

The Legitimate Alternative to Usurious Loans in Islamic Banks (Joint Speculation as a Model)

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Abstract

In light of the accelerating changes and emerging calamities in the world, people are in need of financial transactions based on equality and psychological security far from usury and exploitation of their circumstances and needs, and this can only be achieved by following the law of God Almighty and diligence in the texts The Book of God, the Sunnah of His Messenger, and consensus to work on finding legitimate alternatives to usurious transactions, and to produce new financing formulas that simulate Islamic products; To prevent damage to money and protect it from loss and damage. The problem of the study revolves around the statement of the legal alternative to the usurious loan transaction in the usurious banks by financing the funds through the joint speculation transaction in the Islamic banks. The researcher followed the applied analytical approach, which is based on explaining the meaning of the legal alternative in financial transactions, its importance and legitimacy, and an explanation of its characteristics and the legal adaptation of it. Then employing that in mentioning a practical application of joint speculation treatment in Islamic banks.

Keywords: Alternative, Legitimate, Loans, Usurious, Joint Speculation

Introduction

Praise be to God who created man, taught him the statement, and established the argument and proof upon him, and prayers and peace be upon the best of mankind, our beloved Muhammad and upon his family and companions altogether, and after: Today, the world is in dire need of a financial system based on equality, security, and psychological stability, far from usury and exploitation of people's needs and circumstances. To achieve this, we must follow Islamic law and make use of the efforts made by scholars and jurists in understanding the texts of the Holy Qur'an and the Sunnah of the Prophet – and rely on ijihad, consensus and agreed Sharia ruling. We must be able to face the accelerating challenges and new crises considering the global changes.

The facilities provided by usurious banks under the name of consumer loans were behind the global financial crisis in 2008. These facilities led to an increase in consumption rates in exchange for a decline in global production rates. Accordingly, forums, seminars, and

jurisprudence academies in various parts of the world launched calls for the implementation of banking alternatives proposed by Islamic banks, as these alternatives represent one of the options least affected by the repercussions of the crisis. In response to this, Islamic banks worked to develop financing products that mimic those available in conventional banks, such as mutual speculation, and this is the focus of the study presented in this research.

The Significance of the Study

The importance of the study lies in the following points

- 1- Keeping abreast of developments and changes that affect economic transformations and the need to open to the principles of Islamic economics, especially regarding financial transactions in Islamic banks.
- 2- Preventing damage to funds and preserving individuals' funds from tampering and loss.
- 3- Work to find legitimate alternatives to usurious financial transactions by examining the methods and trends of the jurists.

Literature Review

By looking at the previous studies, the researcher came to the following conclusions:

1- The book "Theory of Islamic Alternatives to Banking Transactions - A Critical Fundamental Study (Al-Kathiri, 2015) in two doors the first: An original study of the theory of Islamic alternatives to banking transactions. And the second: A critical study of Islamic alternatives to banking transactions.

In his identification of the place of error in the manufacture of the Islamic alternative, he mentioned that: the reliance of Islamic banks in mobilizing funds on the method of speculation, and in employing them on the method of debt by selling installments, Murabaha, peace, and istisna'a, making them mediate between financial and usurious financing, and this is what concerns us in The study in our hands, the researcher talked about speculation briefly, and this research shows the method of joint speculation carried out by Islamic banks and the difference between it and bilateral speculation.

2- The book "The Approach of Legal Alternatives in Contemporary Ijtihad – Financial Transactions as a Model" (Al-Yamen, 2021). The researcher wrote about the concept of alternatives, their methodology, divisions, legitimacy, controls, and methods of making alternatives. He touched on examples of these alternatives, but he did not mention the method of speculation. This research meets with him in defining the alternative, its legitimacy, and its importance.

3- Research "The purposes of the provisions of the provisions of financial transactions and their role in finding an alternative to usurious banking transactions" (Hussein, 2009). The researcher wrote in one of his investigations about the wisdom of the legality of speculation in Islam and how it is possible to dispense with usurious loans by creating a unified bank that receives money from its owners and then trades it on behalf of its owners and for its account, and the bank has a known profit as a proposal from it, while this research shows the reality of the speculation process in Islamic banks, which You use it as an alternative to usurious loans.

4- The book "Usury: Its Contemporary Applications and Legal Solutions in Comparison with the Journal of Judicial Rulings and the Jordanian Civil Law" (Abd Halawa, 2014) In his book, the researcher wrote about some legal issues related to usury, and he listed the method of

speculation in Islamic banks and the difference between it and usurious loans without addressing it from the jurisprudential point of view, which we will explain in this research.

The Reason for Choosing the Search

The reason for choosing this study is to identify alternatives to divert people's attention and their dealings from usury and haram to legal dealings as possible, including joint speculation.

The Problem of the Study

The problem of the study revolves around the statement of the legitimate alternative to the transaction of usurious loans in usurious banks by financing funds through joint speculation in Islamic banks.

- What is the definition of a legitimate alternative?
- What is the evidence of the legitimacy of the alternative?
- What are the characteristics of a legitimate alternative?
- How is the speculation transaction in Islamic banks an alternative to the interest-based loan transaction in interest-based banks?

Objectives of the Study

The study achieves several objectives, including:

- Understanding the concept of legal alternative.
- Identify evidence of the legality of the alternative.
- Statement of the characteristics of the legitimate alternative.
- The reality of joint speculation treatment in Islamic banks as an alternative to interest-based loans in interest-based banks.

Study Approach

As for the approach used in this study, it is the analytical and applied approach, which is based on explaining the meaning of the legal alternative in financial transactions, its importance and legitimacy, an explanation of its characteristics and the legal adaptation of it. Then employing that in mentioning a practical application of joint speculation treatment in Islamic banks.

Study Plan

Study plan: Divided into three topics

The introduction, which included the importance of the study, its objectives, its problem, previous studies, and the research methodology.

The first topic: the semantic framework of the terminology of the study title

The first requirement: defining the legitimate alternative.

The second requirement: the definition of usurious loans

The third requirement: the definition of Islamic banks

The fourth requirement: Defining the concept of joint speculation.

The second topic: the importance of presenting the legal alternative, its legitimacy, its characteristics, and the jurisprudential adaptation of it.

The first requirement: the importance of presenting a legitimate alternative.

The second requirement: evidence of the legitimacy of the legal alternative

The third requirement: the characteristics of the legitimate alternative

The fourth requirement: jurisprudential adaptation of the alternative.

The third topic: the manufacture of the legal alternative through the joint speculation contract in Islamic banks.

The first requirement: the reality of mutual speculation

The second requirement: Joint speculation in Islamic banks is an alternative to interest-based loans in interest-based banks.

Conclusion

The first topic: the semantic framework of the terminology of the study title

The first requirement: defining the legitimate alternative

In the following, the definition of the legal alternative is presented by explaining each sign separately, and then stating the compound signified as the title signifier of the term.

Section one: definition of the alternative

First: the definition of the alternative in the language

From the allowance, which is the place of the thing going, it is said that this is the replacement of the thing and its substitute, and they say you changed the thing if you changed it even if you did not bring it in exchange (Abu Al-Hussein, 1979). God said: {And when Our clear signs are recited to them, those who do not expect to meet Us say, bring a Qur'an other than this, or change it. It is not for me to change it of my own accord. If I follow nothing but what is revealed to me. Indeed, I fear, if I disobey my Lord, the punishment of a serene day. umrah Yunis, verse (15) Exchanging a thing is changing it, and if it does not replace it, it means changing its form (Al-Fadl, 1993).

It has also been defined as: behind something and replacing it absolutely, whether by removing it and installing another in its place or by changing its image (Al-Sahah, et al., 1999).

Second: Defining the alternative in the terminology.

The advanced jurists - within the limits of what I have seen - did not define the term alternative to an effective weight with its own definition, but most of their uses is the term allowance, which meant for them to establish something in place of something else when it was impossible (Al-Juma'a, 2008). They used to express the allowance in the matter of tayammum as a substitute for ablution, which takes its place when it is lost or when it cannot be used (Al-Ra'ini, 1983).

As for the contemporary jurists, they defined the allowance with many definitions, including: "The allowance: establishing something in place of something and its parts for it in cases other than cases of necessity (Qalaji, et al., 1988). Likewise, "Al-Badal: is the establishment of something in place of something when it is impossible or prevented from doing so" (Al-Barnawi, 2018)

The second section: the definition of legal

First: the definition of legal in the language

From the Sharia is derived from the triple branch, and it is something that opens in an extension in which it is (Ibn Faris, 1979). Likewise, from "sharia": the one who came legally, legally: took the water in his mouth, and the animals began to enter the water, legally and legally, i.e., entered. And the animals of initiation and initiation: I embarked on the water. And the law, the sail, and the legislator: the places from which water descends., and it was

said in the interpretation of the Almighty's saying: For each of you we have made a law and a way ﴿ Surah Al-Maida, part of verse (48). The law is the religion, and the methodology is the way, and it was said: The law and the methodology are all the way, and the path here is the religion (Ibn Manzoor, 1920).

