

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his “Fiqhi” Facebook Page

Answer to Question

Selling of Fruits on Trees

To: Shifan AbdulHamid

Question:

Our dear Scholar and Ameer, As-Salaam Alaikum Wa Rahmatullah Wa Barakatuhu In our country there is a practice of selling produces on the trees, before harvesting. For example produces such as clove, pepper, coconut, etc. are sold in such a manner. The land owner will plant, water and fertilize the plants to maximize the yield and when fruits are produced, those fruits are sold on an estimated price, so the buyer would have to harvest it and deal with it as appropriate. The buyer will pay the agreed price to the seller (the land owner) before harvesting. Once the sale is done (Price is agreed between buyer and seller), the Seller (i.e. the land owner) is no longer responsible for the produce, the buyer can harvest it immediately, or he can delay it until he sees fit, but it is his responsibility to protect the crops (from animals, robbers etc.) Is this practice allowed in Islam? May Allah bless you and give victory to this Ummah under your leadership. End.

Answer:

Wa Alaikum As-Salaam Wa Rahmatullah Wa Barakatuhu

I understood from your question that you are asking regarding selling of fruits while on the trees (before being picked/harvested). For example a man would come to the owner of trees and offer to buy the fig fruits for the whole season, leaving the fruit (unpicked) on the trees, he eats from it and sells from it, until the trees no longer have the fruits in that season and this is in return for a specific price. And you are asking if this is permissible.

If my understanding of the question is correct then this is the answer:

Yes, this type of transaction is widespread in many Muslim countries and in Fiqh it is called: “selling of fruits while on its source” and it is commonly called: “the tree guarantee”... and this is permissible on the condition that the fruits have started to ripen and it is not necessary that they are all fully ripe, because not all the fruits become ripe at the same time. Here are some of the evidences and details mentioned in our book, **The Islamic Personality Volume 2, chapter 2 under “The selling of fruits while on their source”**:

“The Shariah rule regarding this guarantee, i.e. in purchasing the fruits on the trees (before picking) is detailed. This is dependent on the state of the fruits, if they seem fit, i.e. they are fit to be eaten, in which case it is permissible to have this guarantee transaction, i.e. it is allowed to sell the fruits in this case, but if the fruits are not ready for consumption then the sale is not permissible. The evidence is what narrated by Muslim from Jabir (ra) that he said: «نهى رسول الله صلى الله عليه وسلم عن بيع الثمر حتى يطيب» **“The Messenger of Allah (saw) has forbidden the selling of fruits before it is ripe.”**

And what is narrated from him as well that he said: «نهى رسول الله صلى الله عليه وسلم... وعن بيع الثمر حتى يبدو صلاحه» **“The Messenger of Allah (saw) has forbidden... and the selling of fruits until they look fit (for consumption).”**

And what is narrated from him by Bukhari that he said: «نهى النبي صلى الله عليه وسلم عن أن تباع الثمرة حتى تشقق، قيل ما تشقق، قال: تحمار وتصفار ويؤكل منها» **“The Prophet (saw) forbade the selling of fruits until they become (Tashqah), they asked: what is (Tashqah), He (saw) said: They are red and yellow and can be eaten from.”**

«أنه نهى عن بيع الثمرة حتى يبدو صلاحها، وعن النخل حتى يزهو، قيل: وما يزهو؟ قال: يحمار أو يصفار» **The Prophet forbade the sale of fruits till their benefit is evident; and the sale of date palms till the dates are almost ripe. He was asked what 'are almost ripe' meant. He replied, "Became red and yellow."**

«إن رسول الله صلى الله عليه وسلم نهى عن بيع الثمار حتى تُزهي، فقيل له: وما تُزهي؟ قال: حتى تحمر. فقال رسول الله صلى الله عليه وسلم رأيت إذا منع الله الثمرة بم يأخذ أحدكم مال أخيه» **That the Messenger of Allah (saw) forbade the sale of fruits until they (Tuzhi) they asked what is (Tuzhi)? He (saw) said: Until it is red. The Messenger of Allah (saw) said: If Allah stops the growth of the fruit, then what right would the seller have to take the oney of his brother?"**

And what is narrated by Bukhari from Abdullah Ibn Ummar that the Messenger of Allah (saw): **«نهى عن بيع الثمار حتى يبدو صلاحها، نهى البائع والمبتاع»** **Forbade the sale of fruits until their benefit was evident. He (saw) forbade the seller and the buyer."**

«نهى عن بيع النخل حتى يزهو، وعن He forbade the sale of palm-trees (dates) until they are nearly ripe and the ears of corn until they are white and were safe from blight".

All of the following Hadith are clear in showing the prohibition of selling fruits before they are ripe. The expression (*Mantooq*) of the Hadith is an evidence for the prohibition of selling fruits before they are ready for consumption, and the understanding of the meaning of the Hadith is an evidence for the permissibility of selling the fruits when they are suitable (ready for consumption).

Therefore the guarantee of the tree that start producing fruits like olives, lemon, and palm trees and others is permissible if it is ready for consumption, and prohibited if it not ready for consumption.

