Bank loan financing and its applications in the Sudanese banking system

A study between Islamic jurisprudence and Sudanese law for the year 1984

Dr. Mohammed Amar Eshag Abdu Rahman Gamar, *assistant Professor of Law, Faculty of Law, White Nile University, Kosti, Sudan*

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Abstract: The aim of the research is to explain the provisions of the loan in jurisprudence and law in application to Sudanese banks, where the problem of the research is limited to the extent of Sudanese banks' commitment to the legal application of the loan contract and their distance from dealing with usurious interest. The research highlighted aspects of agreement and difference between schools of thought. Jurisprudence and between it and the law. The research used the inductive approach to collect information from its original sources. The research reached several results, the most important of which are: the public's agreement on the occurrence of the loan in proverbial and valuable things such as animals and others. They disagreed with the Hanafi school of thought that the loan does not apply to proverbial things such as numbers and weights, and it does not apply to valuable things. The Sudanese Transactions Law of 1984 took into account the opinion of the public, as Article 277 stipulated (a loan is the ownership of a thing for another, provided that it is returned like it). The thing includes the like and the valuable, including that Sudanese banks are committed to the legal application of the loan and do not deal with usurious interest, but they do not grant customers direct good loans, and therefore there is no marriage. Between economic development and social development. I recommend that parties dealing in the field of banking financing study the loan contract in its various forms before borrowing from banks. I also recommend that banks grant customers direct good loans until social development is achieved, and to conduct training and education workshops for employees and customers about Islamic forms of credit.

Keyword: financing, bank loan, banking system, Islamic jurisprudence, Sudanese law.

Introduction

A loan is a situation where you get money from a friend, bank or lending institution against the final repayment of the principal amount with interest, while finance is the allocation and management of funds to individuals, organizations and governments, the financial sector includes money circulation, investment management and money lending, loans are classified into secured and unsecured, open and closed-ended, and conventional types, while finance includes three main subcategories which are personal finance, corporate finance, public or government finance, the basic principles of loans are not entirely based on macroeconomic and microeconomic theories, while the basic principles of finance are focused on microeconomic and macroeconomic theories, the better the credit rating the more chances a person will be accepted for a loan, while credit score and financial background are irrelevant when it comes to finance, a loan entails lending money by some person, company or other institution to one or more persons or organizations, while finance involves the operations of a company seeking to obtain capital by selling shares etc., and they may be classified in terms of time into long-term or short-term loans, and in terms of security into loans, and among the forms of bank loans are credits The loan is considered an agreement between the lender and the borrower, whereby the borrower obtains an amount of money and is obligated to return it to the lender on a specific date or dates determined by the terms of the agreement. The loan in this capacity is an important source of external financing that differs from other internal financing sources. The bank loan is what the establishment obtains from a commercial bank in order to meet its immediate or emergency needs. Dealing with banks has increased in this era, and you will not find a society that does not discuss financing and borrowing from banks, and the extent of its legitimacy.

Therefore, the importance of the loan in its various direct forms has emerged, such as opening a letter of credit, discounting commercial papers, and offering bonds for subscription. Therefore, there was an urgent need to clarify the provisions of the loan with the foundation to link the era to the origin.

The first topic: The methodological framework and previous studies

The first requirement: The methodological framework

The research problem:

The research problem lies in the extent of Sudanese banks' commitment to the legal application of the bank loan contract and their avoidance of dealing with usurious interest, and the problem revolves around the lack of correct understanding, awareness and knowledge of the terms of the contract and the pillars on which it is based from several dimensions and the opinions of jurists and schools of thought in the concept of the bank loan.

The importance of the research:

The scientific importance of the research is limited to familiarity and knowledge of the bank loan in terms of Sharia and the Sudanese Transactions Law of 1984 and the ownership of customers and banks what is beneficial and preserving the rights of others, as financing by loan has a practical importance that focuses on helping customers to adhere to the terms of the contract according to the agreement between the two parties, and adhering to the decisive texts in Sharia and dealing in the spirit of the law in the legal texts that guarantee the safety of financing from entering the circle of usurious interest, and as for the importance of financing by loan from the economic aspects, it contributes to encouraging economic activity and driving the wheel of production and development.

Research objectives:

1.Explaining the different forms of the bank loan contract and its origins and its importance in driving the national economy.

2.Clarifying the similarities between it and some contracts such as deposit, sale, gift, and loan.

3.Knowing the extent of Sudanese banks' commitment to the legal application of the good loan contract and other loans.

Research hypotheses:

1.There is a significant and comparative relationship between loan financing and Islamic jurisprudence.

2.There is a significant relationship between loan financing and interest.

3.There is a significant relationship between loan financing and the Sudanese Transactions Law of 1984.

4.There is a significant relationship between good loan financing and customer satisfaction.

Research methodology:

The research followed the inductive approach by referring to the original sources in Islamic jurisprudence and Sudanese law.

Reasons for choosing the topic

1.The bank loan is one of the most important contracts conducted by banks.

2.The bank loan contract takes on many problems in practice that require careful research and study.

3.Clarifying the difference between a loan contract and some contracts such as a deposit contract, a loan, and a gift.

4.Financing with a bank loan is one of the formulas that must be studied carefully and accurately so that the loan applicant does not fall into the circle of usury.

Research Structure:

The research contains four chapters: the first chapter is the methodological framework and previous studies, the second chapter is the theoretical framework, the third chapter is the comparative study, and the fourth chapter is the conclusion, results, recommendations, sources, and references.

The second requirement: Previous studies: The researchers reviewed previous studies that addressed the subject, whether completely or partially, in order to stand on what the studies reached on the same subject, and they obtained studies that are somewhat similar to the current study, and the previous studies addressed the subject from certain aspects, and the researchers saw that they should be presented as studies that addressed the subject and here is a review of the studies as follows:

/1Qorsh Abdul Karim, Sharif Walid, Dahiri Abdul Hadi This study addressed the loan from the angle of its simplified features, in addition to not allocating a percentage of the loans directed to national institutions, and the study tried to focus on the Algerian Popular Loan, and it shed light on this aspect in a way that directs banks to this type of financing.

