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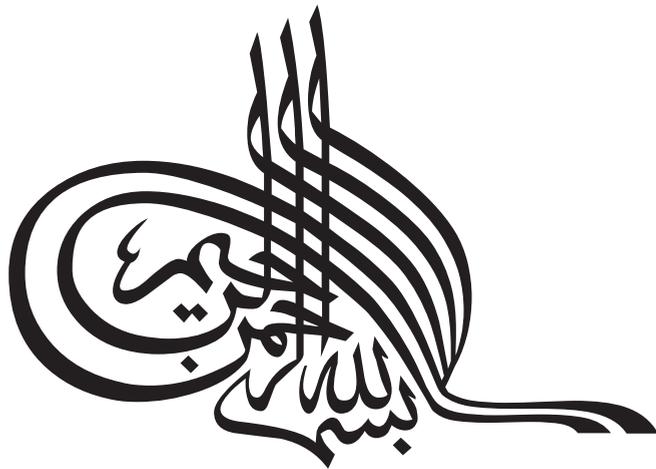


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Studies and Researches

TRADABLE AND NON-TRADABLE RIGHT FROM ISLAMIC LAW OF CONTRACTS PERSPECTIVE

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Abstract:

Islam advocates the protection of all types of Rights. However, each and every type of Right is not directly regulated by Shari'ah (Islamic Law) while the principles of Shari'ah can be construed to provide support for such regulation and protection. To the best of our knowledge, there is no such paper which efficiently talks about the tradable and non-tradable Rights from Islamic Law of Contracts Perspective as such that it provides a framework to evaluate different types of Rights for their permissibility of being subject matter of contract. This paper attempts to address this issue by using library research method (Qualitative Assessment) whereby, data is collected from books, articles, etc. Inductive and deductive methods are used for formulation of arguments and for providing justifications. The findings of this study suggest that not every Right shall be considered subject matter of contract. Furthermore, there are Rights that are specifically granted to the holder and they are not transferable, Rights that are allowed to be sold for a price, Rights that are not allowed to be sold but can be subject of sulh (compromise) / tanazul (waiver), and Rights that are allowed and sometimes not allowed to be inherited.

Keywords: Rights in Islam, Sale of Rights, Intellectual property Rights

الحقوق القابلة للتداول وغير القابلة للتداول: من المنظور الإسلامي لقانون العقود

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(سَلَّم البحث للنشر في 20/1/2019م، واعتمد للنشر في 24/3/2019م)

الملخص:

يدافع الإسلام عن حماية جميع أنواع الحقوق ولكن لم تكن جميع أنواع الحقوق خاضعة لتنظيم مباشر من قبل الشريعة، على الرغم من أن مبادئ الشريعة تقدم الدعم لهذه الحماية. لا يوجد بحث - على حد علمنا - يتحدث بكفاءة عن الحقوق القابلة للتداول وغير القابلة للتداول التي توفر إطارًا يمكن استخدامه لتقييم أي نوع جديد من الحقوق لكونه قابلاً للبيع والشراء. يسعى هذا البحث إلى دراسة قابلية الحقوق للتداول من منظور الشريعة الإسلامية باستخدام أسلوب يسمى «بالبحث في المكتبات» (Library Research Method) «الطريقة النوعية للبحوث». (Qualitative Research Method) تشير نتائج هذه الدراسة إلى أنه ليس كل حق يعتبر قابلاً للتحويل للقيم النقدية من وجهة نظر الشريعة. علاوة على ذلك، هناك حقوق ممنوحة لحاملها على وجه التحديد وليست قابلة للتحويل أو حقوق يُسمح ببيعها مقابل سعر أو حقوق لا يُسمح ببيعها ولكن يمكن أن تكون خاضعة للصالح والتنازل وحقوق مسموح وأحياناً غير مسموح أن يتم توريثها. كلمات مفتاحية: الحقوق في الإسلام، حقوق البيع، حقوق الملكية الفكرية.

Introduction

In recent years, there have been tremendous innovations in the discovery of new assets and properties for example innovations in the area of financial assets. This innovation is the result of either business requirements and social needs or financial engineering and development. As history evidenced, under the regime of financial Rights, Intellectual Property Rights have emerged as an extremely beneficial source of income⁽¹⁾. These financial and incorporeal Rights are being regulated, valued, and exchanged for monetary values. Islam advocates the protection of all types of Rights however, each and every type of Right is not directly regulated by Shari'ah (Islamic Law) while the principles of Shari'ah can be construed to provide support for such regulation and protection⁽²⁾.

Therefore, these enormous innovations have called for the need of Shari'ah evaluation and resolutions related to financial Rights in terms of their permissibility for trade. The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) and Fiqh Academy of Organisation of Islamic Co-operations (OIC) therefore, have attempted to address this issue. However, the resolution by the OIC Fiqh Academy is limited to some intellectual property Rights such as sale of trade licences, trade-marks, CopyRights etc. on the other hand, AAOIFI's standard is very limited in terms of its applicability and practical implications. Moreover, there are other types of Rights that are rarely discussed and therefore it is important to explore what are financial and incorporeal Rights and how they are regulated by the Shari'ah.

Significance of research:

The problem is that not every Right is considered to be exchangeable for monetary values from Shari'ah point of view as we will highlight in following Sections. Hence, there is a need for through review of the existing literature on the matter and formulation of a framework so that any new type of Right will be tested against the framework suggested and consequently gets approval or rejection. Furthermore, the ignorance about different types of Rights may lead to serious misconceptions of the Shari'ah rulings related to them and therefore

(1) European Union Intellectual Property Office Observatory (EUIPO), Research Report on "Intellectual property rights intensive industries and economic performance in the European Union", October 2016, second edition, available at

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf

(2) Usmani, Taqi, S. "Bai' al-huquq al-mujarradah." MajAllah Majma' Fiqh al-Islami 5 (1988): 1922-951. Accessed March 13, 2017. <http://shamela.ws/browse.php/book-8356/page-6854#page-6883>.

may give rise to breach of Islamic Law. For example, someone may argue that debt obligation is a financial Right which can be sold at a price desired by the seller and the rules of Riba doesn't apply to it⁽³⁾. Similarly, the family of a murder victim has the Right to ask the court for capital punishment of the murderer (if the conditions of such rulings are fulfilled). However, this Right cannot be sold to a third party for monetary values rather the victim's family can get the blood money directly from the murderer's family and forgive the murderer. Similarly, having sexual relationship with wife is the Right of the husband and obviously it cannot be sold out rather⁽⁴⁾.

Hence, it is imperative to distinguish between tradable and non-tradable Rights from Islamic law of contracts point of view⁽⁵⁾. Furthermore, the Rights Issue, Sale of Options, Sale of Warrants, Trade License, Trade Mark, Business Brand, and Patents are properties that fall under the regime of financial Rights and need to be addressed in terms of their tradability from Shari'ah point of view.

Literature Review:

Muslim jurists (both classical and contemporary) have paid much attention to address the issue of Rights from a number of aspects. Classical scholars have mainly described certain types of Rights for example, Rights of pre-emption, Rights related to debt obligations, easement Rights, ethical Rights, Rights related to being a victim of crime, Rights of marriage and so on. They have also discussed various dimensions of Shari'ah rulings related to them such as if they can be inherited, or if they can be exchanged for value. Almost every fiqhi book or books of commentary on hadith have somehow touched this topic⁽⁶⁾. The classical and modern literature on Rights can be summarised as following:

Firstly, the classical work in this matter may be further classified into that of usuliyyon (Scholars of Islamic Jurisprudence) who have mainly

(3) Balala, M.H, "Islamic finance and law: Theory and practice in a globalized World", (Vol. 5). IB Tauris 2010

(4) Usmani, Taqi, S. "Bai' al-huquq al-mujarradah." *MajAllah Majma' Fiqh al-Islami* 5 (1988): 1922-951. Accessed March 13, 2017. <http://shamela.ws/browse.php/book-8356/page-6854#page-6883>.

(5) Balala, Maha-Hanaan. *Islamic finance and law: Theory and Practice in a Globalized World*. Vol. 5. IB Tauris, 2010

(6) Ibn Hajar, A. "Fathul Bari Sharh Sahih al-Bukhariy." (1998). Al-Nawawi, Yahya. "Sharh Sahih Muslim." (1972): 162. Ibn-Qudamah, Abu-Muhammad Abd-Allah. "Al-mughni." *Dar al-kitab al-arabi*, Beyrouth (1983).

However, this does not necessarily imply that scholars in both categories restricted themselves to what we have stated rather they had to cross their jurisdiction sometimes for example, some fuqaha have also discussed the definition and classification of rights before they begin to describe the rulings.

guided in terms of the definitions and classifications of Rights⁽⁷⁾. Fuqaha (Muslim Jurists) and hadith commentators on the other hand, have mainly discussed the Shari'ah rulings related to some types of Rights such as Rights of pre-emption, Rights related to debt obligations, easement Rights and so on⁽⁸⁾. Besides, there are some scholars who have focused on a specific category of Rights for example, the renowned scholar, Ibn Taimiyyah had described Shari'ah rulings of "Common Rights" (huquq 'Ammah) or what we term as "Public Rights" governing the inhabitants of an Islamic State⁽⁹⁾.

Secondly, in recent years, there has been comprehensive research and development in the area of Rights from different categories of researchers such as scholars of English or Common Law, Scholars of Shari'ah and so on. Interestingly, both types of scholars have tried profoundly to address the issue. Evidently, scholars of English or Common Law have discussed the classification of Rights and its implication from "English or Common Law" perspective⁽¹⁰⁾. On the other hand Shari'ah scholars and researchers have worked on various aspects of Rights with different approaches. Dr. Nawal and Ahmed Ajayev for example have prescribed women's Rights⁽¹¹⁾.

However, this category of research has mainly focused on the prescription of such Right and bringing awareness about them among general public. Consequently, this type of research will not provide any discussion on tradability of Rights.

