1848 - Ruling on transactions made via modern means of communication

the question

What is the ruling on purchase and rental transactions etc. made via modern inventions such as the telephone, fax, telex and the Internet etc. If the transaction usually takes place in an office or store, what is the ruling on cases where these modern means are used?

Detailed answer

Praise be to Allah.

According to shareeah, a transaction is made when there is an offer [of goods or services] and this is accepted, within the framework of shar'i conditions and in the absence of anything that might invalidate the transaction. An example of this in the case of a sale might be when the vendor says I sell this to you and the purchaser says I agree. There have been major developments in the field of communications which are now widely used to speed up financial dealings and transactions, which we must bear in mind whilst also taking into account what the fuqahaa have said about carrying out transactions via letter, in writing, by means of gestures or through intermediaries. They also established that transactions should be carried out between two parties who are present in the same place with the exception of wills, the appointment of executors and the giving of power of attorney; the offer and agreement should both refer to the same thing and price, there should be no expression or indication that either party is turning away from the deal, and the agreement to an offer should not be delayed beyond whatever timespan is customarily regarded as acceptable.

In the light of the above, the fuqahaa have established the following:

1. If the transaction is carried out between two parties who are not present in the same place where one can actually see the other or hear his voice, and the only means of communication between them is by writing, mail, sending a messenger, this applies also to

telegraphs, telexes, faxes and computer screens, in these cases the transaction is complete when the offer reaches the prospective purchaser and he agrees to it.

2. If the transaction is drawn up at the same time, between two parties who are in different locations which applies to telephones and wireless communications the contract between them is considered to be a contract drawn up between two parties who are present in the same place, and in this case the basic rulings as stated by the fuqahaa and referred to in al-Deebaajah apply.

3. If the vendor makes a limited-time offer through these means of communication, he is bound by it for the duration and he cannot go back on it.

4. The rules outlined above do not include nikaah (marriage contracts) because of the requirement of two witnesses in nikaah, or barter because there has to be an actual exchange of goods or services, or forward buying, because this requires a cash down-payment.

5. In cases where there is the possibility of forgery, fraud or error, reference should be made to the general rules concerning the establishment of proof.l

And Allaah knows best.