600595 - What is the ruling on monthly subscriptions to get a service of which one’s usage will vary?

the question

Is it permissible to subscribe to an annual service for approximately 200 riyals that gives the subscriber free shipping on all orders throughout the year? Please note that the price of shipping for one order is usually approximately 120 riyals. Does this come under the heading of ambiguous transactions or gambling?

Along the same lines, is it permissible to subscribe to delivery apps or e-traders that give some extra services, such as free delivery, to subscribers?

Summary of answer

It is permissible to subscribe to shipping services or prepaid delivery services, because it is a contract of hiring in return for a fee to benefit from a service for a specific period, and there is no ambiguity or gambling in that.

Detailed answer

Praise be to Allah.

I.

Annual or monthly subscriptions in which the subscriber pays a fixed amount in return for a service of a known nature for a known duration, such as shipping or free delivery, are contracts that are permissible according to Islamic teachings, if the service offered is permissible in principle.

The basic principle regarding business transactions is that they are permissible, because Allah, may He be Exalted, says: {But Allah has permitted trade} [Al-Baqarah 2:275] and {O you who

have believed, fulfill [all] contracts} [Al-Ma’idah 5:1].

This subscription, in reality, comes under the heading of hiring or leasing, in which one prays a fee in return for a service that is defined in the contract, which enables the subscriber to make use of the shipping or delivery service within a specific time period.

II.

We cannot say here that this transaction involves ambiguity or deceit on the grounds that there is no known specific number of shipments or deliveries, or the extent of the service to be offered is not known, and that is for several reasons:

1. The contract between the two parties is to enable one party to use a service for a specific length of time, not a specific number of times for which the service will be used.

So the fee in this case is in return for allowing use of the service, not in return for a specific number of orders or a specific number of times the service is used. And according to this contract, the other party has the right to use its service as many times as he wants within the time period that is specified.

2. The decision of how often the service is used is up to the customer, according to his needs and wishes. All the one who is offering the service has to do is enable the other party to use it whenever he wants during the time period agreed upon.

This is in contrast to prohibited ambiguous transactions such as gambling and insurance, in which neither party knows whether he will benefit from this contract or not.

3. The ambiguity in transactions such as this is insignificant and may be overlooked, and if it is said that it is not insignificant, it is still something that people usually overlook and accept, because in this type of transaction there is benefit for both parties.

Al-Qarafi said: Ambiguity and not being specific, as may be understood from the above, fall into three categories: 1. That in which the expected benefits do not happen at all; 2. That in which

what one gets of expected benefits is extremely low; 3. That in which one gets most of the expected benefits. The first two are to be avoided, and the third scenario may be overlooked.

Abul-Walid divided ambiguous contracts into three categories: those in which there is a great deal of ambiguity, those in which there is a little ambiguity, and those in which the ambiguity is of a moderate level. And he regarded those in which there is a great deal of ambiguity as describing the first two of the categories mentioned above.

End quote from *Al-Furooq*, 1/170.

Ibn Rushd said: In conclusion, the jurists are agreed that a great deal of ambiguity when buying and selling is not permissible, but a small amount thereof is permissible; however, they differed regarding transactions in which the level of ambiguity comes in between those two extremes. Some of them regarded it as belonging to the first category, in which there is a great deal of ambiguity, and some of them regarded it as belonging to the second category, in which there is a small amount of ambiguity, which is permissible, because it comes in between the two categories of small and great.

End quote from *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, 3/173.

See also the answer to question no. 91480.

4. The Lawgiver did not disallow every business deal that involves ambiguity; rather what is prohibited is excessive ambiguity or a great deal of ambiguity that usually leads to arguments and disputes. As for that which people usually tolerate and overlook, and does not usually lead to arguments and disputes, it is akin to a small amount of ambiguity that does not affect anything.

Not knowing how often the service will be used does not matter, because not knowing that does not usually lead to disputes, and there are rarely disputes between the parties involved in the services to which people subscribe. If that does happen, it is rare, and what is rare has no impact on the ruling.

Al-Sarkhasi said: When a business transaction is rendered invalid due to ambiguity, it is not because of the ambiguity in and of itself, but because it may lead to disputes.

End quote from *Usul as-Sarkhasi*, 2/208.

5. There are examples of this type of business dealings that are known in jurisprudence, and the scholars approved of them. They include:

- Entering the public bath for a set fee, even though it is not known how long a person will stay and how much water he will use.
- Paying a fee to a water-carrier in return for having a drink, without specifying how much will be drunk.
- Hiring a wet nurse even though it is not known how much milk the infant will drink. Allah, may He be Exalted, says: {And if they breastfeed for you, then give them their payment} [at-Talaq 65:6].

Ibn al-Mundhir said: Hiring a wet nurse is permissible, because Allah has permitted it, and there is no difference among the scholars concerning that as far as I know.

End quote from *Al-Awsat*, 11/158.

Moreover, many scholars regard it as permissible to hire a wet nurse in return for providing her with food and clothing, even though there is ambiguity regarding how much she will eat and what she will need of clothing. In Al-Mawsu`at al-Fiqhiyyah al-Kuwaitiyyah (29/152), it says: If he hires a wet nurse or a worker in return for food and clothing, or if he agrees to give provide wages in addition to food and clothing, the scholars differed regarding that. The majority of jurists – the Malikis and Abu Hanifah, and it is one view that was narrated from Ahmad – said that it is permissible, because this ambiguity does not lead to arguments and disputes, and because the custom is to be generous to wet nurses and not bargain with them, and to give them what they ask for out of compassion towards the children. End quote.