Al-Zamakhshari said: And the Shari'a and the Shari'ah, and Allah, the Most High, prescribed the religion (Al-Soud, 1998)

Second: the definition of legal in terminology.

Ibn Taymiyyah said: "The name of the Shari'ah, the Shari'a, and the Shari'a, for it regulates all that God has ordained in terms of beliefs and actions." (Al-Qasim, 1991)

It was also known as: "What God has legislated for His servants of the rulings that one of the prophets brought, whether they are related to how to work and are called secondary and practical. or to how to believe and are called original and belief." (Dahrouj, 1996).

The third section: Defining the terms of the legitimate alternative and their derivations.

Referring to the books of previous jurists, we did not come across a definition of the term Sharia alternative; As this term is contemporary and has many forms, including: the legal alternative, the jurisprudential alternative, and the Islamic alternative.

While some contemporaries defined this term as follows

- 1- Exchanging the forbidden thing with another good halal thing (Abd al-Hay, 2012).
- 2- Solutions disciplined by Sharia controls, to preserve the essence of Islamic Sharia, which dispenses people from falling into forbidden things, and distracts them from them (Al-Bayanouni, 2008).
- 3- Shari'a disciplined solutions instead of what is not permitted or disliked in order to dye the whole life in an Islamic way, foundation or correction (Al-Barnawi, 2018)
- 4- The motivating values and the dispositions disciplined by Shari'a controls that lead to obtaining the intention of the Lawgiver or a valid purpose for the taxpayer, because it is not possible to obtain it through the original method, or instead of the method that is prohibited by the Shari'a (Al shabah, 2022).

Perhaps the last definition is the most appropriate; Because the rest of the definitions were limited to the alternatives associated with the forbidden and did not include the alternatives associated with the rest of the legal provisions, and this is contrary to the rules of borders and definitions. In addition, the fourth definition contains a restriction that prevents the introduction of alternatives related to a specific aspect of human life, such as economic alternatives, for example. It is related to the economic aspect without the other aspects of human life (Babli, 1989).

The second requirement: the definition of usurious loans

The first section: the definition of the loan.

First: the definition of the loan in the language.

From the article, which means cutting (Al-Zubaidi, 1984). And it is: what you give a person of your money to spend, as if it was something that you cut off from your money, and the loan in trade is from this (Haroun, 2002).

Second: The Definition of the Loan in the Terminology

The jurists defined the loan in many definitions, including

- 1- The Hanafis defined the loan as: what you give of something like me in order to get something like it (Ibn Abdeen, 2000)
- 2- And according to the Malikis, it is the giving of a beneficiary in exchange for a similar amount in the trust for the benefit of the donor only (Al-Dardir, 2010)
- 3- And according to the Shaafa'is, it is the possession of a thing on the condition that it be returned in exchange for it (Al-Sherbiny, 1986)
- 4- And according to the Hanbalis: the payment of money attached to those who benefit from it and return its allowance (Mustafa, 1981).

It is clear from these definitions that the benefit of the loan is exclusive to the borrower without the lender. Therefore, it must be devoid of any interest or benefit accruing to the lender.

It was also defined as: a contract between two parties, one of whom is the lender and the other the borrower, according to which money owned by the lender is paid, provided that the latter returns it or returns a similar amount to the lender at the time and place agreed upon (Al-Ajlouni, 2008)

And the Accounting and Auditing Organization for Financial and Islamic Institutions defined it as: the ownership of money equal to those who need to return the same amount (AAOIFI, 2009)

The Second Section: The Definition of Usury

First: The Definition of Usury in the Language

usury in language is the increase, God Almighty said: Surat Al-Hajj, some of the verse (5).

And the Almighty said: {For a nation to be more distant than a nation} Surah An-Nahl, some of the verse (92). That is, more in number, it is said: ((So-and-so raised more than so-and-so, if he increased it)).

The origin of usury is the increase, either in the same thing, or in exchange for it as one dirham for two dirhams, and usury is applied to every forbidden sale as well (Al-Nawawi, 1972).

Second: Shari'a Definition of Usury

Jurists have defined usury with many definitions, including

- 1- The Hanafi difference in the definition between the two types of usury, usury credit and interest usury. They defined usury of credit as: the preference of an eye of money over the legal criterion, which is the measure or weight when the sex is united. As for the usury of the women or women, it is the preference of solutions over the term and the preference of the eye over debt in those who are measured or weighed when there is a difference in sex, or in those who are not measured or weighed (Al-Samarqandi, 1985).
- 2- And the Malikis defined it: It is a usurious sale for more than its kind for a sake (Al-Baqai, 1994).
- 3- And the Shafi'is defined it: It is a contract for a specific consideration whose symmetry is not known in the criterion of Sharia in the case of the contract, or with the delay of the two considerations or one of them.
- 4- And the Hanbalis defined it: it is the increase in something specific (Al-Mushiqih, et al., 2017)
- 5- **And Ibn Uthaymeen - may God have mercy on him - knew him: he**An increase in specific things, and an increase in debt against the term, absolutely.

It becomes clear to the researcher that the last definition is more general and is the most appropriate here. Because there is no restriction in it, but usury is defined as the increase in debt at all.

The third section: the definition of usurious loans

An interest-based loan is defined as: a loan in which the lender stipulates something in addition to what he lent (Al-Bayan, 2004).

The third requirement: the definition of Islamic banks

The first section: the definition of banks

First: Defining banks in language.

Banks is the plural of bank, and it is taken from the word exchange, and (exchange) language: Most of its section indicates the return of the thing. And from that:

I sent the people away, and they went away, and when you take them back, they go back (Al-Matarzi, 2007).

- Al-Khalil said: Exchange is the superiority of a dirham over a dirham in terms of value. And the meaning of exchange for us is that something is exchanged for something, as if the dinar was exchanged for dirhams, that is, returned to it, if it was taken in exchange.
- Al-Khalil said: From him the name Al-Sayrafi was derived. to transfer it to one another. He said: And the exchange of dirhams in all sales: spending them (Al-Matarzi, 2007). What concerns us from all of this is this last meaning, which is that the exchange means the exchange of dirhams.

Second: Definition of Morphology Idiomatically

The jurists differed in defining the morphology according to the difference in their viewpoints in each doctrine, as follows

A- The Hanafis define morphology with many definitions, including:

- 1- It is the exchange of prices for one another, either gold, or silver for silver, or one of the sexes with its owner, singly or in combination with others (Al-Jundi, 2004).
- 2- Or it is selling some prices for some
- 3- Or it is a sale if each of its considerations is of the same price

B- And for the Malikites: It is the sale of cash for cash of a different kind

C - And according to the Shaafa'is: It is the sale of cash for cash of its kind and others

8- And according to the Hanbalis: It is selling the prices one by one.

After this, it becomes clear that what is meant by exchange in all these definitions is to sell one price for another, such as selling gold for gold, silver for silver, gold for silver, or silver for gold. The place where money is sold is called a bank, and the bank is called a bank.

Third: The definition of the bank according to economists

Economists have defined the bank in different definitions, including the following

- 1- It is an institution whose normal occupation is to receive from the masses money, in the form of deposits or otherwise, which it uses for its own account in discounting, lending or other financial operations (Al-Khouli, 1995).

2- It is a money trading and lending institution that uses the capital deposited with it in lending, exchange, and various financial operations, in exchange for interest (Razzouk, 1985).

3- It is an institution that regularly and permanently receives public funds, whether in the form of deposits or any other form, and uses these funds in lending, credit, financial, investment and economic operations, for the account of the bank, and the bank bears full responsibility for this use of the funds of depositors in investments and is subject to supervision central bank (Abdel Kafi, 2005).

From the previous definitions, it becomes clear to us that economists defined the bank with definitions that all agree that it deals with money and uses it in the form of deposits, lending, credit, or other financial operations in exchange for interest.

Section Two: Definition of an Islamic Bank

The researchers defined the Islamic bank in many definitions, including

1- It is a banking financial institution to collect funds and employ them within the scope of Islamic law, in a way that serves the building of an Islamic society of integration, achieving fair distribution, and placing money in the Islamic path (Babili, 1989).

2- It is a banking institution that adheres in all its transactions and investment activity and manages all its business according to Islamic law and its purposes, as well as the goals of the Islamic community internally and externally (Irsheed, 2001)

3- It is every institution that engages in banking business, with a commitment not to deal with usurious interest, whether it be a give or take (Al-Abadi, 1982).

4- It is a financial institution that carries out banking and other transactions in the light of the provisions of Islamic law with the aim of preserving Islamic values and morals and achieving the maximum social and economic return to achieve the good and decent life of the Islamic nation (Al-Kafraw, 2008).

From the foregoing, it becomes clear to us that there is agreement between these multiple definitions that they are based on the basis of Islamic law and its principles, and that it does not deal with interest (usury), and in the way that serves the individual and society through its works and activities related to the collection and employment of funds, and the individual is represented by the contributor to it, and dealing with it. This confirms the linkage of the work of these banks with Islamic law, its provisions and purposes, and in a manner that leads to the service of society, its individuals and the economy.

