

## Towards Shari'ah Compliant E-Commerce Transactions: A Review of Amazon.com

<sup>1</sup>Marjan Muhammad, <sup>2</sup>Muhd Rosydi Muhammad and <sup>3</sup>Khalil Mohammed Khalil

<sup>1</sup>International Shari'ah Research Academy for Islamic Finance (ISRA),  
Kuala Lumpur, Malaysia

<sup>2</sup>Kulliyah of Information and Communication Technology,  
International Islamic University Malaysia (IIUM)

<sup>3</sup> Faculty of Economics and Muamalat,  
Islamic Sciences University of Malaysia

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**Abstract:** The use of information and communication technology for online commercial transactions may pose some Shari'ah issues. Whilst several studies have elaborated the issues from Islamic viewpoint, none of them provides an empirical investigation on e-commerce transactions in the light of Islamic law of contract. Thus, the objectives of this study is firstly, to examine the permissibility of online transactions from the Shari'ah perspective, particularly in the context of Islamic law of contract and secondly, to analyze whether or not e-commerce transactions satisfy the Shari'ah requirements. Library research by the means of investigating classical and contemporary literature is employed to address the first objective of the study. For the second objective, the Amazon.com is chosen as a case study. This provides a basis for understanding the applicability of the Islamic law of contract in the context of online transactions. Findings indicate that Amazon's online transactions generally satisfy the Shari'ah requirements of a valid contract except in two scenarios; (i) transactions involving impermissible (non-halal) products such as alcohol, pork, non-halal food and beverages, tobacco and tobacco-related products as well as Shari'ah non-compliant entertainments or music and (ii) payment modes using conventional credit cards (*riba*).

**Key words:** E-commerce • Islamic law • Contract • Shari'ah-compliant • Amazon.com

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### INTRODUCTION

The adoption and use of Internet in business sectors has enabled people to electronically conduct commercial transactions. Electronic commerce (e-commerce) is conceptually similar to traditional paper-based commercial transactions. Under both environments, sellers present their products, prices and terms to potential buyers. Buyers consider their options, negotiate prices and terms (where feasible), place orders and make payment. The processes are concluded with the delivery of purchased products. From the Shari'ah viewpoint, every single transaction, either in physical or virtual setting, is regarded as a contract. For the contract to be considered as valid, it must fulfill some requirements stipulated by the Shari'ah. This is essential for the acceptability of e-commerce transactions among Muslims. Despite many studies have examined issues related to e-commerce from

the Islamic perspective, yet none is found to empirically review the step-by-step processes of e-commerce transaction in the light of Islamic law of contract. To address this gap, the study discusses the Shari'ah principles and essential requirements of a contract and conducts a case study on Amazon.com to investigate the Shari'ah compliance of its e-commerce transactions.

**E-Commerce in Islamic Law:** Broadly, e-commerce refers to any form of business transaction executed using information and communication technology (ICT) [1]. In a more precise definition, Turban *et al.* [2] define e-commerce as the process of buying, selling, transferring or exchanging products, services and/or information via computer network, including the Internet. Although e-commerce is a new phenomenon of this modern age, it denotes the same connotation with that of traditional commerce in Islam, as e-commerce also involves contracts

to exchange valuable assets or properties from one party to another to gain profit. Therefore, all e-commerce transactions must also conform to the requirements and principles of Islamic law of contract, which mainly aims at protecting interests and eliminating harms of parties involved in a transaction, thus promoting Islamic ethical code of commerce and business.

There are some parameters underpinning the Islamic financial transactions which are also required for e-commerce, namely: (i) all transactions are permissible unless there is clear justification that suggests otherwise; (ii) all transactions must ensure the benefit and justice for both contracting parties; (iii) every transaction must be free from fundamental prohibited elements such as usury (*riba*), uncertainty (*gharar*) and gambling (*maysir*).

