

LEGALITY OF “BORROW ME CREDIT” SERVICES OFFERED BY TELECOMMUNICATION COMPANIES: A SHARI’AH PERSPECTIVE

Isa Abdur-Razaq Sarumi*

Abdulraheem Abdulwahid Yusuph **

Mu’az Yusuf Ahmed***

ABSTRACT

Telecommunication service providers are known to provide various benefits for airtime packages. Different packages have been introduced in order to satisfy consumer needs. The nexus between service providers and consumers are guided by terms and conditions. Under Islamic law, any condition stipulated by the parties, which involves *riba* is rejected *ab inito* and renders the transaction voidable. Therefore, this article seeks to examine the Airtime Credit Service by service providers such as extra time package known as ‘borrow me credit’ in order to determine whether it is a Shariah-compliant transaction or otherwise. The study adopts doctrinal legal research by using primary and secondary sources of Islamic law such as Qur’an, Sunnah. The study also relies on textbook, journals, and service providers’ websites. The study reveals that the use of the word ‘borrow’ in the package has triggered polemical discourse among the Islamic financial jurists. The study reveals that, although the word ‘borrow’ is used, the intention of service providers is to sell the airtime on credit sale. The article clarifies the juristic discourse of the sale based on Islamic law of contract. It recommends some clarifications on the form and structure of the sale and concludes that it is allowed for Muslims to buy airtime through the package.

* LL.B., Mater of Comparative Law (MCL) & PhD. (Law) Email: saroommool@gmail.com.

** Law Lecturer, Department of Islamic Law, Faculty of Law, al-Hikmah University, Ilorin. Email: ayabdulraheem@alhikmah.edu.ng.

*** Faculty of Shariah and Law, Universiti Sains Islam Malaysia Institute of Education, Ahmadu Bello University. E-mail: yusufahmed61@gmail.com.

Keywords: Shari'ah and air time credit sales, legality of 'borrow me credit', telecommunication service provider, airtime credit sale.

PENDEKATAN JURISPRUDENTIAL ISLAM TERHADAP PERKHIDMATAN KREDIT MASA KE UDARA OLEH SYARIKAT-SYARIKAT TELEKOMUNIKASI

ABSTRAK

Kelebihan pakej masa ke udara dari penyedia perkhidmatan telekomunikasi dalam dunia kotemporari tidak lagi dapat diukur. Pakej-pakej yang berbeza telah diperkenalkan untuk memenuhi keperluan pelanggan. Kaitan antara penyedia perkhidmatan dan pelanggan berdasarkan terma dan syarat. Dalam undang-undang Islam, syarat yang mengikat pihak pihak, yang melibatkan riba akan ditolak dari awal dan menyebabkan transaksi itu batal. Oleh itu, makalah ini menyelidik samada perkhidmatan kredit masa ke udara oleh penyedia perkhidmatan seperti pakej masa tambahan yang juga dikenali sebagai "pinjamkan saya kredit" adalah transaksi yang patuh shariah atau sebaliknya. Kajian ini menggunakan kaedah kajian undang-undang doktrinal dengan menggunakan sumber utama dan sumber kedua undang-undang Islam seperti Al-Quran dan Sunnah. Kajian ini juga merujuk kepada buku teks, jurnal dan laman sesawang penyedia perkhidmatan. Kajian ini menunjukkan penggunaan perkataan "pinjam" telah mencetuskan perbincangan polemik di kalangan ahli fikah kewangan Islam. Kajian mendapati bahawa walaupun perkataan "pinjam" digunakan oleh pemberi perkhidmatan ianya adalah suatu perkhidmatan untuk "menjual" masa ke udara. Makalah ini menjelaskan perbincangan fikah mengenai penjualan berdasarkan prinsip kontrak di dalam undang-undang Islam. Makalah ini mengesyorkan penjelasan dalam bentuk dan struktur penjualan dan menyimpulkan bahawa Muslim dibenarkan untuk membeli pakej masa ke udara tersebut.

Kata kunci: Shari'ah dan penjualan kredit masa ke udara, kesahan kaedah 'borrow me credit', pemberi perkhidmatan telekomunikasi, penjualan masa ke udara.

INTRODUCTION

The growth of wealth and welfare of an individual in the society are recognized pursuits allowed by Islamic law.¹ These pursuits cannot be achieved especially in the commercial area except through the production of goods, services, and exchange of values among contracting parties in the transaction.² The impact of mobile phones throughout the world has been widely documented. These devices now function as fundamental tools to billions of economic livelihoods. The transformative impact of what has become the fastest technology adoption in human history has had the most dramatic ramifications within some of our most underserved societies.³

Approximately 96% of mobile phone customers across emerging markets are on prepaid tariffs and a significant number of them rely on credit services to keep connected, especially when they run out of 'Airtime credit service' (ACS). The ACS is a cashless micro-loan that allows customers to stay online even when they run out of their prepaid call, text, SMS or VAS package.⁴

Islamic law promotes the free flow of goods and services in an open environment in order to achieve the goals and objectives of the contract which is in tandem with the principles of the Islamic law of contract (*Al-muā'malāt*).⁵ Therefore, it necessitates a human being to

¹ Ayub, Muhammad. *Understanding Islamic Finance*. Gramedia Pustaka Utama, 2013, 129 see also Abedifar, Pejman. "Lending, the Poor and Islamic Scripture: Islamic Finance versus Welfare Islam." *Journal of the American Academy of Religion* 87, no. 2 (2019): 460-482.

