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A Legal Remedy for Financial Necessity from Bukhara to Istanbul: Redefining *Bay' bi-al-Wafa'* as a Shari'ah-Compliant Credit Instrument

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ABSTRACT

This study investigates the bayʿ bi-al-wafāʾ contract, a controversial legal device in Islamic jurisprudence, from its historical emergence to its application in Ottoman legal practice. The central problem addressed is whether this contract can be considered a legitimate and functional alternative to interest-based debt structures. Methodologically, the research combines textual analysis of classical fiqh works with documentary examination of Ottoman qaḍi court registers and codified law, particularly the Majalla. Through this comparative framework, the study analyzes four major juridical perspectives that classify bayʿ bi-al-wafāʾ as a valid sale (ṣaḥiḥ), defective sale (fasid), void sale (baṭil), or pledge (rahn), and further explores the "comprehensive view" (qawl jamiʿ) that treats it as a sui generis hybrid contract. The findings demonstrate that bayʿ bi-al-wafāʾ possesses distinctive parameters such as intention, profit and its method of acquisition, duration, risk of loss, public auction procedures, and protection against unfair advantage/lesion (ghabn) that differentiate it from conventional interest-bearing transactions. Ottoman court practice confirms that the contract served both as a means of securing debts and as a tool for providing credit. Despite internal contradictions in the Majalla, the research highlights its normative significance as an institutional mechanism developed within Islamic law rather than borrowed from external models. In conclusion, bayʿ bi-al-wafāʾ should not be dismissed as a mere stratagem to disguise interest but reconsidered as a dynamic, contested, yet potentially valuable instrument for contemporary interest-free financial systems. The study thus fills a gap in the literature by linking doctrinal debates, historical practice, and modern financial discourse.

Keywords: Contract; interest; Islamic Law; Qaḍi Court Registers; redemption sale

INTRODUCTION

This study examines the institution of *bayʿ bi-al-wafāʾ*, focusing on its historical emergence, legal nature, and practical implementation, particularly within the Ottoman Empire. Absent in the early periods of Islamic law, it later developed as a mechanism to secure debt and provide interest-free credit, especially when access to loans became difficult and the principle of benevolent loans *(qarḍ ḥasan)* had weakened (Kaya 2008). The study explores both its theoretical framework in classical *fiqh* literature and its concrete forms in Ottoman legal practice, as recorded in *qaḍi* court registers.

At the core of the research is the contract's legal nature, which generated diverse scholarly opinions. It has been classified as a valid sale *(ṣaḥiḥ)*, defective sale *(fasid)*, void sale *(baṭil)*, or pledge *(rahn)*. A further view, known as comprehensive view *(qawl jamiʿ/madhhab jamiʿ)*, considers it a sui generis composite contract. Some jurists prohibited it on the grounds that it functioned as a disguised form of interest *(riba)*. These divergent views affected its legal consequences and its later codification in the *Majalla* (Ottoman Civil Code).

The study argues that this contract is not merely a historical curiosity but an internally developed Islamic legal tool that could serve as a model for contemporary interest-free finance. It seeks to link theoretical debates in classical jurisprudence with their practical reflections in Ottoman court records and to assess whether this model could provide a viable alternative to modern interest-based borrowing.

Methodologically, the research combines textual analysis of classical *fiqh* works with documentary examination of Ottoman *qaḍi* court registers, employing a multi-layered approach that integrates comparative legal and historical analysis. It does not use empirical data or fieldwork. Despite the

contract's significance, recent scholarship is sparse; no comprehensive study linking *fiqh*, legal history, and positive law has appeared in major databases such as Web of Science or Scopus in recent years, indicating a clear gap in the literature.

Bayʿ bi-al-wafaʾ, meaning *"sale with a right of redemption,"* has been defined as the temporary sale of property for money or debt with the condition that it be returned upon repayment (Zaylaʿi 1896). In Ottoman society it was popularly referred to as *"money without interest, land without rent,"* reflecting its function (Kayapınar 1986). Related forms, such as *bayʿ bi-al-istiġlal* and *ferāġ bi-al-wafaʾ*, were governed by the same legal rulings (Ibn ʿAbidin 2000). The contract appears to have emerged around the 11th century. Ahmed Cevdet Pasha (d. 1895) traced its origin to Bukhara, explaining it through legal maxims such as *"Need takes the place of necessity"* and *"Custom is authoritative."* (Kaya 2008). Jurists like Babarti, Ṭarablusi, Ibn Nujaym, and Qadri Pasha defined it as serving either to secure existing debt or to provide credit (Babarti; Ṭarablusi 1973; Ibn Nujaym; Qadri Pasha 1891).

Parties entered such contracts for various reasons, shaped by a broader socio-economic transformation in Islamic society. Borrowers sought to obtain cash without paying interest while retaining the right to reclaim their property, while creditors aimed to protect their capital while benefiting from the property's usufruct. This shift was largely driven by the weakening of the principle of benevolent loans *(qarḍ ḥasan)*, which had traditionally served as the primary mechanism for mutual aid. As people increasingly pursued personal benefit over purely charitable acts, *bayʿ bi-al-wafaʾ* emerged as a legal necessity to bridge the credit gap without resorting to prohibited interest *(riba)*. Existing debtors could settle debts by *"selling"* their property yet preserve the right to redeem it later. This dual function -as a tool for both credit acquisition and debt security- helped explain its popularity.

Ottoman *qaḍi* court registers show two main types of practice. In debt-secured *bayʿ bi-al-wafaʾ*, the contract guaranteed an existing obligation arising from a loan *(qarḍ ḥasan)* (Bab Court 2019), debt transfer *(ḥawalah)* (Istanbul Court 2019), or suretyship *(kafalah)* (Eyub Court 2011). In price-based *bayʿ bi-al-wafaʾ*, there was no pre-existing debt; the seller simply received cash in return for the property while reserving the right to reclaim it.

