Combining Contracts Together: An Analysis from Maqasid Perspective[1]

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Abstract

This paper seeks to analyze the objectives of the Shariah prohibition of combining contracts together. This is important as it is really feared that some interpretations of the Shariah texts suggest such prohibition may have unnecessarily and arbitrarily burdened peoples' financial transactions. The paper attempts to reconcile those texts and the general Shariah objectives of Islamic financial law. Following the inductive approach to investigate all relevant Shariah texts, the paper adopts an analytical approach to assess and analyze the said texts in order to come up with the right criteria that would outline the prospectus of an unlawful combination of contracts. The paper concludes that understanding the Shariah objectives behind its rules is critical for their proper understanding and right application. This is to exclude from prohibition matters whose textual apparent meaning may suggest an ungrounded and unreasonable prohibition, such as combining contacts when this does not lead to any Shariah caution, especially that contemporary financial transactions may necessitate such combinations. The research also concludes that combining a loan with the condition that the borrower enters into a financial transaction with the lender does not necessarily lead to Riba since the benefit attaches to the lender without harming the lender by any means lawful. The research deals with an issue that did not receive sufficient attention in terms of study and analysis. Its importance lies in setting the parameters that determine the unlawful combination of contracts from the lawful one, especially in transactions suspected of Riba or Gharar.

Keywords: Multiple Contracts, Combining Contracts, Loan, Shariah Objectives, Gharar, Riba

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Introduction

Using Maqasid as a basis for interpreting unclear Shariah textual rules is vital for formulating a proper understanding of these texts and thus, honoring their related Shariah rules. Among all branches of Fiqh, Islamic financial law admits more Maqasid analysis than other branches. This is because this law is meant to achieve the best public interests of the people by validating that which is good for them and prohibiting that which is harmful to the economy and society in general. If this is the case, then this branch of law admits more evolvement than other laws, in view of the changing circumstances and the advances of life, particularly in this field. These facts should present a valuable premise to reconsider many of the formulated Fiqh opinions about what is acceptable and what is unacceptable across the history of Islamic legislation.

The study starts by presenting some Shariah texts from which the prohibition of combining contracts is derived and then the juristic interpretations of these texts. Using the general Maqasid of the Islamic financial law and the various Fiqh discussions pertaining to the matter, the paper attempts to identify the most reasonable objectives of these texts and to articulate their rules accordingly.

1. Relevant Shariah Texts

There are few Sunna reports (Hadith) prohibiting two sales in one sale or two deals (*safqa*) in a single deal. Abu Huraira stated: *"the Messenger of Allah, peace be upon him, prohibited two sales in one"*.[3] Abu Huraira also narrated from the Prophet (pbuh): *"Whoever makes two sales in one, he takes the lower of the two [prices], or it is riba"*.[4] In another hadith, Ibn Mas'ūd narrates that *"The Messenger of Allah, peace be upon him, prohibited two deals (safqatin) in one"*.[5]

1.1. Soundness of These Sunna Reports

The authenticity of these reports was subject to discussion by scholars of Hadith. According to Al-Tirmithi (1999), the first Hadith narrated by Abu Huraira is regarded as '*hasan sahih*', i.e. it is authentic. As for the second Hadith narrated by Abu Huraira with the alternative wording, al-Shawkani (1419 H.) states in his Nail al-Awtar: "Muhammad ibn 'Amr ibn 'Alqamah is in the chain of narration, and he has been questioned [i.e. about his reliability] by more than one [scholar]". As for the third Hadith, it is narrated by 'Abdul-Rahman Ibn 'Abdallah Ibn Mas'ūd from his father, and his hearing of this Hadith from his father has been questioned. His father passed away when he was only six years old. (Ibn Hajar, 1986). However, Al-Haithami (1414 H.) stated that the

[3] Narrated by: Al-Tirmithi, Hadith No. (1231); Al-Nasa'i, Hadith No. (6228); Ahmad bin Hanbal in his Musnad, Hadith No. (9621).
[4] Narrated by: Abu Dawud, Hadith No. (3461); Al-Bayhaqi, Hadith No. (10651).
[5] Narrated by Ahmad in his Musnad, Hadith No. (3792).

narrators from Ahmed - i.e. in this Hadith - are sound. However, in brief, it can be said that these reports, in their totality, were deemed sound in terms of reliability.

