

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his "Fiqhi" Facebook Page

Answer to a Question

Selling a Machine before Obtaining Its Possession

To: Abu Ihsan Manasra

Question:

Our honourable Sheikh,

Assalam Alaikum Wa Rahmatullah Wa Barakatuh

Can you please answer a personal question concerning contract?

I have a 400-square-meter facility with a carpentry machine. One of the people came to buy the machine and I agreed to sell it. Then he asked me to rent out the facility for him to keep the machine he bought from me in its place and work on it in the same place. The contract was agreed on these terms. Note that the machine is portable but it is kept in the facility, and note that the facility's key is with the person who rented out the facility and who owns the machine and has full benefit of the facility and is free to utilize it without causing damage or damage to it.

Does the contract between us meet the Shariah conditions if the machine is not moved?

Or is the contract void (batil) for not moving the machine and keeping it in the facility that he rented (the purchaser of the machine?)

May Allah give you Barakah and bring the victory by your hands

Please answer this question as soon as possible due to necessity.

Wassalam Alaikum Wa Rahmatullah Wa Barakatuh

Answer:

Assalam Alaikum Wa Rahmatullah Wa Barakatuh

In sale, it is required the receipt of the item and obtaining its possession, but this is only for the items that are weighted, measured and counted, such as buying fabrics or food such as rice or buying a number of watermelons or bananas ... Such things that are weighed, and include those that are measured by (thira' (arm)),... or Sold in singles like watermelon or that are sold by weight and the like that are sold by its measure or measured by the arm or weight or number ... All these during their sale must be removed from its place from the purchaser. This is similar for the seller, in order for the commodity to be his property and he may sell it, it must be in his possession and taken to his shop. Therefore, it is not permissible for the merchant to sell a commodity that he does not own, that is it is not in his shop, Prophet Mohammad (saw) said: «مَنْ ابْتِئَاعَ طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَسْتَوْفِيَهُ» **“Whoever buys food let him not sell it until he takes possession of it.”** [Bukhari]

Muslim Narrated from Ibn Umar: «وَكُنَّا نَشْتَرِي الطَّعَامَ مِنَ الرُّكْبَانِ جَزَافًا فَهَاجَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ نَبِيعَهُ» **“We used to buy food without estimation (weight, measure) from travelers, so the Prophet (saw) prohibited us from selling it until we moved from its place”**

Muslim Narrated that the Prophet (saw) said: «مَنْ ابْتِئَاعَ طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَكْتَالَهُ» **“Whoever purchases food, he must not sell until he weighs it”**

On the authority of Hakim Bin Hizam, he said: «قُلْتُ يَا رَسُولَ اللَّهِ إِنِّي اشْتَرَيْتُ بِيُوعًا فَمَا يَحِلُّ لِي مِنْهَا وَمَا يُحَرِّمُ عَلَيَّ؟» **“I said O Messenger of Allah, I buy goods, which is Halal and which is Haram for me? He (saw) said if you buy goods, don't sell it before you obtain its possession”** [Ahmad]

On the authority of Zaid Bin Tahbit: «إِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى أَنْ تُبَاعَ السِّلْعُ حَيْثُ تُبْتِئَعُ حَتَّى يَحُوزَهَا» **“The Prophet (saw) prohibited the sale of a product where it is bought before the trader obtains its possession”** [Abu Dawood]

«مَنْ اشْتَرَى» Ahmad Narrated in his Musnad from Ibn Umar that the Messenger of Allah (saw) said: «مَنْ اشْتَرَى طَعَامًا بِكَيلٍ أَوْ وَزْنٍ فَلَا يَبِيعُهُ حَتَّى يَفِيضَهُ» **“Whoever buys food; weighed or measured, he must not sell before obtaining its possession”**

It is clear that the Hadiths mention the weight and measure, as well as mentioning in food general. Food is either weighed, measured or counted, because it is sometimes sold by the number as some types of fruit, for example ... Therefore, the requirement of obtaining possession is a condition in all that is related to estimating food, weight, measure or number.

