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Duties of the Buyer Under the Sale of Goods in Shariʿah and International Trade Law

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ABSTRACT

The sale of goods constitutes one of the most prevalent forms of commercial transactions globally, undertaken by individuals and businesses alike to satisfy their diverse and continual needs. As a result, buyers are subject to specific obligations towards sellers, which are governed by applicable legal frameworks that differ across jurisdictions. This paper aims to critically examine the duties of buyers under both Shariʿah and international trade law, focusing on both primary and secondary obligations, and offering a comparative analysis of the two legal systems. This research adopts a doctrinal legal methodology alongside Islamic jurisprudential analysis, drawing from authoritative sources in both Shariʿah and international trade law. The findings reveal substantial parallels alongside notable divergences between the two frameworks in relation to the buyer's obligations. Regarding primary obligations, both legal systems impose the duty to pay the agreed price in accordance with the terms of the contract, the duty to undertake necessary actions to facilitate such payment, and the duty to accept delivery of the goods. With respect to secondary obligations, the analysis identifies both convergence and divergence. Areas of convergence include the duty to notify the seller of contract rescission and the duty to preserve the goods. However, key differences emerge: under Shariʿah, unlike international trade law, the buyer is obliged to notify the seller of non-conformity only when intending to rescind the contract, and this duty is not constrained by a specific timeframe nor by any formal requirement to identify the defect in detail. Moreover, Shariʿah does not impose a post-contractual obligation on the buyer to specify the form, measurements, or characteristics of the goods, as such specifications are expected to be addressed prior to contract formation. Nevertheless, there exists significant potential for harmonizing the regulation of sale of goods transactions under Shariʿah and international trade law, thereby facilitating cross-jurisdictional legal coherence and commercial predictability.

KEYWORDS

Buyer, Shariʿah, international trade law, duties, sale of goods

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INTRODUCTION

There are various consequences of the sale of goods after the conclusion of the contract. They include primary and secondary duties that need to be carried out by the buyer towards the seller. The primary duties are necessary for the execution of the contract, and without them, there will be a breach of the contract that would lead to various consequences for the buyer and seller. The secondary duties are important for terminating or rectifying the contract.

This paper analyses the duties of the buyer under the sale of goods in *Shariʿah* and international trade law and compares the two laws in this regard through doctrinal and Islamic legal research methods. This is to find how similar and different *Shariʿah* and international trade law are with regard to the duties of the buyer under the sale of goods.

LITERATURE REVIEW

The existing literature shows a lack of a comprehensive and comparative analysis between *Shariʿah* and international trade law on the duties of the buyer under the sale of goods. A search of the literature seems to show that previous related studies are either attached to the duties of the buyer under *Shariʿah* or the duties of the buyer under international trade law and only a few focused on comparing *Shariʿah* and international trade law. These few writings, however, address the sale of goods in general and the main obligations of the buyer and the seller and highlight certain *Shariʿah* issues surrounding it. Muslim scholars endeavored to identify and analyze the duties of both buyer and seller in Islamic law. Mohd Ma'sum Billah, in Chapter Two of his book entitled "Shariʿah Standard of Business Contract," gives a brief overview of the contract of sale, its classifications, and some international terminologies used in international trade, namely: the C.I.F. and F.O.B. and their validity at the eye of *Shariʿah*. He also provides an analysis of the buyer's duties under the contract of sale. The definitions, requirements, legality, and basic features of all the remedies provided for the aggrieved party in business contracts under *Shariʿah* were also explained in the book (Billah, 2006). The same author, in another book published under the name "Applied Islamic Law of Trade and Finance: A Selection of Contemporary Practical Issues", provided all the related principles and rulings of the contract of sale and concluded with a comparison between the right to defect and the principle of caveat emptor in common law (Billah, 2007). However, it is not within the aim and scope of these two books to examine the buyer's duties in international trade law. Besides, the former book does not address the sale of goods in particular; it rather refers to the broad words of business contracts.

Razali Hj Nawawi, in his book entitled "Islamic Features of the Sale of Goods, presents some issues on *gharar* (uncertainty), the goods and the price, apportionment of the price, deferred payment and installments, and the types of sale (Nawawi, 2009). Another book published under the title of "*Ahkam Al-Muʿamalat Al-Sharʿiyyah*" written in the Arabic language by Ali Khafîf indicates the pillars, the requirements alongside the Islamic principles and rulings governing the sale and types of sales (Khafîf, 2008). However, a comparative analysis of *Shariʿah* and international trade law is left undiscussed by both authors. Furthermore, neither the former nor the latter provides a full understanding of the buyer's duties under the sale contract, though the duties were outlined and highlighted in the discussion.

The work of Indira Carr on International trade law explores the buyer's duties under the sale of goods based on the United Nations Convention on Contracts for International Sale of Goods 1980 (hereinafter referred to as CISG 1980). The study covers aspects such as the duty to pay the price and the duty to take delivery of goods. Nothing in this book mentions the *Shariʿah* point of view on the buyer's duties under the sale of goods or even to any point within the scope of this research (Carr, 2010).

In a rather different tune, Fatima Akkadaf wrote on the "Application of The United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries". The author inquired whether international trade law is compatible with Islamic law principles. Special focus was placed on the freedom of the contract and good faith under Article 7 (1) of CISG 1980. She also suggests using the adaptability character of Islamic law to bring Islamic law into conformity with the CISG. However, it does not consider the primary duties provided under the contract of sale of goods. The study also does not refer to rules other than the CISG 1980, such as the UNIDROIT Principles (Akaddaff, 2001).