Thirdly, the emergence of intellectual property Rights, their acceptance as a valid property exchanged for monetary values and the legal protection of such Rights had called the attention of many Shari'ah scholars to come up with the Shari'ah rulings pertaining to them. In this regard, there are two approaches adopted by the scholars or group of scholars:

(7) Al-Shahraani Hussain Al-Ma'lawi, *Huquq Al-iktira' Wa Al-talif* (Riyadh, Saudi Arabia: Dar Al-tayyibah Li Al-Nshri wa Tawzi', 2004) Kindly, note that few contemporary Shari'ah scholars opined that scholars in the past did not give much attention to the definition and categorisation of rights, Al-Khafif Ali, *Al milkiyyah fi al-shari'ah al-Islamiyyah*

(8) Ibn Hajar and Ibn Qudamah

(9) Taymiyya, Ibn. "al-Siyasa al-shar'iyya." H. Laoust (trans.). *Le traité de droit public d'Ibn Taimiya*. Beirut: Institut Français de Damas (1948)

(10) Al-Muqreeni, Muhammad, *Dr. Al-madkhal Li dirasat Al-qanoon Al-wadhi'*: Nazriyat Al-qanoon, Nazriyat Al-Haq. 3rd ed. Editions Em-aliv, 2016, Sanhori, Ahmed Abdurrazzaq, *Dr. Masadir Al-iltizam*. Vol. 1. Bairroot, Lebanon: Ihya' al-turas Al-arabi.

(11) Nawal, Abdul Aziz. *Huquq Al-marah Fi Dhoui Al-kitab wa Sunnah*. Riyadh, Saudi Arabia, 2006.

First prize winner for the competition Nayef ibn Abdul Aziz, Ahmed, Ajayev. *Woman in the Islamic World*. Nasr, Egypt: Maktabah Handawi, 2012.

• **First Approach:**

Studies on financial Rights: In this category, we find that AAOIFI Shari'ah standard⁽¹²⁾, Sheikh Ali Al-Qurrah Daghi⁽¹³⁾ and Sheikh Taqi Usmani⁽¹⁴⁾ have done significant amount of work. However, it seems that generally the available research is not comprehensive enough in our opinion. This is due to the fact that AAOIFI standard for example, has only covered some financial Rights and their tradability (even has omitted many financial Rights). Sheikh Ali Al-Qurrah Daghi has however, discussed about many financial Rights and their exchangeability and Sheikh Taqi Usmani has limited himself to Huquq Mujarradah but have provided a framework to test any Right if it is allowed for trade.

• **Second Approach**

The second approach is related to the case study type of research where scholars have selected certain Rights and discussed them in a detailed manner. In this second category (case study type), we find researchers such as Sheikh Ali Al-Qurrah Daghi⁽¹⁵⁾ and Ahmed Yousuf⁽¹⁶⁾, both have titled their book as "Incorporeal Rights (huquq ma'nawiyah) and their characteristics". However, Sheikh Ahmed has only covered the Shari'ah rulings related to intangible Rights while Sheikh Ali has adopted similar approach with an addition of discussion on Zakat obligation in such Rights.

Literature on intellectual property Rights:

In the case of intellectual property Rights, Shahrani⁽¹⁷⁾ has discussed in detail, about the principles of Shari'ah pertaining to the intellectual property Rights. OIC fiqh academy⁽¹⁸⁾ has issued resolution on intellectual property Rights (and few other Rights) and has compiled several scholarly articles on the subject in its magazine. However, the main focus of this discourse was to explore rulings on certain aspects of the issue such as permissibility of sale of trade licence, trade secrets and not to come up with the framework.

(12)AAOIFI. (2015). Shari'ah Standard on Financial Rights and Their Tradability. Manamah, Bahrain: Accounting and Auditing Organisation for Islamic Financial Institutions

(13) Al-Qurrah Daghi, Ali. Al-huquq al-maliyyah wa muda jawaz al-i'tiyaz a'nha. 1st ed. Bairoot, Lebanon: Dar al-bashair al-islamiyyah, 2011

(14) Usmani vol.5 pg.1992

(15) Al-Qurrah Daghi, Ali. Al-huquq al-manawiyah wa al-tasaruf fiha wa zakatuha. Qatar: Kulliyat Al-shairah wa al-qanun wa al-dirasat al-islamiyyah

(16) Al-Yousuf, Ahmed Abdullah. "Bai' al-huquq al-manawiyah." MajAllah Jamiyat al-Malik Saud, 2011, 1055-133

(17) Shahrani, Hussain Ma'lawi. Huquq Al-ikhтира' Wa al-talif Fi al-fiqh al-islami. Dar Tayyibah Li al-nashr wa al-touzi'

(18) OIC Fiqh Academy, "huquq manawaiyyah" Fiqh Al-Islami, Volume 5, 1988

Literature on Right to Own (حق التملك):

In the case of Right to Own, (حق التملك) Sheikh Khafeef⁽¹⁹⁾ and Sheikh Abu Zahrah⁽²⁰⁾ have shed light on the matter in their books and in the introductory part, both of them have summarised the discussion on the categorization of huquq since it is very important to know the classification of the Rights. In another book Sheikh Khafeef⁽²¹⁾ has discussed the implications of Shari'ah related to Rights after the demise of the "Holder of such Rights".

Hence, we see a clear gap in the literature which is as follows:

- The classical text only covers the rulings on the cases of that era and there is no framework which can be helpful to know which Right can be traded or otherwise
- Recent studies have mainly added certain types of Rights and have described their shari'ah ruling such as intellectual property Rights, options sale and sale of debt to discover their Shari'ah rulings.

To the best of our knowledge, there is no exhaustive previous study done about the tradable and non-tradable Rights from Shari'ah point of view providing the analogy behind permissibility or impermissibility which can be used as a framework to evaluate any new forms of Rights. So, in this study, we would like to study the matter in detail and make a humble attempt to provide a general framework.

Research questions:

To address the gap in the literature as highlighted above in brief, this study aims to answer the following two research questions:

1. What are the tradable and non-tradable Rights from Islamic Law of contracts perspective? In other words, what should be the framework for the Rights to see if any new form of Right is eligible for trading from shari'ah perspective?
2. What are the Shari'ah evidences or analogy behind permissibility or impermissibility of trading in such Rights?

(19) Al-Khafif, Ali, Dr. Al-milkiyyah fi al-Shari'ah al-islamiyyah ma' al-muqaranah bi al-sharai' al-wadhiyyah. Nasr: Dar al-fikr al-Arabi, 1996.

(20) Zahrah, Abu, Al-Imam. Al-milkiyyah wa nazriyyat al-aqd fi al-Shari'ah al-islamiyyah. Dar al-Fkir al-Arabi

(21) Al-Khafif, Ali, Dr. Al-Haqq wa al-Dhimma wa Taseer al-Mout fihima. Nasr, Egypt: Dar al-Fkir al-Arabi, 2010.

Hence our hypothesis is “Not all kinds of Rights can be exchanged as subject matter in a valid commercial transaction”.

Research objectives:

The objective of the research is to fill the long anticipated gap in the existing literature specifically, we would like to help the practitioners to better understand the issue by developing a general framework that will help them evaluate any new form of Right in the future whether if such Right can be used as an asset in Islamic Financial Instruments such as Sukuk (Islamic Bonds).

Limitations of the study:

This study does not attempt to compile all kinds of Rights and their shari’ah rulings however, it tries to articulate a framework or criterion for assessing any Right if it is allowed for trade. Another limitation is that there needed to be a case study type of research particularly with regards to some contemporary issues such as options sale, sale of debt from Shari’ah point of view.

Methodology:

Since our objective is to understand tradable and non-tradable Rights from Shari’ah point of view, we will use qualitative research method specifically, library research method for our study where we will gather the information from numerous sources including major sources of Shari’ah (Quran and Sunnah) classical Islamic books, journal articles, books, regulatory guidelines etc. Apparently, we will employ the inductive and deductive method for the formulation of arguments and to provide justifications as required.

Section One:

Understanding Rights its definition and classification

General Definition and meaning of Right:

The linguistic meaning of Right under conventional term varies as per the different facets. Those who look at the ultimate use of Right, they define it as an interest which has financial value. On the contrary, those who look at the holder of Right (owner of Right), they define it as an authority that has been granted by the law to certain extent. Moreover, some people combine both aspects so, for them the Right is a legal injunction that is specific for the

individuals to have legal authority and liability over another person.⁽²²⁾

The above definition implies that the conventional understanding of Right is actually confined to those Rights that are established by the law over one another. Hence, it does not cover the moral and ethical values and Rights, as well as the type of Right that fuqaha named as Right to own like the Right of pre-emption. Subsequently, to see the tradability of certain Rights according to Islamic Law of contract perspective, we need to understand the meaning of Right from the view point of Shari'ah.

Definition of Right (al-Haqq) in Shari'ah,

a. Literal Meaning:

Linguistically, a very close meaning to Right in Arabic is "al-Haq". Al-Haq (Right) is the antonym of al-Batil (wrong). It comes from Haqqa al-shai-u (idha wajaba wa thabata) which means something that has been proven. It is mentioned in Qamoos Dictionary that the meaning of Haqq is asserted to wealth, property, and things which exist. Besides, Haqq is one of the names of Almighty Allah S.W.T or His attribute. More generally haqq (Right) can also be defined as destiny, obligation, certainty, property Rights and the likes.⁽²³⁾

b. Technical Meaning:

As regards to the meaning of Right, there are several approaches to define it based on different factors. We have summarised the relevant literature on the topic below:

Rights in the classical Fiqh have several meanings and uses. Some researchers argue that past jurists have not come up with the definition that covers all its aspects. However, their interpretation suggests that they mostly refer to its literal and general meaning. Some researchers point out the reason behind such interpretation and according to them the past jurists did not deem necessary to define it because of the popularity of the word among them and its general understanding. Another reason is that the jurists actually did not specify the meaning of this word in a specific section rather they spilt it into various aspects like, Right of Pre-emption, Right of Divorce in various different contexts.⁽²⁴⁾

(22) Ahmed bin Abdullah, (2011) Bai' al-huquq Al-manaaiyyah, Majallat Jamiat al-Malik Sau'd, p. 1055-1133.

(23) Ahmed bin Abdullah, (2011) Bai' al-huquq Al-manaaiyyah, Majallat Jamiat al-Malik Sau'd, p. 1055-1133.

