

**فاعلية نظرية الخصم الاقتصادي الزمني في المصارف
الإسلامية العراقية**

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Comprehension of the components of this topic and overcoming its problems requires an understanding of the problem of resolving commercial papers. Its significance is also demonstrated by the requirement for commercial paper dealers to understand the jurisprudential background to and subsequent legal analysis of the resolution of commercial papers. F. By weighing and debating the sayings to determine the legal alternatives for the settlement of commercial papers, one can edit the most accurate saying in the jurisprudential context for the settlement of commercial papers. The researcher used an inductive, descriptive, and analytical technique in his investigation, extrapolating and following the claims made by the forensic researchers and their supporting documentation, analyzing and discussing them, and arriving at the most plausible claim supported by the data.

Introduction:

ALLAH be praised as Lord of the Worlds, and blessings and peace be upon the faithful Prophet, his family, and all of his companions. After that, commercial papers play a significant role in business because they are a means of transferring money from one location to another, eliminating the risks associated with carrying it. It can also be used to keep promises. These papers list a variety of banking procedures, including collecting, mortgaging, and deducting. He then reached the first subject. The truth about resolving commercial papers In order to find out the truth about discounting commercial papers, it is necessary to clarify: its definition, elements, conditions, effects, and termination, within the following demands: The first requirement: the definition of discounting commercial papers The discounting of commercial papers has been defined by several definitions among jurists and sharia scholars: Ali Jamal al-Din Awad defined it as: "The process whereby the bank advances to the beneficiary of a commercial paper whose term has not yet expired, the value of this paper, in exchange for a concession The beneficiary to the bank for ownership of the right specified in the paper. The bank deducts from the value of the note an amount called the discount rate (Agio d'escompte), which corresponds to the interest of the amount paid for the period from the date of its payment to the maturity date of the note. (He also defined it by the legalist: Muhammad Salih Qanun: "A money changer pays it to a holder of commercial papers an amount of money equal to its value after deducting an amount that compensates the money changer for making the payment immediately, and guarantees him a small profit, provided that the bearer shows the bill of exchange to the money changer as an endorsement transferring ownership; To be able to meet the value when the maturity date." Among the definitions of Sharia scholars are the following: The Accounting and Auditing Organization for Islamic Financial Institutions defined it as: "A process whereby the holder of a commercial paper transfers its ownership by endorsement to a third party before the maturity date, in return for the institution accelerating its value to him, deducting from it a certain amount." The bank paid the value of the paper before its maturity date after deducting a specific sum that represents the interest of the aforementioned value for the period between the date of deduction and the maturity date, in addition to the bank's commission and collection costs, according to Ali Al-Salous.." ".The bank purchases the bill from its customer before the due date, and on the basis of its current value, that is, decreasing the value contained in the bill by a percentage, representing the interest of the bill amount from the date of its purchase until its maturity date, and the bank collects its value from the debtor on the maturity date, and reserves the right of recourse against the adversaries and the endorser," said Muhammad Al-Shabani. ".The researcher may see from the advanced definitions that the meaning of discounting commercial papers is the same for Sharia scholars and legal scholars. These definitions also differ in how they state the existence of the discount. A definition that encompasses the fact of the discount and the area around it can be derived from their combined value as follows: (a procedure whereby the holder of the commercial paper transfers ownership to the bank by way of endorsement prior to the maturity date in exchange for the bank accelerating its value to him, deducted adding a specific sum, representing the interest of the amount paid for the time between the discount date and the maturity date, in addition to the bank's commission. The bank collects its value from the debtor on the date of maturity, and reserves the right of in the event the debtor defaults, recourse against the settler and the endorsers). The definition made reference to the topic of endorsement, which is not covered by Salus' definition. In addition to the interest that the bank charges, the commission, and the collection costs—all of which are absent from definitions with the exception of Salus' definition—he also brought up the definition. The report also gave the bank the authority to consult the endorsers and the decision in the case that the debtor defaulted on the agreement; other definitions lack this provision, with the exception of Shabani. The image of the discount is summarized: "For the creditor to come to the bank with a bond of debt to his order (a bill of exchange) whose due date has not come, and he wants to receive his amount before its due date, so the creditor signs on the back of the bond (the bill of exchange) by transferring its content to the bank's order, so the bank takes

the place of the creditor towards the debtor who signed the bond, The creditor is paid the amount of the bond, minus the amount of interest for the remaining period of the maturity date immediately, then the bank receives the full amount of the bond on the maturity date ". This, and it should be noted that the common use in the writings of contemporaries is to use the word (deduction) and not (deduction), and the correct language: is to say: (decision) not (deduction); Because decisive language is cutting¹ This is appropriate for what we are in: a part of the value of the deferred commercial paper is deducted in return for expediting the payment of the rest. As for the opponent, it is from the rivalry, which is the argument and the dispute, or it is in the sense of the side of the thing² It does not mean cutting.³ The second requirement: the elements and conditions for settling commercial papers Some definitions of discounting commercial papers state that: "A contract whereby the holder of a commercial paper transfers the ownership of this paper to the bank."⁴...Accordingly, the elements of resolving commercial papers are the same as the general elements of the contract (the formula, the two contracting parties, and the subject of the contract). And explain it as follows:

1- Formula: which is offer and acceptance.⁵ The offer: What was issued first by one of the two contracting parties indicating his consent to create the contract. And acceptance: What was issued secondly by the other contracting party, indicating his consent to what was required by the first.⁶

2-The two contracting parties: are the bank, and the customer, who is the owner of the commercial paper. It is called the beneficiary, the decisive. Both of them are required: eligibility, and authority to dispose of the presenter of the paper.

