Online Purchasing – An Islamic Perspective

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Abstract
Islām encourages Muslims to innovate and employ modern methods to carry out business transactions. It does not forbid from any modern innovation in the worldly affairs (mu’āmalāt) as long as it abides by Islāmic guidelines. Having said that, Islām adopts a principle-based approach and provides its adherents a framework for trading within which it expects from them to operate.

It is important to note that the guidelines provided for purchasing a product or a service online are not different from those that are stipulated for trading in real world. The dynamic nature of Islāmic principles allow them to be applied to all forms of trade and make them relevant in all aspects. Consequently, if the conditions that are stipulated for purchasing in real life are met in an online transaction then Islām not only allows such transaction but also encourages as it renders ease.

Conditions stipulated for purchasing a product or a service and making a commercial contract in general covers three elements: 1. Contracting parties (muta‘āqidān), 2. mode of transaction (ṣīghah) and 3. subject of the transaction (maḥal al-‘aqd / ma‘qūd ‘alayh).

In this article, a comparative study is carried out between the traditional and the online methods of purchasing in the light of the rules and regulations laid down by Sharī’ah thereby postulating that almost all of the conditions stipulated for the transactions are met in an online transaction.

Keywords: online purchasing, commercial contract, transaction, trading.
Introduction

Allāh has blessed man with the resources of this world and has encouraged man to benefit from these resources within the limits set by His Divine Wisdom. He SWT states:

"أَلَمْ تَرَ أَنَّ ٱللَّهَ سَخَّرَ لَكُم مَّا فِى ٱلَْْرْضِ وَٱلْفُلْكَ تَجْرِى فِى ٱلْبَحْرِ بِأَمْرِهِۦ وَيُمْسِكُ ٱلسَّمَآءَ أَن تَقَعَ عَلَى ٱلَْْرْضِ إِلََّ بِإِذْنِهِۦ إِنَّ ٱللَََّّ بِا لنَّاسِ لَرَءُوفٌ رَّحِيمٌ.

“See you not that Allāh has subjected to you (mankind) all that is on the earth, and the ships that sail through the sea by His Command? He withholds the heaven from falling on the earth except by His Leave. Verily, Allāh is, for mankind, full of Kindness, Most Merciful.”

Therefore, Islām encourages Muslim to benefit from the world in all possible ways and innovate ways that can make his life easy as long as they do not contradict any Islāmic principle. Therefore, any business trade, whether online or in-person, as long as it meets certain guidelines, they are permissible and encouraged. It is so because the Prophet SAW would prefer things that were not only beneficial but render ease for him. Consequently, anything that is permissible by Islām, can be preferred over those permissible matters that render difficulty.

Generally, Islām has adopted a principle-based approach which liberates its implementation from the limits of time and place. Because of its dynamic approach, it is applicable in all places and time. In this article, we will look at the guidelines that Islām has provided regarding an online purchase or a commercial deal. These conditions will be analyzed in the context of online trading in order to assess whether they can be implemented or not.

Before we delve into the subject, it is important to define few essential terms that are normally associated with purchasing.

Definition of al-Bay‘ (Transaction)

The word used in Arabic language to denote a commercial transaction is al-bay‘ah. Therefore, Wehr has translated the word bay‘ah as ‘commercial transaction’.

The term ‘commercial transaction’ is a general term that refers to any commercial activity. Hence, the word is used for both purchasing and selling. Therefore, the famous lexicologist, Ibn al-Manẓūr defines it as:

"البيع ضد الشراء، والبيع: الشراء أيضاً، وهو من الأضداد. ويعت الشيء: شريته.”

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1 Sūrah al-Hajj: 65.
2 Muslim b. Ḥajjāj al-Qushayrī, Ṣaḥīḥ Muslim, Edited by: Naẓr b. Muḥammad, (Dār al-Ṭaybah, 2006), The Book of Virtues, Chapter: His Avoidance Of Sin, His Choosing The Easier Of Permissible Things..., 2327d.
“The word al-Bay‘ is the opposite of al-Shirā’ (purchasing) and it also means al-Shirā’ because it is one of the contranyms. Therefore, the meaning of bi’tu al-Shay’ (I sold something) also means sharaytuh (I purchased it).”