Accordingly, an Islamic bank can be defined as a banking financial institution that provides banking and other services in accordance with the provisions and principles of Islamic law.

The fourth requirement: Defining the concept of joint speculation

The first section: the definition of speculation.

First: the definition of speculation in the language.

speculation in language of reactance of beating and she A name derived from hitting the ground, which is walking in the ground (Attar, 1987). As the Almighty says: And when you strike the earth, there is no sin on you if you shorten your prayers if you fear that they will seduce you. Those who disbelieve ﴿ Surat Al-Nisa is part of verse (101). Or travel for the purpose of trade and seeking livelihood (Attar, 1987). As he says: ﴿ And others trek through the land, seeking God's bounty, and others fight in the cause of God. ﴿ Surah Al-Muzzammil is part of verse (20). It is called Muqadarah, and Qiyarat the language Who loaned something if it cut it off, and the reason for naming this contract by this name; In this contract, the owner of the money deducts a piece from his money and hands it over to the worker, and

a piece of the profit is deducted for him, just as the worker also deducts a piece of the profit of his work. In general, the term *mudaraba* is the language of the people of Iraq - which is the use of the Hanafis and Hanbalis. As for the people of Hijaz - who are the Malikis and Shafi'is - they express this contract by means of *qards*.

Second: the definition of speculation in the terminology of the jurists.

Referring to the old jurisprudential blogs, we find that there are many definitions of speculation among the jurists of the different schools of thought. Among these definitions are:

1- A company contract in profit with money on one side and work on the other

B-And for the owners: For a man to give another man money on the condition that he trades with it for a known part that the worker takes from the profit of the money, i.e., part of what they agree upon is a third, a quarter, or a half (Al-Hafid, 2004).

4- And according to the Shafi'is: To pay him money to trade in it and the profit is shared Al-Sherbiny (1986).

5- And according to the Hanbalis: For a man to give his money to another to trade for him with it, on the condition that the profit obtained between them is according to what they stipulated.

These are some of the definitions of the jurists of the schools and it is clear from them that they almost agree among themselves to look at this company as a company that is based on combining capabilities and savings from two or more parties and aims to achieve a specific profit as a result of that mixing, and we may find in it a slight difference about some of the conditions that some of them required to be available in This company to be considered, they went to include their tariffs in those terms. As for some of the others, they exceeded those conditions when defining, either to dispense with, or a desire to single them out in an independent study (Qutb, 2001).

The second section: the definition of joint speculation.

It is not defined in the old jurisprudential blogs, but it is one of the new forms of speculation that Islamic banks apply, as it is the contractual formula developed for the individual or bilateral speculation company, and it is based on the Islamic bank offering - as a speculator - to the owners of the funds to invest their savings for them, just as the bank offers As the owner of the money or an agent on behalf of the owners of the money – the owners of investment projects must invest that money, provided that the profits are distributed according to the agreement between the three parties, and the loss falls on the owner of the money (Shabeer, 1996).

And the Islamic Fiqh Academy, in its thirteenth session held in Kuwait in 1422 AH - 2001 AD, defined joint speculation: It is speculation in which many investors entrust - together or successively - to a natural or legal person, to invest their money, and he is often called the investment in what he sees as achieving the interest, And he may be restricted to a special type of investment, with his express or implied permission to mix their money with one another, or with his own, or sometimes agreeing to withdraw their money in whole or in part when needed under certain conditions.

The second topic: the importance of presenting the legal alternative, its legitimacy, its characteristics, and the jurisprudential adaptation of it.

The first requirement: the importance of presenting a legitimate alternative.

The legal alternative is of great importance in all areas of human life in general, and in the field of financial transactions in particular, which made researchers and scholars pay attention to it, as its importance is highlighted in the following: (Al-Qahtani, 2010).

- 1- A statement of the validity of Islamic law for every time and place; It is the eternal law that God Almighty chose for His servants, and its eternity requires that it be sufficient to provide effective solutions to all the problems and dilemmas that the nation is going through. God has prescribed diligence by deriving legal rulings for all emerging calamities at times, and by finding legal alternatives that meet people's needs and spare them from falling into taboos at other times.
- 2- Confronting the repercussions of the dominance of Western civilization over the rest of civilizations in all areas of life, especially with the dazzle of the people of the nation with what that civilization presents of glamorous slogans that carry poisons that are not visible to the naked eye.
- 3- Finding alternatives to the Western regimes left by colonialism on the aspects of life in Islamic countries that fulfill the aspirations of their peoples.
- 4- Contribute to the renewal of jurisprudence and the search for alternative provisions that impose on jurists and experts' authorship in emerging issues, issues and issues that did not exist in Islamic jurisprudence codes before.
- 5- Offering legal alternatives by the mujtahids of the nation leads to the strength of the nation and works for its progress and development.
- 6- Helping people to fear God and avoid committing sins.
- 7- Meeting the financing and investment needs of individuals to help them obey God and strengthen their economic positions.
- 8- Achieving the purposes of Islamic law by preserving money, religion and life.
- 9- Harnessing human, economic and material resources, spreading goodness and development in the Muslim community.
- 10- Attracting those with financial savings who do not wish to deal with usurious banks and invest their money in financing and investment alternatives in Islamic banks.

The second requirement: evidence of the legitimacy of the legal alternative

In its legality, the legal alternative approach is based on various evidence from the Holy Qur'an, the Prophet's Sunnah, the effects, the legal purposes, and the general rules, including:

First: The Holy Quran:

Among the most important Qur'anic verses indicating the legitimacy of finding a legitimate alternative in various fields in general, and in the field of financial transactions in particular

- 1- God Almighty tells you who believe, say, ﴿ Surah Al-Baqarah, part of verse 104. The point of evidence from the verse: God Almighty forbade Muslims to call out to the Prophet, may God's prayers and peace be upon him, in the forbidden formula in their saying: take care of us and guide them to the legitimate formula, which is their saying. Look at us and this is the reality of the alternative, so their saying "Ra'ana" means "Ra'ana", meaning that we have heard you, and this word is considered ugly in the language of the Jews, as it was said in its meaning: "Listen, not heard." (Al-Nimr, 1989).
- 2- God Almighty says: {And Allah has permitted trading and forbidden usury} Surah Al-Baqarah, part of verse 275. And the evidence from the verse: When God Almighty forbade

usury and prevented His servants from dealing with it, He compensated them with an alternative method that takes its place and protects the needy and the distressed from falling prey to the greed and greed of the usurer on the one hand, and the usury's ease in engaging in usury on the other hand. Since the interest of the world is not regulated except by trade, industry and architecture (Al-Tunisi et al., 1984)

- 3- Almighty saying: And if you fear that you will not be just with orphans, then marry as many women as you like, two, three and four. You fear that you will not be just. Haddah or what you have the nearest to you is that you do not depend. ﴿ Surat Al-Nisa, verse 3. And the evidence from the verse: God Almighty guided His servants to the most appropriate alternative that saves them from falling into the oppression of orphan girls, which is the marriage of other women to the age of four, and He guided them to what they can get rid of from injustice and unfairness in the lack of equality between them, to suffice with one or the possession of the right (Muhammad, 2000)
- 4- Almighty saying: And take in your hand a tooth, strike with it, and do not break your oath. Verily, we found him patient. The best servant. He is obedient. ﴿ Surah S, verse 44. The point of evidence: What came in her interpretation of the story of Job, peace be upon him, that he was in his illness and harm and he got angry with his wife in some matters, so he swore that because God healed him, he would beat her a hundred lashes, so when God healed him and she was a righteous woman who was benevolent to him, then he gave him a fatwa to hit her with a piece of juice containing a hundred shamrocks, the blow of one. in his right (Saadi, 2001)

Second: The Prophetic Sunnah

There have been many hadiths and evidence that prove the importance of finding a legitimate alternative that pleases God and His Messenger and urges to leave the corrupt behaviors and natures inherited, the most important of which are

1- On the authority of Anas bin Malik - may God be pleased with him, he said: *(The Messenger of God, may God's prayers and peace be upon him, came to the city and they had two days in which to play, so he said: What are these two days? Including the day of al-Adha and the day of al-Fitr). Evidence: When God Almighty forbade His servants from rejoicing on the two days of ignorance (the day of Nowruz and the festival day), He kindly legislated for them the best alternative in which joy and expansion for oneself and one's children are legislated. By saying: "The polytheists had temporal and spatial feasts, so when God came with Islam, he abolished them, and replaced them with the Hanafis: Eid al-Fitr, Eid al-Nahr, and the days of Mina, just as he compensated them for the spatial feasts of the polytheists in the Kaaba, the Sacred House, Arafat, Mina, and the holy places."* Shams, 2011)

2- On the authority of Abu Saeed Al-Khudri - may God be pleased with him, who said: ((Bilal brought to the Prophet, may God's prayers and peace be upon him, a Berni date, and the Prophet, may God's prayers and peace be upon him, said to him: Where is this from? Bilal said: We had bad dates, so I sold them saa' by sa'. Let's feed the Prophet, may God bless him and grant him peace. The Prophet, may God bless him and grant him peace, said at that: Oh! The eye of usury, the eye of usury, do not do it, but if you want to buy, sell the dates in another sale, then buy them). Evidence: When the Prophet, may God's prayers and peace be upon him, explained to Bilal, may God be pleased with him, the sanctity of the transaction that he carried out, rather he stipulated that it was the same as usury, he guided him to the legitimate alternative, which is to sell bad dates for another commodity or with dirhams and buy good dates with them, and with this the Prophet, may God's prayers and peace be upon him,

blocked May God bless him and grant him peace after he closed the door of the forbidden, he opened for him what is an alternative to it from the doors of good and lawful (Bin Baz, 1959).