2. The Meaning of Two Sales in One Contract

The scholars have given different interpretations of the meaning of 'two sales in one, the most dominant of which are the following:

a. Imam al-Shāfi'ī's interpretation is that the seller offers two prices for the commodity - one is spot, and the other is deferred (Al-San'ani, 1998). Or the seller offers two items for sale at two different prices, and the two contracting parties depart each other without having agreed on one of them. An example of the first case is when the seller says: "I sell you my house for 50,000 in cash or 60,000 deferred. The second case scenario is when the seller says: "I sell you this book for 100 or this pen for 10". This is also one of the possible interpretations. (Al-San'ani, 1998)

b. When the seller says: "I sell it to you for 100 payable after one year from now and I buy it back from you for 80 on the spot", or he says: "I sell you this for 80 on the spot and I buy it from you for 100 on credit". Ibn al-Qayyim (1415 H.) opted for this interpretation.

c. To sell something deferred on *salam* basis, then when the time of delivery comes, the seller sells the same thing, without delivery, to the same buyer at a higher price. *Salam* refers to a sale of some homogenous good, where the buyer pays the price upfront and takes delivery of the sold goods at a specific time in the future. So an example of this interpretation would be to sell wheat for a year for 1000, and when the time for delivery comes, the buyer says: "sell me the wheat that I owe for 1500 for another year" (i.e., give me more time, and I will profit you more).

d. When one party conditions another contract on the other party, such as a loan or currency exchange or rent. For example, a seller states: "I will sell you this house if you loan me 1000 dinars". This is another interpretation attributed to Imam al-Shāfi'ī. (Al-Shirbini, 2003)

e. The seller says: "I sell this to you for 10 dinars, and you give me its worth in dirhams"; it combines a sale and currency exchange in one contract. Among the jurists who acknowledged the possibility of this interpretation are: Al-Shāfi'i, Abu Hanifa, Ahmed, Ishaq, and Abu Thawr. (Ibn Al-Arabi, 1995)

3. The Jurists' Discussion on Combining Two Sales in One Contract

We have seen that 'two sales in one has many possible meanings. The most likely meaning is the one that mentions two prices - where one is higher than the other, as this comes in line with the completion of the Hadīths pertaining to combining contracts together, as one of these reports goes on to say: "he (the seller) shall have the lesser (*awkasahuma*) of the two prices; otherwise it is *riba*". This statement implies that two sales in one involve two prices. The meaning of '*awkasahuma*' is the lesser of the two [prices]. This supports the first, third and fourth aforementioned interpretations.

The first interpretation can be illustrated by the following example: "I sell you my house for 1000 in cash or 2000 deferred", which the other party accepts, but they depart without agreeing on either price. The majority of jurists prohibit this because the price is unknown in this contract, while not specifying the price may cause dispute and argumentation between both parties in the future.

As for the interpretation based on the second meaning, such as: "I sell to you for 100 payable after one year from now, and I buy it from you for 80 on the spot", this, in fact, refers to *'bay' 'īna'*. It is a sale that is used as a means to reach *riba*. All jurists, including al-Shāfi'īs, prohibit it so long as it is intended to justify loaning with interest. The Mālikis and Hanbalis go further and deem their very contract invalid, regardless of the intention of the contracting parties. (Abozaid, 2004 a)

As for the interpretation of the third meaning (selling the *salam* commodity to the buyer), it is akin to *'īna'*, and it involves *riba of debt*; therefore, the jurists would not differ about its impermissibility and its invalidity.

The fourth and fifth interpretations relate to no *jahāla* or *'īna*, and they give 'two sales in one' a general meaning of conditioning a contract on another contract. However, only very few scholars validated these interpretations and not without doubt. (Abozaid, 2004 b)

Thus, the prohibition, according to the first three interpretations, is understandable. The contract in those scenarios contains a major *gharar* (uncertainty) that cannot be excused, or they are used as means to *riba*. Both excessive uncertainty and *riba* are impermissible, and they invalidate a contract. Hence, it is no surprise that Islam prohibits such contractual formulas as they involve or lead to unlawful ends.

As for deeming combining two contracts in one impermissible in all cases, even when it does not lead to excessive uncertainty or *riba*, it is unreasonable. There is nothing in the Shariah that supports such interpretation. Why prohibit an agreement where one person sells another his house and car in one deal for a detailed price, or where two agree that one sells the other his car while the latter sells the former his farm!