(24) Ahmed bin Abdullah, (2011) Bai' al-huquq Al-manaaiyyah, Majallat Jamiat al-Malik Sau'd, p. 1055-1133.

The contemporary scholars have given three meanings to the word Haqq (Rights):

1. Benefit/Interest: it has been defined by Ali al-Khafeef as:

”مصلحة مستحقة لصاحبها شرعا“

“a benefit or interest that is granted to someone by Shari’ah”

2. Privilege: Mustafa al-Zarqa defined it as

”اختصاص يقرره الشرع سلطة أو تكليفا“

“Haqq is a privilege to which Shari’ah assigns ownership or obligation”

3. The third definition is very close to its linguistic meaning which is suggested by Dr. Ahmed Abu Sanah;

«ما ثبت في الشرع للإنسان أو لله تعالى على الغير»

“What a person or Allah s.w.t. is entitled to against others as per Shari’ah”

The last definition can be adopted with a little change in the wording from للإنسان (for human being) to للشخص (for person). This change is to incorporate the meaning of artificial ownership related substances in the definition of the Right. Hence, the above definition can cover all the aspects of Rights from literal meanings to the uses of fuqaha.⁽²⁵⁾

Classification of Rights:

Muslim scholars differ in terms of categorizing huquq. The section below will elaborate on different approaches for classification of Rights:

1. First Approach, Fiqhi (Scholars of Shari’ah) Approach:

The fuqaha have paid great attention in explaining the various types of Huquq and the relevant rules and obligations imposed by the Shari’ah. Among those types are Moral and ethical Rights (like, Rights of neighbors in Islam), Property Rights, Rights of Sale and Purchase of Assets, Intellectual Property Rights and the like⁽²⁶⁾.

2. Second Approach, Usuli (Scholars of Islamic Jurisprudence) approach:

(25) Ahmed bin Abdullah, (2011) Bai’ al-huquq Al-manaaiyyah, Majallat Jamiat al-Malik Sau’d, p. 1055-1133.

(26) Shahrani Hussain, Huquq al-Ikhtira’ wa-taleef Fi al-Fiqh al-Islami, Master Thesis, Al-Imam Muhammad Ibn Saud Islamic University, Dar Tayyibah Li Nshar wa-Touzee’, p.29

On the other hand, Usuliyyun have stated two types of huquq. Huquq that are related to the Creator and those related to human beings.

They further divide them into four sub-categories:

1) Specific Rights of Almighty which mainly comprise of his commands and prohibitions. For example, belief (Iman) in Almighty Allah swt, prayers (salath), fasting and compulsory charity (Zakat)

2) Specific Rights of man (human beings) like the Property Rights, Easement Rights etc.

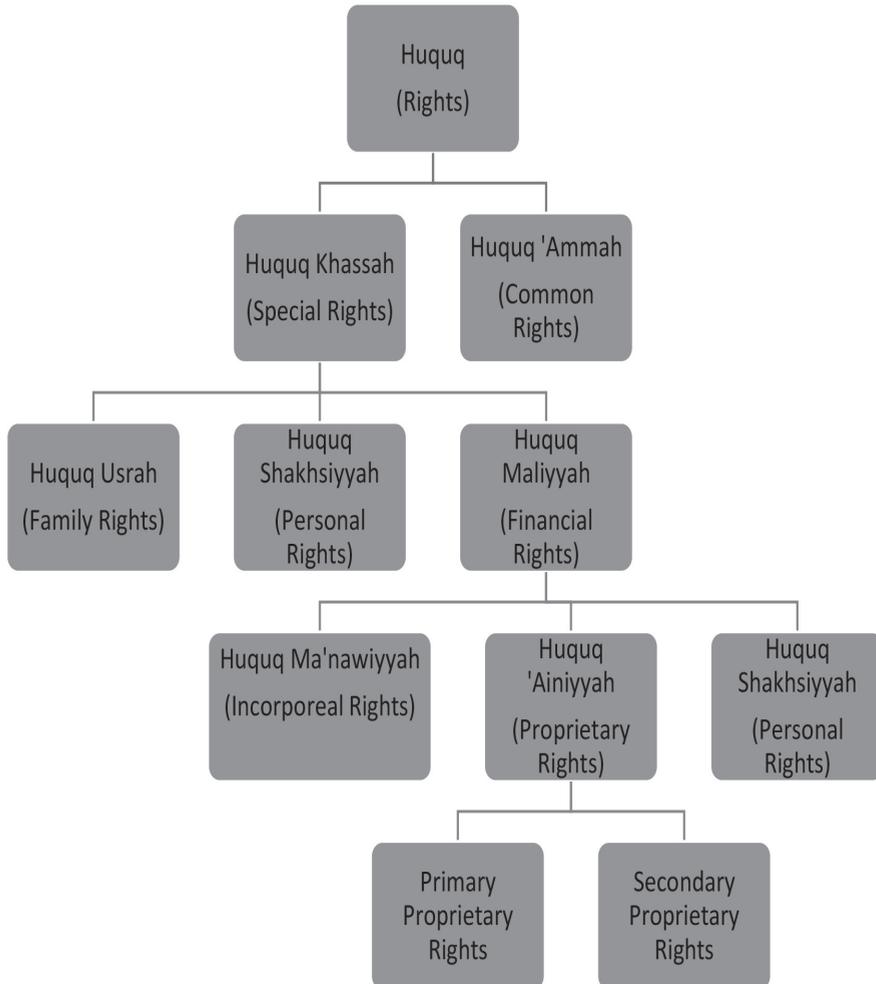
3) Where the Rights of Almighty and Rights of man come together however, Rights of Almighty prevail. For example, Punishment of Defamation (فدقلا دح) in which the Right of human being is to free himself from the false accusation and the Right of Almighty is to bring peace in the world and remove all kinds of disorders. So, in this case Right of Almighty will prevail over the Right of human beings.

4) Where the Right of Almighty and Right of man come together or combined but Right of man prevail⁽²⁷⁾. For example, Death Penalty for murderer in which the Right of Almighty is to free the society from this crime and the Right of man is to reduce his anger. In this scenario, the Right of man prevails.

(27) Shahrani Hussain, Huquq al-Ikhtira' wa-taleef Fi al-Fiqh al-Islami, Master Thesis, Al-Imam Muhammad Ibn Saud Islamic University, Dar Tayyibah Li Nshar wa-Touzee', p.29-30

3. Third Approach, Modern approach⁽²⁸⁾:

Figure 1: The below hierarchy graph shows us the categorization of Right according to modern jurists.



(28) Khafeef Ali, al-milkiyyah fi al-shari'ah al-Islamiyyah Ma' Muqaranah Bi Sharaee' al-wadhe'yyah, 1996, Dar al-fikr al-arabi, Egypt, p.8.

3.1 Huquq ‘Ammah (Common Rights):

Common Rights are Rights that are ensured by the country’s legal system. They are granted to the individuals as well as governments. For example, the liability of the government is to establish justice among the people and to create a peaceful environment while the responsibility of the individual is to live with harmony and to abide by the law of the country. The Right of a neighboring country is to maintain good relationship with its neighbors and vice versa.

3.2 Huquq Khassah (Special Rights):

It means Special Rights of people over one another and huquq khassah has three categories:

3.2.1 Huquq Shakhsiyyah (Personal Rights):

This type of Rights can be seen in the constitution of a country that ensure the independence of individual and his Right to travel, to express his opinion, to acquire properties, and to live in the country out of any pressure. These Rights are granted from the birth of a child until the death and they connect people with each other and with the governments.

3.2.2 Huquq Usrah (Family Rights):

These are family Rights that originate with the kinship or marital relationships. These types of relations do not have financial value rather they have some guardianship like father has over his children and husband over his wife. It is possible that this type of huquq may carry some financial obligations or financial values like husband has to bear the expenses of his wife and the Right of inheritance.

1. Huquq Maliyyah (Financial Rights):

Another approach to categorize the Rights (which is very much related to our study) is according to their ability to carry financial value. Under this category there are three types of huquq.

2. Huquq Maliyyah (Financial Rights):

Rights that have financial value (قيمة مالية) or a financial purpose I attached to them. Therefore, they fall under the category of exchangeable items. They can be sold, exchanged for another thing and they can be withdrawn. The base for this type of Rights will either be tangible or intangible.

3. Huquq Ghair Maliyyah (Non-financial Rights):

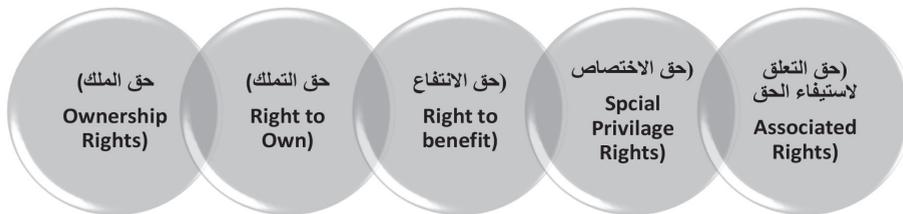
Rights that do not have financial value and hence they do not fall under the category of exchangeable items. Political Rights and family Rights are two major examples for this category.

Rights that share both (financial and non-financial) characteristics:

Some authors have added another category to the above and according to them there are Rights that fall under both categories. This means that they carry financial value even though they seem to be non-financial Rights in nature. This category includes what we term as intellectual property Rights.

It is worth mentioning here how Ibn Rajab categorises Financial Rights:

Figure 2: Classification of financial Rights by Ibn Rajab



Source: Author's contribution based on the available literature

1. Ownership Rights (حق الملك): for example, in sale contracts an offer by the offeror that he can revoke
2. Right to Own (حق التملك): like in above example, the acceptance Right to the offeree
3. Right to benefit (حق الانتفاع): placing the wood in the wall of neighbor in case of pressing need (الاضطرار)
4. Special privilege Rights (حق الاختصاص): a Right by which a person is

entitled to benefit from certain things as such that no one can oppose him. This type of Rights are not exchangeable like a place in an open market which is for the first occupier of that place and like a place in the mosque for the first comer

Right of association with certain things until the fulfillment of other Rights (حق التعلق لاستيفاء الحق): For example, in case of Rahn the pledge is considered the Right of Murtahin (the person who holds the pledge) until the full payment of debt (which implies that all the parts of a pledge are parts of the debts until the repayment).⁽²⁹⁾

Furthermore, financial Rights can be Huquq ‘Ainiyyah, Huquq Shakhsiyyah and Huquq M’anawiyah⁽³⁰⁾:

- **Huquq Shakhsiyyah:**

Personal Rights are Rights that belong to one or more person. The essence in this kind of Right is the liability of the debtor to complete what he has been asked like, liability to build the house on a worker. More generally, this is the relationship between the debtor and the creditor in which they have to fulfill some obligations. Hence, for the repayment, creditor has the Right (Right to Recover his debt) to collect his debt from the debtor. That is why there are three elements of personal Rights namely 1) debt 2) debtor and 3) creditor.

