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Compensation for an Obligation to Sell Currency in the Future (Hedging)*
Dr. Nazih Hammad**†

All praise is Allah's, Lord of the Worlds! Peace and Blessings be upon the Prophet, Muhammad, his Family, and his Companions!

I. INTRODUCTION

This Article establishes a Shari‘ah ruling1 for an important contemporary issue that has been the subject of much inquiry: whether Islamic law permits forward currency contracts (that is, hedging against currency risk). Specifically, this Article addresses what happens when a financial institution offers an obligation to sell or buy a specific currency at a specified rate of exchange in return for a specified amount, regardless of whether the buyer decides to proceed with the exchange contract. Is it lawful for the client (a trader, manufacturing company, Islamic bank, government, or other transaction participant) to purchase that obligation in order to avoid potential losses resulting from market fluctuations in the prices of currencies? In other words, is it lawful, with respect to the Shari‘ah, to hedge against currency risk by purchasing a forward currency contract? This issue is particularly significant

* Translated from the original Arabic text by Yusuf Talal DeLorenzo (with gratitude to Abdulkader Thomas and Muhamed Becic).
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† The Chicago Journal of International Law expresses no opinion as to the accuracy of this Article’s Arabic citations and references.
1 Al-hukm al-Shar'i, literally a legal characterization.
given the needs of Islamic financial institutions, trading houses, manufacturers, and even governments and their agencies. But the issue has yet to become the subject of serious academic research or proficient legal scholarship by those qualified to establish a Shari`ah ruling on the matter.

Since this Article focuses on the issue of “selling obligations” or “obtaining compensation for obligations,” part II of this Article will discuss the meaning of an “obligation” as understood here. Part III will provide context to the definition of “obligation” by considering how Islamic law, or fiqh, characterizes compensation for obligations. After this introductory, but essential, review, this Article will discuss, in part IV, the legal justifications for the conclusion that the obligations described above are consistent with the requirements of Islamic law. Finally, this Article will conclude with a discussion of the practical effect of the approval, from an Islamic law perspective, of the use of options.

II. OBLIGATION: CONCEPT AND TYPES

The categorization of an idea depends upon how it is conceptualized. Thus, we must begin with a definition of “obligation” and an explanation of its meaning in Islamic law. As Zaruq stated in his Maxims, “a discussion of anything is actually an offshoot of how its essence and benefit are conceptualized through acquired or obvious intellectual perceptions, to which reference may be made when considering the instances of its occurrence, in terms of accepting or rejecting [the concept] and in terms of assigning generalities and details [to the concept].”

An obligation is the requirement that a person act, or refrain from acting, in the interests of another. For example:

(a) A person who destroys valuable property is responsible (damani) to the owner of the property for its destruction. This responsibility is an obligation. Likewise, delivering an item that has been sold and guaranteeing the item against hidden defects are obligations that fall upon the seller in the interest of the buyer. Similarly, where a deed brings something from a state of nothingness into a state of being, paying the purchase price of the deed and taking delivery of it are obligations that fall upon the buyer in the interest of the seller. All of these are positive obligations.

(b) Not transgressing against the body, wealth, or reputation of another is an obligation required by the Shari`ah on all who are subject to the Shari`ah. Likewise, the deposit (wadi`ah) contract imposes an obligation upon a deposit holder—in the interest of the depositor—not to transgress upon or neglect a deposit. Also, in a sale of an

2 Abu'l-'Abbas Zaruq, Qawa'id al-Tasarruf (Maxims) 3 (Egypt: Maktabat al-Kuliyyat al-Azhariyyah 1988).
option of stipulation (khayar al-shart) or for an `urbun, the option specified in each of the two contracts obligates the seller not to refuse or otherwise obstruct the buyer from voiding the sale during the prescribed period. Each one of these obligations is a requirement to refrain from a deed, where refraining from a deed means restraining oneself from bringing that deed about when it is contemplated. All of these are negative obligations.

The source of an obligation may be the Shari`ah (as in the obligation to support one's family), a contract (as in the obligation of a lessee to pay rent or a guarantee against defects in the item that is sold by a seller to a buyer), or a detrimental action (as in a guarantee against destruction or compensation for damages of all sorts).