There is a difference of opinion among jurists with regards to the definition of the term al-bay‘. The simplest definition of al-bay‘ as quoted by al-Jurjānī is as follows:

"البيع في اللغة مطلق المبادلة. وفي الشرع مبادلة المال المتقوم بالمال المتقوم تمليكا وتملكا."5

“Al-bay‘ generally refers to an exchange. And in al-Shar‘ (Islāmic law), it refers to the exchange of valuable property with another form of valuable property either in form of acquisition or transfer of ownership.”

Likewise, Abū Mālik defines it as:

"مبادلة المال ولو في الذمة أو منافعة مباحة على التأبيد غير ربا وقرض."6

“A permanent exchange of property either against a permissible profit or a receivable, unlike ribā (usury) or qarḍ (loan).”

Definition of ‘Aqd (Contract)
The Arabic word to denote ‘commercial contract’ is al-‘aqd. Therefore, Wehr translates the word ‘aqd as (pl. عقود ‘uqūd) contract, agreement, arrangement or a legal transaction…7 Ibn Manẓūr defines the term ‘aqd as a knot of a rope, bay‘ (transaction) or a covenant.8

Terminologically, al-Jurjānī defines it as:

"هو ربط أجزاء التصرف بالإيجاب والقبول شرعا"9

“It refers to an engagement in the components of disposal (sale & purchase) by means of offer and acceptance under Shar‘i guidelines.”

Additionally, it is defined as:

"ارتباط إيجاب بالقبول على وجه مشروع يثبت أثره في محله"10

“An agreement including offer and acceptance in a way prescribed by the Sharī‘ah which affirms its influence on its subject (ma‘qūd).”

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7 A Dictionary of Modern Written Arabic: 628.
8 Lisān Al-‘Arab: 3/296.
Elements of a Legal Business Contract in Islām

From an Islāmic perspective, according to the majority of scholars, a legal business contract comprises of following elements (arkān):

1. Contracting parties including both buyer and seller (‘āqidān)
2. Mode of transactions (ṣīghah)
3. Subject of the transaction (ma‘qūd alayh or maḥāl of the transaction)

Contracting Parties

Islām has put forth certain conditions that relate to both contracting parties including buyer and seller. These conditions are briefly discussed below:

Capability (ahlīyah)

Here, the term refers to the contracting person’s capability to recognize himself as a contractor. This is his ability to engage in a commercial transaction either on his own or through his agent in order to carry out a commercial activity on his behalf. This capability is mainly measured by the person’s sanity and maturity.

This condition is relevant as in an online transaction, it is often impossible to recognize the contracting parties. Often, parties themselves do not wish to share their personal information for a number of reasons. Apart from that, e-retailers normally do not deem it necessary to verify a person’s capability to engage in a transaction. Any person can make a fake profile and engage in a commercial transaction. According to one research, 76% of purchases made using mobile devices do not require any age verification step.11 Additionally, Arkose Labs, in their fraud and abuse report, analyzed 1.2 billion real-time interactions with social media that included payments from financial services and ecommerce as well and they found out that an estimated 53% of all logins on social media websites are fraudulent and 25% of all new accounts are fake.12 Although more checks are added in transactions involving higher risks but Islām does not differentiate between transactions on the basis of the involved risk. The rule applies to all forms of commercial engagements.

Agency (Wakālah)

In Islāmic law, wakālah refers to the legal position where one is granted the authority to make a contract on behalf of someone else (i.e. principal). It is permissible in Islām to engage in a transaction on behalf of others (principals) provided one has acquired their consent.13

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This is relevant because there are numerous online retailers who facilitate transactions and somehow secure the position of an agent. For example, Daraz, an online retailer, provides logistic support to its users and acts on behalf of the owner of the product.\textsuperscript{14} It is important to determine the status of the service provider – in what capacity he is acting and what authority has he secured.

\textbf{Riḍā (Mutual Consent)}

In Islāmic Law, any form of contract is based on mutual consent. Jurists from all schools of Islāmic Jurisprudential thought have agreed that one of the primary conditions for the validity of any contract is that both mutually agree for its execution.\textsuperscript{15} This would necessarily apply to the online trading as well. No party can force the other to buy or sell what they possess or own.