- **Huquq Ai’niyyah:**

Proprietary Rights are the Rights that relate to the material items. In this case, the owner of such Right can directly attempt to achieve them. So, unlike Huquq Shakhsiyyah, there are only two elements in this type 1) Source of Right and 2) Holder of Right.

Evidently, the base for huquq a’iniyyah is the item to which they are related to and the owner who can use or dispose it without interference of others One of the important types of huquq ‘ainiyyah is Huquq al-Milkiyyah.

Huquq ‘Ainiyyah can be primary (حقوق عينية أصلية) or secondary proprietary Rights (حقوق عينية تبعية).

- **Primary (حقوق عينية أصلية) proprietary Rights:**

(29) Shahrani Hussain, Huquq al-Ikhtira’ wa-taleef Fi al-Fiqh al-Islami, Master Thesis, Al-Imam Muhammad Ibn Saud Islamic University, Dar Tayyibah Li Nshar wa-Touzee’, p.115

(30) Khafeef Ali, al-milkiyyah fi al-shari’ah al-Islamiyyah Ma’ Muqaranah Bi Sharaee’ al-wadhe’yyah, 1996, Dar al-fikr al-arabi, Egypt, p.8.

Rights arising from full and complete ownership and they are independent Rights that do not rely on the existence of another Right such as Right of Ownership.

- **Secondary proprietary Rights (حقوق عينية تبعية):**

Rights that have no purpose of their own except to help in the fulfillment of personal Rights. For example, in case of Rahn (pledge) the Right of a creditor in collateral or pledge provided by an obligor.

- **Huquq Ma'nawiyah:**

Those Rights which belong to intangible items أشياء غير حسية like copy Rights, Patents etc. The base for this type of huquq are intangibles however, they carry financial values. There are many types of Rights to intangible assets including the following:

Figure 3: Classification of Rights to Intangible Assets



Source: Author's contribution

Fourth Approach, Huquq Mujarradah (Inconstant Rights) and Ghair Mujarradah⁽³¹⁾(Constant Rights):

Another approach to divide Rights is to look at the underlying base for the entitlement of such Right. In this regard, there will be two types of huquq:

Huquq Mujarradah:

Rights that are not constant to their underlying source and it is possible to depart it from its source like Right of pre-emption in which the underlying source (neighborhood) is not constant with the exercise or withdrawal of the Right. In other words, whether the neighbor exercises his Right of pre-emption or not he is still a neighbor.

Huquq Ghair Mujarradah:

Rights that are constant with regards to their source and their departure from the source cannot be imagined for example, Right of Murtahin in the collateral.

5. Haqq al-Khulu (Right of Occupancy):

Literal meaning: “Khulu” in Arabic means empty. They say “Khala Min al-Zammi” which means “he freed himself from disgrace or dishonour”⁽³²⁾.

Technical Meaning: AAOIFI defines Right of occupancy as “a Right based on the Right of the tenant to retain his tenancy in a commercial property or unit”⁽³³⁾.

Section Two:

Tradability of Rights

Part One

1. General rules for commercial transactions in Shari’ah:

Islamic commercial transaction is formed on the basis of three pillars as per the view of majority of scholars specifically, (1) Offer and Acceptance (2)

(31) AAOIFI Vol.1 p.1039

(32) Al-Qurrah Daghi, Ali. “Al-huquq al-maliyyah wa muda jawadh al-i’tiyaz a’nha” 1st ed. Dar al-Bashair al-islamiyyah Beirut, Lebanon, 2011

(33) AAOIFI Vol.1 p.1039

Contracting Parties and (3) Subject Matter. On the other hand, Hanafi scholars opined that the pillar of the contract is only offer and acceptance (and the rest of the elements follow this pillar)⁽³⁴⁾. Additionally, each pillar has some conditions attached to it as prescribed below:

1.1 Offer and acceptance⁽³⁵⁾:

There are three conditions for Offer and acceptance:

- The use of past tense or a language that facilitate the transaction in the present
- The contract should be concluded at one spot so that there is no separation between buyer and the seller
- Concurrent execution of the contract so that buyer and sellers can avoid dispute arising from the changes in the subject matter

1.2 Contracting Parties⁽³⁶⁾:

- Legal capacity of contracting parties
- There is no coercion on either parties unless in the case of obligation from the Shari'ah. In other words, generally there should not be any forceful conclusion of contract and the contracting parties are willingly involved in the buy and sale. Coercion is tolerable in case of insolvency of the debtor in which case, the assets belong to debtor will be sold and creditors are paid from the proceeds. Likewise, if a person has food which people desperately need then only the ruler (Hakim) can force him to sell what is left after leaving for the owner one year food.

1.3 Conditions of the subject matter (Ma'qud 'Alaihi) in Shari'ah⁽³⁷⁾:

To appreciate the reasoning behind tradability and non-tradability of certain types of Rights, we need to know the general rules of Shari'ah attached to the legality of subject matter of the contract. There are certain conditions attached to the subject matter that should be fulfilled before considering it as a valid Subject Matter in a commercial dealing. Furthermore, subject matter

(34) Bidayatul Mujtahid Wa Nihayatul Muqtasid, Ab Al-Waleed Muhammad Ibn Rushd Al-Qurtubi, Dar Ibn Hazm, 1999

(35) Ibn Rushd, 1999

(36) Fiqh al-Muamalat, Abdul Aziz Muhammad 'Izam, Maktab Al-Risalah Al-Duwaliiyyah Li al-Tabati Wa al-combuter, 1997-1998, and Ibn Rushd 1999.

(37) Ibn Rushd 1999 and Mousua'h Fiqhiyyah Kuwaitiyyah, Wizaratul Auqaf wa shun al-Islamiyyah, Kuwait, Vol.9 Pg No. 17

in Shari'ah can be commodity or the price in a contract however, we refer to commodity in this discussion when we say subject matter.

Conditions of Validity for Subject Matter (Ma'qud 'alai) of Contract:

- The subject matter must be halal
- Subject matter must be suitable for the desired contract for example, in an Ijarah on house contract (contract of lease), the property should be inhabitable
- The subject matter must exist at the time of contract except in Tabarruat (Return Free Contracts such as Hibah or gift).
- The subject matter should exist until the period of fulfillment of the contract especially, in case of Ijarah (Contract of Lease) or Rahn (Contract of Pledge) contracts.
- The subject matter must be deliverable to other party which compels the ownership and possession over the asset by the original seller.
- The subject matter should be considered valuable as per the custom (Urf).

2. What is Maal (Property/Commodity) in Islam?

In order to fully appreciate the shari'ah rulings on subject matter of contract, we must first understand the concept of property under Islamic Law. This section will concisely discuss the meaning of property from shari'ah perspective.

Literally Maal means "anything owned by a person" and the author of Li-San Al-Arab opined that maal is known to everybody and need not to be defined in particular⁽³⁸⁾. Hence, the definition of maal is very wide, covering anything which is owned (be it physical items or usufructs or huquq).

As for the technical meaning of maal (property) there exist differences of opinion among past jurists. The definition provided by Jumhoor (majority of scholar, Maliki, Hanbali and Shafi' Scholars) seems more appropriate particularly in the context of the Shari'ah and maqasid al-Shari'ah. They defined maal as anything which has material value among people and Shari'ah permits us to benefit from that item with legal authority⁽³⁹⁾. This definition is

(38) Ibn Manzoor. Lisan Al-Arab, Harf Al-Meem (مزل). Vol. 14. Pg. 152. Dar Sadir, 2003.

(39) Al-Suyooti. Al-Ashbah Wa Al-Nadhair. 1983 ed. Vol. 1. 1 vols. Series 258. Dar Al-Kitab Al Ilmiyyah, 1983.

very general that covers all the facets of maal be it physical items, usufructs.⁽⁴⁰⁾ Moreover, this definition implies that Rights can be considered Maal (Property) because they are owned and generate value to the owners.

Part Two

1. General conditions governing dealings in Rights⁽⁴¹⁾:

Due to the special characteristics of the Rights, there are more specific conditions for the dealings in Rights. The following discussion will provide some conditions associated to them.