Ahmed A. Syed, in his article titled "A Comparison of the *Shariʿah* and the Convention on Contracts for the International Sale of Goods in International Business Transactions," conducted a comparison between *Shariʿah* and international trade law after a brief explanation of *Shariʿah* and the CISG 1980. He found some similarities between the two laws in relation to the rights of the buyer under the sale of goods. These similarities include the absence of a statute of fraud and the principle of good faith. The paper concluded by giving suggestions on how Muslim countries can deal with specific *Shariʿah* non-compliance matters provided by the general principles and rules of the CISG 1980. Although the paper aims to compare the two *Sharīʿah* and international trade law, it concentrates on general principles of the sale of goods and not the detailed rulings on the buyer's duties. Moreover, the paper does not examine the main duties, such as the duty to pay the price and the duty to take delivery of the goods. Also, as far as international trade is concerned, it refers exclusively to the CISG 1980 (Syed, 2015).

Similarly, Mohamed's work titled "Shariah Compliant International Sale of Goods- Mere Possibility or Impending Reality?" centered on the principles of the sale of goods such as *riba* (usury) and *gharar* (uncertainty) rather than the duties of the parties. The purpose of this article is to explore the prospects of a new model of uniform law based on the *Shariʿah* or Islamic principles, but not to look for possible ways to harmonize the two laws. Again, it does not bring into the discussion other international rules such as the UNIDROIT Principles (Mohamed, 2016).

In the same manner, Lisa Spagnolo and Maria Bhatti inquired whether the interest payment obligation, in particular as stipulated in Article 79 of the CISG compatible with *Shariʿah*, but discussion about the duties of the seller and the buyer is not covered (Spagnolo and Bhatti, 2023). Likewise, Ibrahim Wehaibi in his thesis titled ''The Legal Feasibility of Ratification of the United Nation Convention on International Sale of Goods by Saudi Arabia: A Comparative Study between CISG and

Islamic Law'' looked into the similarities and differences between *Shariʿah* and international trade law in terms of *riba*, penalty clause, future contracts, and open price contracts. Once again, it does not concentrate on the duties of the seller or the buyer. In addition, the thesis aimed to highlight the contradictions between the two laws rather than the similarities (Wehaibi, 2020).

Also, Belal Rajab investigated why the CISG is not ratified and applied in Islamic countries. He found that the compatibility issues between the CISG and *Shariʿah* are one of these reasons. Nonetheless, it does not intend to uncover the similarities and differences between the two laws (Rajab, 2021).

The most relevant piece of writing from previous studies to this research is the work by (Hassan et al., 2024). The authors conducted a comparison between the *Shariʿah* and international trade law in terms of the rights of the buyer under the sale of goods. They found some similarities and differences between the two laws and indicated how to harmonize the practice of the two laws, but they did not include the buyer's duties in the discussion.

METHODOLOGY

This study uses doctrinal legal research to understand the buyer's rights in international trade law (Ahmad et al., 2020). Accordingly, it refers to the relevant conventions such as the Vienna Convention on the International Sale of Goods 1980, International general rules such as the UNIDROIT principles and the Principles of European Contract Law, books on international trade law, for instance, International Trade Law, written by Carr. These sources are available in the library and the internet databases such as HeinOnline and Lexis. It also depends on the Islamic legal research method for understanding *Shariʿah* legal rules from sources of Islamic law (Zahraa, 2003). Thus, a reference is made to the *Quran*, books of *Al-Tafsir* such as Al-Jami' Al-Kabir, written by Al-Qurṭubi, books of *Hadith* such as Saḥiḥ al-Bukhari and Sahih Muslim, written by Al-Bukhari and Muslim respectively, books of *fiqh* such as *Bada'i' Al-Sanai'*, written by al-Kasani, and Islamic codes, especially, *Majallat Al-Ahkam Al-'Adliyyah*. These sources are available in the library and Islamic databases.

RESULTS AND DISCUSSION

1. Primary Duties of the Buyer Under the Sale of Goods in *Shariʿah* and International Trade Law

a. Primary Duties of the Buyer Under the Sale of Goods in *Shariʿah*

There are various primary duties that the buyer needs to carry out upon the conclusion of the sale of goods contract. They include the duty to pay the price for the goods, the duty to take necessary steps to effect the payment, and the duty to take delivery of the goods.

i. Duty to Pay the Price for the Goods

Payment of the price is one of the duties of the buyer towards the seller in order for him to own the goods belonging to the seller. Without paying the price, the seller is not obliged to deliver the goods to the buyer as there is no consideration. According to Hanafis, the payment of the price by the buyer precedes the delivery of the goods by the seller (Kasani, 2000). However, according to the Shafiʿis, the buyer is obliged to pay after he receives the goods from the seller (Kasani, 2000).

The amount of the price and the currency must be mentioned in the sale of goods contract to ensure its validity and enforceability. If the contract is silent on the amount of the payment, the contract shall be voidable according to Hanafis, while it is void in the opinion of Shafi'is, Malikis, and Hanbalis for *gharar* (*Majallet al-Ahkam Al-Adliyyah*, Articles 237, 238, and 240; Nawawi, 2009; Zuhaily, 2007a).). Thus, the buyer is not obliged to make the payment in this case according to the four *mazhabs*.

For the place of payment, it must also be clearly stated in the contract. If not, the place of payment will be a convenient place for the seller to receive the payment safely (Kasani, 2000). The place may be either at the contractual session, the residence of the seller, or the residence of the buyer. The place of payment may also be at a bank for direct transfer to the seller's deposit account to ensure the safety of the money paid. Nevertheless, for *bay' al-salam,* the payment is at the contractual session where the buyer and seller conclude their contract (Nawawi, 2009).

As regards the time of payment, in practice, it is usually mentioned in the contract. The buyer has to pay on the agreed time as mentioned in the agreement. If not, the payment is made based on the common practice of the people (*'urf*) (*Majalallat Al-Ahkam Al-ʿAdliyyah*, Article 251).

