THE FOUR INTRODUCTORY THEORIES OF FIQH MUAMALAT
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THE FOUR INTRODUCTORY THEORIES OF FIQH MUAMALAT

BY:

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Allah ﷺ said (al-Nisā':29):

"يا أيّها الذين آمنوا لا تأكلوا أموالكم بباطل إلا أن تكون تجارة عن تراضٍ منكم وَلَا تَقْتُلُوا أَنفُسَكُمْ 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 good-will: 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‘āmalāt 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‘arā’:88-89).

AUTHORS
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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 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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CHAPTER 1
THE POSITION OF FIQH MUAMALAT IN THE SHARIAH

This chapter aims to:

✓ Explain the meaning of Shariah, Fiqh and Mu’āmalāt 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’āmalāt 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’an 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 yajmā‘ al-mā’). Then, it is used for several other meanings such as straight path (al-tariq al-mustaqīm), method (al-manhaj), goodness (al-khayr), doctrine (al-madhhab) 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-dīn” 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:


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-ahkām al-sharī‘iyah al-‘amaliyyah). It is also observed that the word “Shariah” in the Islamic literatures has been used to correspond to the texts of al-Qur‘ān 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:

العِلْمُ بِالْشَّيْءِ؛ وَالْفُهْمُ لَهِ 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:

من يُرِدْ اللَّهُ بِهِ خَيْرًا يُفْقِهْهُ فِي الدَّيْنِ

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:

العِلْمُ بِالأَخْكَامِ الشَّرْعِيَّةِ العَمَلِيَّةِ الْمُكْتَسَبُ مِنْ أَدِلَّتهَا 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 Imam al-Shafi’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 Fiqh”. 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-Zuhaylī (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-Zuhaylī (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
b. Fiqh al-Ahkām 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.


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-Zuhaylī (1997) in his magnum opus i.e. al-Fiqh al-Islāmi wa adillatuh are perhaps the most comprehensive one to illustrate the wide-ranging subject matters of Fīqḥ discipline.

1.2.3 Mu‘āmalāt

Muʿāmalāt literally means mutual dealings. Muʿāmalāt is the plural term of muʿāmalah (mutual dealing) which is derived from the root word of āmala (mutually deal) and āmila (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-Ahkām al-Adlīyyah. 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-Iqtiṣādiyyah 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 Muʿāmalāt. The relationship between these three terms could be illustrated in Figure 1.1.

![Figure 1.1: The Relationship between Shariah, Fiqh and Muʿāmalāt terms](image)

1.3 Position of Fiqh Muamalat in the Shariah

In a very well-known hadīth' reported by ʿUmar al-Khaṭīb, the Prophet 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) Ḥaḍrāt. 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. Ḥaḍrāt is the awareness and attention of a person to Allah 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 Ḥaqīqah 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.

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-Āḥkām al-Adliyyah and Prof. Dr. Wahbah al-Zuḥaylī (as discussed in the earlier sections).
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 ʿīlm 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, ʿUmar Ibn al-Khaṭṭāb ﷺ and ʿAlī Ibn Abī Ṭālib ﷺ, especially on those who trade in the market. ʿUmar Ibn al-Khaṭṭāb ﷺ 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 الْتُّجَّارِ، لَأَبِيْعُ فِي سُوقِنَا مَنْ لَأَفْقَهُ، وَإِلَّا أَكَلَ الرِّبَا رَضِيَ أَمَّ أُيُّى

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.”


In other occasion, it was narrated that:

جَاءَ رِجْلٌ إِلَى عَلَّي بْنِ أَبِي طَالِبٍ، فَقَالَ: يَا أُمِّي الْمُؤْمِنِينَ إِنِّي أَرَيدُ الْتُّجَّارَةَ، فَذَاعَ لِي، فَقَالَ عَلَىٰ: أَوْ فَقَهْتُ فِي دِينِ اللَّهِ؟ قَالَ الْرِّجْلُ: أَوْ يَكُونَ بِغَضُرِ ذَلِكَ، قَالَ عَلَىٰ: وَنَحْكُ، أَفَيْهِ مَنْ يُتَاجِرَ?

