
“Murabaha” as Method of Islamic Banking and Finance In Nigeria”

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ABSTRACT

This conference paper which bearing the title of: Murabaha As Method of Islamic Banking And Finance In Nigerian it will examine definition of Murabaha contract within the scope of Islamic commercial and Business Transaction jurisprudence, the rules which governing Murabaha, the mistakes should be avoided, provisions of Murabaha according to Sudanese law of business and transaction, 1984. In addition to definition of Islamic banking, the historical background of developing banking in general and in particular here in Nigeria. Moreover the paper will also extend to include to what extent Murabaha had been implemented by Islamic or conventional Nigerian banks in particular with reference to Access Bank, Plc.

Keywords: Murabaha, Method, Islamic Banking, Finance, Nigeria”

Aims Research Journal Reference Format:

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1. INTRODUCTION

Presentation of the forgoing conference paper requires exposition to four interrelated parts to be as follows:

Part one: Definition of Murabaha, Legality, Definition of banking system and it’s Historical background.

Part two: Deference between Murabaha and other similar commercial contracts, rules governing Murabaha and mistakes should be avoided.

Part three: Illustration to extra provisions of Murabaha:

Part four: Murabaha As it has been practiced by Nigerian Banks, Access Bank of Nigerian As a case study.

Conclusion: findings Recommendations and bibliography.

Part One: Definition of Murabaha, Legality, Definition of banking system and it's Historical background.

1-1 Definition of Islamic Banking:

Islamic Banking refers to a system of Banking or Banking activity that is consistent with the principles of Islamic law "Shari'ah" and its practical application, through the development of Islamic economics¹. "Shari'ah" prohibits the payment or acceptance of interest "Riba". It prohibits investing in businesses that provide goods or services considered unlawful; such as: selling of alcohol, pork or fake goods.

1-2 Origin of Banking in Islam:

People may need to know whether there is Banking system somewhere in Islamic History or not. Answer to this question is, many intellectuals were of the view that no Banking system ever existed, either during the Prophethood or during the time of the companions, which can be compared to current system and model. Of course this is quite true, but this do not mean that there is no any sign of this kind of system by that time. That is because there are a number of basis in the Banking system proved by history to have existed in Islam during the time of the Prophet and the companions. These include:

Zubair saving service: Zubair bin Awwarn was famous for his honesty and trustworthiness. So a lot of people used to deposit their money with him. But he used to tell them that he accept it as a loan "Salaf" not as deposit *Wadi 'ah* ", because of his fear of using the money and replacing it with another same amount; which is contrary to the Shariah rule on deposit. Consequently, more people came for his service, to the extent that he has two million and two hundred thousand Dirham in his safe keeping (2,200,000).

His son Abdullahi was reported narrating this, when he was explaining why debt due for Zubair after his death became huge. This is what he said:

*"A man comes with money (to Zubair) to keep it for him as deposit, but Zubair says: "No it is a loan (not deposit). Indeed I worry that it might be lost" ... I counted the loans due for him and I found it two million and two hundred thousand ..(Dirham) (2,200,000) ."*².

"As Suflajah" (Bill of Exchange): it is a contract for transfer of money between three people: One who lend money to second party who collect it in the same place, with an agreement that the lender will collect back his money from a third party, but in another place. He can be a debtor to the lender or his agent.

It was reported by Ata'u who said: "Abdullahi bin Zubair used to collect loans from merchants and write letters to his agents (in another place, so that they can recollect it back from them)"³.

1-3 Emergence of Modern Islamic Banking:

The first modern experiment with Islamic Banking was under taken in Egypt under cover, without projecting an Islamic image, for fear of being seen as a manifestation of Islamic fundamentalism, which was anathema to the then political regime. The pioneering effort, led by Ahmad An Naggat took the form of saving Bank, based on profit-sharing, in the Egyptian town of MitGhamr in 1963. The experiment lasted until 1967 (ready 1981), by which time there were nine such Banks in the country"⁴.

In the same year 1963 another experiment named: Interest-Free Bank emerged in Pakistan. It was established in Karachi by some individuals, but did not survive²⁴. In 1972, the Mit Gamr saving project became part of Nasr Social Bank which, currently, is still in business in Egypt.