Institutions with loans with simplified features, in addition to: - Not allocating a percentage of the loans directed to national institutions by banks These institutions, as we have shown, the Algerian Popular Loan is a theoretical specialization. - Banks prefer financing. Financing

[PDF] univ-ouargla.dz

Bank financing of investment projects in light of risk A case study of the Algerian Popular Credit and the Algerian Foreign Bank, Ouargla agencies (2004-2015)

Rahmouni - dspace.univ-ouargla.dz

For this purpose, we conducted a field study on both the Algerian Bank and the Algerian Popular Credit to determine the extent of their reliance on the aforementioned techniques in the financing process and the criteria adopted in rejecting the financing request - dspace.univ-msila.dz

with a bank loan or accepting financing with a bank loan.

[Book] Loan as a Financing Tool in Islamic Law

Muhammad Al-Shahat Al-Jundi - 1996

I have preferred to address financing by loan, perhaps because it requires technicality and a treatment that differs from the established.

Profit, from financing operations in general, and from financing by loans in particular, and institutions do not hesitate.

A look at the basis of the ruling on bank financing contracts (the problem of time and its compensation in the Salam contract.

Daw Miftah Abu Ghararah - Journal of Legal Studies, 2018

A compound of several elements that we summarize (the commodity and time, capital and compensation for time), and according to this concept, time is

The most important element of the subject of bank financing contracts, and from here the issue of usury arises in most financing contracts

[DOC] aabu.edu.jo

The Nature of Social Responsibility in Islamic Banking (A Case Study of the Jordanian Islamic Bank) - journals.uob.edu.ly -books.google.com

Osama Abdul Majeed Al-Ani - 2017

…The criteria that enable measuring Social performance of Islamic banks in its various fields such as zakat, good loan, productive loans, social insurance and the role of the bank in financing small industries

[RTF] univ-msila.dz

[RTF] Mechanisms for financing small and medium enterprises through loans, a case study of the Local Development Bank - Bordj Bou Arreridj Agency - repository.aabu.edu.jo

Hoboub Basma, Rabah Saad

Through this chapter, we aim to clarify the impact of loans granted by banks to small and medium enterprises, as well as to know the extent of the existence of mechanisms and strategies for banks to finance the small enterprises sector - dspace.univ-msila.dz.

Comparing the current study with previous studies, we find that the current study focused on legitimacy in Sharia and Sudanese law, and clarified the opinions of schools and jurists and the extent of their compatibility with the Sudanese Financial Transactions Law of 1984, and identifying the loan from all its legal and legitimate aspects, unlike previous studies that dealt with the loan and its adaptation from economic developmental aspects regardless of its legitimacy and comparing it with jurisprudential opinions, and thus the current study agrees With these studies in the economic and financial aspects, and differ from them in terms of the legal and Sharia rulings, and to some extent the studies complement each other and highlight several aspects that previous studies did not address so that the vision regarding the subject is complete, and we also tried to take excerpts from several studies and point to them as references that can be referred to to

enhance the current study, as the current study agrees with the book of the loan as a financing tool in Islamic law.

The second topic: The theoretical framework

The first requirement: Definition and concept of the loan according to the jurists and its legitimacy

The loan is the cutting, the loan of something by his sting is its cutting and the loan of something is lending it. God Almighty said: (Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? And Allah withholds and increases, and to Him you will be returned) Who spends his money in the way of Allah seeking His pleasure, so He multiplies it for him and makes for him a great reward.

The money that he takes is called a loan, because the lender cuts it from his money in a piece. As for the terminology: The Hanafis defined it by saying (what you give from money similar to mine in order to receive the same)

The Malikis defined it (a person giving another something of financial value purely as a favor, this payment does not require the permissibility of a loan that is not permissible on To take a compensation related to the conscience originally, provided that this compensation does not differ from what he paid, and the Shafi'is defined it as (ownership of something on the condition that its equivalent is returned), and the Hanbalis defined it as (paying money to someone who will benefit from it and returning its equivalent). Imam Abu Bakr al-Jaza'iri chose the Hanbali definition in his book Minhaaj al-Muslim, where he said (It is paying money to someone who will benefit from it and then returning its equivalent), and the conclusion from the definitions above is that the majority (the Shafi'is, Malikis, and Hanbalis) agreed that a loan is a person giving money to another in exchange for compensation that is

established for him in his conscience, similar to what was taken with the intention of benefiting the one to whom it was given only, and money includes fungibles, animals, and commercial goods.

The Hanafis disagreed with them in that they said that a loan is what you give of fungible money to collect it, and fungible is that which does not differ in units that differ in value, such as measured and similar numbers such as eggs and weighed items, as for what is not fungible such as animals, firewood, real estate, and the like that is estimated In terms of value, it is not permissible to lend it. The same applies to counted items that vary in value, such as watermelons, pomegranates, and the like. It is not permissible to lend it. Legitimacy of Loans

Loans in the Book and Sunnah:

First: The Book: The Almighty says: (Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? And Allah withholds and increases, and to Him you will be returned.)