² Ibid.

³ Eagle, Nathan. "txteagle: Mobile crowdsourcing." In *International Conference on Internationalization, Design and Global Development*, pp. 447-456. Springer, Berlin, Heidelberg, 2009.

⁴ <https://www.dtone.com/airtime-credit-service/> (accessed 4 November, 2019).

⁵ Hassan, Abul, and Sabur Mollah. "Islamic Finance: A Global Alternative." In *Islamic Finance*, pp. 19-30. Palgrave Macmillan, Cham, 2018.

avoid *riba* (interest) ⁶ in financial dealings.⁷ The permissibility or otherwise of a transaction or business activities is governed by the principles of Islamic law, that provide the framework for a set of rules and regulations governing economic, social, political, and cultural aspects of Islamic societies.⁸ Consequent upon these, it is incumbent upon Muslims to have basic knowledge of any contract before embarking on it.

In the contemporary world, mobile telecommunication plays significant roles in allowing communication among the people either by voice or by data.⁹ The contractual relationship between customers and mobile telecommunication companies is to buy airtime from the latter or their representatives on the spot.¹⁰ The legality of this contract is not questioned by Islamic scholars. It is a form of trade, which is allowed according to the provision of the Qur'anic injunction. Allah says to the effect: '...whereas Allah has permitted trading and forbidden *riba* (usury)...'¹¹

⁶ Gharar encompasses some forms of incomplete information and/or deception, as well as risk and uncertainty intrinsic to the object of contract. For more explanation on *gharar* check Mahmoud A. El-Gamal, 'Islamic Finance: Law, Economics and Practice, (2006, Cambridge University Press) 58.

⁷ Hanif, Muhammad. "Shari'ah-compliance ratings of the Islamic financial services industry: a quantitative approach." *ISRA International Journal of Islamic Finance* 10, no. 2 (2018): 162-184.

⁸ Sharia Rulings and Finance, <http://www.islamic-banking.com/shariah-rulings-finance.aspx> accessed 7th February, 2019.

⁹ Kim, Moon-Koo, Myeong-Cheol Park, Jong-Hyun Park, Jimin Kim, and Eunhye Kim. "The role of multidimensional switching barriers on the cognitive and affective satisfaction-loyalty link in mobile communication services: Coupling in moderating effects." *Computers in Human Behavior* 87 (2018): 212-223.

¹⁰ Choi, Yong Bum, Janghyuk Lee, Shijin Yoo, and Yong Keun Yoo. "Value relevance of customer equity beyond financial statements: evidence from mobile telecom industry." *Asia-Pacific Journal of Accounting & Economics* 26, no. 3 (2019): 281-300.

¹¹ *Surah al-Baqarah* (2): 275, 'Abdullah Yusuf 'Ali, (Trans.) *The Holy Qur'an. Arabic Text with English Translation of the Meaning & Selected Commentaries*, 2009, SABA Islamic Media: Kuala Lumpur.

However, telecommunication service providers such as Mobile Telecommunication Network (MTN),¹² Airtel and Globacom in Nigeria,¹³ Etisalat in Egypt¹⁴ and other parts of the world had launched some packages in their services for customers that may be questionable. Among the service is, airtime credit borrowing, which is also known as extra airtime package. The introduced package has plunged Muslim customers into widespread confusion; some believe that it is a valid sale while others believe otherwise. Consequently, different jurisprudential characterization of airtime credit sales has sparked off conflicting opinions.

Prohibition of Riba in Islamic Law

Riba is a derivative of ‘*raba*’ which literally means to grow; to expand; to swell; to increase; to develop; to increase; and to prosper.¹⁵ The literal meanings of *riba* have been traced to the usage of Quran and the Sunnah of the Prophet. In Surah al-Baqarah, Allah says to the effect:

Allah destroys interest and gives increase for charities, (wa yurbi al-Sadaqāt).¹⁶

¹² MTN Nigeria is part of the MTN Group, Africa's leading cellular telecommunications company. On May 16, 2001, MTN became the first GSM network to make a call following the globally lauded Nigerian GSM auction conducted by the Nigerian Communications Commission earlier in the year. Thereafter the company launched full commercial operations beginning with Lagos, Abuja and Port Harcourt. See Kadiri, Kamoru Oluwatoyin, and Samuel Oluwaseun Lawal. "Comparative Analysis of Per Second Billing System of GLO, MTN, Etisalat, Airtel and Visafone in Nigeria." *Current Journal of Applied Science and Technology* (2019): 1-8.

