

Answer to a Question

Guarantee (Dhaman), Insurance (Ta'meen) and Monopoly (Ihtikar)

To: Mohamed Ali Bouazizi

Question:

Assalam Alaikum, I have two questions:

First: In the book the *Economic System*, in the discussion of insurance there is an example that confused me, which is "Give your clothes to a cleaner and I guarantee them if they are damaged' ... there will be a guarantor, a person guaranteed for and a guaranteed person, who is the unknown cleaner. How does this differ from the insurance company? There is a guarantor, i.e. the company and the person guaranteed for, i.e. the owner of the car and the guaranteed person, i.e. the car that is on the road and its driver who is unknown who we might hit him one day.

The second question: How does the Islamic state deal with monopoly? Will it force the monopoliser to sell his goods at a certain price, and mentioning pricing, is it Haram or what is its ruling?

May Allah reward you for your efforts and may it benefit all Muslims.

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh

1- Your question about the guarantor, a person guaranteed for and a guaranteed person, and that the subject has confused you...

My brother, I reviewed your question ... Of course, the prohibition of insurance is not only because of the subject of the guaranteed person, but it is for many Shariah violations, such as the absence of a right due upon the responsibility (Dhimma) whether immediately or potentially and this makes the insurance invalid, in addition the insurance has compensation and this makes the insurance invalid, etc as shown in this chapter.

But it seems that the confusion or misunderstanding that you experienced is because you thought that in the case of the cleaner we mentioned in the *Economic System* (book) that the guaranteed person is unknown, but the guarantee is valid, and that in the case of insurance we also mentioned that the guarantor is unknown (as you thought), and therefore it is invalid, and this is why you asked, how can it be valid in the case of the cleaner but invalid the case of insurance?

My brother, we did not say in both cases, that the guaranteed person is unknown, but we said in the case of the cleaner that he is unknown and in the case of insurance it does not exist, and I quote the text in both cases from the *Economic System*:

A- Regarding the cleaner, the following is mentioned in the book:

"However, it is not a condition that the person guaranteed for (Madhmoon 'Anhu) nor the guaranteed person (Madhmoon Lahu) be named; thus the guarantee will be valid if these were unknown (i.e. not named). So if a person said to another: 'Give your clothes to a cleaner,' and the latter said: 'I am afraid that he will damage them.' Then the former responded: 'Give your clothes to a cleaner and I guarantee them if they are damaged' without specifying the cleaner, the guarantee is valid.

So if he gave them to a cleaner and they were damaged, the guarantor would be responsible even if the person guaranteed for was not named. Similarly, if he said: 'so and so is a good cleaner, and I guarantee him against any damage for any person who gives to him his clothes,' the guarantee is valid though the guaranteed person is unknown."

Then he mentioned the evidence and said:

“It is clear in the evidence of the guarantee that there is a joining of one's responsibility to another's responsibility, and it is a guarantee of a right due upon the responsibility (Dhimma). It is also clear that there is a guarantor, a person guaranteed for and a guaranteed person. It is also clear that it is given without compensation, and that the person guaranteed for and the guaranteed person could be unknown. The evidence for that is what Abu Dawud narrated from Jabir who said: «كان رسول الله صلى الله عليه وسلم لا يصلي على رجل مات وعليه دين، فأتني بميت فقال: أعليه دين؟ قالوا: نعم ديناران. قال: صلوا على صاحبكم. فقال أبو قتادة الأنصاري: هما عليّ يا رسول الله، قال: فصلّي عليه رسول الله صلى الله عليه وسلم، فلما فتح الله على رسول الله صلى الله عليه وسلم قال: أنا أولى بكل مؤمن من نفسه. فمن ترك ديناً فعليّ قضاؤه، ومن ترك مالا فلورثته» ***The Prophet (SAW) would not pray over any person who died while indebted. A dead man was brought. He (SAW) said: 'Is he indebted?' They said: 'Yes, two dinars.' He (SAW) said: 'Pray for your companion.' Abu Qatadah al-Ansari said: 'O Messenger of Allah, they are upon me.' The Messenger of Allah (SAW) then prayed over him. When Allah (SWT) opened the land (i.e. conquests in Jihad) for the Messenger of Allah (SAW), he (SAW) said: 'I am more entitled to (i.e. responsible for) every believer than his own soul. So if anyone leaves a debt it is upon me to repay, and whoever leaves wealth it is for his inheritors.'”*** It is clear in this Hadith that Abu Qatadah had joined his responsibility to the responsibility of the dead man in committing a financial right due upon the debtor. And it is clear in the Hadith that the guarantee includes a guarantor, a person guaranteed for and a guaranteed person; and the guarantee which each of them (the dead person and the guarantor) guaranteed to pay was a right due upon the responsibility (of the deceased) and it was given without compensation. It is also clear that the person guaranteed for (the deceased), and the guaranteed person (the owner of the debt) were both unknown at the time of the guarantee. So the Hadith contained the conditions for the validity of a guarantee, and the conditions for its contracting (In'iqad).”