3- On the authority of Abdullah bin Masoud - may God be pleased with him, who said: We were with the Prophet, may God's prayers and peace be upon him, when we were young and could not find anything. The Messenger of God, may God's prayers and peace be upon him, said to us: (O people! Young men, whoever among you can marry, let him get married, for it lowers the gaze and protects chastity. Fasting, for it has come to him). Evidence: The Prophet, may God's prayers and peace be upon him, instructed young people to marry, as it is the best way to obtain immunity, especially in this age group. Because it is a temptation to suppress desires (Bin Baz, 1959).

4- On the authority of Abu Hurairah - may God be pleased with him, that the Messenger of God, may God's prayers and peace be upon him, said: (A strong believer is better and more beloved to God than a weak believer, and there is good in each. Do not be incapable, and if something befalls you, do not say: If I had done such and such, it would have been such and such, but say: God decreed and God willed No if it opens Satan's work). The point of evidence: that the Prophet, may God's prayers and peace be upon him, forbade the believer from saying: If it was such-and-such, it would be so-and-so, and that which feels indignant at God's predestination, so he followed it up by stating the legal alternative, which is his saying: But say: God's destiny and whatever He wills he does (Bin Baz, 1959).

Third: Evidence from the effect

It is known that the Messenger of God, may God's prayers and peace be upon him, taught his companions, may God be pleased with them, and prepared them to prepare to face the changes and developments of life by teaching them the principles of ijihad and encouraging them to do so. To derive legal rulings consistent with those circumstances and variables, it was narrated that Amr Ibn Al-Aas - may God be pleased with him - heard the Messenger of God, may God's prayers and peace be upon him, say: (If the ruler judges and strives, then is correct, he will be rewarded twice, and if he judges and strives, then errs, then he is rewarded.) And they embodied this realistically in the various aspects of their lives - political, religious, and social - for example:

- 1- The first issue they faced after the death of the Messenger of God, may God's prayers and peace be upon him, was the method of selecting and appointing a successor for the Muslims, and they adopted three methods in it: consultation, covenant, and limiting the succession to the masters of the people; Then one of them pledged allegiance through a general pledge of allegiance
- 2- On the authority of Abi Saeed bin Abi Al-Hassan, he said: I was with Ibn Abbas - may God be pleased with them both, when a man came to him and said: O Abu Abbas, I am a human being, but my livelihood is from the work of my hands, and I make these pictures, so Ibn Abbas said: I do not tell you except what I heard the Messenger of God Peace be upon him says; I heard him say:(Whoever takes an image in this world is assigned to blow the spirit into it on the Day of Resurrection, and he is not a blower)Then the man raised a very high hill, and his face turned yellow, then he said: "Woe to you! If you refuse to do anything else, then you must use these trees, everything that has no soul". The point of evidence from the hadith: that Ibn Abbas - may God be pleased with them both, when he forbade a man from depicting animate beings and explained to him the prohibition of that, he directed him to the legitimate alternative, which is depicting what has no spirit, especially

since the man explained to him the extent of his need for that in seeking sustenance, and this is from The jurisprudence that every mufti should possess.

- 3- On the authority of Ibn Sirin, may God have mercy on him, he said: Umar ibn al-Khattab - may God be pleased with him - forbade paper for paper except like for like, so Abd al-Rahman ibn Awf or al-Zubayr said to him: They forge papers on us, so we give the bad and take the good. Offer, so if you take it and you must sell it, digest whatever you want, and take paper if you like. The point of evidence: that Omar Ibn Al-Khattab - may God be pleased with him, knew the companions the legitimate way by which he obtains the lawful, instead of the way that leads them to fall into the prohibited, and this is the matter of the legitimate alternative.

Fourth: Evidence from Legitimate Purposes

It is well-known that the Islamic Sharia bases its behavior on bringing benefits and warding off harm, as it is free from distraction and frivolity. The Most High said: does man think that he will be left in vain ﷻ Surah Al-Qiyamah, verse 36. And the Almighty said: {Did you think that We created you in vain, and that you would not be returned to Us? ﷻ Surat al-Mu'minin, verse 115. The person charged is a worshiper of God, the Mighty and Sublime, so that all his actions are in accordance with what God wills, is pleased with, and intends, and entrusts him with His rulings. Accordingly, he is required to understand the intent of the Lawgiver in terms of his commands and prohibitions, to comply with them in the way that the owner of the Sharia wanted them to do. With it, Al-Shatibi said: "The one who adopts the law from where the Legislator did not intend that intention is taking what is not legitimate in reality, because the Legislator only legislated it for a known matter by imposition, so if he took the intention to other than that known matter, then he did not bring that project at all, and if he did not come It contradicts the Lawgiver in that taking, in that it becomes like the doer of something other than what he was commanded to do, and the abandonment of what he was commanded to do (Al Salman, 1997) Looking at the legal alternatives approach, he finds a target for the street; Because activating it in people's lives entails lifting people's embarrassment, achieving their interests, fulfilling their needs, and achieving the purpose of their worship of their Creator, the Mighty and Majestic. Allah says:) And He has not placed upon you any hardship in religion. ﷻ Surat Al-Hajj, part of verse 78. And the Almighty said: {God intends for you ease and does not want hardship for you ﷻ Surah Al-Baqarah, part of verse 185. And his saying, may God's prayers and peace be upon him: (Indeed, this debt is easy, and no one will overburden the debt except that it overcomes it, so repay, approach, preach good tidings, facilitate, and seek help in the morning and the evening, and some of the evening.) And other verses and sayings of the Prophet indicate that.

Fifth: Evidence from the general rules

Among the most important rules under which Sharia alternatives fall under are the rule of hardship brings facilitation, which is the rule of removing embarrassment and the rule of Sharia concessions (Al-Ghazi, 1996)

Among the most important evidence for this rule

- 1- From the Holy Qur'an: The Almighty says: God intends for you ease and does not want hardship for you ﷻ Surah Al-Baqarah, part of verse 185. And the Almighty says: And He has not placed upon you any hardship in religion. ﷻ Surat Al-Hajj, part of verse 78.

2- *And from the Sunnah: His saying, may God's prayers and peace be upon him: (I was sent with the Hanifiyah, the tolerant). Hanifism in the sense of general Islam: it is the worship of God alone, who has no partner, and faith in His books, His messengers, and the Last Day (Bin Taymiyyah, 1987)*

Al-Samhah means easy, tolerant, against stone and restriction (Bin Taymiyyah, 1987)

Ibn al-Qayyim said: "So he combines the fact that it is Hanefi and that it is tolerant, as it is Hanefi in monotheism, tolerant in action, and against the two things: polytheism and the prohibition of what is lawful". Likewise, the unanimous agreement that the assignment of hard work does not occur definitively indicates that the wise Legislator did not intend to do so.

Sharia licenses are included within this rule, under which the areas of Sharia alternatives are included, such as the field of substitution license: i.e., replacing one worship with another. Examples: Substituting ablution and ghusl for tayammum when there is no water or the inability to use it. And replacing standing in prayer with sitting or lying down for sickness and replacing fasting with feeding when one is unable (Amirat, 1999).

The third requirement: the characteristics of the legitimate alternative

It is known that the legal alternative has derived its characteristics from the general characteristics of Islamic law, which have become a living reality in people's lives, and among the most important of these characteristics (Al-Barnawi, 2018)

1- realism

Therefore, in making legal alternatives, it is necessary to consider the reality of people and the circumstances of their lives, and to remove embarrassment and hardship from them. And He has not placed upon you any hardship in religion. ﴿ Surat Al-Hajj is part of verse 78.

2- Inclusivity and integration

That the alternatives be an integrated, practical program, with clear features, detailed in its aspects, that seeks to provide Islamic solutions to the various dilemmas and problems facing the taxpayer in order to imbue his entire life with the legal character.

3- Influence and persuasion

Making legitimate alternatives is a purposeful approach, and a careful balancing act, built on the law of influence and calm persuasion whose provisions are derived from the words of God Almighty: Invite to the way of your Lord with wisdom and goodly admonition, and argue with them in a way that is best. Indeed, your Lord knows best who has gone astray. his path, and He is most knowing of those who are rightly guided ﴿ Surah An-Nahl, part of verse 125. Therefore, legal alternatives found their way to souls, and people opened their hearts to them. For being a practical embodiment of the spaciousness of Islamic law.

