

**THE FOUR INTRODUCTORY
THEORIES
OF FIQH MUAMALAT**

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THE FOUR INTRODUCTORY THEORIES OF FIQH MUAMALAT

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Allah ﷻ said (al-Nisā':29):

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ
وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا (*)

Meaning: “O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual goodwill: nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful.”

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FOREWORD

In the name of Allah, the Most Gracious, and the Most Merciful,

Praise be to Allah ﷻ, Peace be upon the Prophet Muhammad, his family and companions, May Allah bless them with honour and graces,

“Muamalat” is a very familiar word nowadays. The Faculty of Economics and Muamalat (FEM) at the Islamic Science University of Malaysia (USIM) has established its name on this very word from the beginning of its foundation. Indeed, FEM aims to be the leader and reference in the education and research of Muamalat and Islamic finance at the national and international level through best teaching and learning approaches, researches, publications, consultations and etc.

Thus, the birth of this book and its similars by the academicians from FEM is another milestone in the Faculty’s efforts to position itself as a preferred centre of learning in this area of knowledge. Therefore, it always gives me a great pleasure to cordially welcome the publication of this book. It could be used as the textbook for the foundation of *Fiqh Muamalat* subject and I would like to congratulate the authors who have worked hard to produce this beneficial reference.

Fiqh Muamalat discipline is at the core of Islamic finance education and industry. The right understanding of *Shariah* and *Fiqh Muamalat* is very crucial for the right application of the knowledge. This book offers the understanding of *Fiqh Muamalat* from the very beginning. It is very excellent for the beginners to have a strong foundation in this discipline. I look forward to see more remarkable writings being brought into existence from the collaborations of efforts between the academicians of FEM and I strongly believe that such teamwork would offer more great contributions and benefits to the *ummah*.

Finally, I pray to Allah ﷻ to make this book a success and I believe that this book would be of great use to all students, academicians and the public who are interested in the area of *Fiqh Muamalat* and Islamic finance.

Thank you and Wassalamu’alaikum.

Best Regards,

DR. ASMADDY HARIS,
Dean, Faculty of Economics and Muamalat (FEM),
Islamic Science University of Malaysia (USIM).

PREFACE

In the name of Allah, the Most Gracious, and the Most Merciful.

Praise be to Allah ﷻ, Peace be upon the Prophet Muhammad, his family and companions, May Allah bless them with honour and graces,

The interest on *Fiqh Muamalat* subject by has been growing nowadays with the successful implementation and growth of the Islamic financial industry. The core of Islamic finance lies on the understanding and application of *Fiqh Muamalat* subject. However, without proper teaching and learning methods and frameworks, a person may need many years to really grasp the concepts of *Fiqh Muamalat* with the differences of Islamic jurists' views discussed in the discipline.

Therefore, this book is designed to be the introductory part of *Fiqh Muamalat* by discussing the most basic concepts that should be learned before the discussion of *Mu^cāmalāt* contracts starts. Thus, it covers:

- The definition of Fiqh Muamalat and its position in Islam
- The theory of legal capacity
- The theory of property
- The theory of ownership and
- The theory of contract.

There is an Arabic saying that states: “There is a door for every single thing” and the proper way to enter a house is through its door. The four theories that are covered in the discussion of this book are considered as the first door to *Fiqh Muamalat* study. These four theories shall enlighten the reader on the required legal capacity that must be occupied by the contracting parties, the nature of property from Islamic perspective, the relationship between a property and its owner as well as the framework of Shariah-compliant contract.

The authors sincerely hope that this book would benefit the readers, students as well as academicians in learning *Fiqh Muamalat* in a more proper way. The authors also pray that all the efforts that have been spent by everyone to make this book a success are accepted by Allah ﷻ as good deeds on “*the day whereon neither wealth nor sons will avail, but only he (will prosper) that brings to Allah a sound heart*”, (Al-Shu^carā':88-89).

AUTHORS

ACKNOWLEDGEMENTS

In the name of Allah, the Most Gracious and Most Merciful.

Peace be upon the Prophet Muhammad, his family and companions. May Allah bless them with honour and graces.

First and foremost, we thank Allah ﷻ who enabled us with *tawfiq* to complete the writing and publication of this book.

Secondly, we would like to express our gratitude to our Islamic jurists (*fuqahā'*) and scholars (*ulamā'*) who have spent their lives in protecting, distributing and developing the Shariah knowledge and the virtues of the Prophet ﷺ to the mankind. May Allah bless them and reward them with His blessing, forgiveness and paradise.

We would like to acknowledge Prof. Dr. ʿUthmān Shubayr and Prof. Dr. Wahbah al-Zuḥaylī as our inspiring scholars for this very book. Both of them have written various books on the subject of *Usūl al-Fiqh*, *Fiqh* and *Fiqh Muamalat* which form the main references of this book. May Allah protect and bless both of them.

Then, we would like to thank all the relevant parties and individuals who have directly or indirectly contributed to the completion of this book especially Dr. Asmaddy Haris, Dean of the Faculty of Economics and Muamalat (USIM), our academic colleagues at FEM for their continuous supports and valuable advices as well as Abang Mat for his guidance and kind cooperation with us. Without their support and commitment, this book would not have materialized.

Finally, our deepest gratitude goes to our beloved families, for their understanding that inspired us along the way of this academic endeavour.

Authors

DEDICATION

To my parents: Hj Jalil Omar and Hapisah Ismail, my beloved wife: Suraiya Osman, my loving son: Abdurrahman al-Munib and my lovely daughters: Maryam al-Safiyyah and Sara al-Ameena and my family members.

Abdullaah Jalil

To my parents: Hj Mohd Ramli Seman and Hajah Normah Said, my beloved wife: Roslizawati Mohd Ramly.

Asharaf Mohd Ramli

To my parents: Hj Shahwan Mansor and Hajah Siti Hayati Abas, my in laws: Hajah Jamilah Abdullah and the late Haji Othman Ganyah, my beloved husband: Md Fauzi Othman, my children: Amni Faatihah, Arham Mardhiyyah, Asmaa' al-Syaafiyyah and 'Ammar al-Syaafi, and all my family members, mentors and friends who continuously support my academic route.