It is clear from this that the unknown element regarding the guaranteed for and the person guaranteed is not that he do not exist, but that his name and details are unknown ...etc, but the deceased who is the guaranteed person is present, but the guarantor does not know his name and lineage, but he is present. Not knowing the details of the guaranteed person is the issue and not the fact that he is absent. Therefore the Guarantee is valid, because the guaranteed person is present but his details are not known. Thus the cleaner is present in the neighbourhood but what is unknown is his name to the one who will give the clothes for cleaning, and this does not affect the guarantee according to the previously explained evidence in the Hadith of Abu Dawud from Jabir.

B- Regarding insurance, the following is mentioned in the book:

So the insurance company has guaranteed that which is not due either immediately or potentially, making the guarantee invalid and the insurance consequently becomes void. Furthermore, insurance does not include **a person guaranteed for**, because the insurance company did not guarantee for anyone a right due upon him so as to be called a guarantee; thus the insurance contract was devoid of an essential element required to exist in the view of Shari', namely the presence of the person guaranteed for. This is because it is essential that there should exist in the guarantee, a guarantor, a person guaranteed for, and a guaranteed person. Since the insurance contract **did not include a person guaranteed for**, it is void.

As you can see, we mentioned “that it does not include a guaranteed person. Since the insurance contract **did not include a person guaranteed for**, it is void.” The guaranteed person is said to be “absent” during the contracting, so there is no car crash that will result in the driver paying for the crash and this is guaranteed by the insurance company, **that is the guaranteed person is completely absent, not present, which is different to knowing the name, or lineage**, therefore the contract is void, because the guaranteed person is absent and not just unknown. Maybe you thought that “not present” means “unknown” and you got confused and thought that they are the same, that is it is unknown in the example of the cleaner and unknown in insurance and you therefore asked how is it that it is valid in the first example but invalid in the second one?

The issue as we explained to you is that the guaranteed person in the case of the cleaner is present but his name and lineage are unknown...etc and the guaranteed person is absent in insurance and it is not just the his name and lineage are unknown.

I hope that this is sufficient.

2- Regarding the topic of Monopoly, as it is explained in the *Economic System*, that Monopoly is prohibited:

“Monopoly is prevented absolutely, and it is forbidden in Shari’ due to the decisive prohibition of it that came explicitly in the Hadith. S’aid ibn Al-Musayyab narrated from Mu’ammār ibn Abdullah Al-’Adawi in Sahih Muslim that the Prophet (SAW) said: «لا يحتكر إلا خاطئ» “No one monopolises except the wrongdoer.”

Al-Qasim narrated from Abu Umamah, he said: «نهى رسول الله صلى الله عليه وسلم أن يحتكر الطعام» “The Messenger of Allah (SAW) forbade that a foodstuff be monopolized”. Narrated by Al-Hakim in Al-Mustadrak and Ibn Shayba in His Musannaf.

And Muslim narrated through his chain of narrators from S’aid ibn Al-Musayyab that Mu’ammār said: “The Messenger of Allah (SAW) said: «من احتكر فهو خاطئ» “Whoever monopolised is a wrongdoer.”

The prohibition in the Hadith indicates the refrain and the dispraising of the monopoliser by describing him as a wrongdoer; however the wrongdoer means the disobedient. This is a concatenation that indicates that this prohibition is decisive. Thereupon, the Ahadith indicated that monopoly is Haram. The monopoliser is the one who hoards the commodities until the price rises so as to sell them expensively such that it becomes difficult for the citizens to buy them.”

The solution of the problem of Monopoly is to punish the monopoliser by Ta’zir, and he is forced to display his goods to the consumers and sells it with the market price not by a price given by the state, because price-fixing is Haram as mentioned in the book.

Islam prohibited pricing absolutely, due to what Imam Ahmad narrated from Anas who said: «غلا السعر على عهد رسول الله صلى الله عليه وسلم فقالوا: يا رسول الله لو سَعَرْتَ. فقال: إن الله هو الخالق، القابض، الباسط، الرازق، المسعر، واني لأرجو أن ألقى الله، ولا يطلبني أحد بمظلمة ظلمتها إياه، في دم، ولا مال». Prices increased at the time of the Messenger of Allah, so they said, O Messenger of Allah, we wish would you price (fix the prices). He (saw) said: "Indeed Allah is the Creator, the holder (Qabidh), the Open-handed (Basit), the Provider (Raziq), the Pricer (who fixes prices); and I wish I will meet Allah and nobody demands (complains) of me for unjust act I did against him, neither in blood or property.”