4- Mediocrity

It is well known that the Islamic law is moderate, the Almighty said: {Thus We have made you a middle nation} Surah Al-Baqarah, part of verse 125. One of the most important manifestations of his moderation is his enactment of the jurisprudence of alternatives. The legal alternative is a mediator in the matter of prohibition between absolute prohibition, with which there are no legal exits for the taxpayer, and the fatal estrangement by falling into legal violations. It is also moderate in its goals and objectives, similar in that to the matter of the Sharia in which it revolves. Where it came to serve and achieve the interests of the people in this world and the hereafter, and in financial transactions, the alternative is considered a

mediator in fulfilling people's needs between extravagance and waste on the one hand, and scarcity and constipation on the other hand, and it is also a mediator between achieving profit for Islamic banks on the one hand and achieving development and community service on the other hand.

The fourth requirement: jurisprudential adaptation of the alternative.

The jurisprudential conditioning of the Sharia alternative is to return the new incident to its Sharia origin, and this is done in several ways:

The first path: conditioning on texts and consensus

The one who is diligent in judging emerging cases when adapting a case must start by referring it to the texts of the Book, the Sunnah, and consensus.

As for the Holy Book: God Almighty tells you who have believed, obey God, and obey the Messenger and those in authority among you. If you dispute about something, refer it to God and the Messenger. If you believe in God and the Last Day, that is better and a better interpretation. ﴿ Surat Al-Nisa, verse 59. The point of evidence: God Most High has obligated the disputed person to be referred to God and to His Messenger. The same is true for those who wanted to find out about God's judgment in an issue (AL-Afghani, 1996).

And as for the honorable Sunnah: What came in the well-known hadith of Muadh - may God be pleased with him, in which:

When the Messenger of God, may God's prayers and peace be upon him, wanted to send Mu'adh to Yemen, he said: (How do you spend if you offer to spend? He said: I will decide according to the Book of God Almighty. He said: If you do not find it in the Book of God Almighty? He said: By the Sunnah of the Messenger of God, may God's prayers and peace be upon him. He said: If you do not find it in the Sunnah of the Messenger of God or in the Book of God? He said: I strive my opinion, and I don't care. He said: Then the Messenger of God, may God's prayers and peace be upon him, struck him in the chest and said: Praise be to God who guided the messenger of the Messenger of God, to what pleases the Messenger of God). Likewise, what came on the authority of Ibn Abbas - may God be pleased with them both, that the Messenger of God, may God's prayers and peace be upon him, addressed the people during the Farewell Pilgrimage, and he said: (I left among you, O people, as soon as you hold fast to it, you will never go astray, the Book of God and the Sunnah of His Prophet).

As it was proven from the actions of the Companions, may God be pleased with them, that they conditioned many issues according to what was established in the Qur'an and the Sunnah of the Prophet, such as Umar ibn al-Khattab, may God be pleased with him, adapting the incident of the conquered land by force on a text from the Holy Qur'an, where it was reported that he said: "I have found an argument, God Almighty said in His book: {And whatever of them Allah gave to His Messenger, you did not impose upon it either horses or riders, but Allah gives authority to His Messengers over He wills, and God has power over all things. Surat Al-Hashr, verse 6: Until the matter of Bani Al-Nazir is finished, this is common in all villages.

The second course: graduation based on a general college

For every general rule there is a field, which is: the meaning that connects the subject of the rule and its rule. In the Almighty's saying: {And cooperate in righteousness and piety, but do not cooperate in sin and aggression, and fear God, for God is severe in punishment} Surah Al-Maida, part of verse 2. The point of evidence: It is not permissible to aid in sin, so it is not

permissible, for example, to rent to carry alcohol. Therefore, the jurist must, in adapting the facts to the general rules, achieve the criterion, which is verifying the existence of the meaning that links the subject and the general ruling in the branch, and he must also take into account the consequences, so he looks at the circumstances and the consequences that result from them when the jurisprudential adaptation of the emerging incident on the rule. the college (Shabeer, 2014).

The third course, graduation on a jurisprudential branch

The researcher may strive to append the case under consideration to similar previous cases in which the imams of jurists have previously given a jurisprudential opinion (Abd al-Hamid, 2006). Such as the issue of an open buffet or a contract of feeding until satiated, as it can be attached to the issue of entering the bathroom, which was unanimously agreed upon as a matter of approval Al-Shirazi, 2003). Those who enter these baths vary in their consumption of water, although the fare is estimated for all.

The Third Topic

The manufacture of the legitimate alternative through joint speculation contracts in Islamic banks.

What is meant by creating a legitimate alternative is to apply the ruling to the alternative: which is to download the ruling on the jurisprudential issue, through imagining the calamity and understanding it correctly, then adapting it from the jurisprudential point of view, and by that the ruling of the calamity that is appropriate for it is known (Ibrahim, 2013)

And since Islamic banks rely on the application of joint speculation based on the controls and principles of Islamic law as an alternative to the usurious investment system with the aim of directing their efforts towards supporting economic and social development in society, then I will shed In this topic, the light is on joint speculation in the context of Islamic banks, by examining the reality of this type of transaction, analyzing its different types, and shedding light on the main provisions related to this speculation within the framework of financial institutions of an Islamic nature.

The first requirement

The fact of common speculation

I have already known the concept of joint speculation in the first topic

The first section: Practical steps for joint speculation in Islamic banks.

A- Several owners of funds put each of them a specific part of their money - all at once or in multiple successive installments - in an Islamic investment institution to invest it for them in legal ways, if they have a certain common part of its profits, such as half, two-thirds or otherwise. The remainder of the profit goes to the investing Islamic institution, and if a loss occurs, it falls on the owners of the funds.

B- The Islamic institution - some may call it an Islamic bank - mixes these funds with some of them as soon as they reach them, and may mix them with their own money as well, and then invests these funds - as soon as they reach them or after a period of time according to the opportunities available to them for investment - by investment methods Islamic, including paying it to some craftsmen or merchants on the basis of individual speculation, each of them separately.

C - This Islamic institution calculates its profits at the end of each year by way of judgmental or estimation, by counting the funds it has, including what it recovered from the merchants,

craftsmen and others with whom it conducted speculation, along with its share of the profits it received from them, after deducting expenses.

D - Then the institution deducts its share of these profits, which is the percentage shown in the joint speculation contract with the owners of the funds, and what is left of the profit, which is their share of it, it delivers to them according to the amount of the capital of each of them with it and the time during which this capital remained with it, and if it is not available Profits that did not take anything, and they did not distribute anything to the owners of the money, so if a loss occurred, she did not take anything from this money, and the amount of the loss was deducted from the capital of each of those who dealt with it from the owners of the money, in proportion to his share of the capital with the time that passed since the money remained. in it then. And if the lack of profit or loss has not occurred in Islamic institutions to this day - as far as I know - because of the wisdom of those in charge of managing these institutions, and their taking appropriate precautions and appropriate caution in managing and investing these funds.

E- Every owner of capital has the right to withdraw all or part of his capital at any time he wants before or after the end of the year, but with changing the profit accrual ratio from (deposit) to (investment account).

F- If these funds are destroyed, or some of them are damaged, without any default on the part of those in charge of the Islamic investment institution, the amount of this damage will be deducted from the profits of the money and counted from the loss. By compensating the owners of the money for him from her own money.

These are the steps that the collective or joint speculation takes place in the general Islamic investment financial institutions (Al-Kurdi, 2001).

The second section: the jurisprudential conditioning of joint speculation and the difference between it and individual speculation

First: the jurisprudential conditioning of joint speculation.

The joint mudaraba contract includes three parties, as follows:

The first Money holders.

The second: the Islamic investment institution.

And the mediator: Merchants dealing with the Islamic institution, who develop these funds.

As for the relationship between the Islamic institution and the merchants who deal with it, it is an individual speculative relationship with the agreement of most contemporary jurists, and it is legitimate.

As for the relationship between the Islamic institution and the owners of funds, it is the subject of the study.

In order to arrive at a statement of the ruling on the joint speculation contract, it is necessary to clarify the nature of this contract and its jurisprudential adaptation.

first opinion Most of the contemporary researchers and jurists went to the fact that joint speculation on the advanced approach is an individual and developed speculation, between owners of funds and the Islamic financial institution, where the owners of funds take the place of the owner of the money in individual speculation, and the Islamic institution takes the place of the speculator worker, and each party is given its ruling in it, It is distinguished from it only by some non-influencing differences, then these jurists tried to study these differences, and to show that they do not affect the validity of the speculation.

Second opinion Others are of the view that the owners of the funds are partners in the Islamic institution, and the contract between them is a money company contract, not a speculative

contract. As the institution adds the money of the money owners to its own money, mixes it with it, trades with everyone together, then divides the profit between it and them.