- The Right must be fully established at that material time and it is not a potential Right. One of the main conditions for any transaction is the deliverability and existence of the subject matter as mentioned above. Hence, if there is any Right that has not been established yet, it cannot be sold. For example, the Right of inheritance in the lifetime of ancestor. These types are not allowed to be exchanged by any means.
- It shall not be granted for a particular holder primarily for the purpose of avoiding injustice or harm and which by nature, cannot be moved from one person to another. This type of Rights cannot be exchanged however, they can be subject to Sulh (Compromise) or Tanazul (Withdrawal). For example, the Right of shuf'ah (pre-emption) has been granted for the neighbors to avoid any potential harm or hardship and therefore, cannot be sold, or exchanged. However, the holder of such Right may compromise or withdraw his Right.
- To be tradable, the Rights must not be granted to the holder specifically and it should be transferable to other person. As we mentioned earlier, every subject matter should have ability to be delivered. Thus, if something is very specific to a person such that it cannot be transferred, then it cannot be sold. Like in the above example, the "Right of Pre-emption", is very specific in nature to the neighbor only and cannot be sold to anyone else be it his relatives or any other person.
- To avoid intolerable gharar (uncertainty) it should be possible to define

(40) Ahmed bin Abdullah, (2011) Bai' al-huquq Al-manaaiyyah, Majallat Jamiat al-Malik Sau'd, p. 1055-1133

(41) Parts of this section is inspired by the presentation of Mufti Taqi Usmani at the following reference:

Usmani Taqi, "Bai' al-huquq al-mujarradah" Majallah Majma' al-Fiqh al-Islami", 5

(1988): 1922-951. Accessed on Nov 29, 2018 <http://shameela.ws/browse.php/book-8356/page-6854#page-6883>

the boundary or nature/attribute of Huquq. This condition has been put forward to mitigate the ambiguity in the contracts as gharar (uncertainty) is one of the prohibited elements in any contract for following hadith (and other) reported by Abu Hurairah (R.A.):

«نبى رسول الله صلى الله عليه وسلم عن بيع الحصاة وبيع الغرر»

- This means that Prophet (S.A.W) has prohibited the “sale of throwing stones”⁽⁴²⁾ and any sale with uncertainty.⁽⁴³⁾
- Tradable Rights should be accepted (Generally) based on Uruf (customary practices). The reason why shari’ah scholars allowed the sale of such Rights is due to their popularity among their buyers and sellers as an asset. However, this type of Rights must not contradict with any shari’ah rules. If it does contradict with shari’ah then, such Rights shall not become subject matter of contracts though it may be very popular type of asset.
- Customary Rights, such as Right of Passage on a street, and Right to drink water, can be sold according to the Shafi’ and Hanbali scholars, and some branches of Maliki scholars. Contemporary Hanafi scholars however opine that if such Rights are related to the fixed objects (a fixed material), they may be sold and purchased, such as Right of Passage as long as it is a valid sale contract and there is no uncertainty and ignorance in it.
- Haqq al-Ta’lli (Right to use Rooftop) is not permissible for sale according to hanafi scholars because it is not related to fixed materials (as if we are selling “air” which is a common item for every individual and not a fixed material) but they can be withdrawn for money. However, the majority of scholars allowed the sale of rooftops for the purposes of building rooms, apartments or other uses as required because at that level of building, the area in question is just like the area on ground.
- The discussion above implies that there are Rights that cannot be subject matter of sale. This type of Rights either belong to Rights of Priority or Privilege (Haqq Al-Ikhtisas) and it cannot be sold according to Shafi’ and Hanbali Scholars however, they can be withdrawn for some

(42) For example, the seller says; “you throw this stone on the cloths available here, on whichever cloth your stone lands it will be yours for this much of price”. There is no choice for the buyer nor he can revoke the contract even if there is defect in cloth. (Radd Al-Muhtar, 109/4 – Tabyeen Al-Haqaiq 48/4)

(43) Muslim Ma’ Sharh Linnawawi, hadith No. 1513, sharh Nawai Ala Muslim, Darul Khair, 1996.

consideration. For example, the Right of Employment (حق الوظيفة), though it may not be sold, but may be withdrawn for money⁽⁴⁴⁾.

2. Tradable and non-tradable Rights:

This section discusses a number of Rights and their tradability from shari'ah perspective with analogy behind their permissibility or impermissibility.

Huquq-u-Allah and their tradability:

Generally, this type of Rights cannot be traded, inherited, compromised or withdrawn for consideration. They are sometimes related to I'badat (worships like, Salat) or Uqubat (Punishments) or combination of the both (I'badat and 'Uqubat) like Kaffarat (Repentance)⁽⁴⁵⁾. They may be related to Right which is granted with special consideration like Right of guardianship on a minor. If any person tries to overthrow them, then the Muslim ruler will fight against him like what Abu Bakar (may Allah be pleased with him) did in case of people who denied to pay Zakat. However, scholars have exempted ta'zir and said they can be withdrawn if the Imam (Head of State) seems it appropriate as Imam Shafi' says:

والتعزيرات مفوضة إلى رأي الإمام، فإن رأى التجاوز والصفح تكرما فعلا، ولا معترض عليه، فيما عمل، وإن رأى إقامة التعزير تأديبا و ذيبا فرأيه المتبع، وفي العفو والإقالة متسع، والذي ذكرناه ليس تخييرا مستندا إلى التمني، ولكن الإمام يرى ما هو الأولى والأليق والأحرى، فرب عفو هو أوزع
”لكريم من تعزير

“Ta'zir⁽⁴⁶⁾ (Punishments) should be according to the ruler's discretion. If he sees that forgiveness is better than punishment then, he may do so and there is nothing wrong in it. If he thinks that punishment is more appropriate then he may suggest certain punishment. However, this authority is not given as to allow ruler's personal interest rather it only provides an upper hand to ruler in decision making for the benefit of the society because sometimes forgiveness granted to a respectful person is better than punishments”.

(44) OIC Fiqh Academy, "huquq manawaiyyah" Fiqh Al-Islami, Volume 5

(45) Kaffarah literally means to hide something and technically it is an obligatory action performed by muslim in order correct any wrong doing committed by him. For example it is normally an obligation to fast during the month of Ramadhan however if someone misses any day without proper justification then he has option to feed 60 poor people among other options.

(46) Ta'zir means a punishment of crime/mistake given by the Muslim ruler in cases where shari'ah has not mentioned any punishment up-to the severity of crime. Like someone intentionally miss a prayer (salath). Zuhaili, Wahbah. Al-Fiqh Al-Islami Wa Adillatuhu. 4th ed. Vol. 7. Series 5300. Syria: Dar Al-Fikr.

Huquq al-'Ibad (Rights related to Human beings) and their tradability:

The holder of such Rights has options (if he has legal capacity by the Shari'ah to perform commercial transactions) to withdraw or overthrow and to free himself or legalise these Rights, unless such act is attached to legalise what is prohibited, then the holder of this Right will be prevented by the authorities.

If the Rights are financial Rights, then they will be inherited since the inheritance takes place in everything that is property or has financial value. Conversely, anything which is related to the body of the dead person such as marriage or body parts will not be inherited because the heirs are not entitled for those things.

Huquq mushtarak and their tradability:

Whichever Right (the Right of Almighty Allah or the Right of His Creation) is prevailing, will be given precedence with relative shari'ah rulings⁽⁴⁷⁾ For example, if the Right of Almighty is prevailing, then this Right cannot be waived or exchanged. As in the case of punishment for defamation, the Right of Almighty is prevailing which is to safeguard the dignity of everyone and this Right prevails over the Right of human being which is to remove the outrage from the victim⁽⁴⁸⁾.

If the Right of human being is prevailing then, all the rulings related to the Rights of human being will be applied which implies that it cannot be waived or forgiven through may be compromised. As in the case of death punishment, (for the murderer) where the Right of human being (which is the removal of anger from the hearts of victim family) prevails over the Right of Almighty (that is to free a society from such kind of crimes)⁽⁴⁹⁾.

Right of Shuf'a (Rights of Pre-emption) and its rulings⁽⁵⁰⁾:

The Rights of Shuf'a are only applicable to immovable properties (and movable properties attached to immovable properties) provided that both the properties are common Easement Rights.

The Shafi' (preemptor) enjoys the Right to Buy subject to the conditions

(47) Hubaili Sami, Al-huquq Al-mujarradah Fil Fiqh Al-Mali Islami, Mater Thesis, University of Jordan, 2005

(48) Safwat Bontesh B, "Bai' al-huquq Ma'nawiyah (Master degree Theses)", Jamia Imam Muhammad bin Sa'ud Al-Islamiyyah, Riyadh Saudi Arabia

(49) Ibid pg.8

(50) AAOIFI Vol.1 pg.1039

stipulated in the sale of such properties. The Shafi' (preemptor) has the Right to invalidate all the dispositions made prior to the application of Shuf'a even if the property has changed hands.

Rights of Shuf'a is only available upon immediate interest once being aware of the sale in accordance with the laws otherwise they will lapse. Rights of Shuf'a will be transferred in inheritance

Huquq 'Ammah⁽⁵¹⁾ (Common Rights) and their tradability:

These types of Rights are not permissible for sale nor can they be withdrawn or subject to inheritance. However, if anybody violates them he/she may become liable for penalty charges for such violation since he/she may have harmed someone or a property loss may have occurred.

Huquq shakhsiyyah (Personal Rights) and their tradability:

Under this category there are three types of Rights as discussed above. Huquq Shakhsiyyah (Personal Rights) are Right to Live (life), Right to Earn Money, Right to Engage in Social Activities etc. Similarly, Huquq Usrah are the Rights associated with the relationship of the relatives with each other. Both types of Rights (Personal and Family Rights) are not permissible for sale. However, if anybody violates them he/she shall become liable for penalty charges for such violation because he/she may have harmed someone or a property loss may have occurred.

Huquq al-Usrah (Family Rights) and their tradability:

It is possible that this type of Rights may carry some financial obligations or financial values like husband has to bear the expenses of his wife and the Right of inheritance.

Right to Own (Ownership) and its Rulings⁽⁵²⁾:

Ownership Right gives the owner absolute Right to deposition or leasing with or without consideration as long as all the tenants of Shari'ah are being followed upon.

In the same way ownership of usufruct provides the owner full authority to use the leased item directly or indirectly (through a third party) subject to the terms and conditions stipulated by the owner and bearing liability in case of

(51) Khafeef Ali, al-milkiyyah fi al-shari'ah al-Islamiyyah Ma' Muqaranah Bi Sharaa' al-wadhe'yyah, 1996, Dar al-fikr al-arabi, Egypt, p.8

(52)AAOIFI Vol.1 pg.1039

damage to the assets because of misuse or negligence.

Huquq Maliyyah (Financial Rights) and their tradability:

Generally, financial Rights can be attained through a valid sale, inheritance, gifts, court order or long standing use of a particular item (for example a land in the case of Iqta'⁽⁵³⁾).

1. Financial Rights (الحقوق المالية): These Rights can be sold, exchanged for another valuable item and they can be withdrawn and inherited. The base for this type of huquq will either be tangible or intangibles.
2. Non-financial Rights (الحقوق غير المالية): These Rights cannot be the subject of sale or transfer for monetary values such as Right to live (Right of life).
3. Some authors however, have added another category to the above and according to them there are Rights that fall under the both category. This means that they have some financial value. This category is often referred to as "Rights to intangible assets" and it includes what we term as Intellectual Property Rights.