Also Abu Dawud narrated from Abu Huraira, he said, «إن رجلاً جاء فقال: يا رسول الله، سَعَرَ. فقال: بل ادعوا. A man came and said, O Messenger of Allah, fix prices. He (saw) said: “Rather Allah reduces and increases.” These Ahadith indicate that pricing is prohibited and is an unjust act against which a complaint is made to the ruler to remove it. And if the ruler himself did pricing he would be sinful in the sight of Allah (swt), because it is a prohibited (Haram) act. Every person of the citizens would have the right to complain to the Court of the Unjust Acts (Mahkamat Al-Madhalim) against the ruler who makes pricing, whether he was a governor (Wali) or Khalifah. He complains to this court about this act in order to judge against him and remove this unjust act (Madhlama).

But if he sells it at the market price, it is because this is the Shariah ruling in selling and buying, and if the commodity is only available with the monopoliser, and he sells it at the price that he wants thus controlling the price, because it exists only with him, in this case the state must provide the commodity in the market so that no one of the traders can control the price of his commodity because it is available in the market and sold at market price, so the trader is forced to sell the commodity at the market price. How to deal with the monopoliser is by the Ta’zir punishment and forcing him to display his goods in the market, and if he is the provider of the commodity, then the state must provide the commodity in the market so as not allow him to control the price. The book explained this and it mentions in the chapter of price-fixing the following:

“In regard to the prices that rise at the time of war, or during a political crisis, this results from either the non-availability of the commodities in the market because of their being hoarded as monopoly or because of their shortage. If their absence was due to monopoly, monopoly was prohibited by Allah (SWT), and if it was due to their shortage in the market, then the Khalifah, who is ordered to look after the affairs of the nation, must strive to make them available in the market by bringing them from other places, and thus he would prevent the prices from rising. In the famine year, which was called Ramadha (ashes) year, when famine occurred only in Hijaz due to food shortage in that year and thus food prices increased, Umar ibn Al-Khattab did not fix

the prices of the foodstuffs. Rather he ordered supplies of foodstuffs from Egypt and ash-Sham to be sent to the Hijaz; thus prices dropped without the need for pricing.”

Not selling at the market price is unjust ... and gross unfairness is Haram, which exceeds the market price that the traders know of a small increase or a little decrease from the market price, but if there is a great increase the term gross unfairness applies to it, it is forbidden. All this obliges the trader to adhere to the market price, and the state must find the market price so that a merchant must not control a commodity, **but if no other trader sells this commodity for the market price to exist, the state must provide this commodity and sell it at the market, and no trader controls the price.**

In the *Islamic Personality Volume Two*, the "Deferred Sale", the following is stated:

“But it is stipulated that the price should not be excessive (grossly unfair), but the price must be according to the market price at the time of the sale such as in deferred payment, not when the commodity is received, because the deferred sale is a sale but gross unfairness is prohibited in all sales including the deferred sale. Similarly, it is Haram to sell a present commodity at a price that is deferred with excessive price, and it is not permissible to sell a deferred commodity at a present commodity price that is excessive.”

In the *Islamic Personality Volume Three*, it states under the chapter of l'la (divine reason):

“Similar to what is narrated by Abu Huraira: «نهى رسول الله صلى الله عليه وسلم أن يبيع حاضر لباد» “The Prophet (peace and blessings of Allah be upon him) forbade selling of the person from the city to the person from the countryside” Narrated by Bukhari. The prohibition include that the seller be from the people of the city, and the buyer from the people of the countryside, both are explanations of the prohibition of the sale, and give the (divine) reason for the prohibition as the ignorance of the person from the countryside of the price in the market. Also is prohibited to meet the owners of the goods, the reason is explained clearly, it was narrated that Abu Hurayrah said: «نهى صلى الله عليه وسلم أن يتلقى الجلب، فإن تلقاه إنسان فابتاعه، فصاحب السلعة فيها بالخيار إذا ورد السوق» “The Prophet (ﷺ) prohibited meeting the goods being brought (to the market). If someone were to meet them and buy them, then the owner of the goods retains the option when he reaches the market.” Narrated by al-Tirmidhi”

In summary, the solution to the issue of monopoly should be by:

- Ta'zir punishment to the monopoliser.
- Oblige him to display his goods in his shop to sell to people at market price.
- If he is the only provider of this type of goods and the people need them, the state must provide the goods and let the market decide the price without any trader controlling the price of the goods.
- Thus the problem is solved without pricing because pricing is not allowed.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/827761784087561/?type=3&theater>

The link to the answer from the Ameer's page on Google Plus:

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