

## Shariah requirements for contractors in a transaction and impermissible types of contracts in Islamic Economics

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**Abstract:** It is necessary for Muslim businessman to know the Shariah rules of Transactions. Where Islam allows trade but forbids certain types of trade by declaring them prohibited or undesirable to avoid any disruption or dispute in the livelihood system. Similarly, certain conditions have been laid down for the eligibility of Contractors (Seller and buyer). Without which, those contracts are declared null or void. It is important for the Muslims in particular and the general public in general to be aware of these Islamic economic principles so that the contracts of Muslims are valid as per Islamic law. We want other communities around the world to understand the basics of Islamic economic system to some extent.

So, in this article we will point out the main rules of sale and purchase in the light of Islamic law of contract.

**Keywords:** Islamic Economics, contractors, Transactions, Shariah, buyer and seller

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**Shariah:** The word “Shariah” is Arabic word which means “Islamic canonical law based on the teachings of the Quran and the Hadiths of the Prophet Muhammad (peace be upon him). Islam is not only a religion but it is a way of life which consists of sets of rule relating to different branches of life such as Ibadat (devotional acts), Muamalat (Financial Transactions), Munakahat (Marriage affairs), etc. So Shariah means here a set of Islamic financial rules and principles which are necessary for every transaction. Without adopting these rules and principles the contract cannot be valid.

**Contract (Sale and purchase) and Contractors:** Contract is an expression of exchanging of two subject matters between two contractors (Seller and buyer) by willingly accepting of one party the offer of the second party.

A Muslim seller and buyer should know their requirements for any transaction to be legal in Islam. Similarly, Muslim countries have to implement Islamic law in their trade related activities, we want to point out these requirements globally so that every human being of this world can get some idea of it.

**Basic Requirements for Contractors (seller and Buyer):**

The basic eligibility is necessary for seller and buyer in any selling & Purchasing in Shariah Law. Because the basic elements of any contract (Offering and acceptance) are based on it. The sale cannot take place without eligibility of both parties. The Scholars of different School of thoughts in Islam differ on the requirements and conditions of their eligibility. According to Imam Abu Hanifa, Malik and Imam Ahmad the conditions of eligibility are as follows:

1. The both seller and buyer must be sane. If one of them is insane then the contract cannot be valid.
2. Every contractor should be able to understand Conversation and profit of transaction. If a seller or buyer is so young that he does not have the power to discriminate, then the matter is not correct. According to Hanafi school of thought, the age of distinction is about seven years, and according to other jurists, from the beginning of seven years, the child begins to understand, as Wahbah Zuhili writes.

والتمييز مقدر عند الحنفية بتمام السنوات السبع وعند غيرهم ببلوغ السبع سنوات<sup>1</sup>.

Translation: "Discrimination is estimated according to the Hanafic School at the completion of seven years, and in others by reaching the age of seven".

Even after the existence of this condition, according to the Hanafis, the actions and contracts of the discriminating child have been divided into three categories and their separate order has been stated<sup>2</sup>.

I. Profitable Transaction:

Contracts in which there is only profit, no risk of loss, such as accepting a gift, accepting a charity, making someone a guarantor for the loan, hunting. All these contracts from child are valid without the permission of the guardian.

II. Harmful Transaction:

These are matters in which there is only financial loss, that is, the loss of property without any financial compensation, such as giving gifts, giving loans and giving charity. These contracts are not valid for the child, but these are valid only after the permission of the guardian.

III. Transactions consisting of profit and loss:

This is a case in which there is an aspect of both profit and loss, that is, the property/Commodity comes out of you and brings another property or service, in such contracts the transaction of the child is valid but its implementation is suspended only with the permission of his guardian.

3. There must be more than one contractor in the transaction:

That is, if the buyer and the seller are separate human beings, it is not possible for the same human being to be both a seller and a buyer.

There are several forms of this:

I. That one contracting party is Principal (aseel) on one side and an agent on the other.

II. one party is original in both.

III. The one contracting party is an agent for both sides.

The second case has no specific purpose, so this case does not usually occur. However, the first and third cases occur. But these cases are allowed only for the father, guardian, judge and messenger.