Syahidawati Shahwan

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Abdullaah Jalil is a senior lecturer at the Faculty of Economics and Muamalat, USIM. He obtained his MBA, with major in Islamic Banking and Finance (IBF), from IIUM and was awarded the Best Student Award of MBA (Islamic Banking and Finance) in August 2004. He completed his Bachelor's Degree in Shariah (Fiqh and Islamic Studies) (Hons) within three years time from Yarmouk University, Jordan with "First Class" or "Mumtaz" achievement. He has taught several subjects at the undergraduate and postgraduate levels, inter alia, Qawaid Fiqh Muamalat, Halal and Haram in Islam, Application of Fiqh Muamalat, Management of Islamic Banking and Takaful Institutions, Fiqh Muamalat II and Fiqh Muamalat III. His areas of research interest are Islamic financial product development, Fiqh Muamalat application, Islamic banking and finance, Waqf and Shariah audit. Currently, he is pursuing PhD in Islamic Finance at the International Centre for Education in Islamic Finance (INCEIF).

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Syahidawati Shahwan is currently a senior lecturer at the Faculty of Economics and Muamalat, USIM. Prior to her service at USIM, she was lecturer at the Matriculation Centre, Islamic University of Malaysia (IIUM) or currently known as Centre of Foundation Studies, IIUM. She obtained her first degree from IIUM in Fiqh and Usul Fiqh with specialization in Usul Fiqh. Due to her deep and keen interest and passion in Islamic Banking and Muamalat, she then continued her study in Universiti Malaya (UM) under the Department of Shariah and Economics, Akademi Pengajian Islam (API). Her research interest includes, but not limited to, muamalat, Islamic banking and finance, Shariah issues, Hajj and Umrah management and issues. She is currently on study leave for PhD in Islamic Banking and Finance at IIUM Institute of Islamic Banking and Finance (IliBF).

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CHAPTER 1

THE POSITION OF FIQH MUAMALAT IN THE SHARIAH



This chapter aims to:

- ✓ Explain the meaning of Shariah, Fiqh and Mu^ḥāmalāt terms
- ✓ Illustrate the position of Fiqh Muamalat in the Shariah (Islam) and its relation to the other disciplines of Islamic knowledge
- ✓ Describe the salient features of Fiqh Muamalat and the Shariah principles in dealing with Mu^ḥāmalāt issues

1.1 Introduction

Fiqh Muamalat is a branch of Fiqh discipline. It is a very vast area of knowledge, yet interesting and challenging. It deals with Shariah rulings related to the area of business and financial activities that rapidly change from time to time in order to meet the changing needs of people and rapid developments throughout the worlds.

Fiqh or Islamic Jurisprudence is founded on the divine revelation of al-Qur'ān and al-Sunnah i.e. the Shariah. It is a branch and application of the Shariah in the areas related to the human practices in this world. It is not developed by the Islamic jurists (fuqahā') in the course of their experiences or logical thinking merely. Therefore, prior to the discussion of Fiqh Muamalat, the reader should be explained on the relationship between the three main terms and disciplines of knowledge namely Shariah, Fiqh and Mu'āmalāt.

1.2 Definition of Shariah, Fiqh and Mu'āmalāt

This section shall briefly discuss the literal and technical meanings of Shariah, Fiqh and Mu'āmalāt.

1.2.1 Shariah

Literally, the word "Shariah" has two main basic meanings: (i) the water path (mawrid al-mā') or (ii) the water pool (makān yajma' al-mā'). Then, it is used for several other meanings such as straight path (al-tariq al-mustaqim), method (al-manhaj), goodness (al-khayr), doctrine (al-madhab) and et cetera. Some scholars state that Shariah has about twenty (20) literal meanings.

With regard to the technical meaning of Shariah, it could be general or specific. The general technical meaning of Shariah is similar to "al-din" or religion. Thus, in this context, al-Shariah could be defined as:

"the religion that has been commanded by Allah ﷻ on the mankind (including genies) where He sent the messengers with the holy books and scriptures to guide them to the benefit of this world and the hereafter."

The general meaning of Shariah covers all the three aspects of Shariah rulings. The three aspects of Shariah rulings are:

1. Shariah rulings of faith and belief (al-aḥkām al-shar'īyyah al-ī'tiqādiyyah).

2. Shariah rulings of practical matters (al-aḥkām al-sharʿiyyah al-ʿamaliyyah).
3. Shariah rulings of virtues and spiritual matters (al-aḥkām al-sharʿiyyah al-khuluqiyah wa al-wijdāniyyah).

The word Shariah could also be used for a more specific meaning. In this sense, it provides similar meaning as “al-Fiqh” as it refers to the practical Shariah rulings (al-aḥkām al-sharʿiyyah al-ʿamaliyyah). It is also observed that the word “Shariah” in the Islamic literatures has been used to correspond to the texts of al-Qurʾān and al-Sunnah. Hence, in this context, the Islamic scholars state that al-Shariah will never change.

Based on the above discussion, the readers could appreciate the evolvement of the term “Shariah” as well as relationship between the literal and technical meanings of Shariah. While water is considered as the basis of life and life is similar to a path, analogically Shariah is the basis and the vital path of this entire life from the Islamic perspective.

1.2.2 Fiqh

Fiqh is more and far beyond the meaning of knowledge. It literally means:

الْعِلْمُ بِالشَّيْءِ وَالْفَهْمُ لَهُ وَالْفِطْنَةُ فِيهِ

Meaning: “Knowledge, understanding and intelligence of a matter.”

The “Fiqh” term is usually used to denote the knowledge, understanding and intelligence of the Shariah matters. In this regard, the Prophet ﷺ has been reported to say:

مَنْ يُرِدْ اللَّهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ

Meaning: “Whoever Allah wants for him good matters, Allah will grant him knowledge, understanding and intelligence (fiqh) of this religion.”

The literal and general meaning of “Fiqh” was still widely used in the era of Imām Abū Ḥanīfah r.a. (D 150H). The “Fiqh” term, then, has evolved and is used until now to represent a more specific meaning than its general connotation i.e. the Shariah rulings of practical matters by a mukallaf (the accountable Muslim). Thus, it is technically defined as:

الْعِلْمُ بِالْأَحْكَامِ الشَّرْعِيَّةِ الْعَمَلِيَّةِ الْمَكْتَسَبُ مِنْ أَدَلَّتِهَا التَّفْصِيلِيَّةِ

Meaning: “The knowledge of Shariah rulings that relates to the practical aspects (of a mukallaf) and derived from its detailed evidences.”