3- The subject matter of the contract: which is commercial paper.⁷ For it to be considered valid for the deduction, two conditions must be met:

4-a. That the paper represents a monetary right of a definite amount, payable within a specified period Based on this condition, checks are not subject to the discount process. Because it is by its nature payable at sight, there is no justification for presenting it for the deduction. It should also be noted that the commercial paper that is paid to the bearer is also not subject to the deduction process. Because its guarantee is fragile and weak, as there are no signatures on it from those who trade it, and therefore the bank does not find endorsers to refer to if the debtor does not pay. Hence, the discount is only made on the bill of exchange, and the promissory note in particular a. That the bond authorizes the bank the right to claim from others

The third requirement: the effects of discounting commercial papers:

1) The discounting of commercial papers has effects: some of which are related to the client side, and some of them are related to the bank as follows:

2) First: Effects of Discounting Commercial Papers for the Client:

3) Transferring the ownership of the paper subject to the deduction to the bank by endorsement.

5 (Paying for discounting commercial papers before the due date. This compensation consists of three components:

6 a. Discount rate (Agio): It is represented by the interest due on the amount paid during the remaining maturity period of the paper: which is the period between the discount date and the maturity date.

7 B. Commission: It is the amount determined by the bank according to the risks that it may be exposed to when not paying, in addition to the value of the paper and the remaining term for its maturity.

8 c. Collection expenses: It is the return of the sums paid by the bank for its demand to collect commercial paper.

9 Collecting the value of the note from the bank after deducting the three previous elements from it.

10 - Paying the nominal value of the paper in the event that the bank is unable to collect its value when due without having the right to deduct what the bank has received in terms of interest or commission .

Second: Effects of Discounting Commercial Papers for the Bank:

1-Paying the face value of the security after deducting the discount price, commission, and collection expenses thereof

2 -The bank replacing the paper holder in its legally prescribed rights and guarantees: such as its right to endorse the paper, or recalculate it with other banks, wait until its maturity date, take its value from the drawee, and refer back to the signatories in the event of non-payment .

The fourth requirement: the end of commercial papers deduction The commercial paper discount ends in the following cases

1- Rescission: It takes place at the request of one of the two parties when the other party fails to fulfill its obligation. However, in most cases, the requester for annulment is the bank and not the customer, and for this reason, the banks put a condition in the discount contract, the content of which is: that if one of the parties breaches his commitment, the contract will be rescinded on his own.

٢- -The drawee pays the value of the note to the bank.

٣- -The customer pays the value of the paper to the bank.

The second topic.

Jurisprudential conditioning for the resolution of commercial papers Forensic researchers differed in the conditioning of discounting commercial papers on ten adaptations, as follows:

The first requirement: is the jurisprudential adaptation of the discounting of commercial papers on the basis of the loan alone or in combination with other contracts: The first subsection: discounting commercial papers as a loan with interest :The owners of this adaptation believe that discounting commercial papers is a loan with interest, which is prohibited by Sharia. It is the saying of the most legitimate researchers among them: Hassan Al-Amin , And Hussein Hassan , And an Egyptian companion , And Sami Hammoud ,^٥ And Abdullah Al-Abadi And Ali Salous ,^٦ and Mohamed Siraj^٧ And Muhammad Al-Shabani ,^٨ and Muhammed Shabbir , And Muhammad Al-Shanqeeti .And it took the Accounting and Auditing Organization for Islamic Financial Institutions. And to clarify: discounting commercial papers is, in fact, a usurious loan: the customer borrowed from the bank an amount of money on the condition that he pays more than it, and the interest that the bank takes is the equivalent of the lending, and therefore it varies according to the value of the commercial paper, and the date of maturity: for example, if the value of the commercial paper was one thousand Dinars, and the date of payment is after a month, and the owner needs its value immediately, so the bank gives him, for example, nine hundred and fifty, calculating an interest of fifty dinars, so it is as if he lent him nine hundred and fifty, and the bank recovers his debt after a month with an increase of fifty, which is undoubtedly a forbidden usurious increase Check out Good Health, which indicates a good benefit in good health Also, the aim of the discount is the loan, and the bank did not intend to be a buyer of the fixed right in the paper, nor to be an assignee with it, but rather the intention of lending. Contracts are based on purposes and meanings^٩ According to the jurisprudential rule: "The lesson in contracts is for purposes and meanings, not for words and structures

Section Two: Discounting Commercial Papers Loan and Transfer:

It is a potential raised by Mustafa Al-Zarqa, who explained that the discounting of commercial papers can be subject to the conditions of a loan from the bank to the creditor (customer) of an amount of money equal to the content of the paper (less the amount of interest...) and a transfer of funds from the creditor who holds the paper to his debtor (the drawee) in order to pay. To the bank, which now holds full title to the paper's contents as its creditor. As a result, the bank is happy with the amount it had taken as a loan from the paper's owner and gains an increase. According to Al-Zarqa, the choice made in reliance on this conditioning constitutes blatant usury. since the jurists want hawala Two debts are equal: the assigned debt (the amount paid by the bank to the customer), and the assigned debt (which is proven by the paper). The bank collected more than the loan amount, and this is explicit usury. Even though the researcher agrees with the conclusion reached by this conditioning regarding a deduction from explicit usury, it is not valid to adapt it on the basis of hawala because, as stated in the same saying, one of the conditions for its validity is the equality of the two debts to which the assignee and the assignee are, and this condition has been missed. However, it was stated that decisiveness is not valid as a transfer in the introduction to the hawala model from the Encyclopedia of Fiqh, to which Al-Zarqa referenced for the justification for the sanctity of decisiveness. to overlook the requirement of equality .More clarification of this will come in the fifth section of the second requirement. between the assigned debt and the assigned debt.