Rules governing "Rights to Intangible Assets":

1. These Rights are recognised as valuable assets under Shari'ah so, they must be protected and there should not be any violation of such Rights.
2. It is permissible to transfer them for monetary values or dispose them for consideration provided that there is no Gharar (ambiguity) or fraud in the overall transaction.
3. It is also permissible for license (to use a software for example) holder to dispose it off for consideration or without consideration⁽⁵⁴⁾.

Financial Rights are further categorized into two:

1. Rights that themselves are considered maal (property) and they are exchanged for another maal (property) of which it is possible to be benefited legally like, money and lands.

(53) Iqta' is an Arabic word which literally means to cut something. Technically Iqta' refers to a common property (with no owner) which is granted by the Muslim ruler to a particular individual for the purpose of benefiting from it through cultivation of corps, construction of house etc. (Almajlis Al-'Ala Li Al-Shuoon Al-Islmiyyah. "Mausoo'a Al-Mafaheem Al-Islmiyyah Al-'Ammah." Accessed November/December, 20018. <http://shamela.ws/browse.php/book-433/page-44>)

(54) AAOIFI Vol.1 pg.1039

2. Rights that are not specified as mal (Property) but they carry the attribute of maal since they are related to it like usufruct and easement Rights and so on. These Rights are related to maal and they can be exchanged for a value, and can be transferred through inheritance.

Financial Rights can be Huquq 'Ainiyyah (Proprietary Rights) or Huquq Shakhsiyyah (Personal Rights) and Huquq Ma'nawiyah (Incorporeal Rights):

Huquq Shakhsiyyah (Personal Rights):

- ❖ This means the relationship between the debtor and the creditor in which they have to fulfill some obligations or to get the benefits. Hence, for the repayment, the person entitled for such Right (creditor) has to go through his debtor since creditor has the Right to recover his money from debtor.

Huquq Ai'niyyah (Proprietary Rights):

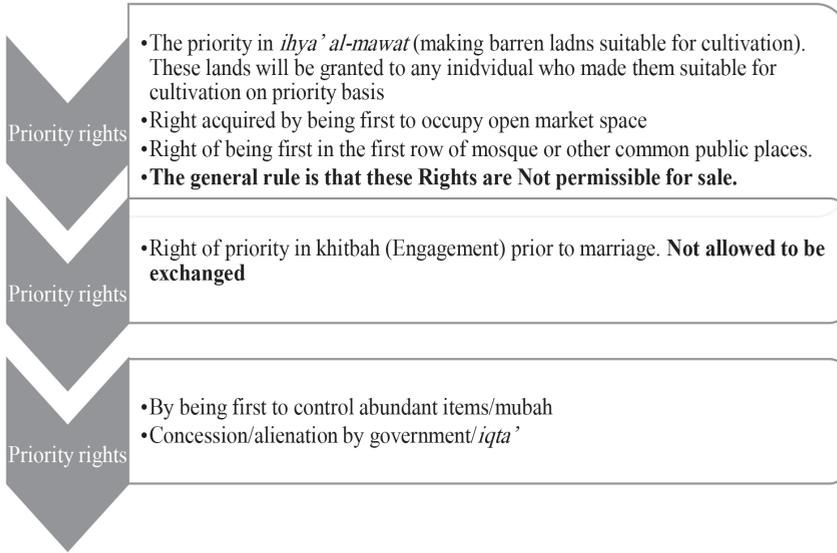
- ❖ In case of Proprietary Rights, the owner of such Right can directly attempt to achieve them. Evidently, the base for huquq 'ainiyyah is the item to which they are related to and the owner can use or dispose it without interference of others. That is why the nature of huquq 'ainiyyah implies that there is no need to specify the duration of the use or disposal of such Rights. This type of Rights can also be sold, exchanged for another thing and can be withdrawn. One of the important types of huquq ai'niyyah is the Haquq milkiyyah (Rights originating because of ownership).

Huquq Ma'nawiyah (Incorporeal Rights) and their tradability:

The discussion above implies that there are Rights that cannot be subject matter of sale. This type of Rights sometimes belong to Rights of Priority or Privilege (Haqq Al-Ikhtisas) and it cannot be sold according to Shafi' and Hanbali Scholars however, they can be withdrawn for some consideration. For example, Right of Employment (حق الوظيفة), though it may not be sold, but may be withdrawn for money⁽⁵⁵⁾. Consider following scenarios for further elaboration.

(55) OIC Vol.5 pg.1999

Figure 4: Illustration of possible scenarios of Priority Rights



Source: Author's contribution (see the meaning of *Ihya Al-Muwat*(56) and in the footnotes on this page)

Hanafi scholars state that the Right of Employment (حق الوظيفة), (though may not be sold), can be withdrawn for money.

Huquq mujarradah (Inconstant Rights) and their tradability:

Scholars have different opinions with regard to the sale of these Rights. Accordingly, few scholars have allowed it entirely while others have disapproved it entirely⁽⁵⁷⁾.

Financial Rights attached to huquq mujarradah and their rulings:

In recent years, there are certain financial Rights which are attached to huquq mujarradah such as citizenship or nationality gives specific Rights to its holder as per legal system for example, it gives the Right of Employment to its own citizens. These Rights generally cannot be exchanged through sale or other means since they have been granted to its citizens specifically and the law itself prohibit the sale. Having said that the following concerns must be observed strictly:

(56) Literally *Ihya* means to bring life into something and technically it refers to common barren lands (with no owner) that are made suitable for cultivation by an individual. (Al-Roudh Al-Murabba' pg. 327-330 via https://www.alukah.net/sharia/0/94689/#_ftn1 accessed on 30th Nov 2018)

(57) OIC Vol.5 pg.1999

1. Sale of Id Card or Right of Employment: It is not allowed and the best practice in this regard can be such that there can be an equity partnership among the parties in the use of such Rights and the returns will be as per the contract.
2. Similarly, the sale of company license is not allowed in Shari'ah nor its lease however, the holder of the license can enter into equity partnership contract.
3. It is also not allowed to sell visa or transfer it for considerations because it is not a Financial Right and hence cannot be subject matter for sale.
4. It is not allowed to sell the generally permitted (Mubah) items such as ocean because these are Rights that belong to everyone and it is not specific to any person.
5. Right to import and its sale: in some countries it is an obligation to get a special approval to be eligible to import goods or services. So, if it is legally allowed to sell these Rights then from Shari'ah perspective there is no restriction on such transaction if all the conditions of a valid sale are observed. However, if it is not allowed legally then from Shari'ah perspective as well it is not allowed to sell them.
6. Right to Build: usually, there is a special permission sought for building a site from land development authorities. From Shari'ah perspective it is allowed to sell these Rights as long as the law permits to do so because such Right is similar to acquiring a license. This has been approved by the OIC Fiqh Academy too.
7. Work permit and its sale: The permit granted by a country's human resource development authorities or other relevant authorities are specific Rights of individuals and it is not allowed to transfer these Rights with or without consideration.
8. Quotas for hajj and its sale: usually there is a lottery system being used to elect few pilgrims to perform hajj. This Right cannot become subject matter for sale due to multiple reasons including legal constrains and being this Right related to 'Ibadat that are Rights of Almighty and Rights of Almighty cannot be subject of sale as highlighted above.
9. Right to participate (in conference, workshops, or other events), appointment with Doctor, and similar permissions: these are again individual Rights which should not be subject of sale unless if allowed by relevant organisers.

10. Right to participate in auctions and tender allotments: these Rights are not allowed to transfer for a number of reasons. One such reason is that it hinders the auction maker from getting the best price for his auction since he may have invited participants of such Rights. However, if the organiser of such events primarily allowed the sale of those rights then it should be allowed.

Huquq ghair mujarradah (Constant Rights) and their tradability:

The base or source in Huquq ghair mujarradah can be property like Right of Ownership. The base can also be a non-financial item like Haqq al-qisaas (Right of Capital Punishment) which is tied with the killer but it's not considered as a financial item. However, both types of huquq ghair mujarradah can be exchanged or waived for considerations.⁽⁵⁸⁾

Easement Rights and their tradability:

There are two types of easement Rights:

1. Private easement Rights: these are the Rights attached to one real estate property over other such as irrigation Rights, watercourse Rights, Drainage Rights and Right of Passage.
2. Public Easement: These are the Rights granted by the government to the general public to use the public utilities provided by the state and similar entities.

Rules related to easement Rights:

The Right of individual to public easement is the Right of individual and cannot be sold to others⁽⁵⁹⁾. Hanafi Scholars generally agree that easement Rights will be inherited because relatives are the successors of the deceased person in each material item and in the Rights related to those material items. It is also allowed to make will (وصية) in this type of Rights however, the condition is that it should be only up to the lifetime of the beneficiary and will not be inherited to his heirs. Finally, it is also allowed to sell this type of Rights as long as we know the full measurement of exchangeable item⁽⁶⁰⁾.

(58) Hubaili Sami, Al-huquq Al-mujarradah Fil Fiqh Al-Mali Islami, Mater Thesis, University of Jordan, 2005

(59) AAOIFI Vol.1 pg.1039

(60) Dr. Usman Muhammad S, "al-mu'amalat al-maliyyah al-mu'asarah fi al-Fiqh al-Islami", Dar al-Nafais Li Nashr wa al-Tauzi', Urdun, 7th ed. Pg.66 2007

Financial Rights arising from Neighborhood:

In this regard, AAOIFI⁽⁶¹⁾ provides following rulings:

1. It is not allowed for the neighbors to act in a manner that will definitely or most likely cause harm to other neighbors
2. For buildings that have multiple floors and every floor owner is the co-owner of the building, the following rules will be applicable:
 - a. If the owner of lower floor cause damage to the building or it is collapsed because of his actions then he will be liable for such actions.
 - b. If the owner of the lower floor is not responsible for the collapse then the court will have the final authority to decide in the best interest of the both parties.
 - c. All the floor owners have the full authority to enjoy the services and benefit from the building.

Haqq al-Khulu (Right of occupancy) and its rulings:

This Right has a number of forms:

1. The Shari'ah does not prohibit the owner and the tenant agreeing that the tenant will pay a lump sum amount over and above the periodic rental payments on condition that this excess payment is considered part of rental payments (for the entire lease period)
2. It is allowed by the Shari'ah to give some amount to the tenant in exchange for his waiver from the usufruct during the lease period. After the expiry of the lease period, if the contract is not renewed then the owner is not obliged to pay any amount to the tenant for vacating the land.
3. It is allowed for the tenant to sub-lease the property for an amount over and above the regular periodic payments as per the terms and conditions of lease agreement. However, in long term lease, it is not allowed to sub-lease the property without the consent of the owner⁽⁶²⁾.