The above definition of Fiqh has been established by Imām al-Shāfi‘ī r.a. (204H) and has been widely accepted by the later Islamic jurists as the definition of “Fiqh” in its specific meaning. In a more classical and basic perspective, Fiqh is divided into two categories i.e.:

1. Fiqh al-‘Ibādāt
2. Fiqh Muamalat

Fiqh al-‘Ibādāt deals with the Shariah rulings of matters related with the worship of Allah or the relationship between a servant and his God (Allah) whilst Fiqh Muamalat refers to the Shariah rulings related with the interpersonal relationship between a person and others. Afterward, the Fiqh discipline has been classified further into four categories. These categories are also known as “four quarters of Fīqh”. They are:

1. Fiqh al-‘Ibādāt: Refers to the Shariah rulings related with the worship of Allah.
2. Fiqh al-Munākahāt: Refers to the Shariah rulings related with the marriage and family matters.
3. Fiqh Muamalat: Refers to the Shariah rulings related with the business and financial dealings between people.
4. Fiqh al-‘Uqūbāt or al-Jināyāt: Refers to the Shariah rulings related with the punishments and criminal procedures.

These four categories of Fiqh could be observed at the beginning of Majallat al-Aḥkām al-‘Adliyyah. With the extension and expansion of discussions in the area of Fiqh, a more detailed division of Fiqh has been proposed by the contemporary Islamic jurists. Prof. Dr. Wahbah al-Zuḥaylī (1997) categorizes the discipline of Fiqh into two (2) main categories with eight (8) sub-categories. By maintaining the classical meaning of Fiqh Muamalat i.e. Shariah rulings related with the interpersonal relationship between a person and others, Prof. Dr. Wahbah al-Zuḥaylī (1997) further divides the Fiqh Muamalat category into eight (8) sub-categories. Thus, the division of Fiqh is as follows:

1. Fiqh al-‘Ibādāt
2. Fiqh Muamalat
 - a. Fiqh al-Aḥwāl al-Shakhsiyyah: Relates to marriage and family matters.

- b. Fiqh al-Aḥkām al-Madaniyyah: Relates to the rights of individuals and their liabilities towards others through regulation of dealings such as sale, pledge, debt and et cetera.
- c. Fiqh al-Aḥkām al-Jinā'iyah: Relates to crimes and punishments.
- d. Fiqh Aḥkām al-Murāfa^ḥāt: Relates to jurisdiction and its legal procedures.
- e. Fiqh al-Aḥkām al-Dustūriyyah: Relates to the national constitution, the rights and liabilities of rulers and public towards each other.
- f. Fiqh al-Aḥkām al-Duwaliyyah: Relates to the relationship between Islamic countries and other countries in term of peace, war and treaties, the status and rights of non-Muslims in Islamic countries and etc. It intends to determine the types and forms of relationship, cooperation as well as mutual respect between countries.
- g. Fiqh al-Aḥkām al-Iqtisādiyyah wa al-Māliyyah: Relates to the financial and economic system, the role and obligations of state, rights of individuals in the system, bayt al-māl management (income and distribution), wills and inheritance, alimony rights and et cetera.
- h. Al-Adāb/ al-Akhlāq: Relates to virtues of life.

These categories of Fiqh as proposed by Prof. Dr. Wahbah al-Zuḥaylī (1997) in his magnum opus i.e. al-Fiqh al-Islāmī wa adillatuh are perhaps the most comprehensive one to illustrate the wide-ranging subject matters of Fiqh discipline.

1.2.3 Mu^ḥāmalāt

Mu^ḥāmalāt literally means mutual dealings. Mu^ḥāmalāt is the plural term of mu^ḥāmalah (mutual dealing) which is derived from the root word of ^ḥāmala (mutually deal) and ^ḥamila (work). As discussed before, the most basic meaning of “Fiqh Muamalat” refers to the Shariah rulings related with the interpersonal relationship between a person and others. Thus, it covers matters related to marriage, divorce, criminal procedures, disputes settlement, business and financial dealings, rulers’ rights and responsibilities, citizens’ rights and responsibilities, international communications and etc.

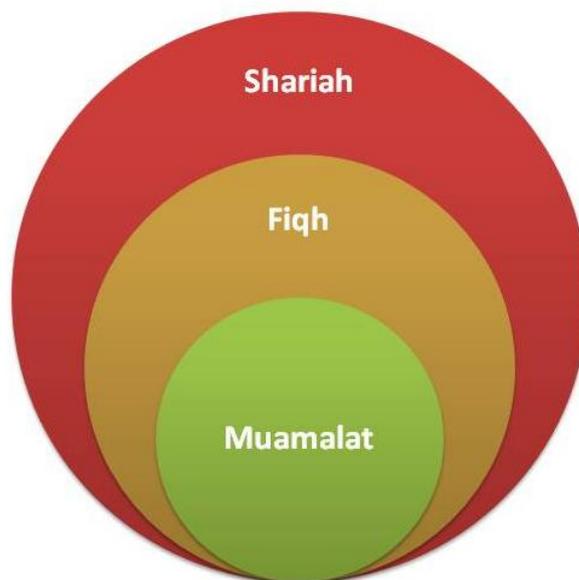
Then, the “Fiqh Muamalat” term has been limited to connote the Shariah rulings related with the business and financial dealings as explained at the beginning of Majallah al-Aḥkām al-^ᶜAdliyyah. It is a quarter of Fiqh discipline. This is the connotation of Fiqh Muamalat that is being used by the authors in this book. Based on the categories of Fiqh explained by Prof. Dr. Wahbah al-Zuḥaylī, the term “Fiqh Muamalat” as applicable in this book shall include two sub-sections i.e. “Fiqh al-Aḥkām al-Madaniyyah” and “Fiqh al-Aḥkām al-Iqtisādiyyah wa al-Māliyyah”.

Thus, Fiqh Muamalat could be defined as:

“the knowledge of Shariah rulings that relates to the practical aspects of a mukallaf in the area of business and financial dealings and derived from its detailed evidences.”

From the above explanations of the three terms, the readers could see that the Shariah has a wider meaning than Fiqh and Fiqh has a wider meaning than Mu^ᶜāmalāt. The relationship between these three terms could be illustrated in Figure 1.1.