*Riba* occurs in loan and sale transactions, where the former refers to the excess amount that the creditor receives from his debtor in consideration of the time given for the repayment of the loan and the latter happens when the exchange of money for money is not hand-to-hand or not in equal quantity [3]. The prohibition of *riba* is based on evidences from the *Quran*, *Sunnah* and consensus. Shari'ah wishes to eliminate not merely the exploitation that is intrinsic in the institution of interest, but also that which is inherent in all forms of unjust exchange in all sorts of business transactions. Meanwhile, *gharar* means uncertainty, ignorance and taking excessive risk [3]. It could be attached to the object or the price in a contract of exchange. *Gharar* is classified into excessive and minor; where the latter could be tolerated because it cannot be totally avoided in any business transaction. *Maysir* or gambling refers to acquisition of wealth by chance, whether or not it deprives the other's right [4]. The main objective for the prohibition of gambling in Islam is that money should be earned by way of work and effort and not by mere chance.

In addition to the above prohibitions, Islamic law prescribes that all transactions must fulfill essential requirements and the related conditions namely contracting parties (i.e. buyer and seller), subject matter (i.e. object and price) and form (i.e. offer and acceptance) in order to ensure the validity of transactions. The following section delineates each of these requirements and its conditions from the perspective of Islamic law of contract.

**Requirements and Conditions of Valid Online Transactions:** For an online transaction to be valid and binding in Islamic law of contract, it must fulfill the following requirements and conditions:

**Form:** Form of contract consists of offer and acceptance, where an offer refers to the initial proposal made by either party in a contract-seller or buyer. Meanwhile, an acceptance is a statement made by the other party involved in the contract expressing his consent to the terms of offer [5]. The majority of Muslim scholars agree that besides words, offer and acceptance occur in a form of writing, or in other forms such as telephone, fax and telex, or even via conduct and body language of the contracting parties [6-8]. Both offer and acceptance should be connected, clear and in conformity with one another [9].

In the traditional commerce, contracting parties are physically present in one meeting session to negotiate terms of the contract. Thus, offer and acceptance is connected, clear and consistent. Nonetheless, in the context of e-commerce, offer and acceptance may take place in two scenarios [5, 10], namely (i) parties are virtually present in the space (though they are at different locations) and the offer and acceptance occur in one meeting place via instant writing such as chatting, or via electronic communication such as tele-conference. Here, the contract shall be deemed a contract between present parties, for it takes the ruling of constructive meeting place in concluding the contract [11]; and (ii) parties cannot see or hear each other physically or virtually and offer and acceptance happen through computer screens such as interactive websites and emails. Council of Islamic Fiqh Academy [11] resolves that the contract is complete when the offerer communicates the offer to the offeree and the offeree notifies his acceptance to the offerer. The ruling is based on the opinion of classical jurists regarding the conclusion of contract between inter-absentees, such as through a letter or a messenger. Despite the time and space intervals, the meeting place deems unified as the messenger or the letter constitute "a representative" acting and offering on behalf of the seller [12].

In e-commerce, some opine that the meeting session starts immediately upon a seller advertising an item on the website [12-14]. Al-Zahrani [5] however argues that the session shall be established once a buyer shows his interest in trading by clicking on the advertised item on a seller's website and then proceeds to checkout basket after knowing the specifications and the price. So, the offer occurs when the seller asks confirmation, such as "do you agree?" Meanwhile, acceptance takes place when the buyer confirms the transaction and continues with the payment and hence the contract is concluded. Hence, Al-Zahrani's [5] opinion is preferred as the

meeting session in the traditional commerce also starts when a buyer picks up an item from the shelves and goes to the till. The transaction is then concluded when he makes the payment.

**Contracting Parties:** Islam highly emphasizes on the requirement of mutual consent between contracting parties and prohibits taking property of others without legal right. The requirement for mutual consent is indispensable in a transaction, without which the contract is null and void and thus carries no legal effect [15]. No property should be taken from its owner without the consent of the owner. Such concept is based on Quranic verse which states: “*O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent*” (4:29). The Prophet (peace be upon him) has also been reported to say: “*Sale is but based on mutual consent*”. These evidences clearly inform that all transactions must be based on free willingness of parties involved. Thus, any factor that breaches this requirement might render the invalidity of the contract. Coercion, for instance, renders the contract to be invalid due to lack of free will in the transaction. Consent, however, is something hidden and internal. Hence, offer and acceptance-between the contracting parties - act as the external evidence of consent.

