

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Fiqhi Page

Answer to Question

Do Not Sell What You Don't Have

To: Abdullah Hadad

(Translated)

Question:

Assalam Alaikum Wa Rahmatullah Wa Barakatuh, May Allah make you continue to be an asset to Islam

Please clarify the topic: "Do not sell what you do not have". Is it in every commodity that is sold, or is it specific to food?

For example: A merchant who sells building materials, cement and sand, is asked to provide iron that he did not have. What is the ruling on a man who contacts the iron dealer to send him the required quantity that the merchant did not have?

Note: There is a prior agreement between the merchant and the iron dealer on the price.

Another example: a person who bought a commodity and did not take possession of it (tangibly) and sold it to another person, does this come under the heading of selling what you do not have?

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh,

The prohibition on selling what the merchant does not have to include food and non-food, in everything that is measured, weighted and counted, and we have explained that in the book, The Economic System of Islam, entitled "It is not permissible to sell what you do not have" and I will repeat it for you:

[It is not allowed to sell a good before completing its ownership (*mulk*) so selling it in this situation is a void sale. This is verified in two situations. Firstly, that one sells the goods before he owns it. Secondly, he sells it after buying it but before he completes owning it via taking possession in that whose completion of ownership is conditioned upon taking possession. This is because the sale contract only occurs upon owned property so that which is not owned yet or is purchased but its ownership is not yet completed since its possession has not yet been taken, then there cannot occur over it the sale contract because there does not exist a place for the contract to occur over in the Shar'a. The Messenger of Allah (saw) did prohibit the sale of what the seller does not own. From Hakeem bin Hazam who said: «قُلْتُ: يَا رَسُولَ اللَّهِ، يَأْتِينِي الرَّجُلُ يَسْأَلُنِي الْبَيْعَ لَيْسَ عِنْدِي مَا أْبِيعُهُ، ثُمَّ أْبِيعُهُ مِنَ السُّوقِ»، فقال: «لَا تَبِعْ مَا لَيْسَ عِنْدَكَ» **I said: O Messenger of Allah, there comes to me a man asking me to sell what I do not have to sell then I buy if from the market. He said: Do not sell what you do not have** (Narrated by Ahmad). And from Amru bin Shuaib from his father from his grandfather who said: The Messenger of Allah (saw) said: «لَا يَحِلُّ سَلْفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحٌ مَا لَمْ تَضْمَنْ، وَلَا يَبِيعُ مَا لَيْسَ عِنْدَكَ» **It is not allowed to borrow and sell, nor two conditions in one sale,**

nor a profit that is not included nor the sale of what you do not have” (Narrated by Abu Dawud).

The expression of the Messenger of “what you do not have” is general included within it your ability to deliver and that which your ownership of has not been completed. This is strengthened by the ahadith which came with a prohibition of selling that which is not possessed in that whose completion of ownership is conditioned upon taking possession. This indicates that whoever buys that which requires taking possession until his purchase is completed is not permitted to sell until he takes its possession. So its rule became the rule of selling that which he does not own due to the Prophet (saw)’s statement: «مَنْ ابْتَاعَ طَعَاماً فَلَا يَبِيعُهُ حَتَّى يَسْتَوْفِيَهُ» **“Whoever sells foodstuff, he should not sell it until he pays its due (yastawfihi)”** (Narrated by Al-Bukhari). And due to what Abu Dawud narrated «أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ أَنْ تُبَاعَ السِّلْعُ حَيْثُ تُبْتَاعُ، حَتَّى يَحُوزَهَا التَّجَارُ إِلَى رِحَالِهِمْ» **“That the Prophet (SAW) prohibited that goods be sold where they are bought until the trader collects them to their mounts”** and due to what Ibn Majah narrated «أَنَّ النَّبِيَّ ﷺ نَهَى عَنْ شِرَاءِ الصَّدَقَاتِ حَتَّى تُقْبَضَ» **“The Prophet (saw) prohibited the purchase of charity (sadaqat) until it is taken possession.”** And due to what was narrated by Bayhaqi, from Ibn Abbas, he said, that when the Prophet (saw) sent Utab bin Usayd to Makkah, he said: «إِنِّي قَدْ بَعَثْتُكَ إِلَى أَهْلِ اللَّهِ، وَأَهْلِ مَكَّةَ، فَأَنْهَهُمْ عَنْ بَيْعِ مَا لَمْ يَفِضُوا» **“Prohibit them from buying that which they have not taken possession of.”**