\textbf{Ṣīghah (Mode of Contract)}

Any transaction, whether carried out in person or online, relate with the mode of the contract. It deals with the terms, words, expression and phrases uttered to materialize the contract. Following are the major conditions that the scholars have discussed:

\textbf{Knowledge of the Contract}

It is necessary for both contractors that they are fully aware of the terms and conditions stipulated for the execution of the contract. All the important clauses need to be brought into the information of each stake holder. In case if anyone is not informed of the contractual terms then the contract will not take place.\textsuperscript{16}

In online businesses, normally terms and conditions are detailed separately. Some businesses require the user to acknowledge that they have read the terms and conditions and they do not let them proceed further with the transaction unless they have acknowledged the message, but others provide information separately in a different section of the platform. It is important that service-users are informed of their obligations and rights before proceeding further especially in transactions that may involve a certain level of risk.

\textbf{Conformity between Offer and Acceptance}

It is required that there must be a conformity between the offer and acceptance. Both must be consistent with each other. What it implies is that in order for the contract to be valid, it is important that the offeree is provided with exactly what he was promised by the offeror. There must not be any inconsistency or difference. If there is a difference, the seller has the right to withdraw from the contract.\textsuperscript{17}

\textsuperscript{14} Daraz, \textit{Sell Online in Pakistan}, https://www.daraz.pk/sell-on-daraz/ (Accessed Decemeber 1, 2021)


\textsuperscript{17} Ibn Hammām, Muḥammad b. ‘Abd al-Wāḥid al-Sīwāsī, \textit{Fath al-Qadīr} (Beirut: Dār al-Fikr) 6/256.
When purchasing online, one major concern that the consumers express is that the product does not meet the requirements that were promised or shown by the offeror. In such cases, the consumer has the right to return the product.

**Conclusive and Clear**

Additionally, it is necessary to ensure that the words or phrases uttered (ṣīghah) have the right implications and do clearly and conclusively express one’s intention. For example, the expression should not refer to the future and must not be too general that it can mislead the listener or alter his perception about the contract. 18

Scholars of Islāmic Jurisprudence explain that it is important that the tense used while concluding the detail should be a past tense rather than future tense. Past tense is more conclusive and clearer in expressing one’s intention as compared to the future tense. For example, it is better to use the term “I purchased/bought such and such thing from you,” rather than saying “I will buy/purchase such and such thing from you.” The other is expected to respond in the similar tense – “I sold such and such thing to you,” rather than “I will sell such and such thing to you.” However, the majority of the scholars among ahnāf19 and shāfi’īyah20 consider the use of future tense permissible as long as the words are indicative of a person’s intention to engage in a deal.

It becomes relevant when a person is making a deal via email, phone call or other means of communication. In majority cases, when one uses the website, there are confirmation buttons that one is required to click in order to express his intention of engaging in the deal.

**Connectedness of Offer and Acceptance**

One additional condition is that both offer and acceptance must be connected with each other. It implies that there shouldn’t be any significant delays in accepting the offer. An unnecessary delay indicates one’s unwillingness to engage in a transaction. Therefore, Ibn ‘Ābidīn states:

> “The offer is nullified by whatever implies avoidance.”

In cases where one offers via email, then unnecessary delayed responses cannot bound the offeror to reserve his offer for the offeree.

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19 Badāʾiʾ al-Ṣanāʾiʾ: 5/133.


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Union (Majlis al-‘Aqd)

In addition to the former point, union in this context implies that the offeree should accept the offer in the same gathering in which the offeror has made the offer. In case if the offeror makes an offer in one gathering and the offeree accepts it in the other, then the transaction will not take place.\(^\text{22}\)

Gathering does not necessarily imply the presence of both parties, rather it refers to the state or the condition in which both parties are engaged in a transaction. Once that engagement is abruptly ended, the contract will not take place.\(^\text{23}\)

In the context of online purchasing, if the process is abruptly ended due to any reason, let us assume because of a bad internet connection, the deal will be nullified. The offeror cannot assume after some time that the offeree has already accepted despite the change in condition. The system cannot charge an individual merely for initiating the deal.