¹³ Globacom Limited is a Nigerian multinational telecommunications company founded on 29 August 2003 by Mike Adenuga, the 2nd richest black man in the world. As of June 2018, the company has employed more than 3,500 people worldwide. Ibid.

¹⁴ <http://www.etisalat.eg/etisalat/portal/3alnota_en> (accessed 17th January, 2020).

¹⁵ Muhammad Ibn Mansur, *Lisan al-Aarab* (Beirut: Dar Sadir, 2008), vol.1, 82.

¹⁶ Surah al-Baqarah (2): 276.

In another verse, Allah says to the effect:

We pour down rain upon it then it begins to stir and swell.¹⁷

The literal usage is evident in the hadith of the Prophet (PBUH):

By Allah, whenever we took a handful of the meal, the meal grew from underneath more than that handful till everybody ate to his satisfaction.¹⁸

These literal usages of the word ‘riba’ in the abovementioned verse is done in a positive light. However, *riba* in its technical form is frowned upon. *Riba* has technically been defined as the ‘premium’ that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity.¹⁹ Interest is usually adopted to convey the meaning of *riba*. However, the concept of *riba* in Islamic law is very broad and within the confines of those words there are actually different types.

In Islamic law, the term *riba* refers to an increase in one of two homogeneous equivalents being exchanged, without this increase being accompanied by a return.²⁰ The term *riba* is, however, used in Islamic law in two senses. The first is *riba al-nasīʾah* (*riba* in loans, interest charged on money loans), and the second is *riba al-faḍl* (*riba* in excess, interest which is charged in barter transactions of commodities). *Riba al-faḍl* involves an exchange of unequal qualities

¹⁷ Surah al-Hajj (22): 5.

¹⁸ Sahih al-Bukhari Sahih al-Bukhari 3581, Book 61, Hadith 90, (In-book reference) or Vol. 4, Book 56, Hadith 781(USC-MSA web (English) reference). The part quoted is actually taken from a long narration by Abdur-Rahman bin Abi Bakar which sought to explain how eating together could add to the barakah of the meal. However, this is the positive connotation that is given to the word.

¹⁹ Ahmad, Abu Umar Faruq, and M. Kabir Hassan. "Riba and Islamic banking." *Journal of Islamic Economics, Banking and Finance* 3, no. 1 (2007): 2.

²⁰ Al-Kāsānī Alaud-Deen, *Badāiʾu al-Sanāiʾi fi Tartīb al-Sharāiʾ*, (Beirut: Dar al-Kitab al-ʿArabi, 1982), vol. 5, 183.

or quantities of the same commodity simultaneously, and could, therefore, be described as the usury of surplus.²¹

Riba al-nasīah, on the other hand is the usury of waiting. This involves the non-simultaneous exchange of equal qualities and quantities of the same commodity and does not involve surplus but only a difference in the exchange timing. Some writers employ the term *riba al-nasīah* to define such an exchange.²² An exchange in which one part with 110 grams of gold now in return for 110 grams of gold to be received tomorrow can be described as *riba al-nasīah*. An exchange in which one part with 110 grams of gold now in return for 115 grammes of gold to be received now can be described as *riba al-fadl*.²³

One of the examples of *riba al-nasīah* is when someone owes some amount of money to another person and the period of debt runs out, the creditor requesting his principal sum; if the debtor shows his inability to pay off his debt, the creditor would then grant him an extension on the condition that he pays in excess of the capital. The period would, therefore, be extended with an increased debt. The additional amount that is charged is known as *riba al-nasīah*. Usury of pre-islamic era (*riba al-jahiliyyah*) is another term that is commonly used for *riba al-nasīah*.²⁴

Based on the above explanation, this part examines the adoption of the term ‘borrow’ by some Airtime Credit Service (ACS) providers which has fueled juristic controversy concerning the legality of the transaction and otherwise. Aside from this, the service charge or deduction from the airtime by the service provider has caused the contract to have been given different juristic characterizations such as a contract of loan (*qard*) and deferred sale (*bai’ muajjal*).²⁵

²¹ Wahbah al-Zuhayli, *al-Fiqh al-Islami wa adillatuh*, (Damascus: Dar al-Fikr, 1984), vol. 5, 355.

²² Ibn Nujaim Zainu al-Din, *Hshiyat al-Bahr al-Rāhiq Shar al-Kanz al-Daqāiq* (Cairo: Dar al-Kitāb al-Islamiy, 1978), vol.6, 136.

²³ Nyazee, Imran Ahsan. "The Prohibition of Riba Elaborated." (Advanced Legal Studies Institute, Islamic Banking) Series 1 (2009).

²⁴ Al-Fakhr Al-Rāzi, Muhammad ibn Umar, *Tafseer Al-Fakhr Al-Rāzi*, (Kuwait: Dar Ihyāi al-Turāth al- ‘Arabi), vol. 1, 1036.