Further, contracting parties must be those who are legitimately allowed to engage into business transaction. The main requirement for buyer and seller is to have legal capacity (*ahliyyah*). It is the quality by which a person becomes fit to obtain what he is entitled to, or for the discharge of legal obligations to which he is liable in the view of Islamic law [16]. Hence, selling and buying activities of a child is considered invalid because he does not possess legal capacity. The transaction is only valid if permission from his guardian is granted.

Moreover, the party offering the subject matter of transaction must be the owner and has the absolute right (*milkiyyah*) over the asset. The Prophet (peace be upon him) said: “*Do not sell what you do not have*”. In the case of mediating the transaction on behalf of others, the mediator or broker must have permission to deal as an agent who acts and offers on behalf of the owner of the asset [12].

**Subject Matter:** It constitutes object/product and price and must fulfill several criteria mainly lawful, valuable, in existence, deliverable and precisely determined for a contract to be valid. The object being traded must be

permissible and lawful in the light of Islamic law. Thus, the sale of wine, dead animals and pork is impermissible since their usage is prohibited in Islam [13]. Moreover, the object must be in existence and deliverable from one party to another. This means that if the object does not exist and the seller is unable to deliver it, the transaction is null and void. For instance, it is invalid to sell straying animals or birds in the air and fish in the water because the seller does not have possession to deliver them. This requirement is crucial to ensure that buyer will have access over the object without impediments and to avoid uncertainty (*gharar*) that may arise from the inability of the seller to make delivery.

Both object and price must also be known to the contracting parties, where they should be precisely identified and described. Lack of knowledge about the subject matter and its characteristics may invalidate the transactions as it could lead to dispute. According to Al-Zuhaili [17], details of the subject matter could be obtained whether by means of physical viewing, indication or description.

## MATERIALS AND METHODS

In understanding the permissibility of online transactions from the Shari'ah perspective, the study employs a library research to gather information on the theory of contract in Islamic law, where both classical and contemporary literature has been researched. Then, the study adopts a content analysis technique to understand views, discussions and debates among jurists and scholars on the Islamic law of contract, particularly in the context of modern online transactions. This provides a theoretical foundation for the study. Amazon.com was chosen as the case study in order to provide a basis for further interpretation on the applicability of the Islamic law of contract in the context of electronic transactions in online environment. In this regard, step-by-step processes to accomplish an online transaction on the website were reviewed in accordance to the previously mentioned essential requirements of contract in Islamic law.

**Case Study: Amazon.com:** Amazon was founded in 1994 and has grown to be one of the Fortune 100 companies [18]. Through the adoption of technological innovation, Amazon.com is able to offer its customers more types of new, refurbished and used products in categories ranging from books, movies, digital downloads, electronic devices and computers to toys, grocery, jewelry, sports and

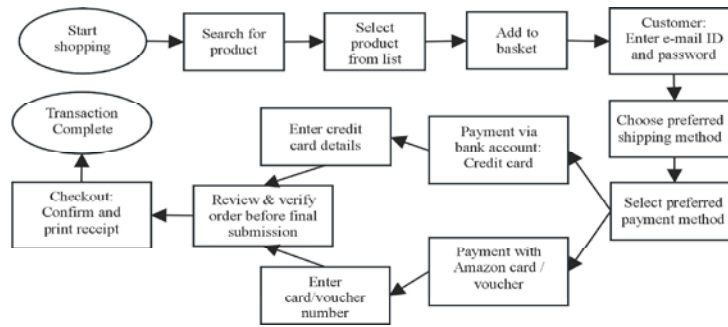


Fig. 1: Generic Transactional Processes at Amazon.com

outdoor equipment, auto and industrial. Amazon has teams across the world working on behalf of its customers at Fulfillment Centres, which provide fast and reliable shipping directly from Amazon’s retail websites and Customer Service Centres which provide 24/7 support.

Based on the generic flow of online transactions at Amazon.com (as depicted in Figure 1), there are six (6) components involved in the transaction, namely:

**Customer (i.e. Buyer):** who, after reviewing an on-line catalogue of products and prices, places an order and completes online payments.