1-4 Development of Islamic Banking:

In 1975 the Islamic Development Bank (IDB) was set up with the mission to provide funding to projects in the member countries. It was established in Jeddah, Saudi Arabia by the Organization of Islamic Conference (OIC). The first modern commercial Islamic Bank if the world, Dubai Islamic Bank. opened it doors also in 1975⁵.

In the following years, a number of Islamic Banks were established mainly in the Middle East, such as the Faysal Islamic Bank of Egypt (1977), the Faysal Islamic Bank in Sudan (1977), the Islamic Bank of Faysal in Jordan (1978), the Jordan Islamic Bank for Finance and Investment (1978), the Bahrain Islamic Bank (1979) and the Islamic Investment Company LTD in the UAE, which was also established in 1979⁶.

There was Bank Islam Malaysia Berhad (BIMB), the first officially sponsored Islamic Bank in Malaysia, which was established in 1983. Later in 1985 there was Islamic Bank, the first in Turkey, established under the legislation on interest free Bank passed in December 1983. Then Bank Mu'amalat, the first Islamic Bank established in Indonesia in 1994⁷.

The first attempt of Islamic Banking known in the west was Islamic Finance House. It was established in Luxembourg in 1978⁸. A comment was made on it as follows:

“Luxembourg is recognized as one of the leading European centres for Islamic finance, with a long track record in the sector. It hosted the first Islamic finance institution more than 30 years ago and was the first European stock exchange to list a number of “Sukuk” bonds⁹.

There is **American Finance House "Lariba"** the largest Islamic Finance in America, servicing the community since 1987¹⁰.

The British parliament enacted or amended quite a number of Acts\Regulations to encourage the introduction of Islamic Banking in the UK. This led to the establishment of the first Islamic Bank in the UK. Its name is The Islamic Bank of Britain. The first Managing Director was Michael Hanlon. South Africa has Islamic financial institutions for several years licensed and operating successfully. **AI**

Baraka Bank for instance, was in existence in the country since 1989. The Bank which is jointly owned by South African investors and the Saudi Arabian based **Dallah Al Baraka Group**, is the sole fullfledged Islamic Bank operating in the country¹¹. Other African countries which .have Islamic Banks include: Senegal, Gambia, Gumea, Niger, Kenya, and Tanzania¹².

1-5 Islamic Banking in Nigeria:

The Nigerian Muslim community has been taking steps to introduce Banking, insurance, and related services, which will comply with the Shariah. This effort started since 1983, when a strong delegation of Darul Mali Al Islami visited the country, led by a Saudi prince, Muhammad Faisal. But unfortunately it did not succeed. In October 1999 Habib Nigeria Bank Limited commenced non-interest Banking operation, by opening Islamic windows in six of its branches, which also did not succeed.

The first to be Islamic Banking in the country, named as Profit and Lost Sharing Bank, had already obtained approval of the Securities and Exchange Commission (SEC) and approval in principle (AIP) from the Central Bank of Nigeria (CBN), for starting its operation since 2004. The initial share capital for the Bank is N2.5 billion and that money would be raised through public issue. The minimum share subscription is N1,000,00 for 1,000; ordinary shares, that is N1 each. With its headquarters in Abuja, the Bank will have five Regional branches. A company named “Ja’iz” International Plc would be the vehicle for bringing the Bank into being¹³. A license had already been issued to this company from the Central Bank of Nigeria (CBN), and it will start operation by this year 2011.

Part two: Deference between Murabaha and other similar commercial contracts, rules governing Murabaha and mistakes should be avoided.

2-1 Legality of Murabaha: the Islamic Act of Business Transaction of Sudan, 1984 provided the legality of Murabaha according to provision of section (186-187) respectively therefore the Sudanese commercial law provides selling of Murabaha is allowed. In selling of Murabaha the purchaser will add amount of money over the agreed fixed price. The price in Murabaha should be previously well known. The agreed price in Murabaha which is increased over the previous formal price would be the official confirmed price by the seller and the purchaser.