Figure 1.1: The Relationship between Shariah, Fiqh and Mu^ᶜāmalāt terms



1.3 Position of Fiqh Muamalat in the Shariah

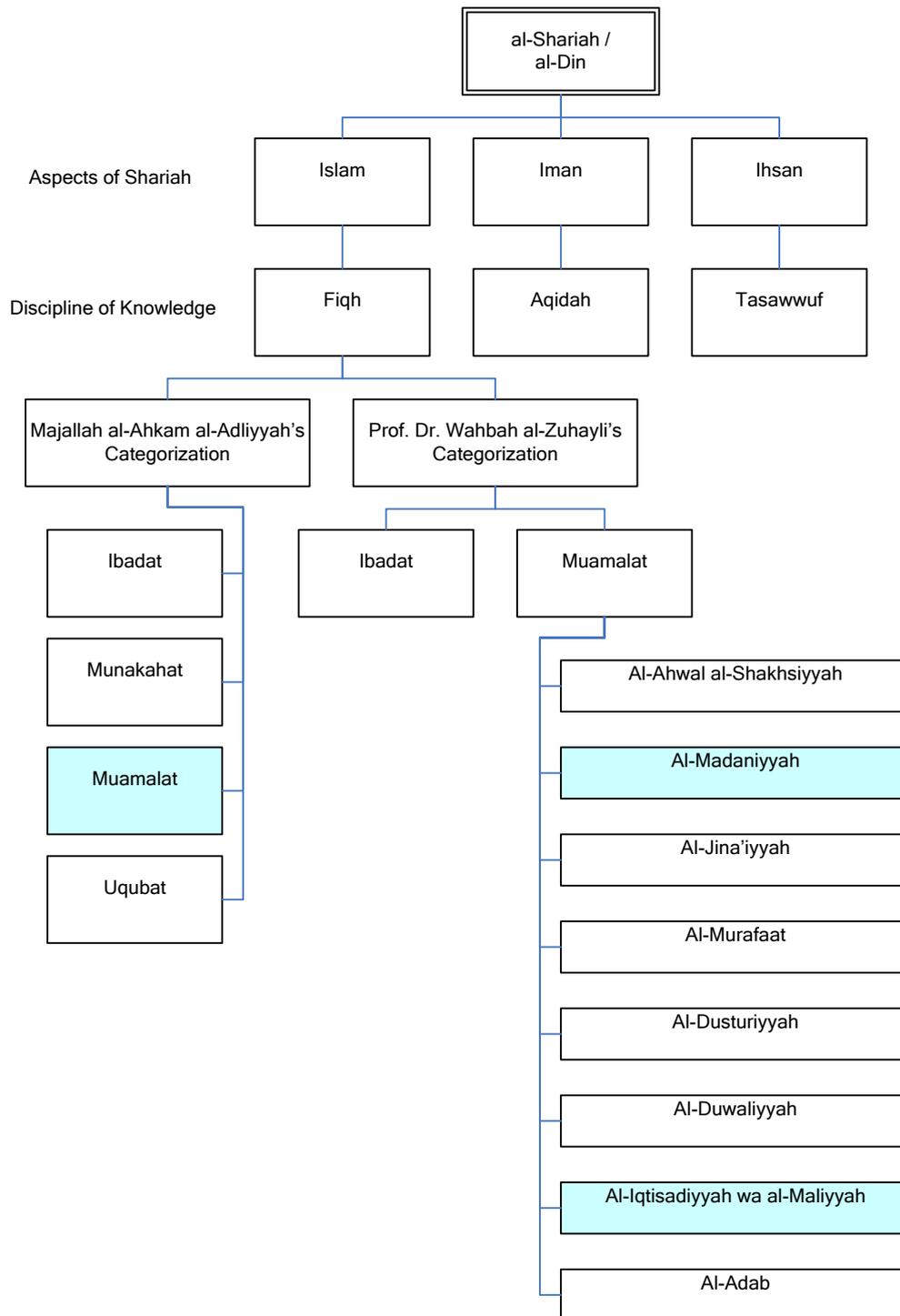
In a very well-known hadīth¹ reported by ^ᶜUmar al-Khaṭṭāb رضي الله عنه, the Prophet صلى الله عليه وسلم and Gabriel (Chief of Angels) have outlined the three aspects of Shariah through questions and answers approach. The three aspects of Shariah are (i)

Islām, (ii) Īmān and (iii) Iḥsān. Although Islām and Īmān are often used interchangeably, both terms may denote different aspects of Shariah in a more specific meaning.

Islām refers to the practical aspects of the Shariah where a person proofs his submission to Allah by practicing the five pillars of Islām. Īmān deals with the faith and belief of a person on the six pillars of Īmān. Iḥsān is the awareness and attention of a person to Allah ﷻ during his performance of worships. The discipline of knowledge that concerns with the practical aspects of the Shariah is Fiqh, while the one that relates to faith and belief of the Shariah is ʿAqīdah and the discipline of Taṣawwuf deals with the purification of one’s souls and virtues in order to have great awareness and attention to Allah ﷻ.

Fiqh Muamalat as a branch of Fiqh is also a branch of Islām and Shariah. Figure 1.2 illustrates the position of Fiqh Muamalat or Islamic Commercial Law based on the categorization of Fiqh by Majallah al-Aḥkām al-ʿAdliyyah and Prof. Dr. Wahbah al-Zuḥaylī (as discussed in the earlier sections).

Figure 1.2: The Position of Fiqh Muamalat in the Shariah



1.4 Shariah Ruling of Learning Fiqh Muamalat and Its Significance

It is not an obligation on every Muslim to be knowledgeable as Islamic jurist in the area of Fiqh Muamalat. However, every Muslim is required to know the Shariah rulings of matters that concern his daily life activities and needs. The Islamic jurists have discussed the types of knowledge that is compulsory on every single Muslim and they differ in defining its scope. From the authors'

perspective, Imām al-Ghazālī r.a. (505H) has provided the best definition of the compulsory knowledge where he concludes that ‘ilm al-ḥāl (knowledge of the event) is the compulsory knowledge on every single Muslim.

Knowledge of Shariah ruling on a certain event becomes compulsory if a person is going to undertake and undergo that event. Thus, the priority order of compulsory knowledge on a person in Islām may differ from one to another based on the differences of the life events of that particular person. If a person wants to engage in a sale contract, the knowledge of a valid sale contract becomes obligatory on him. Furthermore, if he wants to engage in a joint-venture, the knowledge of a Shariah-compliant joint-venture becomes compulsory to him. In normal conditions, nobody would be able to live this life without having engagements in commercial and financial dealings with other people since a person needs other people to fulfill his needs and satisfactions. Therefore, learning Fiqh Muamalat is compulsory on every Muslim.