**Amazon.com (i.e. Seller or Broker):** who sells products and/or mediate the online purchasing and also ensures that the payment initiated on-line is processed before the seller fulfills and delivers the order.

**Product:** An object that is exchanged in the transaction.

**Price:** The amount given for the payment

**Payment Facilities:** Banks, credit card companies and payment clearing houses are the key players in on-line financial processing.

**Product Delivery:** Distributors and delivery companies that fulfill of the delivery of orders.

## RESULTS AND DISCUSSION

This section discusses results of the review of Amazon’s online transactions which are presented based on the essential requirements mentioned in the previous section.

**Form:** As noted earlier, the meeting session in the context of e-commerce transactions commences when a buyer clicks on the product offered on a seller’s website and

then goes to the checkout basket for payment. The offer therefore takes place when the seller, via the website interface, displays the option “accept” or “agree” button and the acceptance is communicated to the seller once the buyer clicks on the button and proceeds with the payment. According to Al-Zahrani [5], such a transaction is valid and binding as it fulfills the condition of connectivity and conformity of the offer and acceptance. With regard to the offer and acceptance of a sale contract via Amazon.com, the same procedure applies with some minor variance compared to other websites, which do not substantially affect the validity of the online transactions from the Shari’ah viewpoint.

**Contracting Parties:** In order to ensure the validity of a transaction conducted via Amazon.com, both customer as a buyer and Amazon as a seller must have the legal capacity (*ahliyyah*) to be eligible to enter into a contractual relationship. The case informs that any customer can simply create an account at Amazon.com. However, when he wants to engage into a transaction, details of credit or debit cards need to be supplied accordingly. Thus, the ability to possess the card is used as a proof for the customer’s eligibility to conclude the transaction.

As a seller, Amazon must possess a distinct legal feature, i.e., a legal entity with a separate form from the individuals who established it. Islam recognizes a legal entity as a person but not a human being [4]. Amazon.com, therefore, is eligible to enter into a contractual relationship and hence conduct business transactions.

Besides selling products and goods out of its warehouses, Amazon.com also provides an online platform allowing third party sellers, retailers and even individuals to sell new and used merchandises to online customers. Here, Amazon.com acts as a broker who mediates the communication between sellers and buyers to engage in online business transactions. Amazon.com

charges a fee to retailers and individuals who offer their products using its platform. It should be noted that brokerage relationship between Amazon.com and third party sellers does not affect contractual relationship between Amazon.com and customers. Islamic law permits the act of brokerage. The fee that a broker collects is admissible, since it is a consideration for work and effort [12, 19]. Based on this explanation, both parties fulfill the requirement of legal capacity (*ahliyyah*) and capable of concluding the transaction.

**Subject Matter:** It refers to the products or objects being traded via Amazon.com and the prices. Upon examining the range of products offered at the Amazon.com, it is found that the majority is permissible except for pork and pork-related items, liquor and alcohol-related products, non-halal food and beverages, tobacco and tobacco-related products as well as Shari'ah non-compliant entertainments or music. These products are deemed impermissible to be traded in Islam as they are unlawful in the view of Shari'ah.

As mentioned earlier, product descriptions and information should also be clearly explained in order to prevent uncertainty (*gharar*) and ignorance. This can be done through pictorial display of the products or three dimensional images. In this case, Amazon describes its' products with text and photos, hence enables their precise identification, genus and quantum. It allocates a web page for every product, which provides customer with photos and details of the product. Some of the products are linked to supplemental product information such as manufacturer specifications. Amazon, furthermore, allows customers to comment and rate purchased products. In addition, prices of all products and cost for shipping are clearly defined. Amazon.com, therefore, fulfills the Shari'ah requirement to provide sufficient information about a product being traded in order to avoid any excessive *gharar* and ignorance.

Further, Shari'ah stipulates on the deliverability of the products. Amazon.com guarantees that all purchased products will be delivered to the customers within stipulated timeframe. Once payment is accepted, the product will be delivered either through downloading (this method is applicable for digital media products, software, e-books and images) or shipping (the order is forwarded to the manufacturer or third-party distributor, who will ship the product to the customer). Since the products are capable of delivery, the Shari'ah requirement has been met. As for the sale of gold via Amazon.com, the transaction is deemed Shari'ah non-compliant as it requires hand-to-hand exchange where the payment and

the delivery of the gold should happen on a spot basis [20]. In most online transactions via websites, including Amazon.com the gold will only be delivered via post after the seller has received the payment.