Invalidation of some formulas of this kind, however, may be reasonable, such as "If you sell me your house, then I will have sold you my car", as in this case, the sale of the car is contingent (*mu'allaq*) upon the sale of the house. If he does sell the house, the car would be deemed sold automatically. It then involves *gharar* - the owner of the house may or may not sell it, leaving the car owner uncertain about the car being sold. The Shariah rejects this condition because it contains *gharar* and leads to dispute or harm to one of the two parties if the sale of the house is delayed. As for mutual obligations/conditions in a single transaction, such as if the first party sells his house and factory to the second party while the second sells his company to the first, there is nothing that suggests it is prohibited as long as both parties consent and each contract is effected independently of the other. The prohibition of this type of transaction without it leading to any

harm is only triggered by the mere stopping at the outward wording of the texts that prevents joining two contracts in one. However, this generalization is not well-grounded, and it leads to a position that is unreasonable, as mentioned.

As a matter of fact, the position held by the majority of jurists that places a general prohibition on combining contracts is based upon considerations that may not be relevant in the present day. These considerations can be summarized as:

Going beyond the contract's boundaries: conditioning a contract in another contract amounts to conditioning an additional benefit to one party, which is not part of the sale contract per se. (Al-Kasani, 1982)

- The invalidity of the price: in a statement like "I sell you my house for 1000 such that you sell me your car for 500", the seller, according to al-Shāfi'ī, has made the price of the house 1000 plus the very second contract. However, since stipulating the second contract is taken as invalid (two sales in one), then part of the price in the first sale contract becomes invalid, which invalidates the first contract too. (Al-Shirbini, 2003)
- Instability of the contract: a contract that depends on another contract that may or may not be executed or does not achieve stability of ownership (Al-San'ani, 1998).
- The probability of dispute and argumentation. Al-Ghazali states: "connecting a condition to a sale leaves it open to disagreement between the parties, making it invalid" (Al-Shirbini, 2003).

This is the summary of the reasons and considerations the jurists gave for the prohibition of combining contracts where *riba* or *gharar* is not evident (like they are in the first three interpretations).

However, these reflections can be questioned. As in combining contracts, the benefit does not only accrue to one party but to both parties if they mutually accept the contract. If this were not the case, the other party would not accept the contract. Besides, we cannot submit to the view that the second conditional contract invalidates some of the prices in the first contract, as this opinion seems to be lacking proper justification. As for the issue of the stability of the contract, it should no longer be relevant if the contracts run simultaneously and the custom ('urf) ensures the absence of argumentation and disputes.

Moreover, the Hanafis recognize the custom's role in rectifying contracts that are invalidated by conditions being placed in them. Al-Kasani (1982) states: *"Among them [i.e. among the conditions that invalidate sale] a condition that is not implied in the contract, that gives a benefit to the seller or the buyer… and is not normal in the transactions between people*[6]*, such as if he sells a house ... on the condition*

[6] As an example of this is sale at the market price; it includes uncertainty since the market price may not be known at the time of sale, but yet it can be validated if such a sale does not lead to dispute between the contracting parties. For more details, see Al-Saliḥ, Firas Aḥmad, "Al-Bay' bi Si'r al-Souq fi al-Fiqh al-Islami",

that the buyer gives him a present, or marries his daughter to him, or sells his something... the sale in all these cases in void". Hence, the Hanafis hold that custom, i.e. what is common among people, has the power to validate contracts deemed originally invalid due to some conditions. Since the custom and the nature of contemporary financial contracts nowadays necessitate combining contracts and making them conditional on each other, then they could be accepted, based on the position of the Hanafis, as long as the contact is void of any other reason for the prohibition. This is of course circumscribed with the contract being void of any direct Shariah prohibition like *riba*.

Besides, the Malikis and the recent Hanbalis scholars hold that there is no issue in combining contracts as long as this does not lead to a prohibited outcome. Otherwise, it should remain in its original state of permissibility. The Maliki jurist, Ibn al-Arabi (1995) states: *"If he says: I sell you my slave for 1000 and in return, you sell me your house for 1000, this is permissible ... If he sells him his slave for a known price on condition that the other sells him his for a known price, Abu Hanīfa says that such a sale is impermissible, but it should be permissible because everyone has agreed to sell his slave for a known price, so why should it be impermissible!"*.

