



Lexicon of Financial and Economic Terms

in the Language of Fiqh Scholars



By

Dr. Nazih Hammad

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translated in-house by

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In the pursuit of spreading knowledge and supporting the Islamic banking industry, Bank AlJazira presents this publication as a supporter and contributor to its dissemination.

Mr. Naif A. Al Abdul Kareem
CEO and MD



Preface

In the Name of Allah, the Entirely Merciful, the Especially Merciful

All praise is due to Allah, the Sovereign, the All-Wise, the Munificent One, the Most Generous, the All-Mighty, the Mercy-Giving, Who has created the heavens and the earth by His omnipotence, and arranged every affair of the worldly life and the Hereafter with His wisdom. I praise Him, Exalted and Glorified be He, for all that He has predestined and decreed. I seek His help, knowing that there is no Lord other than Him, and no god but Him. I seek His guidance, as it does not lead astray the one upon whom He has bestowed His grace, and whoever knows that none except Him forgives his sins and brings salvation to him.

Allah has blessed me with His grace, generosity, and benevolence to compile this concise and inclusive lexicon with meticulous and conscientious craftsmanship, using a rich and clear language, as well as a precise scholarly interpretation of financial and economic terms in the language of Fiqh scholars. After reflection and contemplation, I have written it with deep insight and deliberation, and formulated it in a smooth and easy-to-read style with clear and simple expressions, hoping that it pleases Allah, serves its purpose, achieves its goal, and aids the progress of Islamic banking activities. May it be beneficial to researchers, students, authors, and those who are interested in Islamic economics and contemporary financial and banking transactions. May Allah make it in my righteous deeds on the Day of Judgment.

Thankfully, Dar Al-Qalam in Damascus has published this lexicon in an elegant and refined format in the year 2008 AD, and it was widely received by acceptance of many scholars, researchers, and contemporaries. Further, it has been praised by a large number of scholars who have thorough knowledge of Shari'ah sciences and whose footing are firmly established therein. Allah does not grant infallibility to any book other than His Noble Book, and the fair-minded person will pardon a few mistakes of someone whose valid interpretative inferences are so many.

Now, 15 years since the first edition of this lexicon was released, and sold out, I am delighted that Dar Al Maiman will graciously reprint and publish it under the sponsorship and with the support of Bank Aljazira, a further deepening of its benefit and spreading useful knowledge. May Allah accept it with the best reward and recompense.

Dr. Nazih Hammad

Introduction

of the First Edition

We start with the name of Allah, the One from His commands we seek guidance, and with what He has revealed to our chosen Prophet Muḥammad (peace and blessings of Allah be upon him) we are guided and enlightened. We ask our Lord, Glory be to Him, to spare us mistakes, inspire us to what is right, set us apart from faults, and direct us to what He loves and is pleased with.

The observer of sciences, knowledge, professions, and crafts, and the contemplator of their conditions and paths, notices clearly that the people of every art and craft have certain words that they use to understand one another, and particular terms that they agree upon among themselves, which are specific to them and no one else shares them in using these words and terms in the same sense and connotation. So, since ancient times and centuries ago, we found that the philosophers, sages, syntacticians, rhetoricians, ḥadīth scholars, Fiqh scholars, Uṣūl scholars, theorists, and others were accustomed to using particular terms in the basics of their researches, the branches of their studies, and the different types of their writings, so that no one could dive into their fields, understand their sciences, and comprehend their statements and views to know their meanings and connotations, or find out their purposes thereof.

As a result, early and late scholars were concerned with defining, collecting and explaining the terms of each science in separate compilations, some of which are specialized in the terms of a specific art or branch of knowledge, while others are compiling all the terms of different sciences. Therefore, we found books relating to the syntax definitions: such as “*Hudūd Al-Farrāʾ*”⁽¹⁾ and “*Hudūd Al-Fākihī*”;⁽²⁾ and books relating to the

(1) “*Bughyat Al-Wuʿāh*” by As-Suyūṭī, [2: 333].

(2) Printed with the verification of Nasalis and a group in Calcutta, India, 1862 AD.

Sufism definitions: such as “*Istilâhât As-Sufiyyh*” by Al-Kâshânî;⁽¹⁾ and books relating to the philosophers terms: such as “*Al-Hudûd*” by Ibn Sînâ,⁽²⁾ “*Al-Hurûf*” by Al-Fârâbî,⁽³⁾ and “*Al-Hudûd*” by Al-Ghazâlî;⁽⁴⁾ and books relating to the sages and theologians terms: such as “*Al-Mubîn Fî Sharh Ma ‘ânî Alfâz Al-Hukamâ’ Wa Al-Mutakallimîn*” by Sayfud-Dîn Al-Âmidî;⁽⁵⁾ and books relating to the Fiqh terms: such as “*Hudûd Ibn ‘Arafah Al-Mâlikî*”,⁽⁶⁾ “*Hudûd Ibn Nujaym Al-Hanafî*”,⁽⁷⁾ and “*Talibat At-Talabah*” by Najmud-Din An-Nasafi,⁽⁸⁾ and “*Anîs Al-Fuqahâ*” by Al-Qûnawî;⁽⁹⁾ and books relating to the Uşûl scholars’ terms: such as “*Al-Hudûd Fî Al-Uşûl*” by Abû Al-Walîd Al-Bâjî,⁽¹⁰⁾ “*Al-Hudûd Fî Al-Uşûl*” by Ibn Fuwraq,⁽¹¹⁾ and “*Al-Hudûd Al-Anîqah Wa At-Ta’rîfât Ad-Da’iqah*” by Shaykhul-Islâm Zakariyyâ Al-Ansârî.⁽¹²⁾

Further, you could notice other books concerned with defining the terms used by the scholars of various arts, such as: Fiqh scholars, exegetes,

- (1) Published by the Egyptian General Book Organization in Cairo, with the verification of Dr. Muḥammad Kamâl Ja‘far, 1981 AD.
- (2) Verified and published by Dr. ‘Abdul-Amîr Al-A‘sam within his book entitled: “*Al-Mustalah Al-Falsafi ‘Inda Al-‘Arab*”, Baghdad, 1985 AD.
- (3) Verified by Dr. Muḥsin Maḥdî, and published by Dar Al-Mashriq, Beirut, 1970 AD.
- (4) Verified and published by Dr. ‘Abdul-Amîr Al-A‘sam within his book entitled: “*Al-Mustalah Al-Falsafi ‘Inda Al-‘Arab*”, Baghdad, 1985 AD.
- (5) Verified and published by Dr. Ḥasan Maḥmûd Ash-Shâfi‘î, Cairo, 1983 AD; and by Dr. ‘Abdul-Amîr Al-A‘sam within his book entitled: “*Al-Mustalah Al-Falsafi ‘Inda Al-‘Arab*”, Baghdad, 1985 AD.
- (6) Printed with its “*Sharh*” at Ar-Rassâ‘ At-Tunisi in a lithographed edition, Fez, 1316 AH; and at Al-Maṭba‘ah At-Tûnusiyyah, Tunis, 1350 AH; and published lately by Dâr Al-Gharb Al-Islâmî, Beirut, 1993 AD.
- (7) Printed within Ibn Nujaym’s Messages at the end of the book: “*Ghamz ‘Uyûn Al-Baṣâ‘ir ‘Alâ Al-Ashbâh Wan-Nazâ‘ir*” by Al-Ḥamawî. Al-Maṭba‘ah Al-Âmirah: Istanbul, 1290 AH.
- (8) Printed at Al-Maṭba‘ah Al-Âmirah, Istanbul, 1311 AH; and then republished - with the verification of Khâlid Al-‘Akk - by Dâr An-Nafâ‘is, Beirut, 1416 AH.
- (9) Verified by Dr. Aḥmad ‘Abdur-Razzâq Al-Kabsî, and published by Maktabat Al-Wafâ‘, Jeddah, 1406 AH.
- (10) Verified by Dr. Nazîḥ Ḥammâd, and published by Mu‘assasat Az-Zughbî, Beirut, 1393 AH.
- (11) Verified by Dr. Muḥammad As-Sulaymânî, and published by Dâr Al-Gharb Al-Islâmî, Beirut, 1999 AD.
- (12) Verified by Dr. Mâzin Al-Mubâarak, and published by Dâr Al-Fikr Al-Mu‘âṣir, Beirut, 1411 AH.

rhetoricians, syntacticians, philosophers, theologians, ḥadīth scholars, Uṣūl scholars ... etc., so that their classification was not intended to define the terms used by the scholars of one art without the others. This type of classification includes, for example: “*At-Ta’rīfāt*” by Ash-Sharīf Al-Jurjānī,⁽¹⁾ “*Al-Kullīyyāt*” by Al-Kafawī,⁽²⁾ “*At-Tawqīf ‘Alā Muḥimmāt At-Ta’arīf*” by Al-Munāwī,⁽³⁾ “*Kashshāf Istilāḥāt Al-Funūn*” by At-Tahānwī,⁽⁴⁾ and “*Dustūr Al-‘Ulamā*” by Judge Al-Aḥmad Nikrī.⁽⁵⁾

On the other hand, the contemplator of our heritage could find a kind of compilations that are specialized in explaining the meanings of the Fiqh-based terms contained in some texts, commentaries, or famous compilations in different Fiqh schools. This kind of compilations would explain the linguistic meaning of words if they were unfamiliar, elucidate their terminological meaning if they had an idiomatic indication, and explain their meaning if they had a special Shari’ah meaning transferred to it. The most important of these compilations include: “*Az-Zāhir Fī Gharīb Alfāz Ash-Shāfi’i*” by Al-Azhari;⁽⁶⁾ “*Hilyat Al-Fuqahā*” by Ibn Fāris (in the explanation of the unfamiliar expressions of Ash-Shāfi’i mentioned in “*Mukhtaṣar Al-Muzanī*”);⁽⁷⁾ “*Tahrīr Alfāz At-Tanbīh Lish-Shirāzi*” by An-Nawawī;⁽⁸⁾ “*An-Nazm Al-Musta’dhab Fī Tafsīr Gharīb Alfāz Al-Muḥadhdhab*” by Ibn Battāl Ar-Rakbī;⁽⁹⁾ “*Al-Mughnī Fī Al-Inbā’ ‘An Gharīb Al-Muḥadhdhab Wa Al-*

(1) Printed in Istnabul, 1837 AD; Leipzig, 1845 AD; Cairo, 1938 AD; and Tunis, 1971 AD.

(2) Printed at Maṭba‘at Bulāq, 1281 AH; Al-Maṭba‘ah Al-‘Āmirah; Istanbul, 1287 AH; a lithographed edition in Iran; and edited lately by ‘Adnān Darwīsh and Muḥammad Al-Misrī, Damascus, 1982 AD.

(3) Published - with the verification of Dr. Muḥammad Radwān Ad-Dāyah - by Maktabat Ar-Rushd, Riyadh, 1990 AD.

(4) Printed in full in Calcutta, India, 1862 AD; and then reprinted - with the verification of Dr. ‘Alī Dahrūj - by Maktabat Lubnān, Beirut, 1996 AD.

(5) Printed in Hyderabad, Deccan, India, 1329 AH; and then reprinted - with the verification of Dr. ‘Alī Dahrūj - by Maktabat Lubnān, 1997 AD.

(6) Verified by Dr. Muḥammad Jabr Al-Alfi, and published by the Ministry of Awqaf and Islamic Affairs, Kuwait, 1399 AH. It is republished by Dār Al-Bashā’ir Al-Islāmiyyah, Beirut, 1419 AH, and published - with the edition of Dr. ‘Abdul-Mun‘im Bushnāqī - by Ash-Sharikah Al-Muttaḥidah Li At-Tawzī‘, Beirut, 1419 AH.

(7) Verified by Dr. ‘Abdullāh At-Turkī, and published by Ash-Sharikah Al-Muttaḥidah Li At-Tawzī‘, Beirut, 1403 AH.

(8) Verified by Prof. ‘Abdul-Ghanī Ad-Daqr, and published by Dār Al-Qalam, Damascus, 1408 AH.

(9) Printed at the margin of “*Al-Muḥadhdhab*” by Maṭba‘at Mustafā Al-Bābī Al-Ḥalabī, =

Asmâ” by Ibn Bâtîsh;⁽¹⁾ “*Al-Misbâh Al-Munîr Fî Gharîb Ash-Sharh Al-Kabîr*” by Al-Fayyûmî;⁽²⁾ “*Al-Mughrib Fî Tartîb Al-Mu‘rib*” by Al-Muttarrizî;⁽³⁾ “*Sharh Gharîb Alfâz Al-Mudawwanah*” by Al-Jubbî;⁽⁴⁾ “*Ghurur Al-Maqâlah Fî Sharh Gharîb Ar-Risâlah*” by Al-Maghrâwî;⁽⁵⁾ “*Ad-Durr An-Naqî Fî Sharh Alfâz Al-Khiraqî*” by Yûsuf Ibn ‘Abdul-Hâdî;⁽⁶⁾ “*Al-Muṭli ‘Alâ Abwâb Al-Muqni*” by Al-Ba‘lî;⁽⁷⁾ “*Tahdhîb Al-Asmâ Wa Al-Lughât*” by An-Nawawî (in which he explained the unfamiliar expressions of the six famous books: “*Mukhtasar Al-Muzanî, Al-Muhadhdhab, At-Tanbîh, Al-Wasîl, Al-Wajiz, and Ar-Rawḍah*”).⁽⁸⁾

There is no question that these valuable and precious compilations are beneficial for the contemporary studier of Islamic systems and the researcher into Fiqh-based theories and Shari‘ah rulings in terms of recognizing the connotations of many terms circulated among Fiqh scholars, and used with idiomatic meanings in their books. However, these compilations do not achieve the researcher’s purpose or give him a sense of closure in many places and cases because most of these terms are arranged in order according to the Fiqh sections, and in accordance with the compilations that each author has intended to serve and explain their unfamiliar words. Further, the place of occurring the word with an idiomatic connotation differs according to the difference of Fiqh schools’ books in arranging the sections and chapters

= Egypt, 1379 AH. It is republished - with the verification of Dr. Muṣṭafâ ‘Abdul-Hafîz Sâlim - by Al-Maktabah At-Tijâriyyah, Makkah Al-Mukarramah, 1408 AH (Part I), 1411 AH (Part II).

- (1) Verified by Dr. Muṣṭafâ ‘Abdul-Hafîz Sâlim, and published by Al-Maktabah At-Tijâriyyah, Makkah Al-Mukarramah, 1411 AH.
- (2) Printed at Al-Maṭba‘ah Al-Amîriyyah, Bulâq, 1324 AH.
- (3) Printed in Hyderabad, Deccan, India, 1328 AH, and then republished - with the verification of Prof. Maḥmûd Fâkhûrî and Prof. ‘Abdul-Hamîd Mukhtâr, Aleppo, 1979 AD.
- (4) Verified by Muḥammad Maḥfûz, and published by Dâr Al-Gharb Al-Islâmî, Beirut, 1402 AH.
- (5) Verified by Muḥammad Abû Al-Ajḡân and Al-Hâdî Hammû, and published by Dâr Al-Gharb Al-Islâmî, Beirut, 1406 AH.
- (6) Verified by Dr. Raḍwân Ibn Gharbiyyah, and published by Dâr Al-Mujtama‘, Jeddah, 1411 AH.
- (7) Printed at Al-Maktab Al-Islâmî, Damascus, 1385 AH.
- (8) Edited and printed at Al-Munayriyyah Printing Department, Egypt (no date); and printed - with the verification of ‘Alî Mu‘awwad and ‘Âdil ‘Abdul-Mawjûd - at Dâr An-Nafâ‘is, Beirut, 1426 AH (2005 AD).

and presenting the issues, and it differs also in the compilations of the same Fiqh school, which require great effort and painstaking work in finding the place of word that is intended to know its meaning and connotation. Furthermore, there are a difference in the Fiqh-based connotation of the same word among Fiqh schools according to the differences in their opinions and *Ijtihâds* (Shari'ah-based-reasoning) concerning some of the rulings related to it.

There is another difficulty facing the researcher, which is that all the aforementioned compilations and books do not include an explanation of many Fiqh-based terms that circulate on the tongues of Fiqh scholars, and their intended meaning is ambiguous to many people. Accordingly, the researcher finds nothing but to delve into the depths of various compilations and books in the different schools of Fiqh, and searches into the contents of their sections and chapters spending a lot of valuable time hoping that he could reach his goal and finds his quest.

Moreover, some of the Fiqh-based terms are sectarian in nature (i.e., belong to specific Fiqh school and are not known to all schools of Fiqh). They are used only in one Fiqh school or, sometimes, in two schools, and may or may not have a synonymous term at the rest of Fiqh scholars.

For this reason, there is an urgent need to develop and arrange compilations in alphabetical order that include all the Fiqh-based terms circulated on the tongues of Fiqh scholars, and used in their books at all different schools of Islamic systems: financial, economic, political, criminal, social, behavioral, moral...etc. This is to explain and clarify their idiomatic connotation, and to which extent there are agreement or disagreement among the Fiqh scholars thereon, and the aspects of discrepancy in their concept in case of disagreement, and to mention the Fiqh school using it exclusively among themselves, and what is the idiomatic expression synonymous with it at other Fiqh schools, if any, in an honest and authenticated manner in accordance with the sources that I have mentioned or alluded to them, as well as other considered references in this regard. This shall be in a smooth manner close to understanding, and in clear and straightforward language which clarifies the intended meaning without too much effort or difficulty, and without obscene brevity or tedious verbosity, while maintaining the fluency and eloquence that are distinctive feature of dictionaries, and exquisite Fiqh-based technique, so as not to sever the ties and links between

the original compilations of Fiqh-based heritage and the modern works that are concerned with bringing the heritage closer to perceptions and minds.

Through this humble work, I try to make a contribution towards this project and lay a brick in its foundation, which - as I think - has great importance, crucialness and benefit on the approach I have explained, hoping that other specialists and me will have the opportunity to follow up the path, and develop term dictionaries for other systems in the language of Fiqh scholars, in service of our great Fiqh-based heritage, and in quest of bringing it closer to understanding, and as a prelude to benefiting from its precious components.

It is worth mentioning here that I had already prepared, fifteen years ago, a part of the content of this Lexicon, which was less than half of its current size. I entitled it at that time: “*A Lexicon of Economic terms in the Language of Fiqh Scholars*”, and it was published by the International Institute of Islamic Thought (IIIT) in Washington in 1993 AD. After selling out of its copies, the Institute, in partnership with the International Book House in Riyadh, re-published a second edition (enlarged and revised) with the same title in 1995 AD. After that, I had the opportunity to reconsider it, and make some necessary amendments in terms of deleting, adding, revising, and editing its content, then adding a large amount of the new economic and financial terms with their explanation, so that the Lexicon would become more inclusive of financial and economic terms, because I found them intertwined and integrated, not accepting separation and differentiation. Accordingly, I entitled it: “*A Lexicon of Financial and Economic terms in the Language of Fiqh Scholars*”.

Verily, Allah is the One whose help is to be sought, and upon Him alone is trust and reliance. He is sufficient for us! Most excellent is He in Whom we trust!

Vancouver, Canada

(23-03-1426 AH / 02-05-2005 AD)

Dr. Nazih Hammad

Alif (أ)

• *Ibâhah* (Permissibility) إباحة

Linguistically, the term ‘*Al-Ibâhah*’ denotes permission either to do or not to do (something).

Uṣûl scholars define it as: “A communication from Allah which is connected to the acts of the legally accountable persons, in the form of an option (to do or not to do something) without receiving anything in exchange.”

Fiqh scholars define it as: “A permission to perform an act according to the doer’s will and within the bounds set by this permission.” They classify ‘*Al-Ibâhah*’ according to its source into two categories: The matters permitted by the Legislator, and the matters permitted by the human.

The matters permitted by the Legislator includes all the matters declared as permissible according to evidence from textual references or other sources of Legislation.

As for the matters permitted by the human, it has two types:

- The authority (i.e., permission) over the subject matter is limited to its consumption, such as the permissibility of eating food and

having drink without taking it at feasts.

- The authority (i.e., permission) over the subject matter is limited to its usufruct only, such as the owner’s permission for another person to ride his car, or to reside in his house, and the like.
- These two types entail the permissibility of consumption or use without transferring the ownership of the subject matter or the usufruct to the person to whom the permission is granted.

• *Ibtidâ’ Ad-Dayn Bi Ad-Dayn* (Exchange of a Debt for Another Debt) ابتداء الدين بالدين

The Malikite scholars classify ‘*Bay’ Al-Kâli’ Bi Al-Kâli*’ into three categories: Exchange of a debt for a debt, cancellation of a debt for a debt, and sale of a debt for a debt. Al-Khurashî said, “Although the sale of a debt for a debt (*Bay’ Ad-Dayn Bi Ad-Dayn*) linguistically implies the three categories, the Malikites gives each category a specific name, saying:

“As for the exchange of a debt for another debt (*Ibtidâ’ Ad-Dayn Bi Ad-Dayn*), it is to sell a deferred debt that has not established in liability for another deferred debt. It is form is that a person sells an item clearly described in liability to be delivered at a later specified time in exchange for a deferred price clearly described

Alif

Ba

Tâ’

Thâ’

Jîm

Ha’

Khâ’

Dâl

Dhâl

Râ’

Zây

Sin

Shîn

Sad

Dâd

Tâ’

Zâ’

‘Ayn

Ghayn

Fâ’

Qâf

Kâf

Lâm

Mîm

Nûn

Hâ’

Wâw

Yâ’

in liability. There is no disagreement among Fiqh scholars regarding its prohibition.”

Ibn Taymiyyah confines the meaning of ‘*Bay‘ Al-Kâli‘ Bi Al-Kâli‘*’, which is prohibited by the Prophet Muhammad (peace and blessings of Allah be upon him), to this form that Malikites, against other Fiqh scholars, call: ‘*Ibtidâ‘ Ad-Dayn Bi Ad-Dayn*’. He mentions that this form alone is a point of unanimous agreement concerning what is prohibited of the sale of one debt for another, and his student Ibnul-Qayyim agrees with him in this respect.

In “*Majmû‘ Fatâwâ Ibn Taymiyyah*”, it is stated: “The prohibition is specifically pertaining to ‘*Bay‘ Al-Kâli‘ Bi Al-Kâli‘*’, which is to sell the deferred object that has not been received for the deferred object that has not been received. This is as if he made a *Salam* regarding an item in liability, both of its counter-values are being deferred. This is unanimously impermissible, as it constitutes ‘*Bay‘ Kâli‘ Bi Kâli‘*’.”

• *Ibtizâz* (Extortion)

ابتزاز

The Fiqh usage of the term ‘*Al-Ibtizâz*’ does not go beyond its linguistic meaning, which implies to take something by way of coercion, or to strip someone off, or to take something from someone harshly and forcefully, or to take money by force without a legitimate right.

• *Ibrâ‘* (Release)

إبراء

Linguistically, the term ‘*Al-Ibrâ‘*’ means to release someone from a right due upon him.

In Fiqh terminology, it refers to the renunciation of a person’s right due to him in the liability of another person.

If the right is not established in the person’s liability, such as the right of pre-emption or the right of bequeathed accommodation, then relinquishing it is not considered a release (*Ibrâ‘*), but rather it is mere renunciation (*Isqât*).

Accordingly, the tangible assets non-related to liability are not an object of release. When the release is made for a guaranteed tangible asset, this is considered a release from its value if it has perished due to a cause covered by the guarantee. Otherwise, the release has no effect in case it is made for a tangible asset, so it is permissible to claim the tangible asset despite being released from it.

According to the Hanafite scholars, ‘*Al-Ibrâ‘*’ consists of two parts: The release by way of renunciation of a right, and the release by admission of payment. They considered the first part to be the actual release, because the second part is in the nature of an admission and consists of the confession by one person that he has received what was due to him

from another person. However, they considered both parts as a counterpart for resolving disputes, settling conflicts, and disallowing further claims for the right after being released from it.

• **Al-Ibrâ' Al-Khâss (Special Release)**

الإبراء الخاص

"*Majallat Al-Ahkâm Al-'Adliyyah*" defines the special release (*Al-Ibrâ' Al-Khâss*) as: "The release of a person from an action instituted in respect to a claim relating to some particular matter, such as a house or farm, or the claim for a debt owed by a particular party."

In "*Durar Al-Hukkâm*", 'Alî Haydar states: "The special release has two parts:

First: A release from an action relating to specific wealth. This occurs when one person releases another person from a claim pertaining to specific matter, such as the claim for a house, or a farm, or a horse, or the claim for a debt owed by a particular party, such as the loan, the wrongful appropriation, or the price of sold item. Accordingly, if a person says to another: "I release you from the claim pertaining to such-and-such house," it would be a special release from that claim, and he would no longer have the right to claim that house. However, he still has the right to claim another house, or farm, or debt.

Second: A release from the property of specific wealth. This type has several forms including:

- Special release from the debt, such as when you say: "I release Zayd from such-and-such debt." This release pertains specifically to the debt owed by that party.
- General release from the whole of debts, such as when you say: "I release Zayd from what is due to me in his liability." According to this wording, Zayd is released from any debt, but he is not to be released from the tangible asset.
- A release from specific right, such as the release from the right of pre-emption in a real estate after the pre-emption right has been confirmed for him. Once the release has been made, the releaser cannot claim the pre-emption right in that real estate. However, he still has the right to claim the pre-emption in another real estate or any other right."

In **Fiqh terminology**, the special release is a counterpart for the general release.

• **Al-Ibrâ' Al-'Âmm (General Release)**

الإبراء العام

"*Majallat Al-Ahkâm Al-'Adliyyah*" defines the general release (*Al-Ibrâ' Al-'Âmm*) as: "The release of a person from all actions."

Its ruling, as stated by the Hanafites, is the release from any tangible

Alif

Ba

Tâ'

Thâ'

Jîm

Ha'

Khâ'

Dâl

Dhâl

Râ'

Zây

Sin

Shîn

Sad

Dâd

Tâ'

Zâ'

'Ayn

Ghayn

Fâ'

Qâf

Kâf

Lâm

Mîm

Nûn

Hâ'

Wâw

Yâ'

asset or debt, whether it is by way of constative utterance, such as saying: "I have no right, or claim, or dispute with so-and-so." Or: "He is released from my right." Or: "I have no claim against him." Or: "I have nothing due to me in his liability.." Or by way of performative utterance, such as saying: "I have released you from my right or from what is due to me in your liability."

In "*Durar Al-Hukkâm*", 'Alî Haydar states: "The general release has two parts:

First: A release that includes all rights, such as when someone says: "I have no right against so-and-so." There is no broader or more inclusive wording for release than this expression, as it necessitates a release from the trusts, or the guaranteed tangible assets and debts.

Second: A release that includes a specific type of rights, such as when someone says: "I have released so-and-so from all the debts due to me in his liability," then this will be a release from debts, and the releaser will no longer have the right to claim against him for any debt. However, this does not prevent him from claiming a guaranteed tangible asset or trust ..., or when someone says: "I have no right against so-and-so," then this wording is a general release from trusts, so the releaser cannot claim against him for any trust, but he has the right to

claim for debts."

• *Ibdâ'* (Voluntary Trade) إِيضَاع

Linguistically, the term '*Al-Ibdâ'*' denotes giving in marriage.

In Fiqh terminology, it refers to providing someone with a capital to trade in it voluntarily whereby all profit goes to the owner of the capital. In other words, it is to trade in a commodity whereby the profit goes to its owner, while the worker/trader is acting as a voluntary agent. In Article no. (1059) of "*Majallat Al-Ahkâm Al-'Adliyyah*", it is stated: "Where one person supplies capital to another on condition that the whole of the profit is to belong to him, the capital is called the invested capital. The person supplying such capital is called the investor and the person taking such capital is called the person employing capital."

• *Ibtâl* (Invalidation) إِبْطَال

Linguistically, the term '*Al-Ibtâl*' denotes invalidating and abolishing a thing, whether it is right or wrong.

This term is commonly used by Fiqh scholars to mean annulment, nullification, abolition, cancellation, or invalidation.

The basis of invalidation (*Al-Ibtâl*) is that it should originate from the Legislator. However, there are instances where it can originate from the one who has performed the act or the behaviour, and it can

sometimes originate from the ruling authority in terms of the matters entrusted to it by the Legislator.

• **Ibnus-Sabîl (Wayfarer)** ابن السبيل

Linguistically, ‘As-Sabîl’ is the way, and ‘Ibnus-Sabîl’ is the traveller.

In Fiqh terminology, the term ‘Ibnus-Sabîl’ refers to a traveller who is away from his country without having an access to his wealth. Some scholars define it as a person who has no access to his wealth, whether he is outside his country, or inside it, or just passing by it.

Some Fiqh scholars add restrictions to its definition pertaining to the conditions for considering it among the *Zakâh* beneficiaries. They agreed that if a wayfarer wants to return to his country, but he does not find the means to do so, he will be given from the funds of *Zakâh* (obligatory almsgiving), *Ghanîmah* (spoils of war), and *Fay’* (booty gained without fighting) proportionate to his needs only. However, according to the Hanafites, it is preferable for him to borrow in the case of his ability to do so. The Malikites obligate him to borrow if he is not considered poor in his country. According to their commonly held view, the Hanbalites and the Shafi’ites disagreed with the Malikites in this regard, as they do not stipulate that borrowing is obligato-

ry or preferable for him.

• **Itâwah (Taxes)** إتاوة

Linguistically, the term ‘Al-Itâwah’ means bribery, land tax (*Kh-arâj*) and taxes in general.

In modern finance, it refers to an amount of money imposed forcibly on the owner of a real estate in proportion to the benefit accrues to him from the public works carried out by the state or local authorities.

This term is not commonly used by Fiqh scholars in this sense. Rather, the terms which are used by them in similar contexts include: royal or governmental expenses, levies, tributes, dues, and taxes.

• **Ittihâd Adh-Dhimmah (Confusion or Unity of Liability)** اتِّحَادُ الذِّمَّةِ

Linguistically, the term ‘Al-Itti-hâd’ denotes the act of making two things one.

In Fiqh terminology, the term ‘Ittihâd Adh-Dhimmah’ refers to the merger of creditorship and debtorship for the same debt in one person, leading to dropping the debt and discharging from the obligation.

For example, if Zayd owes his full brother Bakr a debt of one thousand Saudi riyals, and Bakr (the creditor) passes away without leaving any heirs behind him except his brother Zayd (the debtor), then Zayd will

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inherit this debt among the inheritance entitled to him from Bakr. Consequently, Zayd becomes both a debtor and a creditor for the same debt, as he now acts in his capacity as the inheriting creditor. Therefore, if Zayd demands repayment of the debt, he is essentially demanding it from himself as a result of the unity of his liability, so the debt becomes null and void due to the lack of benefit in such demand.

The difference between the unity of liability (*Ittihâd Adh-Dhimmah*) and the set-off (*Al-Muqâssah*) is that there is only one debt in the case of '*Ittihâd Adh-Dhimmah*', and the capacity of the creditor and the debtor has merged into one person. As for '*Al-Muqâssah*', there are two corresponding debts involving two separate individuals, each acting as a creditor and a debtor.

• **Ittihâd Al-Majlis (Unity of Contract Session)** اتِّحَادُ الْمَجْلِسِ

Linguistically, the term '*Al-Ittihâd*' means the merger of two entities into one, and it only occurs with any number from two onwards. The term '*Al-Majlis*' refers to any place of sitting.

In Fiqh terminology, the term '*Ittihâd Al-Majlis*' refers to the simultaneous presence of the two parties at the same session. The Hanafites, against other Fiqh scholars, uses this term to denote incorporating the

different components of session. According to them, '*Al-Majlis*' does not only refer to the place where the two parties are sitting, but it is more inclusive and broader than that, as '*Ittihâd Al-Majlis*' could occur while standing, and with a variation of place and position.

In contracts and others, the unity of contract session (*Ittihâd Al-Majlis*) is divided into two parts: actual and constructive. The actual one occurs when the acceptance is made at the same session of offering. The constructive one occurs when the session for acceptance is separated from the session for offering, such as in written contracts and correspondence, which are constructively united.

The unity of contract session (*Ittihâd Al-Majlis*) can affect some rulings on its own, and sometimes its effect is contingent upon other factors, such as the requirement of the same type and the same session for combining ransoms of the prohibited acts during *Ihrâm*.

• **Itlâf (Destruction)** إتلاف

Linguistically, the term '*Al-Itlâf*' is to render something damaged, meaning ruined or destroyed.

In Fiqh terminology, it is to make something unusable to give the benefit or service it normally gives by the act of a human being. Some scholars define it as: "Anything

which leads to the loss and wasting of wealth, and getting it out of the owner's hand."

The destruction (*Al-Itlâf*) has two parts:

Direct destruction: It is the destruction of a thing by the person himself without involving any act by a free-will person between the actual doer of the act and the destruction, such as burning a garment, killing an animal, eating food, burning a house, etc.

Indirect destruction: It is the destruction of a thing by a person who does an act which causes the destruction of another thing in the normal course of events, such as whoever digs a well, then a person or an animal falls in it and dies accordingly, or whoever opens a cage to a bird, then it flies away.

• ***Al-Itlâf Al-Hukmî (Constructive Destruction)*** الإتلاف الحُكْمِيّ

Al-'Izz Ibn 'Abdus-Salâm states, "The property destruction (*Itlâf Al-A'yân*) is to separate the parts of an object and forfeiting its monetary value."

As for the constructive destruction (*Al-Itlâf Al-Hukmî*), it is to transmute the qualities of an object, such as the defilement of liquids, or the obstruction of its use without hope of its removal, such as throwing dirhams and dinars into the de-

pths of the seas, or the ignorance of their place and location, such as its occurrence at unknown places by someone who is unknown.

• ***Al-Itlâf Bit-Tasabbub (Indirect Destruction)*** الإتلاف بالتسبُّب

Fiqh scholars mention that destruction occurs due to one of two things:

First: The destruction which is not caused by the act of a human being or his choice, such as natural disasters like earthquakes, volcanoes, winds, rains, snow, storms, and the like.

Second: The destruction which is caused by the act of a human being, and it has two types: Direct destruction and indirect destruction.

As for **the indirect destruction**, it is defined by "*Majallat Al-Ahkâm Al-'Adliyyah*" as: "That is to say, to do an act which causes the destruction of another thing in the normal course of events. The person performing such act is called the person causing the destruction. Examples: (1) The cord of a hanging lamp is cut. The lamp falls down and is broken. The person cutting the cord is the direct cause of the destruction of the cord and is the indirect cause of the destruction of the lamp. (2) A person splits a water-skin in half and oil contained therein escapes and is lost. Such person is the direct cause of the destruction of the water-skin

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and the indirect cause of the destruction of the oil.”

Al-Qarâfi said, “The indirect destruction is like digging a well in a place where no permission has been given, putting poison in food, lighting a fire near crops, and similar acts that usually lead to destruction.”

• ***Al-Itlâf Bi Al-Mubâsharah* (Direct Destruction) الإتلاف بالمباشرة**

Fiqh scholars mention that destruction caused by the act of a human being has two types: Direct destruction and indirect destruction.

As for the direct destruction, it consists of the destruction of a thing by the person himself. The person destroying a thing is called the actual doer of the act, whether the destruction is intentional or unintentional.

Ibn Rajab defines the direct destruction as: “The action that directly causes destruction by any means entailing it, such as killing or burning.”

Accordingly, if a person strikes another person’s horse and it dies accordingly, such a person has directly caused its destruction. Similarly, if a person burns another person’s house, such a person has directly caused the destruction of that house. It is evident that causing destruction of something that is not permissible

to destroy falls into two categories:

First: The causes which incur a sin, and this pertains to the acts which occurs intentionally.

Second: The causes which do not incur a sin, and this pertains to the acts which occurs by mistake - as opposed to intentionally. This is when a person intends something but it has happened other than what he has intended, such as when someone destroys another person’s property thinking it belongs to him, in this case he should guarantee it but he is not sinful, as stated by the Prophet Muhammad (peace and blessings of Allah be upon him): “*Mistakes, forgetfulness, and what they are forced to do under duress have been pardoned for my Ummah (Muslim community).*” It means removing the sin of mistake.

• ***Ithârah* (Cultivation) إثارة**

Linguistically, the term ‘*Al-Ithârah*’ means provocation.

In Fiqh terminology, it is used to denote plowing and cultivating the land, as stated by Allah, the Almighty: {“*and they plowed the earth*”} [Ar-Rûm (The Romans): 9]. Al-Muṭarrizî explained: “They plowed and cultivated it.” Al-Fayyûmî commented: “They vivified it by agriculture and cultivation.”

An example of the Fiqh scholar’s usage of this term:

In “*Al-Ahkâm As-Sultâniyyah*”, Abû Ya’lâ mentioned: “The cultivator of a land which has been revived is the one who works and cultivates it. The person responsible for reviving it remains the owner, and the cultivator is the owner of what is produced. If the owner of the land wishes to sell it, he may do so. Then, the sale of the right of cultivation is permitted whatever the circumstances (i.e., whether there are specific things there, like trees or crops, or not), and the cultivator is treated as a partner in ownership by virtue of his work.”

Regarding the same issue, Al-Mâwardî said: “If the land was given to the cultivator to plow it after revival, then the person responsible for reviving it remains the owner, and the cultivator is the owner of what is produced. If the owner of the land wishes to sell it, he may do so, but there is a difference of opinion as to whether the owner of the cultivation may sell his right. Abû Hanîfah says that he may sell it if he has worked the land, but not if he has not worked it. Mâlik says that the sale of the right of cultivation is permitted whatever the circumstances, and the cultivator is treated as a partner in ownership by virtue of his work. Ash-Shâfi’î says that it is not permitted for him to sell the right to cultivation under any circumstances, except if he owns specific things there, like trees or crops,

in which case it is permitted for him to sell these specific objects, but not the right to cultivation.”