**Payment Method:** Credit and debit cards are the most commonly used method for e-payments. Amazon.com, however, enables customers to opt for other alternative means such as Amazon gift cards and claim codes and Amazon store card (which is also a credit card). E-payments via gift cards and debit cards are accepted in Islam as the former are similar to cash while the latter are issued against customer's bank deposits and the amount of payment is transferred almost immediately from the customer's bank account to the merchant's account. Hence, there is no room for interest in using debit card [21]. The issue of *riba* however may arise when credit card is used for online purchasing. The following sections elaborate on the use of credit cards for online payments.

**Credit Card Payment: How Does It Work?:** Credit card is a system of payment that allows cardholder to borrow money and to buy goods by which payment is made at a later date to the card issuer [22]. Figure 2 illustrates the process flow of an online payment using conventional credit cards.

The flow of an online payment using credit card can be explained as follows:

- Buyer (i.e. cardholder) places an order, enters the credit card information and clicks on the Pay button (*Flow 1*).
- The merchant's website sends these details along with the total amount of payment to the payment gateway (*Flow 2*).
- The payment gateway passes information to the merchant's bank (*Flow 3*).
- The merchant's bank sends information to credit card network and requests for authorization of payment (*Flow 4*).
- The credit card network forwards the request to the customer's bank (*Flow 5*).
- The customer's bank authorizes the transaction and sends the authorization response to credit card network (*Flow 6*). At the same time, the customer's bank transfers funds to the merchant's bank and debit the customer's account (*Flow 6.1*). The customer's bank usually keeps a percentage of the transferred funds as interchange fee and the merchant's bank charges a processing fee.

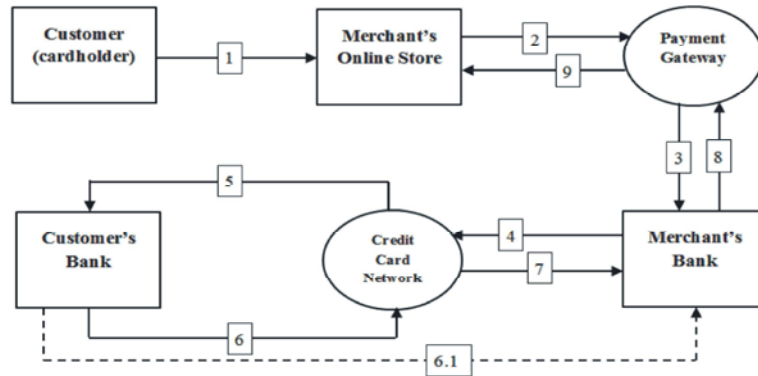


Fig. 2: Process Flow of Credit Card Payment

- Credit card network sends the authorization response to merchant's bank (Flow 7).
- Merchant's bank sends the authorization response to payment gateway (Flow 8).
- The payment gateway passes the authorization response to merchant's store (Flow 9).

Conventional credit card represents a loan relationship between the cardholder and the issuing bank. The cardholder is allowed to borrow fund from the bank in order to make payment for purchased goods or services and full amount needs to be reimbursed by the cardholder (i.e. buyer) with a minimum charging fee. If the payment is delayed, interest will be imposed until the full amount is settled. As mentioned earlier, Shari'ah strictly prohibits *riba*. Therefore, the use of conventional credit cards that impose interest on the money advanced is impermissible even though the cardholder settles the full payment during the specified grace period to avoid the interest being charged [11].