These ahadith are explicit in prohibiting that which they have not taken possession of since the seller has not completed his ownership over it. This is because that which requires taking possession of, then its ownership is not completed until the buyer possesses it and also because it is in the surety/guarantee of its seller. Hence it is clarified that it is a condition of the validity of sale that the seller owns the good and has completed his possession therein. If, however he does not own it or he owns it but has not completed his own ownership therein then it is absolutely not allowed to sell it. This includes what he owns but has not taken possession in what taking possession is a condition to complete the sale which is what is measured, weighed and counted. As for that which taking possession is not a condition of completing ownership which is other than that which is measured, weighed or counted such as the animal, house and land and what is similar then it is permitted for the seller to sell it before taking possession. This is because the mere occurrence of the sale contract by offer and acceptance completes the sale whether he takes possession of it or not, so he would have sold that which his ownership over it is accomplished. The issue of the absence of sale is not related to taking possession or not; rather it is related to the ownership of the sale and the completion of ownership therein. As for permitting the sale of something that has not been possessed in other than what is weighed or counted, this is established by the sahih hadith. Al-Bukhari narrated from Ibn Umar that he was at a (s’ab) camel of Umar «فَقَالَ لَهُ النَّبِيُّ ﷺ بَعْئِيهِ، فَقَالَ عُمَرُ: هُوَ لَكَ فَاشْتَرَاهُ ثُمَّ قَالَ: هُوَ لَكَ يَا عَبْدَ اللَّهِ بْنِ عُمَرَ، فَاصْنَعْ بِهِ مَا شِئْتَ» **“so the Prophet (SAW) said to him to sell it to him. So he bought it then said: It is for you, O Abdullah ibn Umar, so do with it as you wish.”** This is disposal in the sale by gift before taking possession of it which indicates the completion of ownership in the sold good before taking possession of it. It indicates the permissibility of selling it because the seller’s ownership therein has been completed.

Accordingly, whatever the seller owns and his ownership is completed over it then it is permitted for him to sell it. And whatever (good) whose ownership is completed is not permitted to be sold. Hence what is done by small traders of bargaining with the buyer of the good then agreeing with him over the price and selling it to him, then going to another trader to buy it for the one whom he sold it to then (ihdhar) it and delivering it to the buyer is not

permitted because it is selling that which is not owned. When the trader is asked about the good, it is not before him nor does he own it but he knows it exists in the market with others. So he lies and tells the buyer that it is present and sells it to him, then he goes to buy it after selling it. This is haram and not permitted as it is selling that which is not owned. Similarly, what is done by the owners of shops in the vegetable and grain market when they sell vegetables and wheat before their ownership therein is completed. Some traders buy vegetables or wheat from peasants/farmers (*fallah*) and sell it before they have taken possession of it. This is not permitted as it is of foodstuff wherein ownership is not completed except by taking possession of it. Similarly what importers from other countries do. Some of them sell the goods and make the delivery in the country a condition therein, then sell them before they arrive i.e. before their ownership over them is completed. This sale is forbidden as it is selling before the ownership over it is completed]

In conclusion, selling what you do not have, i.e., you did not own it or did not take possession of it, is not permissible, and it includes everything that is counted, weighed and measured, whether it is food or not. But if its sale does not take place in the measured, weighted and counted, such as animals, houses, land and the like, then it is permissible to sell by mere contract by offer and acceptance. The ownership of the thing sold is done by contract, and as for taking possession of it, it is not a condition in this case as explained in the text of the book on *The Islamic Personality Volume II* above.

Based on this, it is not permissible for the iron and cement merchant to sell what he does not have, rather he buys it first and then possesses it, that is, he transfers it to his store and after that he puts it up for sale, and as we said, this is in everything that is measured, counted, weighted and is sold in this way. As for the uncounted, measured and weighted, it is sufficient to have its ownership without its possession as we have explained.

He is Most Wise I hope that this is sufficient and Allah Knows Best.

Your Brother,

Ata Bin Khalil Abu Al-Rashtah

1 Jumada Al-Awwal 1443 AH

5/12/2021 CE

The link to the answer from the Ameer's Facebook page:

<https://www.facebook.com/HT.AtaabuAlrashtah/posts/3080117612234242>