• *Ithrâ’* (Enrichment)

إثراء

The Fiqh usage of the term ‘*Al-Ithrâ’*’ does not go beyond its linguistic meaning, which implies self-sufficiency and enrichment (by wealth accumulation).

As for “unjust enrichment”, it is a contemporary legal term borrowed from some Western laws. It refers to a person’s enrichment as a result of another’s impoverishment, without there being a legitimate reason for this enrichment. It is said that it refers to making a financial increase in one’s property, who is called: “the enriched party”, in contrast to a decrease in the property of another person, who is called: “the impoverished party”.

It is one of the sources of obligation in many Arab and Western civil laws, meaning the obligation of the enriched party to return what he has gained as a result of enrichment, or to compensate for it, to the party who has become impoverished due to this enrichment.

In “*The Theory of Contract*”, As-Sanhûrî mentions that the unjust enrichment as a source of obligation has a narrow scope in Islamic Shar’i’ah... and it is not a source of obligation except in certain cases.

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• **Ijârah (Lease)**

إجارة

Linguistically, the term ‘*Al-Ijârah*’ denotes the rent, which is the land rent.

In Fiqh terminology, it refers to transferring the usufructs (of an item to another party) in return for compensation, whether such compensation is a tangible asset, a debt, or a benefit.

According to the majority of Fiqh scholars, the lease (*Al-Ijârah*) is divided into two parts according to the type of usufruct: the lease of assets (*Ijârah Al-A’yân*), such as: houses, shops, lands, vehicles, clothes, etc., and the lease of labor (*Ijârah Al-A’mâl*), such as: craftsmen, workers, servants, and others.

The Malikites uses a special term in this regard, as they made a precise distinction between the two terms of ‘*Al-Ijârah*’ and ‘*Al-Kirâ*’. They said, “‘*Al-Ijârah*’ and ‘*Al-Kirâ*’ have the same meaning, except that the contracts which pertain to the usufructs provided by a human being and the movable assets other than ships and mounts are often called ‘*Ijârah*’, while the contracts which pertain to the usufructs provided by the immovable assets such as houses and lands, and the movable assets in terms of ships and mounts are called ‘*Kirâ*’.

Some of the Malikites said, “‘*Al-Kirâ*’ is used in terms of transferring

the usufructs of inanimate objects, while ‘*Al-Ijârah*’ is used in terms of transferring the usufructs of animate objects, and they sometimes are used interchangeably.”

Ibn Taymiyyah, the Hanbalite scholar, uses a special term in this regard. He said, “The term ‘*Al-Ijârah*’ implies a general and specific application, as it falls into three levels:

First: Any usufruct provided in return for compensation. This includes the dowry, as stated by Allah, the Almighty: {“*So for whatever you enjoy [of marriage] from them, give them their due compensation*”} [*An-Nisâ’ (Women): 24*], whether the work here is specified or unspecified, and whether the rent is known or unknown, irrevocable or revocable.

Second: The lease in the form of *Ju’alah* (remuneration). This is when the usufruct be unspecified, but the compensation is guaranteed, so it constitutes a valid contract that is not irrevocable, such as saying: “Whoever returns my slave to me, I will reward him with such and such.” He may return it from a distant or near place.

Third: The special lease. This is when a person leases a specific item, or hires someone for a work described in liability, whereby the usufruct is to be specified, the rent is to be known, and the lease is to

be irrevocable. This type of lease resembles the sale in most of its rulings. When the later Fiqh scholars use the term ‘*Al-Ijârah*’, or say: (Chapter on ‘*Al-Ijârah*’), they mean this concept.”

• ***Ijârah Adh-Dimmah* (Lease of Liability)** إجارة الذمة

The majority of Fiqh scholars, including the Shafi’ites, the Malikites, and the Hanbalites, divide the lease, based on the usufruct which constitutes a subject matter of the contract, into two parts: a lease in the sense of obtaining the usufruct of a property, and a lease in the sense of obtaining a service in liability. Regarding the lease in the sense of obtaining the usufruct of a property, the usufruct relates to that specific property, such as when someone rents a specified house, or land, or car, or he hires a specific person to tailor a garment, and the like.

As for the lease in the sense of obtaining a service in liability, the usufruct (which constitutes a subject matter of the contract) relates to the lessor’s liability, such as when someone rents a described animal for riding or carrying, and he says: “I have rented from you an animal of such-and-such description to carry me to such-and-such place,” and the lessor accepts. This type of lease is called a lease of liability, because the usufruct is established in the

lessor’s liability.

• ***Al-Ijârah At-Tawîlah* (Long-Term Lease)** الإجارة الطويلة

The Hanafite scholars use this term in the context of endowment (*Waqf*) to denote a special meaning, which is to lease the endowed property for more than one year if it is a house or a shop, or for more than three years if it is a land, whether this is done through one contract for the entire duration or through consecutive contracts, each contract for a duration of one year in return for a known rent. Its form is that the lessor would say to the lessee: “I lease to you such-and-such house in the year forty-nine for such-and-such rent, and I lease it to you in the year fifty for such-and-such rent, and I lease it to you in the year fifty-one for such-and-such amount” ... and so on until the duration is completed.

• ***Al-Ijârah Al-Lâzimah* (Irrevocable Lease)** الإجارة اللازمة

In Fiqh terminology, the irrevocable lease (*Al-Ijârah Al-Lâzimah*) is any valid contract of lease which is not burdened by a contractual option, or by an option for defect or by an option for inspection, and neither of the contracting parties may cancel it without some lawful excuse.

It is an opposite of the revocable lease. If the lease includes any of the

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options mentioned above, it is referred to as revocable lease.

However, the revocable lease becomes irrevocable after the forfeiture of its respective option, such as when the lessee accepts the defect, or the lessor cancels it before the lessee terminates the contract, and when the duration of the option for defect expires before approval or cancellation, and when the option for inspection is forfeited by the lessee as a result of using the leased property... etc.

• ***Al-Ijârah Al-Mudâfah* (Lease Effective at a Future Date)**

الإجارة المضافة

In Fiqh terminology, the lease effective at a future date (*Al-Ijârah Al-Mudâfah*) is a lease contract which comes into force as from some definite future date. Example: A house is given on hire as from the beginning of some future month for a certain period and for a certain sum of money, then a future lease contract has been concluded. Likewise, if a person leases his house to another person as from the beginning of Muharram for a full month, and then he leases it to someone else from the beginning of Safar for the same period, then the first lease is an immediately effective lease (*Ijârah Munajjazah*), and the second is a lease effective at a future date (*Ijârah Mudâfah*). Accordingly, the house is

to be delivered to the first lessee until the end of Muharram, and after that it is delivered to the second lessee. In Article no. (440) of "*Majallat Al-Ahkâm Al-'Adliyyah*", it is stated: "A contract of lease may validly be concluded to take effect at some future date. It is irrevocable, although it may not yet have come into force. Consequently, neither of the contracting parties may cancel such contract merely on the ground that it has not yet come into force."

• ***Al-Ijârah Al-Munajjazah* (Immediately Effective Lease)**

الإجارة المُنَجَّزة

Linguistically, the term '*Al-Injâz*' means acceleration and accomplishment.

In Fiqh terminology, the immediately effective lease (*Al-Ijârah Al-Munajjazah*) is a lease contract which comes into force immediately upon the conclusion of the contract. Example: A house is given on hire for a period of time for such and such dirhams as from the beginning of the contract.

Fiqh scholars mention that if the starting time of the lease is not specified in the contract, then it is referred to being an immediate lease. Accordingly, the immediately effective lease has two forms:

First: The starting time of the lease is to be specified upon the conclusion of the contract.

Second: The starting time of the lease is to be unspecified upon the conclusion of the contract, such as saying: "I rent this house to you for a year for such and such amount."

In Fiqh usage, the immediately effective lease (*Al-Ijârah Al-Munajj-azah*) is an opposite of the lease effective at a future date (*Al-Ijârah Al-Mudâfah*).

• **Al-Ijâratân (Lease with Dual Payment)** الإجارَتان

The term 'Al-Ijâratân' refers to an agreement between the endowment administrator and a person to pay an amount of money sufficient for the reconstruction of the dilapidated property when the endowment is unable to reconstruct it, provided that this person should have an everlasting entitlement to decide on such property in return for an annual low rent paid to the endowment. The right of decision arising from this agreement is salable and purchasable, and it is inheritable to the heirs of this person.

This contract has been legalized during the Ottoman Empire (after 1020 AH) in the wake of the fires that damaged many endowed properties in Constantinople, so their yields could not afford to renovate the burned properties and the city's appearance was distorted. Thus, this contract was developed to encourage leasing these properties with

the purpose of their reconstruction, inspired by the method of '*Tahkîr*' (long lease of land).

This agreement is a long lease contract - with the judge's permission - on a dilapidated property, in which the rent consists of two parts: an advance payment which is nearly equivalent to its value for the reconstruction of endowed property, and an annual deferred low rent for which the contract is renewed and the rent is paid annually. This represents a way out of the impermissibility of selling the endowed property or leasing it for a long period. Hence, it is called: '*Al-Ijâratân*'.

The difference between the lease with dual payment (*Al-Ijâratân*) and the exclusive lease (*Al-Istihkâr*) is that the building and the trees in the exclusive lease are owned by the lessee, because they were established with his own money after paying (along with the endowment) an advance rent, which is nearly equal to the value of the leased land. As for the lease with dual payment, the building and the land belong to the endowment, because its contract applies to a dilapidated constructed property whose reconstruction is renewed with the same advance rent that the endowment deserves.

• **Ijâzah (Ratification)** إجازة

Linguistically, the term '*Al-Ijâzah*' means enforcement.

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In Fiqh terminology, ratification of the contract means making it permissible and enforceable... This is done through an indication of consent from the owner of the right to conclude the contract by any statement or action that implies his consent. In “*Al-Qawâ'id Al-Fiqhiyyah*”, it is stated: “The Consequential ratification is like prior agency.” This means that the effect of the ratification on the part of its holder arises as from the time of undertaking of the transaction, not as from the time of giving the ratification.

• *Âjam* (Brooks)

أجام

Linguistically, the term ‘*Al-Âjam*’ refers to the tangled trees.

Fiqh scholars use the word ‘*Âjam*’ in the context of ‘Traveler’s Prayer’ to mean fortresses. They also mention it concerning the sales of *Gharar* as a plural of ‘*Ujum*’, which denotes dense tangled trees. They say, “The sale of fish in ‘*Al-Ajamah*’: meaning in the marshes, which are the habitat of reeds or rushes.”

In his book entitled: “*Al-Kharâj*”, Abû Yûsuf said in response to a question directed to him about the ruling on selling fish in brooks and marshes. (He said:) “It is not permissible to sell fish in water, because it involves *Gharar*, and it belongs to the one who catches it, so if it can be taken by hand without catching, then selling it is permissible.

Similarly, if it can be taken without catching, like fish in a jar, then it is permissible. Otherwise, if it can only be taken by catching, then it is like a deer in the wilderness or a bird in the sky, then it is not permissible to sell it because this involves *Gharar*, and it belongs to the one who caught it. Some scholars have permitted selling fish in brooks, but the correct opinion, in our view - and Allah knows best - is to consider it reprehensible.

Then, he reported that ‘Umar Ibn ‘Abdul-‘Azîz received a letter regarding a pond in the land of Iraq in which fish gather: Should we lease it? He replied that you should do so. He also received a letter regarding the sale of fish in brooks, and he replied that there is nothing wrong with that. He called it the confinement (*Al-Habs*), meaning the confined fish.”

• *Ijbâ'* (Selling Unripe Crops) إجباء

Linguistically, the term ‘*Al-Ijbâ'*’ implies to sell the crops before its ripeness, or to hide something, or to supervise and oversee the people.

It was stated in the letter of Wâ'il Ibn Hujr: “And whoever sells unripe fruits, he is engaged in usury.”

Ibnul-Athîr said in his explanation, “‘*Al-Ijbâ'*’ means selling crops before it has begun to ripen. Some said: It is to hide livestock from the collector of *Sadaqah*... It is also said

that it means ‘*Al-‘Inah*’, which is to sell a commodity to someone at a known price deferred for a specified period, then buy it back from him in cash for less than the price at which he sold it.”

• **Ajr (Remuneration or Rent)** أجر

Linguistically, the term ‘*Al-Ajr*’ means the reward or recompense for work.

In Fiqh terminology, it is often used to refer to the consideration that the lessee pays to the lessor in return for the usufruct which constitutes a subject matter of the contract. In a lease contract, it is equivalent to the price in a sale contract.

This is the view of the majority of Fiqh scholars, contrary to the Malikites who call the consideration received in the lease of a human being and the movable assets other than ships and mounts as an ‘*Ajr*’, while they call the consideration received in the lease of a non-human being, and the immovable assets such as houses and lands, and the movable assets in terms of ships and mounts as a ‘*Kirâ*’.

Some of the Malikites said, “*Al-Ajr*’ is used in terms of the consideration received in return for the usufructs of animate objects, while ‘*Al-Kirâ*’ is used in terms of the consideration received in return for the usufructs of animate objects, and they sometimes are used interchangeably.”

• **Ajr Al-Mithl (Reasonable Remuneration or Rent)** أجر المثل

Linguistically, the term ‘*Al-Mithl*’ means the equivalent.

According to Fiqh scholars, the reasonable remuneration (*Ajr Al-Mithl*) refers to the rent or the remuneration (for use of a thing), which the trustworthy experts deem appropriate for a specific purpose.

Ibn Taymiyyah said, “The reasonable remuneration is not a fixed amount, but the value commensurate with the thing according to those who desire it.”

When estimating the reasonable remuneration regarding the lease in the sense of obtaining the usufruct of property, two factors are to be considered: **(a)** the benefit which is equivalent to the usufruct of leased property and the consideration is to be paid in return, and **(b)** the time and place of the lease.

Likewise, in case of lease in the sense of obtaining a service, two factors should be considered: **(a)** A person equivalent to the employee in that work, and the consideration to be paid in return, and **(b)** the time and place of lease, as the rent varies depending on the nature of the work, times, and places. If the reasonable remuneration is variant among people, then the average is to be paid.

It is evident that the reasonable remuneration in lease contracts may be higher, less, or equal to the stipulated remuneration. Thus, the relationship between them (the reasonable remuneration and the stipulated remuneration) is alternating generality and peculiarity (i.e., each of the two exists alongside the other and without it).

• ***Al-Ajr Al-Musammâ* (Stipulated Remuneration or Rent)**

الأجر المسمّى

In Fiqh terminology, the stipulated remuneration (*Al-Ajr Al-Musammâ*) is the rent mentioned and fixed (for use of a thing) at the time of the conclusion of the contract. For example, if someone rents a house from another one for a hundred dinars per year, then these hundred dinars is the stipulated remuneration.

Fiqh scholars mention three cases for the stipulated remuneration: (a) It is to be equal to the reasonable remuneration. (b) It is to be higher than the reasonable remuneration. (c) It is to be less than the reasonable remuneration.

Accordingly, the relationship between the stipulated remuneration (*Al-Ajr Al-Musammâ*) and the reasonable remuneration (*Ajr Al-Mithl*) is alternating generality and peculiarity (i.e., each of the two exists alongside the other and without it).

If the reasonable remuneration of a property is one hundred, and it is rented for a hundred, then the stipulated remuneration in this form is equal to the reasonable remuneration. If it is rented for one hundred and fifty, then the stipulated remuneration is higher than the reasonable remuneration (i.e., fifty). If it is rented for fifty, then its stipulated remuneration is less than fifty.

• ***Ijzâ'* (Sufficiency)**

إجزاء

Linguistically, the term '*Al-Ijzâ'*' means sufficiency and adequacy.

In Shari'ah terminology, it refers to the act being sufficient for what is required, without any addition to it.

There is a difference between the sufficiency (*Al-Ijzâ'*) and the lawfulness (*Al-Hill*): The sufficiency may involve shortcomings, while the lawfulness refers to the sufficiency which is devoid of any shortcoming. Accordingly, the reprehension may be combined with the sufficiency, but it may not be combined with lawfulness in some contexts.

In general, the legitimate act is considered sufficient if its pillars, conditions, and obligations are fulfilled. The details of this can be defined for each act separately in the chapters of Fiqh books.

• ***Ajal* (Future Period)**

أجل

Linguistically, the term '*Al-Ajal*' refers to the specified period for

something and the time in which it becomes due.

In Fiqh terminology, it is a future period to which a matter is added, whether that addition is a deadline for fulfilling an obligation or a deadline for ending an obligation, and whether that period is established by Shari'ah, or the judiciary, or the will of the obligated party.

• **Ajîr (Employee)**

أجير

The employee (*Al-Ajîr*) is the person who is contracted to provide his services in terms of labor lease. According to Fiqh scholars, it has two classes: private and public.

First: The private employee is a person who works for a particular single individual or several persons (contemplated as one individual only) on a temporary basis with specifying exclusivity. So, his service is estimated by time, because the employer is exclusively entitled to his service during the hiring period without anyone else sharing it with him. For example, if someone hires a cook to prepare meals exclusively for him for a specified period, then the cook would be a private employee. This type is also known as a single individual employee. The servants and laborers fall into this type.

Second: The public employee is a person who works neither for a particular single individual nor several

persons, or he works for a particular single individual or several persons on a non-temporary basis, or on a temporary basis without specifying exclusivity. For example, if someone gives cloth to a tailor to make a garment for him, then the tailor is a public employee. He is described as public because he accepts work for two, three, or more persons at the same time, and works for them simultaneously, so they are public in his service and its entitlement.

• **Ihtirâf (Practicing a Profession)**

اختيراف

The Fiqh usage of the term '*Al-Ihtirâf*' does not go beyond its linguistic meaning, which implies seeking a profession to earn a living. Fiqh scholars mention it to denote a certain type of work that a person usually practices to earn a living.

There is a difference between practicing a profession (*Al-Ihtirâf*) and earning a living (*Al-Iktisâb*): practicing a profession is a type of earning a livelihood, while earning a living is a means of collecting and earning money, whether through practicing a profession or other means. As for the relationship between practicing a craft (*As-Sinâ'ah*) and practicing a profession (*Al-Ihtirâf*), practicing a craft is a type of practicing a profession because it is practiced specifically in terms of manual works where machines are being used.

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• **Ihtishâsh (Grass Cutting)** اختشاش

Linguistically, the term ‘*Al-Ihtishâsh*’ means cutting and collecting (dry) grass.

In Fiqh terminology, it refers to cutting the grass, whether it is dry or green (fresh and moist). Some contemporary Fiqh scholars define it as: “Collecting dried grass with the intention of owning it.”

• **Ihtitâb (Gathering Firewood)**

اختطاب

The Fiqh usage of the term ‘*Al-Ihtitâb*’ does not go beyond its linguistic meaning, which implies collecting firewood. Some contemporary Fiqh scholars define it as: “Gathering wood that can be used to light a fire, such as tree branches, boughs, and twigs, with the intention of owning it.”

• **Ihtikâr (Monopolization)** اختیکار

Linguistically, the term ‘*Al-Ihtikâr*’ means accumulating, hoarding, and having control over something.

Judge Ibnul-‘Arabî mentions that there is a difference between monopolization (*Al-Ihtikâr*) and waiting for a price hike (*At-Tarabbus*): The monopolization is the act of gathering and accumulating something, while waiting for a price hike is the act of waiting for scarcity to exploit it.

In Islamic Shari‘ah, the monopolization has two types: permissible and impermissible.

First: the permissible monopolization involves the acquisition and hoarding of certain goods or usufructs with the intention of making a profit by virtue of the fluctuation of markets from less to higher prices, without causing harm to the public or causing undue hardship upon them. This form is compliant with the principles of legitimate commercial activity, as stated by Fiqh scholars.

In this regard, Al-Qurtubî says: “Trade has two types: The first is to utilize and exchange the wealth within cities and villages without transportation or travel. This type involves both the monopolization (*Al-Ihtikâr*) and waiting for a price hike (*At-Tarabbus*), which some fortunate individuals may seek while others avoid due to its risks. The second is to utilize and exchange the wealth through travel and transportation to other regions. This type is more suitable for people of integrity and brings greater benefits, although it carries more risks and uncertainty (*Gharar*).”

Ibn Khaldûn explains, “The essence of trade is to increase the wealth through purchasing goods and trying to sell them at a price higher than the purchase price, either by waiting for the market fluctuations,

transporting them to a place where they are in demand and more expensive, or selling them at a higher price on credit.”

Ibn Taymiyyah states, “Trade means buying goods in order to transport them to another place, or withholding them for a period of time, then selling them at a profit... It should involve the work that a trader usually exercises by transporting these goods from one place to another, or withholding them until the price rises.”

Second: the impermissible monopolization involves withholding goods or usufructs that people need, and monopolizing them in such a way that others cannot compete him, and refraining from selling them except at an unjust price that the monopolist imposes, or withholding them from sale until their price rises, in the hope of obtaining excessive profit that incurs harm to the public.

• Ihtiyâj (Needing)

احتياج

Linguistically, the term ‘*Al-Ihtiyâj*’ means deficiency, and the term ‘*Al-Hâjah*’ means the need for something with affection for it.

In Shari’ah terminology, it means the need for something which if not fulfilled will bring about distress and hardship. Accordingly. The Uṣūl scholars categorize interests (*Masâlih*) into three types: essential (*Dar-*

uriyyah), needful (*Hâjiyyah*), and complementary (*Tahsiniyyah*). They said regarding the needful interests that they are the benefits that lack in terms of facilitating things for people and removing restrictions that are likely to cause difficulty or hardship.

Fiqh scholars said, “The need (‘*Al-Hâjah*’) implies that the legally accountable person reaches a state of distress or hardship if he does not engage in what is prohibited, but it falls short of necessity. Thus, its absence does not result in the person’s death or the occurrence of severe damage to himself, his honor, or his property. They consider this kind of need to be on a par with necessity in terms of permitting what is prohibited, whether it is public or private, as stated in “*Al-Qawâ’id Al-Fiqhiyyah*”: “The need, whether public or private, enjoys the same status of necessity.” The public need for something means that all people are in need of it to achieve a Shari’ah-acceptable interest. On the other hand, the private interest refers to the need for something that is specific to a group of people who share a common description, such as the people of a certain profession or inhabitants of a particular town, and the like. As for individual need, which involves the need for something specific to an individual or a limited group of people who do not share a common bond, it does

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not enjoy - by way of exception - the same status of necessity in terms of removing the prohibition as is the case with public and private need.

• **Ihtiyât (Cautious Approach)**

اختياط

Linguistically, the term ‘*Al-Ihtiyât*’ means going for the choice that is more firm, safer, and more prudent, or preserving oneself against falling into mistake and avoiding it.

In Fiqh terminology, it is to take the precaution that enables the removal of doubt. Al-Jurjânî describes it as preserving oneself against falling into sins. The best definition of ‘*Al-Ihtiyât*’ may be: “The precaution taken by the legally accountable person to avoid falling into what he suspects of being prohibited or reprehensible.”

Precaution can be exercised thorough action, abandonment, or abstention. The expression of doubt (*Shakk*) excludes both assumption (*Az-Zann*) and delusion (*At-Tawahhum*), because the ‘assumption’ is weightier, so it is necessary to act accordingly. On the other hand, the ‘delusion’ is outweighed and does not prompt action or restraint, and by excluding it, the suspicion of the overly cautious people is removed, as it is not absolutely a matter of cautious approach. It is worth noting that cautious approach may be obligatory when it involves refrain-

ing from what is prohibited or where the suspicion is strong, while it may be recommended when it involves avoiding what is reprehensible.

The evidence for applying cautious approach is the *hadîth* related by Al-Bukhârî that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: “*What is lawful is clear and what is unlawful is clear, but between them are certain doubtful things which many people do not know. He who guards against doubtful things keeps his religion and his honor blameless, but he who falls into doubtful things falls into that which is unlawful, just as a shepherd who pastures his animals round a preserve will soon pasture them in it...*”

• **Ihtiyâl (Deception)**

اختيال

Linguistically, the term ‘*Al-Ihtiyâl*’ refers to the management of one’s affairs in a subtle and careful way. In common practice, it is the use of hidden means to ensure achieving one’s purpose, without being noticed except by the exercise of some intelligence and prudence.

Fiqh scholars mention that the ruling on deception varies according to the intention and the purpose on one hand, and according to the consequence of the act on the other hand:

- (a) Deception is prohibited if it leads to nullifying a Shari’ah ruling and altering it outwardly to

another ruling. This is done by making what is obligatory seems non-obligatory, or making what is prohibited seems permissible.

This is because when an act aims to nullify a Shari'ah ruling and outwardly change it to another ruling until the consequence of that act violates the rules of Shari'ah in reality, then this act is forbidden and prohibited.

- (b) Deception is permissible if the intention behind it is to assert one's right, ward off a falsehood, rid oneself of what is prohibited, or attain what is permissible, as Allah, the Almighty, says: {***And take in your hand a bunch (of grass) and strike with it and do not break your oath.***} [Sâd: 44].
- (c) There are matters regarding which there is disagreement, and the purpose of the Legislator in them is neither agreed-upon, nor it appears that they contradict the interests set by Shari'ah. The scholars who view that if deception relates to a certain matter contradicts the Shari'ah-acceptable interest, then it is prohibited in that case.

As for the scholars who view that it does not contradict the Shari'ah-acceptable interest, then deception is permissible in that case, as long as the deceiver's intention does not contradict the purpose of the

Legislator.

• Ihrâz (Safekeeping) إخراز

The Fiqh usage of the term '*Al-Ihrâz*' does not go beyond its linguistic meaning, which implies to safeguard or enclose something in a secure place. They use it to refer to preserving an item and protecting it from being taken away.

It can either be achieved by the fortification of place, which refers to any area designated for safekeeping (securing items) and is prohibited from entry without permission, such as houses, shops, safes, and boxes, or by a guard who watches over it.

A secure place (*Al-Hirz*) is determined based on customary practices, as there is no specific definition for it in Shari'ah or language. It varies depending on the nature of the property, circumstances, and times.

As for the safekeeping (*Al-Ihrâz*), which is a legitimate means of acquiring ownership, it involves placing one's hand on an ownerless permissible item, and it can be either:

- Actual, by physically placing the hand on the item, or
- Constructive, by setting up its cause, such as placing a container to collect rainwater or setting up a net for fishing.

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• ***Ihsân* (Perfection or Benevolence)** إْحْسَان

Linguistically, the term '*Al-Ihsân*' means doing what ought to be done of common right.

In terminological usage, it has two meanings:

First: It is used in the context of servitude to Allah, the Almighty; meaning to worship Allah as if you see Him, for even though you do not see Him, He sees you, as informed by the Prophet Muḥammad (peace and blessings of Allah be upon him). Al-Fayrûz Âbâdî says, "*Al-Ihsân*' is one of the highest levels of servitude, because it is the essence, spirit, and perfection of faith, and all levels are involved in it."

Second: It is used in the context of financial dealing with people, meaning to donate and act with no intention to increase wealth, such as charity, gift, release, and loan, and in the context of graciousness (*Al-Faḍl*), which is above justice (*Al-ʿAdl*), as stated in the Quranic Verse: {"**Indeed, Allah orders justice and good conduct**" } [An-Nahl (The Bee): 90]. Al-Kafawî said, "*Al-Ihsân*' is that a person is given more than what is due to him, and takes less than what is entitled to him. '*Al-ʿAdl*' is that a person gives what is due to him and takes what is entitled to him (without increase or decrease). So, "*Al-Ihsân*' is superior,

and seeking '*Al-ʿAdl*' is obligatory, while seeking '*Al-Ihsân*' is commendable and voluntary."

• ***Ihyâ' Al-Mawât* (Vivification of Dead Land)** إِحْيَاءُ الْمَوَاتِ

Linguistically, the term '*Al-Ihyâ'*' means vivification, and the term '*Al-Mawât*' refers to the land devoid of buildings and inhabitants.

According to Fiqh scholars, the term '*Ihyâ' Al-Mawât*' refers to the cultivation or construction of desolate land that has no owner and is unused by anyone. The scholar's intention of its construction is to promote life in it through building, planting, cultivation, irrigation, and similar arrangements.

• ***Ikhâdhah* (Land-Taking)** إِخْذَاةٌ

In Fiqh terminology, the term '*Al-Ikhâdah*' refers to the desolate land that its owner relinquishes to someone who will cultivate and utilize it.

Al-Muṭarrizî reported that Al-Ghûrî said, "*Al-Ikhâdah*' is the land that a man takes to possess and vivify it", then he said: "This is its interpretation by Fiqh scholars."

• ***Ikhhâl* (Borrowing)** إِكْحَالٌ

Al-Waqqashî said, "**Linguistically**, the term '*Al-Ikhhâl*' is to lend another person camels or sheep for their use and then take them back."

Abû Hilāl Al-‘Askarî mentioned the difference between ‘*Al-Ifqâr*’ and ‘*Al-Ikhhbâl*’ stating: “*Al-Ifqâr*’ is to lend the back of one’s camel for someone to ride on and then take it back. As for ‘*Al-Ikhhbâl*’, it is to give one’s horse for someone to ride on into battle. It is also said that it is to give him his she-camel to benefit from its wool, fur, and milk.”

• *Ikhtisās* (Exclusive Entitlement)

اختصاص

Linguistically, the term ‘*Al-Ikhtisās*’ refers to the full entitlement to something with no share for anyone else, or the exclusive allocation of something to a person over others.

In Fiqh terminology, Ibn Rajab defines it as: “The thing that a person is entitled to benefit from where no one has the right to compete with him, and it is neither inclusive nor exchangeable.”

Al-‘Alā’î said, “The exclusive entitlement ‘*Al-Ikhtisās*’ has two types: An entitlement relating to the unownable objects, such as impure leather before tanning, dogs, and the like. An entitlement relating to the ownable objects, such as the vivification of dead land by enclosing the land (*At-Tahjîr*).”

Az-Zarkashî stated, “The difference between ownership (*Al-Milk*) and exclusive entitlement (*Al-Ikhtisās*) is that ownership pertains to both assets and usufructs, while the

exclusive entitlement is confined to usufructs only. Additionally, the exclusive entitlement is broader concept, as evidenced by its application to the unownable objects, such as impurities like dogs and impure oil, as well as the skin of dead animals, and the like”.

It is worth mentioning that this term is used by the Shafi’ites, the Malikites, and the Hanbalites. As for the Hanafites, they call it a right (*Haqq*), and according to them it refers to what belongs to a person by way of usufruct and easement, without having complete disposal over it, such as pathways, flowing water, and public roads. A person may benefit from a flowing water belonging to him on his neighbor’s roof or from the pathway near his house, but if he wants to dispose of it either by selling, or gifting, or the like, he cannot do so, as stated by Al-Qâbisî.

• *Iktilâs* (Embezzlement) اختلاس

Linguistically, the term ‘*Al-Ikhtilâs*’ is to take something deceitfully and catch its owner all off-guard.

Fiqh scholars uses it to denote the act of taking something in the presence of its owner, and escaping with it, whether the embezzler does so openly or covertly, such as extending his hand to another person’s handkerchief and taking it.

The embezzler is not subjected

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to the mandatory punishment for theft as prescribed by the Shari'ah. This is because, as argued by some Fiqh scholars, the embezzled property can be retrieved from the embezzler by seeking help from people or authorities, then there is no need for cutting off the embezzler's hand.

On the other hand, Ibnul-Qayyim stated: "This is because it is hard to guard against thief, as he usually breaks into the houses, tears down the guards, breaks locks, and the owners can hardly take extra precautions to prevent him, then if cutting off his hands were not prescribed, people would steal from each other, causing great harm and intensifying the disorder. This is unlike the plunderer (*Al-Muntahib*) and embezzler (*Al-Mukhtalis*). The plunderer is a person who openly takes property in front of the people, allowing them to intervene and restore the rights of the victim or testify for him before the judge. As for the embezzler, he takes the property all off-guard while the owner and people are neglectful, and there is always some type of negligence that enables him to embezzle. Otherwise, with full caution and vigilance, the embezzlement would not be possible. The embezzler is not like the thief (*As-Sâriq*); rather, he is more akin to a betrayer. Furthermore, the embezzler usually takes property that is not well-guarded, as he waits for an opportunity when

the owner is neglectful, unlike the openly-taken property by the plunderer. The embezzler can often be guarded against, like the plunderer. As for the wrongful appropriator (*Al-Ghâsib*), the matter is clear as he is more deserving of not to cut off his hand more than the one who plunders, but it is justified to stop their aggression by beating, exemplary punishment, long imprisonment, or fines to recover the appropriated property."

• *Ikhtiyâr* (Choice)

اختيار

Linguistically, the term '*Al-Ikhtiyâr*' means preferring one thing over another.

In terminological usage, it is aiming to an act that wavers between being existent and non-existent, which is within the capacity of the doer by way of giving preponderance to one side over the other.

The Hanafites, against other Fiqh scholars, distinguish between the choice (*Al-Ikhtiyâr*) and the consent (*Ar-Ridâ*). They say that the choice is to give preponderance to one side over the other side. As for the consent, it is the psychological contentment arising from the preference and approbation of something. There is no necessarily a correlation between them in general, as the person may choose something he does not consent thereto in order to avert greater harm. This distinction is evident in matters of coercion,

where they say: “The non-compelling coercion (minor constraint) nullifies consent but it does not nullify choice, while the compelling coercion (major constraint) nullifies both consent and choice.” Abû Hilâl said, “The person who exercises a choice (*Al-Mukhtâr*) is the one who truly desires the better of the two things or the better of the two things in his own mind, without coercion or compulsion. If a person is compelled to desire something, it would not be called ‘*Mukhtâr*’ of it because choice is an opposite of compulsion.”

Furthermore, the Hanafites categorize the choice (*Al-Ikhtiyâr*) into three types:

- **Valid choice:** This is when the person who exercises it aims to be authoritative; i.e., independent, meaning that he has full capacity and is not subject to any compelling coercion (major constraint).
- **Invalid choice:** This is when the person who exercises it is an insane or a non-discerning minor, because they lack the capacity for choice.
- **Void choice:** This is when it is based on someone else’s choice; meaning that the person who exercises it is not independent in his choice but is aimed to it as a result of a compelling coercion (major constraint).

• **Ikhdâm (Hiring a Servant)** إخدام

The Fiqh usage of the term ‘*Al-*

Ikhdâm’ does not go beyond its linguistic meaning, which implies to provide a servant. Fiqh scholars mention this term in various contexts in their writings, such as expenditures, declaration of bankruptcy, and the like. For instance, they mention the obligation of providing a servant for the wife if it is accustomed that her peers hire one, as the majority of scholars states that it is obligatory for the husband to provide a servant for his wife if she is accustomed to having one like her peers, and to bear the expenses for her servant, because the intended purpose is contingent upon achieving this. Similarly, ‘*Al-Ikhdâm*’ applies to providing a servant for the bankrupt person due to his needs, such as when he is chronically ill and requires, in addition to the expenses, a servant. As for the term ‘*Al-Mikhdam*’, Ibn ‘Arafah defines it as: “A slave whose owner has given his service to someone else.”

• **Ikhhfâr (Deliberate Treachery)**

إخفار

The Fiqh usage of the term ‘*Al-Ikhhfâr*’ does not go beyond its linguistic meaning, which implies to breach the covenant. As for ‘*Al-Khafar*’, it is to fulfil the covenant.

• **Ikhlâf (Breaking One’s Undertakings)** إخلاف

Linguistically, the term ‘*Al-Ikhlâf*’

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refers to not fulfilling a promise or an undertaking. Al-Bukhârî and Muslim related that the Prophet Muhammad (peace be upon him) said: *“There are three signs of a hypocrite: when he speaks, he tells lies; when he makes a promise, he breaks it; and when he is entrusted, he betrays (his trust).”*

Some scholars differentiate between its usage for promise and undertaking. Abû Hilâl Al-‘Askarî said, “The undertaking (*Al-‘Ahd*) requires fulfilment, while the promise (*Al-Wa‘d*) requires accomplishment.

Some Fiqh scholars equate lying (*Al-Kadhib*) with breaking undertakings (*Al-Ikhlâf*), while others distinguish between them as they render lying for the past and present, and breaching of promise for the future.

• *Adâ* (Payment)

أداء

The Fiqh usage of the term ‘*Al-Adâ*’ does not go beyond its linguistic meaning, which implies to fulfil and discharge of the debt.

Ar-Râghib said, “*Al-Adâ*” is the payment and fulfilment of what is due. Such as paying tax and tribute, and fulfilling the trust.

As for its usage in terms of acts of worship, it means performing something at its appointed time, and accordingly it is defined as: “To do a time-related duty during the time allowed for it.”

• *Iddikhâr* (Storing up)

ادِّخَار

The Fiqh usage of the term ‘*Al-Iddikhâr*’ does not go beyond its linguistic meaning, which implies to keep something well stored so as to use it when needed.

The difference between storing up (*Al-Iddikhâr*) and monopolization (*Al-Ihtikâr*) which is prohibited by Shari‘ah, can be understood in several ways:

First: The storing up involves hoarding goods and refraining from selling them in anticipation of higher prices, while the monopolization involves keeping something well stored so as to use it at a later time when the person himself needs.

Second: The monopolization involves withholding goods in a way that inflicts harm on people, whereas the storing up involves withholding goods in a way that could or could not inflict harm on people.

Third: The monopolization is reprehensible religiously when it harms people and causes them distress, while the storing up is not be reprehensible; rather, it may be commendable or required in certain circumstances, such as when a man saves for the sustenance of his household or when a state saves for the future needs of its people for their benefit and welfare.

• **Idrâk (Harvesting or Attainment)** إذراك

The Fiqh usage of the term ‘*Al-Idrâk*’ does not go beyond its linguistic meaning, which implies to attain or reach something.

Some Fiqh scholars use it to refer to harvesting or gathering crops. Among the Fiqh maxims concerning ‘*Al-Idrâk*’ is: “He who finds his property intact with another person, he is more entitled to it than anyone else, if it is proven that he owns it with evidence or that the person holding it acknowledges his ownership.”

