

**Repurchase and resale of an item already sold on the basis of murabahah**

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كتاب البيع  
الفصل الخامس عشر في بيع المرابحة

ولو اشترى ثوباً بعشرة فباعه مرابحة باثني عشر، ثم اشتراه ثانياً عشرة فباعه مرابحة على ثمانية في قول أبي حنيفة، وقال أبو يوسف ومحمد: يبيعه مرابحة على عشرة؛ لأن الشراء جديد فنبنى عليه بيع المرابحة، كما لو باعه المشتري من ثالث، ثم إن البائع اشترى من ذلك الثالث، ولأبي حنيفة: أنه لما باعه أولاً وربح، كان الربح على شرف السقوط بأن يرد بالعيب أو يبطل العقد بسبب من الأسباب، فلما اشتراه منه بعد ذلك تأكد الربح، والتأكيد إثبات من وجه، فصار كأنه اشترى الربح والثوب بذلك الثمن، فيصير مقدار الربح من الثمن بمقابلته، ويبقى الباقي بمقابلة الثوب فيبيعه مرابحة على ذلك القدر احتياطاً؛ لأن باب المرابحة مما يحتاط فيه؛ لأنه من باب الربا فيلحق الشبهة منه بالحقيقة، فعلى هذا عند أبي حنيفة: لو اشتراه بعشرة وباعه بعشرين، ثم اشتراه بعشرة لا يبيعه مرابحة أصلاً.

### Interpretative translation by Ahmed Fazel Ebrahim

A person (who becomes Seller A) bought a garment for ten coins, and then sells it (to buyer A) for twelve coins on the basis of *murabahah*.

If he (Seller A) then happens to subsequently buy the very same garment for ten coins (again) (from buyer A), he can only sell it, on the basis of *murabahah*, based on a primary price of eight (8) coins according to Imam Abu Hanifah.

Imam Abu Yusuf and Muhammad state: he can sell it, on the basis of *murabahah*, based on a primary price of ten (ten) coins since this act of purchase is a new transaction. We shall thus base the *murabahah* contract on its pricing just as in the case where buyer (A) sold it to a third person (Buyer B), and then Seller (A) buys it from that third person.<sup>1</sup>

According to Imam Abu Hanifah: When he (Seller A) had first sold it (to Buyer A) and made a profit, there existed the possibility that the profit would be eliminated by either the item being returned due to any defect or the possibility that the transaction be annulled for whatever valid reason. However, when he subsequently buys the same item (from Buyer A), his profit becomes fully established. Such an establishment is a

<sup>1</sup> This indicates that Imam Abu Hanifah is in agreement that if the seller A had subsequently bought it from any one besides Buyer A, the primary pricing of any subsequent *murabahah* contract will be based on the price at which he bought the item from this third person since he (Seller A) did not previously profit from such a third person in regard to this contract.

confirmation (of the acquisition of profit) from this angle. Thus, his purchase of the very same item from (buyer A) is reflective of him actually purchasing his (initial) profit (of two coins) and the (same) garment. The amount of profit (two coins) within the price (given by Buyer A who now becomes Seller B) (of ten coins which he pays in the second transaction) would be considered to be bought back by the same amount (of two coins as given within the payment of ten coins in the second transaction). The balance (of eight coins) would be considered as the actual payment for the garment. he should thus base his new *murabahah* transaction on such a price as a cautionary measure since any *murabahah* transaction demands extreme caution in pricing since it could end up in a *riba* (interest) transaction (due to unjustified gain). The doubt in regard to the validity (of the profiting on the two coins that have already been gained as profit in the first transaction) is thus to be considered as real and already realized gain. It is therefore that, according to Imam Abu Hanifah, if he bought it for ten coins and happen to sell it for twenty (20) coins, and then subsequently buys it for ten again (from the same person), he would not be permitted to sell it on the basis of *murabahah* any more (since he had already gained a profit that was fully equal to the initial cost of the item).

Further notes:

1. The above case would fit in well with a commodity that was not altered by Buyer A, nor suffered depreciation within the time period of the transaction between “Seller A –Buyer A” and “Seller B –Buyer B who was initially seller A”.
2. Where a bank sells a house to a client who later makes alterations to the house or the property value has increased due to which the bank pays more than what it had initially sold it, then it may be allowed to resell the property on a *murabahah* basis to another client depending on the additional value added to the house since it could be greater or lesser than the bank’s initial profit.

Bank sells house to A for \$50 000 and makes \$20000 profit.

If A adds material value of \$10 000 and sells to bank at \$60 000, the banks profit, according to Imam Abu Hanifah would still be \$20000.

If A does not add material value, but a growth of \$10 000 occurs in the property, then in the case where A then makes a sale to the bank at \$50 000, the bank would still be considered as having profited by \$20 000 according to Imam Abu Hanifah even though, in realistic terms, its profit has been reduced by \$10 000 due to the escalation of the property price.

3. If the house depreciates in value, and is resold to the bank at a price much lower than what the bank had initially sold it, it stands to reason that, in terms of the inferential analysis of Imam Abu Hanifah, the bank has already profited to some level or significantly. Thus, such profits must be considered and deducted in the new pricing. To avoid this doubt, the bank could now resell the house on the basis of *musaawamah* (bargaining or negotiation a new price without consideration of the purchase price in their second purchase of the house) e.g.

House was sold to client at \$50 000. A profit of \$20,000 was made. Client resells the house to bank at \$40,000-00. In this case, the *Murabahah* pricing according to Imam Abu Hanifah would be based on \$40,000-00 less \$20,000-00 which is then \$20,000. According to his two students, the new *murabahah* pricing would be based on \$40,000-00.

If the *musaawamah* (sale at a negotiated price without consideration of the seller's cost price) contract is used, the bank could attempt to then sell the house at \$60,000-00 without need to disclose that it had subsequently purchased the house at \$40,000-00.

4. We also have the scenario where the bank could be subsequently purchasing the house at the same price at which it had sold it. Thus, the nominal profit made on the transaction remains the same.

However, in this situation, adopting the (*taqwa*-based) view of Imam Abu Hanifah in regard to consideration of previous profits could be seriously disadvantages in the case of fractional reserve banking since the profits made in the first transaction may actually have a purchase value far higher than the purchase value of the same amount in the subsequent transaction. Thus, in such a situation, I would prefer the opinion of Imam Abu Yusuf and Imam Muhammad *rahmatullahi alayhima*, or alternatively, to use the *musaawamah* contract.