Section Three: Discounting Commercial Papers: A loan secured by commercial papers and a remuneration agency

And Mustafa Al-Hamshari holds the following view: He thinks that the discount is made up of two components: a loan secured by commercial papers and a customer authorization for the bank to use their wages to settle this debt. The value of the customer's wages is then deducted in advance from the secured loan that the customer withdraws from the bank. Al-Hamshari is of the opinion that the resolution of this perception does not entail a sale that results in a legal prohibition. What aids in this adaptation is the bank's legal right to take alimony and supplies during the loan application procedure, and Islam acknowledges loans with guarantees. in addition to paying a charge to the agency. Therefore, the discount can be seen as being acceptable in terms of Sharia, and the money taken for the discount is distributed under the name (Agyo) at the expense of the loan, the costs associated with collecting the money, and the agency charge to do so. This condition is coupled with what Ibn Qayyim al-Jawziyyah mentioned under permissible tricks, where he said: "If he transfers his debt to a man and he fears that his money will be transferred to the one to whom the debt is transferred, then he will not be able to return to the transferor, because the assignment transforms the right and transfers." ".Based on this, what the bank takes in a deduction in the name of (Leo) is permissible according to Sharia, except that one should not go to extremes in taking the loan expense. .^{١٠}

However, Al-Hamshari believes that decisiveness in its current form is forbidden by Sharia. Because the ruling is based on what is established and established, and in the settlement, the bank takes interest in exchange for the loan secured by the commercial paper, and this is prohibited by Sharia (It should be noted that Al-Hamshari has two other opinions that he believes that the decision can be adapted to them, as will be mentioned in the two branches: the second and the fifth of the second requirement.

This saying is discussed as follows:

- 1- Saying that the discount is composed of two things: one of them: is a loan secured by commercial papers, which is not Muslim in the opinion of the researcher; Because these papers are not a guarantee of the loan, but have become the property of the bank by virtue of endorsement saying that Islam approves a loan with a guarantee is a Muslim, but the loan here is illegal. Because it is a loan with interest, and for this reason, the interest varies according to the value of the commercial paper and its due date, as mentioned in the first section.
- 2- What was mentioned about the inclusion of the resolution on the agency with a fee, and it is answered: It is not justified by Sharia to attribute the description of the agency to the resolution; Because the provisions of the agency do not apply to him: the principal (the holder of the commercial paper) if it was proven that he If the agent hypothesis were to be supported, the agent (the bank) would give the principle precisely what he received, not more. If he had granted the bank permission to pay the paper's value, he would not have taken anything less. Furthermore, if the issue concerned a power of attorney, that would constitute a request to collect the commercial paper, therefore there would be no need for a loan process between the bank and the holder of the commercial paper.
- 3- the paper returns to its owner, but the reality in the settlement is otherwise; Because if the bank goes bankrupt, the customer cannot recover the paper from the bankruptcy; Because it became the property of the bank
- 4- Combining a loan and an agency with a fee is a combination of a loan (a loan) and compensation, and it is in the sense of combining a loan and a sale that is forbidden in the Shari'a in the words of the Prophet ﷺ: ((It is not permissible to advance and sell .⁰(Here, the increase in the loan may be permissible in the name of the wages agency.

5 - The expenses and fare that were made the basis for the permissibility of the discount rate are not valid for that; Because the rent has been taken by the bank, and its share is known, as well as the costs of collection, what calls for the inclusion of the third element (interest) - on which interest revolves - and its distribution between expenses and rent?! If the goal is justification and access to some tricks to endorse what is forbidden, then this logic is totally rejected

6 Regarding the trick analogy that Ibn Qayyim al-Jawziyyah suggested, it is a different kind of analogy. There is no question that the agency indicated in the trick is connected to the advancements because it receives no compensation. since they both give. As opposed to the organization that was mentioned in the air conditioning, this. Due to the fact that it has been paid, the net worth that was connected to the predecessor is in the sense of combining a predecessor with a sale that is forbidden in Shari'ah, as previously mentioned .

Section Four: Discounting Commercial Papers: Loans, transfers, and guarantees:

And his statement: that the discount is in fact a loan from the bank to the customer with the consumer transferring the paper's editor to the creditor bank. In addition to the loan and the transfer, there is a third component: the client's promise to pay the paper's editor when it is due. Due to the loan, the customer owns the sum from which the bank deducted the paper, the transfer makes the bank a creditor of the paper edition, and the customer's promise to pay fulfills the bank's right to demand payment of the paper's value in the event that the editor does not do so by the due date, and the editor is obligated to pay the bank as a result of the editor's debt to the bank.ri

Al-Sadr states that based on this basis, what the bank deducts from the value of the paper in return for the remaining term of the due date for payment becomes a representative of the interest it charges for providing the loan to the customer, which is forbidden; Because it is usury. Regarding the commission that he withholds as payment for the service, or as payment for collecting the sum if it is paid somewhere else, it is acceptable. As a result of the commission for the service, the bank is able to charge a fee for writing each loan that it gives as a cost for writing the debt. Because the bank, by discounting the paper, becomes a creditor to the customer for whom the paper is settled by means of a loan contract and the creditor has the right to demand payment in the same place, tempting him to drop this condition in order to transfer the debt, the bank also has the right to charge a commission for collecting the amount in another location.