Second: The Sunnah As for the Sunnah: Ibn Mas`ud narrated that the Prophet, may Allah bless him and grant him peace, said: (There is no Muslim who lends a Muslim a loan twice except that it is like charity once. And on the authority of Ibn `Abbas, he said: The Messenger of Allah, may Allah bless him and grant him peace, said: (On the night of my ascension, I saw written on the door of Paradise: Charity is worth ten times its like, and a loan is worth eighteen times. So I said: O Gabriel, why is a loan better than charity? He said: Because the beggar asks when he has something, and the one who asks only asks out of need, and a loan is recommended for the lender, permissible for the borrower according to the previous hadiths and what was narrated Abu Hurairah, may God be pleased with him, said that the Prophet, may God bless him and grant him peace, said: “Whoever relieves a Muslim of a worldly hardship, God will relieve him of a hardship on the Day of Resurrection. Whoever makes things easy for someone in difficulty,

God will make things easy for him in this world and the Hereafter. God is with the servant as long as the servant is with his brother." And God Almighty said: "But if he is in hardship, then grant him postponement until it is easy for him. But if you remit it as charity, it is better for you, if you only knew." Surah Al-Baqarah, verse 280. And God Almighty said: "O you who have believed, when you contract a debt for a specified term, write it down, etc." Surah Al-Baqarah, verse 282. And the saying of the Noble Messenger: "Whoever makes things difficult for my nation, make them difficult for him." And his saying, may God bless him and grant him peace: "Make things easy and do not make them difficult.

Give good tidings and do not repel." From the above, it is clear that the loan is permissible according to Islamic law because it is one of the acts of worship by which the servant draws closer to Allah, the Almighty, and Islam has made it beloved because it is merciful to people, facilitates their affairs, and is kind to them. Islam has permitted it for Muslims to benefit from in fulfilling needs, then returning the same to the creditor without any increase, and the owner of the debt is asked by the angels to forgive him until his money is returned to him from the debtor.

Second requirement: Distinguishing the loan from some similar words

From the words similar to the loan are the advance, the debt, and the loan.

Salaf: It was mentioned in Lisan Al-Arab by Ibn Manzur ((And the Salaf comes in the meanings: loan, and Salam, and Salaf is every work that the servant has provided, it is said I lent him money, meaning I lent him, and it appears that the concept of Salaf is more general than the loan, because Salaf is used for a loan and other things, and the loan is one of the branches of Salaf.

Debt: Debt comes in the meaning of a loan, it is said I lent him, and I lent him, and the debt is more general than the loan because the loan is one of the reasons for proving the debt, and there are other reasons other than the loan, including Salam sale and deferred sale, and the loan is also considered one of the contracts that transfer ownership, where the borrower owns the money and disposes of it as the owner because it occupies the debtor's conscience with the creditor's right.

Qirad: It is speculation, and it is a contract for a partnership in profit with money from

Qirad: It is speculation and a contract for a partnership in profit with money from one party and work from the other. The origin of Qirad is derived from the loan, which is cutting: that is, the owner of the money cut a piece of his money for the worker in it, and cut him a known amount of profit in it, so Qirad is a partnership between two parties, each of whom is a lender and a borrower at the same time, while the loan is a contract between two parties, one of whom is a lender and the other a borrower.

The nature of the loan contract and its characteristics

The nature of the loan contract

The scholars agreed that the loan is a way for the servant to draw closer to God Almighty, because it contains mercy for people and facilitates their affairs and is kind to them, but they differed on whether it is a form of donations or compensation in three opinions, which are as follows:

The first opinion:

The Hanafi opinion: It stipulates that the loan is a donation in the beginning and a compensation in the end.

The second opinion:

Its meaning is that the loan is a contract of exchange, but not in all aspects, and this is the opinion of the majority of Malikis.

As for their saying that the loan is an exchange by analogy to the sale because the sale is the ownership of something in exchange for the price, and likewise the loan is the ownership of something in exchange for its compensation, and their saying that the exchange in the loan is not in all aspects is that in the loan there is a defect of donation and therefore it is necessary to exchange it.

The third saying:

The loan is one of the donation contracts, and this is the saying of some Malikis, and it is the same saying of some Shafi'is and Hanbalis, and its meaning is that the loan is of the same type as donation and that this is from the category of kindness and charity and not from the category of exchanges, and no option is proven in the loan because it is not a sale nor is it in its meaning from the facilities.

Distinctive characteristics of the loan contract

The loan contract is distinguished by a group of characteristics that make it a contract of a special nature, but some of these characteristics are not problematic as is the case with the characteristic of mutual obligation.

However, some other characteristics are tainted by a kind of ambiguity and lack of clarity, and among those characteristics are the formality and the tangible property, and we will discuss these two characteristics as follows: -

1.The loan contract between consent and formality.

2.The jurists differed on the ruling on documenting the loan contract in writing and witnessing, according to two opinions, one of which is that

of Ibn Hazm, which is the obligation if it is deferred, and he provided evidence for that matter.

By writing the debt and witnessing it in the Almighty's saying:

)O you who believe, when you contract a debt for a specified term, write it down.)

The second opinion: The opinion of the majority of jurists from the Hanafi, Shafi'i, Maliki and Hanbali schools, which is that writing down the debt and having it witnessed are not obligatory, and the command to do so in the verse is guidance to what is more trustworthy and more cautious, and it is not intended to be obligatory, just as it is possible to guarantee the loan with a guarantee or a mortgage, as Aisha, may God be pleased with her, said: (The Prophet, may God bless him and grant him peace, bought food from a Jew on credit and mortgaged him an iron shield.

Loan Contract, Especially In-kind Loan Contract

Is an in-kind loan contract only completed by delivery? Before answering this question, it must be noted that contracts are divided into two sections.

Exchange Contracts:

In which each party takes something in return for what he gives, such as a sale and lease. The seller relinquishes the item sold in exchange for the price, and the buyer relinquishes the price in exchange for the item sold. In a lease, the lessor relinquishes the benefit in exchange for the rent, and the lessee relinquishes the rent in exchange for the benefit.