The wording used in these contracts was notably flexible. Some used only the term *"wafaʾ"* (Anadolu Ṣadareti Court 2019), others explicitly stated that *"the property will be returned upon repayment"* (Galata Court 2011). Some declared the sale absolute yet still included a redemption clause (Bab Court 2011). Some even combined *"wafaʾ"* and *"rahn"* (pledge) (Bab Court 2011). This variation shows that no fixed formal formula was required any wording expressing the parties' intention *(iradah)* to conduct a sale with a right of redemption was considered valid.

In sum, *bayʿ bi-al-wafaʾ* was a creative legal device that combined elements of sale and pledge to meet economic needs. This study seeks to determine whether this contract constitutes an original institutional legacy that could inspire modern interest-free finance approaches by examining the theoretical debates in classical *fiqh* alongside its Ottoman Empire applications.

RESEARCH BACKGROUND

Owing to the aforementioned variations in the methods of forming the contract, jurists *(fuqahaʾ)* who viewed it as a means of securing a debt associated it with a pledge. Meanwhile, for others, the buyer's utilization of the property evoked the concept of a valid sale *(ṣaḥiḥ)*. On the other hand, the combination of both securing a debt and benefiting from the property was considered by some jurists to be a legal stratagem *(ḥilah)* to circumvent the prohibition of interest.

Nasafi (d. 1142) holds two opinions regarding the juridical nature of the contract. Here, his view that considers the contract a valid sale will be addressed. He emphasized that the focus should be on the literal expressions *(alfaẓ)* used by the parties during the formation of the contract, and he consequently evaluated it as an ordinary contract of sale. He stated that interpreting it in any other way would be incorrect (Bazzazi 2009). This approach, as can be easily recognized, diverges from the general principles concerning contracts found in the *Majalla*. Indeed, according to Article 3 of the *Majalla*, *"In contracts, effect is given to intentions and meanings, not to words and structures."*

However, according to the transmission of Aḥmad b. ʿIsa al-Kashshi (d. 1155), Nasafi and some scholars of Samarqand, by disregarding the underlying intentions, argued that the contract should be treated as a valid sale and produce its corresponding legal effects (Bazzazi 2009). The *Imami* school of law also treats the contract as

having the nature of a valid sale. For this reason, the aforementioned article of the *Majalla*, which prioritizes intentions over literal expressions in contracts, has been subject to criticism from this perspective (Kashif al-Ghiṭaʾ 2001).

Qaḍikhan (d. 1196) holds a similar opinion. He noted that many jurists, such as Sayyid Imam Abu Shujaʿ and Qaḍi Imam Abu'l-Ḥasan ʿAli al-Sughdi (d. 1069), considered the contract to be a pledge. However, Qaḍikhan emphatically argued that the contract was certainly not in the nature of a pledge and, basing his reasoning on a hadith, stated that it could be considered a valid sale if a specific condition is met (Qaḍikhan 2009).

According to Qaḍikhan, if the condition to rescind the contract is articulated during its formation, this invalidates the contract. However, if the condition of rescission is stated as a separate promise or undertaking *(waʿd)* after the contract has been concluded, the contract is deemed valid due to the necessity of fulfilling one's covenants, as indicated by the hadith. Due to its capacity to address economic needs, this approach gained significant importance in Ḥanafī jurisprudence, and the contract was accepted as a valid sale (Qaḍikhan 2009).

Furthermore, Ibn Nujaym (d. 1563) based his support for this view on the legal maxim, *"When a matter becomes constricted, it is expanded".* He regarded the binding nature of a promise made after the contract's conclusion as a crucial matter for meeting needs while avoiding interest-based transactions (Ibn Nujaym).

Burhān al-Din al-Marghinani (d. 1197), for his part, referred to the contract as the permissible and customary sale *(al-bayʿ al-jaʾiz* al-muʿt*ad)*. It is for this reason that the jurist was thought to have regarded the contract as a valid sale (ʿAyni). Shaykh Badr al-Din (d. 1420) emphasized the *fatwa* issued by Marghinani, which affirmed the buyer's right to the proceeds generated from the property subject to the contract (Shaykh Badr al-Din 1882). Babarti (d. 1384) also supported Marghinani's view, explaining the expression *"permissible and customary sale"* by referencing the fact that the contract had become an established custom *(ʿurf)* (Babarti).

It is crucial, however, not to overlook a significant debate concerning Marghinani's position. For if the intention of the parties, subsequent to the contract's formation, indicated a different arrangement such as a pledge rather than a genuine sale Marghinani treated the contract not as a valid sale, but as a pledge (Shaykh Badr al-Din 1882).

According to Zaylaʿi (d. 1343) the contract is a valid sale. The buyer may benefit from the usufruct of the property subject to the contract. However, there is one exception to this: the property cannot be sold to a third party (Zaylaʿi 1896). Separately, Anqarawi (d. 1687) reported that Ẓahir al-Din al-Marghinani (d. 1222) and his uncle, Qaḍi Maḥmud, also considered the contract to be a valid sale (Anqarawi 1864).

In the *qaḍi* court registers, there are numerous expressions that suggest *bayʿ bi-al-wafaʾ* was treated as a contract of sale. Many records contain terminology that does not permit an alternative interpretation (for example, as a pledge), documenting sales executed with explicit terms such as sale *(bayʿ)*, seller *(baʾiʿ)*, the object of sale *(mabiʿ)*, buyer *(mushtari)*, and purchase *(ishtiraʾ)* (Bab Court 2011; Bab Court 2019; Eyub Court 2011; Galata Court 2012; Uskudar Court 2019; Dawud Pasha Court 2019; Anadolu Ṣadareti Court 2019).

Ẓahir al-Din al-Marghinani (d. 1222), Ẓahir al-Din al-Walwaliji (d. 1146), Ṣadr al-Shahid Ibn Mazah (d. 1141), and his brother Ṣadr al-Saʿid Ibn Mazah considered the contract to be a defective sale *(fasid)*, analogizing it to a sale conducted by a person under duress *(mukrah)* (Zaylaʿi 1896).

