose has been clearly explained by Allamah Abu Bakr Kaasaani, Allamah Sarakhsi and from the latter day Ulama, Hazrat Moulana Gangohi رَحْمَةُ اللَّهِ.⁷

Case Two: Imaam Abu Hanifa رَحْمَةُ اللَّهِ differed with the majority scholars in the situation where a Muslim leases out his premises to non Muslims for the purpose of erecting a church etc. According to the majority scholars (Imaam Maalik, Imaam Shaafi'ee, Imaam Ahmad, as well as Imaam Abu Yusuf and Imaam Muhammad رَحْمَتُهُمُ اللَّهُ) leasing one's premises for a church is impermissible in all situations. According to Imaam Abu Hanifa رَحْمَةُ اللَّهِ leasing one's premises to non Muslims for a church is permissible.

⁷ حدثنا عبد الله بن منير قال سمعت أبا عاصم عن شبيب بن بشر عن أنس بن مالك قال : لعن رسول الله صلى الله عليه و سلم في الخمر عشرة عاصرها ومتعصرها وشاربها وحاملها والمحمولة إليه وساقيتها وبائعها واكل ثمنها والمشتري لها والمشتراة له (سنن الترمذي، الرقم: ١٢٩٥)

قال العلامة رشيد أحمد الكنكوهي: [عاصرها] المرتكب لفعل العصر والمعتصر من يرتكب له والظاهر أن العاصر من يرتكب العصر لغیره والمعتصر لنفسه، وفي حكم العاصر كل من اهتم لأمرها وسعى في إعدادها، فأَم الأجير لحملها فلم يوجد لها ولا هو ساع في إيجادها فلا يقاس أحدهما على الآخر، والحامل هو الحامل ليشرب فلا يدخل فيه من استأجره ذمي ليحمل خمره إلى بلدة كذا لما أنه لم يحمل لذلك، وإن لم يخل فعله هذا عن كراهة إلا أنه لا يحرم عليه أجرته. (الكوكب الدرّي ٣٢٨/٢)

However it should be understood that the permission issued by Imaam Abu Hanifa رَحْمَةُ اللَّهِ was not a general permission, instead it was subject to two conditions being met.

The first condition is that the property be leased to non Muslims in the villages that were populated only by the kuffaar. If the property was leased for the purpose of a church in the cities and towns of the Muslims or in the villages that were populated by Muslims and non Muslims, according to Imaam Abu Hanifa رَحْمَةُ اللَّهِ such a leasing will be impermissible.

The second condition is that explicit mention of the property being leased for the purpose of a church does not take place at the time of the lease. If it was included in the contract or explicit mention was made at the time of the lease, it will not be permissible according to Imaam Abu Hanifa رَحْمَةُ اللَّهِ.

Allama Kaasaani, the famous Hanafi jurist of the sixth century of Islam explains in his famous book badaai-us-sanaai' that the permission that Abu Hanifa issued of leasing one's property for the purpose of a church, etc (in the villages that were populated only by the kuffaar) was subject to this not being mentioned at the time of the lease. If it was included in the contract or explicit mention was made at the time of the lease, it will not be permissible according to Imaam Abu Hanifa رَحْمَةُ اللَّهِ. Similarly the permission Imaam Abu Hanifa issued was restricted to those villages which were only inhabited by the kuffaar. Allama Kaasaani further explains that since the villages have now also been populated by Muslims and there is great fear through allowing these types of transactions and

leases that Muslims will be influenced towards kufr, the fuqaha state that the verdict of permissibility issued by Imaam Abu Hanifa رَحِمَهُ اللهُ will no longer be applicable.⁸ A similar ruling has been issued by Allamah Sarakhsi in Kitaabul Mabsoot (a commentary on the Mabsoot of Imaam Muhammad رَحِمَهُ اللهُ). While explaining the difference between the verdict of Imaam Abu Hanifa رَحِمَهُ اللهُ and his two students he states that according to Imaam Abu Hanifah رَحِمَهُ اللهُ such a transaction will only be permissible if there was no explicit mention of the impermissible purpose at the time of the transaction. If explicit mention was made, then it will not be permissible.⁹ Allamah Sarakhsi further mentions that according to

⁸ أن الذي إن استأجر داراً من مسلم في مصر فأراد أن يتخذها مصلًى للعامة ويضرب فيها بالناقوس له ذلك ولرب الدار وعامة المسلمين أن يمنعوه من ذلك على طريق الحسبة لما فيه من إحداث شعائر لهم وفيه قهوان بالمسلمين واستخفاف بهم كما يمنع من إحداث ذلك في دار نفسه في أمصار المسلمين ولهذا يمنعون من إحداث الكنائس في أمصار المسلمين قال النبي لا خصاص في الإسلام ولا كنيسة أي لا يجوز إخصاء الإنسان ولا إحداث الكنيسة في دار الإسلام في الأمصار ولا يمنع أن يصلي فيها بنفسه من غير جماعة لأنه ليس فيه ما ذكرناه من المعنى ألا ترى أنه لو فعل ذلك في دار نفسه لا يمنع منه ولو كانت الدار بالسواد ذكر في الأصل أنه لا يمنع من ذلك لكن قيل أن أبا حنيفة إنما أجاز ذلك في زمانه لأن أكثر أهل السواد في زمانه كانوا أهل الذمة من المجوس فكان لا يؤدي ذلك إلى الإهانة والاستخفاف بالمسلمين وأما اليوم فالحمد لله عز وجل فقد صار السواد كالمصر فكان الحكم فيه كالحكم في مصر وهذا إذا لم يشترط ذلك في العقد فأما إذا شرط بأن استأجر ذمي داراً من مسلم في مصر من أمصار المسلمين ليتخذها مصلًى للعامة لم تجز الإجارة لأنه استئجار على المعصية (بدائع الصنائع ١٧٦/٤)

⁹ وإذا استأجر الذمي من المسلم بيتاً لبيع فيه الخمر لم يجز لأنه معصية فلا يتعقد العقد عليه ولا أجر له عندهما وعند أبي حنيفة رحمه الله يجوز والشافعي رحمه الله يجوز هذا العقد لأن العقد يرد على منفعة البيت ولا يتعين عليه بيع الخمر فيه فله أن يبيع فيه شيئاً آخر يجوز العقد لهذا ولكننا نقول تصريحهما بالمقصود لا يجوز اعتبار معنى آخر فيه وما صرحا به معصية وكذلك لو أن ذمياً استأجر مسلماً يحمل له خمر فهو على هذا عند أبي يوسف ومحمد رحمهما الله لا يجوز لأن العقد لأن الخمر يحمل للشرب وهو معصية والاستئجار على المعصية لا يجوز والأصل فيه قوله صلى الله عليه وسلم: "عن الله في الخمر عشرة" وذكر في الجملة حاملها والمحمولة إليه وأبو حنيفة رحمه الله يقول يجوز الاستئجار وهو قول الشافعي رحمه الله لأنه لا يتعين عليه حمل الخمر فلو كلفه بأن يحمل عليه مثل ذلك فلا يستوجب الأجر ولأن حمل الخمر قد يكون للإراقة وللصب في الخل ليتخلل فهو نظير ما لو استأجره ليحمل ميتة وذلك صحيح فهذا مثله إلا أنهما يفرقان فيقولان الميتة تحمل عادة للطرح وإماطة الأذى فأما الخمر يحمل عادة للشرب والمعصية. وذكر هشام عن محمد رحمهما الله قال ابتلينا بمسئلة وهو أن مسلماً استأجر على أن ينقل جيفة ميتة من المشركين من بلد إلى بلد فكذلك قال أبو يوسف رحمه الله لا

Imaam Abu Hanifah if explicit mention of the sin was made in the transaction then one will not deserve any fee and the wealth acquired through such a transaction will be impermissible. Hence, all the latter Hanafi jurists concur that the view of permissibility will no longer remain on account of the fact that Muslims have populated the villages and towns and there is the potential danger of them being influenced by kufr and disbelief.

Summary of Imaam Abu Hanifah's رَحْمَةُ اللَّهِ View

Thus we have clearly seen from the above that Imaam Abu Hanifa رَحْمَةُ اللَّهِ did not differ with the majority. Instead he held the view that hiring one's premises to a non Muslim for a Haraam purpose is impermissible if explicit mention of the Haraam was made at the time of the transaction.¹⁰

أجر له لأنه أنما يحمل حمل الجيفة إلى المقبرة لإمطاة الأذى فأما حملهما من بلد إلى بلد فهو معصية لا يجوز الاستئجار عليه وقلت أنا إن كان الأجير عالما بما أمر بحمله فلا أجر له أيضا وإن لم يعلم بذلك فله الأجر لمعنى الغرور واستئجار الذمي الدابة من المسلم أو السفينة لينقل عليها خمرا على الخلاف الذي بينا.