من الشرائط أن يكون العاقد متعدداً: فلا ينعقد البيع بواسطة وكيل من الجانبين إلا في الأب ووصيه والقاضي والرسول من الجانبين<sup>3</sup>

(One of the conditions is that the contractor must be more than one: the sale is not concluded by an agent on both sides, except in the case of the father, his agent for testate, the judge, and the messenger on both sides)

4. None of the contractors should be slaves
5. They should not be impudent, that is, they should not be squandering their wealth.

So in the Hanafic Fiqh the following cases are not permissible due to lack conditions of contractors:

- I. The sale and purchase of the insane
- II. The transaction of a non-discriminating child.
- III. The same person is both the buyer and the seller.
- IV. Transaction of slaves
- V. Transaction of impudent

According to Imam Shafi'i, the conditions for a person's eligibility are as follow:

1. Every contractor should be sane
2. Every contractor should be an adult.
3. No one be a impudent.

As in the famous book "al Fiqh Al Islami:"

وقال الشافعية : لا ينعقد بيع الصبي لعدم أهليته، وشرط العاقد بائعاً أو مشترياً: أن يكون راشداً<sup>4</sup>، ودليلهم قوله تعالى: {ولا توتوا السفهاء أموالكم التي جعل الله لكم قياماً<sup>5</sup>}

(Shafis said: A child's sale does not take place in Islam due to his lack of eligibility. The condition of the contract, the seller or the buyer, is that he be of sound mind and their source is the saying of the Almighty Allah: {And do not give the fools your money/Goods/Property that God has made for you living})

4. Every contractor should be independent, that is, he has not been forced to sell or buy. Imam Ahmad is also with him in this condition:

لقوله تعالى: {إلا أن تكون تجارة عن تراض منكم}<sup>6</sup>

Allah says: "except that it is a trade by mutual consent of you"

ولقوله عليه الصلاة والسلام: "إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ"<sup>7</sup>.

The Prophet says: Error and forgetfulness and what they were forced to do, have been removed from my Ummah (Nation).

5. Every contractor should be independent or a slave who has been permitted for business by his Master.

Now we move to discuss the different types of invalid Contract due to lack of requirements:

### 1. The transaction of the insane:

The insane person is forbidden to buy and sell. If a insane person buys or sells something, his purchase will not be valid, nor will the verbal matters of the insane person be valid, for example, if a madman divorces. , Or give a gift or do something similar will not be credible. The same rule applies to a person who is unconscious and intoxicated<sup>8</sup>.

### 2. Transaction of Child

If the child is immature, then its purchase and sale is unanimously invalid. If he is conscious but not an adult, then according to Imam Shafi'i and Imam Ahmad ibn Hanbal, his contract is still not valid. However, in this case, the Malikis and the Hanafis have declared the sale of the property valid by suspending it with the permission of the guardian. The details are as follows:

If the non-adult child is conscious, that is, capable of distinguishing between right and wrong, then it is right for him to sale his property with the permission of his guardian. This opinion is more valid, Because: In the Holy Qur'an, Allah Almighty forbids the transfer of property, business and property of an non-adult child before he reaches puberty, unless he is tested Is he even capable of that? Yes, if he is

able to distinguish between right and wrong and is able to be sensible, then he is allowed to sale his property with the condition of permission of guardian, Allah says:

“And try the orphans until they reach the age of puberty, and try them. Then if you find in them a prudent and prudent plan, then give them their property, and do not waste their wealth in haste, for fear of their growing up. Wealthy people should avoid (the orphan's wealth). Yes, the guardian of the orphan is poor and needy, then he should eat it in accordance with the constitution, then when you hand over his property to him<sup>9</sup>.

A child is usually not allowed to make financial transactions before he or she becomes an adult because he or she does not have the ability to distinguish between right and wrong and to have a proper understanding of matters. Therefore, if the child does not have this cause of prohibition and has the required ability, then there is no reason for prohibition, and then the condition of permission of the guardian also eliminates this negative possibility.