There are also narrations indicating that the knowledge of Fiqh Muamalat has been stressed by the two Caliphs, ‘Umar Ibn al-Khaṭṭāb ؓ and ‘Alī Ibn Abī Ṭālib ؓ, especially on those who trade in the market. ‘Umar Ibn al-Khaṭṭāb ؓ was narrated to enter and supervise the market himself and beat some of the sellers (for reasonable causes as he is the regulator and authority) and said:

يَا مَعْشَرَ التُّجَّارِ، لَا يَبِيعُ فِي سُوْقِنَا مَنْ لَا يَفْقَهُ، وَإِلَّا أَكَلَ الرَّبَا رَضِيَ أَمْ أَبِي

Meaning: “O Traders! Do not sell in our market those who do not understand (the fiqh of buying and selling), otherwise he shall eat riba (interest and usury) whether he please or not.”

R: Abū Ṭālib al-Makkī (386H): Qūt al-Qulūb.

In other occasion, it was narrated that:

جَاءَ رَجُلٌ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ ؓ، فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنِّي أُرِيدُ التَّجَارَةَ، فَادْعُ لِي،
فَقَالَ عَلِيٌّ ؓ: أَوْ فَفَهْتَ فِي دِينِ اللَّهِ؟، قَالَ الرَّجُلُ: أَوْ يَكُونُ بَعْضُ ذَلِكَ؟، قَالَ عَلِيٌّ
ؓ: وَيْحَكَ، أَلْفَقَهُ ثُمَّ الْمُتَاجِرَةَ.

Meaning: “A person has come to meet ‘Alī Ibn Abī Ṭālib ؓ and said: O The Leader of Believers! I want to conduct a business, please pray for me. He then asked the person: Have you understood the religion of Allah (in this

matter)? The person replied: Maybe some of it. He then said: Sorrow for you)! Fiqh (first) and then (conducting) businesses.”

It is obvious that Muslims who studied Fiqh Muamalat have fulfilled one of the Islamic obligations on individuals and increased their knowledge to get themselves out of ignorance and stupidity. However, these matters are not the only benefits of studying Fiqh Muamalat subject. Based on the authors' observation (based on the authors' experiences of teaching Fiqh Muamalat subjects at the undergraduate and post graduate levels), the learning of Fiqh Muamalat may affect a person's attitude towards business and financial activities by:

- Having a more positive stance toward business and financial activities;
- Becoming more prudent and far from naïve in business and financial activities. In other words, the person cannot be easily deceived in business and financial dealings;
- Instilling the entrepreneurship spirit in the person's mind where he could be more creative in managing his business and financial activities.

For non-Muslims, learning Fiqh Muamalat subject would provide them with the understanding to conduct business and financial dealings with Muslims and thus, enhance their marketing skill of businesses.

1.5 Salient Features of Fiqh Muamalat

The discipline of Fiqh Muamalat differs from the Fiqh al-^ḥIbādāt from the perspective of Islamic jurisprudence in several ways. Qal^ḥahjī (2000) outlines the main salient features of Fiqh Muamalat vis-a-vis Fiqh al-^ḥIbādāt (See Table 1.1).

Table 1.1: Salient Features of Fiqh Muamalat vis-à-vis Fiqh Ibadat

Salient Features of	
Fiqh Muamalat	Fiqh al-ʿIbādāt
The primary ruling is permissibility except where the Shariah states prohibition.	The primary ruling is impermissibility except where the Shariah states permission.
Fatwā or verdict is based on the most appropriate (al-aysār) opinion.	Fatwā or verdict is based on the most cautious (al-aḥwāt) opinion.
Legal rulings are heavily based on rational reasoning (ʿillah ʿaqliyyah)	Legal rulings cannot be heavily based on rational reasoning (it is a submissive action - taʿabbudī).
Specific Quranic and Sunnah resources are few and general in nature; hence the rational thinking can be applied extensively.	Specific Quranic and Sunnah resources are many and detailed in nature; hence it cannot be developed extensively by rationalization.

These features of Fiqh Muamalat imply that the commercial and financial practices are very much left to the people to decide and construct as long as they do not contradict with the Shariah principles. The Shariah has opened the doors of creativity and innovation broadly to people to develop their economic activities in fulfilling their needs under the light of divine guidance. These features of Fiqh Muamalat also entail that the study of Fiqh Muamalat nowadays needs to cover as much as possible the various opinions of Islamic jurists, especially the four main Sunni schools of Islamic jurisprudence i.e. Ḥanafīyyah, Mālīkiyyah, Shāfiʿīyyah and Ḥanābilah, to accommodate the appropriate needs of people – Muslims and non-Muslims - due to the changes in life systems, places and time.

1.6 General Doctrines of Shariah in Dealing with Fiqh Muamalat Discipline

It is very important for a person who intends to study the current Muʿāmalāt issues to understand the Shariah approach in the area of Fiqh Muamalat. The Shariah treats the discipline of Muʿāmalāt in a different way compared to its approach to the discipline of ʿIbādāt. Fiqh Muamalat discipline is based on several doctrines which form the bases of the discipline. Prof. Dr. ʿUthmān Shubayr (2001) has delineated four main general doctrines of the Shariah in dealing with Muʿāmalāt issues. (See Table 1.2)

Table 1.2: General Doctrines of Shariah in the area of Mu‘āmalāt

No.	General Doctrines	
1.	Fiqh Muamalat is based on General Principles Basis (rather on Detailed Descriptions)	فِقْهُ الْمُعَامَلَاتِ يَتَقَوَّمُ عَلَى أَسَاسِ الْمَبَادِي الْعَامَّةِ
2.	The Primary Ruling for Contracts and Conditions in Financial Dealings is Permissibility (unless Proven Otherwise)	الْأَصْلُ فِي الْمُعَامَلَاتِ مِنْ عُقُودٍ وَشُرُوطٍ الْإِبَاحَةُ
3.	Fiqh Muamalat is Established on the Consideration of Legal Causes and Interests	فِقْهُ الْمُعَامَلَاتِ مَبْنِيٌّ عَلَى مُرَاعَاةِ الْعِلَلِ وَالْمَصَالِحِ
4.	Fiqh Muamalat Combines between Permanence and Flexibility	فِقْهُ الْمُعَامَلَاتِ يَجْمَعُ بَيْنَ الثَّبَاتِ وَالْمُرُونَةِ

The following sections shall explain the four doctrines in more details.

1.6.1 Fiqh Muamalat is based on General Principles Basis

The texts of al-Qur’ān and al-Sunnah usually come in the form of general foundations (mabādi’ ‘āmmah) and universal principles (qawā’id kulliyyah) rather than detailed descriptions concerning the issues of business and economics. This nature provides the Islamic jurists ample spaces for the room of ijtihād (juristic exertion) in determining the Shariah ruling for the new kinds of transactions or financial dealings initiated by the people at any time and place in any circumstances. There are a lot of examples for this fact. However, the authors present here an example from each al-Qur’ān and al-Sunnah for brevity.