Donation Contracts:

In which one of the parties takes without relinquishing any consideration, such as a gift, charity and loan contract. The one who gives a book The other does not take any consideration from the

recipient, and the donor of the benefit of money in the loan does not take any consideration or interest from the borrower. This distinction is made by the three imams Abu Hanifa, Al-Shafi'i and Ahmad: (In exchange contracts, mutual consent between the two parties to the contract is sufficient, so the sale is concluded and binding upon the mere offer and acceptance between the seller and the buyer without the need to deliver the sold item and receive the price, while in donation contracts, the contract does not become binding except by receipt. For example, a gift contract does not become binding for the donor except by the recipient delivering the thing that is the subject of the gift.

As for the Malikis, they do not see this distinction between exchange contracts and donation contracts, and therefore donation contracts, according to them, are like exchange contracts, in which consent is sufficient, and do not require possession of the subject of the contract.

Third Section: Loan in Jurisprudence and Law

First Requirement: Definition of Loan and Its Characteristics

Article (277) of the Sudanese Civil Transactions Law of 1984 states that: (A loan is the ownership of money or any thing to another on the condition that he returns an equivalent amount and And a type to the lender at the end of the loan term. The loan contract is a consensual contract, as it is completed by the mere meeting of offer and acceptance and is binding on both parties, as the lender undertakes to transfer ownership of money or another thing to the borrower and the borrower undertakes to return the same when the time for payment comes, as if it were money or a bag of rice or lentils, and as if it were a promissory note or to the bearer. The loan contract is valid in its wording, such as saying "lend me" or "I lend you", and it is also valid in the wording of "advance" or any other word that conveys their meanings. The borrower owns the money or the borrowed thing and is not required to

return it itself if it is assumed that the borrower has consumed it, but rather returns the same.

Therefore, it is a consensual contract, not a real one. In the loan contract, despite the transfer of ownership of the money or the borrowed thing to the borrower, there remains an obligation on the borrower to return the money or the same thing borrowed with interest, as is the case in the laws of some other countries such as Egypt and Algeria, and contrary to what is stated in the Sudanese Civil Transactions Law of 1984, which prohibited dealing with interest and prohibited usury, as stated in Article (281) if it is stipulated in the contract The loan is a benefit in addition to the contract, the condition was cancelled and the contract was valid, and the legislator did not establish, by virtue of this text, that the borrower be deprived of the loan if the loan contract included a condition of benefit, and he was satisfied with purifying the contract from this benefit by making it void and without effect, so its owner cannot oblige the borrower to it, even if the latter signed in agreement to it, and he was satisfied with obligating the two parties to implement the contract without the condition of benefit, and this is contrary to what the laws of some Arab countries, such as the Arab Republic of Egypt, went to, which considered that the origin of the loan is a donation contract, so interest is not due from the borrower even if the loan is commercial unless it has been agreed upon, as Article (542) of the Egyptian Civil Code stipulated that the borrower must pay the agreed upon interest when its due dates arrive, and if there is no agreement on the interest, the loan is considered without payment. This means that Egyptian law allows interest by agreement, and this interest is usurious. Egyptian legislation should not have allowed this because it violates Islamic law, and everyone knows the prohibition of usury and its impact on society. We ask God to guide everyone and for all Arab legislations to move towards prohibiting usury.

Definition and characteristics of the loan in jurisprudence and law

Characteristics of the loan contract

We now stand from the loan contract at the following characteristics:

These characteristics can be extracted from the definition of the aforementioned Article (227):

1) The loan contract is a consensual contract and is a contract binding on both parties.

2) A donation contract.

The loan is a consensual contract

The loan is a consensual contract that takes place as soon as the offer and acceptance meet. As for transferring ownership of the borrowed item and delivering it to the borrower, this is an obligation created by the loan contract in the responsibility of the lender and is not a pillar of the contract itself, and this is contrary to what the laws have gone to Some Arab countries, such as the Iraqi Civil Code, where Article (684) of the Iraqi Code states: (A loan is for a person to pay another a known item of similar objects that are consumed by benefiting from them, and the same is returned.

The Iraqi Code follows the French Civil Code in this regard, and both codes inherited the objectivity of the loan contract from Roman law without justification. This objectivity was understood in Roman law, where contracts were originally formal, then the form was dispensed with by delivery in real contracts, including the loan. Roman law did not accept that consent alone is sufficient for the conclusion of the contract except in a limited number of contracts called consensual contracts. Today, the rule has become that consent is sufficient for the conclusion of the contract. There is no longer a reason to replace the delivery with the form, as we no longer need the form or the delivery, and this is the trend of modern technologies.

The loan is a contract binding on both sides

The loan creates reciprocal obligations on the part of both the lender and the borrower. It is therefore a contract binding on both sides, and the obligations it creates on the part of the lender are to transfer ownership of the borrowed thing And he hands it over to him and does not recover it from him except at the end of the agreed period, and guarantees the maturity and hidden defects, as for the obligations that it creates on the part of the borrower, they are that he returns the equivalent at the end of the loan and pays the expenses, and he may pay interest according to some Arab laws as we mentioned, but in Sudan, usurious interest has been abolished, and the loan is a binding contract for both parties even if it is a real contract, so no obligation arises to deliver because the latter is a pillar with no obligation, but an obligation arises to refrain from recovering the equivalent before the end of the loan period.

The loan is a donation contract

The loan is a donation contract, as the lender transfers ownership of the thing to the borrower and does not recover the equivalent except after a period of time, and this is without compensation, so he is a donor, and this is practiced in Sudan, but in some Arab countries, they have the original that it is a donation contract, but it can be a contract of exchange if the lender stipulates that the borrower pay certain interest in return for the loan, as in the Arab Republic of Egypt and **Algeria.**

Distinguishing a loan from some contracts

A loan is clearly distinguished from some contracts, and only a gift contract is associated with it. A loan transfers ownership of a thing on condition that it is returned in kind, and a gift transfers ownership of a thing on condition that neither it nor its like is returned. However, a loan without interest shares with a gift in that both of them are donation contracts. This is a lease contract. A loan transfers ownership of a thing,

while a lease does not transfer ownership, but rather obligates the lessor to enable the lessee to benefit from the thing on condition that it is returned in kind at the end of the lease, not that it is returned in kind as in a loan. Rather, a loan with interest and a lease are similar from an economic perspective in that the owner of the money in both cases allows others to benefit from his money in return for something in return. Hence, the lender is called the lessor of money. However, a loan may be associated with other contracts, including in particular sale, partnership, deposit, and loan. Distinguishing between a loan and a sale.