وإن استأجر ذمي ذميا لشيء من ذلك فهو جائز وكذلك لو استأجره يرضى له خنازير لأن الخمر والخنزير مال متقوم في حقهم بمنزلة الشاة والبعر في حقنا وإن استأجره لبيع له مبيتة أو دما لم يجز لأن هذا ليس بمال في حق أحد فحكمهم فيها كحكم المسلمين. (المبسوط للسرخسي ٣٩/١٦-٣٨)

(و) جاز (إجارة بيت بسواد الكوفة) أي قراها (لا بغيرها على الأصح) وأما الأمصار وقرى غير الكوفة فلا يمكنون لظهور شعار الإسلام فيها وخص سواد الكوفة، لأن غالب أهل الذمة (ليتخذ بيت نار أو كنيسة أو بيعة أو يباع فيه الخمر) وقالوا لا ينبغي ذلك لأنه إغانة على المعصية وبه قالت الثلاثة زيلعي. (رد المختار ٣٩٢/٦)

¹⁰ (و) جاز (بيع عصير) عنب (ممن) يعلم أنه (يتخذ خمرا) لأن المعصية لا تقوم بعينه بل بعد تغيره وقيل يكره لإعاقته على المعصية ونقل المصنف عن السراج والمشكلات أن قوله ممن أي من كافر أما يبيعه من المسلم فيكره ومثله في الجوهرة والباقي وغيرهما زاد القهستاني معزيا للخاتبة أنه يكره بالاتفاق. (بخلاف بيع أمرد ممن يلوط به وبيع سلاح من أهل الفتنة) لأن المعصية تقوم بعينه ثم

Hence if explicit mention was made at the time of the contract that the premises is being leased for a conventional bank, then in this case all the four Imaams, Imaam Maalik, Imaam Shaafi'ee, Imaam Ahmad, Imaam Abu Hanifah as well as the two renowned students of Imaam Abu Hanifah, Imaam Abu Yusuf and Imaam Muhammad رَحْمَةُ اللَّهِ agree that such a leasing is impermissible.

Misconception

There is a misconception among some scholars that Imaam Abu Hanifah رَحْمَةُ اللَّهِ had issued a verdict of general permissibility with regard to leasing one's premises for an impermissible purpose. This misconception is probably due to the fact that many classical Hanafi books on fiqh have merely recorded the difference of Imaam Abu Hanifah and his two students with regard to this issue, but without giving much detail of the nature of the difference. However, Allamah Sarakhsi and Allamah Kaasaani have clarified the viewpoint of Imaam Abu Hanifa رَحْمَةُ اللَّهِ that if the impermissible purpose was explicitly mentioned at the time of the transaction, such a transaction according to Imaam Abu Hanifa رَحْمَةُ اللَّهِ will be impermissible and the wealth earned by this contract will not be halaal. From among our latter Ulama, Hadhrat Mufti Shafee

الكراهة في مسألة الأمر مصرح بها في بيع الخانية وغيرها واعتمده المصنف على خلاف ما في الزيلعي والعيني وإن أقره المصنف في باب البغاة. (رد المختار ٣٩٢/٦)

ولو استأجر رجلاً لينحت له أضناماً، أو ليزخرف له بيتاً بالتمائيل فلا أجر له كما لو استأجر نائحة، أو مغنية، وإن استأجر لينحت له طنبورا أو بربطاً، ففعل طاب له الأجر إلا أنه يأثم به (قاضيهان ٢٢٦/٢)

Sahib¹¹ and Hadhrat Moulana Zafar Ahmad Uthmaani have clarified the viewpoint of Imaam Abu Hanifah and explained that according to Imaam Abu Hanifah رَحِمَهُ اللهُ though such a transaction will be valid due to the commodity being in itself permissible, however this does not negate one becoming sinful due to aiding in sin. In other words, the validity of the sale does not mean that this act is not sinful. This can be likened to a sale concluded at the time of Jumu'ah. All the Hanafi jurists agree that this is makrooh-e-tahreemi, though the sale will be valid. Hence, we understand that in a situation where it is clearly stated or one knows in advance that one is leasing his premises for the purpose of a conventional bank, winery, piggery, casino, escort agency or insurance company, all the four Imams and the two notable students of Imaam Abu Hanifah رَحِمَهُ اللهُ are unanimous that it will be impermissible and one will be sinful.

¹¹ قال الشيخ المفتي شفيع رحمه الله في تحقيقه حول هذه المسئلة (تفصيل الكلام في مسئلة الإعانة على الحرام):

والثاني: بتصريح المعصية في صلب العقد: كمن قال: يعني هذا العصور، لأتخذ خمرًا، فقال بعته، أو أجزلي بيتك لأبيع فيه الخمر فقال أجرته، فإنه بهذا التصريح تضمن نفس العقد معصية مع قطع النظر عما يحدث بعد ذلك من إتخاذ خمرًا وبيع الخمر فيه، وذلك لما في (إجازات) ((المبسوط)) للسرخسي: وإذا استأجر الذمي من المسلم بيتًا لبيع فيه الخمر لم يجوز؛ لأنه معصية فلا ينعقد العقد عليه، ولا أجر له عندهما، وعند أبي حنيفة رحمه الله: يجوز، والشافعي يجوز هذا العقد، ولكننا نقول تصريحهما بالمقصود لا يجوز اعتبار معنى آخر فيه، وما صرحا به معصية. اهـ. ((مبسوط)) (٣٨/١٦).

قلت: وقول أبي حنيفة له الأجر؛ لا يستلزم أيضا جواز هذا الفعل بمعنى رفع الإثم؛ بل ظاهر اللفظ بمعنى تصحيح العقد فقط. كما صرح به في عبارة ((الأصل)): فجاز. انتهى كلام الشيخ المفتي شفيع رحمه الله.

أقول: ومما يدل على ما قال الشيخ المفتي شفيع رحمه الله من استحقاق الأجر وعدم رفع الإثم

Fatwa of Hazrat Moulana Gangohi رَحْمَةُ اللَّهِ

Hazrat Moulana Rasheed Ahmed Gangohi رَحْمَةُ اللَّهِ also issued a fatwa to this effect. The following question and answer appear on page 421 of Ta'leefaat-e-Rashidiyyah:

Question: Is it permissible to lease one's premises for a liquor store? Kindly explain the preferred view of the Hanafi Mazhab.

Answer: The correct position of the Hanafi Mazhab and the fatwa is that it is impermissible.

Deeni expediency

It has been clearly understood from the discussion above that according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ, since Christians living in remote villages in an Islamic state are permitted to build churches, hiring out a premises to them in that part of the land is permissible subject to the conditions mentioned. If one attempts to extend this permission and apply it generally to all situations, the doors of fitnah will be thrown wide open. People will begin hiring their premises to casinos, wineries, piggeries, escort agencies and other haraam enterprises and incorrectly attribute all this to the fatwa of Imaam Abu Hanifah رَحْمَةُ اللَّهِ. Hence, it is not in keeping with Deeni expediency that this route be adopted.

The importance of considering the Deeni expediency is evident from the ruling of the fuqaha with regard to many alcoholic beverages. According to some Hanafi scholars many alcoholic beverages do not fall under the definition and classification of

khamr. Yet the clear fatwa of impermissibility was issued on all alcoholic beverages regardless of whether they fall under the technical definition of khamr or not. The expediency of Deen necessitated that the fatwa of impermissibility be applied across the board due to the fear of people falling into that which is clearly haraam.

Riba, which is the lifeblood of conventional banks, is so abhorred and accursed in the eyes of Shari'ah, that though the zimmi (non-Muslim residents in an Islamic state) were given permission and allowed to consume alcohol and pork provided it was not done in public places, yet they were strictly prohibited from all usury and interest dealings. Rasulullah ﷺ openly declared that those zimmi who deal in interest in any form will no longer remain safe citizens in Darul Islam (Islamic country) and immediately the guarantee of amnesty for such a person will terminate.

The following is recorded in Musannaf Ibn Abi Shaybah:

عن الشعبي ، قال : كتب رسول الله صلى الله عليه وسلم إلى أهل نجران وهم نصارى : أن من بايع منكم بالربا ، فلا ذمة له . (مصنف ابن أبي شيبة، الرقم: ٣٨١٧٠)

Hazrat Nabi ﷺ wrote to the Christians of Najraan: "Whoever from amongst you deals in interest, there is no amnesty for him."

According to another narration Nabi ﷺ said:

وأخرج أبو عبيد في الأموال عن مرسل أبي المليح الهزلي نحوه مطولا ولفظه لا تأكلوا الربا، فمن أكل منهم الربا فذمتي منهم بريئة (تخريج في أحاديث الهداية ٣/٣٣٨)

“Do not consume interest! And whoever does so then my guarantee (for his protection) is cancelled.”

Thus, when Rasulullah ﷺ issued such a stern warning, how can it be assumed that Imaam Abu Hanifah رَحِمَهُ اللهُ will allow a Muslim to lease out his property to a conventional bank for such evil?

3. Third Type of cause:

The third category of aiding in sin is where the cause for the sin is an indirect cause. In this case, the ruling will be issued depending on the extent of mediums and processes found before the actual sin takes place. The more the mediums, the lesser the degree of karahiyyat (reprehensibility). The reason for this is that since there are various processes or mediums being found prior to the occurrence of the actual sin, and since the cause is not directly leading to the sin, it will be permissible for one to deal in it. An example of this type is the selling of timber to a non-Muslim. The non-Muslim may use the timber for many permissible things (such as making furniture, etc) as well as use it for impermissible purposes (such as making musical instruments). However, since the cause is distant and the musical instrument will be made after various mediums and processes, the Shari'ah has not considered this cause as being a means of aiding in sin.

HIRING OUT ONE'S PREMISES TO A KAAFIR FOR A PERMISSIBLE CAUSE BUT THEREAFTER SINFUL ACTIVITIES OCCUR ON THE PREMISES

The Fuqaha have explicitly mentioned that if the premises was leased for a permissible cause and thereafter impermissible activities began taking place on the premises, this will not invalidate the lease nor will it cause the income to be contaminated, as the purpose for leasing the premises was a halaal purpose.¹²

For example, Zaid lets out his house to a non-Muslim (Hindu, Christian, Jew, etc). While residing in the house the non-Muslim conducts his acts of worship.¹³ This will not invalidate the lease.