Allah ﷻ said:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

Meaning: “O believers! Do not consume (use) your wealth among yourselves illegally, but rather trade with it by mutual consent.” [al-Nisā’:29]

The prohibition of “bāṭil” or illegal practice has a far-reach meaning as it includes any illegal method of transactions such as cheating, gambling, bribe and others of illegal nature. Similarly, Ibn ʿUmar رضي الله عنه reported that:

نَهَى رَسُولُ اللَّهِ ﷺ عَنِ بَيْعِ الْغَرَرِ

Meaning: “The Prophet ﷺ prohibited any sale of gharar (uncertain object).”

“Gharar” refers to the characteristic of a muamalat dealing where the outcome is unknown or uncertain. The prohibition stated in the above hadīth could be applicable in any transaction that involves gharar – be it in the format or subject matter of the contract. (See 5.5.2 Gharar for the explanation on gharar).

1.6.2 The Primary Ruling for Contracts and Conditions in Financial Dealings is Permissibility

In matters related to ʿibādāt performances (such as prayer and fasting), the Shariah regulates that the actions must be taken or derived from the sources of al-Qurʾān and al-Sunnah. In this regard, the Prophet ﷺ said:

وَصَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

Meaning: “And perform the prayer as you have seen me (performing the prayer).”

and

خُذُوا عَنِّي مَنَاسِكَكُمْ

Meaning: “Take from me (the way to perform) your rituals (of hajj).”

Thus, it is prohibited to perform an ʿibādah unless it has proofs and evidences of validity from the Shariah. The proofs and evidences could be specific (khāṣṣ) and general (ʿāmm) in nature. On the other hand, the Shariah approach in Muʿāmalāt matters is diverse as it regulates that every matter is permissible unless there is a proof or evidence on its prohibition. For example, the Prophet ﷺ said:

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ
إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

Meaning: “al-Ṣulh (reconciliation) is permissible between Muslims except the one that illegalises lawful matters or legalises unlawful matters; and Muslims are bonded by their conditions except the one that illegalises lawful matters or legalises unlawful matters.”

The hadith shows the flexibility given by the Shariah to the Muslims (and others) on the way to solve their disputes through al-sulh (reconciliation) or to stipulate conditions in their dealings as long as no prohibited elements involved. This Shariah doctrine for Mu^ḥamalat matters makes the Fiqh Muamalat discipline dynamic, adaptable, accommodating and flexible in nature where the people and institutions could play their roles to a great extent.

1.6.3 Fiqh Muamalat is established on the Consideration of Legal Causes and Interests

The reasons and logical meaning in the area of ^ḥibādāt may not be apparent to the people’s understanding. For example, the differences between the numbers of rak^ḥāt in the five prayers are not apparent to a person’s logic. However, the legal causes and meaning of Shariah obligations and prohibitions in the area of Mu^ḥāmālāt are necessarily logical and reasonable. In other words, people could understand the rationale and reasons for the Shariah rulings in Fiqh Muamalat discipline so that they could apply similar rulings on events that share the same legal causes.

This doctrine encourages people to use their intelligence to understand the legal causes that underlie the Shariah rulings of prohibition and obligations in this area. For example, one of the causes for the Shariah prohibition on gambling and sale of intoxicative liquor is to avoid roots of enmity and hatred within the community. In this regard, Allah ﷻ said (al-Ma’idah:91):

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ

Meaning: “Indeed Satan seeks to stir up enmity and hatred among you by means of wine and gambling,...” [al-Ma’idah:91]

Additionally, Fiqh Muamalat discipline is also established on the Shariah principle of maṣlaḥah. Hence, the discipline should seek to protect the interest (maṣlaḥah) of both individuals and public in their dealings by considering the legal and logical causes of the Shariah prohibitions and obligations. For example, the Prophet ﷺ disagreed to set a maximum (or minimum) price for certain items in the market (al-tas^ḥir) when the Companions asked Him to do

so. However, the later Islamic jurists have discussed the issue of al-tas^ʿir and some of them allow the practice with certain conditions due the change of conditions, traders' behaviour and ma^ʿṣ^ḥah context. Similarly, when the Prophet ﷺ prohibited the sale of gharar, some of the Islamic jurists rationalised that gharar that is prohibited in the hadīth is the gharar that could cause dispute (al-nizā^ʿ) between the contracting parties. Hence, gharar that does not lead to dispute between the contracting parties is permissible. Some forms of sales and contracts are permitted based on this argument.

This fact leads to the appreciation of one of the Shariah objectives (Maqā^ʿid al-Shariah) i.e. the protection of wealth (hif^ẓ al-māl). Based on this principle, the Shariah rulings in the Fiqh Muamalat area may change accordingly based on the consideration of the logical and legal causes that underlie the rulings and realization of ma^ʿṣ^ḥah. It is certainly the task of competent Islamic jurists to determine the extent of Shariah rulings change based on the Shariah principles and methodology.

1.6.4 Fiqh Muamalat Combines between Permanence and Flexibility

Fiqh Muamalat consists of fixed and flexible Shariah rulings. The fixed or permanent Shariah rulings of Fiqh Muamalat will never change despite of change in conditions, surrounding circumstances or people's behavior and customs. These fixed Shariah rulings usually constitute the foundation of Fiqh Muamalat or relate to the objectives of Shariah such as:

- Mutual consent (al-tarā^ḍī) in contracts;
- Fullfilment (al-wafā^ʿ) of contracts and conditions;
- Prohibition of ribā (interest and usury);
- Prohibition of ghish (fraud);
- Prohibition of i^ḥtikār (hoarding);
- Prohibition of ^ẓulm (injustice) and realisation of ^ʿadl (justice);
- Provision of i^ḥsān (charity/ best practice);
- Protection of wealth;
- Equitable distribution wealth and et cetera.

The flexible Shariah rulings of Fiqh Muamalat are generally those rulings that relate to the methods (al-wasā^ʿil) or that are based on juristic exertion (al-ijtihād) and customary practices (al-^ʿurf). These rulings can change accordingly with the change and development of the methods and technology or the

change of circumstances and customs. For example: the change and development of money.