The mode of payment of the price in the sale of goods also depends on the contract. If the contract mentions that the payment is on a cash basis, then the buyer has to pay in cash. If it is mentioned that the payment is on a deferred basis, then the buyer has to pay as per the agreed terms in the contract, based on the principle of sanctity of the contract. When the payment is on a deferred basis, the actual date of payment needs to be mentioned clearly in the contract. If not, again, the sale of goods shall be voidable, according to the Hanafis, while it is void in the opinion of Shafi'is, Malikis, and Hanbalis, as this would lead to *gharar* (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 246). Thus, the buyer is not obliged to make the payment in this case according to the four *mazhabs*.

Since the payment of the price of the goods is part of the duties of the buyer, he has to pay it accordingly unless due to an intervening legal reason. If he fails to exercise this duty, this would amount to a breach of the contract. As a result, the seller may

request to revoke the contract and apply for specific performance, or claim damages.

The right to claim damages is based on the *Hadith*: "The delay that is caused by a rich man is injustice" (*Sahih Muslim*, 1564: 736). This authority indicates that one who refuses to pay his liability, though he is able to do so, is committing an oppressive and prohibited act (Nawawi, 2000). However, this is not applicable to the buyer who faces financial difficulty, as the seller is encouraged to give an extension of time for payment until the buyer becomes capable (Nawawi, 2000; Zuhaily, 2002). On this, Allah says: "But if he is in hardship, then deferment until a time of ease. But to remit it as charity is better for you if you only knew". (*Surat Al-Baqarah*, 2:280).

This means that the buyer who lacks sufficient wealth, without prejudice to the seller's rights, shall be given an opportunity to fulfil his duty until the time of prosperity, or exempted from payment (Zuhaily, 2007b). To determine the extension time of payment, it is better to rely on the discretion of the judge as he holds full responsibility for rectifying individual actions, incriminating oppressors, supporting aggrieved people, and protecting and promoting justice (Zuhaily 2007a). In the case of payment on a deferred basis through installment, the seller is entitled to ask the buyer to pay the whole remaining sum immediately provided that this entitlement is clearly mentioned in the contract (International Islamic *Fiqh* Academy resolution No. 51, Available at http ://www .iifa-aifi .org/1785 .html). This is allowed to protect the rights of the seller and to enforce what has been agreed upon under the contract (Zuhaily, 2002). The seller, however, is not allowed to charge any compensation or fine, as this is prohibited and would amount to *riba* (usuary) (International Islamic *Fiqh* Academy resolution No.51, Available at http ://www .iifa-aifi .org/1785 .html; Zuhaily 2002). This is the position even where this right is mentioned in the agreement.

ii. Duty to Take Necessary Steps to Effect the Payment

Additionally, the buyer must take a series of actions to fulfil partial or full payment. This may happen especially in the case of payment for imported goods from abroad, where the contract of sale of goods requires the buyer to effect the payment through a letter of credit, cheque, or remitting the payment from the account of the buyer to the seller's bank account. Since this method of payment is agreed upon in the contract, the buyer has to fulfil it on the basis of the Islamic legal maxim: "Anything that makes a duty becomes perfect is a duty in itself" (Salami, 2006).

The *Sharīʿah* recognises payment through a letter of credit based on the principles of "*suftajah*" which refers to "the payment for the goods purchased under the sale of goods contract, which is effected at a different place through a second party" (Hassan, 2006).

There are three types of letters of credit that *Shariʿah* recognises: i) *wakalah* letter of credit, ii) *murabahah* letter of credit, and iii) *musharakah* letter of credit. In a *wakalah* letter of credit, there is an agency relationship between the bank and the customer, whereby the bank acts as an agent of the customer (the buyer). The customer or the applicant will hand over the instruction in writing to the bank by completing a standard form indicating details of the trade. The bank will act on the written instruction under '*aqad* (contract), which binds both parties to the agreement. From this point onwards, the bank as an agent will ensure that the documents conform to the Uniform Customs and Practices for Documentary Credit (UCP) and it can effect payment accordingly once the documents are found to be in compliance. Acting as an agent, the bank will only guarantee the payment to the seller. The bank is not a purchaser, but only an agent to make payment on behalf of the buyer. The price will be fully paid by the applicant from the deposit placed with the bank. Being an agent, the bank is entitled to receive commissions apart from the service charge obtained on the issuance of the letter of credit (Rosmawani et al, 2010).

Under a *murabahah* letter of credit, the bank will provide a financing facility to the customer (applicant), where the customer is given a certain period of time to make full settlement of the purchase, for example, 30 days, 90 days, or 120 days. The bank issues a letter of credit and pays the purchase price to the exporter. Then the bank buys the said goods and resells them at a different price agreeable to the customer. The new selling price constitutes a mark-up of a certain profit above the original cost price. In this case, the customer shall be given a certain grace period in order to enable him to sell the goods to a third party. It also permits him to collect the sales proceeds before he is required to make a full settlement to the bank. For instance, a customer engaging either in trading or manufacturing may need to purchase merchandise or raw materials in the course of their business. The customer, therefore, requires a letter of credit together with financing over a certain period of time. A *Shariʿah*-compliant financial institution can then offer him a letter of credit using *murabahah* facility (Rosmawani et al, 2010).

Under a *musharakah* letter of credit, the bank issues the letter of credit, and both the bank and the customer contribute to the purchase price. They later share the profits of the business venture based on the pre-agreed profit-sharing ratio. Losses are borne proportionate to capital contribution in paying the purchase price. For instance, where a customer of the Islamic bank has been awarded a contract for the supply of certain merchandise to a particular organization, he may propose a joint-venture scheme whereby the bank grants him a credit facility in order for him to import and supply the merchandise. This joint venture proposal is known as *musharakah,* which will be operated on the basis of profit-sharing (Rosmawani et al, 2010).