Hisham said: I asked Muhammad [i.e., Muhammad ibn al-Hasan ash-Shaybani] about services in

which oils are applied to the body in return for a set fee, when it is not known how much will be applied to the customer, depending on how big or small he is.

He said: That is permissible, because the size of the body is usually known, and the variation between one body and another is not great and does not lead to dispute, and because this is how people usually do this transaction without anyone objecting. So this ambiguity is to be overlooked, based on the custom among people when dealing with such issues.

End quote from *Bada'i` as-Sana'i` fi Tatrib ash-Shara'i`*, 4/181.

In *Al-Muhit al-Burhani*, 7/467, it says: Ambiguity regarding the object of a business deal would render the deal invalid if that was not the way in which people deal with such matters. An example of that is entering the public bath for a set fee, which is permissible even though there is ambiguity regarding the purpose of the contract (that is, usage of water and length of stay), because this is the way in which people usually deal with this matter.

An-Nawawi said: The scholars are unanimously agreed that it is permissible to enter the public bath for a fee, even though people vary in how much water they use and how long they stay. And they are unanimously agreed that it is permissible to drink from the water-carrier for a set fee, even though it is not known how much will be drunk, because drinkers vary in their habits.

End quote from *Sharh Sahih Muslim*, 10/156.

Shaykh Mahmoud Khattab as-Subki said: It is permissible for the owner of the public bath to charge a fee for bathing even if he does not know how much water the customer will use or how long he will stay, because the ambiguity regarding the extent to which he will use the service is something that is customarily overlooked, even though – rationally speaking – it should not be overlooked, because it is possible that he could exhaust the water supply as a result of this ambiguity.

End quote from *Ad-Din al-Khalis*, 1/381.

6. There are many contemporary examples of this kind of business practices that people

engage in in our own times, without anyone objecting to them. They include:

- Subscribing to sports clubs and gyms, even though many people pay the subscription and may not make use of it, except on a less frequent basis than they expected to. In this case, the fee is not in return for a specific number of times a person uses the facility; rather it is in return for enabling him to use the facility within a stated period of time.

See the answer to question no. 237790.

- Paying a monthly subscription to use a phone and mobile service in return for making calls anytime one wants during a stated period of time, even though the customer may not use it at all or may only use it a little, or he may use it all the time.

See the answers to questions no. 220237 and 132581.

- Subscribing to an Internet service for a monthly fee, even though there is ambiguity regarding how much one will use the Internet.

See the answer to question no. 100090.

All of these ambiguities having to do with how much the customer will use the service do not do any harm, because it is a kind of ambiguity that does not usually lead to disputes, and it serves the interest of both parties.

Shaykh Sa`d al-Khathlaan was asked about subscribing to delivery apps, and he said:

After examining this issue, and after discussing it with some seekers of knowledge, what appears to be the case – and Allah knows best – is that there is nothing wrong with it. That is because the subscriber to these and similar apps has paid money in return for this service, and this money is a fee in return for a service, namely the delivery of orders during that limited time period. It is similar to buying a phone card that allows him unlimited calls for one month, or services such as Internet and phone calls for one month; he has bought a service that is described in the contract for a limited time period. And that is also the case here. So if someone were to say: isn’t there

ambiguity and deceit in that?

The answer is: with regard to the company, the company is profiting in all cases, because some of these companies charge a fee to the shopkeepers, so they are profiting, and in fact if the number of orders increases, they will profit more, and even if these companies do not charge a fee to the shopkeepers, they will still make money because of the variation in how much customers use the service.

With regard to the subscriber, he has paid for this service and it is made available to him, so whenever he wants he can make use of it, whether he uses it less frequently or more frequently, because he thinks it most likely that he will benefit from it. The wise person will not subscribe unless he thinks it most likely that he will benefit from it. Therefore, so long as he thinks it most likely that he will benefit from it, then the ambiguity is insignificant, especially as the time period is limited, and the place (range of delivery) is also limited, because these companies set a range in a particular city or a particular town, such as Riyadh for example, and they do not deliver orders to all cities and all places. So the place is limited and the duration is limited, and this reduces the ambiguity. So the ambiguity is insignificant, and such ambiguity is overlooked.

Not all ambiguity is prohibited according to Islamic teachings. Some contracts involve a type of ambiguity, yet despite that they are permissible, such as commissioning someone to do something. There is some ambiguity involved in that, yet despite that it is permissible, because there is a need. Similarly, payment in advance involves some ambiguity, yet despite that it is permitted. So not all ambiguous contracts are prohibited in Islam,so long as the ambiguity in this matter is insignificant and is not likely to lead to arguments and disputes.

This does not come under the heading of consuming people’s wealth unlawfully; Rather it serves the interests of all: it serves the interests of the company, the interests of the subscriber and the interests of the shopkeepers. So what appears to be the case is that there is nothing wrong with these apps, or with these companies that deliver orders. End quote.

And Allah knows best.