



Fiqh of Charging Commission

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<QUESTION>

Is it permissible to pay or take a commission on the sale of an item? For example some online auctions and stores take a percentage of the sale of an item that you advertise via their website?

<ANSWER>

In the name of Allah, Most Compassionate, Most Merciful,

It is permitted to pay or take commission upon the sale of an item. The scholars of Hadith (muhaddithun) and jurists (fuqaha) have dealt with the issue of brokerage (samsara) in great detail in their respective works.

Imam al-Bukhari (may Allah have mercy on him) has formed a chapter in his Sahih titled: "Chapter regarding the commission of brokerage" in which, he states:

"Ibn Sirin, Ata', Ibrahim and al-Hasan did not think that there was anything wrong in a broker receiving a commission. Ibn Abbas (may Allah be pleased with him) said: "There is nothing wrong in one saying [to another], "Sell this garment and whatever you receive above such-and-such amount is yours." Ibn Sirin said: "There is no harm in one saying, "Sell it for such-and-such amount and whatever profit is made, it belongs to you, or will be shared between us." (Sahih al-Bukhari 4/569)

Moreover, Qays ibn Abi Gharaza (may Allah be pleased with him) narrates that the Messenger of Allah (Allah bless him & give him peace) emerged upon us [in the market] and we were known as brokers. He said: "O group of merchants! Verily Satan and sin are present when trading, hence fumigate your trade with charity." (Sunan Tirmidhi no: 1208, Sunan Abi Dawud no: 3326 and Musnad Ahmad 4/6)

In this report, there is tacit approval from the Messenger of Allah (Allah bless him & give him peace) that working as a broker and receiving a pay on it is permitted. The Messenger of Allah (Allah bless him & give him peace) ordered these Companions who worked as brokers to give in charity, but did not prohibit them from continuing with their work. Had it been unlawful to work as a broker, the Messenger of Allah (Allah bless him & give him peace) would have surely prohibited them.

As such, working as a broker and charging a fee for it is permitted subject to the condition that one is an intermediary for a transaction that is permitted in Shari'a. If a transaction is unlawful,

however, such as an interest-based transaction or a transaction of alcohol, then undoubtedly it will not be permitted to be an agent for it.

The above ruling is for the situation where the commission or wage of the broker is fixed, such as when a broker says that I will sell this car for you, and charge fifty pounds in return for the brokerage services offered to you. This type of commission or fee charged by the broker is undoubtedly permissible.

As for the broker taking a percentage from the sale of an item as commission, the jurists (fuqaha) disagreed regarding its permissibility.

Some jurists do not allow such transactions saying that one of the conditions for a valid transaction of hire (ijarah) is that the wage (ujra) be known (ma'lum) to all parties. If the broker was to charge a percentage from the sale of the item, the commission will be unknown (majhul). The relevant parties would be unaware of the actual amount the item would be sold at, and subsequently the broker's commission in the form of a percentage from the sale would also be unidentified. This leads to uncertainty in the transaction which is prohibited in Shari'ah.

However, other jurists, such as Imam Ibn Abidin of the Hanafi School are of the view that it is permitted to pay or take a commission in the form of a percentage from the sale of the item. They assert that even though the commission (ujra) of the broker is initially unknown, but when the item is actually sold, it will automatically be identified and fixed. As such, this initial uncertainty (jahala) will subsequently be replaced with certainty, and as such, it is not something that leads to dispute. (See: Radd al-Muhtar 6/57, 6/63 & Taqirir Tirmidhi 1/59)

This second position of the jurists can be acted upon given the current economic climate and given the need people have in dealing with brokers. Imam Ibn Abidin (may Allah have mercy on him) states:

"Muhammad ibn Salama was asked regarding the commission of a broker, so he said, "I hope that there is no harm in it due to its widespread practice (ta'amul), even though in principle such a transaction should be invalid...The jurists permitted such transactions due to the people's need of dealing with them..." (Radd al-Muhtar ala al-Durr, matlab fi ujrat al-dallal 6/63)

Therefore, in conclusion, it is permitted to pay commission to a broker in return of the brokerage services offered by him. This can be a fixed lump sum amount, or an agreed upon percentage from the sale of the item. As such, it would be permitted to advertise and sell an item using online auctions and stores that take a percentage from the sale of the item that one sells through them.

And Allah knows best

Muhammad ibn Adam

Darul Iftaa

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