²⁵ <http://daralifta.org.eg/AR/ViewResearch.aspx?ID=258&fbclid=IwAR0Q7IZhI6hdUm7n9DoxDnmGMcMt1VN0kXrH1rx7aYp6F6xLw4h0CpX3c> accessed 16 August 2019.

Airtime Borrowing

Currently, Mobile Money customers cannot borrow money using their Mobile Money wallets in times of need. This services gives Mobile Money customers the opportunity to borrow money from telecommunication service providers and pay back when they deposit money into their account. The Mobile Money Credit service is a retention strategy that gives the service providers the opportunity to build and maintain profitable relationships with willing/interested customers. The product provides Telco's with the opportunity to position Telco's brand as a dependable service provider not just in good times, but even when they have financial challenges. This in turn builds loyalty for the Telco's brand and decreases churn. With Mobile money lending, one has access to advance products that are convenient, reliable and cost-effective for taking micro-loans.²⁶

For instance, in Nigeria, Airtel Extra Credit allows airtime credit sale when subscribers run out of credit. This is a perfect solution to reload the customer's phone with airtime for calls during an emergency. It also allows airtime credit sale that can be used for all chargeable services. The subscriber pays back on his next recharge with a 15% service charge except for the N25 airtime credit sale which has a service charge of 20%. The same service is not peculiar to the Nigerian communication companies only, in fact many other countries also provide airtime borrowing services.

²⁶ <https://www.airvantage.co.za/products-and-services/mobile-moneylending/> accessed 16th 09, 2019.

Value Airtime Borrowing (N)	Value ²⁷ You Will Be Credited (N)	Amount You Pay Back (N)
25	20	25
50	42.5	50
100	85	100
200	170	200
500	425	500
1,000	850	1,000

Table 1: Modus Operandi of the Package

THE CONCEPT OF EXTRA TIME PACKAGE: AN ISLAMIC PERSPECTIVE

The “Extra-Time Package”, widely known in Nigeria as “Borrow Me Credit”, allows authorized customers to have access to airtime on credit when their account balances are too low to have ordinarily continued on-going calls.²⁸ This is one of the current innovative services launched by network service providers. Prior to this innovation, when a customer runs out airtime, he has to buy a recharge card and top up his account. Sometimes, there are situations when customers will be unable to buy recharge cards for example in the late-night hours, during curfew, while in custody of paramilitary agencies, while travelling, etc. Under these emergencies, the customer would not be able to make calls due to low balance of airtime and this may cause hardship and problems to the customer.

Prevention of harm or hardship before it happens, or minimizing it once it occurs is one of the fundamental principles of Islamic law.²⁹ It is, therefore, incumbent upon Muslim jurists and

²⁷ Value you will be credited with excludes 15% service charge, which will be deducted. See <https://www.airtel.com.ng/pay_and_recharge/airtime/borrow_airtime accessed 16th 09, 2019.

²⁸ MTN Official website, <https://www.mtnonline.com/> accessed 26 June, 2019.

²⁹ Ismail, Azman, and Md Habibur Rahman. *Islamic Legal Maxims: Essentials and Applications*. IBFIM, 2013., 52.

scholars to find a practical legal solution to any emerging obstacles in the society, be it economic, social and spiritual.

There is no impediment under Islamic law to launch or introduce any beneficial service that will make life easier for the people in accordance with the principle of Islamic legal maxim, which states ‘*al-darar yuzāl*³⁰, (harm must be eliminated).³¹ It is discernible from this maxim that all kinds of detriments, harms, and injuries must be removed as much as possible. Thus, the main motive for launching this package is to improve the use of airtime and to make life easier for the subscribers.

Advance (N)	Borrowed Amount (N)	Service fee (N)
25	20	5
50	42.50	7.50
100	85	15
200	170	30
500	425	75
1,000	850	150
2,000	1,700	300

Table 2: Modus Operandi of the “Borrow Me Credit”.

The table is extracted from the website of Airtel service provider on 3rd March, 2019.³²

It is evident from the table above that the higher the airtime credit sale amounts the higher the service charge and vice versa by the service

³⁰ As-Sayuti Abdulrahman, *al-Asbahu wa-Nasa'ir fi-Qawa'id Wa-Furūh al-Sha'fhiyah* (3rd edn, Dar-Salam Publication, Cairo, 2006), vol. 1, 210. See Razif, Nor Fahimah Mohd, Shamsiah Mohamad, and Noor Naemah Abd Rahman. "Permissibility of Hedging in Islamic Finance." *Middle-East Journal of Scientific Research* 12, no. 2 (2012): 155-159.

³¹ Razif, Nor Fahimah Mohd, Shamsiah Mohamad, and Noor Naemah Abd Rahman. "Permissibility of Hedging in Islamic Finance." *Middle-East Journal of Scientific Research* 12, no. 2 (2012): 155-159.