• **Idhn (Permission)** إذن

The terminological usage of the term ‘*Al-Idhn*’ does not go beyond its linguistic meaning, which means the permission or the authorization to act.

Fiqh scholars mention that the permission can be general or specific, and the generality and the specificity can be related to the one granting such permission or to the subject matter, time, or circumstance.

Thus, the permission may be granted by the Legislator to facilitate and ease matters for people or to alleviate embarrassment and hardship for them. It may also be granted by the person for what he owns in terms of assets, usufructs, or rights.

The person’s permission may involve the property’s consumption, such as in the case of feasts, or it may involve the property’s disposal, such as in the case of the guardian’s permission for a discerning minor to engage in trade, or in the case of agency, trusteeship, profit-sharing (*Mudârabah*), and *Waqf* administration. It may also involve the person himself, such as in the case of hiring, or it may involve the person’s use of a property without consuming it, such as in the case of loan for use (*Al-Âriyah*).

There are various means to express permission, including explicit wording indicating permission, writing, gesture, and the customary implication of permission. Therefore, Fiqh scholars state in their maxims: “Permission based on custom is the same as permission based on verbal”, and: “No statement is imputed to a man who keeps silence, but silence is tantamount to a statement where there is an absolute necessity for speech”.

• **Irâdah (Will)** إرادة

Linguistically, the term ‘*Al-Irâdah*’ means will or volition.

According to theologians, it is an attribute that enables a living person to do something in a certain way rather than another.

According to Fiqh scholars, it means aiming for something and

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heading towards it. Al-Jurjânî said, "The will is an inclination that follows the assumption of a benefit."

Fiqh scholars divide the will (*Al-Irâdah*), in terms of permissible means of disposal, into two types: internal and external.

- The internal will (hidden), which is the true intent that cannot be discerned.
- The external will (apparent), which is the clear intent expressed verbally or through actions such as dealings. It expresses the true intention manifested in the context of speech. So, it is considered sufficient evidence for the existence of the true intention, and the contractual obligations are established based on it without the need to investigate the internal true intention, as long as the latter remains hidden and there is no evidence to negate it.

• *Al-Irâdah Al-Munfaridah* (Individual Will) الإرادة المنفردة

The individual will '*Al-Irâdah Al-Munfaridah*' is a newly used Fiqh term that refers to the intent whereby, when declared by the legally accountable person, a Shari'ah-based ruling results without the need for acceptance from another party. Examples include: divorce, emancipation, revocation of divorce, swearing not to have intercourse with one's wife (*Al-Îlâ*), likening one's

wife to his mother, to prevent her on himself (*Az-Zihâr*), endowment (*Al-Waqf*), vow, binding promise, permission of a discerning minor, dismissal of an agent, waiver of the pre-emption right, release, remuneration (*Al-Ja'âlah*), permissibility of the conditional contract, annulment of non-binding contract, and the like.

The Shari'ah-based effect resulting from the individual will (or unilateral act) may include transferring the ownership of a property or usufruct, or it may include enforcing and executing a contract, or revoking and terminating a contract, or it may include granting a right or an undertaking to another party, or waiving or restricting a right, or other similar dispositions, as stipulated in the Fiqh compendiums.

• *Irtizâq* (Earning Livelihood)

ارتزاق

The Fiqh usage of the term '*Al-Irtizâq*' does not go beyond its linguistic meaning, which means earning livelihood.

However, when it is used in the writings of Fiqh scholars, it refers to the ongoing gifts allocated from the state treasury to those who are entitled to it, such as judges, governors, collectors (of *Zakâh*), soldiers, Imams, muftis, and the like. As for '*Al-Murtazaqah*', they are those who receive stipend, even if they are not

officially recorded in the treasury records.

• Irtifâq (Easement)

ارتفاق

Linguistically, the term ‘*Al-Irtifâq*’ means utilization of something.

In Fiqh terminology, the Hanafites define it as: “The established right over one piece of real estate for the benefit of another piece of real estate.” The Shafi’ites, the Malikites and the Hanbalites defines it as: “Enjoying the benefits attached to the real estate.” According to them, the easement is broader than the Hanafites’ definition, because it includes the person’s use of the real estate in addition to the benefit of one piece of real estate over another piece of real estate.

• Arsh (Restitution)

أرش

Linguistically, the term ‘*Al-Arsh*’ means the indemnity received for any damage to properties.

Terminologically, it refers to the money paid in compensation for any resulting injury other than the soul. It is called so because it compensates for the loss incurred, and therefore, Fiqh scholars defines it as: “The compensation for bodily injury.”

According to Fiqh scholars, the ‘*Al-Arsh*’ is broader than ‘*Hukûmat Al-‘Adl*’ (the sum of indemnity determined by a fair person in a case of offence where no specific Shari’ah prescription for it). This is because

‘*Al-Arsh*’ includes both the amount stipulated by the Legislator for a specific offense and the amount owed in cases where there is no specific Shari’ah prescription. Thus, ‘*Hukûmat Al-‘Adl*’ is a type of ‘*Al-Arsh*’.

Fiqh scholars also use the term ‘*Al-Arsh*’ in sale contracts to differentiate between the value of the defective sold item and its value when it is devoid of defects

• Irsâd (Allocation)

إزصاد

Linguistically, the term ‘*Al-Irsâd*’ means preparation.

According to Fiqh scholars, it refers to allocating the yield of some lands of the state treasury by the ruler to some of its beneficiaries. For example, the ruler may allocate some villages or farms from the state treasury to mosques, schools, or individuals entitled to a share of the treasury, such as Imams, muezzins, Qur’an reciters, and others. This allocation is not an endowment in the true sense, as the ruler does not own it; rather, it is the designation of a portion of the state treasury to some of its beneficiaries. Therefore, it is not permissible for the ruler’s successor to change or replace it.

The Hanafites also uses the term ‘*Al-Irsâd*’ in the context of allocating the proceeds of the endowment (*Waqf*) to pay the debts incurred due to its renovation and reconstruction.

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• **Arḍ (Land)**

أرض

Linguistically, the term '*Al-Ard*' refers to the body opposite to the sky.

Fiqh scholars divides the lands that fall under the jurisdiction of the Islamic state, based on the type of taxation imposed on them, into the '*Ushr* lands (owned by individuals and taxed according to yield) and the *Kharāj* lands (owned by state but cultivated by individuals).

The '*Ushr* lands are those lands from which *Zakāh* on crops and fruits is taken: One-tenth is to be paid for them if they are irrigated without expense, and half of one-tenth is to be paid for them if they are irrigated with expense. The *Kharāj* lands are those lands on which tax is imposed, whether a common portion of their produce like one-fifth, or a specific amount in the liability of whoever is responsible for it, like a dirham and a *Qafiz* (a measure of volume) for every *Jarīb* (a known quantity of food).

They also divide the lands, based on the essence of their possession, into five categories: the lands whose people embraced Islam, the lands subject to peace agreement, the lands taken by force, the lands whose people were evacuated therefrom, and the ownerless lands (called: desolate or dead lands).

• **Al-Ard Al-Amīriyyah (Crown or State Land)**

الأرض الأميرية

In Fiqh terminology, the crown or state land (*Al-Ard Al-Amīriyyah*) are the lands whose ownership belongs to the state treasury, and their disposal and authorization are determined by the state. Their ownership belongs to the state, but the right to benefit therefrom belongs to those who are authorized to administer them, according to specific conditions and restrictions. It is mentioned in Article no. (132) of "*Ithāf Al-Akhlāf*": "Transferring the ownership of crown or state lands is restricted and conditional on the public interest. If this contradicts the public interest, it is neither permissible nor legitimate."

• **Al-Ard Al-Bayḍā' (White Land or Non-Agricultural Land)**

الأرض البيضاء

The white land (*Al-Ard Al-Bayḍā'*) is a barren land which is devoid of trees and crops. As for the land with palms and trees, it is called: the black land (*Al-Ard As-Sawḍā'*) because Arabs refer to vegetation as 'blackness.'

This term is used by Fiqh scholars when they talk about *Al-Muzâra'ah*, *Al-Mukhâbarah*, and *Al-Muḥâqalah* (they are some types of sharecropping). Is *Al-Muzâra'ah* permissible in white land for one-half, one-third, or similar shares?

Abû Yûsuf said in his book “*Al-Kharâj*”: “Our scholars among the people of Hijaz and the people of Medina consider it reprehensible and void, and they say that the white land differs from the land with palm and trees. They do not view any problem with *Al-Musâqâh* (irrigation) in terms of the land with palms and trees for one-third or one-fourth. That is, *Al-Muzâra’ah* in terms of the white land differs in meaning from *Al-Musâqâh* in terms of the land with palms and trees, so it should not be analogous to it in ruling.

As for our scholars among the people of Kufa, they differ in opinion regarding this matter. Some consider it permissible while others consider it reprehensible...” Then he (Abû Yûsuf) said, “The correct opinion, in our view - and Allah knows best - is to consider it permissible, correct, and valid.”

• *Ard At-Taymâr* (Timar Land)

أرض التيمار

Timar land (*Ard At-Taymâr*) is a term that was commonly used in the Ottoman Empire, and it was mentioned in the Fiqh books of later Hanafites. According to them, it refers to a piece of the land appropriated by the state, and given by the ruler to a particular person to utilise it. The person given this land will take of its proceeds the share

due to the land itself, and the remainder of the proceeds are given to the workers. The ownership of this land remains with the state, and the person given it is called: Timariot (Timar-holder).

• *Ard Al-Jazâ’* (Regular Payment Land)

أرض الجزاء

The regular payment land (*Ard Al-Jazâ’*) is the land on which a known amount (regular payment or tax) is imposed at the time when it is vivified. Ar-Rassâ’ said, “It exists in our country in Tunisia.”

In “*Fatâwâ Al-Burzulî*”, it is stated: “As for the regular payment land (*Ard Al-Jazâ’*) in our country in Tunisia, which is the purchase of land on a condition of paying a known amount at specified intervals: If it is for an amount imposed as a tax on it at the time when it is vivified, our Sheikh said: ‘It is permissible, and there should be no disagreement about it.’ This has been the established practice in Tunisia for about three hundred years on the land known as: ‘*Ard Al-Jazâ’*.”

As for the purchase of land on a condition that the payment imposed on it continues after its vivification, this does not exist in our country, and it refers to the land expressed in documentary and Andalusian books as the land of tax (*Ard At-Tabl*) and the land of regular payment (*Al-Wazîf*).”

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This term is used specifically in the books of the Malikite school, against other Fiqh schools.

• **Ard Al-Harb (Land of War)**

أرض الحرب

The land of war (*Ard Al-Harb*) refers to the lands of non-Muslim countries (*Dâr Al-Kufr*) that are in a state of actual or anticipated war with Muslim countries (*Dar Al-Islâm*). The term '*Dâr Al-Kufr*', as defined by Judge Abû Ya'la, is: "Any place where non-Islamic laws are dominant while the rulings of Islam are not applied there."

According to Abû Yûsuf and Muhammad (the two companions of Abû Hanîfah), "If the people of a land openly practice polytheism (*Shirk*), then their land becomes a land of war." The reason for this statement is that every land is added either to Islam or non-Islam (*Kufr*). A land is added to Islam when its laws are applied there, and it is added to non-Islam when its laws are applied there, just as one says, "Paradise is the abode of peace, and Hellfire is the abode of ruin," due to the existence of peace in Paradise and destruction in Hellfire, and because Islam or non-Islam becomes dominant through the application of their laws, as stated by Al-Kâsânî. Yûsuf Ibn 'Abdul-Hâdî Al-Hanbalî explained the meaning of '*Dâr Al-Harb*' as: "The land of infidel warriors." This is what we have explained in the definition.

• **Ard Al-Hawz (Appropriated Land)**

أرض الحوز

In Fiqh terminology, the appropriated land (*Ard Al-Hawz*) is the lands acquired by their owners in terms of ownership and usufruct, but they are unable to cultivate and pay their taxes (*Kharâj*), so the owners leave these lands to the state to utilize them and fulfil the tax obligations from their benefits. The ownership of these lands remains with their owners, so it is not permissible for the ruler to sell or endow them. Instead, they are utilized to fulfil their tax obligations as long as their ownership has not legitimately transferred to the state's treasury. In "*Qânûn Al-'Adl Wa Al-Insâf Li Al-Qadâ' 'Alâ Mushkilât Al-Awqâf*", Qadrî Pasha defines it as: "The lands whose owners are unable to cultivate them and pay their taxes, so they leave them to the ruler so that their benefits would be used to fulfil the tax obligation, and the ownership of these lands remains with their owners."

• **Al-Ard Al-Kharâjiyyah (Kharâj Land)**

الأرض الخراجية

Imam Ahmad defines the *Kharâj* land (*Ard Al-Kharâj*) as: "The land that Muslims have taken over by conquer, so it became booty for them, then they gave it to its people and imposed a tax on it. This tax is an ongoing for Muslims."

Judge Abû Ya'la states, "The ruler imposes a tax on it, which is tantamount to a rent for its owners and is taken from whoever uses it, either Muslims or non-Muslims under pledge of security. Its tax and one-tenth of its crops and fruits should be combined, unless there are palm trees on it at the time when it was taken over, in which case these palm trees become an endowment (*Waqf*) along with the land, and no one-tenth is payable on their fruits. However, the ruler imposes a tax on it, and what have been planted later from those palm trees will be zakatable (i.e. one-tenth of their fruits is payable as *Zakâh*), while the land remains taxable."

In "*Tahrîr Al-Ahkâm*", Al-Badr Ibn Jamâ'ah mentioned that the *Kharâj* land is classified into three types:

First type: The land which is conquered by Muslims under a treaty on the condition that it belongs to the Muslims, but it is inhabited by non-Muslims in return for a specified tax paid to Muslims. This land is considered a *Fay'* (booty gained without fighting), and its tax is tantamount to a rent. Even if its inhabitants convert to Islam, they still pay it as a rent. If they become non-Muslim subjects (*Dhimmi*), they pay both the tax and the tribute.

Second type: The land which

is conquered by force, and divided among the conquerors, then it is taken away by the ruler in return for compensation or without compensation, and given as an endowment (*Waqf*) for Muslims, and is imposed a tax on it, as did by 'Umar Ibnul-Khattâb in the agricultural lands of Iraq.

Third type: The land where non-Muslims are evacuated and fled in fear of the Muslims. This land becomes an endowment (*Waqf*) for Muslims, and the tax is imposed on whoever inhabits or benefits from it, whether Muslim or non-Muslim subjects (*Dhimmi*), according to the ruler's discretion.

As for the land whose people made a peace agreement that it would be kept in their possession in return for a tax paid to Muslims. This tax is in fact a tribute which is to be waived upon their conversion to Islam or upon the transfer of ownership to a Muslim because there shall be no tribute on a Muslim.

• **Al-Ard As-Sabikhah (Salty Barren Land)** الأرض السبخة

The salty barren land (*Al-Ard As-Sabikhah*) refers to the poor-quality land whose soil is barely fertile.

• **Ard As-Sawâd (Black Land or Agricultural Land)** أرض السواد

In *Fiqh terminology*, the black land (*Ard As-Sawâd*) refers to the

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agricultural lands of Iraq conquered by Muslims during the era of ‘Umar Ibnul-Khattâb.

Al-Mâwardî and Abû Ya‘lâ stated, “This blackness (*Sawâd*) refers to the region conquered by Muslims during the era of ‘Umar Ibnul-Khattâb in Iraq, which was called ‘*Sawâd*’ because it is covered by crops and trees (and Arabs refer to vegetation as ‘blackness’).”

the black land has specific Fiqh rulings in terms of its ownership, division, taxation, endowment, and inheritance, as well as the extent to which it is permissible to sell, buy, lease, and cultivate it. These rulings are explained in the Fiqh compendiums and laws of Islamic governance books.

• **Al-Ard Al-‘Âdiyyah (Ancient Land)** الأرض العَادِيَّة

In Fiqh terminology, the ancient land (*Al-Ard Al-‘Âdiyyah*) refers to the ownerless dead land, except that it has traces of pre-Islamic architecture, yet due to its long-standing desolateness, it has become dead and unutilized. It is attributed to the people of Aad; an ancient and extinct tribe.

Al-Bayhaqî narrated on the authority of Ibn ‘Abbâs (**may Allah be pleased with them both**) that he said, “Indeed, the ancient land (*Al-Ard Al-‘Âdiyyah*) belongs to Allah and His Messenger, and then

to you. So, whoever vivifies any of the dead lands has more right to it.” Al-Munâwî commented, “The meaning here is the land that is not owned at the moment, even if it was owned before and the time has passed over it. This is not specifically attributed to the people of Aad, as it is attributed to them if its owner is not known.”

• **Al-Ard Al-‘Ushriyyah (‘Ushr Land)** الأرض العُشْرِيَّة

Al-Badr Ibn Jamâ‘ah said, the fertile cultivated land (*Al-Ard Al-‘Âmirah*) is classified into two categories: the ‘*Ushr* lands (owned by individuals and taxed according to yield) and the *Kharâj* lands (owned by state but cultivated by individuals). The ‘*Ushr* lands has three types:

First type: The dead land, whose owner is not known, which was initially vivified by a Muslim or a group of Muslims. This land is considered a ‘*Ushr* property, with no land tax or rent due on it. Instead, the prescribed *Zakâh* is taken from its crops and fruits.

Second type: The land whose inhabitants embraced Islam without any fighting or making a peace agreement on it.

Third type: The land which is conquered by force, and divided among the conquerors, and their ownership remains with them or with those who took their possession on

their behalf through a legitimate method.

Similar rulings can be found in “*Al-Ahkâm As-Sultâniyyah*” by Al-Mâwardî and Abû Ya‘lâ.

• **Ard Al-'Anwah (Conquered Land)** أرض العنوة

Ibn Rajab said, “The conquered land (*Ard Al-'Anwah*) is the land upon which a specific Muslim's right has been established initially, and it is fought over it with non-Muslims and taken from them by force.”

Al-Mâwardî said, “The lands which are acquired from polytheists by force and compulsion. According to the Shafi‘ites, they become a spoil of war and to be divided among the conquerors, and are considered ‘*Ushr* lands, with no land tax (*Kharâj*) due on them. Mâlik rendered them as an endowment (*Waqf*) for the Muslims in return for a land tax imposed on them. Abû Hanîfah said, “The ruler has a choice between the two matters.”

It is reported on the authority of Imam Ahmad, “If the land is conquered by force, it belongs to those who fought for it, unless it has been designated as an endowment (*Waqf*) at the time when it was conquered by Muslims, as did by ‘Umar Ibnul-Khattâb in the agricultural lands of Iraq, who has imposed a land tax on them.”

• **Al-Ard Al-Ghâmir (Swampy Uncultivated Land)** الأرض الغامير

Linguistically, the term ‘*Al-Ard Al-Ghâmiri*’ refers to desolate land. It is an antonym of ‘*Al-Ard Al-‘Âmir*’ (i.e., fertile cultivated land). Ibnul-Athîr said, “‘*Al-Ghâmir*’ is the cultivable land that has not been cultivated.”

It was mentioned in the narration of ‘Umar Ibnul-Khattâb that he imposed a dirham and a *Qafiz* (a measure of volume) for every *Jarîb* (a known quantity of food) whether ‘*Âmir*’ or ‘*Ghâmir*’.

Ibn Rajab Al-Hanbalî said, “As for ‘Umar’s imposition of a land tax on both ‘*Al-‘Âmir*’ and ‘*Al-Ghâmir*’, the former refers to the cultivated land, and the latter refers to the uncultivated land but it has water. It is called: ‘*Ghâmir*’ because water reaches and swamps it.”

As for the dead land that water does not reach it, it is called: ‘*Qafir*’, and it is not referred to as: ‘*Ghâmir*’.

• **Ard Al-Fay’ (Booty Land)** أرض الفَيْء

Ibn Rajab said, “The land that belongs to all Muslims is of two types: the booty land (*Ard Al-Fay’*) and the conquered land (*Ard Al-'Anwah*):

The booty land (*Ard Al-Fay’*) is the land upon which a specific Muslim's right has not been established initially, such as the land abandoned

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by its inhabitants fleeing from non-Muslims, and then taken over by Muslims. This is considered ‘Fay’. Also, the land of a non-Muslim who died and has no heir, which becomes ‘Fay’ according to Ash-Shâfi‘î and Ahmad (in his well-known view), as well as Abû Hanîfah and his two companions (Abû Yûsuf and Muhammad), but they allow it to be utilized for specific purposes. According to Mâlik and An-Nakha‘î, his property belongs to the people of his sect and religion. This view is also attributed to Ahmad.”

The term ‘Al-Fay’ in this context, as Abû Ya‘lâ stated, refers to endowment (Waqf).

• **Ard Al-Qat‘ah (Allotted Land)**

أرض القطيعة

Al-Kâsânî defined the allotted land (Ard Al-Qat‘ah) as: “The land allocated by the ruler to a group of people, and he has designated it specifically for them, so they took its ownership by the ruler’s allocation.” He then added, “Therefore, it is permissible to sell it.”

• **Al-Ard Al-Matrûkah (Abandoned Land)**

الأرض المتركة

In Fiqh terminology, the abandoned land (Al-Ard Al-Matrûkah) is the lands whose usufruct right is left to the public or to the residents of a certain village or district, or to a number of villages or districts, even

though their ownership belongs to the state treasury. Therefore, it is not permissible for anyone to appropriate or take possession of them.

This type of lands can be divided into two categories:

- 1- The lands left for the use of the public, such as roads, markets, squares, and similar places.
- 2- The lands left for the use of the residents of a certain village or a number of villages, such as pastures, farms, and agricultural lands.

Fiqh scholars state, “It is not permissible to sell, own, or dispose of these lands, and the concept of adverse possession (Taqâdum; i.e., acquiring ownership through the passage of time) does not apply to them.”

• **Al-Ard Al-Mutabbalah (Waterlogged Land)**

الأرض المُطَبَّلَة

The waterlogged land (Al-Ard Al-Mutabbalah) is the land on which a known amount (regular payment or tax) is imposed after its vivification. Ar-Rassâ‘ said, “It refers to the land expressed in documentary books as the land of tax (Ard At-Ta-bl) and the land of regular payment (Al-Wazîf).”

This term is used specifically in the books of the Malikite school, against other Fiqh schools.

• **Al-Ard Al-Mawât (Dead Land)**

الأرض الموات

Linguistically, the term '*Al-Ard Al-Mawât*' refers to desolate land. It is an antonym of '*Al-Āmir*' (i.e., fertile cultivated land).

In Fiqh terminology, the dead land (*Al-Ard Al-Mawât*) means: "The ownerless land where no jurisdiction over it for any individual or group, and there is no trace of previous architecture or use." This meaning is what the Shari'ah rulings on land vivification are to be relevant.

Fiqh scholars provides different definitions for it. The Hanbalites said, "It is the land where no jurisdiction and inviolable property." The Malikites said, "It denotes what is devoid of any jurisdiction by the architecture of a building, plantation, water extraction, etc., even if that architecture has been obliterated." The Hanafites said, "It refers to the land that is not utilizable due to the absence of water or water-logging, such as when it turns into a swamp or the sand covers it to the extent that cultivation becomes impossible and its utilization is unrealizable. This is applicable to either the ancient ownerless land. or the land that is owned in Islam, but its specific owner is not known, and it is distant from the villages to the extent that if a person shouts from the furthest point of fertile cultivated land, his voice cannot be heard."

• **Uraf (Boundaries)**

أُرِفَ

Fiqh scholars use the term '*Uraf*' in the context of pre-emption (*Shu-f'ah*), and their usage of it does not go beyond its linguistic meaning which refers to the boundaries and signs that separate divided lands. It is mentioned in the narration of 'Uthmân (may Allah be pleased with him): "The boundaries (*Al-Uraf*) negate pre-emption." And in the narration of 'Umar (may Allah be pleased with him): "Any property that is divided and the boundaries (*Al-Uraf*) are fixed in it, there is no pre-emption in it."

• **Irfâq (Courtesy or Benefiting)**

إِرْفَاق

The Fiqh usage of the term '*Al-Irfâq*' does not go beyond its linguistic meaning, which implies courtesy, kindness, and granting benefit to others.

In Fiqh terminology, "*Uqûd Al-Irfâq*" refers to the contracts of loan, transfer, lending, gift, pledge, agency, deposit, and profit-sharing (*Mudârabah*) because one party in these contracts provides benefit to the other. Al-'Izz Ibn 'Abdus-Salâm called them: *Al-Irfâq* contracts, and added to this list: mortgage, partnership, settlement of debt, remuneration, sharecropping, and irrigating.

• **Izâlah (Removal)**

إِزَالَة

The terminological usage of the

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term ‘*Al-Izâlah*’ does not go beyond its linguistic meaning, which implies to lift something and put it away from its proper place. Fiqh scholars may use the terms: ‘*Al-Izâlah*’, ‘*Al-Izhâb*’, and ‘*Al-Ibtâl*’ interchangeably to denote the same meaning.

The Fiqh scholars state that the removal (*Al-Izâlah*) may be required in some cases by the Legislator, while in other cases it may be prohibited:

- (a) The required removal includes removing the harm, as stated by the Prophet Muhammad (peace and blessings of Allah be upon him): “*There should be neither harming nor reciprocating harm.*” Accordingly, it is stated in the Fiqh maxims: “Harm is to be removed.” However, the harm cannot be removed by another harm, and the most severe harm can be removed by the lesser harm.
- (b) The prohibited removal includes removing the blood of a martyr, which is forbidden according to the majority of Fiqh scholars, and removing the hair from the body, face, and head of a pilgrim without an excuse, as there is a penalty for its removal.

• *Azlâm* (Divining Arrows) أزلام

Linguistically, the term ‘*Al-Azlâm*’ refers to cups or featherless arrows.

Fiqh scholars mention that they are the arrows that the people of pre-Islamic period would use to divide matters of their lives; meaning, they would inscribe commands and prohibitions on them, and place them in a container. In that time, when someone wanted to embark on a journey or had a need, he would put his hand into that container. If he drew out an arrow ordering him to do the act, then he would do it; and if it forbade him from doing it, he would refrain from doing it. It is also said that they are the arrows that the people of pre-Islamic period used to divide matters of gambling (*Al-May-sir*).

Accordingly, there are two types of the divining arrows (*Al-Azlâm*): Those who are designated for divination of life’s matters such as marriage, travel, warfare, trade, and similar matters, and those who are designated for gambling. However, the term ‘*Al-Azlâm*’ generally refers to those designated for divination, because they are commonly used for divination, while arrows are commonly used for archery, and cups are commonly used for gambling.

• *Ustâdh* (Master) أستاذ

This is an Arabized word, and it was customarily used to refer to someone who is skillful in his craft. It was said: A skilled person in a craft who teaches it to others.

Fiqh scholars use it to mean: “The master of a craft who employs an apprentice to teach him it.”

It was stated in Article no. (569) of “*Majallat Al-Ahkâm Al-‘Adliyyah*”: “If a person sends his son to a master to learn a trade and no agreement is made between the two as to the fee to be paid, and they both claim a fee after the boy has learnt the trade, the question is decided in accordance with local custom.”

‘Alî Haydar commented, “That is, if the custom of a town dictates that the master should take a fee from his student, then the master is entitled to a proportional fee for teaching; because he has taught the craft to the student. But if the custom dictates that the master should give a fee to his student, then the father of the student is entitled to receive a proportional fee for his son during that period; because the student has assisted the master in his tasks related to this craft during that period, and what is known by custom is deemed to apply as a condition.”

• **Istibdāl (Exchange)** استبدال

The Fiqh usage of the term ‘*Al-Istibdāl*’ does not go beyond its linguistic meaning, which implies to exchange one thing for another.

It is used by Fiqh scholars in the context of *Zakâh*, when they discuss the exchange of an obligatory portion for its equivalent value. It is also

used in the context of sales, when they explain the ruling on the exchange of the countervalues before taking possession because they are not clearly specified, and because the contract is not revoked by destruction. It is also used in the context of the lease of liability, when they talk about the destruction of the leased property or its entitlement and the necessity of exchanging it for another. It is also used in the context of endowment (*Waqf*), when they explain the ruling on the exchange of endowed property for his interest or due to a legal reason. It is also used in various other contexts.

• **Istithmâr (Investment)** استثمار

Linguistically, the term ‘*Al-Istithmâr*’ means seeking the fruit or yield.

The earlier Fiqh scholars often use this term in their writings in the context of its actual linguistic meaning. For example, Ibn Taymiyyah said: “The basic principle regarding the lease of trees for investment (*Al-Istithmâr*) is that it goes the same way as the lease of land for cultivation and the hiring of a wet nurse for breastfeeding.” They do not use it in its contemporary common meaning which denotes wealth growth and increase, but they use instead words like: ‘*At-Tathmîr*’ (investment), ‘*Al-Istinmâ*’ (utilization), and ‘*At-Tanmiyah*’ (growth).

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In Uṣūl Al-Fiqh, it is used in the context of the deduction of Shari'ah rulings from their evidence by a *Mujtahid* (diligent scholar), as stated by Al-Ghazâlî: "The rulings are fruits, and each fruit has its own quality and essence, and it has a bearer and an investor and a method of investment. The fruit refers to the rulings (meaning: obligation, prohibition, recommendation, reprehension, permission, goodness and badness, fulfilment and payment, validity and invalidity, and others). The bearer refers to the evidence, which are three: the Qur'an, the Sunnah, and the consensus. The methods of investment are the evidential aspects, which are four: as statements may indicate something by their wording and structure, or by their content and meaning, or by their implications and requirements, or by their reasonableness and the meaning derived from them. The investor is the diligent scholar (*Mujtahid*), and it is necessary to know his characteristics, conditions, and provisions."

• *Istijdâ* (Begging) استجداء

The Fiqh usage of the term '*Al-Istijdâ*' does not go beyond its linguistic meaning, which implies to humbly request.

Abû Hilâl Al-'Askarî said, "'*Al-Istijdâ*' is to seek gift."

• *Istihâlah* (Impossibility) استحالة

The Fiqh and Uṣūl usage of the

term '*Al-Istihâlah*' does not go beyond its two linguistic meanings, which implies the transmutation of a thing from its original nature and quality, as well as the impossibility of occurrence.

- The first meaning is mentioned by Fiqh scholars in their discussions regarding wine and impure objects. This is because their qualities can change through various causes and methods, such as burning or chemical manufacturing, or by falling into something pure, such as salt, so it becomes salty, and so on.
- The second meaning is mentioned by Fiqh scholars in their discussions regarding the impossibility of occurrence. They refer to it in matters such as the impossibility of a condition upon which the divorce was made conditional, the impossibility of fulfilling an oath in terms of breaking or not breaking it, performing an expiation or not, ... They also mention it in their discussions regarding transactions and sales, such as the destruction of the subject matter of contract in the possession of its owner before handing it over to the buyer, the cancellation of a contract due to the impossibility of its execution as a result of the destruction of the subject matter before taking possession, and how to guarantee

it: Is it warranted by the contract itself or being that of liability?

- As for the Uṣûl scholars, they use this term only in the context of the impossibility of occurrence. This includes the rulings related to the obligation of performing an impossible act, whether intrinsically or for an external reason, as they differed regarding the permissibility of obligating someone to perform what is impossible. Details of this are found in their Uṣûl compendiums.

• Istihqâq (Entitlement) استحقاق

Linguistically, the term ‘*Al-Istihqâq*’ suggests entitlement or deserving.

In Fiqh terminology, it refers to the appearance of something being rightfully due to someone else. Some Fiqh scholars describe it as: “Removing the ownership of something because its ownership has established by another party.”

The author of “*Al-Qawânîn Al-Fiqhiyyah*” defines it by saying: “The entitlement (*Al-Istihqâq*) is when something be in the possession of a person, and it appears later that it is entitled to another person as established by Shari’ah regarding the legitimate rights, whether through a confession, two just witnesses, a witness and an oath, or other means, so it is adjudicated in favor of that person.”

According to Fiqh scholars, the entitlement has two types: One that nullifies ownership, and one that transfers it.

The first type: nullifies everyone’s ownership of the subject matter entitled to, such as when it appears later that the sold item is established as an endowment (*Waqf*) or a mosque.

The second type: transfers the ownership from one person to another, such as when someone purchases property that is later proven to belong to someone else. In this case, the entitlement transfers the ownership from the buyer to the other party.

In both types of entitlement, the buyer has the right to seek reimbursement from the seller for the price he has paid.

• Istihkâr (Exclusive Lease or Usufruct Monopolization) استحقار

Linguistically, the term ‘*Al-Istihkâr*’ means withholding something.

In Fiqh terminology, the terms ‘*Al-Istihkâr*’, ‘*Al-Ihtikâr*’, and ‘*Al-Tahkîr*’ are used to refer to an agreement whereby an endowed empty land is leased to a person in return of an advance amount nearly equivalent to such land value, and such person has an everlasting entitlement to decide on and dispose of this land

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whether through building, cultivation, or any other usufruct forms as exercised by the true owners, in addition to an annual low rent paid to the endowment. The right of decision arising from this agreement is salable and purchasable, and it is inheritable to the heirs of this person.

In essence, this agreement is a long-term lease, the purpose of which is to utilize the unused endowed lands when the endowment is unable to exploit them. Ibn 'Ābidīn described it as: "A lease aimed to prevent others (from competition), and maintain use of the land." In Article no. (331) of "*Qânûn Al-'Adl Wa Al-Insâf Li Al-Qadâ' 'Alâ Mushkilât Al-Awqâf*", the term '*Al-Ihtikâr*' is defined as: "A lease contract intended to maintain the endowed land designated for construction and expansion, or cultivation, or either of them."

Fiqh scholars commonly use this term in the context of endowments, although they occasionally apply it to private properties as well.

• Istidânah (Purchase on Credit)

استيدانة

In Fiqh terminology, the term '*Al-Istidânah*' means the purchase on credit (deferred payment basis). This is as expressed by the Hanafites, who said that it differs from borrowing (*Al-Iqtirâd*). They further elaborated that in case of *Mudârabah* partnership, if the owner of the capi-

tal permits the *Mudârib* to engage in '*Al-Istidânah*', then the *Mudârib* has the right to buy on credit on behalf of them. However, he does not have the right to borrow; if the *Mudârib* does so, he would be borrowing for himself, and the loan would be due solely on him.

As for the non-Hanafites, there is no explicit mention of this term in their books, although it may be inferred from some of their statements.

The term '*Al-Istidânah*' has emerged as a result of the distinction made by a group of Fiqh scholars between debt (*Ad-Dayn*) and loan (*Al-Qard*), where debt is applied to the consideration deferred in liability and established in a financial exchange-based contract (*Mu'awadah*), while loan is that a person lends another a financial item of fungible assets that is consumed by use, and return an item similar to it. In "*Al-Fatâwâ Al-Hindiyyah*", it is stated: "The debt (*Ad-Dayn*) is to lend dirhams and dinars or fungible assets, and to take back the same in the future. The loan (*Al-Qard*) is to sell something on credit for a specified period." As-Sarakhsî said, "*Al-Istidânah*' is to buy on credit." Ibnul-'Arabî said, "The debt (*Ad-Dayn*) refers to any transaction where one of the two counterparts is given on cash (immediate payment basis) and the other is given on credit (deferred payment basis)."

Perhaps the reason for the distinction between debt and loan is their different terminological usage in Arabic language. To this regard, Abû Hilâl Al-‘Askarî states in *‘Al-Furûq’*: “The price of goods bought on credit (deferred payment basis) is considered debts, not loans, and the loan is repaid from the same kind as what was borrowed, which is not the case with debt.”

• Istirdâd (Claim of Restitution)

اِستِرْدَاد

The Fiqh usage of the term *‘Al-Istirdâd’* does not go beyond its linguistic meaning, which implies to ask and claim the return of something.

Fiqh scholars cite various reasons for *‘Al-Istirdâd’*, including entitlement, non-binding transactions, contract nullification and cancellation, expiration of term, revocation, insolvency, death, maturity, and others. The rulings on *‘Al-Istirdâd’* can be sought from their respective Fiqh compendiums.

• Istis‘â (Seeking Work) اِستِئْصَاء

Linguistically, the term *‘Al-Istis‘â’* means seeking work and earning.

In Fiqh terminology, it refers to the attempt of a freed slave to redeem the remaining portion of his slavery after partial emancipation, so he works, earns, and pays the earnings

to his master. Al-Azharî stated, “It is as if he is hired or working in return for a known tax, and spending the earnings on his value.”

It is worth mentioning that the emancipation resulting from *‘Al-Istis‘â’* differs from contractual emancipation. This is because the seeker of *‘Al-Istis‘â’* is not returned to slavery, given that *‘Al-Istis‘â’* is a relinquishment without transferring the ownership to anyone. Such relinquishment does not involve the concept of exchange-based contract (*Mu‘awadah*), unlike contractual emancipation, which is a contract subject to revocation and annulment. However, *‘Al-Istis‘â’* resembles contractual emancipation as being an emancipation in exchange for compensation.

• Istisnâ’ (Manufacturing or Custom Order) اِستِئْصَانَع

Linguistically, the term *‘Al-Istisnâ’* means requesting or commissioning the manufacture of something.

In Fiqh terminology, the author of *‘Al-Murshid Al-Hayrân’* defines it in Article no. (569) as: “The request of manufacturing an item of specific description, with materials provided by the manufacturer. Thus, if a person requests a manufacturer to make such-and-such thing with the following descriptions for such and such dirhams, and the manufacturer accepts, this will constitute *‘Istisnâ’*.”

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However, Fiqh scholars differ in their Shari'ah categorization of 'Al-Istisnâ' contract. Some said that it is a mutual promise and not a sale. Others said that it is a non-binding promise for the manufacturer. Yet, some others argued that it is a sale, but with the option of inspection for the buyer. There are also those who claim that it is a binding contract for both parties.

