259211 - Can a Partner or Proxy Buy Something from Himself?

the question

I have a store that sells smartphones; the store belongs to some heirs, of whom I am one, and I am running the store. Recently I added a new activity in the store, which is selling by instalments solely for my own benefit. Now, when a customer wants to purchase a device by instalments, I offer it to him for the price to be paid by instalments. When we reach an agreement, I write an invoice for the store, showing the cash price, then I sell it myself to the customer in instalments. Is this way of doing business permissible? Please note that I cannot buy mobile phones to sell by instalments because there are so many different models, colours and options for storage capacity for each phone. Therefore this is the best way in which I can gain some benefits. May Allah reward you with good.

Summary of answer

It is not permissible for a partner or proxy to buy something from himself, except with the permission of his partner or the one who appointed him as his proxy. If your partners give you permission to do that, and they are adults of sound mind, then there is nothing wrong with it in that case.

Detailed answer

Praise be to Allah.

It is not permissible for a partner or proxy to buy something from himself, except with the permission of his partner or the one who appointed him as his proxy, because he could be accused of favouring himself, and because the proxy or partner is obliged to conduct business in a way that will bring more profit to the one who appointed him or his partner, and when buying for himself he will charge himself the cheapest price, when his aim should be to maximise the profits for his

partner or the one who appointed him.

The partner should conduct the partnership business on behalf of himself and also on behalf of his partners, as he is their proxy.

Ibn Qudamah (may Allah have mercy on him) said in Al-Mughni (5/68): “It is not permissible for the proxy or the guardian of an orphan’s wealth to buy from himself.”

To sum up, if someone is appointed to sell something [on behalf of someone else], it is not permissible for him to buy it from himself, according to one of the two reports narrated by Muhanna Ash-Shami (may Allah have mercy on him). This is the view of ash-Shafi`i and of Ashab Ar-Ra’y (may Allah have mercy on them).

Similarly, for the guardian of an orphan’s wealth, it is not permissible for him to buy anything from the orphan’s wealth for himself, according to one of the two reports. This is the view of Ash-Shafi`i (may Allah have mercy on him).”

Al-Mirdawi (may Allah have mercy on him) said in Al-Insaf (5/377): “There are two points: the first point is that the same ruling applies if the proxy buys something from himself on behalf of the one who appointed him. This also applies to the ruler and his trustee, the guardian of an orphan’s wealth, and the one in charge of a waqf. Also, the one who is a partner in a Mudarabah (profit-sharing) contract comes under the same ruling as one who is acting as a proxy.”

In Al-Mawsu`ah Al-Fiqhiyyah (45/39) it says: “The majority of the Hanafi, Shafa‘i, Hanbali and the Maliki jurists are of the view that it is absolutely impermissible for the proxy, when buying and selling on behalf of the one who appointed him, to buy from himself, because the custom when buying is that a man should buy from someone else, and the same applies to the one who is acting as a proxy, because otherwise he may fall under suspicion.

The Hanafis and Shafi`is gave as the reason for this ruling the fact that one person cannot be both buyer and seller at the same time. They said: Even if the one who appointed him instructs the proxy to buy from himself, it is not permissible.

The Malikis and Hanbalis stated clearly that it is permissible for the proxy to sell to [or buy from] himself if the one who appointed him gives him permission.”

Moreover, the partner has no right to take advantage of his partners’ shop and sell to himself in it except with their permission.

The employee does not have the right to do anything during working hours except what he is supposed to do at work.

In the following three matters, you must have permission from your partners in the shop:

1. To sell to yourself
2. To do that in the shop, and with items that belong to the partners
3. To do that during working hours.

If your partners give you permission to do that, and they are adults of sound mind, then there is nothing wrong with it in that case. Then if someone comes to purchase it in instalments, you can purchase the device from the shop for yourself, and pay for it with your own money, then sell it to the customer.

However, if there is anyone among the partners who is not of sound mind – because he has not yet reached puberty or because he has reached puberty but is incompetent – then it is not permissible for you to do this, even if he gives you permission, because his permission does not count for anything.

For more details, please see the following answers: 364332 , 65689 , 128884 , 287395 , and 185462 .

And Allah knows best.