³² <<https://www.mtnonline.com/xtrabyte>> accessed 27th June 27, 2019.

providers. Critically looking at the charges, it is not apposite to flat rate where the same charge is given to all subscribers. For instance, in 200N³³ airtime, 5% is charged as service fees, while in 1000N airtime, 15% is charged as service fees. Moreover, if a subscriber subscribes for 100N airtime, his account would be credited with 85N airtime, the remaining 15N is a service charge. The 15N taken from the subscriber is the cause of disagreement among Muslim jurists. Many views it as *riba* while others view it otherwise.

Credit Sale and Cash Sale Under Islamic Law of Contract

It is crystal clear from the previous explanations that the transaction between telecommunication service providers and subscribers is credit sale of airtime. The significant issue that needs to be discussed in this section is the price increment on the credit sale over cash sale. It is common that when the subscriber wants to buy airtime in cash, he must pay the exact price on the airtime card, but in case of an airtime ‘extra talk package’, he has to pay higher than normal price. This raises the question; does this increment in the price is in accordance with the tenet of Islamic law of contract? Therefore, the subscriber can subscribe to this package or it is a *riba*-based transaction, which is prohibited under the teachings and principles of Islamic law.

In classical Islamic trade, credit sale performs many important functions in trade and commercial transactions. Most Muslim jurists affirm that a seller can indicate two prices, i.e. one for cash (as in buying airtime directly from vendor and pay the price on the spot) and another for a credit transaction (as in airtime extra time package), but one of the two prices must be settled in the meeting of contracting parties before their departure.³⁴ There is consensus on the legality of credit sale and the payment of the price in installment.

There are divergent views among the scholars of Islamic law on the legality of charging the excess on account the period allowed for the payment of the price. Few Islamic scholars of Maliki, Hanafi,

³³ ‘N’ connotes Nigerian Naira (Currency).

³⁴ Al-Zaila’i Fakhr al-din Uthman, *Tabyīn al-Haqāiq Sharhu Kanzu al-Daqāiq*, (Cairo: Dar al-Kitab al-Islami, 1895), vol. 8, 13. See Ibn Hazm Ali, *al-Muhallah*, (Beirut, Dar al-Fikr, 1984), vol. 9, 15.

Ibādiyyah and Zaidiyah schools of law prohibit this form of sale.³⁵ They argued that an increase in the price for delaying is *riba*.³⁶ The position was based on the prophetic tradition, which narrated by Imam al-Tirmidhi that the Prophet forbade two sales in one contract.³⁷ Some jurists explained the hadith that the seller says to the buyer 'I sell this cloth in cash for 10 Dirham and on credit for 15 Dirham but either of the prices is not agreed upon before their separation. This form of transaction contains *gharar* (uncertainty), it is therefore, prohibited.³⁸ It can be inferred from this view that if the seller differentiates between the cash price and credit price before both parties separate and they conclude on either of the two sales, the transaction is valid.

The majority of Muslim jurists including the four schools of law³⁹ support the permissibility of increase of price of the sale. They argued that this transaction is a sale contract not an airtime credit sale. For instance, if Mr. A says to Mr. B 'I lend you 100 Dollar and repay it back after a year for 120 Dollar.' There is no doubt this is *riba*. However, the issue on ground is sale; therefore, there is a different legal

³⁵ Muhammad 'Abdul al-Salam, *Bulghat al-Sālik li Aqrab al-Masālik*, (Beirut: Dar al-Kuub al-Ilmiyyah, 1995), vol. 3, 163. See Ibn 'Uthaimain, Muhammad Sailh *al-Sharh al-Mumti'u 'Ala Zād al-Mustanqi'* (al-Damam, Dar al-Nashr Dar-Ibn al-Jawzi, 2001), vol 12, 15.

³⁶ Hassan As-Sayeed Khatab, 'Bai' Taqseet wa Tatbiqata Al-Mua'sira: Dirasat Fiqhiyyah Muqarannah' 15.

³⁷ Al-Sijistani, Al-Tirmidhi, Abu 'Isa, *Sunan al-Tirmidhi*, (Beirut. Lebanon: Dar al-Fikr 1986), vol. 3, 532.

³⁸ Hassan Khatab, 16.

³⁹ According to Hanafi's Doctrine, 'the price may be increased due to deferment'. See Al-Kāsāni Abu al-'Ala', *Badai'u al-Sanāi'u fi Tartīb al-Sharai'u*, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1976), vol. 5, 187. In Maliki's Doctrine. 'Make certain amount of price due to time'. See Ibn Rushd Muhammad ibn Ahmad, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, (Beirut: Dar al-M'arifah, 1990), vol. 2, 108. Shaffi's doctrine says 'the five in cash is equal to six in installment. See al-Imam al-Ghazali Abu Hamid, *al-Wajīz fi Fiqh al-Imam al-Shafi'i* (Beirut: Dar al-Arqam, 1997), vol. 1, 85. Hanbali's doctrine 'the term takes a portion of the price'. See Ibn Taymiyyah, *Fatāwā Ibn Taymiyyah*, (al-Ribat: Maktabah al-Alma'arifi, 1998), vol. 29, 499.

