

# Futures Contracts In Trading From the Perspectives of Juridical Issues

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**Abstract.** Nowadays, The Most Influential Competitive Weapons In The International Affairs Are The Invention Of Innovative Methods Of Exchange And Covering The Risks For More And Better Success. Futures Contracts Are One Of These Methods. The Purpose Of Futures Is To Provide Risk-Control Tools For Investors And To Help Them To Reach To Their Beneficial Commercial Purpose. In The Current Paper I'm Going To Not Merely Review The Related Literature In Futures Markets In Products But Also To Investigate Their Lawfulness Or Illegality In The Constitution Law Relying On The Opinions Of Islamic Jurists. Logical Hypothesis Here Is Considered As The Correspondence Between Futures Contracts As Undetermined Contracts And Islamic Contract.

**Keywords:** futures contract, juridical issues, futures trading, Islamic law, tacking possession.

## 1. Introduction

The juristic deliberate over futures revolves about the following five points. The first is that both counteract values in such sales are fictional at the time of contract. Second, futures trading is said to be invalid because it consists of short selling, in which the vender does not own nor possess the item he vends. Third, it is said that futures sales fall short of meeting the necessities of *qabd*, or taking possession of the item prior to resale. Fourth, the critics have argued that postponement of both oppose values to a future date turns futures sales into the sale of one debt for another (*bay[ al-kali bi al-kali*), which is said to be prohibited. And, fifth, that futures trading involves speculation that limits on betting and *gharar* (uncertainty and risk taking).

## 2. Futures Contracts

The risk management function of futures is manifested in its use as a hedging tool. Hedging (*al-tahawwut*) as a risk organization tool [1]. The risks are so high that employing sufficient hedging strategies has now become an essential characteristic and theme of financial management [2]. The absence of a risk management mechanism is uniformly right of the Islamic law of dealings. Instability of prices and currencies is by and huge a modern incident, that is why the scholastic *fiqh* literature has not addressed the topic. Because protection of possessions is one of the higher objectives (*maqasid*) of *shari[ah*, it may be argued that failure to protect one's property in the facade of risk and bankruptcy is synonymous to ignore of responsibility which is undesirable from the viewpoint of Islam. "Risk and *darar* may not be possible to reduce but one can reduce them by recourse to risk management strategies and hedging." [3].

The futures contract is defined as "a lawfully binding commitment to deliver at a future date, or take release of, a given quantity of a commodity, or a financial instrument at an agreed price." [4]. The commodity so traded must adhere to the quality and delivery conditions prescribed by the commodity exchange on which it is traded [5]. Futures markets make the economic functions of managing the price risk associated with investment the underlying commodity over a period of time [6]. The clearinghouse

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interposes itself between purchaser and vender and professionally becomes the other party to all contracts – purchaser to all contracts sold and vender to all contracts bought. The success and efficiency of futures is due largely to the clearing house, its clearance and guarantee functions [7].

### 3. Review of Related Literature

There are generally two views on future contracts :Negative Outlook: [Abd al Rahman al-Jaziri [8], Muhammad Akram khan [9], ahmad yūsuf sulayman [10], muhammad taqi usmani [11]. Positive Outlook: [abd al qadir [12], [abd al karim al khatib [13], Abdel-hamid al-ghazali [14], Mukhtar al-salami [15]. It seems that the futures market is the merely market where large business in commodities is conducted in spite of the negative stance of the fiqh academy, Islamic alternatives must be found in order to aid the real reimbursement of these markets particularly in the commodities division.

### 4. "Sell not What is not With You", As stated by a Hadith

This title is a direct translation of the famous *hadith la tabi[ ma laysa findak* [16], which the commentators have interpreted to mean that the subject matter of sale must exist and be owned by the vender at the time of contract. Futures trading, which consists of short selling is, consequently, different to the necessities of this *hadith*. In an attempt to determine the precise meaning of this *hadith*, muslim jurists have advanced three dissimilar interpretations.