The *Shariʿah* also recognizes payment through the issuance of a cheque or, to a certain extent, through a banker's cheque (Kathlan, 2012). In order for the buyer to effect the payment through a cheque, he must have a current account that has a cheque facility, either ordinary or overdraft (Zaʿtri, 2008). To issue the cheque to the seller, the buyer must ensure that he has a sufficient amount of money in his current account or that the amount is within his overdraft limit (Zaʿtri, 2008). This is to ensure that his cheque is not rejected upon clearing it by the seller. However, if the payment is made through a banker's cheque, then the buyer has to apply for it through the bank over the counter with payment of the full amount of the goods and additional fees or charges. Then, the bank will issue the banker's cheque under the name of the seller for him to cash it (*Fiqh* Council of *Al-Belad* Islamic bank resolution No. 29 <http://www.bankalbilad.com/Documents/%d9%82%d8%b1%d8%a7%d8%b1%d8%a7%d8%aa%20%d8%a7%d9%84%d9%87%d9%8a%d8%a6%d9%87%20%d8%a7%d9%84%d8%b4%d8%b1%d8%b9%d9%8a%d9%87/29.pdf > (accessed 2 June 2018); CIMB Islamic bank, <https://www.cimbislamic.com.my/en/personal/banking-with-us/our-services/remittance-zero-fee-telegraphic-transfer-campaign/bankers-cheque.html > (accessed 2 June 2018)).

Furthermore, the payment may be effected by remitting to the seller's bank account. The remittance may be carried out over the counter with the help of the bank's cashier or through an electronic instruction to the bank. For over-the-counter remittance, the buyer has to visit their bank and fill in a remittance form to transfer the sum from their account to the account of the seller, subject to payment of service charge (*ujrah*) (the terms and conditions for the speedsend send money of the CIMB Islamic, paragraph 2. Available at online file:///C:/Users/acer/Desktop/SpeedSend-TnC-SendMoney.pdf (accessed 2 June 2018).

As regards remittance through electronic instruction, it may be online or through an ATM. For the online, the buyer first of all must apply and subscribe to the online facility offered by their bank. He can then use the facility via smartphone or computer to make a payment for the price of the goods to the seller. To ensure the authenticity of the transaction, the buyer will receive the password for them to execute the transfer successfully. For the remittance through an ATM, the buyer has to have a savings or current account that has an ATM card facility for him to withdraw money or carry out any services provided through the ATM. After that, the buyer may request the remittance transaction to transfer a certain amount of money to the account of his counterparty, the seller (<http://www.bankalbilad.com/sites/en/Pages/Transfer-via-Western-Union-Through-Albilad-Net.aspx> (accessed 3 June 208)).

iii. Duty to Take Delivery of the Goods

Another duty of the buyer is to take delivery of the goods from the seller or his agent. This is necessary for the buyer to obtain ownership and have full control of the goods sold. At the same time, taking delivery of the goods would prevent the seller from incurring any financial loss and risk due to damage to the goods while in his possession.

This duty must be carried out as soon as possible from the time the seller enables him to do so. This is based on the general ruling: "The effects of the sale shall be realized immediately" (Kasani, 2000).

Taking possession may be in the form of *qabḍ* where the buyer physically takes possession of the goods directly from the hand of the seller or the carrier. It may also be in the form of *takhliyyah* where the buyer takes possession of the goods at the place after the seller relinquishes possession (Zuhayli, 2007a; *Majallat Al-Ahkam Al-ʿAdliyyah*, Articles 263 and 274).

There are various views of the Muslim jurists as regards the place of delivery. According to Ḥanafis, the goods must be taken over at the place where the goods initially existed (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 285). The *Jumhur*, the Shafi'is, Hanbalis, and Malikis, on the other hand, argue that the customary practice of the people (*ʿurf*) shall determine the place of delivery (Zuhaily, 2007a). According to the dominant principle of mutual consent, if the agreement stipulates a particular place of delivery, the agreement shall prevail. Thus, the buyer has to provide the seller with necessary information such as the time of delivery, the place, the address of delivery, and the person in charge of taking delivery.

The expenses for the delivery of goods to another place, as mentioned in the agreement, must be borne by the seller unless otherwise stated in the agreement (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 289). For expenses on customs duties and taxes, unloading costs, and contributions for *takaful* coverage, Muslim jurists disagree on whether they fall within the responsibility of the buyer or the seller but they all relied on the legal maxim: "The enjoyment of a thing is the compensating factor for any liability attaching thereto" (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 85). According to Al-Kasani and Al-Khafif, the expenses mentioned above shall be borne by the buyer since he would be considered the owner of the goods from the time the contract is concluded (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 369; Kasani 2000; Khafif, 2008). According to Al-Zuhayli, the expenses mentioned above shall be borne by the seller if the goods are still in his control because, up to this time, the ownership has not been transferred to the buyer. However, if the goods have been physically or constructively occupied by the buyer through (*qabỊ*) such expenses shall be borne by him as he would be considered the owner of the goods from this time (Al-Zuhaily, 2002).

In case the buyer does not carry out this duty at the right place and time, he would be liable for any loss. Accordingly, the seller would be entitled to declare the contract void for breach. Alternatively, he may request specific performance under the general principle of sanctity of contract. (*Surat al-Ma`ida,* 1:5). In both cases, the seller may be reimbursed for the expenses and costs he has borne in order to maintain the goods as required by the Islamic principle: "Harm shall be eliminated'' (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 20).

b. Primary Duties of the Buyer Under the Sale of Goods in International Trade Law

The primary duties of the buyer under the sale of goods in international trade law are the duty to pay the price, the duty to take necessary steps to effect the payment, and the duty to take delivery of the goods.

i. Duty to Pay the Price

The buyer is obliged to pay the price to the seller according to both the agreement and the law (CISG 1980, Article 53 and the UP 2016, Article 1.3). The amount of the price and the currency are, initially, governed by the contract (CISG 1980, Article 53 and the UP 2016, Article 1.3). If the price is not fixed, the buyer is still obliged to pay the price generally charged at the time of the conclusion of the contract for such goods under comparable circumstances in the trade concerned or the reasonable price (CISG 1980, Article 55, the UP 2016 Article 5.1.7 (1) and the PECL 2002, Article 6:104). If the parties do not agree on the currency of the price, the payment shall be made in the currency of the place where the payment is to be made because it is generally the place where the payment is to be made (UP 2016, Article 6.1.10). For instance, if the place of the seller's business is Italy, the payment shall be made in Italian lira (CLOUT case No.80, 24 January 1994, translated Abstract, Germany https://documents-dds-ny.un.org/doc/UNDOC/GEN/V95/529/10/IMG/V9552910.pdf?OpenElement).