Additionally, Ibn Taymiyah (n.d.), from the Hanbali school, states: *"It is claimed that if someone says, I sell you my shirt for 100, and you sell me yours for 100… then this is similar to nikah al-shighār! What is the evidence of its invalidity?! It is simply as if you said I rent you my house for 100 and you rent me yours for 100 ... Its prohibition requires a textual proof, or consensus of scholars so that an analogy can be made from it"*. *Nikah al-shighār* is a marriage contract agreement between two guardians to drop dowries in exchange, such as when a father marries off his daughter to someone's son if the latter marries his daughter to the former's son, dropping the dowries in both marriages, which is unlawful.

4. Combining a Sale With a Loan (Salaf)

In addition to the *Hadiths* about combining two contracts in one, there are also Shariah texts that specifically prohibit combining sale (*bay'*) with '*salaf*', where *salaf* refers to a loan (*qard*). As for *salaf* technical definition, it may refer to one of two things: either a loan or *salam*. *Salam* is known as a deferred sale with a spot payment. However, the intended meaning of *salaf* when it is combined with a sale is the first meaning - a loan (Abozaid, 2004 a).

The prohibition of combining a sale with *salaf* is found in the *Hadith "The Messenger of Allah, peace be upon him, said: "Salaf with the sale is impermissible, or two conditions in a sale, or gaining from the sale of something without or before bearing its liability, or selling what you do not have"*.[7]

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[7] Abu Dawud in his Sunan, Hadith No. 3504; Al-Temithi in his Sunan, Hadith No. 1234; Al-Nasai' in his Sunan, Hadith No. 4611, Ahmad in his Musnad, Hadith No. 6683.

5. The Reason for the Prohibition of Salaf (Loan) And Sale in One Transaction

The most obvious reason for this prohibition is that the combination of sale and loan can be used as a means to attain *riba* by the lender at the expense of the borrower. For example, a lender could lend a specific sum of money on the condition that the borrower sells him an item, say his car, for a specific amount that aligns with the lender's interest. He may state: "I loan you 1000, and you sell me your car for 2000", while the market price of the car is more than 2000, say 2500. Alternatively, the lender could place a condition on the borrower that the latter buys an item from him for a price that is higher than its market price. This can occur in all exchange contracts, whereby the lender sets the price of one of the exchange values in his favor in return for giving the loan. For example, lending to a person on the condition that he can rent from him for a lower rental price than the market rate [if he is the lessee], or leasing to him for a higher rental price than the market rate [if he is the lessor]. Similarly, in currency exchange, for example, the lender could say: "I lend you 1000 on the condition that you exchange your 100 dirhams for 100 riyals from me", even though 1 dirham is worth 1.5 riyals. Hence, the condition set by the lender for the exchange rate of the currency exchange is made to align with his interest.

The jurists agree that all of these scenarios and formulas are prohibited, as they are a means to circumvent the prohibition of *riba* of loans. However, even when there is no increase or decrease in price because of the loan, the jurists still prohibit it. However, their reasoning here differs. Some of the jurists prohibit it based on the reasoning that *salaf* with the sale is a condition that is not supposed to be in the sale contract, and the basis of its conditioning is to achieve some possible [extra] benefit for one of the contracting parties, as discussed earlier. Some other jurists stopped at the literal textual prohibition without attempting to rationalize it, stating that it is prohibited merely because it is combining two contracts in one. This position is adopted by the Hanbalis. (Al-Merghinani, 1980; Ibn Qudamah, 1404 H.)

However, other jurists, such as Al-Shāfi'ī, gave a different reason for the prohibition: the uncertainty of the price (*gharar jahāla*); conditioning a loan in a sale contract leads to an unknown price because the benefit accrued from the loan is unknown. This is because to Al-Shāfi'ī, the lender can request his debt whenever he likes, and the seller would not want to sell at that price except if it is conditioned with a loan. Hence, the benefit of the loan is contained within the price of the sale, which is uncertain since the debt can be demanded by the lender at any time, and an uncertain price makes the sale invalid, hence the prohibition. (Al-Shafi'i, 1973)

To clarify further, Imam Al-Shāfi'ī viewed that the seller would not be pleased to sell a commodity except in return for a price that is made up of a certain amount plus the very loan that the buyer provides i.e. the economic benefit of that loan. Hence, he makes the price of the sale item a total of both those two things. As the period of the loan is not binding, there is uncertainty (*jahāla*) in this price, which invalidates the sale contract.