condition, which allows the decision to transfer it at that time. On the debt represented by the paper, which is paid elsewhere. Based on this conditioning, discounting commercial papers in the way that conventional banks do is forbidden by Sharia. Because the loan that is included in the discount is a loan with interest, and it is usury, and this is a Muslim matter. As for conditioning the discount on the basis of the hawala, it is not Muslim in the opinion of the researcher. Because the transfer here has lost one of the conditions for its validity: which is the equality between the two debts to which it is transferred and the one to which it is transferred, as previously mentioned. Likewise, the settlement of the discount on the basis of the guarantee is not accepted; Because the subject matter of the guarantee here is the exchange of the loan with interest, which is prohibited by Sharia, so the guarantee is invalid. The second requirement: is the jurisprudential adaptation of the discount of commercial papers on a basis other than the loan: The first subsection: discounting commercial papers, selling a deferred debt for less than an immediate one. The second requirement: is the jurisprudential adaptation of the discount of commercial papers on a basis other than the loan: The first subsection: discounting commercial papers, selling a deferred debt for less than an immediate one. Based on that, those who advocated this conditioning differed in the ruling on discounting commercial papers on two opinions: The first opinion: discounting commercial papers is forbidden by Sharia. It is the opinion of Abdul Hamid al-Baali, 'And Muhammad Taqi Al-Othmani, ' and Mustafa Al-Zarqa. ' And it took the Islamic Fiqh Academy. ' The reason for this is: The two exchanges here are money: where the commercial paper represents money, then it is sold for money, and it is not permissible to sell money by its gender with differentiation, and when the gender is different, the handover must be made. That is why the discount includes usury of credit. due to asymmetry. It also includes usury of an-Nasee'ah; Due to the lack of contracting, both of which are forbidden by Sharia

The second view is that commercial paper discounts are acceptable. This is due to the fact that if a debt is not made of gold or silver, measured, or weighed, it cannot be sold for less than what is allowed by law to do so. It is OK to sell it for less because the debt sold for less than it in terms of discount is a debt in currency notes rather than gold and silver. And if it is possible to extract the discount on the basis of the sale, then the client's obligation to settle the debt prior to the bank may be extracted when the paper maker fails to make payment on the grounds that the customer, in addition to selling the debt, is also obligated to do so, or 'And he quoted him as a strange beauty This view is discussed: that banknotes have the same ruling as gold and silver; And that at the price mosque. Hence, it is not permissible to sell it for less than it, so if it is sold with its gender, then it is a condition of exchange and similarity, and if it is sold without its gender, then it is a condition of exchange, as previously mentioned in directing the first opinion. Section Two: Discounting Commercial Papers: Exoneration and Dropping And it is the saying of Mustafa Al-Hamshari: Where explained that this conditioning depends on the permissibility of taking less than the value of what is due in the debt contract, and the difference is waived by way of discharge and forfeiture. In the books of jurisprudence, there are examples of this, including: "Reconciliation for what is due in the debt contract: such as selling on credit, and like lending, taking some of his rights and forfeiting the rest. He has it for the other half, there is no compensation, because it is usury, and correcting the behavior of the Muslim is obligatory as far as possible, and it has been possible with what we have mentioned. Assignment by way of exchange is forbidden, and by way of gift and release is correct and permissible, so why is it not permissible to discount based on this, by that we have corrected a common behavior instead of prohibiting it. And when the customer presents the commercial paper for a discount, he has agreed to take less than the nominal value written in it and waived the remainder as a matter of discharge and forfeiture, not compensation. The manifestations of the release are clear: the customer is the one who goes to the bank by choice and accepts the payment of (the ago), and it was possible for him to wait for the paper's maturity date, and claim himself. It should be noted that Al-Hamshari believes that decisiveness in its current form is forbidden by Sharia, as previously mentioned in the third section of the first requirement .

Discussing this saying: Ali Al-Salou discussed this saying as follows:

- 1- The discount does not have a debt contract originally between the customer and the bank, but rather between the customer and the drafter of the bill. A new contract arose after that when the customer borrowed from the bank and mortgaged the commercial paper that might be returned to the customer again, so he would pay the loan and the usurious increase. Hence, the bank is not indebted to the customer until the customer waives some of his debt to him.
- 2- The debt contract mentioned in this adaptation, and the creditor's waiver of some of his rights, is the opposite of the existing picture in the settlement. Because the bank is the creditor, and he is the one who takes the interest, and the customer is the debtor, and he is the one who pays the interest, and the fact that the customer is a creditor to someone other than the bank does not preclude his being a debtor to the bank.

- 3- A difference between the obligation to correct the behavior of a Muslim as much as possible, and the analysis of the usurious business performed by the usurious debt dealer: the behavior here is not from a Muslim individual, but rather from a usurious bank.
- 4- The customer going to the bank for a settlement is like going to other borrowers, and accepting a riba-based loan does not solve him, because his going does not mean in any way that he wanted to choose a riba-based bank to offer him a gift or a favor or a waiver of one of his rights. And if it was possible for him to wait for the paper's maturity date and claim himself, then why would he go to the bank? Is it just to give a gift and give up?! Or because he needed the money before the due date? And if the bank delayed payment to the due date, would the merchant present his gift and concession!?
- 5- An additional clarification of the form of release and gift, and that it does not agree with the resolution of commercial papers, we mention something that came in Islamic jurisprudence: where the jurists stated that the release and gift, if it is on the condition of fulfilling the debt, then it is not valid: Ibn Qudamah says: "The discharge: which is to confess He has a debt that he owes, so he says: I have absolved you of half of it or a specific part of it, so give me what is left, so it is valid if the innocence is absolute without a condition... If he says: Provided that he pays me what remains is void because he did not absolve him of some of the rights except to fulfill the rest of it. It is as if he exchanged some of his rights for others ." And he said in another place: "The gift: which is when he has an eye in his hand, and he says: I gave you half of it, so give me the rest of it, and it is valid... And if it was taken out by the way out of the condition, it is not valid...; because if he made a condition in the gift, he made the gift in exchange for fulfilling it, as if he Replace some of his rights with others "In deduction, the client does not waive part of the value of the paper to the bank except on the condition that he pays the rest, so the waiver - assuming that it is a release - is incorrect.