This duty must be carried out at the seller's place of business unless the parties agree otherwise (CISG 1980, Article 57 (1) (a), UP 2016, Article 6.1.6 (1) (a), and PECL Article 7:101 (a)). However, if the payment of the price is to be made against the handing over of the goods or the documents, the buyer shall pay the price at the place of handing over the goods or the documents (CISG 1980, Article 57 (1) (b)).

As regards the payment time, the buyer shall pay the price within a reasonable time after the seller places the goods or the documents controlling their disposition at the buyer's disposal unless the contract states otherwise (CISG 1980, Article 58 (1); UP 2016, Article 6.1.1 and PECL 2002, Article 7:102). However, he may not do so until he has an adequate opportunity to examine the goods (CISG 1980, Article 58 (3)).

If the buyer fails to pay the price at the right time and the right place, he shall pay an agreed compensation, penalty, or any deferred payments immediately if this is required by the contract. This is because the parties' choice is respected according to the principle of freedom of contract. If the parties do not agree on this matter, the buyer may still have to pay interest and damages according to the law should the seller claim them (CISG 1980, Article 61 (1) and (2)). In addition, the seller may rely on rescission and suspension of performance if the breach is fundamental (CISG 1980, Article 61 (1) and (2)). If the seller's case has been proven to be true, the buyer shall not be awarded a period of grace at all (CISG 1980, Article 61 (3)).

ii. Duty to Take Necessary Steps to Effect Payment

Another duty is that the buyer must take any preparatory steps required to make the payment (CISG 1980, Article 54). These preparatory steps vary depending on the method of payment. For payment by letter of credit, the buyer (applicant) shall give all the details of the documents required, including transport documents, invoices, insurance policies, certificate of quality, and certificate of origin, to the bank (Carr, 2010). The buyer shall open the same kind of letter of credit specified in the contract (CISG 1980, Article 53 and the UP 2016, Article 1.3). He shall do so at the time stipulated in the contract or within a reasonable time after the conclusion of the contract if the contract does not require that the letter of credit be opened at a particular time (UP 2016, Article 6.1.1 and PECL 2002 Article 7:102).

Another method of payment is payment by bill of exchange. Here, the buyer shall draw or endorse a complete and regular bill of exchange on the face of it that is not affected by fraud, duress, or illegality as required by the applicable law. This is to ensure that the rights upon the bill of exchange will transfer to the seller (Carr, 2010).

Furthermore, the payment may be made through a money transfer from the buyer's bank account directly to the seller's bank account. This is known as a telegraphic transfer or mail transfer. In this case, the buyer is required to open an account and request the bank to do the transfer (Carr, 2010).

One more method of payment in international trade is payment by credit or debit card, whereby the bank lends the buyer money to be paid as a price.

Any expenses relating to this duty, such as transfer or approval fees, must be borne by the buyer without any right to claim them from the seller. Thus, the buyer is not entitled to deduct the cost of payment by cheque from the seller's claim for payment of the purchase price (Case No. 45 (19) O 80/94, 17 April 1996, Germany. English translation of this case available at http ://cisgw3.law.pace.edu/cases/960417g1.html).

iii. Duty to Take Delivery of the Goods

Further duty is that the buyer shall take delivery of the goods as required by the contract and law (CISG 1980,

Article 53). This obligation implies that the buyer has to take all steps that are reasonably expected of him in order to enable the seller to make the delivery (CISG, Article 60 (a); UP 2016, Article 5.1.3; PECL Article 1:202). This duty requires the buyer to provide the seller with full information regarding the shipping if it has been arranged by him, and the exact place of destination where the goods shall be dispatched if the shipping has been arranged by the seller. In addition, if the place of delivery is the buyer's place of business, the buyer shall ensure that the seller has accessed the place (Witz, 2004).

The buyer must also take over the goods (CISG 1980, Article 60 (b). This means the buyer shall have physical possession of the goods (Bianca, 1987). This must be conducted at the time and place where the goods are deemed to be delivered according to the contract. In the absence of such agreement, the place of taking delivery of the goods is the place where the seller is obliged to deliver the goods (Case No.43 O 136/92,14 May 1993, abstract available at http://cisgw3.law.pace.edu/cases/930514g1.html).

The time within which the buyer shall take delivery of the goods depends on the method of delivery. Where the sale involves carriage of goods, the duty to take over the goods follows from the actual tender of the goods (Enderlian, 1992). Where the goods have to be placed at the disposal of the buyer, the duty to take delivery of the goods will last within a reasonable time after the buyer has been informed of their right to take delivery of the goods (Enderlian, 1992).

Taking delivery of the goods would entrust the buyer with other related responsibilities, provided that the contract does not stipulate otherwise. These responsibilities include arranging the carriage, paying customs duties and taxes, and paying the freight and unloading costs or expenses for storage of the goods (Bianca et al, 1987; UP 2016, Article 6.1.11; PECL 2002, Article 7:112).

Failure to do any of the above-mentioned duties would result in a breach of contract. (CLOUT case 133, 8 February 1995, Germany (abstract) https://documents-dds-ny.un.org/doc/UNDOC/GEN/V96/853/30/IMG/V968J5330.pdf?OpenElement). Accordingly, the seller may claim any damages for extra fees he paid for retaining the goods at the place where the goods were kept for the buyer's disposal or extension of the carriage service. However, the buyer may refuse to take delivery of the goods if he declares the contract as avoided for fundamental breach of contract (CISG 1980, Articles 25 and 26; Witz, 2004).