The evidence that the fruit is beneficial is that it is fit for consumption, this is what is understood from the above mentioned Hadiths. Regarding the Hadiths that mention the prohibition of selling the fruit before being fit, there are many tafseer. In the Hadith of Jabir it mentions: **«حتى يطيب»** **“Until their benefit are evident”** And it mentions: **«حتى يطيب»** **“Until They are ripe”**.

And in the Hadith of Anas: **«نهى عن بيع العنب حتى يسود، وعن بيع الحب حتى يشتد»** **The Prophet (saw) forbade the sale of grapes till they became black and the sale of grain till it had become hard.”** (Narrated by Abu Daoud) And in another Hadith from Jabir: **«حتى تشقق»** **“Until they (Tashqah) i.e become red and yellow”** In the Hadith of Ibn Abbas: **«حتى يطعم»** **“Until it can be fit for eating”**.

Hence all of the Hadiths carry the same meaning which is that the fruits are ready to be eaten. Looking at the fruits it is clear that the time of their consumption differs according to the different fruits. For some it is when their colour changes from the outside, and they appear to be ripe, like dates, figs, grapes, pears and the like, others are known to be ready when they are turned around or by experts like in the case of watermelon, because it is difficult to tell that it is ripe through colour change. Others are ready when the flower changes into a fruit like the cucumber and the Armenian cucumber and the like. Hence what is meant by the benefit of the fruit is evident, is when they are fit to be eaten. This is supported by the Hadith narrated by Muslim from Ibn Abbas that he said: **«نهى رسول الله صلى الله عليه وسلم عن بيع النخل حتى يأكل منه أو يؤكل»** **The Messenger of Allah (saw) forbade the sale of palm-trees (dates) until one eats from it, or it is eaten.”**

The Hadith which is agreed upon from the narration of Jabir refers to: **«حتى يطيب»** **“Until They are ripe”** .

From this it can be seen that it is permissible to sell the fruits of the cucumber, Armenian cucumbers and the like, it is allowed to conduct the guarantee transaction as soon as it gives fruits i.e. once the the flower begins to turn to a cucumber fruit, it can be sold, so the fruit is sold while still a flower and before it totally blooms, it can be sold in this

state before it forms completely as long as the process of fruiting has started. This is not considered as selling an absent product, because its fruit comes out in stages and not in one go. Therefore all of the cucumber fruit is sold in its season, the ripe and non-ripe. There is no difference in fruits showing the readiness of the fruit, although they vary in manifestation, they can show redness when they are fit in the case of dates, or turning black in the case of grapes, or changing colour in pears, or that some of the fruits can start to change from flower while others, of the same fruit, haven't but will follow and fruit later on.

However, in fruits which their flowering is not considered to be a change to a fruit, like watermelon, it is not permissible to sell. It is forbidden to sell almonds in the flowering stage, and forbidden to sell figs before they start to ripe, what is intended is to sell it while on the trees i.e. as a tree guarantee, because selling of fruits on trees is on the condition of being fit (for consumption), by an evidence to show the starting process of the fruit to ripen.

The meaning of the fruit being fit is not that each fruit is fit, because that is impossible, since fruits become ripe one by one, or batch by batch and the rest follow, also it is not necessary that each farm is ready on its own, or that all farms are ready, what is needed is that the species of fruit, if it is not different in the way it ripens from others, like olives or its type is fit for eating, or if their type is different in the way of becoming ripe, like figs, and grapes. For example, if some fruits are fit in one of the palm trees in one of the palm tree farms, it is permissible to sell all the fruits in all the farms, and if one of the types of apples in some of the trees are ready, then it is allowed to sell that type of apple in all the farms/orchards. If olives are ripe on some trees in a farm, it is permissible to carry out the olive guarantee transaction in all the farms, because the Hadiths says: «نهى عن بيع النخل حتى يزهر» **He forbade the sale of palm-trees (dates) until they are nearly ripe and the ears of corn until they are white and were safe from blight.**

He said: «نهى عن بيع العنب حتى يسود، وعن بيع الحب حتى يشتد» **The Prophet (saw) forbade the sale of grapes till they became black and the sale of grain till it had become hard.**

He (saw) explained the rule of every fruit and every type specifically, He (saw) said regarding the grain that it must become hard, and that the black grapes that it must become black. The ruling is regarding the readiness of each species of fruit regardless of the others and of every type regardless of the others.

The words 'its benefit' are evident, mentioned in the Hadith regarding the same species and type is true regarding some fruits even if few, as well as the nature of fruits show that they ripen in sequential stages.

From this it shows that it is not permissible to guarantee any tree, i.e. to sell the fruits of any tree before it is fit (ready to be eaten).

I pray that this answer is clear.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer's Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/posts/590420424488366:0>

The link to the answer from the Ameer's page on Google Plus:

<https://plus.google.com/u/0/100431756357007517653/posts/VDxAqKaxrct>

The link to the answer from the Ameer's page on Twitter:

<https://twitter.com/ataabualrashtah/status/833437470134005761>