¹² لأن المعصية لم تقم بفعل الموجر ولكنه سبب قريب وصورة إعانة للمعصية، فيكره لأجله إن كان له علم بتلك المعصية قبل عقد الإجارة. وهذا مفاد كلام الإمام محمد في شرح السير الكبير الآتي ذكره.

¹³ وإذا استأجر الذمي من المسلم دارا يسكنها فلا بأس بذلك وإن شرب فيها الخمر أو عبد فيها الصليب أو أدخل فيها الخنازير ولم يلحق المسلم في ذلك بأس لأن المسلم لا يواجهها لذلك إنما أجرها للسكنى كذا في المحيط (الفتاوى الهندية ٤/٤٥٠)

ولا بأس بأن يؤجر المسلم دارا من الذمي ليسكنها فإن شرب فيها الخمر أو عبد فيها الصليب أو دخل فيها الخنازير لم يلحق المسلم إثم في شيء من ذلك لأنه لم يواجهها لذلك والمعصية في فعل المستأجر وفعله دون قصد رب الدار فلا إثم على رب الدار في ذلك كمن باع غلاما ممن يقصد الفاحشة به أو باع جارية ممن لا يشتريها أو يأتينا في غير المأثي لم يلحق البائع إثم في شيء من هذه الأفعال التي

The lease will not be invalidated for two reasons: Firstly, the purpose for which the premises was leased was to reside in it, which has taken place as agreed. Secondly, the sin is not taking place through the action of the lessor. Instead it occurs solely through the action of the lessee.

يأتي بها المشتري وكذلك لو اتخذ فيها بيعة أو كنيسة أو باع فيها الخمر بعد أن يكون ذلك في السواد ويمتنعون من إحداث ذلك في الأمصار (المبسوط للسرخسي ٧٥/١٦)

فإن اشتروا دورا للسكنى فأرادوا أن يتخذوا دارا منها كنيسة أو بيعة أو بيت نار يجتمعون فيها لصلاتهم منعوا من ذلك. لما في إحداث ذلك من صورة المعارضة للمسلمين في بناء المساجد للجماعات وفيه ازدراء بالدين واستخفاف بالمسلمين ، وكذلك يمتنعون من إظهار بيع الخمر والخنازير ونكاح ذوات المحارم في هذا المصير . لأن في هذا الإظهار معنى الاستخفاف بالمسلمين ، ومقصودهم يحصل بدون الإظهار . ولا ينبغي لأحد من المسلمين أن يواجههم بيتا لشيء من ذلك لما فيه من صورة الإعانة إلى ما يرجع إلى الاستخفاف بالمسلمين ، فإن آجرهم فأظهروا شيئا من ذلك في تلك الدار منعهم صاحب البيت وغيره من ذلك ، على سبيل النهي عن المنكر ، وهو في ذلك كغيره ، ولا يفسخ عقد الإجارة بهذا ، بمنزلة ما لو أجر بيته من مسلم فكان يجمع الناس فيه على الشراب أو يبيع المسكر فيه فإنه يمتنع من ذلك على سبيل النهي عن المنكر ولا تفسخ الإجارة لأجله . لأن المنع من هذا ليس لمعنى يتصل بعقد الإجارة . وإن اتخذ فيه مصلى لنفسه خاصة لم يمتنع من ذلك . لأن هذا من جملة السكنى ، وقد استحق ذلك بالإجارة ، وإنما يمتنع مما فيه صورة المعارضة للمسلمين في إظهار أعلام الدين ، وذلك بأن يبنيه كنيسة يجتمعون فيها لصلاتهم . (شرح سير الكبير ٢٤٨/٤)

قلت: قال الشيخ مولانا محمد شفيق: أفاد كلام الإمام محمد هذا جواز الإجارة إذا لم يعلم بقصده، وهذا هو التوفيق الحسن بين كلام المانعين كقاضي خان والمجوزين كالزبلي وغيره بأن المنع عند العلم والجواز عند عدمه.

THE SHAR'EE RULING REGARDING ATM MACHINES

Generally, most businesses which have ATM machines installed by the bank on their premises do so with the intention of either drawing clientele to the business or providing customers the facility of withdrawing cash from the bank at any time they wish. Hence, this convenience facility eventually prompts them to make purchases at the same store. In essence, one opts for installing this type of 'mini bank' within one's premises ultimately to boost and promote one's business. Notwithstanding the aforementioned benefits, as a Believer (a bearer of Imaan), one ought to analyse the situation from an Islamic perspective. One needs to pose the question to himself, "Is leasing this small area to the bank for the purpose of installing an ATM machine permissible in Islam? Am I not aiding in the mission and operation of the bank in some form or in some way?"

Though the ATM machine affords one the ability to withdraw one's personal money kept in the bank and many other conveniences, however since it is possible for one to withdraw interest bearing loans through this medium as well, leasing this area to the bank will result in one sanctioning and promoting the riba based transactions of the bank on his premises. Interest bearing loans can be acquired from the ATM machines by drawing money using a credit card.

When a person draws money using his credit card, then he is charged a fee (which in reality is interest) which varies according to the amount he draws. It should be noted that this fee should not be misconstrued as legitimate bank fees. The bank charges the card holder a monthly fee for the usage of his credit card. This is a legitimate charge by the bank. However the fee that is charged for withdrawing cash with a credit card is not legitimate. This in actual fact is a fee for advancing a loan (which is over and above the administrative charges for using the credit card) and thus it is interest. Furthermore, a person is also able to access interest bearing loans through his debit card in an ATM machine. If a person has an overdraft facility (and many people do), he can draw an interest bearing loan from an ATM. Apart from this it is also possible for one to pay interest at certain ATM's which have the facility of depositing money in the bank or carrying out an internal transfer. Therefore knowing full well that these types of grave sins will be perpetrated on one's premises, it does not behove a Mu'min to embark on such a venture which will be aiding in sin. It will also earn the curse of Allah تَبَارَكَ وَتَعَالَى and His Rasul صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ, merely on the hope of attracting clientele towards one's business. This can be equated to one hiring out a small area within one's business or premises to a food dealer who wishes to sell pork or wine. Naturally everyone understands that this is impermissible.

Further, the Ulama explain that the comparison between leasing one's premises to a conventional bank and allowing the bank to install an ATM machine (which is in reality a mini bank) in one's store or on one's premises is like the comparison between a person

owning one swine compared to the one who is the owner of a piggery, or a person consuming a glass of wine compared to the one who owns a winery. In both instances one understands that the sin perpetrated is the same. The difference, however, lies in the quantity and hence the gravity of the sin. As far as becoming victims of the curse of Allah تَبَارَكَ وَتَعَالَى that has been sounded in the Ahaadith of Rasulallah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ, both are identical.

Hazrat Abu Hurairah رَضِيَ اللَّهُ عَنْهُ reports that Rasulallah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ has said:

عن أبي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم قال يأتي على الناس زمان لا يبالي المرء ما أخذ منه أمن الحلال أم من الحرام (صحيح البخاري، الرقم: ٢٠٥٩)

“A time will dawn upon the people (before qiyaamah) when no one will be concerned about his income, whether it is from a halaal source or a haraam source.”

In another narration Hazrat Abu Hurairah رَضِيَ اللَّهُ عَنْهُ reports that Rasulallah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ has said:

عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال ليأتين على الناس زمان لا يبقى أحد إلا أكل الربا فإن لم يأكله أصابه من بخاره (سنن أبي داود، الرقم: ٣٣٣٣)

“A time will come upon the people that every person will be involved in interest, and if he does not consume it, most certainly he will be affected by its smoke.”

Note: The above Shar'ee ruling pertains to ATM machines which offer services involving interest. However, if the ATM machine is

such that one is only able to withdraw one's own money and the ATM machine does not have any impermissible functions (one cannot conduct transactions of interest etc) then installing such an ATM machine will be permissible.

CARD PAYMENT MACHINES

As far as card payment machines are concerned which are currently found in many businesses, some may argue that this is no different to the ATM machine since payments are made through it via the bank. Hence just as installing the ATM machine is impermissible; as it ultimately aids in sin; so too should be the Shar'i ruling regarding the use of the card payment machines in vogue.

However there is a distinct difference between both these machines. As far as the ATM machine is concerned, the bank leases that specific area from the owner of the business and becomes the lessee. Hence the bank is one's tenant on the premises and the bank is actually paying the lessor (from severely contaminated wealth) in order to allow them the right to conduct *riba* transactions on his premises. As for the card payment machine, the owner of the business hires it from the bank (at a specified rate in addition to a specific percentage charged on each individual transaction). In this case, the bank is not becoming the tenant on one's premises and is not paying one for using one's premises to conduct interest transactions. Rather the bank is charging a fee to the owner of the business for the permissible usage of the card payment machine. Thereafter if one uses the machine in a *halaal* way, not contravening any law of *Shariah*, the use of the machine will be permissible. On the other hand, if one uses the machine in a manner that contravenes the laws of *Shariah* and aids in sin, then obviously it will be impermissible. Hence hiring the card machine will be just

like hiring any other equipment to use on one's premises. If one utilises it correctly, it will be permissible.