Furthermore, the locus of an obligation may be either lawful or unlawful. For example, lawful obligations include: (1) the obligation of a seller to deliver the item(s) sold to the purchaser; (2) the obligation of a borrower or a lessee not to transgress or fail to maintain borrowed or leased property; and (3) the obligation—when these have been stipulated in the contract of marriage—of a husband not to take another wife while married to his present wife or to refrain from taking her from her homeland. On the other hand, unlawful obligations include: (1) the obligation of a borrower to pay interest on an amount he has borrowed; (2) the obligation of a muhallil in a marriage of tahlil to cohabit with the wife; and (3) the obligation of a sales agent to his principal to withhold disclosure of defects to buyers.

III. THE FIQH INTERPRETATION OF THIS CASE

A. FOUNDATIONS OF THE RULING AND THE BASIS FOR CONSIDERATION

A Shari`ah ruling on the lawfulness of selling an obligation to exchange currency in the future at a predetermined price hinges on the degree to which such an obligation has commercial value from a judicial perspective. If the obligation has commercial value, it may be lawfully compensated for by something else with value. Thus, the obligation may be sold in exchange for another item of known value because a sale is an exchange of value for value. However, if the obligation does not have commercial value, then it may not be lawfully compensated for by something else with commercial value because this would amount to the consumption of wealth in return for nothing, and this is clearly prohibited by the Shari`ah. Thus, an understanding of the legal ruling in regard to this issue requires a study of two matters: (1) the nature of wealth and the elements of value in the Islamic legal tradition (al-fiqh) and (2) the degree to which value is realized and its elements are present in an obligation.
1. The Nature of Wealth (mal) and the Shari`ah Concept of the Wealth

The entire community of Islamic jurists—including Shafi`ites, Malikites, and Hanbalites—are of the opinion that there are three elements of wealth. That is, three elements which, when present, will lead to the conclusion that the obligation has value and, from a Shari`ah perspective, can be exchanged for a counter-value. Those three elements are: (1) that the obligation be an intended usufruct, or contain the same; (2) that the usufruct has a monetary value in commercial practice or custom; and (3) that the usufruct be lawful from a Shari`ah perspective (at least when one is in a state of ease and has the ability to make choices).

Support for these three elements can be derived from various sources of Islamic legal commentary. Since justifications for Islamic legal conclusions must be derived from historical texts, it is necessary to review relevant passages. The following is a brief list of legal characterizations of wealth.

(a) Wealth is defined in the Commentary on Tarshih al-Mustafidin as “whatever has, in and of itself, an intended usufruct that may be considered as such by the Shari`ah so that it may be exchanged for a customary form of finance when one is in a state of having the ability to choose.”

(b) According to al-Maziri: “Something without usufruct from the outset is neither lawful to contract for nor [may one contract] by means of. This is because to do so would be to consume peoples' wealth in return for nothing.”

(c) Al-Suyuti, in his al-Ashbah wa'l-Naza'ir, quotes Imam Shafi`i as having said that “[t]he term wealth will not apply except to that which has a price by which it may be sold or which may be charged to whoever damages it, regardless of how insignificant [the price may be].”

(d) Ibn Taymiyah wrote: “Usufruct without a price [known] by custom is like an object without a price such that it is not a lawful subject for either a contract of lease or sale.”

(e) The qadivial judge Ibn al-'Arabi defined wealth as follows: “It is whatever covetousness covets and is suitable by custom and by law to be benefited by.”

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Ibn `Aqil defined wealth in the following manner: “It is what commonly changes hands in legal contracts made by people seeking profit and earnings; contracts which oblige money and rights as responsibilities, owing to the desire of people to have things and to make use of them.”

Al-Qarafi wrote in his *al-Dhakhirah*:

Physical assets and usufructs are of three categories. Among these are: (i) that for which recompense is acceptable, like wheat or a residential lease; (ii) that for which recompense is unacceptable—either because it is prohibited by the Shari`ah, like wine and song; (because it is not something that is customarily valued, like a single grain of wheat or one’s handing another his shoe; or because it is has no purpose whatsoever, like a grain of sand or the movement of a finger); and (iii) that concerning which there is a difference of opinion as to whether or not mutual recompense is acceptable, like manure, phlebotomy (blood letting as a medical procedure), or cupping (a medical procedure similar to phlebotomy).