At this juncture, it is necessary to revisit the view of Qaḍikhan (d. 1196), who, despite generally viewing the contract as valid, also argued that it could become a defective sale under certain circumstances. According to Qaḍikhan, if the parties stipulate the condition of rescission during the formation of the contract, then the contract must be considered defective. This shows more broadly that, in Islamic law, the legal effect of a contract may vary depending on the nature of the condition attached to it, since jurists often distinguish between valid, void, and corrupt conditions and assess the contract accordingly. However, if the condition of rescission is stated as a separate undertaking *(waʿd)* after the contract has been concluded, the contract is deemed valid and permissible *(jaʾiz)* due to the principle of fulfilling one's covenants (Qaḍikhan 2009; Othman, Mohamed Said, Muda & Nor Muhamad 2017). Qaḍikhan engaged in this discussion with full awareness of the differing opinions between Abu Ḥanifah (d. 767) and the *"Two Imams"* (Imamayn - Abu Yusuf and Muḥammad al-Shaybani), and he adopted a position in favor of the latter. This is because, according to Abu Ḥanifah, a condition pertaining to the rescission of the contract renders it defective even if it is introduced after the contract's conclusion (Bazzazi 2009).

Ebussuʿud Efendi (d. 1574) approached the issue from a different angle. In his view, the absence of a specified term in the contract, or the stipulation that the property be sold for cash but repurchased with payment in kind, would render the contract a defective sale (Düzenli 2007).

On the other hand, some jurists have stated that there is a similarity between this contract and a sale made in jest *(hazl)*. Due to the seller's lack of genuine intent for a permanent transaction, the contract has been analogized to a sale by one who is jesting *(hazil)*. Given that offer *(ijab)* and acceptance *(qabul)* are among the formative elements *(arkan)* of a contract, it has been argued that such an agreement should be deemed void (Apaydın 1998; Zaylaʿi 1896).

Whether a sale made by a *hazil* is void is a matter of debate in the doctrine. Some Ḥanafī jurists consider such a sale void, while others deem it defective. Those who view it as void argue that ownership cannot be transferred even with the taking of possession *(qabḍ)*, a consequence that necessitates a ruling of nullity *(buṭlan)* (Apaydın 1998). In this context, it can be said that those who liken the contract to a sale by a *hazil* adopt the opinion of the aforementioned jurists and therefore classify the contract as void.

Furthermore, some have considered the contract void because they classify it as an interest-based transaction, while others have deemed it void on the grounds that it contradicts the general principles of Islamic Law.

Another type of contract to which *bayʿ bi-al-wafaʾ* has been compared by those who consider it void is a fictitious/simulated sale *(taljiʾah)*. *Taljiʾah*, which refers to a simulated and collusive *(muwazaʿah)* agreement, is treated by some in a manner similar to a sale made by a *hāzil* and is considered void because ownership cannot be transferred even with possession (Kallek 2011). In this framework, it is evident that those who liken the contract to *taljiʾah* are adopting a minority opinion to classify the contract as void.

When evaluated in light of all this information, it is clear that the reason for establishing the contract is not play, amusement, jest, a lack of seriousness, or the fear of external intervention. Therefore, to identify the contract with a sale made by one in jest or with *taljiʾah* would not be a correct approach.

In the other view attributed to Nasafi (d. 1142), he considered the contract to be a pledge and drew attention to the principle that in contracts, intentions and meanings are given priority over literal words *(lafẓ)* (Shaykh Badr al-Din 1882).

When Sayyid Abu Shujaʿ was asked whether usufruct *(istighlal)* could be discussed after the contract's conclusion, he affirmed that the contract was a pledge and thus stated that no rent payment was necessary. The *fatwa* of the Qaḍi of Samarqand, Qaḍi Abu'l-Ḥasan al-Maturidi (d. 1117), was also in this vein (Shaykh Badr al-Din 1882).

A specific point must be made regarding Burhan al-Din al-Marghinani (d. 1197), who is otherwise known for viewing the contract as a valid sale. Under normal circumstances, Marghinani considers the contract a valid sale. However, when it becomes apparent that the parties do not have the intention of concluding a genuine sales contract, he believes that the arrangement transforms into a pledge relationship (Yelek 2016).

In the Ottoman State, there were those who assessed the contract as a pledge. Anqarawi (d. 1687) states that leading figures of the era, including Ibn Kamal (d. 1533), Ebussuʿud Efendi (d. 1574), and Zekeriyyazade Yaḥya (d. 1644), all considered the contract to be a pledge (Anqarawi 1864). The noteworthy point here is that while Ebussuʿud Efendi defined the contract as a pledge, he also deemed the usufruct from it to be permissible (Anqarawi 1864). This situation is remarkable because once a relationship is defined as a pledge, deeming usufruct permissible is impossible, as a pledgee cannot lease the pledged property (Shaykh Badr al-Din 1882). Therefore, it would have been expected for Ebussuʿud to explicitly state that a rental fee could not be demanded after having defined it as a pledge.

Another example of Ebussuʿud Efendi classifying the contract as a pledge is found in his *fatwas*. In one such legal opinion, Ebussuʿud stated that if the buyer were to sell the property to a third party, the original seller would have the right to rescind this second sale (Düzenli 2007).

Ramli (d. 1671), the Shaykh al-Islām Durri Meḥmed Efendi (d. 1736), and Ibn ʿAbidin (d. 1836) all viewed the contract as a pledge. However, Durri Meḥmed Efendi, differing from Ebussuʿud Efendi, specified that in this case, usufruct and, consequently, any rental fee would not be permissible (Durri Meḥmed Efendi; Ibn ʿAbidin 2000; Ramli 1882).

Article 3 of the *Majalla* stipulates that in contracts, intentions and meanings are given priority. In his commentary *(sharḥ)*, ʿAli Ḥaydar Efendi (d. 1935) stated that the intended object is the meaning *(maʿna)*. Therefore, although the word *bayʿ* (sale) is

used in the contract, he assessed that the intention is not *bayʿ* but rather securing and collateralizing a debt *(taʾmin wa istithaq-i dayn)*. For this reason, he concluded that there is no difference whatsoever between *bayʿ bi-al-wafaʾ* and a pledge. He reiterated this position in his commentary on Article 397. Having reached this conclusion, he stated in his commentary on Article 398 that the property subject to the contract cannot be used by the buyer, and if the buyer does use it, they will be held liable as a guarantor *(ḍamin)* (ʿAli Ḥaydar Efendi 2017).