Two ways of using the card payment machine

The card payment machine can be utilized in one of two ways. The first way is that at the time of payment the customer opts to pay for the purchased item through a straight transaction. Payment is effected by the bank on behalf of the customer and the customer is not charged interest. As far as this way is concerned, it is totally Shariah compliant and hence permissible. The second way is that the customer opts to pay for the purchased item through a budget transaction. In this case payment is effected through the bank and the purchaser is charged for the purchase in instalments including interest. The Ulama are in agreement that to use the machine in this manner is impermissible as one is becoming the direct means for the bank providing the customer with an interest bearing loan. Hence on account of aiding in sin, using the machine in this way is ruled as impermissible. In the Mubaaruk Ahaadith, Rasulullah ﷺ had cursed such a person who becomes the means for facilitating the sin of interest and usury, as mentioned in the following narration:

عن جابر قال لعن رسول الله صلى الله عليه وسلم آكل الربا وموكله وكاتبه وشاهديه
وقال هم سواء (صحيح مسلم، الرقم: ١٥٩٨)

Hazrat Jaabir reported that Rasulullah ﷺ cursed the one who consumes interest, pays interest, the scribe for the interest transaction

and the witness to such a deal. Rasulullah ﷺ said that all are equal in the sin.

THE SHAR'EE IMPLICATIONS OF BEING ASSOCIATED WITH A RIBA- BASED INSTITUTE

The conventional bank, which in reality is a riba-based system, is aimed towards enslaving man to his carnal desires through the agency of providing him with loans on interest. Many people, due to their naivety and limited understanding view the 'benefits' and 'privileges' afforded to them by the bank (OD facility, etc.) as a means of their progress and advancement, only to realise at the end that they have been entrapped in the snare of Shaitaan.

The outcome of these loans is that one will live beyond his means, labouring under the misconception and fallacy that the bank will always aid him and be at his side in the hour of need. The pitiful result is that one eventually finds himself drowning in a sea of debts, enslaved to the conventional banks in trying to pay off the interest on the loan which in many cases, eventually exceeds the actual loan.

Islam has strongly condemned this inhumane system in such unequivocal and categorical terms that no other evil has been condemned in this manner in the Holy Qur'aan. Allah تَبَارَكَ وَتَعَالَى says:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ ﴿٢٧٨﴾ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ^ط وَإِن تَبَيَّنْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

O you who believe, fear Allah and give up all interest dealings, if you are believers. But if you do not desist from it, then be prepared to wage a war against Allah and His Rasul ﷺ. However if you repent, then you will be allowed to take back your capital; do not deal unjustly, and you shall not be dealt with unjustly.

Rasulullah ﷺ is reported to have said:

عن عبد الله بن حنظلة غسيل الملائكة قال قال رسول الله صلى الله عليه وسلم درهم ربا يأكله الرجل وهو يعلم أشد من ستة وثلاثين زنية (مسند أحمد، الرقم: ٢١٩٥٧)

Hazrat Abdullah bin Hanzalah رَضِيَ اللَّهُ عَنْهُ reported that Rasulullah ﷺ said, "Consuming one dirham of riba knowingly is worse than committing zina thirty-six times."

On the occasion of the farewell pilgrimage, Rasulullah ﷺ declared:

قال رسول الله صلى الله عليه وسلم إن دماءكم وأموالكم عليكم حرام كحرمة يومكم هذا في شهركم هذا في بلدكم هذا ألا إن كل شيء من أمر الجاهلية تحت قدمي موضوع ... وربي الجاهلية موضوع وأول ربا أضعه ربانا ربا عباس بن عبد المطلب فإنه موضوع كله (سنن أبي داود، الرقم: ١٩٠٧)

"Indeed your life and wealth is sacred like the sanctity of this day, in this auspicious month, in this blessed land. Remember! All pre-Islamic ways and

practices (against the Deen of Islam) are abolished beneath my feet.... All interest dealings which used to take place in the pre-Islamic era (jaahiliyyah) are abolished in Islam. The first transaction of riba that I abolish is the riba owed to my uncle, Abbas ibn Abdil Muttalib رَضِيَ اللَّهُ عَنْهُ."

WHY IS RIBA CONDEMNED IN SHARIAH?

The western economic system, which is based on interest, has resulted in concentrating wealth and resources of the world in the hands of few individuals.

The money of the rich is pooled in banks and offered to the poor, according to their financial status, under the guise of fulfilling their needs and requirements with the condition of interest attached, thereby making it extremely difficult for them to continue life.

The outcome is that the wealthy thrive through the blood and sweat of the poor. Hence, they create monopolies and become richer while the poor become poorer in struggling to pay off their debts to the rich. In essence, riba has achieved nothing besides widening the gap between the rich and the poor, causing man to fall deeper into the abyss of destruction. Worst of all, it gradually sucks the blood of the poor and entraps them in slavery that is not in the form of shackles and chains, but rather in the form of anxiety and sleepless nights.

Many countries deficit accounts run into billions due to the interest bearing loans that are borrowed from other countries, the brunt of which is suffered by none but the citizens of the borrowing countries. The reality of the matter is that today's ten richest men in the world own more than the combined wealth of 48 poor countries of the world. Millions are malnourished, lack access to pure water, underprivileged in terms of the basic necessities of life and are deprived of education.

In contrast, Islam advocates brotherhood and showing kindness and compassion to the creation. One is permitted and encouraged to earn a halaal living. However this must be done together with maintaining a balance and with fulfilling the needs of the creation.

ANALYSING THE MAZHAB OF IMAAM ABU HANIFAH رَحْمَةُ اللَّهِ

Q: I am a student of Deen and I noticed that in the Fiqhi Kitaabs, it is mentioned that the Mazhab of Imaam Abu Hanifah رَحْمَةُ اللَّهِ is that it is permissible to lease out one's premises to a liquor store or church (or a bank). When this is the clear verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ, then why do we see some Ulama preventing people from this?

A: In order to correctly understand the view point of Imaam Abu Hanifah رَحْمَةُ اللَّهِ, one will be required to study other masaa'il and verdicts of Imaam Abu Hanifah رَحْمَةُ اللَّهِ of this nature in order to determine the underlying factors that govern the ruling of these masaa'il.

Merely looking at a single mas'alah and trying to understand the mazhab of Imaam Abu Hanifah رَحْمَةُ اللَّهِ, or to take the mas'alah out of its context and attribute it to Imaam Abu Hanifah رَحْمَةُ اللَّهِ, is not correct.

It will only be possible for one to reach the correct conclusion after viewing the various masaa'il which deal with the topic of I'aanat 'alal ma'siyah.

Below we will mention the verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ in a few other masaa'il which pertain to this discussion, and thereafter we will discuss the mas'alah in question.

1. Selling Weapons to the Ahl-e-Harb

In the mas'alah of selling weapons to the Ahl-e-Harb, the Fuqahaa clearly mention that if one has knowledge that the people to whom he is selling the weapons are Ahl-e-Harb (kuffar at war with the Muslims), then it will not be permissible for him to sell the weapons to them, as he will be assisting them in sin.

This is the verdict of Imaam Abu Hanifah and his two students, Imaam Abu Yusuf and Imaam Muhammad رَحْمَةُ اللَّهِ. This consensus is understood from the fact that the Fuqahaa have not mentioned any ikhtilaaf between our three Imaams in this mas'alah.¹⁴

2. Selling a Shawl Embroidered with Silver Beads

As far as the mas'alah of selling a shawl embroidered with silver beads (المكعب المفضض) is concerned, then all the Fuqahaa agree that is not permissible for one to sell such a shawl to a man whom one knows will wear it, as it is not permissible for males to wear silver and gold jewellery (apart from a silver ring).

¹⁴ (ويكره) تحريماً (بيع السلاح من أهل الفتنة إن علم) لأنه إغانة على المعصية... ونحوه يكره لأهل الحرب (الدر المختار، ٢٦٨/٤، بدائع الصنائع ٢٣٣/٥، تبيين الحقائق ٢٩٦/٣، البحر الرائق ١٥٤/٥)

The Fuqahaa clearly state that the basis of the impermissibility of selling the shawl is that one will be aiding in sin. This is the verdict of Imaam Abu Hanifah and his two students, Imaam Abu Yusuf and Imaam Muhammad رَحْمَهُمَا اللهُ.¹⁵

3. Selling Grape Juice

The Fuqahaa have mentioned that it is not permissible for one to sell grape juice to a person who one knows will use it to make khamr.

It should be borne in mind that in this mas'alah, there is no difference in the ruling whether one sells the grape juice to a zimmi or a Muslim.

Allaamah Tahtaawi رَحْمَةُ اللهِ explains that since the kuffaar are mukhaatab with the usool and furoo' of deen, the impermissibility will also apply to them, just as it applies to Muslims.

Hence, it will not be permissible for a Muslim to sell grape juice to them when he knows that they will use it to make khamr, just as it is not permissible in the case of a muslim.

Allaamah Haskafi رَحْمَةُ اللهِ quoted Qadhi Khaan رَحْمَةُ اللهِ as mentioning that there is consensus in this mas'alah between Imaam Abu Hanifah and his two students, Imaam Abu Yusuf and Imaam

¹⁵ وبيع المكعب المفضض للرجل إن ليلبسه يكره، لأنه إعانة على لبس الحرام وإن كان إسكافا أمره إنسان أن يتخذ له خفا على زي المجوس أو الفسقة أو خياطا أمره أن يتخذ له ثوبا على زي الفساق يكره له أن يفعل لأنه سبب التشبه بالمجوس والفسقة اهـ (رد المحتار ٣٩٢/٦، البحر الرائق ٢٣٠/٨، تبيين الحقائق ٢٩/٦، الفتاوى الهندية ٢١٠/٣، قاضيهان ١٤٢/٢)

Muhammad ﷺ, regarding it being impermissible, and the reason for the impermissibility is that one will be aiding in sin.