He objected to them: That there are matters in the joint speculation that prevent it from being validly measured against the Al-Annan company, and attaching it to it in the rulings, because the Al-Anan company must indicate the amount of each of the two partners' money or the money of all the partners, when these funds are mixed with each other, and here this is impossible; Because the money of the owners of the money deposited in this joint speculation in succession, and the Islamic institution cannot find out the amount of its money and the money of the owners of the money previously deposited with it at each deposit, and this matter prevents the validity of the company in this case, and therefore it is not possible to measure or associate the joint speculation with Al-Anan Company in Definition, permissibility and provisions.

Third opinion A third group held that the relationship between owners of funds and the Islamic institution is one of hiring, so the owners of funds are renters, and the institution is a joint employee who manages the money for them at their behest, in exchange for what he takes from them in terms of a share in the profit.

He objected to them: That in the joint speculation that exists now in Islamic institutions is not consistent with the principle of joint or individual lease; Because hiring requires that all profits belong to the owners of the funds, and the Islamic institution has a certain amount of reward, whether the trade wins or not, or it loses (Al-Kurdi, 2001).

The text of the decision of the Islamic Fiqh Academy in its thirteenth session held in Kuwait in 1422 AH - 2001 AD No. 122 (5/13) regarding the relationship between investors:

((b) The investors as a whole are the owners of the money, and the relationship between them - including the speculator if he mixes his money with theirs - is partnership, and the one who undertakes to invest their money is the speculator, whether he is a natural or legal person, such as banks and financial institutions, and the relationship between him and them is speculation (lending) Because he is entrusted with making investment decisions, management and organization, and if the speculator entrusts a third party with the investment, then it is a second speculation between the first speculator and the one to whom he entrusted the investment, and it is not mediation between him and the owners of the funds (the investment account holders).

C- This joint speculation is based on what the jurists have decided on the permissibility of multiple owners of funds, and the permissibility of the speculators participating with them in the capital, and that it does not deviate from the forms of legitimate speculation in the event that it adheres to the legal controls established for speculation, taking into account what is required by the nature of participation in it in a manner that does not exclude it. on the legal requirement.)

Second: the difference between joint speculation and single (binary) speculation

Joint Mudarabah differs from individual Mudarabah in several ways, namely:

A- The joint speculation has three parties, and they are the owner of the money, the bank, and the speculator, and all of them are entitled to the profits if they happen. Whereas in individual speculation there are two parties, the owner of the money, and the investor speculator.

B- In joint speculation, mixing of funds invested in speculation. While individual speculation is based on not mixing the invested funds.

C- The joint venture is based on the continuity of the company. Because some of its deals expire in a year, and some of them need more.

- 6- In joint mudaraba, the capital is guaranteed by the mudarib to its owner. While this is not permissible in individual speculation (Abu Ghuddah, 1993).

The third section: types of joint speculation in Islamic banks

Islamic banks base their transactions on two types of speculation:

The first type: absolute speculation

This type of speculation represents the main context for the activities of Islamic banks in the field of speculation. Where this pattern allows the joint speculators wide freedom in making decisions in various economic fields. The joint speculators also enjoy absolute freedom in directing and investing funds without interference from the owner of the money, and they also manage the funds according to their personal knowledge and experience, and in the ways, they deem appropriate to preserve the capital and achieve the desired returns.

The second type: restricted speculation

In Islamic banking, this context is called “dedicated investment,” and is the framework in which a joint mudarib (the bank) defines the criteria and terms of mudaraba. This includes specifying the type of business, place and time for speculation, in addition to the nature of the business and the type of people who participate in it. Therefore, these conditions must be agreed upon before concluding the Mudaraba contract, or at least before allocating the Mudaraba funds to the project. This pattern of dedicated investment also reflects the interest of Islamic banks in achieving coordination and transparency among all parties involved, which helps ensure the achievement of financial and Sharia goals.

The second requirement: Joint speculation in Islamic banks is an alternative to interest-based loans in interest-based banks.

The joint mudaraba has several applications that work in Islamic banks, and I will explain in this requirement two of them:

The first application: joint speculation based on a specific transaction.

First: The concept of joint speculation based on the specific deal

- A. **identification:** It is that the joint speculator (the bank) finances the deal designated for the second speculator in whole or in part, provided that the second speculator on his part implements all the work necessary to complete this deal, and the loss is from the capital, and the profit is between them according to the agreement (Al-Najjar, 2002).

B. Her photos

The joint Mudaraba based on the particular transaction is represented in two forms:

The first picture: speculation based on the total financing of the deal.

That the mutual speculator agrees with the trader (the speculator) to import a specific transaction of commodities that the trader wishes to purchase, provided that the bank pays the full purchase price of the commodity with. All the required supplies, and the trader, for his part, performs all the necessary work to complete this deal, so the profit will be between them according to the agreement and the loss will be from the capital, and the speculation

ends with the end of the sale of the deal.

- Her verdict

The jurists agreed on the permissibility of this image; Because the money is on one side and the work is on the other side with the intention of making a profit, and this is a form of jurisprudential speculation.

The second picture: speculation based on partial financing.

The joint speculator agrees with the trader (the second speculator) to be a participant in half the value for importing a specific quantity of the commodity, and the speculator offers the other half provided that the second speculator undertakes all the work necessary to complete the deal, and the profit between them is according to the agreement. The speculator has his share as a speculator, in addition to what is related to His share of the money is from the wind, and if a loss is achieved, then it is on the capital, in accordance with the principle of speculation, that the loss is on the owner of the money, so each one is according to his share according to the rule of "being lost in the spoils (Zaidan, 2001).

- Her verdict

The majority are agreed that this form is considered speculation and partnership, and it comes under the heading of the speculator working for himself other than the speculative money, so he is independent in the profit of his money, and he shares with the bank in the profit of the speculative money, and if the loss is realized, then it is on the capital, according to the principle of speculation, "the loss is on the owner of the money," which is It is permissible according to the Hanafis, Shafi'is and Hanbalis:

- **Its benefits**

Among the most important benefits of joint speculation based on the specific deal:

- 1- Encouraging the second speculator to preserve the capital of the company, because he is a partner in the speculative capital.
- 2- Ensuring the distribution of risks so that the loss that may result from recession in one of the speculators in it is compensated by the profit that is achieved in the other classes.
- 3- The speculator benefits in this type of speculation in the distribution of speculation for one type, such as speculation in the iron commodity with several speculators. The first trader may achieve more profits than the second trader in the same season. Profits:
- 4- The participation of the second mudarib in the capital achieves the interest of the joint mudarib, as he can participate in more than one contract in the same way, which increases the chances of making a profit compared to a loss. Therefore, if a loss occurs in one contract, the other contract can compensate for that loss.

The second subsection: Mudaraba ending with ownership.

First: the concept of speculation ending with ownership.

1. identification

It is "for the joint speculator to agree with the investor speculator (businessman) to finance a project in whole or in part, to work with it with a common part of the profits, provided that the joint speculator saves part of the share of the second speculator

according to the agreement, until it reaches the value of the project, then the joint speculator waives About his ownership of the speculators with a new contract.

2- Mudharabah image ending with ownership

The joint speculator (the bank) establishes a factory, hospital, or other investment projects, and the project is managed by an individual, institution, group, or company with a common share of the profits, so the joint speculator takes his right from the profit, and the second speculator takes part of his profits, and this speculation does not continue until The end of the life of the project, but the joint speculator assigns to the second speculator a part of his profits to pay what was agreed upon in terms of purchasing the shares, and upon completion of the payment, the joint speculator waives ownership of the project to the investor speculator under a new contract.

5- her rule

This kind of transaction is permissible; Because it is based on a promise agreed upon in the contract to transfer the ownership of the speculative project to the speculator, and it achieves a legitimate interest for each of the parties and does not conflict with the basic objective of the contract, which is to achieve profit for each of the contracting parties (Al-Shazly, 1987).

Second: its benefits

- 1- This type of investment is a flexible way for the bank (the joint speculator) to invest money and achieve sustainable profitable returns throughout the year.
- 2- encouraging speculators to work seriously through their independence in the management of speculative capital; This requires his liberation from the power of others over him at work.
- 3- It provides speculators with opportunities to own production tools and sources of earning.

It is clear from the foregoing that the joint speculation transaction is not conducted by the usurious bank, as the usurious bank does not deal with financing except based on usurious loans and interest, and there is a difference between the loan contract and the speculation, and the difference between the two transactions is summarized as follows (Abd, 2014):

- 1- Financing by loan the borrower owns the money, so he can do whatever he wants with it, and the growth that results is owned by the borrower, while financing by speculation keeps the money in the possession of the Islamic bank, and the growth is for the bank as well.
- 2- The borrower from the usurious bank is obligated to return the borrowed money as it is according to the dates agreed upon in the contract, while the speculator in the money of the Islamic bank is not obligated to return the money to its owner.
- 3- Financing with a loan in a riba-based bank generates a guaranteed profit for the bank over the money it paid, while financing by speculation does not generate a guaranteed profit. Because the principal of the money in speculation is exposed to profit and loss, and the profit in it is not guaranteed.

Conclusion

Praise be to God who helped me to complete this modest study in explaining a model in the manufacture of alternatives disciplined by Sharia controls and how to find solutions and alternatives to banking financial transactions.