In both *al-Iqna`* and its commentary, *Kashshaf al-Qina’*, the legal definition of wealth is given as “whatever has a legitimate usufruct for other than a needs-related interest or a [life-saving] essential.” Such a definition excludes whatever is without use to begin with, (for example, insects), whatever has illegitimate uses (for example, wine), whatever has a use that is permitted owing to a needs-related interest (for example, a dog), and whatever has a use that is permitted only because it is deemed essential for the preservation of life (for example, improperly slaughtered flesh for one in a state of near starvation or wine taken to facilitate swallowing while one is choking). There is a caveat here: the apparent meaning of the foregoing definition is similar to that implied by others. That is, a usufruct may not be sold, even though in the definition of sale (bai’), it is mentioned as legitimate. For this reason, the definition given here should mention that the subject of sale is either an unqualified lawful asset or usufruct; or the definition might have explained that wealth is inclusive of both physical assets and usufructs.

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10 It should be explained that the sale of dogs is generally understood to be prohibited in the Shari`ah. However, the matter is explained later in this Article.
B. THE DEGREE TO WHICH ELEMENTS OF WEALTH ARE REALIZED IN FORWARD CURRENCY CONTRACTS

Based on the preceding exposition on the nature and concept of wealth from a Shari'ah perspective, compensation for a forward currency contract may be considered lawful because the contract contains the three elements of wealth discussed above.

1. The First Element: That the Obligation be an Intended Usufruct

If Islamic legal terminology describes an item as having "meaningful use" when the item has a proper objective (either in terms of attracting benefit or repelling detriment), then a forward currency contract undoubtedly has a "meaningful use." A purchaser of such an obligation intends to attract benefit or repel detriment. This goal is accomplished, for example, when a merchant or manufacturer hedges against a possible or expected loss caused by market fluctuations in the prices of currency. In order to maintain production, merchants and manufacturers are required to import raw materials on a regular basis using deferred payments in one foreign currency or another. These merchants or manufacturers then sell the raw materials (or what they have become after manufacture) for local currency in cash, credit, as a part of export agreements, or by means of salam sales, istisna', or some other contract. By purchasing forward currency contracts, merchants and manufacturers can hedge against disastrous losses or even bankruptcy that can result from fluctuating exchange rates.

2. The Second Element: That the Usufruct Have Value

When considering whether forward currency contracts have a generally acknowledged monetary value, no consideration should be given to the absence of such obligations in former times. The operative Shari'ah principle here is that a usufruct that was not considered wealth from a legal perspective at any time in the past may indeed be considered wealth if it is accorded value at some other time. The Shari'ah ruling in the matter depends upon custom (al-'urf), and there is no denying that rulings based on custom change with time. This principle is well-established as a legal maxim among the Islamic jurists.

This explanation clarifies the opinion of the Imam al-Qarafi prohibiting recompense for a guarantee (that is, a responsibility for a financial obligation) on the basis that it was not a usufruct accorded value by commercial custom in his times. Based on the lack of custom, Imam al-Qarafi did not consider a guarantee wealth and stated in writing that it was not lawful to exchange a guarantee for a counter-value. Imam al-Qarafi's conclusion is consistent with the preferred opinion in the Maliki school of jurisprudence. Following the classification of physical assets and usufructs given by al-Qarafi in al-Dhakhirah (discussed
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above), a guarantee falls in the second category because, though a guarantee may have value in theory, it is not valued customarily. It was therefore unlawful, in the time of Imam al-Qarafi, to offer a guarantee in return for compensation. 

In our own times, however, a guarantee is valued in commercial custom, and, on that basis, satisfies the second element for wealth. Furthermore, because the fundamentals upon which al-Qarafi's prohibition have changed, a Shari'ah ruling should not rest on antiquated opinions.

This treatment is justified by analogy to another well-known ruling from the Maliki school mentioned by Ibn Rashid al-Qafasi, an authority on Maliki jurisprudence. In the course of his discussion of the prohibition against the types of "deferred payment sales" that seek to achieve what appears to be unlawful by means of what is apparently lawful, he wrote:

Malik prohibited the same in order to block ostensibly lawful means to unlawful ends. In such a situation one must look to what has left the hand and to what returns to it and then compare the one to the other. If it is found to be something that would be lawful if the transaction had begun with it, then you may deem it lawful. But if not, then deem it unlawful; that is, if it is something that is often sought after (like a sale or credit). If it is something that is not often sought after (like a guarantee for a price), then there are two well-known opinions. And if it is something that is highly unlikely (like one's saying, 'Give me credit and I'll give you credit.'), then the most accepted opinion is that it will be lawful, as opposed to what Ibn Majishun had to say on the matter. 