injunction on airtime credit sale.⁴⁰ Allah has permitted sale and prohibited *riba*.⁴¹

From the above legal clarifications, it can be discerned that a credit sale, especially increment in its price is permissible in Islamic law. The Council of the Islamic Fiqh Academy, in its sixth session held in Jeddah, Kingdom of Saudi Arabia, from 17th to 23rd Sha'ban 1410 AH (corresponding to 14- 20 March, 1990) resolved to some conditions to be observed in permissibility of credit sale contract or sale on instalment especially increment of price. These conditions are:⁴²

1. It is allowable to fix an increased price for a commodity sold on deferred payment, as compared to its cash price. It is also allowable to declare different prices for cash and deferred sales. Even the deferred prices can vary according to different periods specified for payment, and the seller to the customer can expressly reveal such discrepancy. However, the sale cannot take place until the parties agree to contract a particular mode of payment and specify whether the payment is in cash or deferred. Therefore, if the sale takes place without specifying a single particular mode of payment, leaving it uncertain whether the buyer shall pay in cash or in installments, the sale is not valid according to Islamic law.
2. It is impermissible, in an instalmental sale, to fix on the spot price on a cash basis, then, to charge interest expressly tied with different periods, separate from the price of the commodity, no matter whether the parties have agreed on a specific rate of interest or have left it to the current market rate.

⁴⁰ *Surah al-Baqarah*, (2): 275.

⁴¹ *Surah al-Baqarah* (2): 275. Either this verse indicates the legality of all forms of sale, the price is deferred or the price is in excess of the price of the accelerated cash.

⁴² Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000' (1st edn, Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Kingdom of Saudi Arabi, 1421 AH/2000)103-104. See <https://uaelaws.files.wordpress.com/2012/05/resolutions-and-recommendations-of-the-council-of-the-islamic-fiqh-academy.pdf>.

3. If the buyer/debtor defers the payment of instalments after the specified date, it is not permissible to charge any amount in addition to his principal liability, whether it is made a pre-condition in the contract or it is claimed without prior agreement.
4. It is prohibited for a solvent debtor to delay the payment of the instalments from their due date. However, it is not allowable in Islamic law to impose compensation in case he delays the payment.
5. It is permissible for the seller to impose a condition in the sale agreement that if the debtor/the buyer delays the payment of some instalments, all the remaining instalments shall be due at once before the agreed date. This condition may be a valid condition, if the buyer had agreed to it when entering into the sale agreement.
6. The seller has no right to secure the ownership (of sold or commodity) after the sale has taken place. However, it is permissible for him to impose a condition that the buyer shall mortgage the sold commodity with the seller to secure his right of receiving the deferred instalment of the price.

In addition, characterizing the airtime credit sale as a deferred sale is also an opinion upheld by *Dār al-Iftā' al-Miṣriyyah*. It asserts that the charges added by service provider is considered as either sale of utility or *ijarah*.⁴³

⁴³ See <http://daralifta.org.eg/AR/ViewResearch.aspx?ID=258&fbclid=IwAR0Q73IZhI6hdUm7n9DoxDnmGMcMt1VN0kXrH1rx7aYp6F6xLw4h0CpX3Dc> accessed 8 August 2019

Significance of Intention of Contracting Parties

One of the contentious issues of the legality or otherwise of extra time package contracts is the word ‘loan’ used by the airtime providers. Some people affirm that since it is the airtime credit sale contract any increment leads to *riba*, therefore it is prohibited while others rely on the intention of airtime provider which means ‘sale on credit’. This section elaborates the effect of intention and meaning of the word used in the contract. There are some Islamic legal maxims, which give priority to intention and meaning of words used by the contracting parties and the validity of the contract or otherwise is based on them. Among them are:

- a) *Al- ‘ibrah fi al- ‘uqûd li-maqāsid wa-al-ma’āni la li-al-alfāz wa-al-mabāni*’ (The effect in contracts depends on the intentions and meanings and not the words and phrases).⁴⁴
- b) *Al- ‘ibrah fil-tasarrufāt lil-maqāsid wal-ma’āni la lil-alfaz wal-mabāni*(The effects in dealing is based on the objectives and meanings and not words and phrases).⁴⁵
- c) *Al-maqāsid wal-i’tiqādat mu’tabarah fi al-tasarrufāt wal-’ādāt* (Intentions and objectives shall be considered in dealings as well as in customs).⁴⁶
- d) *Al-i’tibār fil- ‘uqûd bi-ma’ānīha* (consideration in contracts is to be given to its meaning).⁴⁷

⁴⁴ Ismail Bakr Muhammad, *Al-Qawa'id al-Fiqhiyyah Bain al-Asalatil- Wa- At-Tawjihi* (1st edn, Darul-Manar, Cairo, 1997)39. Also See, Azman Ismail and Habibur-Rahman MD, *Islamic Legal Maxims: Essentials and Application* (1st edn, IBFIM, Malaysia, 2013).