- The importance of presenting the legal alternative lies in the renewal of jurisprudence and the search for alternative rulings that oblige jurists and experts to write on emerging issues, issues and issues that did not exist in Islamic jurisprudence codes before. Which confirms the validity of Islamic law for every time and place.
- I found a lot of evidence showing the legitimacy of the legal alternatives approach from the Book of God, the Sunnah of His Messenger, the effects and the legal rules.
- Behind the application of the method of finding legitimate alternatives, there are good effects in serving the interests of the individual and society alike.
- It is necessary for those who challenge the approach of legal alternatives to be characterized by the conditions of ijtiḥād and to consider issues according to a well-established methodology.
- It has been proven that the borrower in financing with a loan owns the money, so he can do whatever he wants with it, and the growth that results is owned by the borrower, while financing by speculation keeps the money in the possession of the Islamic bank, and the growth is for the bank as well.
- The borrower from the usurious bank is obligated to return the borrowed money as it is according to the dates agreed upon in the contract, while the speculator with the money of the Islamic bank is not obligated to return the money to its owner except in the event of the termination of the contract, as it was not in the hands of the speculator to be returned to its owner.
- Financing with a loan in a riba-based bank generates a guaranteed profit for the bank over the money it paid, while financing by speculation does not generate a guaranteed profit. Because the principal of the money in speculation is exposed to profit and loss, and the profit in it is not guaranteed.
- Work to find alternatives to banking transactions that are compatible with Islamic Sharia and promote it.
- Mujtahid jurists are required to hold conferences and seminars to discuss the legal alternatives approach and spread its culture in society.

References

- Abd Halawa, A. M. (2014) ("Contemporary usury applications and legal solutions in comparison with the Journal of Justice and the Jordanian Civil Law., master's Thesis in Sharia Judiciary, Hebron University, Sharia Judicial Department.
- Abd, A. M. (2014). " Usury, its contemporary applications, and legal solutions compared to the Journal of Justice and the Jordanian Civil Law Alaa Muhammad Abd, (Dr. I), Hebron University, College of Graduate Studies, 2014, pg. 241.
- Abdel Kafi, I. (2005). "Economic and Social Encyclopedia Arabic - English ((Dr. I), Alexandria Book Center, 2005 AD), pg. 217.
- Abu Al-Hussein, A. F. (1979). "language metrics", , investigation by Abd al-Salam Muhammad Haroun, ((D.I) Dar Al-Fikr for Printing, Publishing and Distribution, 1979 AD), 1:210, article BDL.
- Abu Ghuddah, A. S. (1993). "Applied differences between speculation in Islamic jurisprudence and joint speculation, Dr. Ali Al-Sawa, (Research) Studies Journal, Issue (19/a), Research

- in Islamic Banking Transactions and Methods, Abdul Sattar Abu Ghuddah, (Examining the applied differences between individual speculation and joint speculation), Kuwait Finance House, 1993: p. 309.
- Al Salman, M. H. (1997). "approvals", Ibrahim bin Musa bin Muhammad Al-Gharnati Al-Shatibi, investigation: Mashhour bin Hassan Al Salman, (1 edition, Dar Ibn Affan, 1997 AD), 3:30.
- Al shabah, A. (2022). "The legal alternatives approach in contemporary jurisprudence - financial transactions as a model, p. 12.
- Al-Abadi, A. (1982). Sharia position on contemporary Islamic banks (1 edition, 1982 AD), p. 165.
- AL-Afghani, A. (1996) "Origins of Sarkhi", Abu Bakr Muhammad ibn Ahmad ibn Abi Sahl al-Sarkhasi, investigated his origins: Abu al-Wafa al-Afghani, ((D.T), Beirut, Dar al-Ma'rifah, (D.T)), 2:129.
- Al-Ajlouni, M. M. (2008) "Islamic banks, their provisions, principles and banking applications. (1 edition, Amman: Dar Al-Masirah, 2008 AD), p. 341.
- Al-Baqai, Y. (1994). " A footnote to the enemy to explain the sufficiency of the divine student, ((Dr. I), Beirut: Dar Al-Fikr, 1414 AH, 1994 AD), 140:2.
- Al-Barnawi, B. (2018) "The reality of the Islamic alternative and its implications, (1 edition, Saudi Arabia: Dar Al-Watan for Publishing, 2018 AD), p. 5.
- Al-Barnawi, B. (2018). The reality of the Islamic alternative pg. 54.
- Al-Barnawi, B. (2018).The reality of the Islamic alternative and its implications. 213-214.
- Al-Bayan. (2004) "The loan theory in Islamic law, Al-Bayan Magazine, Issue 200, (Rabee Al-Akher 1425 AH): p.14.
- AAOIFI. (2009) " Sharia standards ", Accounting and Auditing Organization for Financial and Islamic Institutions, Standard No. 19, p. 34.
- Abd al-Hamid, M. M. (2006) "The draft in the principles of jurisprudence", Al Taymiyyah, investigation: Muhammad Muhyiddin Abd al-Hamid, (1st edition, Lebanon, Beirut: Dar al-Kitab al-Arabi, Beirut, (D.T)), p. 533.
- Abd al-Hay, H. (2012). "The Islamic alternative concept, purpose, activation, and controls, Al-Aloka website, link:www.alukah.net/sharia/1/41262
- Al-Bayanouni, S. (2008). "Legitimate alternatives and their importance in the success of the Islamic call. (2nd Edition, Dar Al-Aqraa for Publishing and Distribution), p.58.A.
- Al-Dardir, A. (2010)"The small explanation on the closest tract to the doctrine of Imam Malik ((D.T) Egypt: Dar Al-Maarif, (D.T)), 2:104.
- Al-Fadl, M. M. (1993). Arabs Tongue Article BDL, 48:11,"The Illuminating Lamp in Gharib Al-Sharh Al-Kabir" Ahmad bin Muhammad bin Ali al-Fayoumi, ((Dr. I), Beirut: The Scientific Library, (Dr.t)), Article BDL, 39:1.
- Al-Ghazi, M. S. (1996). Al-Wajeez in clarifying the general rules of jurisprudence. Muhammad Sidqi bin Ahmed bin Muhammad al-Borno Abi al-Harith al-Ghazi, (4th edition, Beirut, Lebanon: Edition of the Resala Foundation, 1996 AD), p. 34.
- Al-Hafid, A. (2004). "The beginning of the hardworking and the end of the thrifty." ((Dr. I), Dar al-Hadith - Cairo, 1425 AH, 2004 AD), 4:21.
- Al-Juma'a, A. M. (2008)."Provisions of substitution in Islamic jurisprudence. (1 edition, Riyadh, Dar Al-Tadmuriyyah, Dar Ibn Hazm, 23:1.
- Al-Jundi, A. (2004). "Mabsoot (1 edition, Beirut - Lebanon: Dar Al-Kutub Al-Ilmiyyah, Publications of Muhammad Ali Baydoun 1424 AH - 2004 AD), 7:169.

- Al-Kafraw, M. (2008). Money and banking in the Islamic system (Dr. I), Alexandria, Egyptian Universities House, (Dr. T)), p. 124.
- Al-Kathiri, T. (2015). Dar Treasures of Ishbilgia for Publishing and Distribution. 1st edition, Riyadh:
- Al-Khouli, K. (1995). "The term economic and financial expressions - Arabic - French - English - German - Spanish Yves Bernard and Jean-Claude Colley, translated by a committee under the supervision of Kamal Al-Khouli, (first Arabic edition, 1995 AD), p. 482.
- Al-Kurdi, A. (2001). "Joint lending or speculation in Islamic financial institutions. Dr. Ahmed Al-Hajji Al-Kurdi, (Research) Journal of the Islamic Fiqh Academy 13, 1422 AH 2001 AD: 3:92-93.
- Al-Matarzi, A. (2007). "Language Standards Dictionary, Article (Exchange), verified and commented on by Muhammad Othman, (1 edition, Cairo: Al-Nasher, Religious Culture Library, 1428 AH - 2007), p. 301.
- Al-Mushiqih, K., Al-Aidan, A., Al-Yatami, A. (2017). "Al-Rawd Al-Murabba' with an explanation of Zad Al-Mustaqni', brief and convincing." (1 edition, Kuwait: Dar Rakaez for Publishing and Distribution, 1438 AH), 2:254.
- Al-Najjar, T., A. (2002). Joint speculation and the extent of its application in Islamic banks in Palestine, master's note In Comparative Jurisprudence, Islamic University: College of Sharia, Gaza, 1423 AH - 2002 AD, p. 105.
- Al-Nawawi, A. Z. (1972) "Explanation of Sahih Muslim bin Al-Hajjaj," (2nd edition, Beirut: Dar Ihya Al-Turath Al-Arabi, 1392 AH), 8:11, 24.
- Al-Nimr, M. (1989) "Download Milestones", ((D.T), Riyadh: Dar Taibah for Publishing and Distribution, 1409 AH), 1:132.
- Al-Qahtani., K. (2010). The methodology of deriving the rulings of contemporary jurisprudential emerging issues, (2nd edition, Dar Al-Andalus Al-Khadraa, Dar Ibn Hazm, 2010 AD), pp. 28, 118-120, "Muslims Between Challenge and Confrontation" Abdul Karim Bakkar, (1 edition, Damascus, Dar Al-Qalam (D.T)), 15/16, "alternative reality" Al-Barnawi: p. 30.
- Al-Qasim, A. R. (1991). "Total fatwas, Riyadh: Dar Alam al-Kutub, 1991 AD), 19:306.
- Al-Ra'ini, A. (1983) "Goodies of crafts in the order of the canons Aladdin Al-Kasani, (2nd Edition, Lebanon, Dar Al-Kutub Al-Ilmiyyah, 1986 AD), 47:1. The talents of the Galilee, Khalil's brief explanation., (3rd Edition, Dar Al-Fikr, 1992 AD), 325:1, "Discovering the Mask" on the Board of Persuasion Mansour bin Younes bin Idris Al-Bahooti, ((Dr. I), Beirut: The World of Books, 1983 AD), 160:1.
- Al-Sahah, M., Abdul Qadir, Z., al-Razi, A. (1999), p. 30, "The bride's crown is one of the jewels of the dictionary." Muhammad bin Muhammad bin Abd al-Razzaq al-Husayni, Murtada al-Zubaidi, investigation by a group of investigators, ((D.T), Dar al-Hidaya, (D.T)), 28: 64-65.
- Al-Samarqandi, M. A. (1985). "The masterpiece of jurists (1st edition, Beirut: Dar al-Kutub al-Ilmiyyah, 1985 AD), 2:25.
- Al-Shazly, H. A. (1987). Rent ending with ownership, a comparative study between Islamic jurisprudence and positive jurisprudence, research submitted for the work of the jurisprudential symposium, Kuwait Finance House, Kuwait, 1407 AH - 1987, p. 526.
- Al-Sherbiny, M. (1986). "Singer in need to know the meanings of the words of the curriculum, ((D.T), Beirut: Dar Al-Fikr, (D.T)), 3:29.