3. The Third Element: That the Usufruct Be Lawful

It is a well-established matter in Shari'ah law that the lawfulness of a usufruct requires the support of a legal or scriptural text that expressly mentions the lawfulness of that particular usufruct. This is something that is neither sought after nor stipulated as a condition precedent in regard to any usufruct or contract in the general run of financial exchanges. Rather, the usufruct must not be contrary to that which is established and approved by a legal or scriptural text. Indeed, a legal maxim states that "Anything that has to do with basic human necessities will be suitable as an object for contractual buying and selling. Only that which has been expressly prohibited by Allah or His Prophet will be prohibited because the precedent in all financial contracts and transactions is permission and lawfulness." 

With regard to the focus of our study, the lawfulness of forward currency contracts depends on the purpose of buying the obligation. If the purpose of

12 Al-Qarafi, V al-Dhakhirah at 478 (cited in note 9).
buying the obligation is no more than to speculate on currency prices—with the expectation of benefiting from a rise in prices—rather than to actually take possession of the currency, then the usufruct sought from the purchase will not be a lawful one. This is because such a purpose resembles gambling. In this manner, the characteristic of wealth (true value) is negated in the obligation and such an obligation may not be exchanged for value.\textsuperscript{15} In this context, the obligation will be no more than a form of conventional options contracts prohibited by the Shari`ah, as declared in a decision by the Islamic Fiqh Academy at Jeddah, which states:

Options contracts as currently applied in the world financial markets are a new type of contracts which do not come under any one of the Shari`ah nominate contracts. Since the object of the contract is neither a sum of money nor a utility or a financial right which may be waived, then the contract is not permissible in Shari`ah.\textsuperscript{16}

Furthermore, Ibn al-Qayyim wrote that:

The purpose for which the Almighty legislated sale and made it lawful was for the seller to receive a price for the property and for the payer of the price to become the owner of the property. In this way, both receive what they seek from the sale. One benefits from the selling price and the other from the item that is sold. This will only come about if the buyer seeks the subject of the sale either to benefit himself or to trade and if the seller seeks the price . . . . If each of the two parties to the sale seeks these things, then the reason for which the Almighty legislated the contract will be realized in practice and in theory. However, if the contract is sought merely in order that it may be voided, then it is not intended; and if it is not intended, then its existence will be the same as its non-existence, and anything leading to it will be folly.\textsuperscript{17}

If, however, the intention behind the purchase of the obligation is to take actual possession of the currency in the future, the usufruct of the obligation may be considered, from a Shari`ah perspective, to have value under certain

\textsuperscript{15} Translator's Note: In order for there to be a market in the first place, there need to be both hedgers and speculators. In short, without the participation of speculators, modern markets cannot function. Therefore, in view of the need of hedgers for such markets, and in view of the economic importance of such markets for production and positive growth, the ruling should be in favor of the lawfulness of both hedging and speculation. After all, speculation, in varying degrees, is present in nearly every form of trade and contracting. Moreover, the characteristic of wealth is not negated for the speculator because that is what he thrives on; such speculation is his goods in trade. So, without both hedgers and speculators, there is no liquidity and there is no market. A moral judgment on the assumed motives of speculators should not cancel the overall benefits to the market, consumers, and society in general. And Allah knows best.


\textsuperscript{17} Muhammad Ibn Qayyim al-Jawziyah, \textit{III I`lam al-Muwaggi`in `an rab al-`alamin} 239 (Egypt: Al-Sa`ada 1954).
circumstances. Therefore, it may be lawful to recompense such obligations with
money. Suppose a purchaser resorts to the purchase of the obligation because it
is impossible to cover a real need for currency in the future and to hedge against
possible loss resulting from currency price fluctuations. Under these
circumstances—and in the light of contemporary international business practices
in industries which depend upon raw materials sold in currencies other than
those used for the sale of the items manufactured—it will be lawful to
recompense such obligations with money. In regard to this matter, al-Imam al-
Shawkani wrote that “anything to which a lawful usufruct may be attributed
may lawfully be sold. However, anything which has no usufruct to begin with (or
which has an unlawful usufruct) may not be lawfully sold. This is because the
means to the unlawful is itself unlawful.” In further support of this, Ibn al-
Qayyim wrote that:

the evidence of the Shari‘ah and its principles show that the purposes of
transactions are to be considered; these affect the correctness or
incorrectness of the contract and its lawfulness or its unlawfulness. In fact,
the purpose of a contract is even more potent than that because it has an
effect on deeds—in terms of lawfulness or unlawfulness—that are not
contracts, such that [the purpose of the doer] will render a deed lawful at
one time and unlawful at another, depending on the doer's intention; in the
same way, it will render a deed either correct or incorrect, depending on the
purpose [of the deed].