As for other items that are not weighed, measured or counted, obtaining their possessions are not a condition for the sale. This so for the sale of a house, land, animals, and the like, because the house and the land cannot be moved, as for the animal it is due to the text: Bukhari narrated from Ibn Umar that he was riding on a troublesome camel that belonged to Umar «فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ «بِغْنِيهِ فَقَالَ عُمَرُ هُوَ لَكَ فَاشْتَرَاهُ ثُمَّ قَالَ هُوَ لَكَ يَا عَبْدَ اللَّهِ فَاصْنَعْ بِهِ مَا شِئْتَ» **“The Prophet (saw) said: Sell it to me. Umar said: its yours. He (saw) bought it and then he said its yours O Abdullah, you can do what you like with it.”**

In this Hadith the Prophet (saw) bought it from Umar and sold it to Abdullah Bin Umar before obtaining its possession from Umar.

Also, Muslim narrated in his Sahih on the authority of 'Amir, he said that Jabir Bin Abdullah said: «أَنَّهُ كَانَ يَسِيرُ عَلَى جَمَلٍ لَهُ فَذُ أَغْيَا فَأَرَادَ أَنْ يُسَيِّبَهُ قَالَ فَلَحَقَنِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَدَعَا لِي وَضَرَبَهُ فَسَارَ سَيْرًا لَمْ يَسِرْ مِثْلَهُ قَالَ بِغْنِيهِ بِوَفِيَّةٍ فَلَنْتُ لَا ثُمَّ قَالَ بِغْنِيهِ فَبِعْتُهُ بِوَفِيَّةٍ وَاسْتَنْتَيْتُ عَلَيْهِ حُمْلَانَهُ إِلَى أَهْلِي فَلَمَّا بَلَغْتُ أَتَيْتُهُ بِالْجَمَلِ فَتَقَدَّسِي ثَمَنَهُ ثُمَّ رَجَعْتُ فَارْسَلْتُ فِي أَثْرِي فَقَالَ «أَثْرَانِي مَاكَسْتُكَ لِأَخْذِ جَمَلِكَ خُذْ جَمَلَكَ وَدِرَاهِمَكَ فَهُوَ لَكَ» **“that he was travelling on his camel which had grown jaded, and he decided to let it off. When Allah's Messenger (saw) met him and prayed for him and struck it, so it trotted as it had never trotted before. He said: Sell it to me for an 'uqaya. I said: No. He again said: Sell it to me. So I sold it to him for an 'uqaya, but made the stipulation that I should be allowed to ride back to my family. Then when I came to (my place) I took the camel to him and he paid me its price in ready money. I then went back and he sent: (someone) behind me (and as I came) he said: Do you see that I asked you to reduce price for buying your camel. Take your camel and your coins; these are yours.”**

In the Hadith it mentions that the Messenger of Allah (saw) bought Jabir's camel, but the Prophet (saw) did not obtain its possession, and Jabir continued riding the camel until his reached his family ... and then he gave the camel to the Prophet (saw)

Thus, the sale of animals and their like, which is usually not sold by weight or measure or number, does not necessitate obtaining their possession as a condition for the sale.

The opinion that I outweigh is that the carpentry machine that you asked about is like the animal, so you can sell it without obtaining its possession, i.e. not to be transferred from its place ... **In other words, the sale contract of the machine is correct whether the buyer moved it to his home or rented the place where it is and kept in the same place, and the sale permission is correct, May Allah send His Baraka upon your transaction (sale of the Machine) and upon the one who bought it too.**

This is what I outweigh and Allah (swt) knows best , He is Most Wise.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

22 Jumada Al-Awwal 1439 AH

08/02/2018 CE

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

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/768603106670096/?type=3&theater>

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

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/NUj3iUDoJaD>

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

<https://twitter.com/ataabualrashtah/status/963828252602261505>