### **3. Transaction of Forced Person:**

In the terminology of the jurists, “Ikrah” means: “A deed which a person does to compel another without any consent or authority”. This refers to a sale which is done unjustly and forcibly by forcing the buyer or the seller to do so. Persuading buyers and sellers to sell is not a legitimate, legal or ethical act in any way, even if the one who forces is the ruler of the time. If a person is forced to buy something or sell his goods by force, the sale will be void and invalid according to shariah and it will not have any effect on him.

A strict warning has been issued to those who take part in such matters. They should always remember this saying of the Holy Prophet (sws):” It is not permissible for a person to take anything from his (religious) brother's property or goods without his consent”<sup>10</sup>.

And in another narration he said: “None of you should buy his (religious) brother's property without his consent”<sup>11</sup>.

#### **Excessive sale" Some exceptional cases of forced sale:**

The government or the court or any competent authority may in some unavoidable circumstances force the owner to sell his property or goods which is known in the terminology of jurists as Bi'a al-Jabri.

The cases in which the owner may be compelled to sell his item are as follows:

The first case is that if a debtor is not repaying the debt to owner and he does not have cash then the court may order him to sell his property and repay the debt. If he acts recklessly despite the court order, the court may sell the property of the debtor at market rate in order to get relief from the debtor. If he is not paying despite the court order, the court may sell the borrower's property at market rate in order to provide relief to the lender.

The second case is that if a person has mortgaged his property or something else and is not repaying despite repeated reminders after the payment period has elapsed, then the creditor should sell the mortgaged property, even if the debtor does not agree to it. But the condition is that the court and the debtor should make sure that they sell at a fair price.

Thirdly, when there is a shortage of food items and some people are hoarding, the government has the power to order the traders to sell the stored items, if they do not comply with the order, the government may sell itself at market rate without their consent. As stated in the book “Al-Musawat al-Fiqhiyah alkoyitiyah”:When there is a fear that the people will be affected, the ruler will force the hoarder, rather he will take the stored goods from him and sell them, and will give him (the hoarder) its value. This is the consensus of all the Imams and there is no other opinion in it.

The fourth case is that if the government has a real need for a place (such as a shop, house, etc.) or something for public purposes and the owners are not willing to sell it, then the government can get

that place or thing by force. But it is necessary for the government to pay the owners according to the market rate. However, the government cannot deprive a citizen of his property without paying the market price.

The summary of the schools of thought in this matter is that according to Shawfa'i and Hanbalis it is not held due to lack of consent. According to the Hanafis, it has been suspended till the end of Ikrah(Compulsion). If he gives permission after that, then it will be valid. Otherwise it will be cancelled. This is almost the opinion of the Malikiyah<sup>12</sup>.

#### 4. Unrealistic sale or purchase:

In jurisprudential terms, a "Bai al taljiah" is a shape of transaction in which the parties (buyers and sellers) make an imaginary deal without a sincere intention. And in fact it has no intention of sale or purchase. The purpose of the both contractors is to avoid the fear of an cruel ruler or an enemy, but this deal will be done as a ploy after the fulfillment of all the terms and conditions of sale. The Shafi'is name this sale as " Bai al amanah" (the sale of faith).

Muslim Scholars have both opinions on the validity or invalidity of such a contract, but in the light of the Islamic rules, the correct opinion of the jurists is that such a contract is legally invalid<sup>13</sup>, Because: Mutual and genuine consent is missing in this contract, which is the basic condition for the validity of any transaction. Financial matters and agreements are based on goals and meanings, not on words, as is the rule in business matters:

"العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني"<sup>14</sup>

(Consideration in contracts for purposes and meanings, not for words)

#### 5. Transaction of Mahjoor (a person who is banned from financial transactions):

There is a difference of opinions in the eligibility of a person who is prohibited from making financial transactions. The purpose of this ban is sometimes in the interest of others, such as: to ban the poor debtor from selling his own property/Goods for the sake of the lenders and sometimes this ban imposed for his own interest, such as: insane. Prohibit children and fools from selling their property. There are clear instructions about property/ commodity of immature parson in Quran.

Immature means one who has no ability of spend his commodity, spends money on useless things, does not know the true value of goods as selling of a good of hundred Rupees in ten or twenty. So the action of a fool without the permission of his guardian is neither valid nor enforceable.