Given the nature of this Article, specifically the intent to issue a Shari‘ah
ruling, it is necessary to again review additional commentary by Islamic legal
jurists. The jurists of the Maliki school of jurisprudence have opined in their
texts that the buying and selling of a dog, if it is wanted for no more than
company or play, will be prohibited because a dog may not be considered wealth
when it has no legitimate purpose other than company or play. However, if a
dog is sought for its hunting ability or as a protector of a home, goods, or
livestock, the dog’s sale and purchase will be lawful because the dog is
considered wealth in view of those legitimate functions. Therefore, the dog may
be exchanged for wealth. Following his mention of this case, the jurist, al-
Tasawwuli in al-Buhjah, wrote that “everything that is taken for the purpose of
[deriving from it] a legitimate benefit may be exchanged for wealth.”

The opinion of the Hanafi jurists is similar. Al-Sarakhsi wrote in al-Mabsut
that “[i]f it can be established that something is appraisable wealth and it has a

18 Muhammad al-Shawkani, III al-Sayl al-Jarrar al-Mutadaffiq ‘ala Hada’iq al-Azhur 23 (Beirut: Dar al-
19 Ibn al-Qayyim, III I‘lam al-Muwaqiq in ‘an rab al-‘alamin at 121 (cited in note 17).
According to the community of Islamic scholars, these opinions are based on the prohibition against the sale of whatever is unclean (for example, dung, urine, and animal waste). Consumption of such things is prohibited because they have no legitimate use. Even so, after they discerned ways of lawfully using some of these things, the jurists of the Hanafi, Maliki, and Zahiri schools (in addition to some of the Hanbali jurists who cited an opinion of Ahmad ibn Hanbal), gave permission for the buying and selling of anything in which there was a legitimate and purposeful use, including droppings or manure for fertilizing agricultural lands and dung for burning in fires used for cooking or heating. In this regard, consider the following comments by Islamic jurists:

(a) Al-Tasawwuli, the Maliki jurist, wrote an opinion giving permission for the sale of impure oil to those who would use it repair pipes, burn it in lamps, or make soap from it.\(^\text{24}\)

(b) Ibn Majishun also said: “There is no objection to selling manure because it is of benefit to people.”\(^\text{25}\)

(c) It is recorded in *Al-Mudawwanah*, on the authority of Ibn al-Qasim: “I said, ‘Have you considered manure? Does Malik allow its sale?’ He replied, ‘I never heard anything on the subject from Malik, and I have no objection to its sale myself.’”\(^\text{26}\)

(d) Ibn Hazm said: “The sale of dung and manure for the purpose of fertilizing and the sale of urine to the manufacturer of dyes is lawful. Even so, there are some scholars who prohibit it.”\(^\text{27}\) Thereafter, Ibn Hazm cited proofs and offered a series of arguments for the permissibility of all manner of impurities when there are legitimate uses for them.

(e) Al-Sarakhsi wrote in his *al-Mabsut*: “The prohibition against consuming something does not necessarily mean that its use is also prohibited. For example, the consumption of impure oil is prohibited, but its sale is legal. Likewise, the sale of dung is legal,

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\(^{22}\) Muhammad al-Sarakhsi, XI *al-Mabsut* 235 (Egypt: Al-Sa’ada 1906).

\(^{23}\) Id at 236.

\(^{24}\) Al-Tasawwuli, II *al-Buhjah fi sharh al-Tuhfab* at 10 (cited in note 21). Translator’s Note: Obviously, the initial prohibition was based on the idea that impure oil was essentially damaged goods as it could not be used for cooking or consumption.


\(^{26}\) Sahnun al-Tanukhi, IV *Al-Mudawwanah al-Kubra* 160 (Egypt: Al-Sa’ada 1905).

even though its consumption is prohibited. So, even though dung is inherently impure, its sale is lawful.”