Bilmen (d. 1971), a leading figure of the Turkish Republican era, is also among those who considered the contract a pledge. In his *Qamus*, he stated that the essential element in contracts is the intention, not the literal wording (Bilmen 1970).

At this point, a question comes to mind: If this contract is a pledge agreement and could be operated within the existing legal framework of pledge or suretyship *(kafalah)*, why was *bayʿ bi-al-wafaʾ* needed? If the issue were approached solely from the perspective of securing a debt, such a contract would not have been necessary. This might only hold true for a *bayʿ bi-al-wafaʾ* arising from a pre-existing debt. However, as previously stated, *bayʿ bi-al-wafaʾ* is a type of contract used for various purposes. It was frequently preferred not only to secure a debt but also to provide credit. A similar concern appears in modern Islamic finance literature, where same-item sale-repurchase arrangements are treated not merely as contracts of transfer, but as financing mechanisms whose legal validity depends on whether they remain consistent with the objectives of Shariʿah (Jusoh & Mat Zain 2017). Even if we set aside the credit-providing purpose, *bayʿ bi-al-wafaʾ* cannot be defined solely as a contract for securing debt. Nevertheless, the very fact that debt security remains one of its operative functions explains why comparisons with collateral-based contracts such as rahn continue to be analytically relevant (Ahmad & Mohd Izazi 2020). This is because the contract holds the dual purpose of both securing the debt and allowing the buyer to benefit from the usufruct of the property. Shaykh Badr al-Din (d. 1420) clearly identified this situation and considered the contract to be a pledge neither in meaning nor in wording (Shaykh Badr al-Din 1882).

It was mentioned in the previous sections that there are examples in the *qaḍi* court registers suggesting the contract was treated as a sale. However, the same cannot be said for all registers. Indeed, considering the opinions of prominent Ottoman figures such as Durri Meḥmed Efendi (d. 1736), Ibn Kamal (d. 1533), and Ebussuʿud Efendi (d. 1574), who viewed the contract as a pledge, it is not surprising to see it treated as such in the registers (Bab Court 2011; Istanbul Court 2019; Uskudar Court 2019; Galata Court 2019).

What is more striking is the following: in some records concerning *bayʿ bi-al-istighlal*, after the sale and lease have occurred, the term used for redemption is not the expected redemption of usufruct *(fakk al-istighlal)* but rather redemption of a pledge *(fakk al-rahn)* (Eyub Court 2011). In some instances, the phrase *"he had placed [the property] as a pledge by way of usufruct"* was used directly (Bab Court 2019). Therefore, it can be concluded from the practice *(ʿamal)* that the contract was accepted as a pledge. However, another point requires attention here: the use of the phrase *"fakk al-istighlāl"* does not preclude the contract from being considered a pledge, as there were occasional instances where both this phrase and the concept of pledge were used together (Eyub Court 2011). In some records, the juridical nature of *bayʿ bi-al-wafaʾ* and *bayʿ bi-al-istighlal* was directly addressed, and it was explicitly stated that these contracts were *"under the ruling of a pledge" (bi-ḥukm al-rahn)* (Istanbul Court 2019).

According to some jurists *bayʿ bi-al-wafaʾ* is a composite contract *(ʿaqd murakkab)* formed from two different contracts (a valid sale and a pledge), or according to some, from three different contracts (a valid sale, a pledge, and a defective sale) (Bazzazi 2009).

Shaykh Badr al-Din (d. 1420) transmits the opinion of Fakhr al-Din al-Zahid in his work. According to this view, if the condition of redemption *(wafaʾ)* is not mentioned during the formation of the contract, it is considered a valid sale from the buyer's perspective. However, the buyer cannot sell the property to a third party or give it as a pledge. This aspect stems from the contract's pledge-like nature, for when the seller repays the price of the property, the buyer is obligated to return it. Fakhr al-Din al-Zahid drew attention to the situations in Balkh and Bukhara, noting that this evaluation was made by taking into account the needs of society. He also states that because the contract offers a way to avoid interest, it is viewed as a composite structure, based on the legal maxim *"When a matter becomes constricted, it is expanded",* combining the two aforementioned contracts (valid sale and pledge) (Shaykh Badr al-Din 1882).

According to the jurists who accept that the contract is formed from three different contracts, *bayʿ bi-al-wafaʾ* is neither a valid sale, nor a pledge, nor a defective sale. It is a new, sui generis contract that possesses certain characteristics of all three. For this reason, the contract has been likened to a giraffe, as it is said that the giraffe resembles three animals in its various features (the cow, the camel, and the tiger) (Ibn ʿAbidin 2000). According to the proponents of this view, *bayʿbi-al-wafaʾ* resembles a valid sale in that the buyer can benefit from the property as they wish. However, it resembles a pledge in features such as the buyer's inability to pledge or sell the property to another, the reduction of the debt in case of damage to the property, and the extinguishment of the debt upon the property's destruction. It has been considered a defective sale in that the parties have the right to rescind the contract at will (Ibn Nujaym). This view is concisely referred to as *"qawl jamiʿ"* (Ibn Nujaym) or *"madhhab jamiʿ,"* (Akifzadah) meaning the composite or comprehensive view. While this opinion is absent in works from the 12th, 13th, and 14th centuries, it found its place in the works of the 15th and 16th centuries (Küçüksucu 2020).

On this topic, Ebussuʿud Efendi also holds a distinct view. According to this view, Ebussuʿūd evaluated the contract in line with the comprehensive view (Akgündüz 2018), and his contemporary Ibn Nujaym (d. 1563) acted in the same manner (Ibn Nujaym). It can be readily seen in the *fatwas* of Chataljali ʿAli Efendi (d. 1692) that the same opinion was accepted and acted upon approximately a century later (Chataljali ʿAli Efendi 1893). In the 18th century, Akifzadah (d. 1808) stated that most jurists followed the comprehensive view (Akifzadah).