Right of Competence (Haqq al-Ikhtisas):

Sheik Taqi Usmani states that there is an Ijma' among scholars that a person cannot become the owner of a barren lands (of which there is no owner) unless

(61) AAOIFI Vol.1 pg.1039

(62) AAOIFI Vol.1 pg.1039

by its revival. However, only fencing around an infertile land does not give a person the ownership Rights but only the Right to Revival.

So, the sale of Right of Tahjir (fencing) is a topic of discussion among scholars and we have two different approaches among Hanafi and Shafi' scholars. Few scholars allowed such sale and others banned it. However, according to Sheik Taqi Usmani the sale of Right of Tahjir is not allowed according to the majority of the jurists and some jurists have allowed transfer of such Rights through compromise or by way of waiver⁽⁶³⁾. AAOIFI Shari'ah standard on the sale of financial Rights provides that the Right of Tahjir only gives exclusive authority over others but not Ownership Rights. The standard further guides that the Right of Tahjir will be expired if the land is left without any revival plan for three years⁽⁶⁴⁾.

CopyRights and its tradability⁽⁶⁵⁾:

In the case of CopyRights scholars have two different opinions because few scholars allowed their sale while others prohibited. Scholars who do not agree (for example Dr Ahmed Hajji Kurdi) with the tradability of these Rights mainly rely on the following arguments.

1. Allowing the sale of publication (of a scholarly work) merely for material values lead to hiding of knowledge which is prohibited by the Shari'ah as Prophet (S.A.W) says in the hadith:

(سئل عن علم ثم كتبه أجم يوم القيامة بلجام من نار)

“Anybody who hides the answer of a question being asked, will wear rein of fire in hellfire”

2. Knowledge is regarded as a good deed and act of worship in shari'ah. Hence, it is advisable for the holder of such knowledge not to depend on his knowledge and produce CopyRights as it will be regarded as sale of knowledge for material values.

On the other hand scholars like Mustafa Zarqa, Dr Sayeed Ramadhan, Dr Wahbah Zuhaili and others opine that such Rights are protected by the Shari'ah and they are considered exchangeable from Shari'ah perspective. They support their argument by the following evidences:

(63) OIC Vol.5 pg.1999

(64) AAOIFI Vol.1 pg.1039

(65) Dr. Usman Muhammad S, "al-mu'amalat al-maliyyah al-mu'asarah fi al-Fiqh al-Islami", Dar al-Nafais Li Nashr wa al-Tauzi', Urdun, 7th 2007

1. Basically, CopyRights is a usufruct produced and invented by a human being. So, like any other usufruct (Manfa'ah) this should be considered exchangeable from Shari'ah perspective. According to the view of the majority of Jurists (Maliki, Shafi' and Hanbali), usufruct is considered to be a valid property (Maal).
2. Subscribing to the custom where CopyRights are considered a valid property eligible for sale and rewards, sale of such Rights should be allowed from Shari'ah perspective. It is so, because 'Urf (custom) plays an important role especially, in the case of commercial transactions and identification of valuable assets.
3. Islam emphasis on the positive and true links of any work or statement to its maker. Hence, it is reported that Imam Ahmad had prohibited copying a statement of somebody without asking his permission to quote if he is known. In another occasion, Imam Ahmad was asked about a person whose notes were lost and if another person finds them and wrote some of the Ahadith from them is it permissible. Imam Ahmad replied, "No, it is not permissible unless there is a permission taken from the original writer of those notes"⁽⁶⁶⁾.

Hence, the above discussion implies that CopyRights should be regarded as a valuable property, and they can be sold. This is what OIC Fiqh council had agreed upon in its meeting held on 10-15 December 1988 in Kuwait⁽⁶⁷⁾. AAOIFI Shari'ah standard no. 42 on Financial Rights allowed the sale of CopyRights⁽⁶⁸⁾.

Right of work and its tradability:

Right of work can be of two types:

1. Right of work granted in a Waqf for a particular group, family or to an individual such as leading prayer, calling for Adhan etc.
2. Right of work other than the first category (not granted as a Waqf)

Fuqaha did not allow the sale of this Right however, there is a difference of opinion among scholars with regard to its waiver or transfer through compromise (Sulh). Taqi Usmani in his article presented in the OIC Fiqh

(66) Hussain S, "Huquq al-Ikhtira" wa-talif Fi al-Fiqh al-Islami (Master Thesis)", Al-Imam Muhammad Ibn Saud Islamic University, Dar Tayyibah Li Nshar wa-Touzi', p.330

(67) OIC Vol.5 pg.1999

(68) AAOIFI Vol.1 pg.1039

council meeting on huquq ma'nawiyah as summarised scholarly discussion on the topic and he concludes that scholars generally did not allow the sale of such Right but they have allowed its waiver and transfer for a consideration⁽⁶⁹⁾.

Rights that can be inherited and those which cannot be inherited:

These Rights are of two types and there are different rulings related to them:

1. Dead person's Rights on inheritors:

In the first category, fulfillment of certain Rights becomes an obligation with the death of a person such as Right of blood money, death punishment which will be fulfilled by the heirs. On the other hand, certain Rights that are granted during the lifetime of a person will be inherited by the heirs if the deceased person had requested for such Rights such as Right of Shuf'a, Right of punishment in defamation case, Right to stipulation in a commercial transaction, portion of profit in Mudharaba contract. However, if the deceased person did not request such Rights then they can be of two types:

- I. Rights related to financial items: these Rights will be inherited because they are attached to assets/usufructs owned. These items include Rahn, guarantee in a loan, and Right of Return in case of defect in the purchased commodity.
- II. Rights related to non-financial items: there are two different opinions of scholars and the most famous one is that these Rights will not be inherited.

2. Rights on the ancestor and their rulings:

If these are compulsory Rights then the heirs will fulfill them. If they are not compulsory and have been cancelled by the death of the ancestor they will not pass to the heirs if they are not cancelled by the death of inheritor then they will pass to the heirs.

If a person died before making a compulsory donation then there are two opinions among shari'ah scholars. Abu Kattab says that it will be inherited and other say that it will be void⁽⁷⁰⁾.

(69) OIC Vol.5 pg.1999

(70) Qurrah Ali D, "Al-huquq al-maliyyah wa muda jawadh al-i'tiyaz a'nha" 1st ed. Dar al-Bashair al-islamiyyah Beirut, Lebanon, 2011

Section Three

Some contemporary issues related to Rights:

The discussion above gives us the model evaluating tradability and non-tradability of Rights. The section below discusses some of the contemporary issues relating to certain Rights analyzing the permissibility of such Rights from shari'ah perspective. We have provided the opinions of shari'ah experts on relevant matters and in our opinion, this section can help the reader understand how to use the model that we developed in the third section to evaluate Rights for their permissibility or non-permissibility for trade:

1. Issues related to the sale of options:

Options are a financial derivative sold by an option writer to an option buyer. The contract offers the buyer the right, but not the obligation, to buy (call option) or sell (put option) the underlying asset at an agreed-upon price during a certain period of time or on a specific date.⁽⁷¹⁾

Scholar's opinion on the legality of Options Sale:

Ahmad Muhayyuddin Hasan objects the permissibility of options sale on two grounds. Firstly, maturity beyond three days is unacceptable as can be seen in case of khiyar-al-shart⁽⁷²⁾ (option of stipulation). Secondly, the buyer of an option is granted much more benefits than the seller and that "this is oppression and injustice". Mufti Taqi Usmani prohibits sale of options on the basis of the fee charged for the promise and not because of promise itself. He further elaborate that the promise is permissible according to Shari'ah perspective for call and put options because it is like a promise from one party to the other for buying or selling a property in a future date.⁽⁷³⁾

OIC fiqh academy asserts "Option contracts as currently applied in the world financial markets are a new subject of contract is neither a sum of money nor a utility or a financial Right which may be waived, the contract is not permissible in Shari'ah⁽⁷⁴⁾."

(71) Staff, Investopedia. "Option." Investopedia. August 04, 2018. Accessed November 30, 2018. <https://www.investopedia.com/terms/o/option.asp>.

(72) Khiyar Al-Shart is one of the khiyar (option, please see footnote 74) which broadly means that the buyer and the have an option to stipulate certain explicit conditions in a commercial dealing whose period is fixed. (Ibid Al-Mubdi' pg.67)

(73) Bacha Obiyathulla I. "Derivative instruments and Islamic finance: Some thoughts for a reconsideration", Journal of Islamic Financial Services, Vol.1 No.1 (April 1999): 9-25

(74) Islamic Research and Training Institute. Resolutions and Recommendations of the Council of Islamic Fiqh Academy 1985 - 2000, Jeddah. 1st ed. Pg. 131. Jeddah: Islamic Fiqh Academy. And Muhammad Ayub. (2003) Derivatives and Islamic Finance. Available online at http://www.sbp.org.pk/departments/ibd/derivatives_islamic.pdf#

Alternative for options:

‘Arboon or deposit has been suggested as Shari’ah compliance alternative for call options, according to which, the buyer will pay a deposit for the call option and in the case of withdrawal; the deposit will be forfeited as a gift to the seller. If the buyer continues on the purchase then the deposit will be treated as part of purchase price. For the seller, there will be no option for not to sell.

However, ‘Arboon can make a contract voidable according to Hanafi and void according to Shafi’ and Maliki scholars because it is a form of deception, welcoming danger, and getting properties without any counter value⁽⁷⁵⁾. Only Ahmad Bin Hanbal approved the sale of ‘Arboon based on the hadith narrated by Zaid Ibnu Aslam⁽⁷⁶⁾. Mahmoud El-Gamal disapproves the usage of option⁽⁷⁷⁾. Wahbah states that ‘arboon is permissible on the basis that it has been a customary practice and the ahadiths from both oppositions are weak⁽⁷⁸⁾. OIC fiqh academy endorsed ‘Arboon but only if time limit is specified⁽⁷⁹⁾.