Meaning: “A person has come to meet ʿAlī Ibn Abī Ṭālib ﷺ 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
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-ʿibādāt from the perspective of Islamic jurisprudence in several ways. Qalʿahjī (2000) outlines the main salient features of Fiqh Muamalatvis-a-vis Fiqh al-ʿibādāt (See Table 1.1).
Table 1.1: Salient Features of Fiqh Muamalat vis-à-vis Fiqh Ibadat

<table>
<thead>
<tr>
<th>Fiqh Muamalat</th>
<th>Fiqh al-ʿĪbādāt</th>
</tr>
</thead>
<tbody>
<tr>
<td>The primary ruling is permissibility except where the Shariah states prohibition.</td>
<td>The primary ruling is impermissibility except where the Shariah states permission.</td>
</tr>
<tr>
<td>Fatwā or verdict in based on the most appropriate (al-aysār) opinion.</td>
<td>Fatwā or verdict is based on the most cautious (al-ḥawāt) opinion.</td>
</tr>
<tr>
<td>Legal rulings are heavily based on rational reasoning (ʿillah ʿaqliyyah)</td>
<td>Legal rulings cannot be heavily based on rational reasoning (it is a submissive action - taʿabbudi).</td>
</tr>
<tr>
<td>Specific Quranic and Sunnah resources are few and general in nature; hence the rational thinking can be applied extensively.</td>
<td>Specific Quranic and Sunnah resources are many and detailed in nature; hence it cannot be developed extensively by rationalization.</td>
</tr>
</tbody>
</table>

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. ʿHanafiyyah, Mālikīyyah, Shāfiʿīyyah and ʿHanābilah, 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 ʿĪbādāt. 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 Muʿāmalāt

<table>
<thead>
<tr>
<th>No.</th>
<th>General Doctrines</th>
<th>Arabic Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Fiqh Muamalat is based on General Principles Basis (rather on Detailed Descriptions)</td>
<td>فقه المعاملات يتقوم على أساس المبادئ العامة (بِرَاءة وِضُوْرِ الْإِبَاحَة)</td>
</tr>
<tr>
<td>2.</td>
<td>The Primary Ruling for Contracts and Conditions in Financial Dealings is Permissibility (unless Proven Otherwise)</td>
<td>الأصل في المعاملات من عقود ومـُرَوْنُب الإِبَاحَة</td>
</tr>
<tr>
<td>3.</td>
<td>Fiqh Muamalat is Established on the Consideration of Legal Causes and Interests</td>
<td>فقه المعاملات مبني على مرااعاة العِلَلِ والمصالح</td>
</tr>
<tr>
<td>4.</td>
<td>Fiqh Muamalat Combines between Permanence and Flexibility</td>
<td>فقه المعاملات يجمع بين الثبات والمؤونة</td>
</tr>
</tbody>
</table>

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-Qurʾān and al-Sunnah usually come in the form of general foundations (mabādiʿ ʿāmmah) and universal principles (qawāʿid kullīyyah) 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-Qurʾān and al-Sunnah for brevity.

Allah ﷻ said:

يا أَيُّهَا الْذِّينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةٌ عَنْ تَرَابِضٍ مِنَّكُمْ

Meaning: “O believers! Do not consume (use) your wealth among yourselves illegally, but rather trade with it by mutual consent.” [al-Nisāʾ:29]
The prohibition of “bātīl” 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  reported that:

\[
\text{نَهَىٰ رَسُولُ اللَّهِ ﷺ عَنْ بِيعِ الْغَرَّ}
\]

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 hadith 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-Qur’ān and al-Sunnah. In this regard, the Prophet ﷺ said:

\[
\text{وَصَلُّوا كَمَا رَأَيْتُمُونِي أَصْلَى}
\]

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

and

\[
\text{خُذُوا عَنِّي مَنابِكُمْ}
\]

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 (khāss) 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:

\[
\text{الصُّلْحُ جَائِز بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحُ حَرَّمَ خَلاَلًا أَوْ أَحَلَّ حَرَّمَ وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شُرَطُ حَزََّ خَلاَلًا أَوْ أَحَلَّ حَزََّ}
\]
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-ṣulh (reconciliation) or to stipulate conditions in their dealings as long as no prohibited elements involved. This Shariah doctrine for Muʿamalat 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 rakāt 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 Muʿamalāt 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-Maʿidah: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-Maʿidah: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-tasʿīr) when the Companions asked Him to do
so. However, the later Islamic jurists have discussed the issue of al-tasā‘ir and some of them allow the practice with certain conditions due the change of conditions, traders’ behaviour and maṣlaḥah 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‘) 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 (Maqāṣid al-Shariah) i.e. the protection of wealth (hifz 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 maṣlaḥah. 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-tarāḍī) in contracts;
- Fullfilment (al-wafā‘) of contracts and conditions;
- Prohibition of ribā (interest and usury);
- Prohibition of ghish (fraud);
- Prohibition of ihtikār (hoarding);
- Prohibition of zulm (injustice) and realisation of ḍāl (justice);
- Provision of ilṣān (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‘īl) or that are based on juristic exertion (al-ijtihād) and customary practices (al-urf). 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’ (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 hadith 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‘āmalat 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 Muʿāmalāt contracts. In other words, the theories underlie the framework of Muʿāmalāt 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 ʿAqd (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 ʿAqd 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