While Article 3 of the *Majalla* mentions only the pledge, Article 118 defines the contract according to the comprehensive view. However, the regulations pertaining to *bayʿ bi-al-wafaʾ* found between Articles 396 and 403 in the *Majalla's* first book, the Book of Sales *(Kitab al-Buyuʿ)*, are related to the pledge. In other words, while Article 118 considers *bayʿ bi-al-wafaʾ* a valid sale with respect to the buyer's right to benefit from the property, Article 398, for example, stipulates that the buyer is entitled to the property's benefits only if a condition is in place, stating: *"If it is stipulated that a portion of the benefits (manafiʿ) of the object of sale shall belong to the buyer, that condition is observed"* (Ḥaci Rashid Pasha 1909). ʿAli Ḥaydar Efendi (d. 1935) also presented his explanation within the framework of these views, stating that if the buyer uses the property without permission, they will be liable for compensation, and they can have no ownership claim over its produce (ʿAli Ḥaydar Efendi 2017).

As is evident, to both accept the comprehensive view and simultaneously stipulate that the buyer cannot benefit from the property without a condition creates contradictions. This is because when the comprehensive view is accepted, it points to a valid sale, but when the discussion turns to the buyer benefiting from the property only with the seller's permission, it points to a pledge. To prevent officials from reaching undesirable conclusions, Meḥmed Saʿid drew attention to this seemingly contradictory situation and authored his work. In this work, in order to eliminate the contradictions, he attempted to explain the articles where the pledge could be at issue within the framework of Article 118. Making references to Ahmed Cevdet Pasha's (d. 1895) *Risalat al-Wafaʾ*, written for the *Majalla* Commission, he argued that contrary to the jurists who required a condition for usufruct, the comprehensive view should be followed, citing the permissibility of *bayʿ bi-al-istighlal* as an example (Meḥmed Saʿid).

In our opinion, the *Majalla*, by accepting the comprehensive view, not only made it possible for the buyer to benefit from the property without a condition but also foresaw that certain special circumstances could arise. In other words, considering that the seller might need the property sold under *wafaʾ* and might have a request to benefit from it, it stated that the parties could add a condition to the contract stipulating that not all of the property's benefit but rather *"a portion of it shall belong to the buyer."* Through this provision, a right of usufruct was actually granted not to the buyer, but to the seller. This is because the default position is that the buyer benefits, and Article 398 introduces an exception for the seller to also benefit without any lease situation arising. For this reason, although the enacted regulations are not contrary the comprehensive view, it would have been a far more accurate regulation within the framework of the comprehensive view if Article 398 had stated, *"a portion... to remain with the seller"* instead of *"a portion... to belong to the buyer."*

The International Islamic Fiqh Academy *(Majmaʿ al-Fiqh al-Islami)*, an academy established in Jeddah in 1981 under the Organisation of Islamic Cooperation (OIC), evaluated the contract in a

1992 resolution as a loan transaction that generates a benefit. Deeming it a legal stratagem *(ḥilah)* to engage in interest, the Academy ruled that the contract is not permissible (The Council of the International Islamic Fiqh Academy).

Aḥmad Muḥammad al-Zarqaʾ drew attention to the difficult economic conditions of the people of Bukhara and stated that, due to this necessity, the buyer's benefit from the property was licit *(ḥalal)*. He argued that the rulings of a pledge contract should be applied to it (Muḥammad al-Zarqaʾ 1989).

Muṣṭafa al- Zarqaʾ (d. 1999) states that the reason the contract was needed was not merely to secure a debt; unlike a pledge contract, it also served the purpose of allowing the buyer to benefit from the usufruct of the property sold under wafaʾ. Zarqaʾ considered it an independent, sui generis contract that contained not only the rulings of a sale but also those of a pledge, with the pledge rulings being more dominant (Muṣṭafa al-Zarqaʾ 1998).

Ḥafif, on the other hand, stated that the buyer's benefit from the property leads to the forbidden *(ḥaram)*. According to him, this contract is in the nature of a pledge (Ḥafif 2011).

According to Mudarris, the contract was used by the people of Balkh and Bukhara as a legal stratagem against interest. He argues that this fact absolutely precludes it from being considered a pledge and necessitates that the contract be deemed void on the grounds that the parties harbored bad faith within a seemingly legitimate transaction (Mudarris 2020).

According to Gerber, these types of contracts were the most common form of interest-based lending and served to conceal interest. Gerber also asserts that it was known by both judges *(qaḍis)* and *muftis* that such borrowings were a veil that hid interest (Gerber 1994).

In Turkey, Bayındır, in his examination of the topic, points to the prohibition in the hadith of *"two transactions in one" (ṣafqatani fi ṣafqah)*, stating that the term ṣafqah is used in the sense of a contract. He argues that in *bayʿ bi-al-wafaʾ*, a sale and a pledge, and in *bayʿ bi-al-istighlal*, a sale, a pledge, and a lease are combined into a single transaction. For this reason, Bayındır states that such transactions should be considered a form of interest (Bayındır 2016).

From the perspective of legal historians in Turkey, Aydın accepted the contract as an interest-based loan transaction to which the appearance of a sale was given. It is also noted that Aydın examined *bayʿ bi-al-wafaʾ*, and consequently *bayʿ bi-al-istighlal*, under the heading of *"special forms of pledge"* (Aydın 2018). On the other hand, Cin and Akgündüz have stated that the contract is, in all its aspects, in the nature of a pledge (Cin-Akgündüz 2011). Similarly, Ekinci has stated that the rulings of a pledge should be applied to the contract. However, he treats *bayʿ bi-al-istighlal* separately, considering it a defective sale that was deemed permissible due to necessity (Ekinci 2008).

The various legal interpretations and their practical consequences, which often present a complex landscape for the reader, are synthesized and presented in Table 1 for a clearer comparative overview.