- Al-Shirazi, A. A. (2003). "Brightness in Usul al-Fiqh" Abu Ishaq Ibrahim bin Ali bin Yusuf Al-Shirazi, (2nd Edition, Dar Al-Kutub Al-Ilmiyyah, 2003 AD), p. 121, "Disruptive Evidence in Al-Soud, M. (1998). "Basis of rhetoric., (1 edition, Lebanon, Beirut: Dar Al-Kutub Al-Ilmiyyah, 1998 AD), 1:303, Sharia article.
- Al-Tunisi, I., Muhammad, M. (1984). "Tahrir and Enlightenment", ((Dr. I), Tunisia: Al-Dar Al-Tunisi, 1984 AD), 3:86.
- Al-Yamen, A. (2021). "The legal alternatives approach in contemporary jurisprudence - financial transactions as a model., a doctoral dissertation, Algeria: Institute of Islamic Sciences.
- Al-Zubaidi, M. (1984) "Arabes Tong", Ibn Manzoor, 7:217, Crown of the bride", 17/19.
- Amirat., Z. (1999). "Similarities and counterparts on the doctrine of Abu Hanifa al-Nu'man." Zain al-Din ibn Ibrahim ibn Muhammad ibn Najim, footnotes to it and his hadiths extracted: Sheikh Zakariya Amirat, (1 edition, Beirut - Lebanon: Dar al-Kutub al-Ilmiyyah, 1999 AD), pp. 71-72, "Al Wajeez", Porno, p. 229.
- Attar, A. (1987). "Arabs Tong" Ibn Manzoor, article (multiplication), 1:545, " Asahah crown Arabic language and sanitation " (4th edition, Beirut, Dar Al-Ilm for Millions, 1407 AH - 1987 AD) Article (multiplication), 1: 168, 169.
- Babili, M. M. (1989). Islamic banks are an absolute necessity (1st edition, Beirut: Lebanon, Islamic Office, 1409 AH - 1989 AD), p. 188.
- Babli, M. M. (1989). "Islamic banks are an inevitable necessity," (1st edition, Beirut: Lebanon, Islamic Office, 1409 AH - 1989 AD)
- Bin Baz, A. Z. (1959). Fath Al-Bari Explanation of Sahih Al-Bukhari Ahmed bin Ali bin Hajar Abu Al-Fadl Al-Asqalani, ((Dr. I), Beirut: Dar Al-Maarifa, 1379 AH), the number of his books, chapters, and hadiths: Muhammad Fouad Abdul-Baqi, he directed it, corrected it, and supervised its printing: Mohib Al-Din Al-Khatib, with the comments of the scholar: Abdul Aziz Bin Abdullah Bin Baz, 4:490-491.
- Bin Taymiyyah, T. (1987). "The Great Fatwas", Taqi al-Din Abu al-Abbas Ahmad bin Abd al-Halim bin Abd al-Salam bin Taymiyyah, (1 edition, Dar al-Kutub al-Ilmiyyah, 1987 AD), 1:73.
- Dahrouj, A. (1996). "Arts conventions explorer (1 edition, Beirut: Libanon Publishers Library, 1:1018.
- Haroun, A. (2002). Language Standards, Ibn Faris, Edited and edited by Abd al-Salam Muhammad Haroun, ((Dr. I), edition of the Arab Book Union, 1423 AH - 2002 AD), 5:71, from the loan item.
- Hussein, A. M. (2009). "The purposes of the provisions of the provisions of financial transactions and their role in finding an alternative to usurious banking transactions. A. Zayan Ashour University, Journal of Law and Human Sciences Djelfa, Algeria, Issue 3.
- Ibn Abdeen. (2000). "The response of Al-Muhtar to Al-Dur Al-Mukhtar Ibn Abdeen, ((Dr. I), Beirut: Dar Al-Fikr for Printing, Publishing and Distribution, 2000AD), 5:161.
- Ibn Faris. (1979). "Language metrics", 3:262 Article SRA.
- Ibn Manzoor, (1920). Arabes Tong", 8:175-176, Sharia article.
- Ibrahim, M. I. (2013). "The jurisprudence of calamities for Muslim minorities - in origin and application. Muhammad Yousry Ibrahim, (1 edition, Cairo: Dar Al-Yusr, PhD thesis in Islamic jurisprudence from the Faculty of Sharia and Law at Al-Azhar University, 1434 AH - 2013 AD), 2: 721.
- Irsheed, M. (2001). Comprehensive in the transactions of the operations of Islamic banks. (1 edition, Jordan, Dar Al-Nafees for Publishing and Distribution 1421 AH - 2001 AD), p.

- 14Islamic Banks Muhammad Al-Zuhaili, Islamic Economics Journal 198: p. 148, and Issue 167: p. 29.
- Muhammad, M. S. (2000) "the wonders of interpretation, Ibn al-Qayyim al-Jawzi, compiled by: Yousry al-Sayyid Muhammad, (1 edition, Saudi Arabia: Dar al-Jawzi, 1993 AD), 1:265,"Interpretation of the Great Qur'an", Imad al-Din Abi al-Fida, Ismail Ibn Katheer, investigation:, (1st edition, Cordoba Foundation for Publishing and Distribution, Giza: Welad al-Sheikh Heritage Library, 2000), 2:208.
- Mustafa, H. M. (1981). "Mask Scout ((Dr. I), Beirut: Dar Al-Nasher, 1402 AH), 3:312.
- Qutb., M. (2001). "Savings, their provisions, methods of formation and investment in Islamic jurisprudence, (1 edition, Jordan: Dar Al-Nafais for Publishing and Distribution, 1421 AH, 2001 AD), pp. 260-261.
- Razzouk, A. (1985). "The economic dictionary includes the most important and latest economic, financial, banking and commercial terms, with an explanation of the main terms and a presentation of the history of their development - Arabic - French - English - German (1 edition, The Arab Institute for Studies and Publishing, 1985 AD), pp. 397-398.
- Saadi, A. R. (2001). Facilitating the Generous Manan in the Interpretation of the Qur'an", (1 edition, Dammam: Dar Al-Jawzi, 1422 AH), p. 456.
- Shabeer, M. O. (2014) "The Jurisprudential Conditioning of New Facts and Its Jurisprudential Applications," (1 edition, Damascus: Dar Al-Qalam, 2014 AD), p. 34.
- Shabeer, M. O. (1996). "Contemporary financial transactions, (1 edition, Dar Al-Nafais, 1416 AH - 1996 AD), p. 300.
- Shams, M. A. (2011). Rescuing the anxious from the traps of SatanIbn al-Qayyim al-Jawziyyah, investigation: Muhammad Aziz Shams, (1 edition, Mecca: Dar Alam al-Fawa'id, 1432 AH), 1:345.
- Zaidan, A. Z. (2001). The meaning of the rule is to gain the benefit of something that bears its harm. Al-Wajeez in explaining the jurisprudential rules in Islamic law (1 edition, Beirut: Al-Risala Foundation, 1322 AH / 2001 AD), p. 150.