Imam Al-Shafi'i states in *Al-Umm*: "Sale and *salaf* that are prohibited are to say: "I sell you this for this much and in return you loan me this amount; the ruling of *salaf* is that it is demandable at any time *(hall)* so the sale occurs with a known and an unknown price, and sale is not permitted unless its price is fully known". (Al-Shafi'i, 1973)

Hence, the reason for Al-Shafi'i's prohibition is the uncertainty of the price, not the formality of combining two contracts in one. This stand of Al-Shafi'i is particularly important as he, unlike the Hanafis and the Hanbalis, does not stop at the outward literal reading of the text and rules it as prohibited. Al-Shafi'i goes beyond the [textual] formality by reasoning that the prohibition is not related to the formality, so he sets the ground for reasoning such prohibition beyond the formalities of the texts.

In fact, the above discussions, in general, show that the prohibition of combining sale and *salaf* has a Shari'ah objective, which is to prevent circumventing the prohibition on *riba* by increasing (or decreasing) the price of the sale, and not simply due to combining contracts. However, some jurists did not feel comfortable with this position, as they justified the prohibition by *riba* whenever this was possible, but when not possible, as in the second hypothetical case where there is no suspicion of *riba*, they insisted upon the outward prohibition and ruled accordingly. This shows an inconsistency in the understanding of the objective behind the prohibition of joining contracts as well as in the validity of considering the formality of joining contracts as a reason for the prohibition.

It is also notable in this context that the Shafi'is ruled that women's associations (i.e., when a group of women agree to exchange loans periodically and rotate them according to some particular order) are permissible, even though they involve an exchange of conditional loans (Qalyubi and Umairah, 1995). This shows that the outward formality of the contract is not considered here either; if it was considered, they would not have permitted them as they contained a contract conditioned in another contract (mutual conditional loans).

Thus, joining a sale with *salaf* may lead to *riba* in some cases but not always. The difference of opinions amongst jurists is evidence that the prohibition is not intended for its own sake, i.e. due to the formality of combining contracts per se, but due to what it may result in.

6. Summary of the Discussion

To summarize the above discussions, there is no reason to prohibit combining contracts or adding conditions to contracts if it does not lead to a Shariah prohibition, such as a circumvention (*hīla*) to *riba*, as we see in *ʾīna* sale or in combining a sale with *salaf* with the price determined to suit the interest of the lender. Another example is when combining contracts leads to significant uncertainty (*jahāla*), as in the case of presenting commodities with two prices without agreeing on a price while contracting. Additionally, when the contract is conditioned on something that may

or may not occur and could cause harm to one of the two contracting parties, whereby the seller does not know whether he has sold, and the buyer does not know whether he has bought.

However, as for agreements that contain different contracts or different conditions, there is nothing that warrants them being prohibited. Such as agreements that guarantee respective obligations, whereby if one party fails on his obligations, the obligations of the other party are nullified or suspended until the first party can commit to his obligations. None of these contracts and conditions should be deemed prohibited if there are clear and explicit agreements that determine the obligations of both parties and they do not involve uncertainty *gharar* that would usually lead to argumentation and dissonance between the contracting parties.

Undoubtedly, contracts today, especially those that occur between companies, contain numerous partial contracts, detailed mutual conditions and obligations that overcome *gharar* and *jahāla*. There is nothing in the principles or the objectives of the Shariah that would necessitate a prohibition simply because there happens to be more than one contract or condition in the transaction, while if we adopt the outward meaning of the relevant Shariah texts, we should deem them invalid.

In fact, a careful study of *fiqh al-Mu'amalat* (Islamic law of financial transactions) reveals that Shariah places certain formal conditions at times to guarantee the protection of the essence of a contract, such that it is possible to excuse those formalities if it is ensured that the essence remains protected. The jurists used to follow this approach, for example, when they permit *ta'ātī* sale (sale by action; without exchanging offer (*ījab*) and acceptance (*qabūl*) between the two contracting parties, like by paying the price and delivering the commodity silently). This implies the formality of the contract is not important. It is true that the exchange of offer and acceptance is a condition for the formulation of sale, but it is meant only to ensure mutual consent. Thus, if the mutual consent of the contracting parties is ensured by other means, such as by action, then this formality requirement can be dropped. Besides, the jurists have permitted *fudūli* sale (i.e., one who interferes in others' businesses without authorization, like by selling their items without authorization), even though the seller in this sale does not own what he sells or has not been given the mandate to do so. However, because the consent of the commodity owner [whose absence is the possible reason for originally deeming such a sale invalid] can come after the sale, if he wishes to approve the sale later, they deemed this contract valid in essence, although Shariah texts invalidate the sale of what one does not own (Ibn Rushd, 2014).