⁴⁵ Ahmad Muhammad al-Husaini, *Ghamz ‘Uyûn al-Basāir Sharhu Kitāb al-Ashbāh wa al-Nazāir*, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1985), vol. 3, 77.

⁴⁶ Al-Zuhaili Wabbah Mustafa, *al-Fiqh al-Islami wa adillatuh*, (Damascus: Dar al-Fikr, 1985), vol. 4, 573.

⁴⁷ Al-Barkatiy Muhammad ‘Ameem, *Qawā'id al-Fiqh*, (beirut: Dar al-Kutub al-‘Ilmiyyah, 1986), 91.

These maxims explain that, in all transactions and contracts, the ultimate concern shall be given to the intended objectives therein, and the execution shall be done based on the meanings and substances of the contracts. Variances of the form and word shall not divert the contracts from the underlying objectives that the contract is grounded thereupon.⁴⁸ When a contract is concluded, the words used by the contracting parties are not the ones to be considered but the real intentions behind them. This is because the real meaning of a contract or transaction is the intention behind it and not the words used.⁴⁹

Ibn Taymiyyah further explained that, in words, if the expression was different whereas the meaning is the same, the legal decision therein would be the same. However, if the phrase is similar but denotes a difference in the meanings, judgment therein would be different. Similarly, in actions; if the structure and form happen to be different whereas objectives therein are similar, the judgment therein would be alike and same in terms of being valid and lawful in this life and obtaining the reward in the Hereafter.⁵⁰ According to Ibn Qayyim, the intentions and objectives of a speaker must never be overlooked in a contract.⁵¹ It is certain that the intention of the service provider is to sell airtime on credit. Consequently, use of the word 'loan' in transaction does not invalidate the contract. In this case, priority is given to the intention not to the word or statement.

Differences between Increment in Price of Airtime Borrowing and Riba-Based Transaction

The airtime provider sells airtime to subscribers on credit, while selling it on credit, it takes into consideration the period in which the price of airtime is to be paid through buying another airtime in cash and increases the price. The higher the airtime borrowed, the higher the increment of service charge. This engenders the underlying cause of

⁴⁸ Ahmad al-Zarqa, *Sharh al-Qawaid al-Fiqhiyyah*, (Damascus: Dar al-Qalam, 1989), 225.

⁴⁹ Riyadh Mansur al-Khalifi, *al-Mihaj fi 'Ilm al-Qawaid al-Fiqhiyyah*, (al-Maktabah al-Shamilah, 2011), 5.

⁵⁰ Ibn Taymiyyah Ahmad ibn Abd al-Haleem, *Kutub wa Rasā'il wa Fatāwa ibn Taymiyyah*, (Jeddah: Maktabah ibn Taymiyyah, 1987), vol. 30, 112.

⁵¹ Ibn Qayyim *al-Jaoziyyah, I'lām al-Muwaqqi'īn*, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1996), vol. 3, 119.

debating on legality or otherwise the increment in price of airtime borrowing. Some contend that since the price of airtime is increased in the package, hence, it is prohibited. The time given to the subscriber should be treated analogously to the interest charged on airtime credit sale, because in both contracts, an additional amount is charged for the deferred payment. This argument, which seems to be rational in appearance, is based on misconception about the principle of Islamic law concerning the prohibition of *riba* (interest). For the precise understanding of the concept, the following points must be known and understood.

In modern capitalism, there is no difference between money and commodity as much as commercial transactions are concerned. In the matter of exchange, money and commodity are treated alike. Both can be purchased at whatever price the parties agree upon.⁵² Party A can sell one dollar (1 \$) for two dollars (2 \$) to Party B. The mutual consent is the main condition for validity of the contract.⁵³

The Islamic law principles, however, do not subscribe to a capitalist theory. According to Islamic law principles, money and commodity have different characteristics and therefore, they are treated differently.⁵⁴ The main points of difference between money and commodity are the following:

1. Money has no intrinsic utility.⁵⁵ It cannot be utilized for fulfilling human needs directly. It is to be used in order to purchase some goods and services. Commodities/services, on the other hand, have intrinsic utility. They can be utilized directly without exchanging them for some other thing.⁵⁶

⁵² Ingham, Geoffrey. "Fundamentals of a theory of money: untangling Fine, Lapavistas and Zelizer." *Economy and Society* 30, no. 3 (2001): 304-323.

⁵³ Muhammad Taqi Usmani, *An Introduction to Islamic Finance*, 77, www.muftitaqiusmani.com accessed 12th December, 2018.

⁵⁴ Ahmad, Abu Umar Faruq, and M. Kabir Hassan, "The Time Value of Money Concept in Islamic Finance." *American Journal of Islamic Social Sciences* 23, no. 1 (2006): 66.

⁵⁵ Rosa, Angelo Luigi. "Harmonizing Risk and Religion: The Utility of Shari'a-Compliant Transaction Structuring in Commercial Aircraft Finance." *Minn. J. Global Trade* 13 (2004): 35.

