CHAPTER TEN

‘ARBŪN RISK MANAGEMENT AND OPTIONS

‘Arbūn refers to a sale in which the buyer deposits earnest money with the seller as part payment of the price in advance, but agrees that if he fails to ratify the contract, he will forfeit the deposit money, which the seller can keep.’ It is also defined as “a transaction whereby the buyer pays only a small part of the price of a commodity (for instance two dirhams), on the understanding that the seller will retain this amount if the sale is not finally concluded due to withdrawal of the buyer”.

However, Imām Mālik gives a somewhat more general definition of ‘arbūn. It holds when a person buys or rents an animal and says to the seller or the owner of the animal, “I will give you one dinār or one dirham or more or less and if I ratify the sale or the rent contract, the amount I gave will be part of the total price. And if I cancel the deal, then what I gave will be for you without any exchange.” The above definition of Imam Mālik shows that ‘arbūn is not only possible in a sale contract but also in a rent or leasing contract. This will widen the use of ‘arbūn as we will see later. However, there is disagreement among the classical schools of Islamic law about the legality of ‘arbūn.

The Majority held that it is an invalid contract and considered it to be akin to misappropriating the property of others. Moreover, it involves an unknown option or condition, which amounts to gharar. The Ḥanbalī school, on the other hand, considers it as a legal contract. ʿUmar, the second caliph, and his son ʿAbd Allāh Ibn ʿUmar held a similar position. Among the followers certain prominent figures including Mujāhid, Saʿīd Ibn al-Musayyib, Ibn Sīrin, Nāfiʿ Ibn al-Ḥārith, and Zaid

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1 Kamali, Islamic Commercial Law an Analysis of Options and Futures, p. 365.
Ibn 'Aslam also held it to be lawful. The source of this difference lies in the authenticity of two *ḥadīth* reported on the issue, which seem to contradict each other.

Thus, the majority relied on a *ḥadīth* reported by Imām Mālik in *al-Muwatta* as well as by Imām Aḥmad, Nasāʾī, Abū Dawūd and Ibn Mājah to the effect that the Prophet (PBUH) prohibited the sale of 'arbūn. However, the *ḥadīth* is considered to be weak (*munqatī*). On the other hand, the Hanbalī School relied on a *ḥadīth* reported by ʿAbd al-Razzāk to the effect that the Prophet was asked about 'arbūn sale and he declared it permissible. But this *ḥadīth* is also declared to be weak (*mursāl*). In addition, the Ḥanbalīs relied on the report of Nāfi’s Ibn al-Ḥārith, the officer of the caliph ʿUmar in Makkah to the effect that he bought from Safwān Ibn Umayyah a prison house for the caliph ʿUmar for four thousand *dirham* on condition that if the caliph approved of it, the deal would be final, otherwise Safwān would be given four hundred *dirhams*.

Further evidence could be invoked in support of the legality of bayʿ al-'arbūn such as the *ḥadīth*: “Muslims are bound by their stipulations unless it be a stipulation which declares unlawful what is permissible or permits what is unlawful”.

Also it is reported in al-Bukhārī and narrated by Ibn Sirīn that “a man said to a hirer of animals, ʿprepare your travelling animals and if I do not go with you on such and such a day, I shall pay you a hundred *dirhams*. But he did not go on that day. Shuraiḥ said: If anyone puts a condition on himself of his own free will without being under duress, he has to abide by it. Also it is narrated by Ayyūb from Ibn Sirīn that “A man sold food, and the buyer told the seller that if he did not come to him on Wednesday, his deal would be cancelled, and he did not turn up on that day”. Shuraiḥ said to the buyer “You have broken your promise” and gave the verdict against him. Ibn Ḥajar said, Sayid Ibn Mansūr has completed this transmission by the chain of Sufyān from...

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