Note: In regards to the mas'alah of selling grape juice to a zimmi, some Hanafi kitaabs say that it is permissible and others say that it is not permissible. Allaamah Qadhi Khaan رحمه الله explained that this difference is based on the difference between both groups of Ulama as to whether the kuffaar are mukhaatab with furoo' or not. Those who issued the verdict of permissibility based their view upon the qawl that the kuffaar are not mukhaatab with the furoo' of deen, rather they are only mukhaatab with the usool of deen.

However, the preferred opinion in the Hanafi mazhab is that the kuffaar are mukhaatab with the usool and furoo' of deen and therefore it will not be permissible for a Muslim to sell grape juice to them, (just as it is not permissible for him to sell grape juice to a Muslim) when he knows that their intention for purchasing it is to make wine out of it.¹⁶

¹⁶ (و) جاز (بيع عصير) عنب (من) يعلم أنه (يتخذ خمرًا) لأن المعصية لا تقوم بعينه بل بعد تغيره وقيل يكره لإعاقته على المعصية ونقل المصنف عن السراج والمشكلات أن قوله من أي من كافر أما يبيعه من المسلم فيكره ومثله في الجوهرة والباقي وغيرهما زاد القهستاني معزيا للخانية أنه يكره بالاتفاق.

قال العلامة ابن عابدين رحمه الله: (قوله أما يبيعه من المسلم فيكره) لأنه إعانة على المعصية قهستاني عن الجواهر. أقول: وهو خلاف إطلاق المتن وتعليل الشروح بما مر وقال ط: وفيه أنه لا يظهر إلا على قول من قال إن الكفار غير مخاطبين بفروع الشريعة والأصح خطايم وعليه فيكون إعانة على المعصية، فلا فرق بين المسلم والكافر في بيع العصير منهما فتدبر اهـ. ولا يرد هذا على الإطلاق والتعليل المار. (رد المختار ٣٩١/٦)

ثم قال ذلك البعض: ثم كلام المصنف صريح في أن إجارة البيت لبيع فيه الخمر مع كونه معصية إنما صحت عند أبي حنيفة لتخلل فعل فاعل مختار. وقد صرح صاحب المحيط بأن صحته لعدم كون بيع الخمر معصية للذمي كشره، لأن خطاب التحريم غير نازل في حقه، ولا خفاء فيما بينهما أيضًا من الثاني انتهى. أقول: كون كلام المصنف صريحًا فيما ذكره ممنوع لجواز أن يكون قول المصنف وإنما المعصية بفعل المستأجر وهو مختار فيه خارجًا مخرج التغليب. فإن في المسألة المذكورة صورًا: إيجار البيت لأن يتخذ فيه بيت نار

4. Selling an Amrad Slave Boy

In the mas'alah of selling a slave boy who is a young lad (أمرد) to a person who one knows intends to commit haraam with him, the Fuqahaa mentioned that it is not permissible for one sell the slave to him.

This is the verdict of Imaam Abu Hanifah رَحِمَهُ اللهُ and his two students, Imaam Abu Yusuf and Imaam Muhammad رَحِمَهُمُ اللهُ.

This being the verdict of all the three imams is understood from the fact that the Fuqahaa did not mention any ikhtilaaf in this mas'alah.

It should be known that the author of Nihaayah and the author of Kifaayah regarded the sale of a young slave boy (to a person who one knows is purchasing the boy to commit sin with him) to be permissible. They based their view upon the ibaat of Mabsoot Sarakhsi, which mentions that the sale to such a person is permissible.

وإيجاره لأن يتخذ فيه كنيسة ، وإيجاره لأن يتخذ فيه بيعة . وإيجاره لأن يباع فيه الخمر ، ولا شك أن اتخاذ بيت النار واتخاذ الكنيسة واتخاذ البيعة معصية للذمي أيضا لكون الكفار مخاطبين بالإيمان بلا خلاف . واتخاذ تلك الأمور يناهي الإيمان فكانت معصية قطعاً ، وإن لم يكن بيع الخمر معصية للكافر بناء على القول بأن خطاب التحريم غير نازل في حق الكفار فيجوز أن تكون الصور الثلاث الأولى مغلبة على صورة بيع الخمر في قول المصنف ، وإنما المعصية بفعل المستأجر وهو مختار فيه قطعاً فنسبته عنه ، فكأنه قال : وإنما المعصية في صورة اتخاذ المعصية بفعل المستأجر وهو مختار فيه فقطع نسبة ذلك الفعل عن المؤجر . وأما في غير صورة اتخاذ المعصية وهي صورة بيع الذمي الخمر فالأمر بين ، فحينئذ لا يتحقق التناهي بينه وبين ما صرح به صاحب المحيط كما لا يخفى ، ثم إنه لو سلم دلالة كلام المصنف على كون بيع الخمر أيضاً معصية للذمي فلا ضير فيه ؛ لأن في نزول خطاب التحريم في حق الكفار قولين من مشايخنا ، فعند بعضهم غير نازل وعند بعضهم نازل كما عرف في أصول الفقه في فصل أن الكفار مخاطبون بالشرائع أم لا ، فيجوز أن يكون مبنى كلام صاحب المحيط على القول الأول ومبنى كلام المصنف على القول الثاني ، ولكل وجهة هو موليها (فتح القدير ٦١٠/١-٦١)

However, our response to this is that if one has to view the ibaat of Mabsoot in context, he will understand that Mabsoot had regarded the sale of an amrad as permissible in the situation where one did not have knowledge of the wrong intention of the purchaser.

This can be easily understood from the fact that the author of Mabsoot likened the mas'alah of selling a slave boy to the previous mentioned mas'alah, and in the previous mentioned mas'alah, the qaid (condition) of one not knowing the intention of the purchaser was mentioned.

Therefore, one concludes that if the seller knows the wrong intention of the purchaser, it will not be permissible, and there is no difference between Mabsoot and all the other kitaabs which we have quoted above.¹⁷

¹⁷ ولا بأس بأن يواجه المسلم داراً من الذمي ليسكنها فإن شرب فيها الخمر، أو عبد فيها الصليب، أو أدخل فيها الخنازير لم يلحق المسلم إثم في شيء من ذلك؛ لأنه لم يواجهها لذلك والمعصية في فعل المستأجر وفعله دون قصد رب الدار فلا إثم على رب الدار في ذلك كمن باع غلاماً ممن يقصد الفاحشة به، أو باع جارية ممن لا يستترئها، أو يأتيتها في غير المأثى لم يلحق البائع إثم في شيء من هذه الأفعال التي يأتي بها المشتري، (المبسوط للسرخسي ٣٨/١٦)

ويكره بيع الأمرد من فاسق يعلم أنه يعصي به لأنه أعانه على المعصية (قاضيهان ١٧٠/٢، البحر الرائق ١٥٥/٥، الفتاوى الهندية ٢١٠/٣، البنائة ٢٢٠/١٢)

قال الولوالجي في بيوع فتاواه رجل له عبد أمرد أراد أن يبيعه من فاسق يعلم أنه يعصي الله فيه غالباً يكره هذا البيع؛ لأنه إعانة على المعصية. اهـ. غاية (حاشية الشلبي على تبيين الحقائق ٢٩/٦)

وسئل الفقيه أبو بكر عن يبيع عبده الأمرد من فاسق يعلم أنه يعصي الله به قال: يكره؛ لأنه إعانة على المعصية. (المحيط البرهاني ١٤٠/٧)

فقد قالوا: يجوز بيع العصور ممن يعلم أنه يتخذ خمرًا مع الكراهة، وكذا بيع الأمرد ممن يعلم أنه يعصي به (النهر الفائق ٤٢٩/٤)

Note: Most of the Fiqhi Hanafi Kitaabs have explained that in the case where one has knowledge that the purchaser's intention for purchasing the slave boy is to commit haraam with him, it will be makrooh-e-tahrimi to sell the slave boy to such a person.

However, the apparent ibaarat of Tabyeen-ul-Haqaa'iq shows that the sale is permissible. One tatbeeq (reconciliation) that can be given for the ibaarat of Tabyeen is that it refers to the situation where one did not have knowledge of the intention of the purchaser. In this way, there will be no contradiction between the ibaarat of Tabyeen and all the other kitaabs.

However, Allaamah Shaami رَحْمَةُ اللَّهِ has given preference to the mutlaq ibaarat of Tabyeen and made ta'weel (gave an interpretation) for the ibaarat of all other kitaabs. He said that those kitaabs which mention that selling a slave boy to a person who one knows that he intends to commit sin with him is Makrooh - this refers to Makrooh-e-Tanzeehi, whereas those kitaabs that said that it is not Makrooh - they are referring to it not being Makrooh-e-Tahreemi.

However, this tatbeeq (reconciliation) of Allaamah Shaami رَحْمَةُ اللَّهِ is not correct for three reasons:

1. It goes against the other masaa'il which have been mentioned thus far regarding I'aanat alal-Ma'siyat, and in all these masaa'il, the verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ is that it is Makrooh-e-Tahreemi.