(f) Al-Mayyarah said in his Commentary on *al-Tuhfa*: “It was mentioned previously that a condition for the subject of a sale is that it be pure. It is for this reason that the sale of something impure, like dung, is prohibited. Even so, the jurists have given license for the sale of these things when there is a need to benefit from them.”

Afterward, he drew an analogy between this issue and the sale of water whose characteristics have changed (following its collection in washing places) for legitimates uses elsewhere. Al-Mayyarah also wrote: “Chapter: On the Sale of Animal Excrement.” The author of *al-Muqarrab* quoted Ibn al Qasem who said, “There is no objection to the sale of camel or sheep dung or cow manure. Based on this, it is lawful to sell guano [droppings] from domesticated pigeons and chickens.”

In sum, given the existing legal commentary and the use of forward currency exchange obligations to further legitimate ends, it is clear that the sale of an obligation for a delayed exchange is analogous to the current sanction on the sale the sale of waste, urine, animal excrement, and other impure substances. What was once prohibited because of its impurity is now sanctioned because of its now legitimate use.

IV. THE LEGAL JUSTIFICATION FOR LAWFULNESS

Having established textual justifications for the legitimate purpose underlying present day forward currency contracts, this Article will now turn to a discussion of the legal justification for forward currency contracts from the Islamic perspective. The legal justification depends on two considerations: (1) the general legal orientation and (2) the legal maxim concerning hardship.

A. THE GENERAL LEGAL ORIENTATION

Concerning the lawfulness of compensation for obligations with a useful and legitimate purpose, a general legal justification may be discerned from the reasoning of renowned scholars from different schools of Islamic jurisprudence and the words and deeds of the great scholars of the Companion generation.

28 Translator’s Note: The sense of the term *najis al-'ayn* is that the essence of the substance is impure.

29 Al-Sarakhsi, XXIV *al-Mabsut* at 15 (cited in note 22). See also Al-Sarakhsi, X *al-Mabsut* at 198 (cited in note 22); Al-Sarakhsi, XXIII *al-Mabsut* at 14 (cited in note 22).

30 Muhammad Mayyarah, J. *Sharh Mayyarah 'ala al-Tuhfa* 83 (Egypt: Al-Istiqamah undated).

31 Id.

32 In the hierarchy of evidence in Islamic Law there is a special place for the opinions of the Companions of the Prophet, owing to their having heard his words and teachings, and to their
two-stage analysis will clarify the high points of this orientation. First, we consider certain legal parallels to forward currency contracts. Second, we attempt to infer from these legal parallels the lawfulness of buying and selling forward currency contracts by negating the differences between such contracts and other obligations with a useful and legitimate purpose.  

Certainly, drawing analogies between legal cases and their parallels is an established method for finding rulings on cases never previously considered by jurists.

Many legal scholars have recorded that it is lawful to give or take monetary compensation for a variety of different obligations if these include a legitimate benefit for the obligee. All of these preexisting cases may be considered legal parallels to the subject of our study and may be extrapolated for the purpose of establishing a similar ruling of lawfulness in our novel case. Accordingly, on the condition that these obligations are undertaken for lawful purposes, we have the opinions of scholars from the Maliki school of jurisprudence concerning lawful monetary compensation for a variety of simple obligations. These include, for example, a husband's obligation to his wife—in return for compensation that he takes from her—not to marry another (while still married to her); and a wife's obligation not marry another man after her husband's death.

**B. THE LEGAL MAXIM CONCERNING REMOVAL OF HARDSHIP**

Among the better known principles of the Shari'ah is that of easing difficulties for people and relieving them of the responsibility for actions or having observed first hand the ways that he did things. For more discussion, see Bernard Weiss, *The Search for God’s Law* 169–78, 214–20, 664–68, 690–93 (Utah 1992).

Translator’s Note: The use of analogy in Islamic legal thought is widespread, and the methodology for the same may vary considerably between the different schools of jurisprudence. In the interest of maintaining a faithful translation of the original text, I have translated the last part of the sentence in which mention is made of negating differences which is actually a method used by some schools and not others. See id at 551–654.