Jurists have stated the rule of recognizing foolishness in transactions as follows: He who does not have a good and proper understanding of transactions or he shows by his actions that he does not know how to spend his wealth well. In short, according to the Shawfa'is and the Hanbalis, the transaction of fool/immature person is invalid, and according to other jurists, it is suspended<sup>15</sup>.

#### 5. Transaction of a slave without the permission of the master

In Islamic Fiqh a slave has no ability of sale or purchase without permission of his master. he cannot own property, money and goods. As the Prophet (peace and blessings of Allah be upon him) said: "Whoever buys a slave and has wealth, it is owned by the owner who bought it"<sup>16</sup>.

#### Prohibited types of Transactions and their shariah Status:

Where Islam has allowed buying and selling as a necessity of the way of life, it has instructed to refrain from certain types of trade by declaring them prohibited or undesirable, so that they do not cause any disruption or conflict in the livelihood system. According to the Hanafi School of thought, there are three types of these illegal purchases and sales:

1. Bia e Batil (Invalid/Void financial contract)
2. Bai e Fasid (Voidable / irregular transaction)

### 3. Bai e Makrooh.(Undesirable transaction)

#### 1. Invalid Contract:

An invalid sale is a sale that has a defect in its *asl*(essence) and *wasf* (external attributes). In other words, if there is any defect in its elements, such as a Muslim selling a pig, then since the pig (subject matter) is not a *mal*(commodity) in the Shari'ah which the basis of the sale.

والبيع الباطل: هو ما اختل ركنه أو محله، أو هو ما لا يكون مشروعاً بأصله ولا بوصفه، أي أن يكون العاقد ليس أهلاً للعقد، أو أن يكون محل العقد ليس قابلاً له<sup>17</sup>.

(And the invalid sale: it is what its element or its base is defective, or it is what is not legitimate in its essence or external attributes, that is, that the contracting party is not qualified to contract, or that the subject matter of the contract is not contract able.)The ownership of subjects will not be transferred here.

#### 2. Irregular transaction

A Irregular transaction is a transaction which does not have any defect in its element and origin but there is some legal defect in its external attributes, in other words: The irregular contract is legal in respect to its essence but it is irregular due to the prohibition of the attributes<sup>18</sup>, as if one of the contractors imposes a condition which is against the requirements of the contract<sup>19</sup>. Such as that the contract includes *Riba* or *Gharar* (uncertainty, indeterminacy). Its legal position is that the ownership of this subject is transferred after occupation, but it is obligatory to cancel the contract because it is prohibited in Islam.

#### 3. Makroh Transaction:

A makrooh sale is one that is valid in its origin and nature but is undesirable due to some external reason, such as selling in a mosque or buying and selling after the Friday Adhan. In Hadith:

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا رَأَيْتُمْ مَنْ يَبِيعُ أَوْ يَتَنَاجَى فِي الْمَسْجِدِ فَقُولُوا لَا أَرْبَحَ اللَّهُ تِجَارَتَكَ وَإِذَا رَأَيْتُمْ مَنْ يَنْشُدُ فِيهِ ضَلَالَةً فَقُولُوا لَا رَدَّ اللَّهُ عَلَيْكَ<sup>20</sup>.

(On the authority of Abu Hurairah, the Messenger of God (peace be upon him) said: “that when you saw someone who sells or purchases in the mosque, then say: God does not make your business profitable, and if you see someone who seeks a lost thing in mosque, say: God will not return it to you)

However, according to the majority of jurists, the sale is either Valid or invalid. There is no third type of contract as Wahbah Zuhili writes: “according to the non-Hanafiyyah: the sale is either valid or invalid”<sup>21</sup>.

So, according to the majority of jurists, all forms of forbidden trade are invalid. Let us now review these false and forbidden types of trade one by one

#### 1. Transaction of Madoom(non-existent Subject matter):

Madoom that does not exist in the world, such as selling a baby of fetus, selling fruit before it appears. According to all the Imams, this sale is void<sup>22</sup>. As stated in the hadeeth: On the authority of Ibn Umar “the Messenger of Allaah (peace and blessings of Allaah be upon him) forbade the sale of fetus of fetus”<sup>23</sup>.