This was Ali Al-Salous's discussion of the previous adaptation, and the following matters are added to it:

- 1- Exoneration and forfeiture come under the heading of donation, and this is unlike decisiveness. As it is netting for the purpose of profit, and that is consistent with the nature of the work of traditional banks: which is trading in money, and these banks have allocated for that a section that depends on trading in commercial papers, and its basis is the discount rate. The difference between the value of a commercial paper and its face value is compensation for not waiting until it matures. Likewise, the customer is not free to pay this interest, rather the bank stipulates it, and his stipulation for it is only with the intention of compensation .
- 2- Conciliation can only be from a dispute, as the jurists mentioned in their definition of conciliation: Ibn Mawdud defined it as: "a contract that removes quarrels and conflict between opponents .And it came in the talents of Galilee: "Sulh: Transfer of a right or a claim for compensation; to resolve a dispute or the fear of its occurrence .. Al-Husni defined it as: "The contract that ends the dispute of the disputants .As Ibn Qudamah defined it as: "a contract by which he reaches reconciliation between the different . This is unlike discounting commercial papers. As there is no dispute between the bank and the customer we consider the settlement as reconciliation.

The third section: discounting commercial papers such as (place and hasten) :What is meant by it: waiving part of the deferred debt, and paying the remaining part immediately. In deduction, the bank accelerates the value of the commercial paper whose maturity date has not yet come, in return for deducting a specific amount from its value. This is under the heading of (put and hasten), and it is permissible according to some jurists: it is a narration according to the Hanbalis It was chosen by Ibn Taymiyyah 'Ibn Qayyim al-Jawziyyah Accordingly, the discount is permissible It is possible to discuss this saying: that the issue of (put and hurry) is a matter of disagreement between the jurists: as the majority of Hanafi jurists prevented it ' And the owner And Shafia 'And the Hanbalis in the doctrine .Assuming that it is permissible, there are differences between decisiveness and this issue, in the sense that it is forbidden to make analogies with it. These differences are: The relationship in the issue of (put and hasten) is bilateral between the creditor and the debtor: where the creditor puts a part of the deferred debt, and the debtor pays the remaining part immediately. As for the discount, the relationship is threefold: where a third financier (the bank) enters and offers a loan with an increase in return for the term, and he is not the debtor, and paying the amount and taking the commercial paper does not mean ending the relationship, as the debtor may not give the bank, so the bank returns to the creditor (the customer)

- 1- -Whoever permits the issue of (put and hasten) has looked at the benefit that accrues to the debtor: which is the discharge of his obligation, and to the benefit that accrues to the creditor: which is the acceleration of his right. This is in contrast to decisiveness: the debtor is still a debtor whose obligation has not been discharged, and he has not reaped any benefit..

Section Four: Details:

If the amounts included in the commercial papers are a debt owed by the bank that undertakes the discount, then the discount is considered in the judgment of conciliation for the deferred debt with some of it immediately (place and hasten), and the most correct is that it is permissible. But if those amounts are not for the party that undertakes the deduction, then the deduction is not permissible. It is the saying of Saud Duraib And the age of the tracker

- 1- This statement can be discussed as follows:
- 2- As for the inadmissibility of the settlement if the debt is on a party other than the party that undertook the settlement, then it is accepted by the researcher.
- 3- As for the permissibility of discounting in the event that the debt is owed by the bank that undertakes the discount, it is answered: This case is not realistic in the bank discount process, in the opinion of the researcher; Because the debt is owed by a third party (the debtor) and not by the bank.
- 4- Assuming that this situation has occurred, and assuming that the issue of (put and hasten) is permissible, there is a difference between them with which analogy is forbidden: in the issue of (put and hasten), we find that the creditor is the one who dictates his conditions, and presents the amount of the debt that he puts. While the matter is reflected in decisiveness; Because the debtor (the bank) is the one who dictates the terms and determines the amount of the discount

Section Five: Discounting commercial papers as a transfer for a fee:

This is what Mustafa Al-Hamshari said: He explained that the concept of hawala includes one of two meanings: the process of selling a debt for a debt, or the process of fulfilling it. And since the selling process entails legal prohibitions, why do we not consider the discount as a process of receiving a fee, and we consider the fee as what the bank has agreed to call ajio ?Al-Hamshari mentioned that Muhammad Rashid Rida had preceded him in such a scenario: when he was asked about the ruling on selling debt to some banks or others with one "I do not know a scripture in the Koran or the Sunnah that bans that, and in analogy, it is more like a transfer than selling cash," he replied, referring to the trading of the two currencies or assets. With cash, the essence of this transaction is that the buyer needs to borrow that money because he is better equipped to do so, and usury is not involved. And for the person who needs it, he takes it from the bank or from others as a loan, transfers it at its value to his debtor or more than it, and earns the additional A charge or whatever he desires... Any transaction that is legal and free of wrongdoing is acceptable. Without a doubt, whoever sells him the prohibition of that may be unjust to him because the majority is in a reason like this Selling is the inability of the creditor to collect his debt himself, or he stops at a large expense, both of which are harmful to him."However, Al-Hamshari believes that this fatwa is not strong enough to allow deduction in its current form: as the bank deducts three things from the customer: interest, commission (wage), and expenses. The commission can be authorized, as well as the expenses; Because each of them is in exchange for real services provided by the bank: the commission is in return for opening and maintaining the account, and the expenses are in return for what was spent and incurred. After that, the rule of interest remains, so how do we tolerate it?! On what interpretation do we take it out?! This is what the fatwa neglected, as it was limited to covering what is taken when selling the debt or collecting it as a fee, and it did not address the interest unless the interest was combined with the commission, and the whole became a wage, and this is unimaginable; Because custom and law refuse to combine interest with the commission in one item. Because each of them is set at a certain percentage, which means that the interest is separated from the commission. Based on that, Al-Hamshari believes that this conditioning is not capable of legalizing decisiveness in its current form, and if the fatwa permitted this behavior, it is because it failed to understand the nature of the transaction or to consider the integration of interest and commission and consider them as a wage, and it has been proven that they are separate This statement can be discussed as follows:

- 1) () As for considering commercial papers as a transfer, it is not Muslim. Because the transfer requires that the two debts be equal: the debt assigned (the amount paid by the bank to the customer), and the debt assigned to him (which is proven by the paper), and the bank has collected more than the loan amount, and this is explicit usury..

A- As for the permissibility of taking the wages on the transfer, it is answered in the following ways:

B. Taking the reward on the assignment contradicts the requirement that the two debts be equal: the transferee and the transferee

C-c. an Assignment is a fulfillment contract, or a contract excluded from the sale of debt for debt due to need, or an attachment contract, and all of that contradicts the reward

a. The acceptance of the transfer is not subject to exchange; Some of the jurists, such as the Hanbalis, carried itThe matter is in the saying of the Prophet ﷺ: (If one of you follows my milli, then let him follow(

It is obligatory, so how can he compensate for an obligatory matter

B. Adapting the deducted amount as a fee for the transfer is incorrect; Because in the eyes of the contracting parties, it is an interest that the bank takes in return for accelerating the value of the paper, and therefore it is considered in it into the amount of the debt and its term, not the amount of what the transferee costs by accepting the transfer .

c. Transfer with a fee in the meaning of the loan with the condition of the increase, or deferring the debt in exchange for the increase, and is usury.

The d-The settlement involves a realized injustice to one of the parties, and an expected injustice: As for the realized injustice, it falls on the client; As he is given less than the value of his commercial paper. As for the expected injustice, it falls on the bank; Because it is likely that he needs cash, and he cannot wait for the paper's maturity date, so he resorts to the Central Bank to decide it, and it falls on him like what he signed on others . The researcher adds that the discount is not intended for the bank to require the debt because it is more capable of that than the customer; Because the bank does not actually collect the debt from the debtor when the customer comes to him asking for a discount, but rather gives him part of the value of the paper, then waits for its maturity date, then he collects its full value, and that is a loan with interest.

Section Six: Discounting commercial papers (Jalalah) And his statement: that the discount is permissible if it takes the following form: that the creditor obtains the value of the commercial paper from the bank as a loan Without interest minus an amount that the bank deserves as a commission or royalty in return for collection, according to the following legal form: The creditor presents the commercial paper to the bank, and agrees with him on an amount to leave from the debt The remainder of the debt is taken from him as an interest-free loan in order to make it easier for him to collect. When the debt matures, the bank collects it for the creditor's account and uses it to pay off the loan and place the creditor under obligation to him. He may use any means necessary to guarantee debt repayment at the expense of the creditor. If the debt cannot be paid off: As if the debtor declared bankruptcy, the bank just returned the value of the loan to the creditor; it was not done so in order to gain money.. Based on this, the decision is legally permissible. Its reference is that it is the collection of the debt in exchange for making the collection with the payment of the rest of the debt as a loan without interest, and nothing else.. This adaptation is based on what was reported by the Malikis regarding the permissibility of Kuala on the requirement of debt with a part of what it requires: It came in granting the honorable: "And the Kuala on the requirement of debt with a part of what is required by its prevention is more grizzly, and the most obvious is its permissibility.

- A. This statement can be discussed as follows:
- B. There are differences between Judah and decisiveness, with which analogy is prohibited, and they are:
- C. a. The reward is indefinite. The discount for commercial papers is determined by their maturity.
- D. Jualah is a permissible contract: the one who gives the reward has the power to terminate it before the worker begins work In decisiveness, the client does not have the right to terminate the contract.
- E. He does not deserve any of the rewards except after the completion of the work In deduction, the commission is taken before the maturity date when the loan is provided.
- 1) As for measuring the decisiveness of what was mentioned by the Malikis regarding the permissibility of royalty on the requirements of the debt with a part of what it requires, then it is answered in two parts:
- F. The first: It is not in the matter mentioned by the Malikis that a loan is given from the recipient (the one who collects the debt) to the one who makes it (the creditor). This is unlike discounting: where the bank offers a loan to the customer, then takes more from it, then it is a loan with interest
- G. The second: The researcher adds that the form of the issue mentioned by the Malikis is: that the creditor comes to a person and asks him to fulfill the debt that he owes to another with a part of that debt. This is closer to the process of collecting commercial papers than to a settlement.
- H. The connection between the power of attorney to collect the debt when its due date and the provision of the loan at its value at the same time, deducting from it a commission or a commission on the collection in advance, makes the issue in its reality a deferred loan with usurious interest, even if it is called a commission or commission .
- Selected conditioning:

From the foregoing, and after reviewing and discussing the advanced adaptations, the researcher chooses the first adaptation: which is considering discounting commercial papers as a loan with interest; This is due to the directives given by the owners of this adaptation. And it agrees in the outcome of the matter with what those who say that it is forbidden to discount commercial papers went to the owners of the fifth condition (selling a deferred debt for less than it is immediate): where they justified the prohibition that the discount includes

usury of credit and usury of credit. And the loan interest usury. It is forbidden without a doubt; Where the jurists agreed⁰ It is forbidden to stipulate an increase in the loan, for the following:

1- -The Almighty said: ﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾ [From verse 275: The Cow].