1. "Sell not what is not with you" means not to vend what you do not own (*ya[ni ma laysa fi milkik*) at the time of sale [17]. 2. In general, jurists and *hadith* scholars hold that this *hadith* applies merely to the sale of specified objects (*afyan*) and not to fungible goods, as these can be substituted and replaced with ease [18]. 3. A third position is that sale of "what is not with you" means the sale of what is not present and what the vender cannot deliver [19].

### 5. Sale Earlier Than taking possession (qabd)

Prevailing money-making customs in futures trading have made personal supervision over weight and measurement needless and unfeasible. It would appear that *qabd* in such commodities takes place by obtaining the representative storehouse receipt, rather than by constant re-measuring and reweighing. so it is clear that normal practice has a role in determining the manner in which the legal necessities of *qabd* and delivery may be satisfied. Provided that the processes adopted are free of doubt, unwarranted *gharar*, and potential for dispute, it would be satisfactory. It is quite imaginable that modern technology and computerization may bring further changes into the predictable methods of *qabd*, which may gain popularity and customary approval. This would be satisfactory from the *shari[ah* perspective if it fulfills the basic rationale of *qabd*, which is to prevent uncertainty and *gharar*. No case of failure of a futures transaction has in fact been well-known due to *gharar* over perishing or destruction of foodstuffs.

### 6. Subjects over the sale of debts (bay[ al dayn bil dayn ) and gharar

The *fiqh* concept of *bay[ al-dayn* referred to transactions over debts in the open market without any guarantee. *Bay[ al-dayn* essentially envisaged sale over an unpaid debt involving either two, or in some cases, three parties. The basic foundation of the ban of *bay[ al-dayn* was over uncertainty in its repayment [20]. Mukhtar al-salami has rejected the claim of *gharar* leading to disputes in the postponement of both counter values [21]. Masoomi nia furthermore rejects the idea of *gharar* [22].

It may be concluded then that *bay[ al-dayn*, which is incurred in futures, is in the nature of the fulfillment of exceptional obligations and of debt repayment by the debtor. This is evidently allowable and conforms to the *qur'anic* norm on the fulfillment of contracts (cf. Al-ma'ida, 5:1).

### 7. A Reappraisal of the Qur'anic āayat al-mudaāyanah

The *qur'an* validated deferred transactions involving future obligations as follows:

When you deal with each other in transactions involving future obligations for a fixed era of time (*idha tadayantum bi daynin ila ajal in musamman*) put them in writing. Let a scribe jot down faithfully as between

the parties (2:282).

it seems that the *[ulama'* have interpreted *dayn* in a variety of ways. while some have restricted it to certain types of debts [23], others have applied it usually to all deferred liability transactions that can fall within its broad meaning [24]. obviously, the *qur'an* has not specified the general meaning of *dayn* or *mudayana*, and there is no forceful proof to warrant departure from this position. Our analysis furthermore concurs with the conclusions of al [attar in his *nazariyah al ajal* (theory of deferment in *shari'ah*) [25]. The preferred view would appear to be that the text's language should convey its universal and unqualified meaning. Even if we accept ibn [abbas's interpretation, it may be said that his interpretation was based on the occasion of revelation (*sha'n al nuzul*) of the *ayat al mudayana*. According to the rules of *usuul al fiqh*, a text's *sha'n al nuzul* may be specific, but that does not unavoidably limit its general purport and ruling. so, it may be concluded that even if the text were revealed for *salam*, its language is general and appropriate to all debts. This would imply the basic legality, in the eyes of the *shari'ah*, of all deferred transactions.