Before the arrival of Islam, people of Mecca use the gold and silver coins produced by the Romes (Byzantine) and Persians (Sassanian) accordingly and some coins from Yemen (Himyarite). They have standard weights for weighing gold and silver coins. The weight unit for gold coins is known as “Dīnār” and the weight unit for silver coins is known as “Dirham”. In the classical Islamic jurisprudence, gold and silver currencies are named as al-nuqūd. Al-Nuqūd is subject to the regulation of zakāh and ribā according to al-ijmā^c (the consensus of Islamic jurists).

With the legislation of Zakāh during the Medina era, the Prophet ﷺ has acknowledged the gold and silver currency which has been used by the people of Mecca as the standard weight for zakāh on nuqūd since there were different gold and silver standards at that time. The hadīth is narrated by Abū Dawūd and al-Nasā’ī where the Prophet ﷺ is reported to say:

الْوَزْنُ وَزْنُ أَهْلِ مَكَّةَ وَالْمِكْيَالُ مِكْيَالُ أَهْلِ الْمَدِينَةِ

Meaning: “The weight (al-wazn) is that of Mecca community, and the measure (al-kayl) is that of Medina community.”

This hadith is evident on the Shariah’s acknowledgment of ‘urf that is not contradicted with the Shariah. The dīnār and dirham that played the role as the main medium of exchange in the Islamic countries has not been used as currency by the Muslims since the fall of Ottoman Empire. They have been replaced by paper money nowadays. However, these paper moneys are still subject to the rule of zakāh and ribā even though the form of money has changed from gold and silver to paper². Based on the example explained, the reader could observe that the fixed Shariah rulings such as ribā and zakāh on money have never changed even though the form of money has changed (the flexible Shariah ruling). Thus, the Fiqh Muamalat feature of combining between permanence (al-thabāt) and flexibility (al-murūnah) is obvious in the example.

1.7 The Four Introductory Theories of Fiqh Muamalat

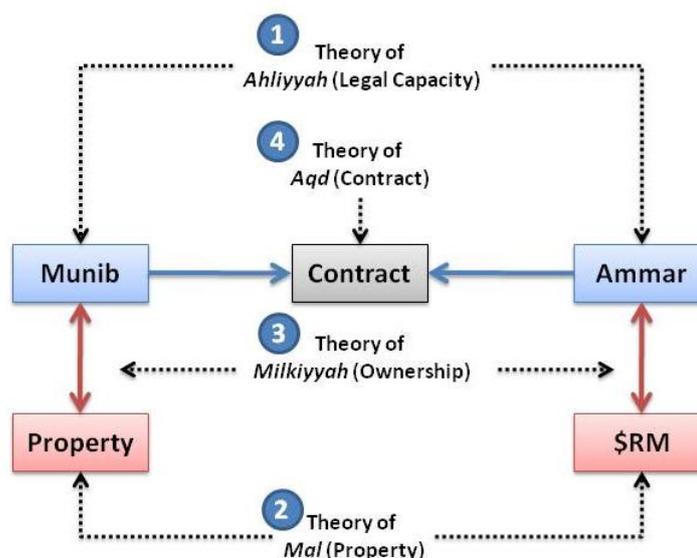
Having discussed the general doctrines of Shariah in dealing with Mu^cāmalāt matters, the discussion shall now go to the most basic concepts or theories of Fiqh Muamalat. There are four theories that form the pre-requisites of Fiqh

Muamalat discipline as they are applied in any form of Mu^ḥamalāt contracts. In other words, the theories underlie the framework of Mu^ḥamalāt dealings and thus, should be the early or introductory topics of Fiqh Muamalat learning and discussion. The four theories are:

1. Theory of Ahliyyah (Legal Capacity)
2. Theory of Māl (Property)
3. Theory of Milkiyyah (Ownership)
4. Theory of ^ḥAqd (Contract)

The theory of Ahliyyah discusses the types of legal capacity occupied by a person in his life stages. Thus, it also touches on the required legal capacity that must be occupied by the contracting parties in financial transactions. Next, the theory of Māl concerns the subject matter of a contract i.e. the property. It discusses the nature and types of property in Islamic jurisprudence. Then, the theory of Milkiyyah describes the relationship between the property and its owner. The section talks about types, methods and scopes of ownership in Islamic jurisprudence. Last but not least, the theory of ^ḥaqd portrays the framework or structure of a contract in Islamic jurisprudence. The connection between all these theories in a sale contract is illustrated in the figure below. The following chapters shall discuss the four introductory theories in more details. These four theories constitute the core subjects of this book.

Figure 1.3: The Relationship between the Four Introductory Theories in a Sale Contract Structure



Summary

Fiqh Muamalat is a branch of Fiqh discipline which forms the practical aspects of the Shariah. Thus, it is primarily based on the divine revelation i.e. al-Qur'ān and al-Sunnah. However, the Shariah provides ample rooms for the people to innovate their methods of transactions by outlining the general principles instead of taking a rigid stance towards Mu'āmalāt dealings. Therefore, Fiqh Muamalat does not aim to complicate the dealings between people and institutions. In fact, it aims to facilitate the dealings and avoid unjust exploitation or hostility between the contracting parties.

Key Terms and Glossary

ʿIllah	Ratio decidendi; Legal cause or reason
Fiqh	(i) Islamic jurisprudence (ii) Knowledge, understanding and intelligence (iii) The practical Shariah rulings which are derived from their detailed sources
Fuqahā'	Islamic Jurists
Ḥadīth; Sunnah	The narratives and reports of the deeds and saying of the Prophet ﷺ.
Ḥanābilah	The Islamic Jurists of Imam Ahmad's School of Islamic Jurisprudence (One of the four main Sunni Schools of Islamic Jurisprudence)
Ḥanafiyah	The Islamic Jurists of Imam Abu Hanifah's School of Islamic Jurisprudence (One of the four main Sunni Schools of Islamic Jurisprudence)
Ijtihād	Juristic exertion
Malikiyyah	The Islamic Jurists of Imam Malik's School of Islamic Jurisprudence (One of the four main Sunni Schools of Islamic Jurisprudence)
Maṣlaḥah	Benefit; Interest
Mu'āmalat	Mutual dealings
Mukallaf	The accountable person - who is Muslim, puberscent and sane – could be a real person or legal entity
Qur'ān	The Holy Book of Islam
Shafi'iyyah	The Islamic Jurists of Imam al-Shafi'i's School of Islamic Jurisprudence (One of the four main Sunni Schools of Islamic Jurisprudence)

Shariah	(i) Religion of Islam (ii) Islamic jurisprudence; Islamic Law; Shariah rulings of practical matters (iii) The Texts of al-Quran and al-Sunnah
Tarādī	Mutual consent

Review Questions

1. Define these three terms: Shariah, Fiqh and Mu^ʿāmalāt, and describe the relationship between these terms.
2. Illustrate the position of Fiqh Muamalat in the Shariah.
3. What is the Shariah ruling on the learning of Fiqh Muamalat subject?
4. Describe the salient features of Fiqh Muamalat.
5. Explain the general doctrines of Shariah in dealing with Fiqh Muamalat discipline.