In most cases, a loan is clearly distinguished from a sale contract. A sale is the transfer of ownership of the sold item in exchange for a price of money, while a loan is the transfer of ownership of the borrower on the condition that he recovers the same amount with or without interest. Sometimes it may be difficult to distinguish between the two contracts in some cases, including the following:

1) Sale of fulfillment

It is the sale in which the lender takes the item from the borrower and gives him an amount of money that is in reality a loan, but the contracting parties call it a price. If the borrower does not return the money on time, the lender becomes the owner of the item with irrevocable ownership. If things were called by their correct names, the item would be a mortgage, and the lender would not be able to own it, but rather he would have to sell it at auction to recover the loan.

2) Sale of ‘Aina

It is when someone sells something to someone else for a deferred price and delivers it to him, then he buys it back before receiving the price for less than that price in cash.

The reality of sale of ‘Aina is a loan, and its form is when he sells something on credit, then buys it from the one who sold it to him for

ten, then he buys it for five. It is like someone who gave five on credit for ten. This difference is interest, and it is likely that it is exorbitant interest hidden by the contract of sale.

Distinguishing between a loan and a company

A loan is clearly distinguished from a company in most cases, as the lender recovers the equivalent from the borrower, and he has no concern whether the borrower has made a profit or a loss from exploiting the loan. As for the partner, he does not recover his share of the company after its expiration except after he contributes to the profit or the loss.

This contribution to the profit and loss is what distinguishes the company from the loan. The distinction becomes clear if a person provides money to another and stipulates that he recovers the equivalent and contributes to the profit without the loss. Some have said that this company is invalid, and others have seen that the one who provided the money has lent it to the other and stipulated interest on the loan, which is a certain percentage of the profit.

The interest here is a possible matter that may be realized if the profit is realized and not realized if the profit is absent. A group may agree that each of them will provide an amount of money, on the condition that each of them takes the sum of these amounts for a period of one year, for example, and returns it for someone else to take, so that everyone benefits from the sum of these amounts for a certain period. This is what is called a deferred credit loan. This is a contract that appears to be a company mixed with a loan.

Distinguishing between a loan and a deposit

A loan is distinguished from a deposit in that a loan transfers ownership of the borrowed item to the borrower, provided that he returns the same at the end of the loan to the lender. As for a deposit, it does not transfer

ownership of the deposited item to the depositor, but rather it remains the property of the depositor and he retrieves it himself. This is because the borrower benefits from the loan amount after he becomes its owner, while the depositor does not benefit from the deposited item, but is obligated to keep it until he returns it to its owner. However, a person may deposit with another an amount of money or something else that perishes with use, and authorize him to use it. This is what is called an incomplete deposit. The Transactions Law of 1984 settled the dispute over the nature of an incomplete deposit, and how it is a loan when Article (458) stipulated that if the deposit is an amount of money or something.

If it is destroyed by use and the depositor authorizes its use, the contract is considered a loan, and this text is identical to the text of Article 726 of the Egyptian Civil Code. Distinguishing between a loan and a loan Many laws, including the French and Egyptian laws, have combined the loan and the loan in one place and called the two contracts a loan. To distinguish between them, the loan is called a consumption loan and the loan is called a use loan.

This is what the Sudanese law did not do in the Civil Transactions Law of 1984, where it distinguished between the two contracts because the difference between the two contracts is a fundamental difference. In the loan, the lender transfers ownership of a fungible thing on the condition that the fungible is returned at the end of the loan. Therefore, if the loan is one of the contracts that relate to ownership, as for the loan, the lender does not transfer ownership of the loaned item to the borrower, but is limited to delivering it to him so that he can benefit from it on the condition that he returns it itself at the end of the loan.

Therefore, the loan was one of the contracts that relate to the benefit of the thing. What distinguishes the loan from the loan is that the subject of the loan must be a fungible thing, because the borrower is obligated

to return its like, while the subject of the loan must be a valuable thing, not a fungible thing, because the borrower returns it in kind, not in kind. This distinction is clear in the Civil Transactions Law of 1984. 1984 where (Article 359 stipulates that the loan is the ownership of the benefit of something to another without compensation for a specific period or for a specific purpose, provided that it is returned after use), and this confirms that the subject of the loan is something valuable, not fungible, and it is returned for a benefit, not for ownership.

Second requirement: ***A study between Islamic jurisprudence and law***

After studying the definition and characteristics of the loan in jurisprudence and law, we conclude the following:

1.Islamic jurisprudence is characterized by clarity, comprehensiveness and breadth. We notice this breadth and clarity from the statements of jurists, as scholars can choose in every time and place what suits their eras and places. Rather, they can exert effort and add because the Messenger, may God bless him and grant him peace, approved the effort when he sent Muadh bin Jabal to Yemen as a judge, this is contrary to the narrowness, difficulty and shortcomings in the law, and therefore we find many changes in the laws, for example in Egypt, an old and a new law, and in Sudan, the law of 1971, the law of 1974 and the law of 1984, and the latter is the best because it is taken from Islamic law.

2.In terms of defining a loan, we find that the Transactions Law adopted the Shafi'i definition of a loan, where (Article 277 states that a loan is the ownership of something to another on the condition that he returns something similar), which is the same definition of the Shafi'i loan, and a loan according to this definition applies to similar and valuable things alike, as well as to ownership without benefit, and this breadth was made clear in this definition to facilitate people's affairs and be kind to them.