2-2 Difference between Murabaha and the similar contracts: contract of Murabaha classified within selling of trust or “Ugud El-Amana” which are three in number: (1) Murabaha (2) Tawlyat and (3) Wadiat. The jurists differentiate between them as follows:¹⁴

- By Murabaha they mean: The seller will purchase the product with a price more than that previous fixed.
- By Tawlyat they mean: the seller will collect the purchased product with the same price that already agreed between the contractual parties.
- By Wadyat they mean: the seller will collect the commodity with a price that less than the previous fixed for the sold product¹⁵.

2-3 Definition of Murabahah

The whole founders of sunni school of thought define Murabaha as a contract whereby the seller and purchaser will agree to fix a profit over the official price of the commodity.¹⁶ therefore this definition adopted by both Muslim jurist and Scholars in the field of banking and finance.¹⁷

2-4 Basic Rules Governing Murabahah:

Following are the rules governing a *murabahah* transaction:

1. The subject matter must exist at the time of sale. Thus, anything that may not exist at the time of sale cannot be sold and its non-existence makes the contract void.
2. The subject matter should be in the ownership of the seller at the time of sale. If he sells something that he has not acquired himself then the sale becomes void.
3. The subject matter must be in physical or constructive possession of the seller when he sells it to another person.

Constructive possession means a situation where the seller has not taken physical delivery of the commodity, yet it has come into his control and all rights and liabilities of the commodity are passed on to him including the risk of its destruction.

4. The sale must be instant and absolute. Thus a sale attributed to a future date or a sale contingent on a future event is void. For example, 'A' tells 'B' on 1st January that he will sell his lorry on 1st February to 'B'; the sale is void because it is attributed to a future date.
5. The subject matter should be a property having value. Thus, a good having no value cannot be sold or purchased.
6. The subject matter should not be a thing used for an un-Islamic purpose.
7. The subject of sale must be specifically known and identified to the buyer. For example, 'A', the owner of an apartment building says to 'B' that he will sell a unit to 'B'. Now the sale is void because the apartment unit to be sold is not specifically mentioned or pointed to the buyer.
8. The delivery of the sold commodity to the buyer must be certain and should not depend on a contingency or chance.
9. The certainty of price is a necessary condition for the validity of the sale. If the price is uncertain, the sale is void.
10. The sale must be unconditional. A conditional sale is invalid unless the condition is recognized as a part of the transaction according to the usage of the trade.¹⁸

2-5 Basic Mistakes in Murabahah.

Some basic mistakes are highlighted in practical implications of the concept which are as follows:

1. The most common mistake is to assume that *murabahah* can be used for all types of transactions and financing. This mode can only be used when a commodity is to be purchased by the customer. If funds are required for some other purpose *murabahah* cannot be used.
2. The document is signed for obtaining funds for a specific commodity and therefore it is important to study the subject matter of the *murabahah*,
3. In some cases, the sale of commodity to the client is affected before the commodity is acquired from the supplier. This occurs when the various stages of the *murabahah* are skipped and the documents are signed all together. It is to be remembered that *murabahah* is a package of different contracts and they come into play one after another at their respective stages.
4. It is observed in some financial institutions that *murabahah* is applied on already purchased commodities, which is not allowed in *Shari'ah* and can be affected on commodities not yet purchased.¹⁹

2-6 Commodity Murabahah:

Commodity *murabahah* is one of the most commonly used financing contracts in Islamic banking. It falls in the same category of '*uqiid al-mu' awadat* (exchange contracts) that covers all types of transactions including most *sukiil*: as well. Commodity *murabahah* is clearly the Islamic treasurer's funding product of choice, as it is flexible enough to facilitate many structures for financing, bedding, and currency exchanging.²⁰

Part Three: Illustration to extra provisions of Murabaha:

There are various juristic provisions in respect of murabaha selling likewise the stipulation such as:²¹