2. Secondary Duties of the Buyer Under the Sale of Goods in Shariʿah and International Trade Law

a. Secondary Duties of the Buyer Under the Sale of Goods in Shariʿah

Generally, the secondary duties in *Shariʿah* include the duty to notify the seller of rescission (*al-faskh*) and the duty to preserve the delivered goods.

i. Duty to Notify the Seller of Rescission (*Al-Faskh*)

The buyer shall notify the seller of his intention to revoke the contract whenever he intends to exercise a right to rescind the contract under the option of defect (*khiyār al-ʿayb*), or the option of description (*khiyār al-waṣf*), or the option of examination (*khiyār al-ruʿiyah*) (Kasani, 2000; Zuhaily, 2007a). This duty is required to prevent the buyer from being bound by the contract or to restore any payment made (Zuhaily, 2007a).

To exercise this duty, the buyer shall either say any words that indicate their intention to reject the goods. For example, he may say, "I do not accept these goods" (Zuhaily, 2007a). Alternatively, the buyer may express such intentions through writing. This is based on the legal maxim: "Correspondence takes the place of an exchange of conversation" (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 69). According to Hanafis, he shall also take legal proceedings before the court in order to seek a judgment for rescission if the seller does not agree to rescind the contract. However, Shafiʿis are of the opinion that the buyer's statement to rescind the contract is sufficient (Zuhaily, 2007a). Muslim scholars provide different views on when to exercise this duty. According to Shafiʿis, if the buyer fails to do this duty within a short time, the contract would be binding on him for his implied consent. The time frame starts when the buyer first examines the goods delivered for the option of examination, knows the defect or the non-conformity for the option of defect and the option of description, and lasts until a sufficient period, in accordance with custom (*ʿurf*) to take a decision whether to accept the goods or reject it. If this period lapses and the buyer does not give the seller a notice of his intention to reject the goods, the buyer will be deemed to have accepted the goods. Shafʿis defended their position by arguing that although sales are typically legally obligatory, they are not when they include an option of flaw, description, or examination. This is to eliminate any harm to the buyer. They also argue that delay in notifying the seller of the rescission is not justified unless the *ʿurf* requires otherwise, such as delay due to illness (Zuhaily, 2007a).

Hanafis and Hanbalis think that the duty to notify the buyer of the rescission is not restricted by time (Zuhaily, 2007a). It lasts forever as long as there are no excuses for the buyer for exercising their right of option. This is because harm exists whenever the goods sold are defective, or they do not comply with the agreed descriptions, and options are provided to avoid or eliminate this harm (Zuhaily, 2007a).

From the two different views, the former is preferable because it brings justice to both parties. On one hand, there is nothing that prevents the buyer from fulfilling his duty to notify the seller of the rescission.

On the other hand, the longer the time given for the buyer to perform his duty to notify the seller of the rescission, the more the seller suffers from the probable loss caused by the buyer's unexpected rejection of the goods.

It seems that if the buyer does not carry out this duty, the rescission would be void.

ii. Duty to Preserve the Delivered Goods

Another duty is that if the buyer has taken over the goods that are non-conforming to the agreed description or defective, he shall preserve them from this time till the goods are repossessed by the seller. This duty shall be carried out even if the buyer does not physically control the goods as long as he possesses a bill of lading representing the ownership of such goods or has the authority to instruct the carrier. In these cases, the buyer is deemed to be the constructive possessor of the goods (*qabid hukman*), which is equal to the ordinary possessor (*qabid haqiqatan*) (Zuhaily, 2002).

Firstly, this duty is based on the fact that the risk on the goods is assumed to be transferred from the seller to the buyer when they are controlled by the buyer through "*qabiḍ*" even though the goods do not conform to the agreed goods at this time (Zuhaily, 2002). In addition, this duty is also necessary to exercise the option of defect. Moreover, the goods in the hands of the buyer are deemed to be a trust which shall be returned to their owner in the same condition as they were delivered to the buyer. Upon dealing with trusts, Allah said: "Allah instructs you to give back things entrusted to you to their owners" (*Surah Al-Nisa`*, 4:58). Also, dealing with the entrusted goods by any kind of transaction is prohibited (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 96).

This duty shall be carried out at the time the buyer physically or constructively possesses the goods. This is because the responsibility for the goods shall be entrusted to the buyer from this time (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 96).

Upon performing this duty, the buyer does not need to redeliver the goods to the seller. Alternatively, the seller shall strive to retake the goods at his own cost. This is because the seller is responsible for the non-conformity of the goods that causes the rescission of the contract. Furthermore, because the seller regains ownership of the goods from the time of the rescission of the contract, he shall pay any costs and expenses borne by the buyer to retain the goods. In this regard, an Islamic legal maxim says: "The enjoyment of a thing is the compensating factor for any liability attaching thereto (*Majallat Al-Ahkam Al-ʿAdliyyah*, Article 85).

b. Secondary Duties of the Buyer Under the Sale of Goods in International Trade Law

Secondary duties of the buyer under the sale of goods in international trade include: the duty to specify the form, measurement, or other features of the goods, the duty to notify the seller of non-conformity, the duty to notify the seller of rescission, and the duty to preserve the goods.

i. Duty to Specify the Form, Measurement, and Features of the Goods

The buyer is under a duty to specify one or more features of the goods if the contract requires so (CISG, Article 65). This is to enable the buyer to obtain goods that are fit for his actual business needs (Bianca et al, 1987). For example, on April 1, a buyer orders 1000 pairs of shoes at a certain price for delivery on or before October 1, and the contract states that the buyer will specify the styles and sizes to the seller on or before September 1. The seller may be a merchant who will assemble the quantity to be delivered from inventory, or he may be a manufacturer who, after notification by the buyer, will manufacture the goods according to the buyer's specifications (Bianca et al, 1987).