3.We find in Islamic jurisprudence that every loan that is coupled with a conditional benefit is forbidden and impermissible, and therefore usurious interest was abolished in the Sudanese Civil Transactions Law of 1984, contrary to the laws of some Arab countries that allow usurious interest, such as Egypt, Algeria and Morocco.

Therefore, I prefer the opinions of Islamic jurisprudence in everything it has gone to because it stems from the Qur'an and Sunnah, while positive laws are deficient and incomplete because they are the creation and making of humans.

The first pillar: the formula

For the loan to be valid, there must be a condition of offer and acceptance, i.e. an offer from the lender and acceptance from the borrower. The word loan is valid with the word loan and advance because the Shari'ah has mentioned them, and it is valid with what conveys its meaning, such as I lent you, I advanced you, and I gave you a loan. Likewise, acceptance is valid with any word that indicates satisfaction with what the first one required, such as: I borrowed, I accepted, or lend me. Sheikh Zakaria Al-Ansari said: (The apparent request and from the lender such as borrowing from me takes the place of the offer and from the borrower such as lend me takes the place of acceptance.

The second pillar is the two contracting parties

The lender and the borrower and the eligibility to donate is required in the lender in what he lends, i.e. he must be free, adult, sane and rational. Accordingly, the boy, the freed slave, the authorized slave and the like do not have the right to dispose of it. Likewise, the conditions are maturity and choice, so lending or borrowing from someone who is incompetent due to foolishness is not valid, just as the coerced act is not permissible.

So the conclusion in (the two contracting parties) is the eligibility to contract, such that the contracting party is the lender or the borrower, an adult, sane, mature and free of choice, and qualified to donate. Because the loan is a donation contract, it is not valid from the insane, the foolish, the incompetent, the child, the coerced, or from the guardian except for necessity or need because these are not qualified to donate.

The third pillar: the subject of the contract

The majority of jurists other than the Hanafis have held that a loan is permissible in everything that one owns By selling and it is determined by description like Salam, i.e. in fungibles, valuables and animals, except that they differed regarding slaves, so the Malikis went to its permissibility in everything except female slaves, and the following is the activation of the sayings of the jurists from the four schools as follows:

1.The Hanafis said that a loan is valid in fungibles (which do not vary in units that differ in value, such as measured, and similarly counted items such as nuts and eggs, and a loan is not permissible in fungibles of valuables such as animals, firewood, real estate and varying numbers because it is impossible to return the same.

2.The Malikis, Shafi'is and Hanbalis said: It is permissible to loan all money in which Salam is permissible, i.e. all money that can be proven in the conscience, whether it is measured or weighed, such as gold, silver and foods, or weights and valuables such as trade goods, animals and the like, such as the counted.

As for what Salam is not permissible in, such as jewels and the like, it is not valid to loan it according to the most correct opinion, because the loan requires returning the same, and what is not regulated or rarely found, it is difficult or impossible to return the same. Accordingly, the loan is valid according to the majority of jurists in any item that is valid

between them except for female slaves because it leads to the lending of vaginas.

Summary of the conditions of the loan

The validity of the loan requires four conditions as follows:

1.That the loan is made in the form of an offer or what replaces it according to the majority of scholars from the given, and the given is not sufficient according to the Shafi'is like other contracts.

2.Capacity to contract: That the contracting party be a lender or a borrower, an adult, sane, free-willed and eligible to donate, because the loan is a donation contract and is not valid from a child, an insane person, a fool, a person under guardianship or a person forced, nor from a guardian without necessity or need, because these are not eligible to donate.

3.That the loan money be fungible according to the Hanafis, and any money that can be proven in the conscience of money, grains and valuables such as animals, real estate and others is valid according to the majority.

4.That the loan money be of a known amount in terms of measure, weight, number or crops so that it can be returned, and that it be of a type that has not been mixed with something else, such as wheat mixed with barley because it is difficult to return its equivalent.

Valid and invalid conditions for a loan

It is permissible to stipulate any condition that leads to documenting or confirming the right, such as stipulating a mortgage with the borrower's or guarantor's money, or witnessing the contract, or writing down the debt, or acknowledging it before the judge. According to the majority, stipulating a term in a loan is not valid, but according to the Maliki school, it is valid. A condition that does not suit the contract is not

valid, such as stipulating the return of an increase in the consideration, or returning a valid amount in exchange for a defective amount, or stipulating the sale of his house.

Voiding condition:

Stipulating an increase in the consideration for the loan or presenting a gift to the lender.

The condition is void and not invalid if it does not benefit anyone.

Pillars and conditions of a loan contract in law

A loan contract has three pillars

/1Consent 2/ Subject matter 3/ Reason.

The first pillar: Consent in a loan contract

Consent has conditions for its conclusion and conditions for its validity.

We will first talk about the conditions for its conclusion.

The loan contract is a consensual contract, and it is sufficient for it to be concluded by the agreement of the offer and acceptance of the lender and the borrower. In this regard, there are no special provisions for the loan contract, so the general rules of contract theory apply, including the methods of expressing the will, whether explicitly or implicitly, the time at which the expression of the will is produced and its effect, the death of the one from whom the expression of the will was issued or his loss of capacity, the contract between absent persons and representation in the loan contract, and other general provisions. Different forms of loan contracts.

While we are talking about consent in a loan contract, we should talk about some forms of loan contracts. The loan may take different forms other than the usual forms, including that a company or a public legal entity issues bonds. These bonds are loans concluded by the company

or legal entity with lenders. Whoever subscribes to these bonds is a lender to the company or legal entity for the value of what he subscribed to. This includes issuing a bill of exchange, a promissory note, or a bearer note. These papers may be loans concluded by the one who issued them, who is the borrower, for the benefit of the one to whom they were issued, who is the lender.