Evidence: The verse, in its text, indicates the prohibition of usury, and what is meant by it: the usury that the people of the pre-Islamic period used to pay from the loan of dirhams or dinars on time, with the stipulation of the increase .

2- -He □ said: (And the usury of the Jahiliyyah is abolished, and the first usury that I abolish is the usury of Abbas bin Abdul Muttalib, for it is all abolished

Evidence: The hadeeth, in its narration, indicates that the pre-Islamic usury is abolished, and what is meant by it: refunding the increase that they used to stipulate in the loan and nullifying it

3- -Consensus: The scholars have unanimously agreed that if the lender stipulates an increase in the loan, then it is forbidden usury

4- -And because the loan is a contract of nearness to God, the Mighty and Sublime, and attachment to the borrower, so the requirement for an increase in it detracts from its subject matter

If discounting commercial papers is, in fact, a loan with interest, then it is forbidden by Sharia. This is what the Islamic Fiqh Academy adopted: It stated in its decision No. 66/2/7 regarding selling by installments in the session of its seventh conference in Jeddah from 7-12 Dhu al-Qi'dah 1412 AH corresponding to 9-14 May 1992 CE: "Deducting (discounting) commercial papers is not permissible according to Sharia, because it It leads to forbidden usury." And departures of this kind, they are at that time, they are in Islam. Some of them do it, but to no avail:

such as the Jordan Islamic Bank :⁰ Article (7) of the Jordan Islamic Bank for Finance and Investment Law states: "In order to achieve its goals, the bank undertakes the works that enable it to achieve the goals, by working in the following fields: The following: ... 3_ Providing fixed-term credit as a service devoid of interest: either by discounting short-term commercial promissory notes, or by installment lending, and the bank is prohibited - in all cases - from providing this service by way of credit on the basis of the debit current account ."

Article (7) of the Jordan Islamic Bank for Finance and Investment Law states: "In order to achieve its goals, the bank undertakes the works that enable it to achieve the goals, by working in the following fields: The following: ... 3_ Providing fixed-term credit as a service devoid of interest: either by discounting short-term commercial promissory notes, or by installment lending, and the bank is prohibited - in all cases - from providing this service by way of credit on the basis of the debit current account ."

Thus, it becomes clear that the Jordan Islamic Bank makes the discount, but without interest, although it charges a fee for the administrative work that it performs in order to collect the value of the commercial paper, which is not of interest, and for this reason, it is not linked to the amount and duration of the commercial paper. The third topicLegal alternatives to discount commercial papers

Since discounting commercial papers is forbidden, contemporary researchers have striven to find legal alternatives to this process, and the following is a presentation of these alternatives within the following demands:

The first requirement: selling commercial paper with offers: This alternative consists in selling the commercial paper to the bank for a non-monetary consideration (offer) that the bank delivers to the customer immediately, then the customer sells this consideration for cash, and the bank achieves its purpose, and the bank achieves an appropriate profit. In this way, the intention of both the bank and the customer is achieved

This is what the Islamic Fiqh Academy and the Accounting and Auditing Organization for Islamic Financial Institutions took:Islamic jurisprudence on the issue of selling debt: "The academy believes that the legal alternative to discounting commercial papers and selling bonds is to sell them with offers (commodities) on the condition that the seller receives them at the time of the contract, even if the price of the commodity is less than the value of the commercial paper because there is no legal objection to a person buying a commodity. at a deferred price more than its current price."⁰ Sharia Standard No. (16) Commercial Papers are one of the Sharia standards: "It is permissible for the beneficiary to make the deferred commercial paper a price with a specific commodity, and it is not described in the trust, provided that the commodity is received in fact or in a legal manner."⁰ "

And the criterion showed the basis for the legitimacy of this matter: "This is like selling the debt to someone other than the one who owes it in kind. It is permissible according to the Maliki school of thought , provided that this is after the arrest; lest it leads to the postponement of the two allowances."⁰

The second requirement: is the good loan:

This alternative is for the bank to give the customer the full value of the commercial paper without deducting from its value what interest-based banks deduct for the waiting period, but under the following conditions:

-If the customer who owns the paper has a checking account with the bank.

The second requirement: is the good loan:

This alternative is for the bank to give the customer the full value of the commercial paper without deducting from its value what interest-based banks deduct for the waiting period, but under the following conditions:

-If the customer who owns the paper has a checking account with the bank.

-That this account - in the annual average - is not less than a third or half of the value of the note; In order not to mishandle the papers to the banks to pay their value in large amounts that may impede the liquidity of their cash balance.

- The invoice or document evidencing its subject matter shall be attached to the paper. As a guarantee of seriousness, and to prevent courtesy bills.

There is no injustice or injustice to the bank in this alternative. Because he invests in the customer's current account and does not pay him any interest, why does he not spend his paper except after deducting interest from its value!?

- 1- This alternative has been discussed as follows:
- 2- -This alternative has clear shortcomings. Because it is specialized for Those who have a current account in the bank without anyone else)
- 3- The problem of the bank still exists: What does it gain from this process when it is a for-profit investment institution and not a charitable institution for acts of righteousness and benevolence only.?
- 4- -The first condition stipulates that a loan that draws interest is prohibited. As the bank does not lend according to this except to its customers, and this is sufficient for the loan to be prohibited. ⁰And his statement: The current account is, in fact, a loan from the customer to the bank, so if the bank refuses to provide the loan except to those who have a current account with it, then it is as if he is saying to the customer: I will lend you on the condition that you lend me, and it is a loan that brings benefit.