This duty also has a legal effect on the parties. On the one hand, it gives rise to a further duty on the seller to deliver goods that conform to the specifications provided by the buyer. On the other hand, it bars the buyer from changing the specification once made (Bianca et al, 1987).

This duty must be carried out pursuant to the contract. Hence, if the contract states that the buyer shall specify the goods on or before a certain date or upon the seller's request, the buyer must comply (Bianca et al, 1987).

Failure to carry out this duty on time would give the seller the right to make the specification by himself in accordance with the requirements of the buyer that may be known to him (CISG 1980, Article 65 (1)). Alternatively, the seller may seek other remedies such as rescission of the contract or request the buyer to do the specification through specific performance as well as damages (CISG 1980, Article 64 (1) (a) and (b), Article 62, and Article 74).

ii. Duty to Notify the Seller of Non-conformity

Another duty of the buyer is to notify the seller of the non-conformity of the goods. The non-conformity refers to any of the following:

i) dissimilarity between the delivered goods and the agreed goods in the quantity, the quality, the description, or the manner they are contained or packaged.

ii) unfitness of the goods for ordinary use, including lack of specific characteristics or a defect that impede their material use, or unfitness of the goods for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely or that it was unreasonable for him to rely on the seller's skill and judgment (Enderlein, 1992; CISG 1980, Article 35 (b)).

iii) dissimilarity between the qualities of the goods delivered and the qualities that the seller has

held out to the buyer as a sample or model (CISG 1980, Article 35 (c)).

iv) dissimilarity between the manner the goods are delivered, contained, or packaged and the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods (CISG 1980, Article 35 (d)).

The notification to the seller of any non-conformity found is carried out after the buyer has examined the goods (CISG 1980, Article 39). He shall do so within a reasonable time from the time when he discovers the non-conformity or ought to have discovered it (CISG 1980, Article 39). This reasonable time is determined on a case-by-case basis (Bianca et al, 1987). Generally, the notification must be made after the buyer has discovered the non-conformity, as long as it is not hidden (Case No.54 O 644/94, 5 April 1995, Germany, abstract available at http://cisgw3.law.pace.edu/cases/950405g1.html; CLOUT Case No. 123, 8 March 1995, https://documents-dds-ny.un.org/doc/UNDOC/GEN/V96/842/23/IMG/V9684223.pdf?OpenElement.) For durable goods, the reasonable time is eight days from the time when the buyer discovered or ought to have discovered the non-conformity (Case No.7 U 3758/94, 8 February 1995, Germany (translated abstract), UNILEX, http://www.unilex.info/case.cfm?pid=1&do=case&id=117&step=Abstract). However, this time limitation shall not in all cases exceed two years from the time when the goods were actually handed over to the buyer (CISG 1980, Article 39).

To exercise this duty, the buyer shall notify the seller of a concise description of the non-conformity (CISG 1980, Article 39 (1)). Accordingly, if he insufficiently specifies the non-conformity as if he does not give notice of specific unlabeled plates sold if he only complains that stones sold are wrongly labeled, or if he does not specify how many items sold do not conform to the agreed size and so on, the buyer's claim would be rejected (CLOUT case No.364, 30, November 1999, Germany (translated abstract) https://documents-dds-ny.un.org/doc/UNDOC/GEN/V00/602/96/PDF/V0060296.pdf?OpenElement; CLOUT case No.252, 21, September 1998, Germany (translated abstract) https://documents-dds-ny.un.org/doc/UNDOC/GEN/V99/892/77/PDF/V9989277.pdf?OpenElement)

However, if the buyer intends to keep the goods and claim damages or a reduction of the price, he can rely on the non-conformity even if he fails to notify the seller of the non-conformity within the required time frame (Bianca et al, 1987).

iii. Duty to Notify the Seller of the Rescission

The buyer is bound to notify the seller of his intention to rescind the contract (CISG 1980, Article 26). This duty is necessary because traders may not be aware that certain conduct could automatically entail the rescission of the contract (Enderlein, 1992).

The notification can only be made orally or in writing. Thus, any conduct implying an intent, for instance, sending back delivered non-conformed goods, does not amount to a notification (Enderlein, 1992). In addition, it must be made via a means appropriate under the circumstances (Enderlein, 1992). Accordingly, written notes would have to be sent using customary means of communication with the grounds for rescission (Enderlein, 1992). If the buyer does not fulfil this duty, he will lose his right to rely on the rescission of the contract (CISG 1980, Article 26).

iv. Duty to Preserve the Goods

One more duty of the buyer is the duty to preserve the goods whenever the buyer intends to exercise any right to reject them. They are either physically possessed by him or they have been dispatched by the seller to the buyer and placed at the buyer's disposal at their destination (CISG 1980, Article 86 (1); Bianca 1987).

As for the former case, the duty to preserve the goods depends on the reason for which the buyer intends to reject the goods. If his intention to reject the goods is based on the wrong place or time of delivery by the seller, the buyer's duty to preserve the goods is established after he has received the goods and manifested his intention to reject them (Bianca, 1987). If the buyer intends to reject the goods because of non-conformity, he must perform this duty from the time he discovers the lack of conformity (Bianca, 1987). Upon exercising this duty, the buyer shall take only reasonable steps in the circumstances (Bianca, 1987).

As for the latter case, the buyer must take possession of the goods first to preserve the goods on behalf of the seller, provided that this can be done without payment of the price and without incurring unreasonable expenses, then he must preserve the goods (CISG 1980, Article 2).

To exercise this duty, the buyer has an option either to deposit them in a warehouse of a third party at the seller's expense, to sell them due to unreasonable delay in taking possession of the goods by the seller, in taking them back, or in paying the price or the cost of preservation (CISG 1980, Articles 87 and 88 (1)). He may deduct any expenses of preserving the goods and selling them from the proceeds of the sale (CISG 1980, Article 88 (3)).