2. Warrants:

A warrant is a Right, but not an obligation, to buy or sell a fixed quantity of an asset (such as shares) for a specified price within a limited period of time.

Arguments that support the permissibility of warrants⁽⁸⁰⁾:

In determining the status of warrants, athar and Islamic jurisprudence are used as a reference. Although there are no such instruments in the practices of Islamic muamalat, the studies are nevertheless made from the perspective of general Shari’ah principles that are relevant to the instruments. These principles are as follows:

a. Athar⁽⁸¹⁾ (آثار)

As a basis, there is evidence of practices similar to paying for a Right by the companions of the Prophet (S.A.W). The evidences were in the form of sales

(75) Subul AL-Salam, vol.3 pg.17, Nail Al-Autar vol. 5 pg. a53, Al-Muatta, vol.2 pg 151, reference thorough, Wahbah al-Zuhaili,(a) pg. 449, 1995). Fiqh and Islamic Laws, Vol V.

(76) Zuhaili pg 449

(77) International Journal of Islamic Financial Service, 1999

(78) Wahbah al-Zuhaili,(a) pg. 462, 1995

(79) Muhammad Ayub. (2003) Derivatives and Islamic Finance, available online at

http://www.sbp.org.pk/departments/ibd/derivatives_islamic.pdf#

(80)Shairah Advisory Council of Securities Commission, “Capital Market Products according to Islamic Jurisprudence”, Malaysia Access link: <https://ribh.files.wordpress.com/2007/08/capital-markets-products-according-to-islamic-jurisprudence.pdf>

(81) Athar refers to the sayings and practices of the companions of the Prophet (peace be upon him)

and purchases, and rentals.

Holding Rights in Sales and Purchases:

According to Imam Ahmad, as narrated by Ibnu Qudamah in his book al-Mughni, Nafi` bin al-Harith was reported to have bought a house from Safwan bin Umayyah for Caliph Omar which was to be converted into a prison. He laid down a condition to Safwan that if the Caliph agreed, then he would buy the house, otherwise, Safwan would still be paid a certain sum. In the book, *Alam al-Muwaqq`in*, Ibnu Qayyim said that the cost of the house was 4,000 dirham, and Safwan would be paid 400 dirham if the Caliph did not agree to the purchase⁽⁸²⁾. In al-Mughni, the reason why the sum of 400 dirham was given is said to be that the house would not be sold to someone else⁽⁸³⁾.

This narration showed that payment was permissible to give holding Right on a property.

b. Islamic jurisprudence

This instrument fulfills the features of maal (asset) according to Islamic jurisprudence as outlined in the haqq mali (financial right) and haqq tamalluk (Right to Own) principles. Haqq mali (financial right) can be traded if it complies with Islamic principles and conditions of buying and selling⁽⁸⁴⁾.

At its 4th meeting on 26 July 1995, the Islamic Instrument Study Group (IISG) passed a resolution permitting the use of call warrants on the condition that the underlying shares of the warrants in question are Shari`ah compliant.

3. Intellectual property Rights:

Although nothing in Islamic law would prohibit or limit legal protection of intellectual property in general, certain principles do affect the nature and scope of the protections afforded. Islamic law treats property interests as very important and provides a high level of protection to owners. One method to obtain title is to do a creative act or to take affirmative steps to get possession or control of some property. The creation of something new, a new work of art,

(82) *Asqalani, Ahmed Hajar. Fath Al-Bari Sharah Al-Bukhari, Kitab Al-Khusoomat, Bab Al-Rabt Wa Al-Habs Fi Al-Haram. 1986 ed. Dar Al-Rayyan Li Al-Turath. Through http://library.islamweb.net/newlibrary/display_book.php?bk_no=52&ID=1526&idfrom=4377&idto=4406&bookid=52&startno=12 accessed on 1/12/2018

(83) Ibnu Qayyim, *Alam al-Muwaqq`in*, vol. 3, p. 402. Ibnu Qudamah, *Al-Mughni*, vol. 3, p. 313. Through, Shairah Advisory Council of Securities Commission, "Capital Market Products according to Islamic Jurisprudence", Malaysia
Access link: <https://ribh.files.wordpress.com/2007/08/capital-markets-products-according-to-islamic-jurisprudence.pdf>

(84) SAC MALAYSIA pg.3

a new book, a new invention, a new computer program, is no less worthy of protection. The creation of the mind ought to be protected like a creation of the hands. Traditional concepts of property can easily be extended to intellectual property, and to do so is most consistent with the high value placed on property in Islamic legal systems.

OIC Fiqh academy has passed a resolution on 10-15 December 1988 in its 5th conference, according to which intellectual property Rights are recognised by Shair'ah and it is not permissible to violate them. These Rights are tradable from Shari'ah perspective⁽⁸⁵⁾.

4. Licensing:

A matter of some concern arises because so many intellectual property transactions involve licensing of the technology or knowledge rather than an out Right sale. Licensing in general does not run afoul of the Shari'ah. The central idea of licensing copyRighted or patented matter is that the copyRight or patent holder retains the copyRight or patent and licenses, through a non-exclusive or exclusive license, and the use of the property. The ownership is thus separated from the Right of use. Such separation is fully consistent with Islamic law.

A more serious concern with licensing relates to indefiniteness (gharar). A license is for the use of something. Therefore, parties

- i. must know the value of the intellectual property,
- ii. must know what it is and what it does, and
- iii. must have full control.
- iv. The property must either exist or the agreement must be to create it

AAOIFI provides following rulings related to licensing⁽⁸⁶⁾:

1. It is allowed for license holder to dispose license with or without consideration unless prohibited by the law
2. Ownership of a license to use gives the license holder the Right to personal use without transferring it to third party (since it is not allowed).

5. Case Study: "Intangible assets as underlying sukuk assets"

For a typical sukuk structure, Shari'ah requires 100 % physical or non-ribawi intangible assets as underlying assets however, given the large issuances, limitations in finding such portion of assets, tax imparity, legal restrictions

(85) OIC Vol.5 pg.1999

(86) AAOIFI Vol.1 pg.503

and other factors. Some Shari'ah scholars have allowed threshold of 49 % or 33 % of physical assets and 51 % or 67 % of Ribawi intangible assets such as Shari'ah compliant receivables.

In case of 33 % or 51 % physical assets requirement, the assets can be tangible or intangible (Non-ribawi) in nature. For example, in 2012, the Malaysian company "Projek Lebuhraya Usahasama" (PLUS) closed a record breaking landmark RM30.6 billion (US\$9.86 billion) sukuk programme comprising two tranches of government guaranteed and non-government guaranteed 'AAA' rated issuances of varying tenors, sizes, expected returns and yields to maturity. This sukuk deal is the world largest to date with the largest single issuance from Malaysia⁽⁸⁷⁾. In this deal, 26 % of the assets comprised of Rights and concessions (called Rights to services) granted by the government to PLUS for the collection on tolls etc.

From Shari'ah perspective, the question arises as whether the Rights are specific to PLUS and cannot be transferred in which case it cannot be subject matter for sale as discussed in section three above. On the other hand, some scholars also argued that this kind of Sukuk is valid because it is based on the Shari'ah concept of Badal al-kulu (بدل الخلو). Badal al-kulu is where a person enters into an Ijarah agreement for realty for instance, and rents out the usufruct Rights to another person and takes a fee for that. Because he owns the usufruct Right at that moment, therefore he has the Right to sell it to another person. Based on this, PLUS has the Right to sell its concession Right to investors for money and for a specific duration of time⁽⁸⁸⁾.

Conclusion

Initially, we have given an introduction to the study emphasising on the importance of the study based on the literature review and we have raised two research questions that are 1). What are tradable and non-tradable Rights from Islamic Law of contract perspective? 3). What are the Shari'ah evidences or analogy behind permissibility or impermissibility of trading in such Rights? We have also specified that we will use the qualitative method (library research method) to address these questions.

Section one laid down the base for our study as it discussed the meaning of Rights and its classification from different approaches like Usuli, (Scholars of Islamic Jurisprudence) Fiqhi, (Scholars of Shari'ah) and modern approaches.

(87) Sa'ad, Auwal Adam. "Can Rights be The Underlying Assets Of Sukuk?: The Malaysian Experience." Islam and Civilisational Renewal (ICR) 6, no. 1 (2015)

(88) Auwal, (ICR)6, pg.101

Section two is the focal point of this study as it discusses the tradability of various types of Rights from Shari'ah perspective. First it gives a general overview of rules and regulations related to commercial dealings zooming into rules related to subject matter of the contract and emphasising on the aspect of Maal (Property) under Shari'ah. Then we have provided general rules related to the dealings in Rights after which we have given a detail discussion on the tradable and non-tradable Rights from Shari'ah perspective (there are totally seventeen types of Rights discussed with their rulings). The major findings of this section include the following:

1. Any Right that is attached to a Maal (property) according to customs or it is related to a real property for a true cause is allowed for transfer for a consideration through sale such as easement Rights.
2. Any non-financial Right which is not related to Maal (property) as per customs is not allowed for sale such as Right of inheritance.⁽⁸⁹⁾
3. Not every Right is considered to be exchangeable for monetary values from Shari'ah point of view proving our hypothesis to be true. Furthermore, there are Rights that are granted to the holder specifically and they are not transferable, Rights that are allowed to be sold for a price, Rights that are not allowed to be sold but can be subject of sulh (compromise) / tanazul (withdrawal), and Rights that are allowed/not allowed to be inherited. Hence our hypothesis proves to be null.

Section three is the result of our discussion and it provides to the reader with a practical implication of the study. In this section we have highlighted some of the contemporary types of Rights and their rulings.

This study is expected to have both academic and Shari'ah implications. From the academic point, it will add value to the scarce literature. From the practical view point, this study is expected to provide a framework to identify the tradability of different types of Rights which can be used by product development team in Islamic Financial Institutions.

This study does not attempt to compile all kinds of Rights and their shari'ah rulings however, it tries to formulate a framework or criterion for assessing any Right if it is allowed for trade. Another limitation is that there needed to be a case study type of research particularly with regards to some contemporary issues such as options sale, sale of debt from Shari'ah point of view.

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