Conditions Related to the Subject (Ma'qūd ‘alayh / Maḥal)

Here, the subject matter refers to the product or the service for which the deal is initiated. These conditions are stipulated for both, products and services alike. They are briefly discussed below and are analyzed after their application to the online businesses:\(^\text{24}\)

Qualified to be contracted for

The first condition requires that the product or the service should qualify for transaction or the contract. This implies two things:

1. The service or the product must be permissible. Any product or service that is regarded has ḥarām (impermissible) does not qualify for the transaction.\(^\text{25}\)
2. Whatever is being purchased should have some monetary value or worth.

Anything that can be termed as māl (property) is qualified to be contracted for. Māl is defined as follows:

\[\text{هو كل ما دخل في الملك وأمكن الإنتفاع به حال السعة والإختيار.}\]

“It refers to everything that is owned and can be benefitted from in favorable and conscious state.”

For example, the scholars have forbidden purchasing or selling insects, serpents, mice and other similar living creatures unless they acquire a commercial value.\(^\text{27}\)

\[^{22}\text{Badā’i’ al-Ṣanā‘i’: 5/133.}\]
\[^{23}\text{Online Tijārat: 84.}\]
\[^{24}\text{Sulaymān ‘Abd al-Razzāq, Abū Muṣṭafā, Al-Tijārah Al-Ilaktrūnīyah fī Fiqh Al-Islāmī, (Ghaza: Jāmi’ah al-Islāmīyah, 2005) 13.}\]
\[^{25}\text{Al-Tijārah Al-Ilaktrūnīyah fī Fiqh Al-Islāmī: 14.}\]
\[^{26}\text{‘Ali al-Khaffīf, Aḥkām al-Mu‘āmalāt al-Sharī‘ah, (Dār al-Fikr al-‘Arabi, 2008) 05.}\]
\[^{27}\text{Fiqh al-Sunnah: 901.}\]
Hence, in an online transaction, one has to ensure whether the above conditions are met or not. In case where the product or service being purchased is impermissible or it does not qualify for the definition of a māl (property), then one cannot make a deal out of it.

**Existence of the Subject During the Contract (mawjūd)**

The scholars agree that it is forbidden to purchase or sell a product that has not acquired its existence. As for the provision of service, they consider the contract to be permissible because in most cases, the benefit is acquired in future.\(^{28}\)

With regards to the existence of the product, the scholars differ. Majority of the scholars consider the presence of the product necessary for the validity of the contract. They exclude some of those contracts that the Sharī‘ah itself has excluded or has permitted them because of their excessive need. This includes bay‘ al-salam (credit transaction) and istiṣnā‘ (bespoke manufacturing). Other scholars, including mainly ḥanābilah do not consider the existence of the product necessary because of the absence of any reliable evidence to prove that. They argue in favor of carrying out a transaction without the existence of the product by generalizing the ruling ordained for bay‘ al-salam. Scholars who differ, argue against the second opinion by referring to bay‘ al-gharar, but ḥanābilah relate this form the subject (ma‘qūd) that is either undeliverable or is not at the disposal of the dealer despite its presence.\(^{29}\)

According to the majority of the scholars, in the context of online transaction, it is important to determine if the product has acquired its existence before the contract is concluded. However, for ḥanābilah it is not necessary and is therefore permissible.

**Knowledge of the Subject (ma‘lūm)**

An important condition requires that both parties should be fully aware of the subject and its specifications before concluding the transaction. It must be sufficient enough to avoid any conflict that may arise in future.\(^{30}\) Simply, it can be said that one must be provided with all the necessary information that can influence his decision making.

There is a difference of opinion with regards to the visual observation of the product. The question is, whether a mere provision of information suffices or is it necessary that the object be visually examined before the conclusion of the contract. Majority of the scholars do not find it necessary that the visual observation or examination is necessary as long as the information provided is sufficient enough and will not influence the buyer’s decision making if provided with more. Others

\(^{28}\) Fatḥ al-Qadīr: 9/32.


(shawāfī‘ and ḥanābilah) differ and argue that it is not enough to share the details with the customer. A visual observation and examination in real life is necessary for an informed decision making and to avoid conflicts later.\(^\text{31}\)

The fundamental cause of difference of opinion in this matter is the question whether one can equate visual observation with the sufficient information or not? Secondly, does having essential knowledge about the product qualify one to make a deal regarding a product or is it necessary that he should inquire further?\(^\text{32}\)

In the context of an online transaction, the consumer is provided mainly with the information or few pictures. Pictures are normally deceiving, and they appear to conceal all the imperfections. Most of human beings tend to make their decisions on what appeals to their eyes rather than their quality and standards. Therefore, when observed and examined in real life, some retract and change their decisions.