**Shari'ah Compliant Credit Card: an Alternative Payment Mode for Online Transactions:** Alternatively, Shari'ah compliant credit card has been introduced in order to resolve the issue of interest. Islamic banking institutions have issued free interest credit cards which are based on several underlying structures such as *bay' al-inah* (sale and buy back), *tawarruq* (tri-partite sale), *ijarah* (lease), a combination of *ujrah* (fee) and *kafalah* (guarantee) and a combination of *tawarruq* and *mudarabah* (also known as covered card) [3, 23]. In principle, Shari'ah compliant credit card needs to fulfill the following conditions: (i) No imposition of interest; (ii) No interest is charged on the delay of settling the outstanding debt amount; (iii) The issuer can charge an annual fee, which can be paid on a monthly basis; (iv) The issuer can charge a fee for cash withdrawals, but such charge must not be a percentage of the amount withdrawn; rather it should be a fixed fee;

and (v) The issuer can earn commissions from third party merchants from whom the customer buys goods or services [23].

**Validity of E-Commerce via Amazon.com:** The above discussion basically informs that contracting parties, product, price and form are crucial for the accomplishment of online transactions from the Shari'ah viewpoint. In addition, it must also ensure that mode of payment employed is permissible in the view of Shari'ah. The case study of Amazon.com indicates that every component has satisfied Shari'ah validity requirements except in two situations namely (i) those prohibited products such as pork and pork-related items, liquor and alcohol-related products, non-halal food and beverages, tobacco and tobacco-related products as well as Shari'ah non-compliant entertainments or music and (ii) payment mode that involves the element of *riba*. Figure 3 summarizes the overall validity of e-commerce transactions conducted through Amazon.com.

## CONCLUSION

The concept of e-commerce is acceptable in Islam. However, certain Shari'ah principles and requirements must be fulfilled to ensure its permissibility and validity. All e-commerce transactions must fulfill essential requirements related to form (i.e. offer and acceptance), contracting parties (i.e. buyer and seller) and the subject matter (i.e. object and price) in order to ensure their validity from the perspective of Islamic law of contract. These requirements and conditions include connectedness, clarity and conformity of the offer and acceptance; mutual consent of the contracting parties, capability of both parties to engage into transactions, legal ownership of the asset being traded, permissibility of the asset, deliverability of the asset and the absence of the anonymity. In addition, every e-commerce transaction

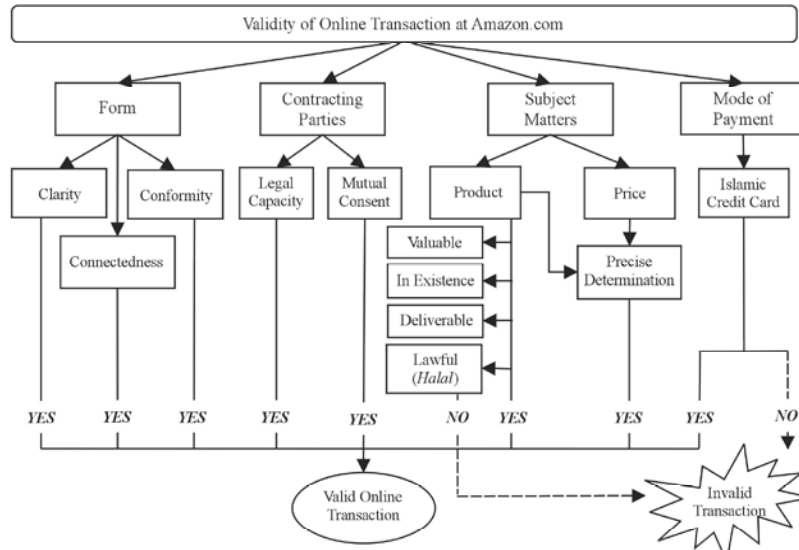


Fig. 3: Validity of Online Transaction via Amazon.com from the Shari'ah Perspective

must be free of the element of usury (*riba*), uncertainty (*gharar*) and gambling (*maysir*) and must ensure the benefit and justice of the contracting parties. Hence, there is a need for buyers and sellers to “screen” the overall processes of online transactions to ensure their compliance with Islamic law of contract.

This study contributes to existing body of knowledge in Shari'ah-compliant e-commerce through its empirical review of the online commercial transactions at Amazon.com. Further, it is also regarded as an “eye-opener” for future empirical-based research that enriches limited knowledge in the area of study. In addition, this study also provides a room for practitioners to further understand the requirements and principles of Shari'ah-compliant e-commerce. Accordingly, it will be of convenience for them to comply with Shari'ah in conducting online commerce and business transactions.

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