1. Murabaha selling would be for commodities the ownership will transfer to the second contractual party through selling, donation, inheritance, speculation and not any contract else.
2. In the contract of Murabaha, Wadiate and Twailyat the latest agreed price should be considered and not the formal first one
3. If the sold property or commodity that sold by Murabaha affected with damage or deficiency due to consent of purchaser, the contract will be valid in this context.
4. In the contract of Murabaha and Twailyat the first fixed price for the commodity may be paid in monetary or raw material. Notwithstanding the validity of this rule if the first fixed price paid in a mood of monetary the second agreed price must be paid in monetary and not in raw material.
5. In contract of murabaha the profit should be well known if it's ambiguous then establishment of murabaha will be void.
6. The profit in murabaha is determinant to be from the same currency that consist the second fixed price and also might be paid out of another currency. eg: if Mr (A) agreed with Mr (B) to sell for him a car with the agreed price of N1,500,000 they may agree he should pay extra profit of \$500 five hundred US Dollars .
7. If the purchaser collects deferent commodities with payment of different prices according to the view of Abuhanifa and Abu Yosuf he is authorizing to sell them with different fixed ration of profits.
8. In the contract of murabaha if the purchaser paid more changes over the agreed price such as: cost of loading, custom service, tax and lawyer fees, he may add all these charges to the capital and fix a ration for a profit that he likes.
9. The extra charges that added to the capital of the sold property if it permitted in the customs of traders then the purchaser may fix his profit in murabaha eg. Cost of transport, travelling ticket of airplane, ship, bus, renting horses or donkies.
10. If the purchaser who wants to sell the commodity or the product in the above mentioned example to another seller he must mention to him the capital and the extra charges in addition to his fixed profit.
11. If the purchaser wants to sell the commodity but it affected with deficiency he must explain it to the seller at the moment establishing the contract.
12. In murabaha selling if there is damage affected the sold property and the seller refused to explain it to the purchaser then latter after establishing the contract discovers that damage, he will be given the option to approve the contract or reject it.
13. If the purchaser establishes the contract of murabaha on condition of collecting the commodity at postponing date then he decides to sell the product without mentioning that fact to the seller, the second contractual party in this case having the option either to approve the contract or to reject it which called *Khyar Alkhyamah* or the option of cheating.

Part Four: murabaha As it has been practiced by Nigeria Banks Access Bank, Plc, As a case study:

On the date of 21st/July/2015 I conducted interview with Director Investment in Access Bank Plc, Kaduna Branch, Ahmadu Bello way. I raised several questions in respect of the authority of the bank to purchase for the costumers new cars from abroad countries on contract of Murabaha basis? The summary responses by the Managing Director were as follows:²²: the bank hawing full authority to purchase cars for customers on Murabaha basis from abroad countries, the cars normally available for sells based on customers desires such as: Hruda, Hyndi, BMW, Rover, Land Cruiser and others, some of them saloons others are Jeep. The least price N4,500,000 and the highest N36,000,000 naira every customer who receives monthly salary in the least range of N250,000 or above is eligible to purchase a car, the bank already design selling contract which consisting the whole conditions for ownership of the car, among the conditions.

if the customer is an officer he/she should open account with Access Bank, the management of the Bank will start deducting from his salary every month based on the duration that he wants to clear the price of the car weather he wants to clear the price within 4,5,6,7,10 up to 12 years. In all cases the Managing Director will explain to the customer the main initial price of the car, cost of loading, customs duty, tax and the ratio profit that stated by the bank. The bank and the customers will sign a contract under authentication and supervision of legal advisers appointed by the bank. In addition to extra conditions such as: how to settle a deficiency to fulfill obligations to clear the price of the sold or purchased car.....

Conclusion: By the complementary of this conference paper I would like to state the following findings and recommendations:

Findings:

1. The provisions of selling of Murabaha are available according Islamic Jurisprudence.
2. Contract of Murabaha classified within contracts of trust or Amana.
3. It is allowed to have an agreement between the seller and the purchaser to add extra amount on the agreed price on Murabaha basis.
4. The contract of Murabaha in contemporary years was practiced globally by; sellers, purchasers, conventional or Islamic banks.
5. Practicing of Murabaha will develop economic and banking sectors.
6. Through the banking method of Murabaha Junior executives, administrators, lecturers, medical doctors, business men could easily owned the needed cars according to their option.

6. Recommendations

(1) I recommend the entire colleagues, students of undergraduate and postgraduates studies to learn the Islamic financial and commercial jurisprudence

(2)To actualize implementation of Islamic jurisprudence it should be combined with other studies such as: economics, banking, law political science. e.t.c.

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