Therefore, in order to mitigate this risk, it is important that a person should engage in a contract only when he has the option to return the product after its visual examination. In case when information is insufficient, one must not engage in such transaction as it does not fulfil the criteria.

**Complete Ownership (Mamlūk)**

It is regarded as impermissible by the sharī‘ah to make a deal of something that one does not own or where others have their vested claims involved. For example, it is impermissible to purchase a product that is given to one in a trust or guarantee.\(^\text{33}\) Similarly, the jurists have forbidden making business deals with the professional divers entailing that whatever is hunted from the oceans will be sold in exchange of such and such amount.\(^\text{34}\) However, there is an exception in case of wakālah (agency). Such deals depend on the consent of the owner – if the owner allows then it can be considered valid otherwise it will not be executed.\(^\text{35}\)

In an online transaction, it is important to determine if the product being offered is in the ownership of the seller or is he making a deal of something that he does not own. Online platforms normally lack the mechanism of ensuring such matters and proceed on the face value assuming that whatever is being offered, the person has the legal right to sell that.


\(^{32}\) Online Tijārat: 88.

\(^{33}\) Ghaffārī, Nūr Muḥammad, Islām kā Qānūn Tijārat, (Lahore: Markaz Taḥqīq Diyāl Singh Trust Library) 89.

\(^{34}\) Fiqh al-Sunnah: 903.

Deliverability (Al-Qudrah ‘alā al-Taslīm)

The scholars agree on the nullification of the contract if the subject is not deliverable. This entails that the seller does not have a control over it which consequently nullifies his executionary right. For example, one is not permitted to make a contract of a certain bird that is in the air or of the lost camel. 36

However, the scholars differ with regards to the gifts and donations. For example, the question is, can one gift his camel to someone saying that if you found it, it will be yours? Majority of the scholars incline towards its impermissibility while mālikī jurists permit as it does not cause any harm to the recipient. 37

In the context of online transaction, one must not engage in a contract where the consumer is committed against something that is not deliverable. The e-retailer or the service provider is required to setup a mechanism that ensures that deliverability of the product being offered by the seller on his platform.

Conclusion
To conclude it is important to look briefly at the conditions stipulated for a commercial contract and analyze if they are met in an online transaction or not.

With respect to the contractors, as long as the person who is engaging in a transaction is capable enough in the view of sharī‘ah to enter into a transaction, it is permissible. Likewise, agency related conditions and those that relate with the mutual consent are fulfilled in the online businesses. As for the conditions that relate with the mode of consent, they are also met in an online transaction in general.

Similarly, as for the conditions ordained for the subject matter, then one can briefly conclude: The first condition requires that the contract should be regarding something that is permissible and valuable in nature. Hence, this condition depends upon the will of the contractors. This condition does not influence the validity of the process or the business model in place. 38

The second condition requires that the subject should be known to both contractors. In other words, both parties must have sufficient knowledge of the product and the price. This condition is also met in an online business because the seller provides in detail information to the consumer and also provides opportunity to compare the product with similar products. Hence, one recognizes the product or service sufficient enough that he can make a decision regarding that transaction. 39

38 Ibid.:370.

9215 http://www.webology.org
The third condition relates to the deliverability of the product. This condition is also met online as long as the consumer does not purchase something from an unreliable source. Known retailers have procedures in place to ensure that one must own the product before he can actually make a deal out of it.

The fourth condition relates to the existence of the product. This is also ensured in known websites as one is required to add all the relevant details including model, maker, and other necessary information in order to make it available on the website for the consumer.

The fifth condition requires that one must own product before making a transaction. It is undeniable that many people make offers of products online that they do not own. This issue does not arise when one is dealing directly with the company rather than using the secondary sources where sometimes the information is fake or obsolete. Additional procedures can be put in place to ensure the ownership of the seller.

To conclude, one can say that online trading does allow in general to trade in a way which is prescribed by the Sharī’ah. However, there are cases when people do not abide by the principles ordained by Islām but if they do, there appears to be nothing against Sharī’ah that one needs to be concerned about.

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40 Ibid.