• **Isti'dâ' (Seeking Support)** استعداء

The Fiqh usage of the term 'Al-Isti'dâ' does not go beyond its linguistic meaning, which implies to seek aid or assistance.

Fiqh scholars mentioned phrases such as: "A man lodged a complaint (Idda'a) against another before the judge and requested support ('Adwâ) from him," meaning he asked the judge for support and assistance in bringing the adversary. Consequently, the judge would provide support ('Adwâ) for him; i.e., listen to his words, and order the adversary to be brought.

• **Istighlâl (Right of Usufruct)** استغلال

Linguistically, the term 'Al-Istighlâl' means seeking profit or gain.

In Fiqh terminology, the sale with a right of usufruct (Bay' Al-Istighlâl) is a term used in the Hanafite school, meaning the sale subject to a right of redemption under the con-

dition that the buyer leases back the sold item to the seller. "Majallat Al-Ahkâm Al-'Adliyyah" define it in Article no. (119) as: "A sale with a right of usufruct is a sale subject to a right of redemption, the vendor having a right to take the property sold on hire."

In contemporary legal terminology, the right to use (*Haqq Al-Istighlâl*) refers to the owner's right to benefit from the produce, fruits, and yields of the property, and to carry out the necessary works for this purpose either by himself or through someone else. This includes activities such as cultivating his land and reaps the fruits of that, or leasing it out or utilizing it through sharecropping (*Muzâra'ah*) with someone else.

• **Istiqlâh (Rescinding Request)** استقالة

The Fiqh usage of the term 'Al-Istiqlâh' does not go beyond its linguistic meaning, which means a request for rescinding, which refers to annulment and removal.

In Fiqh terminology, it refers to a request by one of the contracting parties from the other party to annul the contract and its implications, after it has been concluded, by mutual consent.

• **Istaqâm (Pricing)** استقام

Linguistically, the term 'Istaqâm'

means to evaluate the item and decide a price for it.

It was narrated on the authority of Ibn ‘Abbâs that he said, “If you priced (the commodity) with cash and sold for cash, there would be no harm in it, but if you priced (the commodity) with cash and sold on credit (deferred payment basis), there would be no good in it.” Related by Sa‘îd Ibn Mansûr and ‘Abdur-Razzâq in *‘Al-Muṣannaf*”.

Ibn Taymiyyah explained, “It means: if you evaluated the commodity with cash and sold it on a deferred payment basis (in return for a higher price), then your intention is only (selling) dirhams for dirhams.” He added: “Likewise, Muḥammad Ibn Sirîn said: ‘If he intends to buy it with cash, then he should bargain for it with cash, and if he intends to buy it on credit, then he should bargain for it on credit. They considered it is reprehensible to bargain for it with cash and sell it on credit, lest the intention should be the sale of dirhams for dirhams.’”

Ibnul-Athîr said, “... The meaning is that a man gives a garment to another, and evaluates it at thirty, then he would say to him: ‘Sell it with this (thirty), and whatever is surplus is yours.’ If he sells it with cash for more than thirty, it is permissible, and he would take the surplus. But if he sells it on a deferred payment basis for more than what

he would sell it for cash, then the sale is void, and it would not be permissible.”

• *Istinâd* (Attribution or Retroactivity) استناد

Linguistically, the term ‘*Al-Istinâd*’ means depending, relying, or leaning on something.

In Fiqh terminology, it refers to the retroactive confirmation of a ruling. This means that the ruling is confirmed immediately because its cause has established, then the ruling is retroactively confirmed to the past based on its confirmation in the present. For instance, the obligation of *Zakâh* at the end of a whole lunar year (*Hawl*) is retroactively based on the possession of the *Nisâb* (minimum amount determining a person’s zakatability) as from its beginning. Similarly, transferring the ownership of guaranteed properties upon fulfilling the warranty is retroactively based on the time of the existence of its cause. Another example is the sold item which is pending on ratification: if it was ratified by the person holding the right of ratification, it would become effective retroactively from the time of contract conclusion, not from the time of its ratification.

The usage of the term ‘*Al-Istinâd*’ in this sense is specific to the Hanafite school. However, other schools like the Shafi‘ites, the Malikites, and the

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Hanbalites use instead terms like ‘*At-Tabayyun*’, and the Malikites expresses it as: ‘*Al-In‘itâf*’.

In the context of ratification (*Al-Ijâzah*), ‘*Al-Istinâd*’ implies that when the pending contract is ratified, the ratification will have retroactive effect. After ratification, the contracting party benefits from the consequences of the contract as from its conclusion, because the ratification does not establish the contract anew but rather enforces it. That is, it opens the way for its suspended and pending effects to pass and take effect, so these effects are attached to the contract that generated them from the time of its conclusion and establishment, not merely from the time of ratification.

• *Istihâm* (Drawing Lots) استيهام

The Fiqh usage of the term ‘*Al-Istihâm*’ does not go beyond its linguistic meaning, which means drawing lots.

It is mentioned in the Prophetic *hadîth*: “Go, and be careful (in your division). Then draw lots.” Ibnul-Athîr explained, “That is, draw lots to determine the share of each one of you.” Judge ‘*Iyâd*’ said, “That is, seek what is right and divide by drawing lots.”

An-Nawawî mentioned that ‘*Al-Istihâm*’ is used by Fiqh scholars in the sense of participation.

• *Istihlāk* (Consumption) استهلاك

Linguistically, the term ‘*Al-Istihlāk*’ is used in two meanings:

First: Exposure to destruction.

Second: Consumption and using up.

In Fiqh terminology, it refers to rendering something perishable or as good as perishable, such as a worn-out garment, or mixing it with something else in a way that it cannot be separated by disposal, like the consumption of butter in bread.

Moreover, some Fiqh scholars categorize wealth, according to the effect of its use, into: consumable and usable. The consumable wealth is the items that are destroyed upon single use, whether their destruction come from the perishability of their essence such as: food, drinks, firewood, etc., or from its transmutation such as: paper for writing, wool for weaving, and other materials that are manufactured but their essences do not perish through manufacturing. Some others define it as the items that cannot be benefited from while their essence remain intact.

As for the usable wealth, it is the items that withstand repeated use with their substance kept intact, even though their value may decrease due to use, or sometimes lead to their destruction like real estate,

house furniture, tools, machinery, and the like.

• Istifâ' (Taking Right in Full)

استيفاء

The Fiqh usage of the term 'Al-Istifâ' does not go beyond its linguistic meaning, which implies that a person takes his right in full without leaving anything of it.

As for the release by admission of payment (*Ibrâ' Al-Istifâ*), it is a widely used term among the Hanafite scholars. They divide the release (*Al-Ibrâ'*) into two parts: release by way of renunciation of a right, and release by admission of payment. In personal guarantee, for example, if the creditor says to the guarantor, "You are released from the debt due to me," it constitutes a release by admission of payment for both the guarantor and the creditor, and they are released from the claim. However, if the creditor says, "I release you," it would be a release by way of renunciation of a right, not an admission of payment. In the release by way of renunciation of a right, the guarantor is not entitled to recourse to the debtor with anything because it is a release from the debt, whereas in the release by admission of payment, the guarantor is entitled to demand payment from the debtor because it is a release by admission of payment, as if he said, "You have paid me the money."

• Istîlâ' (Appropriation) استيلاء

Linguistically, the term 'Al-Istîlâ' means placing one's hand on something, taking possession of it, and gaining control over it.

In Fiqh terminology, it is the establishment of control over a place, or dominance over it in the present and in the future, or coercion and prevalence (even constructively).

As for the physical act by which appropriation is achieved, it varies depending on the objects, individuals, times, and places, given that it is determined by customary practices.

• Istîlâd (Impregnation) استيلاء

Linguistically, the term 'Al-Istîlâd' means impregnating a woman, whether she is free or slave.

Terminologically, the Hanafites has uniquely used this term in the sense of rendering a slave-girl *Umm Walad* (child's mother by impregnation). Other scholars termed this as: *Ummahât Al-Awlâd* (children's mothers). Ibn Qudâmah defined *Umm Al-Walad* as: "The slave-girl who gives birth to a child from her master while under his possession."

Fiqh scholars stipulated special rulings for the child's mother, distinguishing her from other slaves. The most significant of these rulings is that if she becomes pregnant by her master and gives birth to his child, she shall be emancipated upon his

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death by virtue of her child, as stated by the Prophet Muḥammad (peace and blessings of Allah be upon him): “Any slave-girl who gives birth to her master’s child becomes free after he dies.”

• **Isti’mân (Seeking Asylum or Trust)** استئمان

Linguistically, the term ‘Al-Isti’mân’ refers to a request of (personal) safety.

In Fiqh terminology, it is used to denote entering the land of others (i.e., their territory) safely, whether the entrant is a Muslim or an infidel warrior.

This term is also used by Fiqh scholars in the context of financial transactions to denote making one’s property in the liability of another person as a trust. That is, the trustee does not bear the liability of its loss as long as he has not committed a tort or negligence in its safekeeping. Examples include: the bailee, partner, *Mudârabah* manager, and the sale agent...

As for the sale of ‘Al-Isti’mân’ according to Fiqh scholars, it is a sale of ‘*Istirsâl*’ and ‘*Istislâm*’ (a trust sale where a person enters into a sale contract based on his trust with the other party). Its form is that the person requesting the sale or purchase or the like reveals to the other contracting party that he is unaware of the actual price of the item being

offered, but he places his trust in him and seeks his advice. Consequently, he says to the seller, “Buy from me as you buy from other people, or sell to me as you sell to other people”, and the contract is concluded on this basis. Al-Hattâb stated, “As for the sale of ‘Al-Isti’mân’ and ‘Al-Istirsâl’, it is when a person says: ‘Buy my commodity from me as you buy from other people, for I do not know the price,’ and the buyer purchases from him at the price he offers.”

The Malikites and the Hanbalites give the trusting party the option of deceit (*Khiyâr Al-Ghabn*); i.e. to revoke the contract due to deceit, contrary to the Hanafites and Shafi’ites.

• **Isrâf (Extravagance)** إسراف

Linguistically, the term ‘Al-Isrâf’ refers to exceeding the limit in every action a person undertakes. However, it is commonly associated with excessive spending.

In Fiqh terminology, it is used to denote exceeding the limit in spending money. This can be understood either in terms of quantity or in terms of quality.

Fiqh scholars mentioned that there are two cases of extravagance:

First: Spending in what is prohibited (*Harâm*).

Second: Spending in what is originally permissible, but in a manner

that is not reasonable or legitimate. For example, spending excessive amounts of money on trivial matters, such as spending it in permissible ways but beyond moderation and necessity.

• **Isqât (Relinquishment)** إسقاط

Linguistically, the term ‘*Al-Isqât*’ means dropping and waiving.

In Fiqh terminology, it refers to the removal of an ownership or a right, not transferred to another owner or rightful claimant. Thus, the claim to it relinquishes because the relinquished right ceases and drops without being transferred, such as divorce, emancipation, pardon from retribution (*Qisâs*), and release from a debt.

• **Isqâtât (Extinguishing Rights)** إسقاطات

The Hanafite scholars categorize contracts in their broad sense (which is the undertaking of transaction based on a firm intention and definite consent, whether by one party alone or multiple parties), according to their nature, suitability for conditions or restrictions, possibility of being contingent, and the ability to take effect on a specified future date, into several groups, each of which is organized separately. These groups are: alienation of property contracts (*At-Tamlîkât*), extinguishing rights contracts (*Al-Isqâtât*), authorization

contracts (*Al-Itlâqât*), restriction of rights contracts (*At-Taqyîdât*), partnership contracts (*Ash-Sharikât*), guarantee contracts (*Al-Istithâq*), and deposits and bailments contracts (*Al-Istihfâz*).

Accordingly, the great scholar **Ahmed Ibrâhîm** states, “Extinguishing rights (*Al-Isqâtât*) group is a type of contracts under which falls the following categories:

- (a) Extinguishing rights (*Al-Isqâtât*) which imply the concept of donation: These include endowment (*Waqf*) and release from a debt.
- (b) Extinguishing rights (*Al-Isqâtât*) which are absolute: These include divorce, emancipation, transferring the right of pre-emption, and similar dispositions of relinquishing a right without compensation.

• **Aswâq (Markets)** أسواق

The term ‘*Al-Aswâq*’ refers to marketplaces, i.e., the places where commercial transactions take place, such as buying and selling.

Fiqh scholars have specific compilations concerning the rulings on markets, aimed at elucidating the Shari’ah rulings governing the various types of transactions that occur in markets. These compilations are specialized in applying texts and religious verdicts (fatwas) to the realities of market transactions.

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• ***Ishrâk* (Taking a Partner) إشراك**

Linguistically, the term '*Al-Ishrâk*' means making someone a partner.

In Fiqh terminology, it refers to the merger or partnership of two individuals.

It is used also by Fiqh scholars to refer to sharing the ownership of a commodity in return for a portion of the price. To this regard, An-Nawawî stated: "*Al-Ishrâk*' is when someone buys something and then shares it with someone else so that each of them owns a portion of it proportionate to their share of the price."

• ***Ashâb Al-Furûd* (Heirs With Prescribed Shares) أصحاب الفروض**

Linguistically, the term '*Al-Furûd*' is the plural of '*Al-Fard*', which means estimation or determination.

Both Al-Bukhârî and Muslim related that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: "*Give 'Al-Farâ'id*' (i.e., the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it; and what remains over goes to the closest male (relative of the deceased)."

The meaning of the ḥadīth is that the heirs with prescribed shares should receive their estimated portions first. If anything remains after

that, it goes to the nearest agnatic heir. This is because the consensus among scholars is that inheritance is of two types: inheritance by prescribed share and inheritance by way of agnation. The inheritance by prescribed share is when each heir has an estimated share (i.e., a specific percentage) as prescribed by the Qur'an: two-thirds, one-third, one-sixth, one-half, one-fourth, or one-eighth. The inheritance by way of agnation, on the other hand, is when each heir does not have a prescribed share but inherits the entire estate if he or she is the only heir, and inherits what remains of the estate after the heirs with prescribed shares, if they exist and have not been blocked.

The prescribed share (*Al-Fard*) was given precedence over agnation (*At-Ta'sīb*) because the inheritance through it is stronger, given that the prescribed heir does not lose his right even if the heirs with prescribed shares have consumed the whole estate, unlike the nearest agnatic heir who loses his right in such a case.

• ***Islâh* (Repair)**

إصلاح

Linguistically, the term '*Al-Islâh*' means changing something so as to set it on the right course, ensuring that it is wisely done.

In Fiqh terminology, it is used in various contexts, such as the owner's

repair of a leased property to ensure its continued use, the repair of a dead land by its vivification, the appointment of a guardian, trustee and custodian to repair (i.e., manage) the property of a person whose legal competence is restricted, and other similar cases.

• **Idâ'at Al-Mâl (Wasting of Wealth)** إضاعة المال

It was related by Muslim, Mâlik, and Ahmad on the authority of Abû Hurayrah that the Prophet (peace and blessings of Allah be upon him) forbade wasting of wealth.

The Fiqh scholars differed regarding the meaning of wasting of wealth into four opinions:

First: Spending it in any manner not allowed by the Shari'ah, such as spending it in acts of disobedience to Allah, or using it extravagantly and wastefully, because of being a means of corruption which leads to the use of Allah's wealth in acts of disobedience to Him.

Second: Destroying it and causing its loss, or exposing it to that, because of being a means of corruption for wealth, and Allah does not like corruption, and because when one's wealth is destroyed, he will be exposed to unjustly offend people and their possessions.

Third: Preventing it from growth by neglecting its investment and

considering its development.

Fourth: non-spending it in its due purposes required by the Shari'ah, which are beneficial for both his religious and worldly matters.

Ashhab narrated on the authority of Mâlik that he said, "Wasting of wealth is not to spend it in its due purposes, but to spend it in undue purposes." This is explained by Ibn Rushd (Grandfather): "Withholding wealth and non-spending it in its due purposes, and abstaining from spending it in acts of charity and good deeds, are considered wastefulness of it; as there is no benefit in it in this way, and thus its existence and non-existence will be the same, rather it increases wrongdoing by non-spending it in its due purposes and spending it in undue purposes, which is also a wastefulness of it due to its destruction and consumption without any reward to the spender in return.

In "*Al-Mufhim*", Al-Qurtubî pointed out that the general prohibition against wasting of wealth includes both a little and a lot of it, so even if one throws something valued at a dirham into the sea, for example, it would still be prohibited. Similarly, if one refrains from spending it in its due purpose or spends it in acts of disobedience to Allah, it would still be prohibited as well.

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• **Idâfah (Annexation or Addition)**
إِضَافَةٌ

The Fiqh usage of the term ‘*Al-Idâfah*’ does not go beyond its linguistic meaning, which implies to annex or attribute something to another.

In Fiqh terminology, the scholars use it in the sense of the casual relation to something in comparison to another relation, such as paternity and filiation. As expressed by them, annexing or adding the ruling to the future time means postponing the effects of disposal to the future time determined by the disposer, as the annexation postpones the application of the ruling on the cause until the time to which the cause has been annexed.

Fiqh scholars divide the annexation (*Al-Idâfah*) in terms of contracts into two types: addition to time and addition to person. The addition to time means postponing the consequences resulting from the contract until the time to which that contract has been added. It is evident that some contracts accept addition to time while others do not. As for the addition to person, it means attributing the ruling of disposal to a known person.

• **Idtirâr (Necessity or Compulsion)**
اضطرار

Linguistically, the term ‘*Al-Id-*

tirâr’ means resorting to something that involves severe harm and coercion. It is said, “The resort to something when there is no other option.”

In Fiqh terminology, it means that the legally accountable person falls into a desperate situation where he is forced to commit what is prohibited or to abandon what is obligated by Shari’ah, as in the compelling coercion (major constraint), fear of death by starvation, defending oneself against assault on life, honor, property, and similar situations.

In Shari’ah, the compulsion (*Al-Idtirâr*) is an exceptional case whereby the Legislator has made an exemption to absolve the compelled person from sin regarding the rights of Allah, the Almighty, as He said: {“... while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled.”} [Al-An’âm (Cattle):119]. To this regard, it is stated in “*Al-Qawâ'id Al-Fiqhiyyah*”: “Necessities render prohibited things permissible”, and “Necessity is estimated by the extent thereof”, and “There is no obligation in case of inability, and no prohibition in case of necessity.”

As for the rights of people, the compulsion (*Al-Idtirâr*) does not exempt the compelled person from civil or criminal liability. For instance, the person who is compelled to unjustly take another’s life in

self-defense will be held accountable, and the person who is compelled to destroy another's property for his own benefit will be obligated to compensate for it. This is based on the basic principle of the inviolability of the Muslim's blood, property, and honor. Fiqh scholars clarified this in their maxims stating: "Compulsion does not negate the inviolability of the property", and "Compulsion does not suspend the rights of others".

• **Itlâq (Unrestrictedness)** إطلاق

Linguistically, the term '*Al-Itlâq*' denotes giving a free hand, full permission, generalization, and non-restriction.

According to Fiqh and Uṣūl scholars, its definition is derived from the concept of '*Al-Mutlaq*'; a term which refers to an unidentified person, or that indicates the reality of something without restriction, or a thing that is not restricted by a qualifier preventing it from extending to something else.

It is used by Fiqh scholars to mean enforcement, as they refer to the unrestrictedness of disposition as being enforceable.

Fiqh scholars use the term '*Al-Itlâq*' when they discuss contracts that are concluded on unidentified items: are they valid or not? They also use it in terms of '*Mudârabah*' and '*Wakâlah*' when there is a differ-

ence between the manager, owner, agent, and principal regarding the unrestrictedness or restrictedness of disposition. Further, they use it when addressing the unrestricted admission and unrestricted endowment in the context of admissions and endowments. It is also used in terms of vows when they discuss the unrestricted vow and the release from it.... They also have detailed discussions on unrestrictedness in lease, will, and endowment. As-Suyûtî dedicated a section in his book "*Al-Ashbâh Wan-Nazâ'ir*" to all matters that the Shari'ah has mentioned unrestricted and there is neither a rule for it in Shari'ah or in language, where the customary practice is applicable to it.

• **Itlâqât (Authorization Contracts)** إطلاقات

The Hanafite scholars categorize contracts in their broad sense (which is the undertaking of transaction based on a firm intention and definite consent, whether by one party alone or multiple parties) according to their nature, suitability for conditions or restrictions, possibility of being contingent, and the ability to take effect on a specified future date, into several groups, each of which is organized separately. These groups are: commutative contracts (*Al-Mu'âwadhât*), gratuitous contracts (*At-Tabarru'ât*), extinguishing rights contracts (*Al-Isqâtât*),

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authorization contracts (*Al-Itlâqât*), restriction of rights contracts (*At-Ta-qyîdât*), partnership contracts (*Ash-Sharikât*), guarantee contracts (*Al-Istîthâq*), and deposits and bailments contracts (*Al-Istihfâz*).

Accordingly, the great scholar Ahmed Ibrâhîm states, "Authorization contracts (*Al-Itlâqât*) group is a type of contracts under which falls the following categories: agency, and authorization for a discerning minor to engage in trade, and likewise the discerning imbecile and the slave. It also includes: all types of guardianship, whether over oneself or over property, the appointment of judges and all other state officials, the appointment of a caliph to lead the Ummah and act as an agent and guardian over its interests." The professor Az-Zarqâ added, "Authorization contracts (*Al-Itlâqât*) include: agency and authorization by the guardian for a discerning minor to engage in trade, as it involves granting discretionary authority to the agent and the minor, from which they were previously interdicted."

• *I'tâq* (Emancipation) إعتاق

Linguistically, the term '*Al-I'tâq*' is derived from '*Al-Itq*' which means generosity.

In Fiqh terminology, it is the removal of slavery. Accordingly, Fiqh scholars defined it as: "The empowerment by which a slave becomes

eligible for legitimate transactions."

They sometimes express the term '*Al-Itq*' as: freeing the slave, meaning the emancipation of the whole of the slave.

• *I'tisâr* (Reclaiming) إغتصاف

Linguistically, the term '*Al-I'tisâr*' refers to extracting wealth from someone's hand by any means.

Terminologically, it means reclaiming the gift, as evidenced by the statement of 'Umar Ibnul-Khattâb: "The father may reclaim (*Ya'tasir*) his gift from his son, but the son cannot reclaim anything from his father." Ibnul-Athîr explained, "It means that if a father gives something to his son (as a gift), he has the right to take it back."

The Fiqh usage of the term '*Al-I'tisâr*', as defined by Ibn Arafa Al-Mâlikî, implies that the giver takes back his gift without compensation, not at the discretion of its recipient, meaning without the consent of the donee.

This term is commonly used in the Malikites books with this meaning. As for other scholars, they express it by the term '*Ar-Rujû*' in the gift (taking the gift back).

• *I'tiqâb* (Confinement) اغْتِقَاب

Linguistically, the term '*Al-I'tiqâb*' refers to withholding and prevention. It is said, "The seller has

confined the item”, meaning he withholds it until he receives the price. Ibrâhîm An-Nakha‘î said, “The confiner shall be held liable for what he has confined,” meaning if the seller sold something and withheld it from the buyer, but it perished in his possession, then it has been perished by him, not by the buyer.

• I'timâl (Working)

اِغْتِيَاظ

Linguistically, the term ‘*Al-I'timâl*’ refers to working with one’s own effort, opinion, and machine.

It was mentioned in the ḥadīth of Khaybar that Allah’s Messenger (peace and blessings of Allah be upon him) handed over their land to them (the Jews of Khaybar) on the condition that they should work upon it (*Ya’tamilûhâ*) with their own wealth. Ibnul-Athîr said, “They undertake what is needed for it in terms of vivification, cultivation, fertilization, guarding, and the like.”

• I'tiyâd (Taking Compensation)

اِغْتِيَاظ

The Fiqh usage of the term ‘*Al-I'tiyâd*’ does not go beyond its linguistic meaning, which implies to take compensation, i.e., the consideration. It applies to everything a person possesses, whether it be tangible asset, debt, right, or usufruct, as prescribed by the Shari‘ah texts and its general rules.

Al-Kâsânî said, “The compensation in terms of absolute commutative contracts may be in the form of tangible asset, debt, or usufruct, except that the receipt is stipulated in some cases of compensation under certain circumstances.”

As for the underlying reasons for ‘*Al-I'tiyâd*’, it may arise from one of the straightforward financial commutative contracts such as sale and lease, or by one of the non- straightforward financial commutative contracts such as manumission by contract (*Al-Mukâtabah*) and wife’s self-redemption (*Al-Khul’*). It may also arise from the destruction of property or the infliction of financial harm on others, as determined by the Fiqh maxim regarding the justice compensations (*Al-Jawâbir*).

• I'dâm (Destituteness)

اِغْدَام

The Fiqh usage of the term ‘*Al-I'dâm*’ does not go beyond its linguistic meaning, which commonly refers to the loss of wealth.

The Fiqh scholars classified the insolvency (*Al-I'sâr*) into destituteness and impoverishment, and the insolvent debtor is categorized as either a destitute or an impoverished. They explained:

“The destitute (*Al-Mu'dim*) is the one whose entire wealth has run out, so he has nothing left to spend on himself and his dependents, let alone to pay off his debts adequately.

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The impoverished (*Al-Muqill*) is the one who possesses some wealth, but it is so little that it hardly suffices for spending on himself and his dependents in a reasonable manner, and for paying off his debts except with harm, hardship, and difficulty.”

• I'sâr (Insolvency)

إعسار

Linguistically, the term ‘*Al-I'sâr*’ originally refers to the transition from ease to hardship, and the term ‘*Al-'Usrah*’ denotes hardship resulting from the lack of wealth.

In Fiqh terminology, the term ‘*Al-'Usrah*’ is often associated with financial hardship, as stated by Al-Qurtubî. Most Fiqh scholars have not set a limit or standards for the insolvency (*Al-I'sâr*), and they suggest that it shall be determined according to customary practices, as it varies depending on circumstances and regions.

As for ‘*Al-'Usrah*’ mentioned in the Quranic Verse: {“*And if someone is in hardship ('Usrah), then (let there be) postponement until (a time of) ease.*”} [Al-Baqarah (The Cow): 280], it refers to the debtor’s inability to fulfil his financial obligations.

Judge Abû Al-Walîd Ibn Rushd mentioned that the insolvent debtor has two cases: either he is destitute or he is not. This because not every insolvent person is destitute, although every destitute person is insolvent. He stated:

- The debtor who is destitute: That is, his entire wealth has run out, so he has nothing left to meet the essential needs for himself and his dependents, let alone to pay off his debts adequately. In this case, it is obligatory for the creditor to grant him a respite, because he is in a state of absolute inability to repay his debts, and it is not permissible, according to Shari'ah, to impose on him that he cannot afford.
- The debtor who is not destitute: That is, he possesses some wealth, but it is so little that it hardly suffices for spending on himself and his dependents in a reasonable manner, and for paying off his debts except with harm, hardship, and difficulty. In this case, it is desirable and recommended to grant him a respite until his circumstances improve and can repay without incurring harm on him. The scholars in Qurtubâ (Cordoba) used to issue fatwas allowing such respite based on careful consideration of the debtor’s financial situation and the scarcity of his resources. They would refrain from authorizing the immediate sale of their goods and properties, unlike the fatwas of other scholars in Al-Andalus (Andalusia) who would permit the debtor’s property to be sold and the creditor to be repaid promptly.

• **I'tâ' (Giving)**

إعطاء

Linguistically, the term 'Al-I'tâ' means to hand over or deliver.

It does not originally imply transferring ownership to the recipient, but it is used customarily as synonymous with gift-giving (*Al-Hibah*). Abû Hilâl Al-'Askarî pointed this out, saying: "The difference between giving (*Al-I'tâ'*) and gift-giving (*Al-Hibah*) is that giving means handing something over to the recipient, while gift-giving entails the transfer of ownership.... Then, the term 'Al-I'tâ' was extensively used until it became synonymous with the transfer of ownership...."

The Fiqh usage of this term does not go beyond its linguistic meaning and customary connotation. As for the meaning of giving (*Al-I'tâ'*) in the Fiqh maxim stating: "A thing which may not be taken may also not be given" ["*Majallat Al-Ahkâm Al-'Adliyyah*": Article no. (34)], it refers, as stated by As-Suyûtî, Ibn Nujaym, and others, to what is given and provided on the basis of transferring the ownership in exchange for an act forbidden by Shari'ah, such as usury, the earnings of a prostitute, the charges taken by a soothsayer, bribery, the fee of a wailing woman, and the wage of a man who is blowing a pipe.

• **I'wâz (Neediness)**

إغواز

Linguistically, the term 'Al-I'w-

âz' refers to hardship, indigence, and poverty.

An-Nawawî said, "'Al-I'wâz' means poverty."

• **Ighlâl (Misappropriation)** إغلال

Linguistically, the term 'Al-Ighlâl' refers to everything obtained from the yields of a land or its rent, and similar things.

The Fiqh scholars said that both 'Al-Ghulûl' and 'Al-Ighlâl' mean the breach of trust, except that 'Al-Ghulûl' is used customarily in Shari'ah to denote the breach of trust by stealing from the spoils of war, while 'Al-Ighlâl' is a more general term. This is evidenced by the Prophetic *hadîth* stating: "*The borrower who is not misappropriating shall not be held liable*", meaning: the one who does not breach of trust.

• **Ighmâd (Overlooking)** إغماض

Linguistically, the term 'Al-Ighmâd' means closing one's eyes, and it is metaphorically used to indicate leniency or overlooking.

To this regard, Fiqh scholars says: "The settlement (*Sulh*) is essentially based on leniency and overlooking", meaning: tolerance.

Ibull-Athîr stated, "'Al-Ighmâd' means forgiveness and leniency. It is said: '*Aghmada Fî Al-Mabî', Yughmidu*' meaning to add something extra to a sale without increasing the price, and the seller agrees to it."

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In the Qur'an, it is mentioned: *{“And do not aim toward the defective therefrom, spending (from that) while you would not take it (yourself) except with closed eyes”}* [Al-Baqarah (The Cow): 267]. Al-Azharî explained, “Do not take out your charity from the worst crops and fruits, for you do not accept this inferior quality that you give in charity in your sale transactions, unless you take it with a deduction in price, less than the price of what it is sold for of its kind. So, the meaning of ‘*Tughmidû*’ (close eyes) is to make it permissible for yourselves; that is, you take it at a reduced price.”

• **Ighnâ’ (Sufficiency)** إغناء

The Fiqh usage of the term ‘*Al-Ighnâ*’ does not go beyond its linguistic meaning, which implies sufficiency and adequacy.

• **Ifâdah (Benefitting)** إفادة

Linguistically, the term ‘*Al-Ifâdah*’ implies two opposite meanings: giving and taking.

In Fiqh terminology, it is used in the context of bankruptcy, as mentioned in “*Mukhtasar Al-Muzanî*”: “I prevented his creditors from pursuing him until a proof is established that he has benefited (*Afâda*) from wealth,” indicating that he took benefit.”

• **Ifrâz (Separation)** إفراز

The Fiqh usage of the term ‘*Al-If-*

râz’ does not go beyond its linguistic meaning, which implies separation; i.e., isolating something and distinguishing it from similar ones.

The scholars use it in the context of division, which has two types: the assets division and the usufructs division. They termed the usufructs division as ‘*Muhâya’h*’ (partition of usufruct).

As for the assets division, they stated that it could be either division by separation or division by adjustment. According to them, the division by separation is the division that does not require a return (proportional addition) or an evaluation.

The scholars also use it when they discuss the conditions for taking possession in sales, gifts, pledges, and other transactions. Some of them stipulate for the validity of possession that the subject matter must be separated and not occupied by the right of others.

However, the Fiqh scholars have disagreed regarding the reality of division. Some say: it is a sale; others say: it is a separation; and yet others say: it is a separation of some shares from others, and an exchange of some shares for others.

• **Ifqâr (Lending an Animal)** إنقار

The Fiqh usage of the term ‘*Al-If-qâr*’ does not go beyond its linguistic

meaning, which implies to lend any animal for riding or carrying a load.

Abû Hilâl Al-‘Askarî mentioned the difference between ‘*Al-Ifaqâr*’ and ‘*Al-Ikhhâl*’ stating: “*Al-Ifaqâr*’ is to lend the back of one’s camel for someone to ride on and then take it back. As for ‘*Al-Ikhhâl*’, it is to give one’s horse for someone to ride on into battle. It is also said that it is to give him his she-camel to benefit from its milk, fur, and fat.”

• *Iflâs* (Bankruptcy) إفلاس

Linguistically, the term ‘*Al-Iflâs*’ refers to a case when a person goes bankrupt after having wealth in gold and silver, or when he reaches a state where he has no wealth.

In Fiqh terminology, it is the state when a person’s liabilities exceed his wealth, whether he originally has no wealth at all, or he has wealth less than his liabilities. Ibn Qudâmah said, “The one whose debt outweighs his wealth is termed bankrupt (*Muflis*), even if he possesses assets; because his assets are destined to be used to repay off his debt, so such assets would be as if non-existent.”

• *Iqâlah* (Rescinding) إقالة

Linguistically, the term ‘*Al-Iqâlah*’ means annulment, and removal.

In Fiqh terminology, it is to annul a contract and its implications,

after it has been concluded, by the two parties’ mutual consent.

• *Iqtâr* (Sparingness) إقتار

Linguistically, the term ‘*Al-Iqtâr*’ means spending with niggardliness. It is an opposite of excessiveness (*Al-Isrâf*), and both are condemned by Shari’ah. as Allah says: {“**And (they are) those who, when they spend, do so not excessively or sparingly but are ever, between that, (justly) moderate.**”} [Al-Furqân (The Criterion): 67].

As for the stinginess (*At-Taqtîr*), it means to be tight-fisted where a person is required to spend, such as the spending on the family’s livelihood and the dependents’ needs.

In Fiqh terminology, some scholars defined the sparingness (*Al-Iqtâr*) as: “The negligence in fulfilling what is obligatory.” It was narrated on the authority of Ath-Thawrî and Ibn ‘Abbâs: “‘*Al-Iqtâr*’ is to deprive someone of his right.” At-Tabarî said, “It is the negligence in observing Allah’s commands.”

• *Iqtisâd* (Moderation) اقتصاد

Linguistically, the term ‘*Al-Iqtisâd*’ is derived from the word ‘*Al-Qasd*’, which means moderation and seeking a middle course.

In Fiqh terminology, scholars use it to denote the moderation between excessiveness and negligence. Al-‘Izz Ibn ‘Abdus-Salâm said,

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“*Al-Iqtisâd*’ is a rank between two ranks and a position between two positions. There are three positions: the negligence in pursuing benefits, the excessiveness in pursuing them, and the moderation between them.... the negligence is blameworthy, and the excessiveness is blameworthy, but the good deed is the moderation between excessiveness and negligence, as the best matters are those of the middle way.”

Ibnul-Qayyim said, “As for the difference between the (*Al-Iqtisâd*) and the miserliness (*Ash-Shuh*), the moderation is a praiseworthy trait that arises from two qualities: justice and wisdom. Through justice, the person moderates in withholding and spending, and through wisdom he places each in its appropriate place, so the moderation arises between these two extremes.

As for miserliness, it is a blameworthy trait that arises from evil thinking and weak soul. Satan fuels this trait until it turns into panic; i.e., an intense desire for something coupled with fear of losing it. This leads to withholding it and distress over its loss.”

• *Iqtisâr* (Restriction) اقتصار

Linguistically, the term ‘*Al-Iqtisâr*’ means restricting oneself to something, and not to exceed it.

In Fiqh terminology, it refers to

the establishment of a ruling at the occurrence of its cause, not before or after its occurrence. Thus, they defined it as: “The establishment of the ruling at once.” This applies to contracts like executory sales and immediately effective divorces, and others. Accordingly:

- 1- The restriction (*Al-Iqtisâr*) is one of the methods through which a ruling is established.
- 2- The establishment of a ruling by way of restriction (*Al-Iqtisâr*) shall be immediate; meaning it is not to be retroactive or effective at a future date.
- 3- It is established by way of performative utterance, not by way of constative utterance.
- 4- It is an immediately effective performativity, not a pending one.

It is evident that the terminological usage of the term ‘*Al-Iqtisâr*’ does not go beyond its linguistic meaning because the establishment of a ruling at once implies its restriction to the time of its occurrence and not extending it, neither into the past nor into the future.

• *Iqtidâ'* (Demanding Repayment) اقتضاء

The term ‘*Iqtidâ' Al-Haqq*’ is used linguistically and by Fiqh scholars to mean the recovery and taking possession.

Ibn 'Arafah stated, “*Al-Iqtidâ*” conventionally means taking possession of what is established in someone’s liability other than the possessor.” It is also used to mean demanding one’s right, as indicated by Al-Bukhârî in the Prophetic *hadîth* stating: “*May Allah have mercy on a person who is lenient when he sells, when he buys, and when he asks for repayment.*” That is, demanding the repayment of his right leniently and without any pressure.

The Uṣūl scholars use this term in the context of indication, saying: “The matter requires obligation”, meaning it indicates obligation, and in the context of request, saying: “*Al-Hukm At-Taklîf*” is a communication from Allah which is connected to the acts of the legally accountable persons demanding them to do or not to do a thing or gives an option between the two.” That is, a request to do or not to do it.

• *Iqtinâ*’ (Acquisition)

اقتناء

The Fiqh usage of the term ‘*Al-Iqtinâ*’ does not go beyond its linguistic meaning, which refers to the property obtained for personal use, not for trade.