See Mustafa al-Zarqa, *I al-Madkhal al-Fiqhi al-`Amm.* 68 (Damascus: Al-Jami`ah al-Suriyyah 1952) (discussing the letter of `Umar ibn al-Khattab to Abu Musa al-Ash`ari that contained instructions about the fundamentals of making legal judgments. `Umar wrote, “You must then consider the legal parallels so that you can deduce new rulings [by drawing analogies] from previous cases. So, depend on the ruling that you consider to be nearest to God and closest to the truth; and then follow it.”); Najm al-Din al-Nasafi, *Talabat al-Talabah* 130 (Istanbul: Al-`Amirah 1893) (“If an event occurs and you are unaware of a ruling for that event, have recourse to its legal parallels; and [there] you will have the answer.”); Ahmad b. `Abd al-Halim Ibn Taymiyyah, *Nazariyat al-`Aqd* 172 (Egypt: Al-Sunna al-Muhammadiyah 1949) (“Compensation [of all kinds] follows a single canon. The Shari’ah is both appropriate and equitable, such that it places what is comparable on equal footing and differentiates between what is dissimilar.”).

omissions that would lead to undue hardship. Accordingly, if the Supreme and All Wise Legislator prohibited people from contracting over obligations for which people have a real need and cannot do without, then people would find themselves in hardship. Thus, it is the Almighty's justice and His mercy to humankind that He has made such contracts lawful—as a fundamental ruling—as long as these contracts benefit people and contain nothing prohibited by Allah or His Prophet.

In this context, forward currency contracts are often used by merchants, contractors, and manufacturers who must purchase raw materials using foreign currencies and who later sell—either all at once or in a series of consignments—the goods or products made from such raw materials for payment in another currency. If these merchants, contractors, and manufacturers were prohibited by the Shari'ah from purchasing forward currency contracts, they would fall into certain hardship, asperity, and hazardous situations that could result in bankruptcy or unbearable losses. Forward currency contracts allow such parties to set in advance the prices of their goods in local currencies and continue importing, exporting, manufacturing, and marketing their goods without having to bear prohibitive currency risks that have the potential to disrupt their trade or to destroy their business.

The matter is much the same with regard to a state that produces oil or any other raw material traded in international markets. Suppose that such a state sells quantities of its products on credit in US Dollars. Suppose further that the state makes budget estimates for the coming year in the local currency on the basis of an expected exchange rate for US Dollars. If the exchange rate for the US Dollar is lower than the expected rate, the shortfalls could easily lead to dangerous shortages in the national budget, thereby negatively affecting the government's ability to manage its affairs. The state's inability to meet its financial obligations or to carry out its plans for the future in a timely fashion may expose it to economic and social upheavals that have no solutions. Such a financial risk may

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36 See Qur'an, 6:6 ("Allah does not want to impose hardship upon you . . ."); Qur'an 22:78 ("He has not placed any hardship upon you in matters of religion."); Ahmad b. 'Abd al-Halim Ibn Taymiyyah, II Jami' al-Rasa'il 370 (Jeddah: Dar al-Madani 1984) (commenting that "[t]he Almighty informs us [in the Qur'an 22:78] that He has not imposed hardship upon us in matters of religion by issuing an emphatic and comprehensive denial. Anyone who believes that there is even a mustard seed's weight of hardship in what He has commanded has belied both Allah and His Prophet—peace be upon him" and that "the Almighty informs us that He does not want to impose hardship on us in the things that He orders us to do. The word 'hardship' is an indefinite noun here, and this is in order to be inclusive of all manner of hardship.").

37 Ibn Taymiyyah, Nazariyyat al-'Aqd at 226 (cited in note 14) ("Verily, the legal presumption in regard to all contracts is that they are lawful. Only those contracts will be unlawful which have been prohibited by Allah and His Prophet. Nor has Allah ever prohibited a contract in which there is benefit for the believers, unless there is a detriment that overrides it.").
not be managed without taking the precaution of purchasing an obligation from a financial institution to exchange US Dollars at a set price at specified future dates.

V. THE EXTENT OF THE NEED TO DEAL WITH THIS CASE

From the preceding, it should now be obvious that, in the present age, there is a real and specific need to allow a country that exports international commodities to enter forward currency contracts in accordance with established Shari‘ah principles. The same reasoning applies to merchants, traders, manufacturers, and others who pay for imported goods in one currency and sell those goods (or products made from them) in another currency for cash, credit, or by means of contracts of export, salam, istisna‘, and the like, from Islamic banks and finance houses.