2. It also goes against the qai'dah of the Fuqahaa that when mutlaq karaahat is mentioned, it refers to Makrooh-e-Tahreemi.
3. There is a mas'alah mentioned in Shaami that if a Muslim appoints a kaafir as his wakeel to sell khamr or khinzeer on his behalf, then according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ، though the sale will be valid, but it will be Makrooh-e-Tahreemi for one to do so. Hence, we see that Imaam Abu Hanifah رَحْمَةُ اللَّهِ ruling something as valid does not mean that it is permissible according to him, but rather, he regarded it to be Makrooh-e-Tahreemi. This verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ in this mas'alah makes it abundantly clear that the karaahat in these types of masaa'il is not Karaahat-e-Tanzeehi, but Karaahat-e-Tahreemi.

In this mas'alah (of a Muslim appointing a kaafir as his wakeel to sell khamr or khinzeer), the verdict of Imaam Abu Yusuf and Imaam Muhammad رَحْمَهُمُ اللَّهُ is that the sale will not be valid.¹⁸

¹⁸ (أو أمر المسلم ببيع خمر أو خنزير أو شرائهما) أي وكل المسلم (ذميا أو) أمر (المحرم غيره) أي غير المحرم (ببيع صيده) يعني صح ذلك عند الإمام مع أشد كراهة كما صح ما مر؛ لأن العاقد يتصرف بأهليته وانتقال الملك إلى الأمر أمر حكمي. وقالوا: لا يصح، وهو الأظهر شربلاية عن البرهان (الدر المختار ٨٣/٥)

قال العلامة ابن عابدين رحمه الله: (قوله أو أمر المسلم إلخ) عطف على كفل من قوله كما لو كفل ط (قوله ببيع خمر أو خنزير) أي مملوكين له بأن أسلم عليهما ومات قبل أن يزيلهما وله وارث مسلم فيرثهما فتح (قوله يعني صح ذلك) أي التوكيل وبيع الوكيل وشراؤه بحر (قوله مع أشد كراهة) أي مع كراهة التحريم، فيجب عليه أن يخلل الخمر أو يريقها ويسبب الخنزير، ولو وكله ببيعهما يجب عليه أن يتصدق بثمانهما نحر وغيره (رد المختار ٨٣/٥)

What is the Verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ عَلَيْهِ regarding Leasing one's Premises to a Bank, Liquor Store or Church?

In the mas'alah of hiring out one's premises in the sawaad (villages occupied by the ahluz zimmah) to a zimmi who is going to use it as a church or is going to use it to sell khamr, the Fuqahaa have also mentioned ikhtilaaf between Imaam Abu Hanifah and his two students (i.e. according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ عَلَيْهِ, it is permissible, and according to his two students, it is not permissible).

It should be borne in mind that in this mas'lah, Imaam Abu Hanifah's رَحْمَةُ اللَّهِ عَلَيْهِ verdict of permissibility is not general, rather he makes a difference between the sawaad (the villages which are predominantly occupied by the zimmi) and the Muslim towns.

In regard to the sawaad, the Fuqahaa mention that the verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ عَلَيْهِ is that it is permissible for a Muslim to hire out his premises to a zimmi for the purpose of using it as a church, as this will not oppose the Sha'aa'ir (salient symbols) of Islam.

However, in regard to the Muslim towns, the Fuqahaa mention that the verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ عَلَيْهِ is that it is not permissible as it will be going against the Sha'aa'ir of Islam.¹⁹

¹⁹ وإنما قيده بالسواد؛ لأهم لا يمكنون من إحداث المعبد، وإظهار بيع الخمر والخنازير في الأمصار لظهور شعائر الإسلام فيها فلا يعارض بإظهار شعائر الكفر بخلاف السواد قالوا هذا في سواد الكوفة؛ لأن غالب أهلها أهل ذمة، وأما في سواد غيرها فيه شعائر الإسلام ظاهرة فلا يمكنون فيها في الأصح (تبيين الحقائق ٢٩/٦، البحر الرائق ٢٣٠/٨، رد المختار ٣٩٢/٦)

Similarly, in the mas'alah of a zimmi hiring a Muslim to transport khamr, the Fuqahaa have mentioned an ikhtilaaf between Imaam Abu Hanifah رَحْمَةُ اللَّهِ and his two students (i.e. according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ, it is permissible, and according to his two students, it is not permissible).

There are three questions that arise at this juncture.

1. The first question is, “Why did Imaam Abu Hanifah رَحْمَةُ اللَّهِ allow a Muslim to transport khamr?”
2. The second question is, “Why did Imaam Abu Hanifah رَحْمَةُ اللَّهِ allow a Muslim to hire out his premises to a non-muslim for the purpose of using it as a church in the sawaad, and not in the Muslim towns?”

Response to the First Question - Why did Imaam Abu Hanifah رَحْمَةُ اللَّهِ allow a Muslim to transport khamr?

The answer to the first question is that this verdict of Imaam Abu Hanifah was in the case where one did not have knowledge of the intention of the hirer. Since it is possible that one is being hired to dispose of the wine or to make it into vinegar, it will be permissible for one to carry the wine for a wage. However, if one knows the intention of the hirer, that he wishes to drink the wine or sell it to someone who wishes to drink it, then it will not be permissible

لا يمكنون في الأمصار لعدم الإذن من الحكام فيما تغلب فيه شعائر الإسلام وعن هذا قال ويكره في المصر إجماعاً وكذا في سواد غالبه أهل الإسلام لما مر أن شعائر الإسلام ظاهرة (مجمع الأنهر ٢/٥٢٩)

according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ. This answer is given by Allaamah Sarakhsi and Allaamah Kaasaani رَحْمَةُ اللَّهِ.

Response to the Second Question - Why did Imaam Abu Hanifah allow a Muslim to hire out his premises to a non-muslim for the purpose of using it as a church in the sawaad and not in the Muslim towns?

The answer to the second question is that this verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ is in the case where one did not have knowledge of the intention of the hirer, that he wishes to use the premises for a church. In such a situation, Imaam Abu Hanifah رَحْمَةُ اللَّهِ allows a Muslim to lease out his premises to a zimmi in the sawaad. However, if one knew his intention, then it will not be permissible according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ. This answer has been given by Allaamah Sarakhsi رَحْمَةُ اللَّهِ in Mabsoot and by Allaamah Kaasaani رَحْمَةُ اللَّهِ in Badaai'.

Is the Verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ General or is it Restricted to the Case where One does not know the Intention of the Hirer that he wishes to use the Premises for a Church, Liquor Store or Bank?

According to Allaamah Sarakhsi رَحْمَةُ اللَّهِ and Allaamah Kaasaani رَحْمَةُ اللَّهِ, the verdict of Imaam Abu Hanifah رَحْمَةُ اللَّهِ regarding the permissibility of leasing one's premises to the zimmi in the sawaad is restricted to the case where one does not know the intention of the hirer. If he knows that the hirer wants the premises for a

church, liquor store etc, then it will not be permissible – even in the sawaad.

However, according to other Fuqahaa, the verdict of Imaam Abu Hanifah رَحِمَهُ اللهُ is general i.e. it is permissible to hire out one's premises to a zimmi in the sawaad, whether one knows that he is hiring the premises for a church or a liquor store, or one does not know. In both cases, it will be permissible according to Imaam Abu Hanifah رَحِمَهُ اللهُ. The apparent fiqhi ibaaraat seem to be supporting this second view.²⁰

²⁰ ومن استأجر حالاً يحمل له الخمر فله الأجر في قول أبي حنيفة وعند أبي يوسف ومحمد لا أجر له كذا ذكر في الأصل وذكر في الجامع الصغير أنه يطيب له الأجر في قول أبي حنيفة وعندهما يكره ، لهما أن هذه إجارة على المعصية لأن حمل الخمر معصية لكونه إعانة على المعصية وقد قال الله عز وجل { ولا تعاونوا على الإثم والعدوان } ولهذا لعن الله تعالى عشرة منهم حاملها وأحمول إليه ولأبي حنيفة أن نفس الحمل ليس بمعصية بدليل أن حملها للإراقة والتخليل مباح وكذا ليس بسبب للمعصية وهو الشرب لأن ذلك يحصل بفعل فاعل مختار وليس الحمل من ضرورات الشرب فكانت سبباً محضاً فلا حكم له كعصر العنب وقطفه والحديث محمول على الحمل بنية الشرب وبه نقول إن ذلك معصية ويكره أكل أجرته (بدائع الصنائع ١٩٠/٤)

...وهذا إذا لم يشترط ذلك في العقد فأما إذا شرط بأن استأجر ذمي داراً من مسلم في مصر من أمصار المسلمين ليتخذها مصلى للعامة لم تجز الإجارة لأنه استئجار على المعصية (بدائع الصنائع ١٧٦/٤)

