

Aldj'alah Conditions of the Loan in Islamic Jurisprudence (A Comparative Juristic Study)

Taiseer Abu Khushrif
Department of Islamic Jurisprudence
Damascus University - Faculty of Shari'ah

Abstract

This research includes many important doctrinal partial issues, which belongs within the arrangement of the relationship between lender and borrower, where one or both of the contractors stipulate some conditions of the contract, These conditions are called " *Aldjaalia conditions* ". The loan is a contract of approximation, the origin of the loan is the borrower's benefit, and co-operation on the righteousness and piety is the lawful basis. Scholars have decided that any condition that makes the contract separable from its content is unacceptable, and that some conditions can also make the contract illegal. Sometimes one of the contractors may refuse to fulfill the contract without conditions which cause the benefit for one of them or both, but if these conditions are true, the contract will be right, and if the conditions are wrong, the contract will be illegal. If the conditions are concealed, the contract will be right. The important conditions include the following:

- Sometimes the person rejects to lend if there is no fixed period for repayment of the loan, because the fixed period gives the lender a trust, and at the same time it gives the borrower a trust, where the lender cannot demand his loan before a limited time. However, scholars have disagreed in this case, as most of them forbid the fixed period, but according to Al Malikia, the fixed period is allowed.
- Sometimes the lender stipulates that the borrower must repay the loan in other country for a benefit for him, and in this the scholars distinguish between two cases: First: the lender has a benefit in this condition , and the repayment in another country (like Maunaa) , in this case the condition is not right and the contract will be cancelled with it, because it is in opposition to the content of the contract. Therefore it is forbidden, where the contract is established on borrower's benefit. For example: the lender stipulates that the borrower must allow him to dwell in his house as compensation for the loan. In the second case, the scholars allow the condition if there is no cost from repayment of the loan in other country. For example, if he is sent a charge to his family and it is not enough, so he lends it to someone and stipulates that the borrower must pay it to them fully, because this fulfills a benefit for both (lender and borrower).

- Sometimes the lender stipulates that the borrower must repay the loan with an excess (addition); in this case, the scholars agreed that the addition is not allowable. This is because the conditional addition like the interest (al rebaa), is an addition without compensation, and the scholars agreed that the addition is allowable, if it was not a conditional addition.

In another case, the lender stipulates that there must be a pledge with possession or a surety. Another case may be that the lender stipulates that the borrower must make another contract with the loan (sale –trade – partnership ...its). In this case, the scholars disagreed and they divided into two groups:

First: consider it as forbidden; second: consider it as detestable.

In another case, someone needs the loan but he doesn't find anyone to give him it, then he turns for help from a famous person, but the famous person stipulates the amount of money. In this case there are two views:

First: the loan is right, but the insurance is not allowable for the money

Second: it is allowable if the famous person has travel or costs, but it is forbidden if the famous person has not got any costs. Some scholars have stated that this is forbidden absolutely. Al hanafia said that the rent for bringing a letter is acceptable but it is not allowable if the lender is unknown to the borrower.