Even if forward currency contracts may have originally been unlawful, the pressing and specific need for such transactions in the modern marketplace is clearly a strong argument for—and sufficient proof of—the lawfulness of such compensation as an exceptional ruling based on a special need. As demonstrated above, an analysis of general legal principles, analogies drawn from a variety of parallel rulings, and principles governing financial compensation bolster the case for legitimizing forward currency contracts.

The justification underlying exceptional rulings generally, and this ruling specifically, was explained by al-‘Izz ibn ‘Abd al-Salam when he said:

A Maxim Concerning Exceptional Rulings: Know that the Almighty legislated for His subjects the expending of effort in turning away detriment in both worlds [this one and the next] or in one of the two; and that every legal maxim is joined by a single occasioning factor. Even so, He excepted from the general rule anything in the avoidance of which there is undue hardship or in which there is benefit that overrides detriment. All of this was done out of mercy for His subjects ... in their interests, and from His kindness.

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38 A special need is one in which the need is limited to a group of people joined by a shared characteristic, like the people of a town, a profession, and so on. A general need, however, is one in which the need is common to all people. See al-Zarqa, II al-Madhkal al-Fiqhi al-‘Amm at 997 (cited in note 34).

39 ‘Izz al-Din ‘Abd al-‘Aziz Sulami, II al-Qawa‘id al-Kubra 283 (Damascus: Dar al-Qalam 2000). See also Ibn Taymiyyah, al-Masa’il al-Mahriyyah, in XXIX Majmu‘ al-Fatawa (Saudi Arabia 1398AH) (“Whenever there is something for the sale of which a need exists, it may be accommodated in ways that other things are not accommodated. Thus, the Legislator will allow it because it is needed and despite the reason for its prohibition.”); al-Maqarri, Maxims of al-Maqarri 81 no 875 (unpublished manuscript, stored at the King Faysal Center in Riyadh) (“The general spirit of legal accommodation by Malik [the namesake of the Maliki school of jurisprudence] requires exceptions to legal presumptions by analogy to what is stated in the texts [of the Qur'an and the Sunnah].”); Al-Zayla‘iy, IV Tabyin al-Haqa‘iq Sharh Kanz al-Daqa‘iq 87 (Egypt: Bulaq 1313AH)
Further justification for such an exceptional ruling is found in the well-established principle that "necessity renders prohibited things permissible." Among the comprehensive legal maxims there is one that states, "A special need will render the prohibited permissible." 4

Need is reached when a person arrives at a state of exhaustion and difficulty if he does not commit what is prohibited. Moreover, if necessity "is a state of recourse for committing what is prohibited by law" 43 or "a man's reaching a point at which he does not commit what is prohibited, he will perish, or very nearly," 44 then in the eyes of the law, a need is equal to a necessity if, as many jurists have indicated, "a need, whether public or private, is to be dealt with as a necessity." 45 Therefore, in matters of contract, need is reached if not entering into the contract will result in hardship because of the loss of the opportunity to avail oneself of an otherwise legitimate transaction. Since, as we just discussed, needs in this context are too be treated as necessities, then the law will permit the use of forward currency contracts.

VI. CONCLUSION: SHARI`AH RULES IN REGARD TO COMPENSATION FOR OBLIGATIONS

This judgment is based on a comprehensive look at the schools of jurisprudence and an evaluation of their opinions on related subjects. In particular, I have formulated this judgment in the light of the sources, general principles, and purposes of the Shari`ah—especially those related to attracting benefit and repelling detriment or relieving people of hardship—and in view of the needs and circumstances of the modern world.

After carefully considering the case at hand, it is apparent that every sort of obligation—whether of commission or omission; by means of contractual

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41 al-Zarkashi, II al-Manthur fi al-Qawa'id at 25 (cited in note 40).
44 al-Suyuti, al-Ashbah wa al-Naza'ir at 85 (cited in note 5).
45 al-Haydar, Majallah al-Ahkam al-`Adiliyab at 32 (cited in note 40); Ibn al Nujaym, al-Ashbah wa al-Naza'ir at 100 (cited in note 40); al-Suyuti, al-Ashbah wa al-Naza'ir at 88 (cited in note 5).
agreement or otherwise; for compensation, charity, or otherwise—may be bought or sold for money, if the following four conditions are met:

1. The one contracting for the obligation must have a real use for it.
2. The use must be a lawful one.
3. The use must have a monetary value recognized by custom.
4. It must be possible to fulfill the obligation.

And Allah knows best.

وَاللهُ طَالِعٌ أَعْلَمْ