The Fiqh scholars uses it frequently in the context of *Zakâh* (obligatory almsgiving), where they differentiate between the property obtained for personal use and those acquired for trade. The property obtained for

personal use, such as clothing, house furniture, personal vehicles, residential homes, shops, fixed furnishings, and tools of a manufacturer, etc. are not subject to *Zakâh*. However, the property prepared for trade with the intention of selling it and making a profit from its sale are subject to *Zakâh*. This ruling does not apply to gold and silver, as their possessors are obliged to pay *Zakâh* on their nuggets, coined currency, ornaments, and utensils, regardless of whether they intend to trade in them or not, because they are naturally intended for trade. This is stated by the Hanafites, and it is generally agreed upon by the Shafi’ites, the Malikites, and the Hanbalites, except in the case of women’s jewelry.

• *Iqtiwâ*’ (Partners Outbidding)

اقتواء

Linguistically, it is said: ‘*Iqawâ*’, ‘*Yuqwi*’, meaning to strengthen. So, ‘*Al-Muqwi*’ refers to someone with a strong animal.

In the statement of Ibn Sîrîn, “He did not see anything wrong with partners bidding for the commodity among themselves, each trying to outbid the other.”

Ibnul-Athîr said, “Partners outbidding (*Al-Iqtiwâ*) means that partners buy a cheap commodity, then they bid for it among themselves until they reach its highest price.”

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In “Az-Zâhir”, it is stated: “I heard Al-Mundhirî saying: ‘I asked Abû Al-Haytham about ‘*Al-Iqtiwâ*’ in goods’, and he said: ‘Its origin is when you and another person share a commodity, then you buy his share with a portion of the profit, ...”

• *Iqtiyât* (Taking Sustenance) اِقتِيَاث

The Fiqh usage of the term ‘*Al-Iqtiyât*’ does not go beyond its linguistic meaning, which refers to taking sustenance.

Ad-Dusûqî defined it as: “What sustains the body and without which it perishes. Foods (*Al-Aghziyah*) is more general than taking sustenance (*Al-Iqtiyât*), as a person may consume it for sustenance, seasoning, fruitiness, or medicinal purposes.”

The scholars use the term ‘*Al-Iqtiyât*’ in the context of *Zakâh*, usury-based sales, and monopolization: In *Zakâh*, there is no disagreement among scholars regarding the obligation of *Zakâh* on what is used for feeding or storing up voluntarily, such as crops and fruits. As for non-food items, there is disagreement regarding the obligation of *Zakâh* on them. In usury-based sales, the majority of Fiqh scholars do not consider taking sustenance (*Al-Iqtiyât*) as a cause for usury. However, according to the Malikites, taking sustenance (*Al-Iqtiyât*) and storing up (*Al-Iddikhâr*) are considered causes for usury. In their understanding, ‘*Al-Iqtiyât*’ refers to what en-

hances sustenance, such as salt and spices. Regarding monopolization, scholars agree on prohibiting the monopolization of sustenance, while they disagree regarding other items.

• *Iqtâ*’ (Concession or Land Gift) اِقتَاع

Linguistically, the term ‘*Al-Iqtâ*’ means alienation and utilization.

In Fiqh terminology, it is defined in Article no. (99) of “*Tartîb As-Sunûf*” as: “A piece of land that a ruler gives, in full ownership or benefit only, to someone who is entitled to a share in the state treasury.”

Ibn Taymiyyah said, “The concession (*Al-Iqtâ*) consists of two types: Concession of ownership (*Iqtâ’ Tamlik*), as when the ruler grants land to someone who vivifies it by way of ownership. Concession of usufruct (*Iqtâ’ Istighlâl*), as when granting the benefits of the land to someone who utilizes it, whether by way of cultivation, leasing, or having others to cultivate it on his behalf.”

Some Fiqh scholars divide the concession (*Al-Iqtâ*) into three categories: concession of ownership (*Iqtâ’ Tamlik*), concession of usufruct (*Iqtâ’ Istighlâl*), and concession of temporary utilization (*Iqtâ’ Irfâq*).

• *Iqlâl* (Impoverishment) اِقْلَال

The Fiqh usage of the term ‘*Al-Iqlâl*’ does not go beyond its linguistic

meaning, which refers to the state of being scarce or impoverished.

In their compendiums, the Fiqh scholars mention it when they discuss insolvency, where they classified it into destituteness and impoverishment, and the insolvent debtor is categorized as either a destitute or an impoverished. They explained:

“The impoverished (*Al-Muqill*) is the one who possesses some wealth, but it is so little that it hardly suffices for spending on himself and his dependents in a reasonable manner, and for paying off his debts except with harm, hardship, and difficulty.

The destitute (*Al-Mu'dim*) is the one whose entire wealth has run out, so he has nothing left to spend on himself and his dependents, let alone to pay off his debts adequately.”

• **Ikârah (Giving on Hire)** إكارة

Linguistically, the term ‘*Al-Ikârah*’ means land cultivation.

In Fiqh terminology, it refers to the land whose owner leases to peasants and farmers, so that they cultivate and vivify it (in return for compensation).

• **Iktinâz (Hoarding up)** اكتناز

Linguistically, the term ‘*Al-Ikti-nâz*’ signifies the act of collecting and hoarding up.

In Shari‘ah usage, it relates specifically to the warning in Allah’s

saying: {“**And those who hoard gold and silver**”} [At-Tawbah (Repentance): 34]. So, it refers to the property for which the due *Zakâh* has not been paid to its beneficiaries, not merely the property acquired and hoarded up.

Judge ‘Iyâd said, “The scholars have unanimously agreed that any property upon which *Zakâh* is obligatory but has not been paid is considered hoarding up (*Iktinâz*), for which its people has been warned in the Quranic Verse. As for the property on which *Zakâh* has been paid, it is not considered hoarding up (*Iktinâz*).

• **Iktiyâl (Taking a Measure)** اكيال

Linguistically, the term ‘*Al-Iktiyâl*’ means to measure something (with the customary standard unit used for measurement).

It was narrated in the Prophetic *hadîth*: “Whoever buys foodgrain should not sell it until he measures it.” (Related by Abû Dâwûd)

• **Ikdâ’ (Prevention or Withholding)** إكداء

Linguistically, the term ‘*Al-Ikdâ’*’ refers to the act of preventing someone from a need or a request. It also implies several meanings including: giving reluctantly, stinginess, failing to meet one’s need or to increase one’s wealth, denial and rejection, holding back after giving.

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• **Ikrâh (Duress)**

إكراه

Linguistically. The term '*Al-Ikrâh*' refers to the act of compelling someone to do what he does not like by force.

In Shari'ah usage, it is defined as: "Forcing someone to do or say something that he does not consent to, in such a way that he would not choose to engage in if he was given the choice and freedom."

The consent (*Ar-Ridâ*) refers to the soul's satisfaction and willingness towards an action it desires. As for the choice (*Al-Ikhtiyâr*), it is the intention towards a possible outcome, wavering between existence and non-existence, with one side being favored over the other. If the doer is independent in his intention, then his choice is valid; otherwise, it is invalid. This differentiation between consent and choice is made by the Hanafites, given that the choice is more general than the consent. They state that the choice may exist without consent, as in the case when a legally accountable person chooses the lesser of two evils or the lesser harm. This is what is referred to as "invalid choice". As for the majority of Fiqh scholars, they do not recognize this differentiation.

On the other hand, the duress (*Al-Ikrâh*) is categorized into two types: compelling coercion (major constraint) and non-compelling coercion (minor constraint). The Fiqh

scholars differ in defining each of these categories, which should be examined in their respective contexts.

• **Iltizâm (Commitment)**

التزام

Linguistically, the term '*Al-Iltizâm*' refers to what is established and continued, or what is obligatory, or the thing you are committed to do.

In Fiqh terminology, it is used with a general application to denote either of two meanings: specific and general.

In its specific meaning, it is defined as: "A person obligating himself to perform a good act, whether unconditional or conditional upon something." This applies commonly to all forms of voluntary donations. This concept is specific to the Maliki school and is not recognized by others.

In its general meaning, it is defined as: "A person obligating himself to an act, either by his own choice and will or by the obligation of Shari'ah, thus he observes it because Shari'ah has obligated it, in obedience to the Legislator's command.

• **Iltizâm Al-Ma'rûf (Commitment to What Is Right)**

التزام المعروف

Linguistically, the term '*Al-Ma'rûf*' means goodness, kindness, and benevolence.

In Shari'ah terminology, it is defined as: "Anything that is considered good in Shari'ah", as stated by

Al-Jurjânî. Ar-Râghib: “*Al-Ma’rûf* is a term for any act whose goodness is acceptable either by intellect or by Shari’ah.” It is mentioned in the Quranic Verse: {“*and whoever is poor - let him take according to what is Ma’rûf (acceptable)*”}, [An-Nisâ’ (Women): 6], and the meaning in this Verse refers to moderation; that is, as much as needed, without extravagance.

As for the term ‘*Iltizâm Al-Ma’rûf*’, it is attributed to the Malikites. According to them, it refers to a person who obligates himself to perform a good act, voluntarily and of his own accord. This could be with the intention of getting closer to Allah (and it is called a vow), or bringing benefit to an individual or a group of individuals, or for the general welfare of society. It takes various forms, including: gift, bequest, endowment, lending, release from debt, assuming a debt for a debtor, relinquishing a right or ownership, and similar arrangements. According to the Malikite school and its followers, this commitment is obligatory for the person who made it according to Shari’ah, with detailed rulings and classifications that cannot be fully elaborated here.

One of their fundamental principles regarding this term is that any form of charity, gift, endowment, or other similar arrangements that have a specific purpose and are intended

for righteousness and reward, cannot be revoked by the donor or the giver. If a dispute arises regarding such commitment, the beneficiary, whether specified or unspecified, has the right to enforce it. However, if the beneficiary is unspecified, such as in the case of the poor and the needy, the commonly held view in the Malikite school is that the committed person (obligor) is requested to fulfil the commitment religiously, but he cannot be compelled by any legal judgment due to the lack of a specific claimant (obligee) to whom he is obligated.

Furthermore, any charity, endowment, or gift made under oath or in the context of dispute and litigation cannot be revoked, regardless of whether the beneficiary is specified or unspecified. Instead, the committed person (obligor) is requested to fulfil the commitment religiously, according to the commonly held view in the Malikite school.

• Iljâ’ (Compulsion)

إلجاء

Linguistically, the term ‘*Al-Iljâ’*’ means the necessity (*Al-Idtirâr*) and the duress (*Al-Ikrâh*). Abû Hilâl Al-‘Askarî differentiated between these three terms, stating that the compulsion (*Al-Iljâ’*) is used when a person is forced to do something in a manner from which he cannot escape, such as eating carrion due to extreme hunger. It may be described as a forced (*Mudtar*). As

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for the duress (*Al-Ikrâh*), it means doing something without necessity, but out of fear of harm. As for an action that happens to a person while he intends to refrain from it, such as trembling, it is described as a forced (*Mudtar*) to it, and not as a compelled (*Mulja*) to it. If he does not intend to refrain from it, it is not described as a necessity (*Idtirâr*), such as when a child moves the hand of a strong man.

As for the Fiqh terminology, the Hanafites uses this term in their classification of the duress (*Al-Ikrâh*), as they categorize the duress into two types: compelling coercion (major constraint) and non-compelling coercion (minor constraint):

- The compelling coercion (major constraint) occurs when there is a threat that involves loss of life or a limb, or destruction of one's wealth, or killing those whom the person cares about. They said, "This type of duress negates consent and invalidates choice without its negation."
- The non-compelling coercion (minor constraint) occurs when there is a threat that does not involve loss of life or a limb, such as imprisonment for a short period or beating that does not risk death or damage to limbs. They said, "This type of duress negates consent but it does not invalidate choice, due to the person being compelled is

not forced to do what he is compelled to do, given that he is able to endure what he is threatened with, unlike the first type.

• *Ildâd* (Fierce Disputation) إلداد

Linguistically, the term '*Al-Ildâd*' means fierce disputation. It was stated in the tradition: "*The most hateful of men to Allah is the one given to fierce violent disputation.*"

In Fiqh terminology, it refers to a defendant twisting his case during litigation. Accordingly, the word '*Al-add*' is said to the fierce or vehement disputant. An-Nawawî said, "An example of this is when someone says to the judge: 'Make my defendant swear an oath.' Then, when the defendant begins to swear, he says: 'Leave the oath, let me provide evidence.' But he has no evidence, and similar cases."

As for '*Al-Ildâd*', it refers to the person who repeatedly procrastinates, as stated by Al-Jubbî in "*Sharh Gharîb Alfâz Al-Mudawwanah*".

• *Amânah* (Trust) أمانة

Linguistically, the term '*Al-Amânah*' is an opposite of mistrust.

In Fiqh terminology, Judge Abû Al-Walîd Ibn Rushd divided it into two categories: A trust between the person and his Creator, and a trust between the persons.

- The trust between the person and

his Creator refers to the trust in terms of religion. It includes the obligations that Allah has imposed upon His servants, which He has offered to the heavens, the earth, and the mountains. They declined to bear it, fearing they might not fulfil their duty to Allah in it, but man bore it. He surely proved unjust and ignorant.

- The trust between the persons refers to the trust that people place in each other. Allah has commanded that it must be fulfilled to its rightful recipients, whether they are righteous or unrighteous. This trust has been mentioned by scholars in two meanings:

- 1- In the sense of the thing held by a trustee, whether it is a trust for the purpose of safekeeping, such as deposit, or it is part of a contract, such as the wage-earner, the capital of a partner or a *Mudârabah* manager. It also includes cases where an item is placed in someone's possession without a contract or purpose, such as when the wind carries something to someone's property like his neighbor's money. Since this occurs without a contract, it is not considered a deposit, rather it is a trust.
- 2- In the sense of the attribute, which is called the sale of trust, such as: *Al-Murâbahah* (markup), *At-Tawliyah* (sale at cost) or *Al-*

Wadî'ah (sale below cost) *Al-Is-tirsâl* (confidence sale), and in the context of guardianship (*Wilâyah*), whether it is general: such as the judge, or specific: such as the trustee or endowment administrator, or someone whose words bind others, such as the witness.

• *Imtâ'* (Enjoyment or Usufruct)

إمتاع

Linguistically, the term '*Al-Im-tâ'*' means giving a benefit for an extended period of time.

In Fiqh terminology, it refers to something that the wife or her father grants to the husband either during the marriage contract or after it, such as living in her house or utilizing her land during the duration of marriage.

Mayyârah stated, "Know that the enjoyment (*Al-Imtâ'*) and the gift for life (*Al-'Umrâ*) are equal in terms of death and divorce because they both stem from the same principle, which is to gift the usufruct for an indefinite period that ends with an event of unknown timing. The original ownership remains in the possession of its owner, to whom the usufruct is returned (on the death of the recipient)."

This term is predominantly used in the Malikite school, against other Fiqh schools.

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• **Imtiyâz (Privilege or Concession)** امتياز

The Fiqh usage of the term ‘*Al-Imtiyâz*’ does not go beyond its linguistic meaning, which denotes separation and isolation.

In contemporary legal terminology, the concession (*Al-Imtiyâz*) refers to granting a special right or permission to operate or lease a particular project carried out by a government or a private company, such as granting a concession by the government to an oil exploration company for extraction within its territories.

In commerce, the franchise (*Al-Imtiyâz*) refers to an agreement between a supplier and a wholesale or retail distributor, whereby the former grants the latter the right to deal with his products according to specified terms agreed upon between them. It also refers to a right granted by the government or a company to an individual to provide a service of public utility or to engage in a business of a public nature, such as granting a bus transportation company an exclusive franchise to operate its buses in the streets of a particular city or state, etc.

• **Imdâ’ (Enforcement)** إنضاء

Linguistically, the term ‘*Al-Imdâ’*’ means execution.

In Fiqh terminology, it is used to mean ratification. For example, if a man enforced the contract, this means he would make it effective after it was subject to ratification, or make it binding after he had the option to annul it through one of the Shari’ah-accepted options, such as the defect option, cooling-off option, or deal fragmentation option, ... etc.

It was related by Muslim in his “*Sahîh*” that the Prophet Muhammad (peace and blessings of Allah be upon him) said, “*The son of Adam claims: My wealth, my wealth. Yet, is there something for you from your wealth besides what you eat and then it perishes, or what you wear and then it grows worn, or what you give in charity and make it enforceable?*”

The Fiqh scholars explained that the meaning of “*make it enforceable*” in the *hadîth* is to make the charity obligatory by delivering it. Ibnut-Tallâ’ Al-Qurtubî said, “The Messenger of Allah (peace and blessings of Allah be upon him) stipulated the enforcement in charity, which means here delivery.”

• **Amlaku (More Effective)** أَمْلَاكُ

Linguistically, the term ‘*Amalaku*’ denotes the ability to prevent oneself from succumbing to his desires, and ‘*Al-Imlâk*’ means giving in marriage.

In Fiqh terminology, it is reported that ‘Umar Ibnul-Khattâb said: “When a man makes two bequests, the latter one is more effective”, meaning it is stronger and more powerful for its owner. It is as if it owns and holds him, not allowing him to deviate from it to the former. A similar expression is found in the common saying: “The condition is more effective, whether it is for you or against you.”

Ibn Fâris said, “The basis of this structure indicates the subject matter’s strength and its validity.”

• **Al-Amwâl Al-Bâtinah (Non-Apparent Wealth)** الأموال الباطنة

Linguistically, the term ‘Al-Bâtin’ is an opposite of ‘Az-Zâhir’, and it refers to the hidden part of anything.

In Shari‘ah terminology, Fiqh scholars categorize wealth subject to *Zakâh* (obligatory almsgiving) into two types: apparent (*Zâhirah*) and non-apparent (*Bâtinah*).

In their usage, the concept of non-apparent wealth refers to the type of wealth that cannot be known or counted by anyone other than its owner. This includes, based on their customary understanding, cash and its equivalents, and goods-stocked for trade.

The majority of Fiqh scholars agree that the non-apparent wealth is delegated to its owners, and the

rulers have no any authority over its *Zakâh*. Accordingly, it is not obligatory to pay it to the ruler to distribute it among the rightful recipients. However, the ruler can take it from those obligated to pay it if they willingly offer it. This is unlike apparent wealth, for which the ruler’s authority is established for its collection and distribution among the Muslims. Ibn Qudâmah said, “The difference between apparent and non-apparent wealth is that *Zakâh* is definitely correlated to the apparent wealth due to its visibility and the attachment of the hearts of the needy to it.”

• **Al-Amwâl Al-Hashriyyah (Collective Wealth)** الأموال الحشرية

Linguistically, the term ‘Al-Hashr’ refers to gathering or collective assembly.

‘Al-Amwâl Al-Hashriyyah’ are the amassed or collective wealth. **In Fiqh terminology**, as defined by An-Nawawî, they are: “The type of wealth gathered and collected for Muslims and their interests...”

Technically speaking, the term ‘Al-Hashir’ refers to the one who collects spoils of war, as mentioned by Al-Muṭarrizî. In “*An-Nazm Al-Musta‘dhab*”, it is stated: “He is the one who gathers livestock to the collector (of *Zakâh*) at the water or to his place.” In “*Al-Muhadhdhab*”, Ash-Shîrâzî mentioned that the gatherer

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(*Al-Hâshir*) is entitled to a share from the portion of those who employed to collect it (i.e., *Zakâh*) because he is considered one of them.

In "*Al-Nihâyah*" by Ibnul-Athîr, it is stated: "The gatherer (*Al-Hâshir*) is one of the names of the Prophet Muḥammad (peace and blessings of Allah be upon him), as he told, indicating that he will be the one who gathers people behind him and on his religion other than other religions."

• ***Al-Amwâl Az-Zâhirah* (Apparent Wealth)** الأموال الظاهرة

Linguistically, the term '*Az-Zâhir*' refers to the visible thing that can be observed.

In Shari'ah terminology, Fiqh scholars categorize wealth subject to *Zakâh* (obligatory almsgiving) into two types: apparent (*Zâhirah*) and non-apparent (*Bâtinah*).

The concept of apparent wealth in their terminology refers to the type of wealth that can be known or counted by someone other than its owner. This includes agricultural produce such as crops and fruits, as well as livestock such as camels, cattle, sheep, and the like.

The majority of Fiqh scholars agree that the authority to collect and distribute apparent wealth among the rightful recipients belongs to the ruler and not to individuals, and it

should not be left to the individuals' discretion, conscience, or personal judgment. Numerous narrations attributed to the Prophet Muḥammad (peace and blessings of Allah be upon him) indicate that he used to send the collectors to gather what is obligatory for it, and this obligation is enforced upon Muslims by the Muslim state, even to the extent of fighting them to ensure their compliance.

• ***Inâbah* (Repentance or Deputation)** إنابة

Linguistically, the term '*Al-Inâbah*' denotes returning (to obedience) or entrusting a person with one's authority.

In Fiqh terminology, it refers to entrusting a person with the authority to act on one's behalf. It has three forms: guardianship (*Wilâyah*), trusteeship (*Wisâyah*), and agency (*Wakâlah*).

- Guardianship (*Wilâyah*): A Shar-i'ah-based deputation established to some relatives of a minor, such as his father or grandfather, in a specific order.
- Trusteeship (*Wisâyah*): A judicial deputation established to a person appointed by the judge to act on behalf of orphaned minors. The person appointed is called a trustee (*Wasî*).
- Agency (*Wakâlah*): A contractual

deputation where a person entrusts another to perform certain actions on his behalf during his lifetime.

• *Intâj* (Production)

إنتاج

Linguistically, when it is said that the mare has produced (*Antaja*), it means that its pregnancy has become evident, indicating that it is productive.

In contemporary economic terminology, the production (*Al-Intâj*) means utilizing the resources, satisfying the needs, and generating the returns.

This term is not recognized by Fiqh scholars in this sense.

• *Intisâf* (Taking the Due Rights)

انتصاف

Linguistically, the term '*Al-Intisâf*' or '*Al-Istinsâf*' refers to receiving one's right from someone else in full.

In Shari'ah terminology, Al-Mâwardî defines '*Al-Intisâf*' as: "Taking and extracting the due rights by just means."

• *Intifâ* (Utilization or Usufruct)

انتفاع

Linguistically, the term '*Al-Intifâ*' means obtaining the benefit rendered by something.

In Shari'ah terminology, some Fiqh scholars defined the permissi-

ble utilization as: "The right of the beneficiary to use and exploit the property as long as it remains intact, even if he does not own it." [See: Article no. (13) of "Murshid Al-Hayrân"].

Fiqh scholars often use the term '*Al-Intifâ*' in conjunction with the right or alienation. They say, "The right of usufruct or the alienation of usufruct is a license or permission for a person to use the property and benefit by it himself, such as the permission to reside in schools and public places, the right to sit in mosques and markets, the right to use roads and rivers in ways that do not harm the public, the right to enter places whose owners give permission to enter therein and to eat what they allow to be consumed, and similar rights. Therefore, whoever is permitted to do so may benefit himself, and he is forbidden to transfer it to others, whether in return for compensation or not.

• *Inzâl* (Descent or Increment)

إنزال

Linguistically, the term '*Al-Inzâl*' means sending down or moving something from a high place to a low one. It is also used with reference to a right, meaning to relinquish it. The word '*An-Nuzl*' refers to the food provided to a guest or traveler. It may also suggest the increment or increase resulting from a thing.

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In Fiqh terminology, it was mentioned by some Malikite scholars to mean: "The permanent lease for the endowed property." This is as cited by Ibn 'Āshūr.

• *Insâf* (Fairness)

إنصاف

Linguistically, the term '*Al-Insâf*' is used to mean justice.

In transactions, as described by Ar-Râghib, it denotes fairness, which is that a person does not take from others more benefits than what he gives them, and does not suffer more harm than what they are suffering.

In Shari'ah politics, Al-Mâwardi stated: "The fairness (*Al-Insâf*) is a justice that distinguishes between what is right and what is wrong, through which the subjects' condition is straightened out and the state's affairs are organized, as the state cannot enjoy stability if its people are not treated fairly, or when injustice prevails over its justice."

Abû Hilâl Al-'Askarî said, "There is a difference between the justice (*Al-'Adl*) and the fairness (*Al-Insâf*): The fairness is to give in half, while the justice implies these meaning and other contexts. For instance, when a thief is punished by cutting off his hand, it is said that justice has been imposed upon him, not fairness. The basis of fairness is to give one half of something and take the other half without increase or

decrease. Sometimes it is said: 'I seek half from you', just as it is said: 'I seek fairness from you.' Then it was used in other contexts as we have mentioned."

• *Inzâr* (Respite)

إنظار

Linguistically, the term '*Al-Inzâr*' means postponement and granting a respite, as mentioned in the Quranic Verse: {"*And if someone is in hardship, then (let there be) postponement until (a time of) ease.*"} [Al-Baqarah (The Cow): 280]; meaning to grant him a respite until a time of ease.

Abû Hilâl Al-'Askarî said, "There is a difference between respiting (*Al-Inzâr*) and waiting (*Al-Imhâl*): The respiting is associated with a specific period, while the waiting is indefinite. It is also said that the respiting is when a person is postponed to consider his matter, while the waiting is when he is postponed to facilitate his work."

• *In'iqâd* (Conclusion)

إنعقاد

Linguistically, the term '*Al-In'iqâd*' refers to confirmation, assurance, and connection.

In Fiqh terminology, it refers to the connection of the offer made by one party with the acceptance made by the other party in such a manner that its effect is established on the subject matter of the contract, and it entails the obligation of each

party to fulfil what is required of him towards the other. Accordingly, it is defined in “*Majallat Al-Ahkâm Al-‘Adliyyah*” as: “The conclusion of a contract consists of connecting offer and acceptance together legally in such a manner that the result may be perfectly clear.”

This is because when the offer and the acceptance occur according to their Shari‘ah-based conditions, there is essentially a connection between the two parties regarding the subject matter of the contract (which is the intended effect for which the contract was instituted). Consequently, each party becomes bound by the rights that he has committed to under the contract towards the other party.

• *Infâdh* (Execution) إنفاذ

Linguistically, the term ‘*Al-Infâdh*’ means enforcement. It also comes in the sense of dispatching or sending forth.

Terminologically, when a phrase like: “executing the transaction” or “executing the contract” is used, it means to make it executory, i.e., ratifying it in such a manner that indicates approval. This includes all means of expressing consent, whether explicitly or implicitly, by word or action.

It is used by Fiqh scholars in terms of pending contracts; meaning that the right holder shows his

willingness and consent to sign the contract, given that the contract was only ruled to be pending out of respect for him and to ward off harm on his part.

Similarly, it is used in terms of revocable contracts; meaning any word or action indicating consent from the party who has the option to enforce the contract.

The execution (*Al-Infâdh*) in this sense occurs only after the transaction has been made. If the execution precedes it, then it is called ratification.

• *Infâq* (Spending) إنفاق

Linguistically, the term ‘*Al-Infâq*’ means depletion or exhaustion.

In Shari‘ah terminology, it refers to the act of taking money out of one’s ownership. Ar-Râghib stated, “Spending (*Al-Infâq*) can involve money or other things, and it can be obligatory or voluntary.”

Abû Hilâl Al-‘Askarî said, “There is a difference between spending (*Al-Infâq*) and giving (*Al-I’tâ*): The spending is the act of taking money out of one’s ownership. That is why it cannot be said: Allah spends on His servants. As for His saying: {“*He spends (His bounty) however He wills.*”} [Al-Mâ’idah (The Table): 64], it is a metaphor and cannot be used in all contexts. In essence, it means that He provides for His servants according to their needs. On the other

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hand, the giving does not necessarily entail taking the given item out of one's ownership. For example, when you give Zayd money to buy something for you or give him cloth to tailor a garment for you, you do not relinquish ownership of the item, so this cannot be called spending."

• **Anfâl (Additional Gains)** أَفْئَال

Linguistically, the term '*Al-Anfâl*' means increase or additional gain.

Terminologically, the Fiqh scholars have different opinions regarding the meaning of '*Al-Anfâl*', which can be summarized into five views: (1) '*Al-Ghanîmah*'; i.e., the spoils of war. (2) '*Al-Fay*'; i.e., the booty gained without fighting. (3) '*Al-Khumus*'; i.e., one-fifth of the war spoils given to the state. (4) '*At-Tanfil*'; i.e., what is taken before the spoils are acquired and distributed in the Muslim state. (5) '*As-Salab*'; i.e., the extra share given to a horseman over his due portion of the spoils as an incentive for him to engage in battle.

In conclusion, it can be said that '*Al-Anfâl*' refers to the wealth accrued by the Muslims from the infidel warriors by way of fighting or other means.

The reason for calling it '*Nafî*' is either because it signifies an increase in the lawful acquisitions for this nation, which was not lawful for past nations, or because it is an

addition to the reward earned by the conqueror, which is the original share. This was stated by An-Nasafi.

• **Infisâkh (Revocation)** انْفِساخ

Linguistically, the term '*Al-Infisâkh*' refers to the revocation of intention or sale.

The contract revocation (*Infisâkh Al-'Aqd*) is a term used by Fiqh scholars to mean the termination of a contract and the dissolution of its bond due to an unforeseen involuntary circumstance, such as the revocation of a sale due to the destruction of the sold item before its delivery to the buyer. This renders the execution of the contract impossible due to the impossibility of delivering the item after its destruction. Thus, the contract is revoked owing to the loss of the subject matter upon which the contract is established. This is because if the subject matter of the contract remained intact, it would necessitate demanding the price from the buyer, and if the seller demanded the price from the buyer, he would be demanded to deliver the sold item to him, but the seller is unable to deliver it, so the demand is ultimately impossible from both parties, leading to the necessity of revoking the contract due to the lack of benefit in its continuation. When the contract is revoked, the buyer will not be demanded to pay the price because its revocation implies the price

cancellation in the first place, as if it never existed.

An example of this is the revocation of *Al-Muzâra'ah* (sharecropping), *Al-Musâqâh* (irrigation) and *Ash-Sharikah* (partnership) due to the death of one of the contracting parties. This is because these contracts establish ongoing practical obligations with recurring consequences, where withdrawal and continuation depend on the survival of the contracting parties in addition to the existence of the subject matter.

Al-Qarâfi defined '*Al-Infisâkh*' as: "Turning each of the two counter-values over to its owner."

Al-'Izz Ibn 'Abdus-Salâm defined it as: "Transferring each of the two countervalues to their respective providers."

• *Inqitâ'* (Unavailability) انقطاع

Linguistically, the term '*Al-Inqitâ'*' means the non-existence or unavailability of something.

Fiqh scholars use the term '*Al-Inqitâ'*' in *Salam* contracts when they discuss the unavailability of the sold item on the delivery date, and in sale and loan contracts when they discuss the unavailability of the money established in liability at the time of fulfilment. According to them, "the unavailability of the sold item" means the non-existence of

a similar item in the markets, even if such an item is available in houses, because if it is not available in the markets, then it is considered as an unavailable (*Munqatî'*). They also mean by "the unavailability of the money established in liability" that it is non-existent in the hands of people and unavailable in the market for those who need it, even if it is available in houses or in the hands of money changers.

Al-Khurashî and Az-Zurqânî said regarding the criterion for the unavailability (*Al-Inqitâ'*): "What matters here is the unavailability in the land of transaction, meaning the place where they made the transaction. If it is available elsewhere, it is still considered as unavailable."

• *Ahliyyah* (Competence) أهلية

Linguistically, the term '*Al-Ahliyyah*' refers to the competence and eligibility for a matter or an affair.

In Fiqh terminology, it denotes a person's capacity to receive the communication from Allah and subject to the rulings of Shari'ah. Thus, the competence (*Al-Ahliyyah*) is a quality or capability in a person through which the Legislator considers him suitable for being subject to Shari'ah rulings, given that the Legislator, in what He legislates, only addresses people with rulings (commands and prohibitions), and obliges them to implement and observe them.

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According to Fiqh scholars, the competence has two types: The competence for obligation (*Ahliyyat Wujûb*) and the competence for performance (*Ahliyyat Adâ*). The competence for obligation refers to a person's capacity to have the legitimate rights due to him and carry out the obligations imposed upon him. Its basis is human nature, and it is not related to age, intellect, or maturity. Every human being, regardless of his stage or condition, has the competence for obligation, even if he is a fetus or an insane. It is just that his competence for obligation may be complete or incomplete.

As for the competence for performance, it refers to a person's capacity to perform the act in such a manner that is acceptable according to Shari'ah. Its basis is discernment and sanity. This type of competence does not exist in a child before he becomes capable of discernment and able to understand the legislative communication in general, and to carry out some responsibilities.

• **Al-Awqâf Al-Mustathnâh (Excluded Endowments)** الأوقاف المستثناة

This term was used in the later periods of the Ottoman Empire. It refers to the endowments that are managed directly by their designated guardians, without any intervention in their management by the Ministry of Awqaf.

• **Al-Awqâf Al-Madbûtah (Controlled Endowments)** الأوقاف المضبوطة

This term was used in the later periods of the Ottoman Empire. It refers to the endowments that are managed directly by the endowment administration (Ministry of Awqaf). These endowments are classified into three types:

First type: The endowments of the sultans and their dependents. Due to the stipulation of guardianship over these endowments for the position of the sultanate, the endowment administrators were entrusted with their management as agents on behalf of the Sultan.

Second type: The endowments whose management is regulated by the Ministry of Awqaf due to the extinction of the designated successors for guardianship from the descendants of the endower and his dependents. The Department of Awqaf directly manages these endowments when the designated successors for guardianship are extinct, and no guardian has been appointed by the judge.

Third type: The endowments whose guardians have been relieved of their management responsibilities after allocating certain salaries to them, and their management is then directly transferred to the Department of Awqaf, despite the existence of designated successors for their guardianship. However,

because their management does not comply with Shari'ah rulings, it becomes necessary to return them to their designated guardians.

• **Al-Awqâf Al-Mulhaqah (Attached Endowments)** الأوقاف المُلحقة

This term was used in the later periods of the Ottoman Empire. It refers to the endowments that are managed by their designated guardians under the supervision of the Ministry of Awqaf. These are the endowments whose management was finally transferred to the Ministry of Awqaf upon its establishment, while they are remaining in the hands of their designated guardians, whom the endower himself had stipulated them for guardianship.

• **I'timân (Trustiness)** ائتمان

Linguistically, the term '*Al-I'timân*' means trust or confidence.

In Fiqh terminology, it refers to the confidence that leads to transferring wealth to others by way of ownership in case of loan, debt, guarantee, or by way of usufruct in case of lending and the like, or safekeeping in a deposit, or authorization and delegation to act in agency, partnership, profit-sharing (*Mudârabah*), trusteeship, custodianship, and similar arrangements.

It is also metaphorically applied to lending, debt, guarantee, deposit, borrowing, etc., in the context of

attributing the cause to the effect. This is supported by the following evidences:

First: The Quranic Verses use the term '*Al-Mu'taman*' (the trustee or the one who is entrusted) in the context of debt contracts such as deferred payment sales, *Salam*, and the like, as stated in Surah Al-Baqarah (The Cow: 283): {"*And if one of you entrusts another, then let him who is entrusted discharge his trust (faithfully).*"} Az-Zamakhshari commented, "It urges the debtor to be as trustworthy as the creditor expects, trusts, and relies upon him, and to fulfil the rights entrusted to him."

Second: The Prophetic *hadîths* use the term '*Al-Mu'taman*' (the trustee or the one who is entrusted) to refer to the one who holds others' property with their permission, such as in case of deposit, lending, agency, lease, partnership, profit-sharing (*Qirâd* or *Mudârabah*), custodianship, and trusteeship, as mentioned by the Prophet Muhammad (peace and blessings of Allah be upon him) in the *hadîths* stating: "*There is no guarantee for the one who is entrusted (except in the case of abuse and negligence).*" And the *hadîths* stating: "*Fulfil the trust for the one who entrusted you, and do not cheat the one who cheated you.*"

The Malikite scholars used the term the trustiness (*Al-I'timân*) as

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opposed to the guarantee (*Ad-Da-mân*), referring to the consequence of giving money by way of trust to the depositor, agent, tenant, partner, *Mudârib*, guardian, trustee, custodian, or the like, which implies that they would not be held responsible for any loss or damage to others' property under their control except in the case of abuse and negligence. This concept is elucidated in "*Al-Qawâ'id*" by Al-Maqqari: "The basis for whoever pays willingly, not with the intention of transferring ownership, is the trustiness."

Similarly, in the books of the Shaf'ite school, the deposit is described as 'absolute trustiness', as mentioned in "*Asnâ Al-Matâlib*".

• *Îjâb* (Obligation or Offer) إيجاب

Linguistically, the term '*Al-Îjâb*' means the effectiveness. It is said, "The sale has been obligated", meaning it became effective.

In Uṣūl terminology, it refers to: "The Legislator's demand for an act by way of obligation." It is thus a counterpart for prohibition and permissibility.

In Fiqh terminology, the offer (*Al-Îjâb*) is the first statement issued by one of the contracting parties, expressing their firm intention to establish the contract, regardless of the party who made it, while the acceptance (*Al-Qabûl*) is what is issued by the other party after the

offer has been made, expressing his approval of it. This is stated by the Hanafite school, and they added: "The one who initially makes his statement is always considered the offeror (*Al-Mujib*), and the other party is the acceptor (*Al-Qâbil*), whether the initiator is, for example, the seller in a sale contract by saying: "I sold", or the buyer by saying: "I bought", or the lessor in a lease contract by saying: "I leased out", or the lessee by saying: "I rented", and so on for all types of contracts." Accordingly, it was stated in Article no. (101) of "*Majallat Al-Ahkâm Al-Adliyyah*": "Offer is the statement made in the first place with a view to making a disposition of property and such disposition is proved thereby." An-Nasafi said, "The offer is the fundamental element of the contract, and the acceptance is based on it."

The non-Hanafite scholars view that the offer (*Al-Îjâb*) is the statement issued by the seller, lessor, or wife or her guardian (with differences between the Fiqh schools), whether it is issued first or last. This is because they are the ones who will transfer ownership of the sold item to the buyer, or grant the usufruct of the leased property to the lessee, or provide the matrimonial authority for the husband, and so on.