7. A Modern Practical Application: Merchants Lending Farmers on Condition of Sale

Based on the conclusion the paper has reached above, certain modern practices can be validated despite their involvement in the two transactions in one, such as the following:

It is a common practice nowadays, especially in agricultural societies, to find a trader lending a farmer an amount of money to help him with his farming activities on the condition that the

farmer will put his crops on sale with the trader or sell his crops to him at the market price. The benefit to the trader will be guaranteed a good for his trade, especially if the type of the crop is of a certain quality that is rare or desirable in the market. This practice would be deemed unlawful if we were to prohibit any transaction that contains two contracts, or more specifically, a loan and a sale together. It would also be deemed impermissible if we adopt at face value the generality of this Fiqh maxim "any loan which results in a benefit is considered usury". However, this maxim has few exceptions that defeat its generality and can be subjected to restrictions (Abozaid, 2018). However, the rationale for such a prohibition is that the agreed selling price may favor the lender as discussed earlier, such as the price is lower than the market price where the lender is the buyer, or higher than the market price when the lender is the seller. However, if we submit to the view this paper advocates, i.e. not to prohibit a transaction merely because it involves both a sale and a loan together, then there is no reason to invalidate such an agreement if no suspicion of riba is suspected. However, in order to make sure that riba or exploitation will not take place, the following conditions must be met in this transaction:

a. The selling of the crop by the farmer to the trader should not lead to an increase in the cost for the farmer, nor should it deny him the chance of making more profit by selling it to others.

b. The two parties must not decide on the price for the crop before its harvest, and it has to be the market price then. This is because the price of the crop may appreciate from the day of lending to the day of harvest, thus denying the farmer the chance of making more profit.

c. The method of price payment (cash-credit) must not be affected by the loan (i.e. with respect to the method of price payment; the farmer should be treated by the lending trader equally to a farmer who did not receive a loan from him- the trader cannot be granted the privilege of a credit sale simply because the lent the farmer earlier).

With these three conditions, riba and exploitation will not take place, and there would be no reason for invalidating such a transaction except for the fact that the transaction contains a loan with a sale, according to those who believe that the mere combination of loan and sale triggers a Shariah concern. However, we have concluded earlier that the invalidity of such a combination should be restricted to pricing the other contract besides a loan in a way that favors the lender or caters for the loan (i.e. to charge interest indirectly through the price in the sale contract). As for the benefit that the trader may derive from the loan in this transaction, it is not, in fact, at the expense of the borrower because no harm would befall the borrower by selling his crop to this trader or another trader as long as both traders would purchase the commodity for the same price.

Conclusion

It becomes clear now from the aforementioned discussion that combining contracts is not prohibited for its own sake, but when it is done in a way that produces an outcome that is prohibited, such as *riba*, or excessive *gharar* (*jahāla*). The aim of the prohibition is not the outer

form of the contract but that which it may lead to in terms of harms and evils. When these harms and evils are not apparent, the original ruling of permissibility should prevail.

Custom could also develop and lead to harms being prevented, although they may have occurred previously, such as ones related to the uncertainty of contracts or dispute between contracting parties. Both are matters of custom; the development of custom could guarantee the stability of contracts and their implementation, and it may remove causes of argumentation and animosity. Hence, taking a general stand on the prohibition of combining contracts is unnecessary and unjustified.

The paper also produces the following results:

- In Fiqh literature, there is inconsistency in the understanding of the objective behind the prohibition of joining contracts and in the validity of considering the formality of joining contracts as a reason for the prohibition.
- The most obvious reason for prohibiting the combination of sale and loan in one transaction is that such combination may be used as a means to attain riba when the lender benefits from his loan at the expense of the borrower.
- The position held by the majority of jurists that places a general prohibition on combining contracts is based upon considerations that may not be relevant at the present day.
- There is no reason to prohibit combining contracts or adding conditions to contracts if it does not lead to an established and known Shariah prohibition.
- When Shariah places certain formal conditions, this is only to guarantee the protection of the essence of a contract, such that it is possible to excuse those formalities if one is sure that the essence remains protected.
- The Shariah rules that prohibit something only in view of its possible harms (muharram lighairhi; tahreem tharai'i) may change if the change in people's custom and life guarantee the absence of these harms.

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