## 8. Speculation and Gambling

When speculation is applied to futures trading, the problem is whether financial speculation in futures exposes the other party to risk and, if so, whether it furthermore involves unlawful gain and appropriation of someone else's property. clearly, there is no misappropriation of another's property in futures, for the purchaser in such a contract is occupied in a transaction aimed at making profit through trading and not through the dishonest appropriation of another's property. Speculative risk taking in commerce, which involves investment of property, labor, and skill, is not forbidden; what is forbidden is extreme *gharar* and gambling. Financial risk taking is likely to involve gambling if it is staged and created for its own sake, but not if it is incidental to useful activity and trade [26]. Typical descriptions of *qimar* and *maysir* furthermore suggest the involvement of two parties in a combative game played for the sole purpose of winning at the expense of one's opponent. One party's gain is equal to the other's loss. The gain accruing from such a game is unlawful, as is the act of playing it, for it diverts one's attention from productive occupation and virtuous conduct [27].

## 9. Final Remark

The argument of the *hadith* "sell not what is not with you" led to the conclusion that it applies merely to sales involving specific objects and not to fungible commodities. Since futures, as a rule, merely apply to fungible commodities, they fall outside the purview of this *hadith*. To this, i have added that the above *hadith* is concerned not so much with ownership or possession, but with preventing *gharar* due the vender's ability to deliver. Since delivery and fulfillment are forever guaranteed by the clearinghouse procedures, the vender's ability to deliver is not a subject of concern in futures trading.

In addition, the necessity of *qabd* in the *hadiths* reviewed is limited clearly to foodstuffs, and extending the same necessity to other commodities is not supported by the text. But even in foodstuffs, it is most likely concerned with perishable foodstuffs that are usually not fit for futures transactions. *Qabd* is related to the question of liability for loss. Nevertheless, since delivery and *qabd* are not dominant factors in futures i submit that the question of liability and loss should be determined not by reference to *qabd* but by reference to the contract.

My analysis of the sale of debts particularly of *bay' al kali bi al kali* led to the conclusion that there is no conclusive evidence in the sunnah on its prohibition. The manifest text in *ayat al mudayana* furthermore accommodates an assenting ruling on futures trading. I have also revealed that a direct correlation between futures sales and conventional sales which the critics have attempted is not justified, mainly because trading procedures in futures provide in-built safeguards against *gharar* that reduce doubt over delivery and payment. and finally, my analysis of financial speculation indicates that speculation is basically lawful and that the subject over its propensity toward gambling must be tackled through constant supervision and effective position limits that would put a check on speculative risk taking.

Present trade has witnessed a large number of new and unprecedented modes of trading which were not known in previous times. To endorse the people's prosperity through trade is distinctively beneficial and in

principle represents an eminent *maslaha* of our time. For those who take unduly prohibitive views of these varieties of trade simply because a certain mode of trading was not recognized to the *fuqaha* of earlier times and then pass negative judgments on speculative grounds without clear *shari'ah* evidence is tantamount to acting contrary to the objectives (*maqasid*) of *shari'ah*. The basic norm and maxim of *shari'ah* is prohibition (*al-hazar*) in the realm merely of *ibadat* (worship matters) and it is permissibility (*ibahah, idhn*) in *mu'amalat* and commercial transactions. nothing in this latter area must be declared prohibited without decisive and indisputable proof. Since there is no decisive proof on the prohibition of futures, then its permissibility in *shari'ah* is established. A transaction is valid from the *shari'ah* perspective when it does not violate a decisive principle, it is clear of *riba*, and it does not partake in extreme *gharar*. When these conditions are met, the transaction in question is valid and may be practiced in spite of as to whether or not it agrees with the discourse of the *fuqaha* on transaction and contract. The general guidelines of the *qur'an* must certainly be applied separately of the time-bound discourses of the *fuqaha* of earlier times. The *qur'an* upholds the people's needs and *maslaha* at all times and in manners that may be appropriate to their conditions, provided that none of its decisive principles are violated. Commodity futures fall under the basic principle of permissibility, with the proviso that we engage ourselves in a continuous process to improve vigilance and develop more refined safeguards against abuse, extreme speculation, and *gharar*.

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