In another Narration from the messenger of God: “On the authority of Ibn Umar on the authority of the Prophet, may God’s prayers and peace be upon him, that he forbade the Mazamin, Malaqih and wa habl al Hablah. He said: And the Mazamin: what is in the origin of camels, and the maqiyah, what is in their wombs, and the Habl al Hablah: the fetus of the camel”<sup>24</sup>.

Selling pearls inside the shell, selling milk inside the teat is one of the sales of non-existent subject.

#### 2. Transaction of non-deliverable:

If it is impossible to assign something to a contractor at the time of the contract, then the sale of the item is not valid. If it is done, it will be void although it is in his possession, such as a bird in possession



which flew from his hand, the runaway slave and the lost thing. The four Imams agree on the invalidity of such a contract<sup>25</sup>.

### 3. Sale of liability or loan:

Every financial obligation that is incumbent on a person, such as the price of a Subject matter, repayment of loan, mulam Fih (subject matter of bai e salam). There are several types of it:

(a) Selling loan only to the creditor on cash.

In this case, if the debtor gives him something else in return for the debt of his creditor and both of them agree to it, then this is valid transaction according to the four Imams, because it is a form of reconciliation. in the sunnah "On the authority of Abdullah bin Omar, he said: "I came to the Prophet (may God bless him and grant him peace) and asked: I sell camels in al-Baqi', so I sell dinars and take dirhams, and sell dirhams and take dinars? He said: There is no harm in taking the price of that day as long as you don't separate and something remains between you"<sup>26</sup>.

In this hadith, taking dananir in exchange for darahims has been described as "bay-ud-din ba'een mumn alayh-ud-din"(selling a loan for cash to the person to whom it is due).But some other Imams, such as Ibn Hazm al-Zahiri, have not considered it legal due to non-identifying of subject<sup>27</sup>.

(b) Selling loan only to the lender on credit

An example of this is when a person buys something from someone but will receive it later, i.e when the due period comes, the seller does not sell it, so he asks the buyer to sell it to me again on credit. Then he sells it orally. Nothing is taken over by anyone. It is forbidden in any case to sell the loan/liability on credit because it has been mentioned in the hadith:

"ان النبي صلى الله عليه وسلم نهى عن بيع الكالى بالكالى"<sup>28</sup>.

(The Prophet (Peace be upon him) forbade selling liability for liability)

Some people have coated the agreement of all jurists that the liability cannot be sold on credit, as Wahb al-Zuhili writes:"It has been said: Muslims are unanimously agreed that it is not permissible to sell a debt for a debt, whether the sale is to the creditor or to a non-creditor"<sup>29</sup>.

(C) Selling loan only to the creditor on cash

In this case, if one person lends another fifty kilos of wheat, he tells the other person that he sold the to him his wheat which is in debt to such and such a person for one thousand rupees and received one thousand rupees in cash. This contract is not valid according to the Hanafis and Ahl al-Zawahir because the subject matter is a liability here it cannot be delivered by this seller<sup>30</sup>.

(d) Selling loan only to the creditor on credit

In this case, the seller will tell someone that he sold you so many kilos of wheat which are due to such and such for so much money that you will give it to me after such a time<sup>31</sup>. It has the same legal position as the "C".

### 4. Sale and purchase of Najis

Najis, that is, things that are najis in nature because they are not wealth, so buying and selling them is haraam, such as urine, feces, blood, wines, pig and carrion. It is in the Hadith:

إِنَّ اللَّهَ حَرَّمَ الْخَمْرَ، وَتَمَنَّاها، وَحَرَّمَ الْمَيْتَةَ وَتَمَنَّاها، وَحَرَّمَ الْخِنْزِيرَ وَتَمَنَّاها<sup>32</sup>.

"God forbids wine and its price, and forbids dead animals and their price, and forbids pig and its price".

Similarly, it is not permissible to sell najis oil or anything that smells bad, because the Prophet (peace and blessings of Allah be upon him) said: "When Allah Almighty made something haraam (Unlawful), He also made its price haraam(Unlawful)<sup>33</sup>".The Prophet (peace and blessings of Allaah be upon him) was asked: What is the ruling on the fat of the dead, which is used to lubricate the boats, to soften the skins, and to light the lamps in the houses with it? He replied: "No, it is haraam."<sup>34</sup> It is not permissible to use it.