⁵⁶ Juma'h, Ahmad, and Raed N. Abu-Mounes. "An introduction to the Islamic perspectives of conducting business." *Revista Empresarial Inter Metro/Inter Metro Business Journal* 7, no. 1 (2011): 58.

2. Commodities/services can be of different qualities, while money has no quality except that it is a measure of value or a medium of exchange. Therefore, all the units of money, of same denomination, are equal to each other. A new note of 10\$ has the same value as an old and dirty 10\$. This is the opposite in the case of commodities, an old and used car may be much less in value than a brand-new car.⁵⁷
3. In commodities/services, the transaction of sale and purchase is affected on a particular individual commodity or, at least, on the commodities having particular specifications. If A has purchased a particular car by identifying it and the seller has agreed, he deserves to receive the exact car. The seller has no right to force him to take the delivery of another car even if it is having the same type or quality. Money on the contrary, cannot be identified in a transaction of exchange. For instance, if A has purchased a commodity from B showing him a specific note of 100\$, he can still pay him another note of the same denomination, while B cannot insist that he will take the same note as was shown to him.⁵⁸

From the above discussion, it could be inferred that borrowing of airtime with increment of its price from network providers is allowable due to following deduction:

1. It is not buying money with money which can lead to *riba*, because in reality the subscriber is purchasing a service which instead of selling at 4.5\$, they choose to sell it 5 \$.
2. The mentioning of money by service providers does not mean that money is exchanged for money, the intent of service providers is to exchange service with money. Moreover, it has been explained in the application of the legal maxim that 'the effect in contracts depends on the intentions and meanings and

⁵⁷ Siegfried, Nikolaus A. "Concepts of Paper Money in Islamic Legal Thought." *Arab Law Quarterly* 16, no. 4 (2001): 319-332.

⁵⁸ Ibid.

not the words and phrases'. Therefore, it is only service that is exchanged (airtime service) which adds a service fee upon the normal selling rate, if the transaction is carried out based on 'cash-and-carry'. This is permissible, because the ownership of service belongs to the service providers. In addition, they can decide to sell at a higher price, just as they can sell at a lower price.

3. It is common knowledge that airtime is only a service because after loading the number on an airtime card, subscribers cannot use the airtime cards as a legal tender. It is also permissible for the vendor to sell 1\$ airtime card at 1.2\$, despite that it is only 1\$ on the airtime card or sell it at 0.95\$. Moreover, after loading the airtime number on the card, the subscriber throws it away without considering 1\$ airtime written on it. This indicates that the airtime card is not money but rather a service. All the four Schools of law and the majority of Muslim jurists accept this view unanimously. The research, therefore, recommends that the name of the package should be changed to airtime card credit sale instead of using the term 'loan'. This will clear all misconceptions about the package.

CONCLUSION

Contracts in Islamic law are based on an engagement and agreement between contracting parties. The contracts, therefore, may have different needs, circumstances and legal justifications. Many contracts involve bilateral declaration with regards to the subject matter and the price. Therefore, airtime credit sale with charges against its normal price is termed as one of the bilateral contracts, in which all necessary legal conditions must be observed. This article has elucidated the concept of the package and clarified some issues that arise on the legality or otherwise of the contract. On offer and acceptance (*tjāb and qabûl*), which appears problematic in the extra time package has been clarified that they are not only restricted to words only. It rather can be exercised via other means recognized by Shari'ah, such as conduct, writing, phoning, gesture, etc., with the condition that the offer and acceptance must clearly indicate the intended motive of the parties.

The research has also established the validity and the permissibility of deferred sale (*bai' al-muajjal*). It has been found that a majority of Muslim jurists support the permissibility of increase of price of the sale. In addition, it has been found that one of the contentious issues of the legality or otherwise of the extra time package contract is the word 'loan' used by the airtime providers. Some people argue that since it is the airtime credit sale contract any increment leads to *riba*, as a result they consider it prohibited while others rely on the intention of airtime provider, which means 'sale on credit'. This research has dispelled the misconception through the Islamic legal maxim '*al-'ibrah fi al-'uqūd li-maqāsid wa-al-ma'āni la li-al-alfāz wa-al-mabāni*' (The effect in contracts depends on the intentions and meanings and not the words and phrases). It is evident through the established maxim that the precedence should be given to the intention and objective of the contract over the meaning of words used by the contracting parties and the validity of the contract or otherwise. Besides, in all transactions and contracts, the ultimate concern is given to the intended objectives therein, and the execution shall be done based on the meanings and substances of the contracts. Variances of the form and word shall not divert the contracts from the underlying objectives that the contract is grounded thereupon. It has also been found that the mentioning of "money" by service providers does not mean that money is exchanged for money. The intent of the service provider is to exchange service with money; not paying money with money can lead to *riba*. Ultimately, the research recommends that the use of loan/borrowing be changed to airtime credit sale to averting misconceptions about the package.