This option is mandatory when the goods are rapidly deteriorating or when the buyer would have to bear unreasonable expenses to preserve them (CISG 1980, Article 88 (2)). However, the seller shall give the buyer notice of his intention to sell the goods (CISG 1980, Article 88 (1)).

If the buyer infringes the obligation to preserve the goods, he will lose his right to declare the contract avoided or to require delivery of substitute goods, if the infringement leads to loss or substantial damage of the goods (CISG 1980, Article 82 (1)). The seller may also be entitled to claim damages if he incurred a loss

in preserving the goods by himself (Schlechtriem et al, 2010).

3. Comparative Analysis Between the Duties of the Buyer Under the Sale of Goods in Shariʿah and International Trade Law

There are various similarities pertaining to the primary and secondary duties of the buyer under the sale of goods in *Shariʿah* and international trade law.

As for the primary duties, first of all, they are similar in regard to the duty to pay the price. Besides this, there are slight differences between *Shariʿah* and international trade law on this matter, as the *Shariʿah* requires the price to be sufficiently determined before the duty comes into effect, but the international trade law does not provide such a requirement. Again, the former requires this duty to be executed immediately after the conclusion of the contract, without looking into whether the buyer has examined the goods or not. Whereas international trade law stipulates that this duty must be performed within a reasonable time after the conclusion of the contract or after the buyer examines the goods at his request. Furthermore, *Shariʿah* does not require that the payment of the price be made particularly at the seller's place of business as provided in international trade law. Alternatively, *Shariʿah* does not state where the payment should be conducted if the parties do not agree on it, but it requires that the place of payment should not cause hardship to any party except in a *salam* sale (*Majallat Al-Ahkām Al-ʿAdliyyah*, Article 17).

Another similarity is that the two laws impose on the buyer a duty to take necessary steps to effect the payment. However, the *Shariʿah* does not permit paying any interest to the bank for the letter of credit, but international trade law provides this duty if required.

The next similarity is that both laws impose the duty to take delivery of the goods on the buyer. However, the *Shariʿah* establishes this duty promptly after the conclusion of the contract, while the international trade law preserves this duty within a reasonable time after the seller places the goods at the buyer's disposal.

A further similarity is that the two laws lay a duty on the buyer to notify the seller of their intention to rescind the contract. Similarly, both laws provide that the duty must be done either through spoken or written words. Otherwise, the recession will be ineffective.

One more similarity is that the two laws obligate the buyer to preserve the non-conforming goods. Likewise, they both require that the goods should be delivered to the buyer before the duty exists.

As for the secondary duties, there are some similarities and differences between the two laws. The first similarity is that the two laws recognize the duty to notify the seller of the rescission. Another similarity is that both laws provide for the duty to preserve non-conforming goods.

With respect to the dissimilarities, the *Sharīʿah* implicitly recognizes the duty to notify the seller of the non-conformity of a defect. According to Hanafis, the buyer will necessarily have to notify the seller of the non-conformity of a defect in order to support their claim. *Shariʿah* also does not lay down a specific time frame or requirements on the specification of the defect for this duty. However, if *ʿurf* obliges the buyer to return the defective goods within a period of time customarily allowed for revocation on such grounds, then the buyer should do so. On the other hand, international trade law stipulates this duty in distinction from other duties and requires that this duty be exercised within a reasonable time and that the buyer should concisely specify the non-conformity.

Another dissimilarity is that *Shariʿah* does not entrust upon the buyer a duty to specify the form, measurement, or other features of the goods after the conclusion of the contract, but before the conclusion of the contract. Clearly, the goods shall be identified if they exist at the time of the conclusion of the contract or precisely specified by all their distinctive characteristics if they do not exist at the time of the contract (*Majallat Al-Ahkam Al-ʿAdliyyah*, Articles 200 and 201). If the contract is made on terms that the goods should be identified or specified by the buyer or the seller at a later time, the contract would be void on the basis of *gharar* unless it provides for an option of determination (*khiyar al-taʿyin*). On the contrary, international trade law admits this duty to exist after the conclusion of the contract as long as the characteristics specified by the buyer do not include the description or the quantity of the goods.

CONCLUSION

There are several similarities between the *Shariʿah* and international trade law, and a few differences concerning the buyer's duties under the sale of goods. These differences do not preclude the practice of the sale of goods as per *Shariʿah* and international trade law together, as there is ample opportunity to harmonize them by the court and the parties as follows; firstly, the court may take into consideration the *ʿurf* of the place where the contract is concluded while determining the reasonable time for the duty to pay the price, the duty to take delivery of the goods, and the buyer's right to reject the goods sold or revoke the contract, considering that the common practices reflects the common sense and good judgment. Besides, *ʿurf* is one of the sources of *Shariʿah,* and it also covers usage widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned, which binds the parties to the sale of goods under international trade law. Furthermore, it is objective and, therefore, helps to standardize the practice. Secondly, the buyer should offer the seller a choice in where to pay the price or otherwise agree with him on the place of payment. This is to avoid any hardship against the seller or any possible difference between the *Shariʿah* and international trade law. Thirdly, to give the seller time

to assemble or manufacture the desired goods, the buyer may merely make a unilateral *waʿad* (promise), before the conclusion of the contract, to buy goods with a specified form, features, or measurement. But they must confirm this promise during the conclusion of the contract. Fourthly, the buyer and the seller should expressly agree on the price to avoid applying the implied price, which involves *gharar*.

This calls on Muslim majority jurisdictions and Islamic banks intending to be involved in international sale of goods under international trade law to incorporate *ʿurf* into the legal instruments of the international sale of goods and ensure that they specify the place of payment of the price and the essential features of the goods at the time of the conclusion of the contract.

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