Endnote

¹ This hadīth is known as “hadīth of Jibrīl”. Imām al-Nawāwī quoted this hadīth as one of the 42 hadīths that form the core of the Shariah. The hadīth is as follows: ʿUmar al-Khaṭṭāb رضي الله عنه said:

بَيْنَمَا نَحْنُ عِنْدَ رَسُولِ اللَّهِ ﷺ ذَاتَ يَوْمٍ، إِذْ طَلَعَ عَلَيْنَا رَجُلٌ شَدِيدٌ، بَيَاضِ الشَّيَابِ، شَدِيدُ سَوَادِ الشَّعْرِ، لَا يُرَى عَلَيْهِ أَثَرُ السَّفَرِ، وَلَا يَعْرِفُهُ مِنَّا أَحَدٌ، حَتَّى جَلَسَ إِلَى النَّبِيِّ ﷺ، فَأَسْنَدَ رُكْبَتَيْهِ إِلَى رُكْبَتَيْهِ، وَوَضَعَ كَفَّيْهِ عَلَى فِخْدَيْهِ، وَقَالَ: يَا مُحَمَّدُ، أَخْبِرْنِي عَنِ الْإِسْلَامِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: " الْإِسْلَامُ أَنْ تَشْهَدَ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ ﷺ وَتُقِيمَ الصَّلَاةَ، وَتُؤْتِيَ الزَّكَاةَ، وَتَصُومَ رَمَضَانَ، وَتَحُجَّ الْبَيْتَ إِنْ اسْتَطَعْتَ إِلَيْهِ سَبِيلًا "، قَالَ: صَدَقْتَ، قَالَ: فَعَجَبْنَا لَهُ يَسْأَلُهُ، وَيُصَدِّقُهُ، قَالَ: فَأَخْبِرْنِي عَنِ الْإِيمَانِ، قَالَ: " أَنْ تُؤْمِنَ بِاللَّهِ، وَمَلَائِكَتِهِ، وَكُتُبِهِ، وَرُسُلِهِ، وَالْيَوْمِ الْآخِرِ، وَتُؤْمِنَ بِالْقَدَرِ خَيْرِهِ وَشَرِّهِ "، قَالَ: صَدَقْتَ، قَالَ: فَأَخْبِرْنِي عَنِ الْإِحْسَانِ، قَالَ: " أَنْ تَعْبُدَ اللَّهَ كَأَنَّكَ تَرَاهُ، فَإِنْ لَمْ تَكُنْ تَرَاهُ، فَإِنَّهُ يَرَاكَ

"، قَالَ: فَأَخْبِرْنِي عَنِ السَّاعَةِ، قَالَ: مَا الْمَسْئُولُ عَنْهَا بِأَعْلَمَ مِنَ السَّائِلِ، قَالَ: فَأَخْبِرْنِي عَنِ أَمَارَتِهَا، قَالَ: " أَنْ تَلِدَ الْأُمَةُ رَبَّتَهَا، وَأَنْ تَرَى الْحُفَاةَ الْعُرَاةَ الْعَالَةَ رِعَاءَ الشَّاءِ، يَتَطَاوَلُونَ فِي الْبُنْيَانِ "، قَالَ: ثُمَّ انْطَلَقَ فَلَبِثْتُ مَلِيًّا، ثُمَّ قَالَ لِي: يَا عُمَرُ أَتَدْرِي مَنْ السَّائِلُ؟ قُلْتُ: اللَّهُ وَرَسُولُهُ أَعْلَمُ، قَالَ: فَإِنَّهُ جِبْرِيلُ، أَتَاكُمْ يُعَلِّمُكُمْ دِينَكُمْ.

Meaning: "While we were sitting with the Prophet ﷺ, one day a man came up to us whose clothes were extremely white, whose hair was extremely black, upon whom traces of travelling could not be seen, and whom none of us knew, until he sat down close to the Prophet ﷺ, so that he rested his knees upon his knees and placed his two hands upon his thighs and said: 'Muhammad, tell me about Islām.' The Prophet ﷺ said: 'Islām is that you witness that there is no god but Allah and that Muhammad is the Messenger of Allah, and you establish the prayer, and you give the Zakāh, and you fast Ramaḍān, and you perform the hajj of the House if you are able to take a way to it.' He said, 'You have told the truth,' and we were amazed at him asking him and [then] telling him that he told the truth. He said, 'Tell me about Īmān.' He said, 'That you affirm Allah, His angels, His books, His messengers, and the Last Day, and that you affirm the Decree, the good of it and the bad of it.' He said, 'You have told the truth.' He said, 'Tell me about Iḥsān.' He said, 'That you worship Allah as if you see Him, for if you don't see Him then truly He sees you.' He said, 'Tell me about the Hour.' He said, 'The one asked about it knows no more than the one asking.' He said, 'Then tell me about its tokens.' He said, 'That the female slave should give birth to her mistress, and you see poor, naked, barefoot shepherds of sheep and goats competing in making tall buildings.' He went away, and I remained some time. Then he asked, 'Umar, do you know who the questioner was?' I said, 'Allah and His Messenger know best.' He said, 'He was Jibrīl who came to you to teach you your al-dīn (religion).'
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² A number of the Islamic scholars nowadays call for returning to the use of Islamic gold dinar in payments settlements, savings, investment, hedging instruments against inflation and even as main currencies. Tun Mahathir has initiated the movement to reconsider the use of dīnār for Bilateral Payments Arrangements (BPA) after the 1997 Asian financial crisis. The movement has created awareness amongst the public on the salient qualities of gold currency.

Several Malaysian financial institutions are now offering gold saving and investment accounts such as Maybank and Public Bank. The latest development related to dinar in Malaysia is the introduction of Kelantan Dinar by the Kelantan State Government on 12th August 2010. However, the issue of returning to the use of gold currency is still under debate and consideration by many scholars. For more critical discussions of the topic, kindly refer to the writings of Tun Mahathir, Dr. Ahamed Kameel Mydin Meera and Sheikh Imran Hosein.