The rule regarding the sale and purchase of other haraam animals is that every animal that has a shar'i (lawful) benefit, its sale and purchase is valid, as stated in the book *Al fiqh Al Islami*: "The rule according to the jurists: that everything that has a benefit is permissible according to Sharia, so selling it is permissible, because the objects were created for the benefit of human"<sup>35</sup>, because Al mighty Allah says in Quran: "He created for you all that is on the earth"<sup>36</sup>.

#### 5. Transaction of Arboun(pledge)

Arboun contract/ transaction means a person who buys something or rents an animal and pays a dollar in advance and says that if I do not pay the remaining amount and buy the goods or do not rent the animal, then this dollar will be yours. This sale is not valid according to shari'ah. This is the saying of the Messenger of Allah<sup>37</sup>.

There is a difference between this pledge and the leverage (fore purchase payment) of our era. The leverage is returned, while the pledge stipulates that the seller will confiscate the pledge in case of termination of the transaction.

#### 6. Transaction of un possessed assets.

It is not permissible for a Muslim to buy goods and sell them before taking possession of them, because the Prophet (peace and blessings of Allaah be upon him) said: "He who buys food should not sell it until he has received it"<sup>38</sup>.

#### 7. Transaction of non-precise determined subject

It is not permissible to "sell" anything that is not definite. Therefore, fish in water, wool on the back of a sheep, baby in the belly of animal, milk in the udder, fruit before ripening, grains before hardening should not be sold. Similarly, it is necessary to know the nature, quality and quantity of the missing goods in order to validate the sale, because Ibn 'Umar (may Allah be pleased with him) narrates: "The Prophet (peace and blessings of Allaah be upon him) forbade selling fruits before they are edible, as well as selling wool on the back, milk in the udder or butter in the milk"<sup>39</sup>. It is also narrated on the authority of Anas ibn Malik "that the Prophet (peace and blessings of Allah be upon him) forbade the sale of fruits before they were ripe"<sup>40</sup>. Abu Sa'eed al-Khudri (may Allah be pleased with him) said: "The Messenger of Allah (peace and blessings of Allah be upon him) forbade the sale of mulamasa and munabadha". "Mulamasa" means that one person touches another's clothes, does not look at it upside down (and the deal is done) and "munabadha" is that one person throws his clothes towards the other and The second is towards it, and this is considered the contract of sale between them, while in both cases the thing has not been looked at carefully and has not been fully examined.

### Conclusion

We discussed in this research paper the shariah law of Financial Transaction. We also discussed the forbidden transactions in detail. Our paper specially concentrated on the conditions of contractors (Buyer and seller) in the respect of Islamic Jurisprudence. In this regard, the opinions of different schools of thoughts of Islamic jurisprudence are pointed out for researchers and readers; in the last we presented an analytical study of the main forms of forbidden transaction and their shariah Status.

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<sup>1</sup>. Wahb ibn Mustafa al-Zuhili, *Al fiqh Al Islami wa adilatuhu*, Dar al-Fikr, Damascus: 5/17

<sup>2</sup>. *Al fiqh Al Islami wa adilatuhu*: 5/331

<sup>3</sup>. *Ibid*: 5/3317



- <sup>4</sup>.Ibid
- <sup>5</sup> . Alquran, Al Nisa: 4/5
- <sup>6</sup>. Al Nisa: 4/92
- <sup>7</sup>. Ibn Majah Abu Abdullah Muhammad ibn Yazid al-Qazwini, Sunan Ibn Majah, Dar al-Risalah al-Alamiya, Beirut, 2009: 3/201
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- <sup>12</sup>. Al fiqh Al Islami wa adilatuhu: 5/3492
- <sup>13</sup>. Ibid
- <sup>14</sup>. Sayyid Sabiq, Fiqh al-Sunnah, Dar al-Kitab al-Arabi, Beirut, 1977: 3/205
- <sup>15</sup> -Al fiqh Al Islami wa adilatuhu: 5/ 3492
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