This includes opening a credit in a bank for a customer. The customer borrows from the bank an amount whose maximum limit is the open credit. This includes depositing money in a bank. The customer who deposited the money is the lender and the bank is the borrower. We have already stated that this is an incomplete deposit and is considered a loan by law. This includes a bank accelerating an amount of money for a customer who deposited the money for a customer in exchange for financial papers deposited in the bank. The bank has The client lent this amount in advance in exchange for mortgaging these securities deposited in the bank. **Second: Conditions of validity**

Capacity in the loan contract

The capacity that must be available in the loan is the capacity to dispose, if it transfers the ownership of the borrowed thing, and this is if the loan is with interest, but if it is without interest, it is a donation, and therefore the lender must have the capacity to donate, and if he lends to a minor or a person under guardianship without interest, the loan is invalid because it is purely harmful to him, but if he lends with interest, the loan is voidable, and it is noted that countries that allow usurious interest consider the loan with interest to be the best for the lender, so if he lends to a minor with interest, his disposal is voidable, but if he lends without interest, his disposal is considered purely harmful, and therefore this disposal is void, Glory be to God, these regulations ignored the elimination of usury and its social, economic and religious dangers, in addition to taking away the blessing from it, but in Sudan,

the matter is different, as the Civil Transactions Law stipulates that the lender must be eligible to donate, because the loan contract is a donation contract and not a contract of exchange, and the contract The exchange in the loan is that which is with interest, as stated in Article 279 of the Civil Transactions Law, which states:

1.The lender must be qualified to donate.

2.The guardian or trustee does not have the right to lend or borrow money from someone under his guardianship.

The loan contract is considered a gift contract because Sudan does not apply the interest system on loans, and therefore the lender must be eligible for this donation, i.e. he must have the capacity to donate, and therefore the donation of a minor is not valid, nor is the donation of a guardian or trustee, nor is the lending of a minor's money valid, since guardianship over a minor's money is his care and preservation, and therefore the Personal Status Law for Muslims has subjected the actions of these people in the boy's money to the supervision of the competent judge (Article 233 and following), and just as they are not permitted to lend a minor's money, they are not permitted to borrow (Article 253H). Article (252) of that law stipulates that it is not permissible for a minor to borrow (Article 252). As for the borrower, the capacity to commit is required because he is obligated to return the equivalent, so it is not permissible for a minor or a person under guardianship to borrow, even if the minor is authorized to manage his business, and in this case the contract is subject to cancellation. Defects of will in the loan contract.

There are no provisions specific to the loan contract in terms of preventing management defects, so the general rules established in the contract theory apply, and thus the loan is subject to cancellation if the will of one of the contracting parties is tainted by a defect of will, which are error, fraud, and coercion.

The second pillar is the subject of the loan contract

The subject of the loan contract is the borrowed thing, and interest in Arab countries whose laws are based on interest, such as the Arab Republic of Egypt, Algeria and Morocco, must meet the general conditions that must be met in the subject. The thing must exist, be meaningful or identifiable, and not violate public order or morals. Since the borrowed thing is, in most cases, money, these conditions are met as long as the amount of the borrowed amount has been specified. However, it may happen that the borrowed thing is fungible things other than money, such as crops, for example. In that case, the amount of the borrowed crops must be present at the time of the loan. If it was burned before the loan, the subject is no longer valid and the loan is not concluded.

Likewise, its amount must be known so that it can be returned in its place at the end of the loan. If the borrowed thing is prohibited, such as hashish and drugs, the subject is in violation of public order. However, if the loan is coupled with interest, the interest is cancelled and this loan is valid in Sudan. In addition to these general conditions, it must be The borrowed item is fungible because the nature of the loan contract requires that the borrowed item be fungible, as the borrower owns it on the condition that he returns something similar, and the same cannot be returned except in fungibles, therefore it is stated in the text of Article (280).

The Civil Transactions Law refers to this condition, which states: (It is required that the borrowed money be fungible and not consumable), and there is no doubt that the text of this wording is not what it should be, since how can it be required that the loan be fungible and not consumable, knowing that it is required to return the loan like it is not a sample, since the loan is not a loan, since it is required that the loan be something valuable and not fungible because the borrower returns it in

a sample after use, and therefore the loaned thing must not be consumable, whereas in the loan, the borrower owns the money or the borrowed thing and consumes it and then returns the same, and therefore the text can be (It is required that the borrowed money be fungible and not consumable from the text because the loan money is consumable, so the condition is that the borrowed money be fungible as stated in Article (538) of the Egyptian Civil Code, which states ((The loan is a contract by which the lender undertakes to transfer to the borrower the ownership of a sum of money or any other fungible thing).

The third pillar: the reason for the loan contract

The reason for the loan contract is the motive that prompted the contract, since the contract was The loan is a contract binding on both parties. The reason for the borrower's obligation to return the loan amount is the lender's obligation to transfer his ownership, as is the case with any contract binding on both parties. The obligation of each of the contracting parties is the reason for the obligation of the other. Therefore, the loan is void if the borrower intends to be able to gamble and the lender is aware of this intention, whether he is a partner with him in the gambling or not. The loan is also void if the loan is to enable the borrower to obtain a house to rent to a prostitute, or to maintain dishonorable relations that bind him to a mistress of his. Therefore, the motive that prompted the contract in the loan contract must be taken into account, and it must be made the reason as long as the other contracting party knows this motive or should know about it.

Comparison between Islamic jurisprudence and law

Referring to the pillars of the loan in Islamic jurisprudence, which are: the formula, the contracting parties, and the subject matter, we find that the law does not differ much from Islamic jurisprudence, but rather a difference in the names and some concepts. Consent in law corresponds to the formula, the contracting parties in Islamic jurisprudence, and the

subject matter in law corresponds to the contracted upon in Islamic jurisprudence.