وكذلك لو أن ذمياً استأجر مسلماً يحمل له خمرًا فهو على هذا عند أبي يوسف ومحمد - رحمهم الله - لا يجوزان العقد؛ لأن الخمر يحمل للشرب وهو معصية والاستئجار على المعصية لا تجوز والأصل فيه قوله - صلى الله عليه وسلم - «لعن الله في الخمر عشرة» وذكر في الجملة حاملها وأحمولها إليه وأبو حنيفة - رحمه الله - يقول يجوز الاستئجار وهو قول الشافعي - رحمه الله -؛ لأنه لا يتعين عليه حمل الخمر فلو كلفه بأن يحمل عليه مثل ذلك فلا يستوجب الأجر، ولأن حمل الخمر قد يكون للإراقة وللصبي في الخل ليتخلل فهو نظير ما لو استأجره ليحمل ميتة، وذلك صحيح فهذا مثله إلا أنهما يفرقان فيقولان الميتة تحمل عادة للطرح وإمالة الأذى. فأما الخمر يحمل عادة للشرب والمعصية... (وقلت) أنا إن كان الأجير عالماً بما أمر بحمله فلا أجر له أيضاً، وإن لم يعلم بذلك فله الأجر (المبسوط للسرخسي ٣٨/١٦)

قال شيخ الإسلام رحمه الله: وأراد بهذا إذا استأجرها الذمي ليسكنها، ثم أراد بعد ذلك أن يتخذ كنيسة أو بيعة فيها، فأما إذا استأجرها في الابتداء ليتخذها بيعة أو كنيسة لا يجوز إلا إلى ما ذكر قبل هذا أن الذمي، إذا استأجر من المسلم بيعة يصلي فيها لم يجز بعض مشايخنا قالوا: وما ذكر في سواد الكوفة؛ لأن عامة سكانها أهل الذمة والروافض أما في سوادنا عامة سكانها المسلمون فيمتنعون

Why did Imaam Abu Hanifah رَحِمَهُ اللهُ make a difference between the Islamic towns and Villages thereby Allowing a Muslim to lease his premises for a Church in the villages?

The reason why Imaam Abu Hanifah رَحِمَهُ اللهُ made a difference between the Islamic towns and villages in this case is that in the Islamic towns, the Sha'aa'ir of Islam are found. Therefore, allowing the zimmi to open liquor stores or churches in these towns will clash with the Sha'aair of Islam.

As for allowing them to open liquor stores and churches in the villages which are predominantly occupied by the kuffaar, then since this will not clash with the Sha'aair of Islam, it will be permissible.

Though one might argue that in giving the zimmi permission in the villages, one will be aiding them in sin (and for this reason, Imaam Abu Hanifah's two students, as well as Imaam Shaafi'ee, Imaam Maalik and Imaam Ahmed رَحِمَهُمُ اللهُ all do not allow it), our answer is that when Shari'ah has allowed them to reside in Daarul Islam, have churches and continue to follow their religions, and Shari'ah did not command us to break down their churches or stop them from practicing their religion or from consuming wine and swine, then they should be allowed to practice their deen and carry out their religious practices.

عن إحداه الكنائس كما يمنعون عنها في الأمصار، وكثير من المشايخ قالوا: لا يمنعون عن إحداه الكنائس في سوادنا أيضا. (المحيط البرهاني ٨/٨٧)

However, we should ensure that they do these practices far away from the Muslim towns and cities so that there is no clash with the Sha'aair of Islam. Therefore, they will be allowed to practice their deen in the villages that are predominantly inhabited by Zimmis.

Nevertheless, in today's times, since the whole world is operating through the kuffaar systems and there is no land that is being run on the system of Daarul Islam in the true sense of the word, and everywhere we go, we find that there is a clash between the Sha'aair of Islam and the ways of the kuffaar, the Ulama mention that in today's times, even according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ، hiring out one's premises to the kuffaar for these purposes will not be permissible. It is for this reason that Saahib-e-Hidaayah also mentioned that when the Sha'aair of deen are now found in the sawaad, then according to Imaam Abu Hanifah رَحْمَةُ اللَّهِ، hiring out one's premises to the kuffaar for this purpose will not be permissible in the sawaad as well, as this will oppose the Sha'aair of Islam.²¹

One should ponder over the fact that in the Fiqhi Kitaabs, permission has been granted to carry out riba transactions in

²¹ "ولا يجوز إحداث بيعة ولا كنيسة في دار الإسلام" لقوله عليه الصلاة والسلام " لا خصاء في الإسلام ولا كنيسة " والمراد إحداثها " وإن اخدمت البيع والكنائس القديمة أعادوها " لأن الأبنية لا تبقى دائما ولما أفرهم الإمام فقد عهد إليهم الإعادة إلا أنهم لا يمكنون من نقلها لأنه إحداث في الحقيقة والصومعة للتخلي فيها بمنزلة البيعة بخلاف موضع الصلاة في البيت لأنه تبع للسكنى وهذا في الأمصار دون القرى لأن الأمصار هي التي تقام فيها الشعائر فلا تعارض بإظهار ما يخالفها وقيل في ديارنا يمنعون من ذلك في القرى أيضا لأن فيها بعض الشعائر والمروى عن صاحب المذهب في قرى الكوفة لأن أكثر أهلها أهل الذمة وفي أرض العرب يمنعون من ذلك في أمصارها وقراها لقوله عليه الصلاة والسلام " لا يجتمع دينان في جزيرة العرب ". (الهداية ٤٠٤/٢)

Daarul Harb. However, the Ulama say that in today's times, it will not be permissible as there is no Daarul Islam found (in the true sense of the word) anywhere in the world, as the whole world is currently operating on the kuffaar systems. Therefore, the Fatwa regarding riba in Daarul Harb will be passed according to the verdict of Imaam Abu Yusuf رَحِمَهُ اللهُ, which is also the verdict of Imaam Maalik, Imaam Shaafi' and Imaam Ahmad رَحِمَهُمُ اللهُ.

When all the countries of the world are following the kuffaar systems of riba, if permission is given based on the verdict of Imaam Abu Hanifah رَحِمَهُ اللهُ and Imaam Muhammad رَحِمَهُ اللهُ, that dealing in riba in Daarul Harb is permissible, then what will be left of Islam?²²

²² (إجارة بيت ليتخذ بيت نار أو بيعة أو كنيسة أو يباع فيه خمر بالسود) وإنما قيده بالسود؛ لأنهم لا يمكنون من إحداث المبد، وإظهار بيع الخمر والخنازير في الأمصار لظهور شعائر الإسلام فيها فلا يعارض بإظهار شعائر الكفر بخلاف السود قالوا هذا في سود الكوفة؛ لأن غالب أهلها أهل ذمة، وأما في سود غيرها فيه شعائر الإسلام ظاهرة فلا يمكنون فيها في الأصح. (تبيين الحقائق ٢٩٦/٦)

(و) جاز (إجارة بيت بسود الكوفة) أي قرأها (لا يغيرها على الأصح) وأما الأمصار وقرى غير الكوفة فلا يمكنون لظهور شعار الإسلام فيها وخص سود الكوفة، لأن غالب أهلها أهل الذمة (ليتخذ بيت نار أو كنيسة أو بيعة أو يباع فيه الخمر) وقال لا ينبغي ذلك لأنه إغانة على المعصية وبه قالت الثلاثة زيلي. (الدر المختار ٣٩٢/٦)

قالوا إن ما ذكره الإمام مختص بسود الكوفة؛ لأن أغلب أهلها ذمي وأما في سودنا فأعلام الإسلام ظاهرة فلا يمكنون من إجارة البيت ليتخذ معبدا ومفسقا في الأصح كما لا يمكنون في الأمصار لعدم الإذن من الحكام فيما تغلب فيه شعائر الإسلام (مجمع الأئمة ٥٢٩/٢)

قال العبد الضعيف: قد تقدم في باب الإجازات اختلاف الروايات عن الإمام في هذا الباب، فروى عنه جواز بيع العصور ممن يعلم أنه يتخذ خمرًا، وقيل: يكره لإعانتة على المعصية، وزاد القهستاني معزيا للخائنة أنه يكره بالإتفاق، وبيع الأمرد ممن يلوط به لا يجوز عنده، كذا في الدر مع الشامية وإذا كان كذلك فما في بعض الروايات عنه من الجواز محمول على صحة البيع قضاءً، وكذا ما روي عنه أنه لا بأس بإجارة الدار ممن يتخذها كنيسة أو بيعة، معناه صحتها قضاءً، وأن الأجرة تحمل للمؤجر، ولا نزاع في كراهتها ديانةً، فافهم. فان الروايات قد اختلفت عن الإمام، فقال بجواز بعض الاجازات والبيوع من هذا الجنس، وبكراهة بعضها، وحرمة البعض من نظائرها، والجمع بينهما بما ذكرنا أولى، فان القول بجوازها مطلقا مخالف لحديث بريدة المذكور في المتن، فلا بد من القول بكراهة هذه العقود ديانةً، والذي أدين إليه به ان ابا حنيفة الإمام لم ينف الكراهة ديانة قطعاً، وإنما قال بصحة العقد قضاءً فقط، والله تعالى أعلم بالصواب (إعلاء السنن ٤٣٣/١٧)

It is for this reason that when Mufti Mahmoodul Hasan Gangohi رَحْمَةُ اللَّهِ was asked regarding riba in India (which is Daarul Harb), Hazrat mentioned that it is not permissible, as all the nusoos of the Quraan and Ahaadith that prohibit dealing in riba are general and are not restricted to any place (i.e. the prohibition of dealing in interest applies in Daarul Islam and Daarul Harb equally).

Below is the Fatwa of Mufti Mahmoodul Hasan Gangohi رَحْمَةُ اللَّهِ:

Ribaa in Daarul Harb

Question:

Is India regarded as Daarul Harb? What are the conditions for a land to be regarded as Daarul Harb? Is it permissible to take interest in Daarul Harb?

Answer:

Daarul Harb refers to that land whose rule is not under the Muslims. Taking this into consideration, India is a Daarul Harb.