TABLE 1. Summary of Juridical Perspectives on *Bay' bi-al-Wafa'*

Name of the Viewpoint	Key Proponent(s)	Main Argument	Practical Implications
Valid Sale *(Sahih)*	Early Hanafi scholars of Balkh and Samarkand	It is a valid sale because it fulfills the essential pillars of a contract and serves a social necessity.	The buyer becomes the full owner; the seller has a contractual right to repurchase.
Defective Sale *(Fasid)*	Some Hanafi and Shafi'i jurists	The condition of returning the property is seen as an "extraneous condition" (*shart fāsid*) that invalidates the sale's finality.	The contract is legally deficient; either the condition must be removed or the contract annulled to avoid sin.
Void Sale *(Batil)*	Majority of Shafi'i, Maliki, and Hanbali schools	It is essentially a "trick" (*hilah*) to bypass the prohibition of interest (*riba*), lacking genuine intent for sale.	The contract has no legal effect; the property and price must be returned to original owners immediately.
Pledge *(Rahn)*	Later Hanafi scholars and several Ottoman jurists	Since the seller's intent is to secure debt and the buyer's intent is to hold security, it functions legally as a pledge.	The buyer cannot sell the property to third parties; if the property is destroyed, the debt may be extinguished.
Hybrid/Sui Generis *(Qawl Jami')*	*The Majalla* (Ottoman Civil Code)	It is a unique contract that combines elements of sale (transfer of usufruct) and pledge (security for debt).	Regulated as a specific legal institution where the buyer enjoys usufruct but the seller retains redemption rights.

EXPERIMENTAL DETAILS / METHODOLOGY

This study employs a multi-layered qualitative methodology that integrates comparative legal analysis, textual examination of classical jurisprudential sources, and a doctrinal evaluation of codified law, specifically the *Majalla*, to investigate the juridical nature, historical evolution, and practical implementation of the *bayʿ bi-al-wafaʾ* contract. Central to this methodological framework is an empirical archival investigation based on the 100 volume Istanbul Court Registers (İstanbul Kadı Sicilleri) project. While the entire corpus was systematically screened to identify relevant judicial decisions yielding findings across 69 volumes/courts the final analysis focuses on a curated selection of 141 court records sourced from 16 volumes. This refined selection ensures a robust and representative sample that captures the diverse jurisdictional and chronological applications of the contract while avoiding the distortion of repetitive legal patterns. In other words, the court records analyzed in this study were not pre-selected from specific jurisdictions; rather, they were distilled from a comprehensive systematic screening of the entire 100 volume corpus.

Primary sources include authoritative works by major jurists such as Ibn ʿAbidin, Ebussuʿud Efendi, Burhan al-Dīn al-Marghinani, and Ahmed Cevdet Pasha, alongside the normative texts of the *Majalla*. Among these, Ibn ʿAbidin's *Radd al-Muḥtar* is specifically prioritized as the primary jurisprudential reference because it represents the most comprehensive synthesis of late Hanafi legal thought. His work is uniquely significant for this study as it provides the most direct theoretical foundation for late-period Ottoman judicial practice and served as a crucial precursor to the codification of the *Majalla*. By reconciling centuries of divergent views on *bayʿ bi-al-wafaʾ*, Ibn ʿAbidin offers the most relevant legal framework for interpreting the court records analyzed. These texts are examined to identify doctrinal debates regarding the classification of the contract as a valid sale, a defective sale, a void sale, a pledge, or a sui generis structure. Simultaneously, archival records from Ottoman *qaḍi* courts are analyzed to assess how these theoretical views were reflected in judicial practice. This comparison enables the study to establish a link between abstract jurisprudential discourse and concrete legal outcomes.

The analysis proceeds in two stages. First, a thematic content analysis is applied to the classical *fiqh* texts to trace conceptual distinctions, doctrinal arguments, and shifts in the understanding of the contract over time. Second, a documentary-legal analysis of court records examines the operative language, procedural forms, and outcomes of *bayʿ bi-al-wafaʾ* cases to reconstruct their applied legal framework. Particular attention is given to identifying terminological patterns (e.g., *bayʿ, wafaʾ*, raḥn, fakk al-rahn) that reveal how judges conceptualized these contracts.

No fieldwork or empirical data collection is involved. Instead, the methodology privileges the historical-contextual approach, situating the contract within broader socio-economic and legal developments. Triangulation is ensured by cross-verifying findings from jurisprudential texts, archival documents, and codified law. The validity of interpretations is reinforced through a systematic thematic analysis of contemporary scholarly debates and peer-reviewed studies. Themes were identified using an inductive approach, derived directly from the recurring legal issues found in the court registers and jurisprudential texts. These themes include 'the true intent of the contracting parties,' 'the allocation of liability and risk of loss,' and 'the legal boundaries of usufruct rights.' The coding and classification of both the archival data and the modern literature were conducted manually. This manual process was preferred over software-based analysis to ensure a precise understanding of the archaic Ottoman legal terminology and the subtle nuances of Islamic jurisprudence, which require expert qualitative interpretation to bridge the gap between historical practice and modern legal theory.

This combined methodology enables the study to present a comprehensive and historically grounded understanding of *bayʿ bi-al-wafaʾ*, elucidating its juridical nature, its evolution in Ottoman practice, and its potential relevance to contemporary interest-free financial systems.

RESULTS AND DISCUSSION

In our opinion, there are certain elements that prevent *bayʿ bi-al-wafaʾ* from being classified as an interest-based transaction:

1. According to the Qur'anic verse, *"...Allah has permitted trade and has forbidden interest"* (al-Baqarah 2/275), Muslims are required to base their commercial relationships on trade, not interest. Furthermore, another verse emphasizes that wealth should not be consumed through

wrongful means *(baṭil)*, even if based on mutual consent (an-Nisa 4/29). From these verses, it can be concluded that commercial dealings must be founded on trade conducted without resorting to wrongful means, even if mutual consent exists. In the *bayʿ bi-al-wafaʾ* contract, it is evident that mutual consent is present and that the language of a sale is used, without consideration of wrongful means details concerning this will be addressed in the following points. At this juncture, it is claimed that the intention, aim, and will are not for a sale, but that the parties act with the purpose of borrowing or lending, thereby giving the agreement the appearance of a sales contract. However, it is also possible to argue the opposite of this claim. In other words, one could assert that the sale is the foundational basis of the contract. In such cases where the contrary is claimed, will it then become a matter of having to prove the intention, aim, and will? How will the intention, aim, and will of the buyer be determined, who states that he is not taking advantage of the seller's difficult situation, not exploiting him, but, on the contrary, is doing a kindness to the seller -even if it may result in unfavorable outcomes for himself (these matters will be expressed in other points)- and providing him with the credit he needs? To what extent would it be correct to interpret the buyer's subsequent (potential) profit as an indication or presumption that the buyer's external will does not reflect his internal will, and to view the buyer as an interest-taker or usurer? As is evident, it would not be appropriate to reject from the outset a matter that is highly debatable on the point of intention, aim, and will, with the claim that it inherently carries the intention, aim, and will of interest. For this reason, the legal assessment of such contracts should not be confined to the external wording alone; in the field of *muʿamalat, maṣlaḥah* functions as an evaluative principle through which the actual effects of a transaction benefit, hardship, harm, and fairness may also be considered (Nik Abdul Ghani, Laluddin & Mat Nor 2011).

2. It is clear that the guaranteed profit found in interest-based loans is not present in these contracts. Just as there are situations where the buyer might earn a profit as a result of their labor and expenses, there are also many situations where no profit can be made. For example, in an orchard purchased for its fruit, it is possible that the expected yield may not be obtained that year for various reasons. Similarly, if a property purchased with the intention of renting it out cannot be leased, no profit may be generated. Therefore, unlike in interest-based transactions, it is not possible to speak of a guaranteed profit here.
3. In cases where a profit is made, it is clear that this profit does not originate from the debtor. The profit arises as a result of the buyer's capital and labor. The amount the seller, as the debtor, is required to pay is, just as in a benevolent loan *(qarḍ)* contract, a sum that is neither more nor less than the price (Kazak & Alim 2022; Zaylaʿi 1896) determined at the time the contract was concluded.
4. The contract also has a noteworthy feature concerning its duration. Although a term may be set when the contract is formed, the parties are not bound by this term. The seller can rescind the contract by repaying the debt, and the buyer by returning the property (Ibn ʿAbidin 2000). This brings to mind the benevolent loan *(qarḍ ḥasan)*, because in a *qarḍ ḥasan*, the creditor also has the right to demand repayment at any time. This feature distinguishes the contract from commercial debts and interest-based transactions where the term is binding. As is known, interest-based transactions stipulate a specific maturity period, and one must wait until this period is over. For this reason, not only can the contract not be associated with interest in terms of its duration, but it also does not perfectly resemble permissible commercial debts. The situation is one that is fully characteristic of a *qarḍ ḥasan*.
5. It was stated that the parties are not bound by the term of the contract. However, it cannot be said that the specified term is entirely meaningless. If the seller is unable to pay the debt or return the money within the specified period, the contract is not treated as a definitive sale, and therefore the property will not pass into the buyer's ownership, either directly or indirectly (Mantashzadah ʿAbd al-Raḥim Efendi 1827). Instead, the property will be put up for sale by auction by the authorities (Qadri Pasha 1891). This provides a significant advantage for the seller, especially in cases where the value of the property is greater than the debt. This is because, as a result of the auction, the property will be sold at or near its market value; after

the buyer collects what is owed, the remaining amount will be returned to the seller. Thus, the seller will have only paid the price determined when the contract was formed, and there will be no situation in which they are exploited by the buyer.

6. The issue of bearing the loss *(ḍaman)* is another matter of discussion. In cases where the value of the property is less than or equal to the debt, it is accepted that the debt will be extinguished without regard to the buyer's fault. In this situation, the buyer bears the loss (Yanishahri 1849). In cases where the value of the property is greater than the debt, compensation can be demanded only for the excess amount if the buyer is at fault. In this case as well, the buyer again assumes the loss. The only situation where the seller bears the loss arises when the value of the property is greater than the debt and the buyer is without fault (Yanishahri 1849). As is evident, it would not be a correct approach to compare a contract in which the seller is protected to such an extent with interest-based transactions, to which unprotected debtors are party.
7. Another advantage of *bayʿ bi-al-wafāʾ* from the seller's perspective is that it prevents them from having to sell their property far below its value. Debtors may at times find themselves needing to liquidate their assets quickly to be relieved of a debt. In such hasty sales, the property is often sold below its market value, which leads to lesion *(ghabn)* meaning the seller's difficult situation is exploited. However, thanks to the *bayʿ bi-al-wafāʾ* contract, the seller's position is strengthened as they can reclaim their property upon improving their financial situation. Particularly if the contract was established due to a debt, and the creditor-who could have purchased the property outright *(battan)* below its market value- chose instead to acquire it through wafāʾ, it would be incorrect to label the creditor an interest-taker or usurer, or to claim that the seller was exploited for the purpose of generating interest.
8. Despite all these advantages, it must be acknowledged that *bayʿ bi-al-wafāʾ* is an incomplete contract. This is because it only enables individuals who possess certain assets to obtain credit. It does not offer a solution for the needs of those who have no property to sell. On the other hand, earning a profit by engaging in commerce with people who do have assets cannot be considered wrong. For instance, if a person who owns a car falls into hardship and asks for a loan, providing credit without engaging in commerce and without the thought of profit does not align with economic realities. Spending money on charitable works is one thing; seeking the development of commerce and the increase of profit is another. Therefore, refraining from giving a loan to someone with assets even if mutual support should be valued can be seen as a natural stance.
9. The situation can also be examined from the perspective of sacrifice. On the one hand, there is money held and used in interest-based transactions, which requires no action or production. On the other, there is an action or production undertaken to earn a profit. In this context, when looking at the credit provided, one side involves a potential sacrifice, while the other involves a definite sacrifice.
10. While the International Islamic Fiqh Academy (IIFA) classifies *bayʿ bi-al-wafāʾ* primarily as a legal artifice *(ḥilah)* to circumvent the prohibition of *riba*, our findings from the Ottoman court records suggest a more nuanced functional reality. The analyzed records demonstrate that the contract was not merely a formal cover for interest, but a robust legal instrument that strictly regulated the transfer of usufruct and risk. The systematic enforcement of redemption rights in the courts counters the IIFA's concern by showing that the contract functioned as a genuine hybrid of sale and security, providing necessary liquidity in a capital-constrained economy.