• *Îghâr* (Protection)

إيغار

The term '*Al-Îghâr*', as described

by Al-Fayrûz Âbâdî, means that a ruler grants a piece of land to a person without requiring a tax from him, or that a person pays the tax directly to the central authority to avoid dealing with local officials (tax collectors). It is also referred to as: the land tax guarantee (*Damân Al-Kharâj*).

Al- Khwârizmî defined it by saying: “*Al-Îghâr*’is the protection.” This means that the estate or village is protected so that the (tax) collectors would not enter it, and a tax is imposed on it annually to be paid to the state treasury in the city or in some other regions.



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Ba (ب)

• Bakhs (Diminution)

بخس

In language and *Shari* terminology, *Bakhs* can be defined as to decrease something unjustly. Allah, the Almighty, says: {“**and they therein will not be deprived**”} [Hûd: 15].

Accordingly, *Abû Hilâl Al-‘Askarî* said: “The difference between *Bakhs* (diminution) and *Nuqsân* (decrease) is that *Bakhs* is to decrease something unjustly. Allah, the Almighty, said: {“**and do not deprive the people of their due**”} [Al-A‘raf: 85]. This Verse means that “do not diminish their due unjustly. Decrease, however, can occur whether unjustly or not.

• Badal (Consideration)

بدل

Badal is defined by Fiqh scholars in the sections of financial transactions as consideration, which is what is given in exchange for something else.

In the section of exchange, the Fiqh scholars said: The validity of the contract requires exchange of the two considerations before separation. In the section of leasing, it stated: the rent is the consideration for the usufruct contracted for. Regarding the sale, it is required that

each of the two considerations be valuable money. What they mean by *Badal* in all of these transactions is consideration.

Ar-Râghib Al-Asbhânî said: *Ib-dal* (substitution), *Tabdil* (change), *Tabadul* (alternation) and *Istibdal* (replacement) is to put one thing in place of another thing. Then he said: It is more general than consideration (*‘Iwad*), because consideration implies that you get the second thing in exchange for the first thing. *Tabdil*, however, may imply mere change without getting a replacement.

• Badhakh (Extravagance)

بدخ

Ibnul-Athîr said: “*Badhakh* implies pride and arrogance.”

Abul-Faḍl Ad-Dimashqî defined *Badhakh* as: “When a man goes beyond what the people of his class and stage follow in what he eats with or in what he might wear for the sake of ostentation.”

• Badhl (Giving)

بدل

Al-Manâwî defined *Badhl* as: “giving willingly.” The author of “*An-Nazum Al-Musta’dhab*” said: “*Badhl* means giving voluntarily, without coercion or demand.” *Al-Mâwardî* said: The term “*Badhl* carries two different aspects: The first is what a person begins to give without asking; and the second is what is made as a result of a request or demand.

• *Barâ'ah* (Discharge)

براءة

In the terminology of Fiqh scholars, the term *Barâ'ah* means: to leave and get separated from something.

Accordingly, they considered the term *Barâ'ah* as one of the words that implies divorce, which is separation. They also used *Barâ'ah* in debts, transactions, and crimes to mean discharge and getting rid of. In this regard they said: If a person is discharged or released of a debt, he is no longer required to pay it off.

In *Al-Qawâ'id Al-Fiqhiyyah*, it is stated "The main principle is discharge of liability." This means that the liability is free from another right. This is because the person is born free of every responsibility, obligation, or liability.

On the other hand, the term "*Barâ'ah*" refers to the receipt or written document that the treasurer and similar trustees to the person from whom he receives money or goods. In this concern, *Al-Khuwârizmî* said: "*Barâ'ah* is a deed given by the broker or treasurer to a person for what is given to him by that person.

• *Birtîl* (Bribery)

برطيل

In language and terminology, *Bartil* means bribery.

• *Bustân* (Orchard)

بستان

Ash-Sharîf Aj-Jurjânî said: "*Bustân* is an orchard with scattered

palm trees, where other plants can be planted between its trees. If the trees are twisted and it is not possible to plant between them, then it is *Hadiqah* (garden)." The term *Bustân* is defined similarly by Al-Munâwî, Al-Kafawî, and Al-Mujaddidî.

• *Buslah* (Courage)

بُسْلَة

Ar-Râghib said: *Basalah* means courage, either because the brave person is described to be frowning, or because he deprives himself compared to his peers because of his courage, or because he protects what is under his hand from his enemies.

Buslah is the reward or wage of the person who performs *Ruqyah*, which is permissible only if made by Allah's remembrance or Quran.

• *Bushârah* (Tidings)

بشارة

Linguistically, *Bisharah* is the news whose effect appears on the complexion. Al-Ba'î said: "The term *Bishârah* is used with good and bad tidings, but only used restricted with bad tidings. When the term is used generally, it is supposed to imply good tidings or news." This is because it is often used for things that bring joy. Al-Jurjânî said: "*Bisharah* refers to true news that changes the complexion of the face, and it is used with good and bad tidings, but most often with good tidings."

Bushârah is used to refer to what is given by the one who brings the

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tidings. It was mentioned in the *ha-dith* of Ka'b's repentance that: "So I gave him my garment as good tidings."

Bashârah, however, means beauty and goodness.

• *Bidâ'ah* (Merchandise) بضاعة

In language and *Fiqh*, *Bidâ'ah* means a piece of a property that is acquired or prepared for trade.

Fiqh scholars define *Bidâ'ah* as the capital paid to a third party for trade without wage, where the entire profit goes to the owner of the money.

• *Bitâqat Al-F'timân* (Credit Card) بطاقة الائتمان

The Oxford Lexicon defines credit card as: "a payment card, usually issued by a bank or financial company, allowing its users to purchase goods or services and pay for them later." The American law defines the word "credit" in the economic and commercial fields as "the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment." This means that the word "credit" in the economic and commercial terminology means indebtedness.

Referring to this card in the Arabic language as a credit card is acceptable and permissible. The party

issuing the card entrusts the person to whom the card is granted to perform the right entrusted to him. Accordingly, the credit card holder owes the issuer this right as a debtor according to the agreement between the two parties.

The Islamic Jurisprudence Academy in Jeddah, after considering and contemplating the concept of this card and its function, ended up defining it as: "a document given by its issuer to a natural or legal person, under on a contract between them, that enables him to purchase goods or services from the person who approves the document, without paying the price immediately, because the document implies that the issuer guarantees the payment. One type of this document is that which enables its holder to withdrawal money from banks.

• *Bahraj* (Bad/Counterfeit) بهرج

Linguistically, *Bahraj* is defined as "bad" or counterfeit. *Dirham Bahraj* (bad/ counterfeit Dirham) is the dirham rejected by traders or the counterfeit dirham coined outside the mint.

The majority of *fiqh* scholars said: counterfeit dirham is the dirham rejected by the treasury and *Bahraj* dirham is the dirham rejected by the traders.

• *Bayyâ'* (Professional Seller) بيع

In *Fiqh* terminology, the terms

Bayyâ' refers to the auctioneer or broker who mediates between the seller and the buyer to carry out the sale transaction in exchange for a fee or wage. He is referred to by this name, i.e. *Bayaâ'*, because of his frequent mediation between people in buying and selling transaction. In "*Al-'Uqûd Ad-Durriyah*" by Ibn 'Âbidîn, it is stated that: "*Bayyâ'* is the auctioneer who works for wage."

• Baytul-Mâl (Public Treasury)

بيت المال

Linguistically, *Baytul-Mâl* refers to the place prepared for keeping money, whether private or public.

In terminology, the term "*Bayt Mâl Al-Muslimîn*" or "*Bayt Mâl Allah*" was used in early stage of Islam to refer to the building and place in which the public funds of the Islamic state, including movables, such as spoils, fifth of the spoils, etc., were kept until they were spent for their intended purpose. Then, the phrase "*Baytul-Mâl*" was used only to indicate the same meaning and later on became the general meaning for the previously mentioned two phrases.

The concept of "*Baytul-Mâl*" developed in subsequent Islamic eras until it was widely used to refer to the entity that owns the public money of Muslims, including money, goods, and lands. Accordingly, the *Baytul-Mâl* (or the treasury) has a legal personality and is treated like

a natural person through its representatives. It has a financial liability such that rights are established for it and against it, and lawsuits are filed by and against it.

• Bay' (Sale)

بيع

Linguistically, *Bay'* is the exchange of a property for another property. Both parties of the sale transactions are called buyer and seller. However, when used in general, the word seller refers to the one who offers the goods to be sold.

In Fiqh terminology, *Bay'* refers to the process where the seller transfers the ownership of an item to the buyer in exchange for the price of the item sold. Some Fiqh scholars define *Bay'*, however, as exchanging property for another property by mutual consent. Al-Munâwî said: One of the best definitions given to *Bay'* is that it is the transfer of ownership of a financial asset or a permissible usufruct permanently in return for a financial consideration.

According to Fiqh scholars, *Bay'* is of four categories, as follows: 1) selling a property for another property, such as selling goods for another goods, which is called exchange sale; 2) selling property for a debt, such as selling goods for absolute prices, which is the general definition of the term *Bay'*; 3) selling debt for debt, which is selling the absolute price for the absolute price,

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which is called exchange contract; and 4) selling debt for a property, which is called *Salam* transaction, where the item to be delivered is the sold item, which is a debt, and the capital may be a property or debt, which should be, however, received before the two contracting parties moving apart, and so it becomes a property.

• Bay'ul-Ikhtiyâr (Option Sale)

بيع الاختيار

Bay'ul-Ikhtiyâr is a term developed by Mâlikî scholars and means in their School: "The sale of one of two things or more for a known price, where the buyer shall have the right to choose one of them within a specific period." It is known for Hanafites as "the appointment option," which is one of the types of conditional option in their School.

In Al-Mudawwanah, it is stated that: "I said: What do you think if I buy two slave girls based on the option that I can buy one of them for a thousand dirhams, which is obligatory for me, do you think that this sale is obligatory for me according to Mâlik's opinions? He said: I do not see anything wrong with it. This is because Mâlik said, "With regard to clothes, sheep, and similar items, a man buys an item for such-and-such where he chooses it from many items: There is no wrong with that. The same applies to female slaves, and the price in our question

regarding the items, and is obligatory for you regarding one of them."

Ad-Dusûqî said: "There are three categories of sale: sale of option only, sale of choice only, and sale of option and choice. The sale of option is the sale in which the option, i.e., discretion, is given to one of the two parties to keep and return, such as when I sell you these two garments for such and such price based on the option to keep them or return them withing three days. The sale of choice only is a sale in which the seller gives the buyer the option of determination, such as when I sell you one of these two garments under the option of determination for a dinar, and I give you a day or two days to choose one of them. The sale of option and choice is a sale in which the seller gives the buyer the option of determination and then the option to keep or return regarding the item he has already determined (to buy), such as when I sell you these two garments for a dinar, on the condition that you choose one of them, and after choosing one of them, you have the option to accept or reject it within three days."

• Bay'ul-Istijrâr (Credit Sale)

بيع الاستجرار

In Fiqh terminology, *Bay'ul-Istijrâr* can be defined as a process of sale where a person purchases his needs from the seller one by one or

litter by litter, without agreeing on the price or paying any part thereof, and then he pays the price of such items after consuming them.

What appears to be the case is that they, i.e., both the buyer and the seller, agree on the price of the sold items only after taking possession of the item sold and disposing of it. Accordingly, the sale is not concluded between them at the time of taking delivery of the items but rather at the time of paying their typical price.

According to Fiqh scholars, *Bay'ul-Istijrâr* has many forms and rulings, which is beyond of scope of this book.

• **Bay'ul-Istighlâl (Sale with a Right of Usufruct)** بيع الاستغلال

In Fiqh terminology is, *Bay'ul-Istighlâl* is a form of sale where “a person sells a property for an advance price or for a debt to be paid by the buyer on the condition that he rents it from him and that when the seller returns the price to the buyer or pays him the debt, the buyer returns the sold item to him in full.” It is composed of a fulfillment sale and a rental contract.

Bay'ul-Istighlâl is defined in Article no. 119 of “*Majallat Al-Ahkâm Al-Adliyyah*” as follows: “A sale with a right of usufruct is a sale subject to a right of redemption, the vendor having a right to take the property

sold on hire.” The scholar ‘Alî Haydar defined it as follows: “It is when a person sells his house to another for ten thousand piasters on the condition that he returns it to him when the price is returned, and that he rents it to him. After vacating the house and handing it over to the buyer, the seller rented it from the buyer for a thousand piasters for a period of one year. This sale is *Bay'ul-Istighlâl*, and the thousand piasters, the proceeds of the sale, are the interest that accrues to the buyer from the sale.”

This term was used by later Hanafites, and it is not known by this name among other Fiqh scholars.

• **Al-Bay'ul-Bâtî (Absolute Sale)** البيع البات

Al-Bay'ul-Bâtî is defined in Article no. (117) of the *Majallat Al-Ahkâm Al-Adliyyah* as “a final sale.”

The scholar ‘Alî Haydar said: This sale is sometimes used as an equivalent for redemption sale and other times as an equivalent for a sale with an option. It was used in “*Al-Fatâwâ Al-Bazzaziyyah*” in the following phrase “Destruction of the sold item is final, or the optional condition is at the hands of the seller...” as an equivalent for a sale with an option. It is stated in “*Radd Al-Muhtâr*” before the chapter on the guarantee: “If the seller claims that the sale is redemption, and the buyers claims

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that the sale is final, or vice versa, the correct opinion shall be that of the one who claims that the sale is final" It is used here as an equivalent for the redemption sale. In "*Majalat Al- Ahkâm Al-'Adliyyah*", however, it is used as an equivalent for the redemption sale since Article no. (1658) thereof provides for: "A person who admits being a party to an unconditional and perfectly valid contract, his admission being reduced to writing, is estopped from alleging later that the contract was entered into subject to a condition as to redemption, or is voidable."

• **Al-Bay' Bil-Unmûdhag (Sale by Sample)** البيع بالأنموذج

In Fiqh terminology, *Al-Bay' Bil-Unmûdhag* is defined as a form of sale where the seller shows the buyer some of the item sold, and they negotiate on the basis that the entire item sold is like that sample, such as when he shows him a *Sâ'* of wheat in his store, then selling him a quantity of it as similar to what the buyer saw.

This form of sale applies only to identical items whose parts do not differ, and it is valid and binding according to the majority of Fiqh scholars if the rest of the item sold is identical to the sample. However, if the buyer finds a difference between them, he has the option to cancel or proceed with the sale.

It is stated in Article no. (375) of "*Murshid Al-Hayrân*": "For things sold according to their sample, it is sufficient to see a sample of them. If it is proven that the item sold is not identical to the sample according to which he bought it, he shall have a choice between accepting it for the specified price or returning it by canceling the sale."

• **Al-Bay' Bit-Ta'âtî (Sale by Conduct of the Parties)** البيع بالتعاطي

In Fiqh terminology, *Al-Bay' Bit-Ta'âtî* is an actual exchange indicating the connection of the two wills and consent without verbal offer and acceptance.

An example of *Al-Bay' Bit-Ta'âtî* is when a person finds an item in a store with its price written on it, or the price is known, or he asks its owner about its price and he tells him about it, so he takes the it and gave the seller its price, and thus he takes it from him willingly, without a verbal formula indicating the establishment of the contract.

Most *Hanafites* are of the opinion that *Al-Bay' Bit-Ta'âtî* does not include a contract in which one part is a verbal and the other is an act, as when the seller says: I sell it to you for a thousand, and the buyer takes it and does not say anything. Ibn Nujaym said: "The real from of the *Al-Bay' Bit-Ta'âtî* is to put the price and takes the item sold by mutual

consent without verbal expression, which indicates that it is necessary for *Ta‘âtî* (conduct) to be made by both parties, which is the opinion adopted by most of the scholars.”

The majority of Shâfi‘ites, Mâlikites, Hanbalites, and some Hanafites disagreed with them regarding this point. They said: This form of sale is considered *Al-Bay‘ Bit-Ta‘âtî*, as there is no difference between the presence in one of the two parts of the contract of a word issued by one of the contracting parties followed by an act from the other party and the absence of a word at all, but the act is made by the two contracting parties with an evidence of the existence of mutual consent between the two parties.

• **Al-Bay‘ Bir-Raqam (Sale by Number)**

البيع بالرقم

In Fiqh terminology, *Al-Bay‘ Bir-Raqam* is when the seller says to the buyer: I sell you this garment for the number on it, and the buyer accepts without knowing its value.

In this form, *Al-Bay‘ Bir-Raqam* is an invalid sale according to the majority of Fiqh scholars due to the unknown price at the time of the contract. The Hanafites and Hanbalites said: If the buyer knows the value of the number in the meeting and accepts it, then it turns into permissible sale.

However, if the number, which

is the price written on the commodity, is known to them at the time of the contract, then the sale is permissible and legitimate according to the majority of Fiqh scholars. Ibn Qudâmah said: “It is a sale for a known price and thus it is like the case where the seller mentions its amount, or where he says: I sell this item to you for the same price I bought it for, and they both know such price.”

• **Al-Bay‘ Bis-Sifah (Sale by Description)**

البيع بالصفة

In Fiqh terminology, *Al-Bay‘ Bis-Sifah* is a sale of item not existent at the meeting of contract, provided that the seller describes it to the buyer in a way that reveals the sold item.

It is stated in “*Al-Mughni*” by Ibn Qudâmah: Sale by description is of two types:

First: Sale of a specific item, such as when the seller says: I sell to you my Turkish slave, and then mentions all his attributes. In this case, the contract is annulled by returning the slave to the seller or if the slave is damaged before taking possession thereof because the contracted item is specified. Accordingly, the contract is annulled by disappearance of the contracted item. In this case, it is also permissible to cancel the sale before receiving the price of the sold item and taking possession of

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the sold item, such as the sale of an existent item.

Second: Sale of described but not specified item. An example is when the seller says: I sell to you a Turkish slave, and then fulfills the requirements of *Salam* sale, where the same becomes *Salam* sale.

• ***Al-Bay' Bil-Murâsalah* (Sale by Correspondence)** البيع بالمراسلة

Al-Bay' Bil-Murâsalah is when the offer and acceptance indicating ownership and possession (of the item sold) in the sale contract occurs in writing between two absent parties, or by sending a messenger carrying one party's offer or when the seller accept to buy an item to an absent buyer in writing using a phrase, such as: I sell to you my house for such and such, or when he sends a messenger to that effect, and the buyer accepts after reviewing the offer included in the message or delivered by the messenger.

• ***Bay'ul-Barâ'ah* (Sale Based on Release)** بيع البراءة

In Fiqh terminology, *Bay'ul-Barâ'ah* is a sale on the condition that the seller is free or released from any defect." Ibn Rushd, the grandson, said: "Its form of sale where the seller stipulates that the buyer must be responsible for every defect that he finds in the item sold in general," as if the seller says to the buyer: I sell to you this car or house, for ex-

ample, on the condition that I am free of every defect in it. Ibn 'Âbidîn said: "I said: This phrase is not specific, meaning that any phrase with similar meaning shall have the same effect, including the phrase: I sell you this house as it were completely destroyed, which is common in our days."

This form of sale is permissible according to the *Hanafites*. In a narration by *Ahmad*, this sale is absolutely permissible if the buyer is satisfied with it, whether the seller knows about the defect or not, and whether he names it or does not, and the buyer shall not have the option to cancel it because he accepted it with every effect that may appear in it.

The majority of *Fiqh* scholars disagreed with them in this regard, and some of them do not regard it as permissible in an absolute manner, and other *Fiqh* scholars only regard as permissible some of its cases and forms, with disagreement among them regarding the conditions and details. Judge *Abdul-Wahhâb Al-Baghdâdî Al-Mâlikî* said: Sale on the condition of release is permissible in slaves but not in others, and the seller is absolved of what he does not know, but he is not absolved of what he knows but not reveals. This is the opinion adopted in the school. There is another narration as follows: He (the

seller) is absolved with regard to the slaves and other sold items. In a third narration, however, it is stated that *Bay'ul-Barâ'ah* is not valid and release is not considered.

Article no. (429) of "*Majallat Al-Ahkâm Al-'Adliyyah*" states: "If the seller stipulates that he be free of a specific defect, or of every defect, the condition is invalid, and the sale is valid, whether the defects are apparent or hidden." In "*Al-Mughni*", Ibn Qudâmah says: The narration differs from Ahmad's narration regarding release from defects. It was narrated from him that the seller is not to be absolved unless the buyer knows of the defect, which is the opinion adopted by Ash-Shâfi'. The second narration: He (the seller) is to be absolved of every defect he does not know, and he is not absolved of any defect he knows. This is narrated on the authority of Uthmân, and it is the opinion of *Mâlik*, and the opinion of Ash-Shâfi' regarding animals in particular.

• **Bay'ul-Barâ'ât (Sale of Settlement)** بيع البراءات

In **Fiqh terminology**, Ibn 'Âbidîn defined *Al-Barâ'ât* as: "They are the papers that the clerks of the Diwan write for those who work in the country with a share, as a gift, or on the plowmen for what they owe. It is called *Barâ'ah* (release) because the person is released by paying what is stated in it."

In "*Ad-Durr Al-Muhtâr*" by Al-Hasakfi, it is stated: "*Bay'ul-Barâ'ât* written by the Diwan to workers is not valid, unlike sale the shares of imams; Because the endowment money exists (at the hand of Imam) in that case, but it does not exist in this one."

• **Bay'ut-Talji'ah (Sale out of Compulsion)** بيع التلجئة

In **Fiqh terminology**, *Bay'ut-Talji'ah* is a process where a contract is to reveal a contract which is not intended to be real." As stated in Article no. (179) of "*Majallat Al-Ahkâm Al-'Adliyyah*" according to the school of Ahmad.

According to Fiqh scholars, *Bay'ut-Talji'ah* is when "two parties declare a sale that they do not intend in fact but rather out of fear of an oppressor and the like." In this form of sale, they agree to show the contract, either out of fear of an oppressor or something else, and agree that if they show it, it will not be a sale between them. This sale is called "*Bay'ut-Talji'ah*" as the word itself means compulsion or coercion.

In "*Ad-Durr Al-Muhtâr*", it is stated "It (i.e. *Bay'ut-Talji'ah*) is when they present a contract which they do not want out of fear of an enemy, and it is not real, but rather, fabricated sale.

Besides, *Bay'ut-Talji'ah* occurs in all financial exchange contracts, as

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well as in marriage, divorce, endowment, gift, and other donations.

The Shafi'ites have also termed the sale of *Talji'ah* as *Bay'ul-Amânah* (Sale based on Trust).

• **Bay'ul-Jâmiyyah (Sale of Treasury Grant)** بيع الجامعية

Ibn 'Âbidîn said: "*Bay'ul-Jâmiyyah*" is when a person has a *Jâmiyyah* (salary) in the treasury, and he needs urgent dirhams before the *Jâmiyyah* payment time is due, and a person says to him: Sell me your *Jâmiyyah* that is worth such and such for an amount less than the value of the *Jâmiyyah*, so he says to him: I sell it to you."

It is sale a deferred debt for a lesser amount of immediate cash. The Hanafites are of the opinion that *Bay'ul-Jâmiyyah* is not permissible for anyone other than the one who owes a debt, but it is permissible for the debtor even from his gift.

• **Al-Bay'ul-Jabrî (Forced Sale)**

البيع الجبري

In Fiqh terminology, *Al-Bay'ul-Jabrî* is a sale made by someone who is legally forced, or a sale made on his behalf to fulfill a right he owes, or to ward off harm or achieve a public interest." An example of *Al-Bay'ul-Jabrî* is when the ruler forces a procrastinating debtor to sell his property to pay off a debt owed by him, or when the ruler, based on a request

from the creditor, the debtor's property forcibly to pay off the debt owed by him when he refrains from doing so, or forcing the monopolist to sell the goods that he has monopolized to fulfil the need the people and to remove harm from them, or selling such goods on his behalf if he refuses to do so, or forcing the property owners to sell it for a public interest, such as expanding a crowded mosque or a public road, etc.

• **Bay'ul-Hâdir Lil-bâdî (Sale by City Dweller on Behalf of a Desert Dweller)** بيع الحاضر للبادي

It has been authentically reported from the Prophet, (peace and blessings of Allah be upon him), that he forbade a sale made by a city dweller on behalf of a desert dweller. According to the majority of Fiqh scholars, *Bay'ul-Hâdir Lil-bâdî* is that when a city dweller undertakes the sale of a desert dweller's commodity, as broker on behalf of the desert dweller. Al-Halwânî said: It is when a city-dwelling broker prevents a desert dweller from selling, and says to him: Do not sell, I know the process, and thus the desert dweller trusts him, and the broker sells at very high price. If the broker had let him sell himself, he would have made it easier for the people. A similar explanation, for this form of sale, is made by Al-Ghazâlî.

Some Hanafites, such as the compiler of "*Al-Hidâyah*", believed that

what was meant by this form of sale is when the city dweller sells his goods to a desert dweller, out of greed for higher price.

It is worth mentioning in this regard that the Hanbalites considered the desert dweller to include anyone dwelling in the desert, and any stranger entering the city, whether he is a desert dweller or from another village or town.

• **Bay' Habal Al-Habalah (Sale of an Unborn Fetus or Its Anticipated Offspring)** بيع حبل الحبله

Al-Bukhārī, Muslim, and Mālik related the hadīth that Ibn 'Umar said that Allah's Messenger (peace and blessings of Allah be upon him) forbade *Bay' Habal Al-Habalah* (Sale of an unborn fetus or its anticipated offspring)."

Fiqh scholars have two different opinions regarding what is meant by prohibition of *Bay' Habal Al-Habalah* as follows:

The first opinion is adopted by Ash-Shāfi'ī, Mālik and others. According to them, *Bay' Habal Al-Habalah* is a sale for a deferred price until the camel gives birth and her child gives birth (assuming it is a female). This is the interpretation of Ibn 'Umar, the narrator of the hadīth. He said: People, in the pre-Islamic era, used to sell the meat of *Bay' Habal Al-Habalah*, which is when the she-camel gives birth and

then her (female) child give birth, which was forbidden by the Prophet (peace and blessings of Allah be upon him).

The reason for prohibiting this form of sale is ignorance of the term. An-Nawawī said: "Because it is a sale for a price for an unknown term, and the term takes a portion of the price."

The second opinion is adopted by Abū 'Ubaydah, Abū 'Ubayd, Ahmad, Ishaq, and the Hanafites: It is the immediate sale of the offspring of the offspring of the pregnant she-camel; That is: selling the offspring of the fetus in the she-camel's womb, if she gives birth, and then her (female) child becomes pregnant. This was one of the pre-Islamic sales, so the Prophet (peace and blessings of Allah be upon him) forbade it.

The reason for prohibiting this sale, as An-Nawawī said, is "It is a sale of non-existent and unknown thing, and it is not owned by the seller, and it is not possible to deliver," and all these forms of sale are forbidden.

• **Bay'ul-Hasāh (Pebble Sale)**

بيع الحصاة

The Fiqh scholars differed regarding the meaning of the sale of pebble, which is prohibited in the noble hadīth, based on four opinions:

The first: when there are different things, such as dresses, for

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example, and the seller says to the buyer: Throw a pebble on it, and whatever dress it falls on is the item sold, without contemplation, inspection, or choice after that.

The second: The seller says to the buyer: I sell to you this land from where I or so-and-so stand until the end of throwing this pebble for such-and-such.

The third: The seller says to the buyer: I sell this to you for such-and-such, on the condition that when I throw this pebble, the sale becomes obligatory and binding.

Fourth: The seller says: If I throw this pebble, this dress will be sold to you for ten. That is, it makes throwing stones similar to the form of a contract.

• **Bay'ul-Haml (Selling the Unborn Fetus in Its Mother's Womb without the Mother Being Included in The Sale)** بيع الحمل

Bay'ul-Haml is "Selling the unborn fetus in its mother's womb without the mother being included in the sale." There is no disagreement among Fiqh scholars regarding its invalidity. As-Sarakhsî, Al-Kâsânî, and other Fiqh scholars interpreted it as "the sale of *Habal Al-Habalâh*" according to what was stated about some narrations of the *ḥadīth* prohibiting it.

As for the explanation for the impermissibility of *Sale of Haml*, As-

Sarakhsî said: "It is not permissible due to deception (*Gharar*), lack of value before separation (birth), and the inability of the seller to deliver it." Ibn Qudâmah said: "Sale of fetus in the womb is not permissible for two reasons; **First:** ignorance about the description of the fetus. **Second:** It cannot be delivered (at the time of sale)." Mâlik said in "*Al-Muwat-ta*": "We believe that it is a risk and a deceit to buy the fetus of women and animals because it is not known whether it will come out or not? If it comes out, it is not known whether it will be good or bad, perfect or incomplete, male or female, each of which has a different price."

• **Bay'ul-Khayâr (Option Sale)**

بيع الخيار

This is a jurisprudential term used by the Malikites only, and it is synonymous in other *Fiqhi* schools is "conditional option" or the "option of determination" in the sale. Accordingly, Ad-Dusûqî defined it as: "It is a sale in which the option, i.e. determination, is given to one of the two parties in terms of taking and returning, such as: I sell you these two garments for such and such, with the option of a period of three days in taking and returning." In his "*Al-Hudûd*" Ibn 'Arafah said: "Option sale is a sale whose final conclusion is based on an expected decision."

• **Bay'ud-Dayn Bid-Dayn (Sale of Debt for Another Debt)**

بيع الدين بالدين

Sale of debt for debt has many cases and various forms, mentioned by the majority of Fiqh scholars. They discussed its permissibility and mentioned different details and restrictions regarding its rulings and related opinions. There are eight forms of this type of sale, as follows:

First: selling a deferred debt to **the debtor** for a deferred price.

Second: selling a due debt to **the debtor** for a deferred price.

Third: selling a deferred debt to **the debtor** for an immediate price.

Fourth: Selling a due debt to **the debtor** at a current price.

Fifth: Selling a deferred debt to **someone other than the debtor** for a deferred price.

Sixth: selling a due debt to **someone other than the debtor** for a deferred price.

Seventh: Selling a deferred debt to **someone other than the debtor** for an immediate price.

Eighth: Selling a due debt to **someone other than the debtor** for an immediate price.

The Malikites *Bay'ul-Kâli' Bil-Kâli'* (i.e. Exchange of a Debt for another Debt) into three categories:

Exchange of a debt for a debt, cancellation of a debt for a debt, and sale of a debt for another debt. Al-Khurashî said: "Although *Bay'ud-Dayn Bid-Dayn* (sale of a debt for a debt) linguistically implies the three categories, the Malikites scholars gives each category a specific name." They said:

As for sale of debt for debt, it is a sale of a deferred debt, previously established in the liability, to someone other than the debtor for a deferred price described in the liability. (This is the fifth form).

• **Bay'ur-Rajâ' (Hope Sale)** بيع الرجاء

In Fiqh terminology, it is a sale in which the seller hopes that the item sold will be returned to him. The Fiqh scholars mentioned that *Bay'ur-Rajâ'* (Hope Sale) is of two kinds:

First: an invalid and forbidden usurious trick; such as when a person wants to borrow a sum of money from another person for a term in excess of the capital, then they conspire so that the person seeking the loan sells a movable property or a return-producing property the lender (the alleged buyer) and gives him the proceeds for as long as it remain in his possession, and the buyer is obligated to return the sold item to the seller whenever he returns the price to him. Thus, the lender (the alleged buyer) obtains

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the loan amount with the increase that they agreed upon through this usurious trick.

Ash-Shawkânî said: "*Bay'ur-Rajâ'* has several forms, some of which are invalid, such as those intended to achieve an increase over the amount of the loan. This is like when a man wants to borrow one hundred dirhams for a term, but the lender is not satisfied except with an increase. In an attempt to be freed from the sin of making an increase over the mount loan, he buys land from him for those dirhams, and gives him the produce to benefit from in exchange for the hundred that he lent. What is meant here is not the buying and selling transaction permitted by Allah, but rather the loan itself.

Second: a sales contract in which the sale has the optional condition (the right to cancel the contract for a specific period. It is a matter of jurisprudential controversy. Ash-Shawkânî said: "Among the forms of *Bay'ur-Rajâ'* is when a man sells to another man, intending the sale itself, giving up the sold item, without resorting to a trick to do something forbidden, except that he provides an option for himself if he is able to return the price at such and such a time. This is a sale accompanied by a conditional option, and there is nothing wrong with it. This does not apply to what Imam

Izzud-Dîn (Ibn Abdus-Salâm) said, namely that *Bay'ur-Rajâ'* is in fact temporary sale; Because if the seller returns the same price, he takes the sold item back, whether the buyer accepts or not. Here, we argue saying: This is the case with the conditional option that is given to the seller only, and this is a form of it, as he stated that, and he does not regard as invalid every sale in which the option is stipulated for the seller. Evidence has shown the validity of the sale in which the two sellers separate while a conditional option is made between them"

• *Bay'us-Sinîn* (Selling Fruits Years Ahead of Their Harvest) بيع السنين

In Fiqh terminology, *Bay'us-Sinîn* means a sale of the fruits of trees, palm trees, or orchard for more than a year, two, three, four years, etc.

Abû Dâwûd and An-Nasâ'î narrated that the Prophet (peace and blessings of Allah be upon him) "*forbade Bay'us-Sinîn*". Al-Khattabî said: "*Bay'us-Sinîn* is when a man sells what a palm tree or palm trees produce for several years, such three, four or more, which is a form deception (*Gharar*). This is because he sells something that does not exist or has been created at the time of the contract, and it is not known whether it will be produced or not? Whether palm trees will bear fruit or not? This applies to the sale of specific items.

As for the sale based on description, it is permissible, such as an advance on something for three, four or more years, as long as the period is known, if the thing for which the advance is made is most likely to be present at the time of when the loan is due.

• Bay'us-Safqah (Deal Sale)

بيع الصفقة

In Fiqh terminology, *Bay'us-Safqah* is when one of the partners (in a partnership) sells all of the joint property to a third party in one deal, with his partners having the choice between annulment of the sale on the condition of owning his share for their share from the price for which he sold it to the third party and adding it to their shares, or approve his sale transaction.

This term is used by the Malikites and not in other schools of Fiqh.

• Bay'us-Sikâk (Sale by Instrument)

بيع الصكاك

An-Nawawî said: "*Sakk* (instrument) here is a paper issued from ruler that determines the provision to be given to a person who deserves it, such as food or other things, and its owner sells what is written to the instrument to a person before he takes possession of it. Scholars have differed on this matter, but the most correct opinion according to our companions and others is that it is permissible to sell it. The second

opinion, however, prevents this sale. Whoever forbade this sale took the apparent meaning of Abû Hurayrah's statement and evidence, and whoever permitted it interpreted Abû Hurayrah's case to mean that the buyer for whom the instrument was issued sold it to a third party before he took possession of it, and thus the prohibition was for the second sale, not for the **first one**; Because the one for whom this instrument is issued is regarded as an owner of it out of an established (stable) ownership, and he is not a buyer, so it is not forbidden for him to sell it before taking possession of it, just as it is not forbidden for a man to sell what he inherited before taking possession of it."

• Bay' Dirâb Al-Jamal (Sale of the Semen of Camel)

بيع ضراب الجمل

Al-Mâzurî defined it by saying: "It is the sale of the camel semen while mating a she-camel." Muslim narrated on the authority of Jâbir bin Abdullah that the Messenger of Allah (peace and blessings of Allah be upon him), "forbade *Sale of Dirâb Al-Jamal*." An-Nawawî said: It refers to the price for its semen. Ibnul-Qayyim said: "It is referred to as the price for semen either because what is meant is the semen itself, and so the price is given in exchange for the semen, which is the reality of the sale, or the rental of the camel for mating is called

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sale, which is a contract of exchange, which implies sale of usufructs.”

The Fiqh scholars differed regarding the ruling on leasing the stud for mating:

A) The Hanafites, Shafi’its, and Hanbalites held that it is an invalid contract because the Prophet (peace and blessings of Allah be upon him), forbade it, whether it is sale or lease. This is because the subject of the contract, which is the stud’s semen, is unknown, and implies deception (*Gharar*) since it cannot be delivered.

B) Mâlik and a group of the Companions and Followers were of the view that it is permissible to rent a stud for mating out of interest. If it were prevented, the breed would be cut off. The Malikites said: We only permit renting it (the stud for mating) because the *hadîth* only forbade selling it (the stud’s semen), and the two cases may be different, just as we permit renting a foster mother for breastfeeding while forbid the sale of her milk. Likewise, it is permissible to rent a stud for mating, unlike selling it (its semen).

As for renting it for a mating for a specified period or for a specified number of matings, it is permissible; Because the contract of exchange here is concluded on a known item that is capable of being delivered.

C) Ibn ‘Aqîl Al-Hanbalî said: In my opinion, it may be permissible; Because it is a contract on the usufructs of the stud and his mating with the cow, which it is an intended usufruct, and the stud’s semen is added consequently, and most likely it occurs as a result of the mating, so it is like a contract on the foster woman to produce milk in the boy’s belly.

• Bay‘ Darbat Al-Ghâ’is (Sale of What a Diver May Catch in One Dive)

بيع ضربة الغائص

Bay‘ Darbat Al-Ghâ’is is when a person who is accustomed to diving in the sea say to another: What pearls I take out in this dive are yours for such and such a price. Accordingly, As-Sughdî defined as: “It is when a diver says to a man: I sell you the outcome of one dive for such and such a price, then he dives, and whatever he brings out from the bottom of the sea, he sells it for such price.”

This sale is prohibited and invalid according to Islamic Shari‘ah based on the *hadîth* narrated by Ahmad, Ibn Mâjah, Al-Bazzâr, and Ad-Daraqutnî from Abû Said Al-Khudrî that the Prophet (peace and blessings of Allah be upon him), forbade *Bay‘ Darbat Al-Ghâ’is*. The reason for its prohibition and invalidity is ignorance and deception (*Gharar*) regarding the sold item since it is of unknown value, and is not owned

by the seller at the time of the contract.