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>‘Illah</td>
<td>Ratio decidendi; Legal cause or reason</td>
</tr>
<tr>
<td>Fiqh</td>
<td>(i) Islamic jurisprudence</td>
</tr>
<tr>
<td></td>
<td>(ii) Knowledge, understanding and intelligence</td>
</tr>
<tr>
<td></td>
<td>(iii) The practical Shariah rulings which are derived from theirs detailed sources</td>
</tr>
<tr>
<td>Fuqahā’</td>
<td>Islamic Jurists</td>
</tr>
<tr>
<td>Ḥadīth; Sunnah</td>
<td>The narratives and reports of the deeds and saying of the Prophet</td>
</tr>
<tr>
<td>Ḥanābilah</td>
<td>The Islamic Jurists of Imam Ahmad’s School of Islamic Jurisprudence</td>
</tr>
<tr>
<td>Ḥanafiyyah</td>
<td>The Islamic Jurists of Imam Abu Hanifah’s School of Islamic Jurisprudence</td>
</tr>
<tr>
<td>Ijtihād</td>
<td>Juristic exertion</td>
</tr>
<tr>
<td>Malikiyyah</td>
<td>The Islamic Jurists of Imam Malik’s School of Islamic Jurisprudence</td>
</tr>
<tr>
<td>Maṣlaḥah</td>
<td>Benefit; Interest</td>
</tr>
<tr>
<td>Mu‘āmalat</td>
<td>Mutual dealings</td>
</tr>
<tr>
<td>Mukallaf</td>
<td>The accountable person - who is Muslim, puberscent and sane – could be a real person or legal entity</td>
</tr>
<tr>
<td>Qur’ān</td>
<td>The Holy Book of Islam</td>
</tr>
<tr>
<td>Shafi‘iyyah</td>
<td>The Islamic Jurists of Imam al-Shafi‘i’s School of Islamic Jurisprudence</td>
</tr>
</tbody>
</table>
Review Questions

1. Define these three terms: Shariah, Fiqh and Mu'amalat, 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 hadith is known as “hadith of Jibril”. Imām al-Nawāwī quoted this hadith as one of the 42 hadiths that form the core of the Shariah. The hadith is as follows: Ḥārūn al-Khaṭṭāb ﭔ said:

بيئنا نحن عند رسول الله ﷺ ذات يوم، إذ طلع علينا رجل شديد، بياض الظاب، شديد سواد الشعر، لا يرى عليه أثر السفر، ولا يعرفه من أحد، حتى جلس إلى النبي ﷺ، فأسند ركبته إلى ركبته، ووضع كفاه على فخذينه، وقال: يا محمد، أخبرني عن الإسلام، فقال رسول الله ﷺ: " الإسلام أن تشهد أن لا إله إلا الله، وأن محمدا رسول الله ﷺ وقيم الصلاة، وتنبي ركاه، وتصوم رمضان، وتخخ البيت إن استطعت إليه سبيله "، قال: صدفت، قال: فعجبنا له يسأله، ويتصدف، قال: فأخبرني عن الإيمان، قال: " أن تؤمن بالله، وملائكته، وكتبه، ورسله، واليوم الآخر، وتؤمن بالقدر حيوره وشريكه "، قال: صدفت، قال: فأخبرني عن الإحسان، قال: " أن تعبد الله كأنك تراه، فإن لم تكن تراه، فإنّه يراك".

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 Islâm.’ The Prophet ﷺ said: 'Islâm 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 Zakâh, and you fast Ramaḏān, 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 Îmân.’ 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 Ihsân.’ 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 Jibrîl who came to you to teach you your al-dîn (religion).’

[www.sunnipath.com]

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 dinâr 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.