Furthermore, the findings of this study provide a critical counter-argument to Haim Gerber's thesis regarding the exploitative nature of Ottoman credit contracts. Gerber suggests that *bayʿ bi-al-wafāʾ* functioned primarily as a mechanism for institutionalized interest, often leading to the dispossession of small-scale borrowers. However, the archival evidence from the Istanbul registers challenges this exploitation narrative. The analyzed records show that the Ottoman judiciary functioned as a proactive regulator rather than a passive enforcer of creditor demands. For instance, the systematic application of protection against unfair advantage *(ghabn)* and the public auction requirement for defaulted properties

demonstrate that the legal system prioritized the preservation of the borrower's equity. Contrary to Gerber's view, the courts ensured that if a property's value exceeded the debt, the surplus was returned to the debtor, thereby preventing the "unjust enrichment" of the creditor. This judicial oversight indicates that *bayʿ bi-al-wafāʾ* was not a static tool of exploitation but a balanced legal instrument that provided vital liquidity while maintaining social justice in a credit-scarce economy.

On the other hand, it is essential to address the technical critique by Bayındır regarding the prohibition of *"two transactions in one"*. From this perspective, the contract is seen as a prohibited "double contract" where conflicting legal intentions ownership transfer and debt security are collapsed into a single transaction. However, the Ottoman court registers provide a sophisticated counter-narrative to this objection by revealing a clear legal hierarchy and procedural separation. The examined records demonstrate that the judiciary did not treat these elements as a confused, single contract. Instead, the Ottoman legal system managed the sale and security aspects as distinct stages of a single legal process rather than a prohibited merger. While the sale provided the formal framework for the legal transfer of possession, the redemption right functioned as a separate, enforceable condition that protected the borrower's equity. Crucially, the records show that when the property was leased back to the seller *(istiġlāl)*, this was frequently conducted through a distinct and subsequent legal agreement, rather than being an automatic clause within the initial sale. By formalizing each stage the transfer of property, the security condition, and the independent lease as transparent and procedurally separate steps, the Ottoman judges effectively unbundled the legal intentions. This empirical evidence suggests that in practice, *bayʿ bi-al-wafāʾ* functioned not as a prohibited merger of conflicting contracts, but as a series of independent legal actions that resolved the socio-economic emergency of the era without violating the core intent of the prophetic prohibition.

11. Finally, the principle of legal methodology *(uṣul)* that two things that resemble each other are not always the same- should not be overlooked in this context. The fact that the person opposite the debtor-seller earns a profit -which, as previously stated, is only a possibility- may show a resemblance to those who profit from interest-based transactions. However, when the aforementioned points are taken into consideration, it cannot be said that these two situations are entirely the same.

In conclusion, although *bayʿ bi-al-wafāʾ* is a contract that arose because Muslims were not helping one another without seeking profit, it possesses specific characteristics that prevent it from being classified as an interest-based transaction. Therefore, even if it has been considered void due to its resemblance to interest in appearance and form, and then permitted based on necessity, it is our opinion that the contract is a legal remedy that possesses characteristics that would make it permissible from the outset. In this context, it can be said that the contract offers a viable alternative to the interest-based transactions that are frequently resorted to today.

CONCLUSION

The analysis of the *bayʿbi-al-wafāʾ* contract through Ottoman court registers and classical jurisprudence reveals that this legal instrument was not a mere artifice to bypass interest but a sophisticated, sui generis solution to the socio-economic liquidity crises of its time. The main findings of this study demonstrate that the Ottoman judiciary transformed a theoretically contested contract into a standardized, transparent, and fair credit mechanism. Unlike the static descriptions in classical legal texts, the court records show that the contract's validity was maintained through rigorous procedural safeguards, such as the mandatory public auction of the collateral and the judicial prevention of unfair advantage *(ghabn)*. These findings confirm that the *bayʿ bi-al-wafāʾ* functioned as a hybrid structure *(qawl jamiʿ)* that successfully balanced the creditor's need for security with the borrower's protection.

The novelty of this research lies in its empirical demonstration of how legal theory was adapted into a functional judicial reality. While previous studies have often treated *bayʿ bi-al-wafāʾ* as either a pure sale or a simple pledge, this study fills a gap in the literature by proving its independent and remedial legal nature. By unbundling the sale, pledge, and lease *(istiġlal)* elements often through distinct and subsequent legal agreements the Ottoman

practice neutralized the risks of ambiguity *(gharar)* and exploitation usually associated with *"two transactions in one."* This distinction positions the contract not as an imitation of interest-bearing loans, but as a legitimate historical precursor to modern structured finance and risk-sharing models.

Despite these insights, this study has several limitations. The research is primarily focused on the Istanbul court registers; therefore, the findings may not fully reflect the diverse regional applications of the contract across the broader Ottoman geography.

Future research should expand upon these findings through comparative historical studies, analyzing how *bayʿ bi-al-wafaʾ* was applied in different provinces like Cairo, Damascus, or the Balkans. Additionally, applied research could investigate the potential for integrating the "redemption sale" logic into modern Islamic microfinance products as a risk-sharing alternative to conventional debt. Theoretical studies are also needed to further refine the *qawl jamiʿ* framework within contemporary contract law.

This study contributes to global Islamic studies in three significant ways. First, it offers an empirical methodology that bridges the gap between classical *fiqh* theory and historical judicial practice. Second, it challenges the orientalist and modernist narratives that view such contracts purely as legal tricks, by highlighting the ethical and protective role of the *qadi* courts. Third, it enriches the discourse on contemporary Islamic finance by providing a historical precedent for sui generis hybrid contracts that prioritize social justice and liquidity over exploitative profit.

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The author declares no conflict of interest.

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The author confirms that this research was conducted in full compliance with institutional and international ethical guidelines, upholding the highest standards of research integrity and ensuring the complete avoidance of plagiarism or any form of academic misconduct.

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