The third requirement: Mudaraba contract:

Mudaraba language: taken from hitting the ground: which is to walk in it; a request for sustenance. It is the language of the people of Iraq. In the language of the people of Hijaz, it is called qiradh, which means speculation. Its origin is from the card: which is cutting; Because the owner gives the worker a piece of his money that he disposes of, and a piece of the profit, or from the loan on the land: and he cuts it by walking on it..And idiomatically: "For a man to give his money to another to trade for him with it, on the condition that the profit obtained between them is according to what they stipulated."⁰ .

It is legalized by the Book, the Sunnah, consensus, and reason :From the book: the saying of the Almighty : ([From verse 20: Al-Muzzammil].

I [From verse 20: Al-Muzzammil] .⁰ .And speculators who do so, it is legitimate to do .And from the Sunnah: what was narrated on the authority of Ibn Abbas - may God (If Al-Abbas bin Abdul-Muttalib paid speculative money, he stated that the owner should not travel by water with it, nor should he go down to a valley with it, nor should he buy a wet liver with it, and if he did, then he is a guarantor.) He so brought up his situation with the Prophet of Allah, may He grant him peace and blessings, and he was given permission. itThe jurists have unanimously agreed on its legitimacy.^{1t} is reasonable: that people need speculation: money does not grow except through trade, and not everyone who owns money is good at trading. Also, not everyone who improves trade has capital, so speculation was prescribed to pay for the two needs ^{(This alternative is for the bank to pay the customer the amount of the commercial paper as speculative capital, and the client invests it as a factor in the speculation, then they share the profit between them according to what they agree upon.}ليه⁰ .It is noted that this alternative, although it is undeniable from a legal point of view, is in reality an independent alternative that did not come to address the defects in the settlement process. Rather, it is another contract that has nothing to do with this process.The fourth requirement: is a peace contract:As-Sallam linguistically: "The predecessor, the safer in something, the salam, and the advances in one sense."⁰ And idiomatically: "A contract on a person described in the obligation in return for a consideration given immediately."⁰ It is legislated by the Book, the Sunnah, consensus, and reason :From the book: the saying of the Almighty : ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ﴾ : [From verse 282: The Cow]. It was narrated on the authority of Ibn Abbas - may God be pleased with them both - that he said: (I bear witness that the advances guaranteed for a term have been made lawful by God in the Book and authorized in it. God □ said: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدِينٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ﴾⁰)

It was narrated on the authority of Ibn Abbas - may ALLAH be pleased with them both - that he said: (I bear witness that the advances guaranteed for a term have been made lawful by ALLAH in the Book and authorized in it. ALLAH □ said .(" : The jurists have unanimously agreed on its legitimac.⁰)

And it is reasonable: that the appraiser (sold) is one of the considerations for the sale, so it is permissible to prove in the responsibility; like the price, and because people need peace; Because the owners of crops, fruits and trade need to spend on themselves and on it, and buyers need to buy with concessions, so peace was prescribed to fill the need .This alternative is for the bank to pay the customer an amount of money as capital, and it may be as

much as the value of the commercial paper, then the customer delivers to the bank the delivered commodity when the deadline comes..It is noted on this alternative as it was noted on the previous alternative.

Conclusion:

The most important results of this research and its recommendations can be mentioned in the following points:

First: Results:

-^١Discounting commercial papers is: (a process whereby the holder of commercial paper transfers its ownership by endorsement to the bank before the maturity date, in return for the bank accelerating its value to him, deducting from it a certain amount, representing the interest of the amount paid for the period between the discount date and the maturity date, plus The bank's commission and collection expenses, and the bank collects its value from the debtor on the due date and reserves the right of recourse to the decisive and the endorsers in the event of the debtor's default.

about payment.(

-^٢The most correct condition for discounting commercial papers is that it is a loan with interest: the customer borrowed from the bank an amount of money on the condition that he pays more than it, and the interest that the bank takes is the equivalent of the lending, and therefore it varies according to the value of the commercial paper and the date of maturity. Accordingly, discounting commercial papers is forbidden by Sharia.

-^٣The legitimate alternative to discounting commercial papers is selling the commercial paper to the bank for a non-monetary consideration (offer) that the bank delivers to the customer immediately, then the customer sells this consideration for cash, and he achieves his goal, just as the bank achieves his goal of profit.

-^٤The pillars of settling commercial papers are three: the formula, and the two contracts (the bank and the customer), and both of them are required: eligibility and the authority to act with respect to the presenter of the paper. The subject of the contract (commercial paper), and it is stipulated that: it represents a cash right of a specified amount and is due for payment after a deadline, and that it gives the bank the right to claim from others.

-^٥The discounting of commercial papers has effects: including those related to the customer: such as transferring the ownership of the paper to the bank, and paying for the discounting of commercial papers. Including what is related to the bank: such as paying the nominal value of the paper, and the bank replacing the paper holder in its rights and guarantees.

-^٦The commercial paper discount ends in the following cases: rescission, the drawee paying the value of the paper to the bank, and the customer paying the value of the paper to the bank.

Second: Recommendations:

١- -Invite those in charge of commercial legislation to reconsider the issue of discounting commercial papers; The apparent legal violations involved in this transaction.

-^٢Inviting those dealing in commercial papers to adopt legal alternatives to discounting commercial papers.

2. Requesting that more research and study be done on the subject of discounting commercial papers, as well as conferences and seminars, by legal researchers in general and those in charge of the International Islamic Fiqh Academy and the Accounting and Auditing Organization for Islamic Financial Institutions in particular.

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