Taking interest is haraam. The impermissibility of taking interest is found in the nass-e-qat'ee (Allah تَبَارَكَ وَتَعَالَى says in the Qur'aan Majeed – “وحرّم الربوا” (Allah تَبَارَكَ وَتَعَالَى had made riba haraam). In this verse, there is no restriction of any place (hence, the impermissibility of riba is general and applies to all places, whether Daarul Islam and Daarul Harb).

(Fataawa Mahmoodiyah 24/377)

A question was sent to Hazrat Mufti Ebrahim Salejee Saheb (Muddazilluhu) with regard to interest. Hazrat Mufti Saheb's fatwa is reproduced hereunder for the general benefit of the readers.

HOW DO YOU LIVE IN THE UK WITHOUT PARTICIPATING IN INTEREST?

Q: My question pertains to interest which I know is forbidden in Islam and is seen as a great sin. But in the UK, through mortgages, insurances, etc., it seems virtually impossible to avoid riba/interest. I have looked into Islamic banking in the UK but I see it to be an awful alternative as it still essentially charges riba but with some clever play on words and has been dismissed by the consensus of scholars. So, my question is: how do you live in the UK without participating in interest as I am struggling to see alternatives?

حامداً ومصلحاً

A: The prohibition of interest is clearly and explicitly mentioned in the Noble Qur'aan. Allah تَبَارَكَ وَتَعَالَى states: "And Allah has permitted sale and prohibited riba – interest."²³

²³ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا (سورة البقرة: ٢٧٥)

On the Day of Qiyaamah, the one who consumed interest will wake up in such a state of bewilderment and shock that it will seem as if he has been affected by the evil touch of Shaitaan. Allah تَبَارَكَ وَتَعَالَى speaks of this in another aayah: “Those who consumed interest will rise [on the Day of Qiyaamah] like the one who has been afflicted by the evil touch of Shaitaan.”²⁴

In yet another aayah, Allah تَبَارَكَ وَتَعَالَى sounds an extremely severe warning to those who deal in interest despite understanding its evil and prohibition. Allah تَبَارَكَ وَتَعَالَى says: “If you do not do so [desist from dealing in interest] then be prepared to wage war against Allah and His Rasul صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ.”²⁵

In Surah Aal-e-Imraan, Allah تَبَارَكَ وَتَعَالَى has sounded another warning. Allah تَبَارَكَ وَتَعَالَى says: “O you who believe, do not consume interest multiplied manifold and fear Allah so that you be successful. And fear the fire (of Jahannum) which has been prepared for the disbelievers.”²⁶

Commenting on this aayah, Imaam Abu Hanifah رَحِمَهُ اللَّهُ said: “This is the most fearsome aayah in the entire Qur’aan Shareef, for Allah has warned the believers of the fire of Jahannum, which has been

²⁴ الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ (سورة البقرة: ٢٧٥)

²⁵ فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ (سورة البقرة: ٢٧٩)

²⁶ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً ۚ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ (سورة آل عمران: ١٣٠)

prepared for the disbelievers, if they do not refrain from the haraam of interest.”²⁷

Nabi ﷺ has also sounded stern warnings against those who consume riba.

Hazrat Abdullah bin Hanzalah رَضِيَ اللَّهُ عَنْهُ reported that Rasulullah ﷺ said: “Consuming one dirham of riba knowingly is worse than committing zina thirty-six times.”²⁸

In another Hadith, Nabi ﷺ is reported to have mentioned: “The fire of Jahannum is more deserving for the one who nourished his body with haraam (riba).”²⁹

Hazrat Jaabir رَضِيَ اللَّهُ عَنْهُ reported that Rasulullah ﷺ cursed the one who consumes interest, pays interest, the scribe of the interest-bearing deal and the witness to such a deal.”³⁰

Interest outwardly seems to be a means of increase in wealth, yet in reality is a means of decrease. Nabi ﷺ said: “No matter how much the interest may be, it will result in decrease (of wealth).”³¹

²⁷ فتاوى محموديه ٣٥٠/٢٤ ، مدارك التنزيل ٢٨٢/١

²⁸ عن عبد الله بن حنظلة غسيل الملائكة رضي الله عنه قال قال رسول الله صلى الله عليه وسلم درهم ربا يأكله الرجل وهو يعلم أشد من ستة وثلاثين زنية (مسند أحمد، الرقم: ٢١٩٥٧)

²⁹ عن جابر بن عبد الله رضي الله عنه أن النبي صلى الله عليه وسلم قال لكعب بن عجرة ... يا كعب بن عجرة إنه لا يدخل الجنة لحم نبت من سحت النار أولى به (مسند أحمد، الرقم: ١٤٤٤١)

³⁰ عن جابر رضي الله عنه قال لعن رسول الله صلى الله عليه وسلم أكل الربا وموكله وكاتبه وشاهديه وقال هم سواء (صحيح مسلم، الرقم: ١٥٩٨)

³¹ عن ابن مسعود رضي الله عنه أن النبي صلى الله عليه وسلم قال الربا وإن كثر فإن عاقبته تصير إلى قل (مسند أحمد، الرقم: ٣٧٥٤)

The prohibition and severity of interest understood from the above-mentioned Aayaat and Ahaadith will undoubtedly appeal and strike sense into any understanding and intelligent individual.

When the prohibition of riba (interest) was revealed, the general Muslim public were undergoing constraints far worse than those which the present-day Muslims face. For months on end, not even a fire could be lit in the houses of many. Stones had to be tied on their bellies to fight the pangs of starvation and hunger. They did not have sufficient clothing to cover their entire bodies. Nights would be spent in darkness, for a lamp could not be lit to provide light. Their infant children would constantly cry out of hunger. Nabi ﷺ himself had to give his armour which he used in jihaad as collateral for the grains that he purchased from a Jew in order to provide for the needs of his blessed wives, and in this very condition did he leave this world.

The greatest solution to the present economic crisis is to inculcate contentment in our lives. Despite the severe constraints that the Muslims were facing during the era of Rasulullah ﷺ, Allah ﷻ commanded Nabi ﷺ not to cast his gaze at the worldly riches of the kuffaar.

Involving oneself in interest will bring no benefit to an individual. In fact, it will be a means of loss and detriment, as is understood from the aforementioned Hadith wherein Rasulullah ﷺ said: "No matter how much the interest may be, it will eventually decrease (and result in loss)."

In another Aayah of the Qur'aan, Allah تَبَارَكَ وَتَعَالَى speaks of the evil worldly consequence of interest, saying: “Allah تَبَارَكَ وَتَعَالَى obliterates riba.”³²

Hence, a Muslim should totally refrain from dealing in interest. Muslims can never progress by means of something which Allah تَبَارَكَ وَتَعَالَى has explicitly prohibited, nor can it ever be a solution to their problems and constraints.

Adopting the ways of the kuffaar will in no way bring a person anywhere close to success.

Nabi صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ never worried about his ummah having to face poverty and financial constraints, for their purpose of life is something much greater and nobler than merely amassing worldly riches and enjoying a luxurious life. Their purpose is pleasing Allah تَبَارَكَ وَتَعَالَى and earning maximum rewards for the hereafter.

In one Hadith, Rasulullah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ mentioned: “I do not fear faqr (poverty) befalling you, but I fear that the world will be spread out before you, as it was spread out before those who preceded you. Then you will compete with one another in amassing its riches, as they had competed, eventually leading to your destruction and ruin, as it had destroyed them.”³³

³² يَمْحَقُ اللَّهُ الرِّبَا (سورة البقرة: ٢٧٦)

³³ عن المسور بن مخرمة رضي الله عنه أنه أخبره أن عمرو بن عوف الأنصاري وهو حليف لبني عامر بن لؤي وكان شهد بدرا أخبره أن رسول الله صلى الله عليه وسلم ... قال فأبشروا وأملوا ما يسركم فوالله لا الفقر أخشى عليكم ولكن أخشى عليكم أن تبسط عليكم الدنيا كما بسطت على من كان قبلكم فتنافسوها كما تنافسوها وتملككم كما أهلكتهم (صحيح البخاري، الرقم: ٣١٥٨)

Hazrat Ibnu Abbaas رَضِيَ اللهُ عَنْهُمَا reported that Rasulullah صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ said: “Whoever suffers from hunger or want and he conceals his need, Allah تَبَارَكَ وَتَعَالَى takes the responsibility of sustaining him with halaal sustenance for a whole year.”³⁴

In such times of constraints and hardship, a mu'min should turn his focus and attention to Allah تَبَارَكَ وَتَعَالَى, for it is only Allah's assistance that can rope a person out of the predicament that he is facing.

Further, one should live within his means and budget his spending. If one is really in debts, then he should request his creditors to grant him some leniency and respite. (Extracted from Fatawaa Mahmoodiyyah, 24/349-365)

We make dua that Allah تَبَارَكَ وَتَعَالَى guides the ummah towards earning halaal, emulating the Sunnah of Rasulullah صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ and refraining from any involvement in riba (interest).

Answered by:

Mufti Zakaria Makada

Checked & Approved:

Mufti Ebrahim Salejee (Isipingo Beach)

³⁴ عن ابن عباس رضي الله عنهما قال : قال رسول الله صلى الله عليه و سلم : من جاع أو احتاج فكنمه الناس كان حقا على الله عز وجل أن يرزقه رزق سنة من حلال (شعب الإيمان، الرقم: ١٠٠٥٤)