Likewise, "*Bay' Darbat Al-Qân-is*" (sale of what a fisherman may catch in one time) is impermissible. An example of such a kind of sale is when a fisherman says to the buyer: I sell you what comes out of throwing this net once for such and such price

• **Bay'ul-'Arâyâ (Sale of Fruits on the Palm Tree)** بيع العرايا

Ibn 'Aqîl said: "In Shari'ah, it is the sale of dates on the tops of a palm tree for dried dates by estimate. Abul-'Abbâs Al-Qurtubî said: "The summary of the Malikites' opinions regarding the '*Ariyyah* is that it is a gift of the fruit of a palm tree or palm trees from an orchard, so it is permissible for the one to whom it is given to sell it if it appears to be in ripe, where in cash, for other goods, or for an estimated amount of dry dates, especially from the donator "

An-Nawawî said, "*Ariyyah* is when the one estimating the amount of dates on some palm trees says, for example, 'The fresh dates these palm trees shall produce will be three *Awsuq* (Plural of *Wasq*. It is a measure of weight) when dried', and then their holder sells this amount for three *Awsuq*. Subsequently, the two parties conclude the sale in the same meeting when they made the contract, the buyer giving the dry

dates and the seller leaving the palm trees to the buyer to receive the fresh dates on them.

Ibnul-Athîr narrated that when the Prophet (peace and blessings of Allah be upon him), forbade *Muzâbîanah*, which is the sale of fruit from the tops of palm trees for dry dates, he permitted, in general, *Bay'ul-'Arâyâ*, which is when someone who does not have palm trees and is in need to buy dates, and does not have money to buy dates for his family, nor he has palm trees from which he feeds them, and he has dry dates left over, so he comes to the owner of the palm trees and says to him: Sell me the fruit of one or two palm trees for an estimated amount of dry dates, so he gives. This sale is permissible as long as the quantity exchanged is less than five *Awsuq*.

Al-Qurtubî said: "*Ariyyah*, in our view, is excluded from forbidden transactions, such as *Muzâbanah*, *Gharar*, *Ribâ Al-Fadl* (an unlawful excess in the exchange of two counter-values when the excess is measurable by weight or a measure), *Ribâ An-Nasî'ah* (interest on credit transactions), and taking back a gift. This form of sale is regarded as permissible due to goodness, kindness, and removal of harm it achieves.

The reason for permitting '*Arâyâ*, as Ibn Taymiyyah said, is: "Whatever needs to be sold may be permitted

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to be sold out of the need, and so the Legislator may permit its sale due to the need despite the reason of prohibition. For example, the Legislator permit the sale of the dates on palm trees for dry dates of estimated amount, where estimation here is used instated of measure, and does not make this sale as the forbidden *Muzâbanah* sale, which is to sale an amount of property for an estimated amount of the same property.

• **Al-Bay‘ ‘Alâ Al-Barnâmij (Sale by Description)** البيع على البرنامج

This is a Fiqh-based term commonly used by the Malikites only. In their School, it means “the sale of an item based on its description,” whether it is non-existent or existent, but its inspection involves cost and hardship.

They have stipulated that it is a binding sale in their view, in which the buyer has no option to cancel the contract if the sold item is in accordance with the description on which the sale was made.

• **Al-Bay‘ ‘Alâ Bay‘ul-Ghayr (Interfering in a Transaction While Others Are Negotiating about It)**

البيع على بيع الغير

Al-Bukhârî and Muslim narrated from Abû Hurayrah (may Allah be pleased with him), that he said: Allah's Messenger (peace and blessings of Allah be upon him), said:

“No man should urge anyone to cancel a sale he has already agreed upon with his brother so as to sell him his own goods.”

The form of this sale is in the view of the majority of Fiqh scholars is as follows: When a person asks the buyer, before the (other) sale becomes binding on him, to annul the sale, so that he sells something similar to it at a cheaper price, or better than it at the same price. It is prohibited by Shairah because it involves harm that causes enmity and hatred.

An-Nawawî said: “An example of this sale is when a person says to someone who bought something during the option period: Cancel this sale, and I will sell you something like it at a cheaper price, or something better than it at the same price.”

Ibn Rajab Al-Hanbalî clarified that this is not specific to the option period, and that it is general during this period and after it, as stated in a narration of Ahmad - “Because even if the buyer is not able to cancel it himself after the option has expired, then if he wishes to return the first commodity to its seller, he will use various ways to return it, which may cause harm to the seller, even by insisting, and what leads to harm to a Muslim is forbidden.”

In “Al-Muwatta’,” Imam Mâlik explained the prohibition of this sale as

it is the same as the prohibition of the transaction where a man offers a price above that offered by his brother Muslim.

• **Bay'ul-Mukhâtarah (Sale by Risk)** بيع المخاطرة

This is a term used by Hanafites and I did not find it in the books of other Fiqh scholars. As-Sughdî mentioned it in "*An-Nutaf*" and defined it as: "It is when a man says to another man: I will buy this item from you for such-and-such, if so-and-so has come from his journey, and the like," and he considered it as invalid sale.

It appears from its definition that it is the same as "a sale subject to a condition" in the terminology of the majority of Fiqh scholars. It was stated in Article no. (254) *Majallat Al-Ahkâm Al-'Adliyyah* according to the school of Ahmad: "A sale that is conditional upon a condition is not valid. If he said: I sell to you this item or buy it from you for such-and-such, if so-and-so is satisfied, or if he comes, it will not be a valid sale.

Ibn Taymiyyah, who narrated it from Ahmad, believes that it is permissible to make the sale conditional on a condition if it benefits people and does not include anything forbidden By Allah and His Messenger (peace and blessings of Allah be upon him).

• **Bay'ul-Majr (Selling the Fetus Before It Is Born)** بيع المجر

The phrase "*Bay'ul-Majr*," was mentioned in the hadith narrated by Al-Bayhaqî and others that the Prophet (peace and blessings of Allah be upon him), "forbade *Bay'ul-Majr*." Al-Munâwî said: "It is to sell, buy, or trade what is in the belly of a female animal. Ibnul-'Arabî said: "Abû Zayd said: *Majr* transaction is to buy camel or other thing in exchange for what is in the she-camel's belly."

• **Bay'ul-Murâwadah (Tacit sale)** بيع المرافضة

In Shari'ah terminology, Hanafites use *Sale of Murâwadah* to refer to two types of sales:

First: *Bay'ul-Muwâsafah* (Sale by Description). It is when a man sells something based on description while he does not possess it, and then buys it and delivers it to the buyer.

Second: *Bay'ut-Ta'âtî* (Sale by conduct of the parties). It is when the buyer takes the item sold and pays the price to the seller, or the seller gives the item sold to the buyer and the other pays the price to him based on their mutual consent without any expression or indication.

• **Bay'ul-Mudtarr (Forced Sale)** بيع المضطر

As for the term "*Bay'ul-Mudtarr*," it was mentioned the Prophet

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(peace and blessings of Allah be upon him). Al-Bayhaqî, and Ahmad narrated on the authority of ‘Alî Ibn Abû Tâlib that he (i.e. the Prophet) preached and said: “Time is certainly coming to mankind when people will bite each other and a rich man will hold fast, what he has in his possession (i.e. his property), though he was not commanded for that. Allah, Most High, said: “And do not forget liberality between yourselves.” The men who are forced will contract sale while the Prophet (peace and blessings of Allah be upon him) forbade forced contract.

The Fiqh scholars mentioned five forms of forced sale as follows:

First: When the person is forced to enter into the contract through coercion. It is mentioned by Al-Khattâbî and Al-Qârî.

Second: When the person is forced to sell due to a debt he has to pay, or because of supplies that burden him, then he sells what he has in his hand at a lower price out of necessity. It is mentioned by Al-Khattâbî and Al-Qârî as well.

Third: When the person has properties and sell them a deferred price. Ibn Taymiyyah said: This form of sale falls under the forced sale because most of the people who buy on credit do so because it is impossible for them to pay in cash. Accordingly, if a man only sells on

credit, his profit is from those of necessity and need, and if he sells for cash and credit, then he is a merchant.

Fourth: When the person sells what people are forced to buy from him for a higher price because they cannot find it with someone else. It was mentioned by Ibn Taymiyyah, As-Sughdî, and Ibn ‘Âbidîn, and it is a narration on the authority of Imam Ahmad.

Fifth: The sale of ‘*Inah* (i.e. sale for immediate cash to repurchase the object with a profit) and *Tawarruq* (i.e. monetization) fall under the forced sale. It is a narration about Imam Ahmad.

• Bay‘ul-Madghût (Sale by a Coerced Person) بيع المضبوط

Bay‘ul-Madghût is one of the terms that are used by the Malikites only. According to them, *Bay‘ul-Madghût* is when one is forced to sell something. They divided *Bay‘ul-Madghût* in two forms, as follows:

First: someone who is forced to sell his belongings without a legal right, and he sells them under duress and coercion.

Second: One who is forced to pay money that he is not legally obligated to pay to someone who has influence and power, where he sells his possessions to pay the money to him.

• **Bay'ul-Mu'âmalah (Sale of Transaction)** بيع المعاملة

This is a Hanafi term that is not known except by their Fiqh scholars, and they apply it in their terminology to two types of contracts:

First: Fulfilment sale; It is a sale on the condition that when the seller returns the price to the buyer, the buyer returns the sold item to him. The reason for calling it a transaction sale is as Ibn Abidin said: "The transaction is the profit of the debt, and this is bought by the creditor to benefit from it in exchange for his debt."

Second: lending with the lender selling to the borrower something more expensive than its value, so that the seller obtains a profit equal to the increase he wants in exchange for postponing the loan debt for the period requested by the borrower.

It is a form of combining borrowing and sale for engaging in usurious loan. Ibn Taymiyyah stated that it is a form of usury, and in the view of the majority of scholars, it is a prohibited usurious trick.

However, some late Hanafites in the Ottoman era issued fatwas permitting this form of sale on the condition that the lender's benefit (hidden usurious increase) shall not exceed 5% of the loan amount. Others said: It is permissible if it does not exceed 15%. As for the early

Hanafites, they have detailed views and disagreement on the issue, and their statements include prohibition, detestation, and permissibility, as Ibn Abidin mentioned in "Radul-Muhtar."

• **Bay'ul-Mukâyasah (Bargaining Sale)** بيع المكايسة

Judge Ibn Rushd (the grandfather) defined the bargain sale by saying: "It is when a man bargains with another man regarding his commodity, so he buys it from him at the price they agree upon." Then he followed that by saying: "Then there is no right for the person who bought it out of fraud or error, according to the well-known opinions."

• **Bay'ul-Malâqîh (Sale of the Semen of a Stud)** بيع الملاقح

Fiqh scholars differed in the interpretation of *Bay'ul-Malâqîh*, and many of them believed that it meant selling animals in the wombs of females. This is the saying of Ibn Habbîb from the Malikites.

Mâlik interpreted *Malâqîh* as what is in the back of camels (semen). That is: the semen of a stud. It is stated in "*Al-Muwatta*" that: "It is narrated from Sa'id Ibnul-Musayyab: "There are three things forbidden in animals: *Al-Madâmîn*, *Al-Malâqîh*, and *Habalul-Habalah*: *Al-Madâmîn* is what is in the wombs of female camels. "*Al-Malâqîh* is what is the

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back of camel (semen)." This is because the people of pre-Islamic times used to sell the semen of a stud for a year or years, so they were forbidden from doing so.

Az-Zurqânî said: "*Al-Malâqih* is the selling of what is on the backs of camels, plural of camel, which is a male camel; Because it is the one who stocks the she-camel."

As-Sugdî, a Hanafî scholar, defined the *Bay'ul-Malâqih* as: "The sale of what in the backs of male animals and slaves of every kind."

• ***Al-Bay'ul-Munajjaz (Immediately Effective Sale)*** البيع المنجز

The Fiqh scholars differed in the concept of the term *Al-Bay'ul-Munajjaz*: The Hanafites said, "It the sale with an absolute form, not conditional and not linked to a future time." That is, it is the opposite of the conditional sale, and the future sale. They stipulated that it has to be included immediately.

The Malikites believed that it is a "binding final sale." That is, it is the opposite of option sale. Ibn Juzayy Al-Mâlikî said: "The sale is divided into two parts: a completed sale, which is concluded immediately and the option sale."

• ***Bay'ul-Muwâsafah (Sale by Description)*** بيع المواصفة

The Fiqh scholars differed as to what is meant by *Bay'ul-Muwâsafah*.

Some of them said: It means selling something according to the specification without seeing it. As-Sughdî said: "It is to sell something that he does not have." He considered it a corrupt sale.

In "*Ta'wîl Mukhtalaf Al-Hadîth*" by Ibn Qutaybah: "It is to buy something that is not with the seller." It is said: It is when someone sells something based on description without having it, and then he buys it and delivers it to the buyer. In "*Al-Muntaqâ*", it is stated that: Abû Hanîfah regarded *Bay'ul-Muwâsafah* as detestable sale, which is that the seller sells something the he does not have.

• ***Bay'un-Nasī'ah (Sale for Deferred Price)*** بيع النسبة

It is the sale of something on the basis of delaying its price. In jurisprudential terminology, it is the opposite of sale in cash.

Ibn Juzayy said: "The sale is divided from another aspect into four categories: **First:** that the price and the sold item be paid immediately, which is sale in cash. **Second:** To delay the price and the sold item, which is selling debt for debt, and it is not permissible. **Third:** The price is delayed while the sold item is delivered immediately, which is *Nasī'ah Sale*. **Fourth:** The price is paid immediately while the sold item is delayed, which is Salam sale.

• **Bay'u-Naqd (Sale in Cash)** بيع النقد

In Fiqh terminology, *Bay'u-Naqd* is a sale in which the price and the sold item are paid immediately. Judge 'Iyâd said: "It is a sale where both considerations are exchanged immediately."

• **Bay'ul-Hawâ' (Sale of Building's Outer Space)** بيع الهواء

In Fiqh terminology, *Bay'ul Hawâ'* is the sale of the right to extend over an area of land or building. Al-Qarâfi said: "The ruling on outer spaces follows the ruling on buildings, so the outer space of waqf is dealt with as waqf, the outer space of open area is dealt with as an open area, the outer space of arid land is dealt with an air land, and the outer space of the mosque follows the same ruling as that of the mosque."

It is stated in Article no. (1195) of "*Majallat Al- Ahkâm Al-'Adliyyah*": "No person may extend the eaves of a room which he has constructed in his house, over his neighbor's house. If he does so, the amount which so extends over his neighbor's house may be removed". Article no. (1196), however, stipulates that "If the branches of trees in any person's garden extend into the house or garden of his neighbor, the owner may be made by the neighbor to tie up such branches and thus bring them back into his own garden, or to cut them down and thus obtain a clear

current of air.

Although the Fiqh scholars agree that whoever owns land (or a building) owns its outer space and that the outer space of the land and building is related to its origin, they differed regarding the permissibility of selling the outer space only, based on two opinions:

The Hanafites, Shafi'ites and Zahirites held that it is not permissible because the outer space is linked to the possession, and so it is not permissible to sell it separately.

The Malikites and Hanbalites are of the opinion that it is permissible to sell it to anyone who will benefit from it.

• **Bay'ul-Wadi'ah (Sale at Lower Price)** بيع الوضعية

In Fiqh terminology, *Bay'ul-Wadi'ah* is: a sale in which the price is determined by a decrease in the capital or a loss in it. It is a sale at a lower price than the original price for which the item was purchased. It is a trust sale, and is classified under it. This is because the seller is entrusted with informing the buyer of the price for which he bought the item.

• **Bay'ul-Wafâ' (Fulfilment Sale)** بيع الوفاء

Bay'ul-Wafâ', in the Fiqh scholars' terminology: is when a person sells something for such and such or

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for a debt owed by him on the condition that when the seller returns the price to the buyer or pays him the debt he owes, he returns to him the item sold as fulfillment. Rather, it is called *Bay'ul-Wafâ'* (fulfillment sale) because the buyer is obligated to fulfill the condition. Ibn 'Âbidîn said: "The reason for calling it *Bay'ul-Wafâ'* is that it contains a promise of fulfillment from the buyer to return the sold item to the seller when he returns the price to him."

• **Bay'ul-Walâ' (Selling the Right of Inheritance)** بيع الولاء

Al-Bukhârî, Muslim, At-Tirmidhî, Ibn Mâjah, and *Mâlik* narrated from Ibn 'Umar that: Allah's Messenger (peace and blessings of Allah be upon him), "forbade *Bay'ul-Walâ'*", which is to sell the right to inheritance that a person deserves by virtue of emancipation of a person in his possession. There is no disagreement among Fiqh scholars that whoever frees his slave deserves to inherit him based on the Prophet's saying: "*Walâ' is (legally) for the manumitter.*"

Walâ', in Fiqh terminology, is: "a right to inheritance by means of emancipation, which gives the emancipator, and his male lineage after his death, the right to inheritance and guardianship over marriage requires (the freed slave) to pray for the person who emancipated him."

Al-Qurtubî said: "It is not permissible to sell or give away the right of inheritance (*Walâ'*) because it is forbidden. It is an existential matter that is not possible to separate from it like lineage. Therefore, the Prophet (peace and blessings of Allah be upon him), said: "*Walâ' (of a manumitted slave) is considered as one's lineage.*" Just as paternity are not transmitted, *Walâ'* is not transmitted."

Al-Munâwî said: "He forbade *Bay'ul-Walâ'*, that is, the right of inheritance resulting from emancipation, which is that if the emancipated person dies, the emancipator inherits from him. The Arabs used to sell it, but they were prohibited from doing so. This is because it is a right like lineage, and just as it is not permissible to transfer lineage, it is not permissible to transfer it to someone other than the emancipator."

The majority of scholars, including the Hanafites, Shafi'ites, Malikites, Hanbalites, and other scholars, have stated that the sale or giving as a gift of *Walâ'*; is prohibited, and that they are not valid according to Shar'i'ah.

• **Bay'atân Fî Bay'ah (Two Sales in One)** بيعتان في بيعه

Abû Dâwûd, At-Tirmidhî, An-Nasâ'î and other scholars narrated that the Prophet (peace and blessings of Allah be upon him), forbade

two sales in one. Ibnul-'Arabî said: It is authentic hadîth from the Prophet (peace and blessings of Allah be upon him).

The Fiqh scholars agreed on the prohibition of two sales in one, but they differed regarding its meaning and intent, with eight opinions:

First: when the seller says to the buyer: I sell you this dress for ten dirhams in cash or for twenty to be paid after one year, and the buyer accepts without specifying at what price he buys the dress. It is the interpretation of Mâlik, Abû Hanîfah, Ath-Thawrî, Ishâq, Ash-Shâfi'î, in one of his two sayings, and other Fiqh scholars. But if they depart while agreeing on one of the two sales, whether cash or credit, then it is valid and legitimate sale. If the sale is not binding at one of the two prices, and they depart while agreeing that they both have the option, or that one of them has the option, then Imam Mâlik permitted it and considered it a form of sale of option.

Second: When he says: Sell me this commodity of yours for a dinar in cash or for a specified sheep for such and such a period, and they depart while agreeing that he is obliged to sell it for one of the two prices without specifying. This is Mâlik's interpretation in "*Al-Muwatta'*".

Third: When a man says to another: I sell you this garden for such-and-such on the condition that you sell me your house for such-and-such. That is, if it is obligatory me to sell you, then it is obligatory for you to sell me. It is the interpretation of the Hanbalites, Hanafites, and Shafi'ites, according to another opinion of him.

Fourth: When a man buys from another man two commodities for two different prices, provided that he is bound by one of the two sales and has the option to choose which one he is bound to. Ibnul-'Arabî attributed this interpretation to the Malikites.

Fifth: When a man says to another: Buy for me, or buy such-and-such commodity in cash for such-and-such, or for what you bought it for, and buy it from me for such-and-such for a period.

Sixth: When a man says to another: I sell this to you for ten dinars on the condition that you give such and such dirhams in exchange of it.

Seventh: When a man pays to another one dinar in advance for a pound of wheat to be delivered after one month. When the time of delivery is due and he demands the wheat, he says: Sell me the pound that you own to me for two pounds to be delivered after two months. This sale turns into two sales in one

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because the second sale is included in the first one.

Eighth: When one says: I sell this commodity to you for a hundred for a year on the condition that I will buy it from you for eighty immediately. It is the same as *‘Inah* (i.e. sale for immediate cash to repurchase the object with a profit). This is the interpretation of Ibn Taymiyyah and Ibnul-Qayyim of the two sales in one.

• ***Biyû‘ul-Âjâl* (Deferred Sales)**

بيع الأجل

This expression is one of the terms used exclusively by the Malikites, and what they mean by this is sales under usurious pretexts, which are: sales that appear to be valid (if viewed separately) but are surrounded by the accusation of leading to a forbidden transaction; Because they are usually used for this purpose.

These sales have many forms, including *‘Inah* sale, the sale and advanced payment, the loan that brings benefit, etc. Ibn Rushd, the grandson, gave an example of this form of

sale by a person selling a commodity to another person for ten dinars in cash, then buying it from him for twenty to be paid after a period of time. If the second sale is added to the first, the matter becomes settled as that one of them paid ten dinars for twenty dinars to be paid later. So, they used what appears to be a valid sale as a pretext to perform a usurious transaction where ten dinars is paid in advance for twenty dinars to be paid after a specified period.

This form of transaction is not permissible according to the majority of Fiqh scholars. This because what is meant by it is not the actual sale, but rather the usurious loan. These sales are concluded at different prices and terms until they deviate from their original purpose permitted by the Shari‘ah, and collectively turn into usurious lending by means of trickery.

The concept of “*Biyû‘ul-Âjâl*” is known to all Fiqh scholars, but non-Malikites do not give it this name.



Tâ' (ت)

• Tâbi' (Accessory)

تابع

In Fiqh terminology, *Tâbi'* means “accessory” in contracts and deals, which is accessory to what was originally intended, or attached to it in targeting and directing the will in the transaction. Al-Khatîb Ash-Shirbînî defined it by saying: “It is what the intention is not often directed to, even if it is intended in itself.” Rather, this is defined and determined based on commercial custom and the experience of relevant and specialized people.

One of the most important jurisprudential rulings on the “accessory” is that it is an accessory to others in existence in fact or in law, so the rule of “*Matbû*” (principle) applies to it. This is because the accessory does not have an independent existence. Accordingly, it was stated in “*Al-Qawâ'id Al-Fiqhiyyah*”: “The accessory is a that which is attached to an object” (*Majallat Al-Ahkâm Al-'Adliyyah*, Article no. (47), and it also stated: “An accessory to an object cannot be dealt with separately” (*Majallat Al-Ahkâm Al-'Adliyyah*, Article no. (48). This means that the accessory is not independent and that the same rule of the principle

applies to it. It also stated: “If the principle fails, the accessory also fails,” and “whatever is an accessory does not need a condition for entering into the deal.”

The majority of Fiqh scholars have stated that subordination in contracts requires forgiveness and permission in them. The legal principle is that what is not permissible in the case of an independent accessory can be permissible when it is combined together with the principle. Accordingly, it was stated in the “*Al-Qawâ'id Al-Fiqhiyyah*”: “A thing which is not permissible in itself, may be permissible as an accessory” (*Majallat Al-Ahkâm Al-'Adliyyah* Article no. (54).

• At-Tâjir Al-Muhtakir [Al-Mutarabbis] (Monopolistic Merchant)

المتربص

This term is used by Malikites only, in the chapter on *Zakâh*. It means “the merchant who buys goods and waits for their price to rise in the markets.” That is, he keeps it waiting for its price to rise in order to make a huge profit. They said: This person does not have to pay *Zakâh* on the merchandise he has until he sells it. If he sells it after a year or more, he must pay *Zakâh* on the price for one year.

• At-Tâjir Al-Mudîr (Managing Merchant)

التاجر المدير

In Fiqh terminology, *At-Tâjir*

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Al-Mudîr (Managing Merchant) is defined as “The merchant who buys goods, then sells them at the current price, then replaces them with something else (and perhaps sells without a profit for fear of a recession). He does not monitor the higher price in the market in order to sell or recession in order to buy.” That is, he manages his money in various sales and trades, as most shop owners and those bringing goods from countries do. Ibn Arafâ defined him by saying: “He is the one whose wealth is hardly found in cash”.

This is one of the terms used by Maliki *Fiqh* scholars exclusively, in the chapter of *Zakâh*.

• *Ta'mîm* (Nationalization) تأميم

The term *Ta'mîm* (i.e. nationalization) in contemporary economics means transforming a private project of some importance into a public project managed in the manner of a public institution, or in the form of a company whose shares are all owned by the state. It is based on the expropriation of private projects of vital benefit to the nation, and their transfer to state ownership.

This term is not known in the language of *Fiqh* scholars.

• *Ta'mîn* (Insurance) تأمين

Insurance contract is a contract of compensation in which one party, namely the insurer, is obligated

to pay to the other party, which is the insured or to the beneficiary for whose benefit the insurance is made, an agreed-upon financial compensation, to be paid upon the occurrence of the risk or the realization of the loss specified in the contract, in return for a fee called a premium. Insurance is paid by the insured in the amount, term and manner stipulated in the contract concluded between them.

(This definition is extracted from Egyptian civil codification and English, American, and Belgian jurisprudence).

• *Tibâ'ah* (Debts) تباعة

In *Fiqh* terminology, the Malikites define the term “*Tibâ'ah*,” and its plural “*Tibâ'ât*,” as: “whatever occupies the indebtedness of the debts of the servants.” Accordingly, Ibn Rushd included in the book “*Al-Jâmi'*” from “*Al-Muqaddimât Al-Mumahhidât*” a chapter entitled: “*At-Tahlîl Min Az-Zulâmât Wat-Tibâ'ât*” (i.e. releasing from injustices and debts.) He meant by *Az-Zulâmât*: injustices (i.e., what a person wrongs others with), and by *At-Tibâ'ât*: the debts of people and their financial rights that are a liability.

• *Tabdhîr* (Extravagance) التبذير

In *Fiqh* terminology, Al-Nawawî defined *Tabdhîr* as “spending money in ways other than those known to rational people.”

Ibn Taymiyyah stated: Extravagance is spending money on things that are not beneficial to religion or the world. He said: Extravagance may in quantity, by giving to those who are deserving more than what they really need and not giving those who are more in need of money. It may be in the original, by giving money for forbidden benefits, such as the wage of a prostitute and the wage of a priest.

Judge Ibnul-‘Arabî said: If it is said: Whoever spends his money on desires, is he a spendthrift or not? We said: Whoever spends his money on desires in excess of needs and thereby exposes it to exhaustion is a spendthrift. Whoever spends the profit of his money or his produce on his desires and protects the principle is not a spendthrift. Whoever spends a dirham on something unlawful is a spendthrift.

• **Tibr (Pure Material of Gold and Silver)** التبر

Ibnul-Athîr said: “*Tibr* is gold and silver before they are minted into dinars and dirhams, and when they are minted, they become in kind. *Tibr* may be used to refer to other minerals, such as copper, iron, and lead, and it is most commonly used for gold.

As for the legal use of the word, Abû Dâwûd narrated from ‘Ubâdah

Ibnus-Sâmit: Allah's Messenger (peace and blessings of Allah be upon him) said: “*Gold is to be paid for with gold, raw and coined, silver with silver, raw and coined (in equal weight).*”

Al-Khattâbî said in explaining the hadîth: “*Tibr* is pieces of gold and silver before they are minted and printed into dirhams and dinars. Allah's Messenger (peace and blessings of Allah be upon him) forbade the sale of a quantity of coined gold for more quantity of raw gold. He also forbade disparity between minted silver and raw silver.

• **Tabarru‘ (Donation)** تبرع

In Fiqh terminology, it is when the person gives money or benefit to another person, in the present or in the future, without compensation, usually with the intention of doing good. It includes gift, will, endowment, loan, etc. The scholar ‘Alî Haydar defined it by saying: “It is the transferring of the ownership of money without compensation.”

• **Tijârah (Trade)** تجارة

In Fiqh terminology, it means dealing with money by buying and selling and the like for achieving profit. Accordingly, Al-Nawawî defined it as “dealing with money and spending it in order to seek growth.” Al-Manâwî defined it as “dealing with money by disposing of it for the purpose of profit.” Ibn Khaldûn

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said: "The meaning of trade is to increase one's money by buying goods and trying to sell them at a higher price than the purchase price, either by waiting for a market condition, or transporting them to a country where they are more expensive, or selling them at a higher price on credit."

• *Tijârah Hâdirah* (Spot Trade)

تجارة حاضرة

In Fiqh terminology, it means "The sale transaction in which the two items are exchanged and each of the two contracting parties is bound by what he bought from the other party."

It was stated in the Quran: {"*except in the case of a spot transaction between you*" } [Al-Baqarah: 282]. Az-Zamakhsharî said: "If you say: What is the meaning of spot trade, whether the sale transaction is for a debt or for in kind property? What is the meaning of "between you"? I said: Trade is the exchanges that are traded in. The meaning of "between you" is that they deal with it hand in hand. The meaning is: unless you make a complete sale, hand in hand."

• *Tajdid Ad-Dayn* (Renewal of Debt)

تجديد الدين

In Fiqh terminology, it means replacing a new debt with the previous debt, by canceling the first debt contract and renewing it in another contract upon which the two parties

agree. An example is when Zayd owes Bakr an amount of twenty dinars for the rent of a house owned by Bakr that Zayd rented from him, he agrees with him that this debt will remain with him as a loan.

If the first debt contract is annulled and the debt is renewed with another contract, the debt due under the first contract is dropped, and the debtor is liable for a new debt under the second contract. One of the effects of the expiration and forfeiture of the debt in this case is that if the first debt is guaranteed and its contract is canceled and renewed with another contract, the guarantee is invalid and the guarantor is acquitted, so the debt incurred through the new contract cannot be claimed unless the guarantee is renewed.

• *Tajhîl* (Unknowability) التجهيل

In Fiqh terminology, Unknowability is the failure of the trustee to explain the status of the trust in his possession upon his death, even though he knows that his heir does not know that it is a trust in his possession.

It is stated in "*Al-Qawâ'id Al-Fiqhiyyah*": "The trustee becomes a guarantor if unknowability exists." They justified this by the fact that through ignorance, he empowers his creditors and heirs to take it (the trust), and the trustee, through such empowering, becomes a guarantor, as if he informed a thief to steal it.

This is because he committed himself to fulfilling the trust, and part of the fulfillment of the trust is to state it upon his death and return it to the owner if he requests. Just as he guarantees by not returning it after the request, he also guarantees by not stating it upon death.

As a branch of this principle, it was stated in *Majallat Al-Ahkâm Al-Adliyyahh*, Article no. (1430): "If the person supplying the labor dies and it is not known what has become of the capital, the loss must be made good from his estate." Also, Article no. (801) says: "If upon the death of the person to whom a thing has been entrusted for safe keeping such thing is found among the estate of the deceased, it is held on trust by the heir, and must be returned to the owner".

The Hanbalites held the same view as the Hanafites, that the hand of trust changes into the hand of a guarantee due to ignorance. They stipulated this regarding the depositor, the *Mudârib* (speculator), the guardian, the agent, the employee, the worker of the endowment, and its supervisor, if one of them dies, without stating the trust that is in his hand. The Shafi'ites and Malikites adopt similar views but with some differences in details, restrictions, rulings and names.

• **Tahâss (Getting A Share)** تحاص

Linguistically, *Tahâss* means to

take share from something or to divide it into share between people.

• **Tahjîr (Petrification)** تحجير

Literally and terminologically, petrification means preventing others from reviving dead land by placing a mark, such as a stone or something else, on the four sides. It legally benefits jurisdiction, not ownership.

There is no disagreement among Fiqh scholars that petrified land belongs to waste lands which is not permissible for others to revive it. This is because the one who petrifies it is more deserving of benefiting from it than anyone else.

• **Tahfil (Tying up Udders)** تحفيل

In Fiqh terminology, *Muhaffalah* is a camel, cow or sheep whose udders have not been milked for a long time so that the buyer would be deceived by it, and increase its price.

Ibn Mâjah, Al-Bayhaqî, and Ahmad narrated from the Prophet (peace and blessings of Allah be upon him) that he said: "Selling a *Muhaffalah* is *Khilâbah* (deception), and *Khilâbah* (deception) is not lawful for the Muslim." The reason for prohibiting *Tahfil* is that it involves fraud, deception, and the intention to harm the buyer.

• **Tahkîm (Arbitration)** تحكيم

Tahkîm, in the terminology of Fiqh scholars, means: "appointing an

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arbitrator to settle a dispute between two parties.” This appointment may be made by the judge or by the two opponents.

The difference between reconciliation and arbitration in Shari‘ah terminology has two aspects:

First: arbitration results in a judicial ruling, unlike reconciliation, which results in a contract upon which the two disputing parties agree.

Second: reconciliation involves one or both parties waiving a right, unlike arbitration, in which there is no waiver of a right.

• *Tahkîmul-Hâl* (Maintaining an Existing State) تحكيم الحال

According to Fiqh scholars, it means making the existing state during the pleading of the two opponents as a ground for the judgment.

• *Takhâruj* (Exit) تخرج

In the terminology of Fiqh scholars, it is for the heirs to reach an agreement to remove some of them from the estate with a known thing.

The basic principle is that it is a reconciliation contract between the heirs to remove one of them, but it is considered a contract of sale if the reconciled consideration is something other than the estate. It is considered a division and exchange contract if the reconciled consideration

is from the estate’s money. It may be a gift or a waiver for some if the reconciled consideration is less than the due share.

This is in general, and Fiqh scholars stipulate specific conditions in each case.

• *Takhâyur* (Choice) تخاير

Takhâyur In Fiqh terminology means “the choice of the contracting parties to bind the contract in the sitting (before parting), whether explicitly or implicitly.”

As for the explicit: it is like their saying: We chose, or we chose to sign the contract, or we performed it, or we made it binding, or we concluded it, or something like that. This is because the option is their right. It is waived if they voluntarily waive it, even if they were in the selling session and do not separate.

As for the implicit: as if the two contracting parties sell the two compensations after receiving them in the setting. This is because that includes consent to the binding of the first contract.

The Shafi‘ites, and Ahmad in a narration chosen by Ibn Abû Mûsâ and deemed authentic by Ibn Qudâmah, have stated that the option of the setting is waived by choosing, just as it is waived by separating and leaving the setting. Al-Mâwardî said: “As for separation,

it implies waiving the option and making the sale binding; This is because the option is established for each of them after the contract in terms of annulment or approval, and waiving this option can be done in one of two ways: either by separation, or by the choice based on waiving the option in place of separation.”

As for the Hanafites and Malikites, they do not support the setting's choice at all, and they do not consider it permissible. Accordingly, they do not recognize the choice based on it.

• **Takhliyah (Delivery)** التخلية

Fiqh scholars have used the term “*Takhliyah*” in the sense of enabling others to dispose of a thing without any objection. Article no. (263) of the “*Majallat Al-Ahkâm Al-Adliyyah*” defines it as follows: “The thing sold must be delivered in such a way that the purchaser may take delivery thereof without hindrance. The vendor must give permission for such delivery.” It is stated in Article no. (216) of the “*Majallat Al-Ahkâm Ash-Shar‘iyyah ‘Alâ Madhhab Ahmad*”: “*Takhliyah* is permission to seize and dispose of without any hindrance.”

According to the Hanafites, *Takhliyah* regarding the sold thing, the price, the mortgaged thing, the gifted thing, the leased property, the

object of Salam, the dowry, etc., is considered a legal seizure against the person who delivers it, whether it is movable property or real estate. They said: Because the one who is obligated to deliver must have a way to perform what he is obligated to do, and what is within his power is to deliver and lift the impediments. Taking possession, however, is not within his power. This is because taking possession by hand is a voluntary act for the one who is to take possession, so if the obligation of delivery was attached to it, it would be impossible for him to fulfill the obligation. The Shafi‘ites, Malikites and Hanbalites are of the view that the *Takhliyah* is the possession of the property only, while the possession of the movable property is according to custom, either by hand or by transfer or by determining it according to the customary standard unit, such as weight, measure, size, number, etc.

• **Tadbîr (Emancipation after Death)** تدبير

In Fiqh terminology, *Tadbîr* means emancipation at the end, i.e. after death, since death is the end of life. Accordingly, it is known as “suspension of emancipation by death.”

As for the economic significance of *Tadbîr* (Emancipation after death), Muḥammad At-Tāhîr Ibn ‘Āshûr alluded to it by saying: “*Tadbîr* is seeking methods of production

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and bringing wealth, by following the best methods, the most appropriate times, the best methods of work, preparing capital, being active in undertaking work, and anticipating appropriate conditions for issuing (goods) when the demand is felt, and saving when prices are stagnant, or when there is a fear of losing what is needed for prosperity.”

• *Tadlîs* (Fraud)

تدليس

Ibn Qudâmah said: The meaning of fraud regarding a defect is to conceal it from the buyer even though the seller knows about it or to conceal it from him in a way that makes the buyer think that it does not exist, such as deception. It is as if the seller, by covering up the defect and concealing it, places it in darkness, so it is hidden from the buyer, so he does not see it, nor does he know about it.

The Hanbalites expanded the concept of fraud, making it inclusive of every illusion made by the seller in the descriptions of the sold item in order to extract an increase in its price from the buyer. Accordingly, it was stated in Article no. (210) of “*Majallat Al-Ahkâm Ash-Shar‘iyyah ‘Alâ Madhhab Ahmad*”: “Fraud: doing what makes the buyer believe that there is a characteristic in the sold item that necessitates an increase in the price or the concealment of a defect.” He said in “*Al-Mutlî*”: “Fraud that establishes

the option (to cancel the sale) is of two types; **First**: concealing the defect; **Second**: deception that increases the price, even if it is not a defect, such as blushing the face of the slave girl, blackening her hair, and the like.