As for the difference in concepts, when Islamic jurisprudence says that the contracted upon must be legitimate, this is a comprehensive description that includes everything that violates Islamic law, such as usurious interest, hashish, and running a house for gambling or for a prostitute. As for when the law says that it should not be contrary to public order, this is limited to certain things indicated by the law, such as gambling, running a house for a prostitute or hashish, and does not include usurious interest.

This is a shortcoming in the law, and this shortcoming and limitation always appear. As for mentioning the reason in the law, this does not mean that Islamic jurisprudence has neglected the reason, as the reason is present and exists in Islamic jurisprudence according to the principle of legitimacy found in Islamic jurisprudence. As we mentioned earlier, jurisprudence says that the contracted upon must be legitimate. This includes the subject matter and the reason, and it is known in Islamic jurisprudence that the intention It is the basis of actions (Actions are but by intentions, and each person will have but what he intended). This is if the intention and shortening are not permissible, then the entire action is not permissible.

The researchers' opinion is to prefer what Islamic jurisprudence has gone to in terms of names for the pillars of the loan contract because it is the best and most comprehensive when compared to the pillars mentioned by the law. Fourth Section: Applications of Sudanese banks for the loan contract

First requirement: Field study

Field visit: The field visit was conducted to (22 banks), which represent all banks in Sudan, headed by the Central Bank (Bank of Sudan). The

field study aimed to know the extent of Sudanese banks' commitment to the legal application of the bank loan and whether it combines economic development and social development by granting interest-free loans to customers, and what are the difficulties and problems that hinder the application of the bank loan and other Islamic formulas.

Visit procedures: The visit began with an interview with the investment manager for each of the banks mentioned above, and they kindly answered all the questions and inquiries that were posed to them by the researchers, and they were very cooperative. The researchers recorded all the notes in addition to taking samples of some Islamic credit formula contracts such as (Salam, Murabaha, Mudarabah, Musharaka), but they did not find a model for a good loan contract.

Difficulties and problems hindering the application of the bank loan:

This axis is concerned with the difficulties and problems hindering the application of the bank loan And other formulas. We have come to know the difficulties and problems by asking direct questions to bank employees and customers, who kindly answered them. Their answers were as follows:

First: Bank employees' answers: Bank employees' answers are represented in the following points

1.Banks do not grant good loans to customers, but rather limit them to employees only.

2.Complete ignorance and lack of sufficient knowledge among customers about Islamic credit formulas and lack of concern and investigation into the legitimacy of the financing they are about to receive from banks.

3.Administrative restrictions from the Bank of Sudan on some formulas in some sectors, which leads to customer fraud.

4.Insufficient training for customers and employees in banks.

5.Banks do not include all investments and limit some of them and complicate procedures.

6.The long-standing experience of usurious banks has been deliberately devoted to usurious dealings.

Second: Customers' answers are as follows:

1.Some customers use fraudulent methods to obtain financing in cash.

2.The policies of the Bank of Sudan are fluctuating and its restrictions are many, which hinders financing.

3.Banks fear loss, so they limit the formulas to Murabaha only.

4.Customers' lack of knowledge of legitimate investment formulas.

5.Lack of training courses for employees to educate them about legitimate formulas.

6.The profit determined by the bank is large.

Field visit results: The field study reached the following results:

1.Sudanese banks are committed to the legitimate application of the loan contract because they do not lend to customers with interest.

2.Sudanese banks finance customers through Islamic credit formulas such as Murabaha, Salam and Musharaka and focus on Murabaha.

3.Sudanese banks do not grant customers good loans but limit them to employees only.

4.There is no combination between economic development and social development, but rather its goal is purely economic, which is to achieve the greatest possible profits.

5.Bank of Sudan procedures related to financing are complex.

6.Bank employees and customers are not aware of legitimate investment formulas.

7.Lack of training courses for employees and customers to educate them about legitimate credit formulas.

The second requirement: Conclusion

The conclusion contains the following results and recommendations:

First: Results:

1.The public agreed that the loan is returned to fungible and valuable things, and the Hanafi school disagreed with them on that the loan is returned to fungible things only. The Sudanese Transactions Law of 1984 took the public opinion that the subject of the loan is fungible and valuable, as Article 277 stipulated, which reads (the loan is the ownership of a thing to another on the condition that its like is returned), and the thing includes the valuable and fungible.

2.Among the results reached by the research is that every loan associated with a conditional benefit is forbidden and not permissible according to Sharia, and discounting commercial papers as a form of a loan is not permissible according to Sharia.

3.Sudanese banks are committed to the Sharia application of the loan contract because they do not lend to customers with interest, and it is also permissible according to Sharia to collect commercial papers.

4.The research proved that Sudanese banks finance customers through Islamic credit formulas such as Murabaha, Salam, Mudaraba and Musharaka, and focus on Murabaha, and Sudanese banks do not grant customers good loans, but rather limit them to employees only.

5.The research showed that there is no combination between economic development and social development, but rather its goal is purely economic, by achieving the greatest amount of profits, and the procedures of the Central Bank related to financing are complex.

6.The research confirmed that bank employees and customers are not familiar with legitimate investment formulas, and the lack of training courses provided to employees and customers in order to educate them about legitimate credit formulas.

Second: Recommendations:

1.The research recommended that parties dealing in the field of banking financing should study the loan contract in its various forms before entering into it.

2.The Central Bank of Sudan should facilitate financing procedures, reduce the amount of profits, and determine a percentage of good loans from the amount of financing it grants to commercial banks and oblige them to finance customers with it.

3.Commercial banks should implement the policies of the Bank of Sudan, especially with regard to granting good loans, and work to link economic development with social development by paying attention to the weak segments by financing small projects with easy terms and reasonable profits.

4.The necessity of paying attention to training the staff and educating them about Islamic credit formulas through workshops that are held and involving customers in that.

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