• *Tarâju’* (Restitution)

تراجع

In **Fiqh terminology**, it is stated in the hadîth of *Zakâh* narrated by Al-Bukhârî: “If a property is equally owned by two partners, they should pay the combined *Zakâh* and it will be considered that both of them have paid their *Zakâh* equally.”

Al-Khattâbî said: “It means that there are forty sheep owned jointly by two persons, for example, and each of them has twenty, and each of them knows the exact amount of his money, so the *Zakâh* collector takes a sheep from the share of one of them, and the amount taken from his money is to be divided equally between the two persons.”

• *Trâkh* (Indolence)

تراخ

Avoidance of activity or exertion; laziness. It was stated in “*An-Nazm Al-Musta’dhab*”: “The meaning of Indolence is leniency and abandonment of haste and initiative.”

• *Tarsîm* (House Arrest)

ترسيم

Terminologically, Shafi’ites and Hanbalites used the term “*Tarsîm*” to mean: the judge sentenced a person to house arrest, that is, restricting

him and restricting his movement, such that he cannot leave his home and go to another place in order to force him to pay his debt.

Ibn Taymiyyah said: "If a man, that is a debtor, has a commodity, and he asks for a grace period until he sells it and pays him the price, he will be given a grace period equal to that. Likewise, if he is able to behave to repay his debt by borrowing and the like, and he asks not to be put under house arrest until he does that, his request must be answered and may not be imprisoned in a way that prevents him from doing so"

It is stated in "*Al-IKhtiyârât Al-Fiqhiyyah*" in discussing the husband's imprisonment for his wife's expense: "It is permissible for him to be imprisoned and put under house arrest if the intended purpose is achieved, such that it prevents him from going out."

Al-Qalyûbî said: "It is not permissible to testify to a confession by a detainee or a person under house arrest for the sign of coercion."

It was stated in "*Matâlib Uli An-Nuhâ*": "A claim of coercion based on a confession indicating coercion is accepted from a confessor and the like, such as the threat of someone capable of what he threatened to do, such as beating or imprisonment, and imposing house arrest against him or imprisoning him or taking his money and the like, as the situa-

tion indicates it."

• *Tarikah* (Estate)

تركة

In terminology, the Fiqh scholars differed in defining estate in two opinions: The majority of Fiqh scholars from the Malikites, Shafi'ites, and Hanbalites held that the estate is everything that the deceased leaves behind in terms of money and rights that are absolutely established. The Hanafites hold that the estate is the money left by the dead person, free of any attachment to the specific right of others.

It is clear from these two concepts that the estate includes absolute rights according to the majority of scholars, including benefits. The benefits, however, are not included in the estate according to the Hanafites, as they limit the estate to money or the right that is related to money.

• *Tasbîb* (Causation)

تسيب

Terminology, Al-Khuwarizmî said: "(Causation) is to cause a man's livelihood on impossible money, so that the one who caused it helps the worker to extract it, so he makes a return for the worker, and a portion for the man who is benefiting from the work." He mentioned that this term is taken from *Diwânul-Khazn*.

• *Tasbîl* (In the Cause of Allah)

تسبيل

In Fiqh terminology: "*Tasbîl*" is

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used to describe the action of making something in the cause of Allah, the Almighty, or for goodness and types of righteousness.

An-Nasâ'î and Ibn Mâjah narrated from the Prophet (peace and blessings of Allah be upon him) that he said to Umar when he asked him about his land in Khaybar: "Make it an endowment and give its produce in the cause of Allah." Ibnul-Athîr said: He wants to endow the origin of the property, and to make the fruit permissible for whoever the endowment is made. Ibn Bâtîsh said: That is, to make the original an endowment, so that the essence of the property remains and cannot be disposed of by any way that transfers ownership, such as sale, gift, or inheritance, and make the fruit in the cause of Allah.

• Tas'îr (Pricing)

تسعير

In Fiqh terminology, what is meant by pricing is that the guardian determines the prices of the things, whether they are objects or benefits, and forces their owners to sell them at the specified price.

It is, as Ibn Taymiyyah and Ibnul-Qayyim said, of two types: forbidden as a form of injustice, and permissible as a form of justice.

As for the forbidden form, it involves forcing owners of goods or benefits, without right, to sell at a price they are not satisfied with, or

preventing them from doing what Allah has permitted for them.

As for permissible from (or even obligatory), it is what includes establishing justice between people, by forcing the owners of goods or benefits that people need to sell to them at a fair price (in exchange for something similar) if they refrain from selling them except for the unfair price that they impose.

• Taslîm (Delivery)

تسليم

Terminologically, to deliver something means to give it in full. Delivery, for the sold item, the mortgaged item, the price, the item of Salam, the gifted item, the dowry, etc., is achieved according to the Hanafites when its owner leaves it for the person entitled to it, so that he can dispose of it without any obstacle. They said: When delivery occurs by one party, the other party becomes legally in possession of it, even if it does not receive it physically. This is because the one who is obligated to deliver the thing must have a way to fulfill the obligation of what he is obligated to do, and what is within his power is to leave it and lift the barriers according to custom. As for physical receiving, it is not within his power because it is a voluntary act of the one who is to receive. In this case, if the obligation of delivery were attached to it, it would be impossible for him to fulfill the obligation, and that is not

permissible. The Shafi'ites, Malikites and Hanbalites are of the view that evacuation is the possession of the property only, while the possession of the movable property is according to custom, either by hand or by transfer or by determining it according to the customary standard unit, such as weight, measure, length, etc.

• **Taswîf (Procrastination)** تسویف

Procrastination in language and jurisprudential usage means the act of delaying something that must be done. An example is when a person says to someone who has promised to fulfill: "I will do it", again and again.

• **Tashîh (Integration)** تصحیح

In terminology of the science of inheritance, integration is to remove the fractions located between the shares and the heads when distributing the inheritance. In other words, it is to take the shares from the smallest number possible, in a way that the fraction does not fall on any of the heirs, by making the fraction integer numbers without any fractions. This is the meaning of integration of fractions. When the calculation is made out of the least, it is not to be made out of the most. That is, if it is made out of three, it is not to be made out of six.

• **Tasarruf (Act)** تصرف

In Fiqh terminology, the "act"

it is everything a person utters or does that results in a legal ruling.

Accordingly, it is of two types: actual and verbal. Actual act is that which consists of non-linguistic action, such as obtaining what is permissible, usurping, destroying, receiving the sold item, collecting the debt, etc. As for the verbal act, it is of two types: **The first:** is a verbal and contractual act, whether it involves an engagement between two parties in the specific sense of the contract, or it is something that is accomplished by one will in the general sense of it. **The second:** non-contractual verbal action, such as a lawsuit, which is a request for a right before the judiciary, and such as acknowledgment, denial, and swearing to deny the opponent's claim. They are statements that entail legal rulings. Likewise, slander and slander are assaults that also entail legal rulings.

Ibn Taymiyyah stated that acts are of two types: 'Adliyyah (law-related) and Fadliyyah (finance-related) acts.

As for 'Adliyyah acts, there are two types: compensations and partnerships. The compensations are like selling and leasing, and the partnerships are like the property partnership and the contract partnership. This includes the participation of Muslims in the money of the treasury, the participation of people in

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permissible things, such as the benefits of mosques, permissible markets, and roads, and revived land, or other permissible things, and the participation of heirs in the inheritance, and the participation of the legatees and those for whom the endowment is made in bequests and endowments, and the participation of merchants and craftsmen in partnership incorporation and vocational partnership, etc.

As for *Fadliyyah* acts, they include loan, gift, or will.

• **Tasriyah (Tying up Udders) تصرية**

In Fiqh terminology: *Tasriyah* is when the seller deliberately neglecting to milk a camel, sheep, or other animal for a period of time before selling it, so that the milk collects in its udder, so that the buyer is deceived by it, and increases its price. Al-Bukhârî and Muslim narrated that the Prophet (peace and blessings of Allah be upon him) that, said: “Do not tie up the udders of camels and goats. He who buys them after that (has been done) has two choices open to him after milking them: he may keep them if he wishes, or may return them along with one Sa’ of dates.” Ibn ‘Abdul-Barr said: The *ḥadīth* of *Al-Musarrâh* (livestock with tied up udders) is the basis for forbidding fraud, and the basis for establishing the option for the one who is deceived with a defect, and the basis for the fact that the basis of

the sale is not invalidated by fraud.

• **Tasyîr (Property Transfer for Debt) تصيير**

In Fiqh terminology, *Tasyîr* is the payment of a specific thing, even real estate, for a previous debt. At-Tâwdî said: “It is a contract to pay a property, goods, or something else in return for a previous debt.” Ibn Salmûn said: “It is to give the property in exchange for a debt.” Then he said: “*Tasyîr* is kind of sale, except that one of its conditions is delivery shall be accomplished to the person for whom *Tasyîr* is made at the time of the transaction, and if it delays, the transaction is invalid. Because it includes selling debt for debt.”

This term is one of the terms that is used exclusively by the Malikites.

• **Tatâruhud-Daynayn (Settlement of Two Debts) تطرح الدينين**

In Fiqh terminology, settlement of two debts is the exchange of what is the liability to discharge both liabilities. At-Taqî As-Subkî said: “If he says: I sell you the dinar that I owe you for the ten dirhams that you owe me, so that the liability each of us is discharged,” this issue is called settlement of two debts.”

The issue of *Tatâruhud-Daynayn* (Settlement of two debts) is one of the controversial issues, as the Shafi’ites and *Hanbalites* stipulated that it is

not permissible to discharge what is in the liability, and the Hanafites, Malikites, At-Taqî As-Subkî, and Taqiu-Din Ibn Taymiyyah disagreed with them and said that it is permissible.

• **At-Ta'âmul, Ta'âmul An-Nâs (Dealing, Dealing of People)**

تعامل الناس

What is meant by “dealing” or “dealing with people” In Fiqh terminology is that people engage in financial transactions repeatedly until they reach a large number.

This term is of Hanafi origin. The Hanafites used it in the chapters on financial transactions. They considered it to be a legal basis and assigned exceptional rulings to it. They imposed legal licenses and mitigations on its existence and verification, with controls and conditions they established. The summary of their words about it is:

- A)** Dealing contrary to the legal text is not valid. Accordingly, if most people deal in usury or gambling, there is no consideration for that, and it is inevitably corrupt.
- B)** Dealing with people without any wrong is a basic principle. This is explained by Al-Kâsânî's statement about Istisnâ': “Qiyâs (analogical deduction) rejects the permissibility of Istisnâ' because it is the sale of something that is not

available, however it is permissible out of discretion. This is because people dealt with it in all eras without objection, so there was a consensus among them regarding its permissibility.

- C)** Abandoning analogy on dealing for financial transactions is permissible out of discretion.

- D)** Gharar and ignorance are permissible in compensation transactions as an exception to dealings. Accordingly, Al-Kâsânî said in explaining the permissibility of the option of designation in the sale, which is ruled to be invalid through Qiyâs due to the ignorance of the item sold: “And because the people dealt with this sale due to their need for it, so we permitted it for the people’s dealings.” It was stated in “Majma' Ad-Damânât”: “Sharecropping is invalid according to Abû Hanîfah, and they said: It is permissible. The fatwa is based on their statement due to the dealing of people when they need it.” It was stated in the “Hindi Fatwas” regarding the issue of weaving a garment by a third and a quarter: “The sheikhs of Balkh considered it permissible due to the dealing of people” even though it is similar to of the miller’s Qaffiz (measure).

The basis for abandoning analogy and seeking permissibility for

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dealing is public or private need, as it is placed in the status of necessity in permitting the prohibited, as stipulated in the jurisprudential rules. This is because people do not deal with any contract unless there is a need that force them to deal with it. Dealing is evidence of the existence of a need for what they deal with, and a manifestation of it, and its absence is evidence of its absence. Dealing is closely connected to the need, as the need arises first, then the dealing follows it. Dealing is inconceivable without a need. Likewise, public or private need is not determined except through public or private dealing. It was stated in “*Al-Qabas*” by Ibnul-‘Arabi: “The seventh rule: Considering need in permitting the prevented is the same as considering necessity in permitting the forbidden.”

• **Ta’jiz Al-Mukatab (Inability of Mukatab)** تعجز المكاتب

In Fiqh terminology, the term “inability of *Mukatab*” (slave who has made an agreement to purchase his freedom) is used to mean the *Mukatab* acknowledges his inability to perform the agreement he made to purchase his freedom.

• **Ta’add (Transgression)** تعد

In Fiqh terminology, transgression means “exceeding what should be limited by law or custom and habit.” It includes the meaning of

injustice and transgression of rights.

According to the majority of Fiqh scholars, transgression includes assault on oneself and others. It also includes assault on the property of others by usurpation, consumption, destruction by direct action or by causing it. It also refers to the trustee exceeding his limit regarding what was entrusted to him of the property of others, such as the depositary’s transgression of the deposit through his benefit from it or denial of it. It also implies the worker’s transgression in speculation by using the money in a way that the owner of the money has not given him permission to do, as well as the employee’s transgression by explicitly or implicitly violating the employer’s order, etc.

Al-Mâzarî said: Transgression is other than usurpation. The difference between them is that transgression implies the benefit from someone else’s property is without the intention of owning the property itself. If the intention is to own the property itself, then it is usurpation. Ibn ‘Arafah agreed with him in this regard, and accordingly he defined, in his “*Sharh Hudûd Ibn ‘Arafah*”, transgression as “using someone else’s property without right, without intending to own the property, or destroying it or part of it without intending to own it.”

According to Fiqh scholars, transgression necessitates guarantee or compensation if it is accompanied by damage.

• Ta'dil (Adjustment)

تعديل

Adjustment means correction and evaluation.

As for the term “*Qismatut-Ta'dil*” (adjustment division) according to Fiqh scholars, it means: that the common property is divided based on the value and benefit, not according to the amount, because it is possible for the lesser part to be equivalent to the greater part in its value and benefit. For example, the value of the land's parts may vary according to the strength of production, proximity to water, or irrigation of some of it with a river and some of it with a stream or otherwise. So, for example, a third of it may be equal in value to two-thirds of it, so it is divided in an adjustment division, making one-third a share and two-thirds a share to achieve equality between value and benefit and amount.

• At-Ta'zîrul-Mâli (Financial Discretionary Punishment)

التعزير المالي

According to Fiqh scholars, *Ta'zîr* is a punishment that is not prescribed by Shari'ah for any sin (or violation) for which there is no punishment or atonement in most cases. The judge may choose the appropriate punishment in each case according to what

achieves the goal. The discretionary punishment may be directed at the body, or it may restrict freedom, or it may affect money, or it may be other than that. The discretionary punishment regarding money has several forms:

First: Withholding the money from its owner, whereby the judge withholds some of the offender's money for a period of time to rebuke him, then returns it to him when his repentance appears.

Second: destroying his money, such as destroying idols, tools of sin, and adulterated materials such as food, artifacts, etc., or changing its for according to what achieves the interest and achieves the goal.

Third: imposing fine, or transferring the money to others, such as the Prophet (peace and blessings of Allah be upon him) decreeing that someone who stole some of the hanging fruit before he was taken to the green house should be subjected to severe lashes, and he would be fined twice as much as he had taken, and Umar decreeing that the person who keeps the stray animal would be fined twice its value, etc.

• Ta'diyah (Division)

تعضية

Ta'diyah is defined in the *hadîth* that says: “There is no *Ta'diyah* (division) in an inheritance except in that which can be divided.” Ibnul-Athîr said: “It is when a man dies

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and leaves behind something, if it is divided among his heirs, they or some of them would incur damage, such as a jewel, a garment, or bathroom, which fall under *Ta'diyah*, i.e. division, ruling.

• *Ta'wid* (Compensation) تعويض

According to Fiqh scholars, it means paying the required financial compensation due to causing harm to others.

In their view, the obligation to pay financial compensation is derived from "*Khitâb Al-Wad*" (declaration) not from "*Khitâb At-Taklîf*" (imposition of Obligation), and therefore it applies to both the accountable and unaccountable persons. The child, the insane, the sleeping person, and anyone who has no awareness has to pay compensation for what they have unlawfully destroyed of the wealth of others, due to the protection guaranteed for of the Muslims wealth.

• *Taghrîr* (Deception) تغريب

In Fiqh terminology, *Taghrîr* means presenting something in an unreal appearance, while giving it a characteristic that it does not have, in order to arouse the desire of the other party, so he can conclude the contract. Examples include: tying up the udder of a sheep, false advertising about the advantages of a commodity to entice others to buy it, and so on.

Just as *Taghrîr* is from the seller to the buyer, it is also from the buyer to the seller with regard to the price, just as it is from the broker for someone else.

• *Taghrîm* (Fining) تغريم

Fining means making others lose something. It is derived from *Ghurum* (risk-sharing or loss), which is harm or injury that causes loss of value.

• *Taghyîr* (Change) تغيير

Fiqh scholars use the term changing in the chapter on usurpation, and they impose legal rulings on it. The Hanafites and Malikites say, for example: If the usurper changes the usurped thing until the name and most of its benefits are removed, such as grinding wheat and slaughtering a sheep, then the usurper is responsible for it and owns it but may not make use of it before paying its guarantee. The Shafi'ites and Hanbalites say: If the changing increases the value of the usurped property, it belongs to the owner, and the usurper does not get anything because of it if the increase is a pure effect. If it decreases the usurped property, then the usurper must return it and compensate for the deficiency.

• *Tafarruq* (Separation) تفرق

Fiqh scholars use the term *Tafarruq* (separation) in their discussion about the contract of exchange,

Salam, exchanging usurious items, and other things. They mean the separation of the two contracting parties physically, as in their saying: For the validity of the exchange transaction, the two items must be exchanged before the separation. For the validity of the *Salam*, the capital must be delivered before separation, etc.

As for the limit of separation, there is no disagreement among Fiqh scholars that it depends on custom and on what people consider to be separation, since the Shairah assigned rulings to it, and does not clarify it. It has no limit in the language, so it depends on custom and what people have agreed upon, as is the case with receiving and acquirement, etc.

• **Tafarruqus-Safqah (Deal Splitting)** تفرق الصفقة

In Fiqh terminology, the deal refers to one contract for one price. The meaning deal splitting according to the Fiqh scholars is that the ruling of the contract does not cover all of the contracted items, or it covers it and then recedes from it, so the one combined deal is divided, dispersed, or fragmented. Fiqh scholars express all of these synonyms by saying: “splitting the deal,” “dividing the deal,” etc.”

Moreover, Fiqh scholars have stated that splitting the deal necessi-

tates an option when the sale occurs in one deal. That is: a deal in which there is no specified contracting parties, whether seller or buyer, and in which the price is not specified for the multiple contracted items.

• **Tafrîṭ (Negligence)** تفریط

Ibn Taymiyyah defined negligence terminologically by saying: It is abandoning what one is obligated to do without an excuse.

The term *Tafrîṭ* (negligence) is used by Fiqh scholars when they speak about trust contracts such as deposit, partnership, speculation, and agency, as the hand of the trustee in possession turns into a hand of guarantee through negligence. If the property were to perish in the hands of the agent, partner, speculation agent, depositor, or trustee, without transgression or negligence, then there is no guarantee regarding it. This is because his hand is the hand of trustee. But, if he neglects to preserve it and it perishes, then he is liable for his negligence. This is because the negligent person causes its damage by neglecting what he is obligated to preserve. This is a matter of agreement among Fiqh scholars.

The negligence that necessitates the guarantee is what people consider to be a customary negligence in preserving the money entrusted to be kept.

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• *Taflīs* (Declaring Bankruptcy)

تفليس

In Fiqh terminology, *Taflīs* (Declaring Bankruptcy) refers to the case when “the ruler preventing the debtor from conducting financial transactions because the debt is attached to them.” Al-Khatīb Ash-Shirbīnī expressed this meaning by saying: “It is when the ruler makes the debtor as bankrupt by preventing him from disposing of his money.” Ad-Dardīr says: “It is when the person’s money is taken from him and given to his creditors.”

Declaring bankruptcy and interdiction because of debt in the language of Fiqh scholars have the same meaning, and a group of them use the first expression while others use the second.

• *Taqādum* (Limitation)

تقادم

In Fiqh terminology, “*Majallat Al-Ahkām Al-‘Adliyyah*” defines *Taqādum* (limitation) as the passage of time. The Malikites use the term “possession” (*Hiyāzah*) instead of *Taqadum*.

As for the origin of the issue of limitation, it is that the ruler has the right to prevent judges from hearing the case in some cases after a specific period of time has passed, even though the right does not fall with the prescription of time, in order to avoid forgery and fraud. Abandoning the case for a period of time

while being able to file it indicates the lack of right. Hanafites have set it at 30 years in cases of endowment, orphan and absentee property, and inheritance, and 50 years in cases of debt, deposits, and owned property.

Not hearing the case after the specified period has passed is not based on the forfeiture of the right itself, but rather it is merely preventing the judges from hearing it while the right remains with its owner. Even if the opponent agrees, the right remains with its owner. If the limitation extinguishes the right, however, it will no longer belong to its owner.

The Malikites, however, divided limitation (possession) into two parts: possession with ignorance of the owner of the property; and possession with knowledge of the owner of the property. In the first case, possession is sufficient to prevent the case from being heard for a period of ten months or more, whether the possessed is real estate or something else. The second case requires ten years or more for real estate, or two years for animals, clothes, and the like.

• *Taqabbul* (Acceptance)

تقبل

In Fiqh terminology, *Taqabbul* (acceptance) is a commitment to a contract. It is said: I accepted the work from its owner if you commit to a contract. (Article no. 1055) of

“*Majallat Al-Ahkâm Al-Adliyyah*” defines acceptance as “by accepting responsibility is meant undertaking to do and carry out any particular piece of work.” Work, here, refers to any piece of work such dyeing clothes, stitching fabric, etc.

• **Taqdîrul-Amwâl (Estimation of Funds)** تقدير الأموال

This is a term used in the chapters on Shari’ah politics, and Al-Mâwardî mentioned it in his book “*Tashîlun-Nazar*”, where he says: As for the fourth rule regarding the ownership’s policy after its establishment and stability, it is “estimation of funds.” Estimation is considered in two ways:

First: Estimating inflow. This is estimated in one of two ways:

Either by a Shari’ah text stipulating estimation, which is not permissible to violate.

Or through the *Ijtihâd* (legal reasoning and discretion) of the rulers, and whatever establishment and estimation made by means of *Ijtihâd* may not be annulled.

Second: estimating outflow. This is estimated from two aspects:

First: by necessity, whether its reasons are necessary or permissible.

Second: with the property, so that there is no lack of inflow, and no hardship is incurred with it.

Then, if inflow is compared to outflow, there are three conditions:

First: When inflow exceeds outflow. This is the sound ownership and upright estimation, so that the ample income (inflow) is prepared for calamities and emergencies.

Second: When inflow falls short of outflow, which is defective ownership and defective estimation.

Third: when inflow and outflow are equal until the ownership is balanced. Thus, in times of peace, the ownership is balanced, and in times of accidents is imbalanced, and each of the two times has its own ruling.

• **Taqstî (Installment)** تقسيط

In *Fiqh terminology*, Article no. (188) of “*Majallat Al-Ahkâm Ash-Shar’iyyah ‘Alâ Madhhab Ahmâd*” defines instalment as: “postponing compensation divided into multiple times, and each part whose time comes is called an installment, and the part of the price corresponding to a part of the sold item is called its installment.”

Accordingly, dividing the debt in installments means dividing it into shares or amounts to be paid in specified amounts within several specific deadlines. Article no. (157) of “*Majallat Al-Ahkâm Al-Adliyyah*” says: “Payment by instalments consists of a postponement of payment of a debt in order that it may be paid at deferent and definite periods.”

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As for (installment sale), it is a type of credit sale, in which it is agreed to deliver the sold item and postpone all or some of the price in known installments for specific periods. These deadlines may be of regular duration, such as every month, for example, or every year, etc. They may also be equal in amount, increasing, or decreasing.

• **Taqyîdât (Restrictions)** تقييدات

The Hanafites divided contracts, in the more general sense of a contract, which is the establishment of an action based on a firm determination and intention, whether it includes one person or more, according to their nature and their ability to be associated with conditions and to be modified by addition in the future, into several groups, each group is organized by a unit, making it a separate type, which are: compensations, donations, omissions, releases, restrictions, partnerships, etc. They said: As for restrictions: they are like removing an agent and interdicting an authorized boy in trade.

• **Takâful (Solidarity)** تكافل

It has been authentically reported that the Prophet (peace and blessings of Allah be upon him) said: *"I will be like this in Jannah with the person who takes care of an orphan."* Related by Al-Bukhârî, Abû Dâwûd, and At-Tirmidhî. Ibnul-Athîr said:

The sponsor is the one who takes care of the orphan and raises him. Al-Munâwî said: The sponsor is the one who takes care of his affairs and interests, as a gift from his own money, or from the orphan's money, whether he is a relative or not.

As for the expression (social solidarity), it is a new term, which means, as Muhammad Abû Zahrah said: "That individual people should be in charge of their group, and that every capable or powerful person should take care of his community, providing it with good, and that all human forces in society should be united to protect the interests of individuals and protecting them from damages and protecting the social structure from damages, and establishing it on sound foundations, etc.

• **Talji'ah (Coercion)** تلجئة

Al-Khuwârizmî stated that *Talji'ah* (coercion) in the terminology carries the sense that a weak person entrusts his property to a strong person to protect it. Then he said: the strong person may entrust the property entrusted to him to someone else.

It was stated in *"Raddul-Muhtâr"* by Ibn 'Âbidîn: *"Talji'ah*: is what a person resorts to without his choice. This is as if a man fears the ruler, so he says to another: I pretend that I sold my house to you, and it is not a sale in reality, but rather it is an

attempt to seek refuge, and he bears witness to that.”

Ibn Taymiyyah said: “*Talji'ah*” means that two people agree to reveal the contract, a characteristic in it, or acknowledge it, or the like, as just a form, without the contract having any real meaning, such as a man whose property is wanted by an oppressor, and then agrees with someone to sell such property to him with a simulated contract to protect it from the oppressor.

• *Talaf* (Damage)

تلف

The Fiqh scholars said: *Talaf* (Damage) can either be caused by nature, which is said a heavenly scourge or a pandemic or by human. The last one is divided by the Fiqh scholars into two types: *Talaf Hissî* (actual damage) and *Talaf Sahr'î* (legal damage). *Talaf Hissî* refers to the destruction of the property itself, whether partially or wholly. Meanwhile, *Talaf Sahr'î* is when the Lawgiver prevents from benefiting from the property while it remains due to the destroyer, as if a person bought a female slave and his father freed her before taking possession of her; This is because the Lawgiver makes the emancipation made by the father as it were made by the son and applies the same ruling. The same applies to other transactions such as emancipation agreement, man-aging, charity, and gift.

• *Talaqqî Al-Rukbân* (Meeting the Caravan)

تلقى الركبان

In Fiqh terminology, *Talaqqî Al-Rukbân* (meeting the caravan) refers to leaving the country to which food or goods are brought to meet their owners who are coming to sell them in order to buy them before they reach the market and know the price.

Some Hanafites interpreted it as saying that it is when a urban resident meets the Bedouin before he arrives to the country and informs him of the deterioration of his goods, so that he could buy his goods at a price less than the price of the similar items.

Al-Bukhârî and Muslim narrated from Abû Hurayrah that Allah's Messenger (peace and blessings of Allah be upon him) said: “*Do not meet the caravan.*” In another narration, it is stated: “*Do not go out to meet the merchandise, (but one must wait) till it is brought down to the market.*”

The scholars have three opinions regarding the reason for the prohibition of meeting the caravan:

First: Taking into account the interest of the owner, protecting him from harm, and protecting him from deception by the one who meets him, since he does not know the price, which may lead him to sell the goods at a lower price.

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Second: taking into account the interest of the people of the country, as the one who meets the caravan may cause harm to them when he only manages to purchase a lower price and then he may raise the price for them or withhold the goods he bought until the price increases. This is the opposite of the owner's intention of selling their goods at any price suitable for them and then moving back to their shops and businesses.

Third: taking into account the two interests; the interest of the owner, and the interest of the people of the country.

• **Talmîz (Early Dispensation)** تلمیظ

In Fiqh terminology, Al-Khuwârizmî said: “*Talmîz* means to give some livelihoods to a group of poor people before they are due.”

• **Tamlîk (Transferring Ownership)** تملیک

In Fiqh terminology, *Tamlîk* (transferring ownership) means making someone else the owner of a thing. According to Fiqh scholars, it is of four types:

First: transferring the ownership of a property for a compensation, which is sale.

Second: transferring the ownership of a property without compensation, which is gift.

Third: transferring the ownership of the usufruct for a compensation, which is lease.

Fourth: transferring the ownership of the usufruct without a compensation, which is *Áriyah*.

• **Tanjîz (Completion)** تنجیز

Fiqh scholars use the word *Tanjîz* (completion) in the sense of presence and hastening, in contrast to suspension, addition, and postponement. This term is mostly used in the forms of contracts, while in the obligatory rulings related to acts of worship such as *Zakâh* and Hajj, they use the word “*Al-fawr*”, which means performance at the earliest possible time.

• **Tandîd (Liquidation)** تنضیض

In Fiqh terminology, *Tandîdul-Mâl* (Liquidation) means “converting property into cash through sale or exchange.”

• **Tanfil (Increase)** تنفیل

In Fiqh terminology, *Tanfil* means an increase in money over the share of the spoils, stipulated by the Imam or the commander of the army for whoever fights bravely against the enemy.

• **Tawâ (Damage or Inability)** نوی

The term “*Tawâ*” means damage and destruction.

As for the Hanafites, they defined

Tawâ, in the Book of *Hawâlah*, by saying: “It is the inability to reach the right” due to the ingratitude of the transferee or his death penniless. Al-Matrazî said: The meaning implies: “there is nothing due on the Muslim’s wealth that is lost”. In its interpretation in the *ḥadīth* of ‘Umar, may Allah be pleased with him, regarding the transferee who dies penniless, He said: The debt returns to the transferor’s liability.

• *Tawthîq* (Documentation) توثيق

In *Fiqh terminology*, *Tawthîq* (documentation) of debt means increasing its confirmation. They define two ways for documentation.

Frist: Strengthening and confirming the creditor’s right to the debt he has in the debtor’s liability with something reliable, such as writing and testimony, to prevent the debtor from denying, reminding him when he forgets, and to prevent him from claiming less than the debt or claiming earlier repayment. Accordingly, if a dispute or disagreement occurs between the debtor and the creditor, this documentation serves as a powerful tool to prove the right before the judiciary.

Second: Establishing and enforcing the creditor’s right to the debt he has in the debtor’s liability, so that when the debtor refuses to pay, for any reason, the creditor can recover his debt from a third person

who guarantees the debtor with his wealth or with a financial asset to which the creditor’s right relates and which is a pledge for his debt.

• *Tawarruq* (Monetization) تورق

In *Fiqh terminology*, only the *Hanbalites* use the term “*Tawarruq*” and define it as “when a person buys a commodity on credit, then sells it for cash to someone other than the seller for a lower price in order to obtain cash.” This form is mentioned by all *Fiqh* scholars without calling it *Tawarruq* in issues of *‘Īnah* (sale for immediate cash to repurchase the object with a profit) sale. The *Shafi’ites* called it “*Zarnaqaḥ*,” and Al-Azharî described it as “permissible *‘Īnah*.”

As for the ruling on *Tawarruq*, the majority of *Fiqh* scholars agree that it is permissible because it is a sale in which neither the intent nor the form of usury appears. ‘Umar Ibn ‘Abdul-‘Azîz and Muḥammad Ibnul-Ḥasan Ash-Shaybânî regarded it as *Makruh* (detestable) transaction. Ibnul-Ḥumâm said: It contradicts the recommended from. Ibn Taymiyyah and Ibnul-Qayyim classified it as form of sale made by a forced person (*Bay‘ul-Muḍtar*). However, according to the Hanbali doctrine, it is permissible.

• *Tawrîq* (Securitization of Debt)

توريق (تصكيك الدين)

Tawrîq (Securitization) means

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turning the deferred debt owed by others, in the period between its confirmation and the maturity date, into negotiable instruments in a secondary market.

Thus, various exchange and trading operations can take place on it, and it turns into cash money after it was merely an obligation owed by the debtor.

Some contemporary researchers have called this process *Taskik* (securitization) and stated that it is essentially based on the creation of tradable securities, based on an investment portfolio with low liquidity.

These securities (debt trading documents) are of great importance in contemporary global financial markets, as they have opened the door wide for trading all types of debt and investing money in that easy and organized way.

• *Tawzīʿ* (Distribution) توزيع

In Fiqh terminology, An-Nawawī said: “Distribution means: division and sharing.”

• *Tawfir* (Provision) توفير

Linguistically, *Tawfir* (provision) means fulfillment and completion. It also donates maintenance preservation. the Fiqh use of the word does not deviate from its linguistic meaning.

• *Tawliyah* (Reselling at Cost price)

توليه

In Fiqh terminology, *Tawliyah* refers to a sale in which the capital itself specifies a price without profit or loss. Its reality is the transfer of all of the sold item from the seller to the owner in exchange for the price.

Ibn Qudāmah said: “*Tawliyah* sale: is a sale for the price of the similar item (i.e. the one for which it was bought) without any decrease or increase. Its ruling regarding informing about its price and clarifying what needs to be clarified is the same ruling on *Murābahah*. The word “sale” and the word “*Tawliyah*” can both be used to denote the same meaning.”

In jurisprudential consideration, *Tawliyah* (reselling at cost price) sale is classified into the group of “trust sales.” This is because the seller is entrusted with informing the buyer of the price for which he purchased the item sold.

• *Tawliḥ* (Gift in the Form of Sale)

توليع

In Fiqh terminology, Mayyārah Al-Mālikī defined *Tawliḥ* as: “a gift in the form of a sale to eliminate the cost of possession in the sale, and the lack of it in the gift.” Then he said: “This is what is mostly used, although some of them are applied to others, meaning *Muhābah* and

Tawlīj due to the closeness of their meanings.”

This term is used only by the *Malikites*.

- **Tĩ'ah (Minimum Amount Determining Zakâh on Animals)** تِيعَة

In Fiqh terminology, “Tĩ'ah” is

a name for the minimum amount determining *Zakâh* on animals. Ibnul-Athîr said: “It is the total number in which the collector of *Zakâh* have the right to collect *Zakâh* on,” like one fifth for camels and forty for sheep.”



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Thâ' (ث)

• Thaman (Price)

ثمن

Linguistically, “Thaman” (price) means compensation. A-Râghib said: The price is a name for what the seller takes in exchange for the thing sold, whether in kind or commodity, and everything that is obtained in exchange for something is its price.

Fiqh scholars use the term “price” for value in exchange for “the compensation agreed upon by the parties to the contract, whether it is equal to the price of similar items in the market or less or more.” Ibn ‘Âbidîn said: “The difference between the price and the value is that the price is what the two contracting parties agree upon, whether it is more or less than the value.

Fiqh scholars also use the word “price” in exchange for “the thing sold” in the sales contract and mean “what is in exchange for the thing sold, and is related to the liability.” As for the “priced” item, it is the thing that is sold for price.

It is stated in “*Radd Al-Muhtâr*”: “The price is what is proven as a debt in the liability upon exchange, which

is the two cashes (gold and silver) and fungible items if they are specific and exchanged for assets, or are not specific and are accompanied by what refers to the exchange. As for the sold item, it is the estimated items or fungible items when exchanged for cash or in kind and is not specific, such as: I bought a measure of wheat for this slave.

• Thaman Al-Mithl (Price of Similar Item/Usual Price)

ثمن المثل

In Fiqh terminology, “Thaman Al-Mithl” (usual price or the price of similar item) is the price of an equivalent commodity in the market. Ar-Ramlî and Al-Khatîb Ash-Shirbînî defined it as “the end of buyers’ desires.”

Ibn Taymiyyah said: “The basic principle is the choice, will, and desire of human beings. That is why many scholars said: The value of a similar item is what a thing is worth according to the opinion of those with desires. The basis for it is the will and desire of the people... If it is known that their known will for a thing is such and such amount, it is known that it is the price of a similar item, which is its value and the value of other items similar to it.” Then he said: “If this is known: the desires of people are very different and varied, and they differ according to the abundance and scarcity of what is sought. When it is scarce,

the desire for which differs from when there is a large number of it and the desire also is based on the number of people who seek to buy this thing, whether large or small. Accordingly, the price of what is sought by a large number of people increases in contrast to price of what is sought by small number of people requesting. The value of a thing also depends on the need or the demand on it, whether strong or weak. It also depends on the buyer. If he is a wealthy person, people desire to inter into compensation with him for lower price that would not be offered for the person who is suspected of (financial) inability, procrastination, or ungratefulness. The value also may be determined based on the compensation. For example, the item may be sold for lower price if it sold for popular currency compared to less popular currency."

As for how to determine the price of a similar item, experts determine it according to the average price of the commodity in the market.

• **Ath-Thaman Al-Musammâ (Fixed Price)** الثلث المسمى

"Ath-Thaman Al-Musammâ" (fixed price) is defined by "Majallat Al-Ahkâm Al-'Adliyyah" as "The fixed price is a price mutually named and agreed upon by the two contracting parties whether corresponding to the real value of whether more or less."

It is when the word "price" is used in sales, it refers to it. The basic principle of the price is that which the two contracting parties agree on. The "price of the similar item" is not resorted to except in limited cases, as in forced pricing, and forms of forced ownership to satisfy a partial need (such as someone who is in need for the food of others) or a general need (such as compensation from the ruler for Muslims, an orphan, or an endowment), and in cases of inclusion in corrupt contracts and the like.

• **Thinâ (Twice)** ثنى

Linguistically, "Thinâ" means doing the command twice. Al-Fayyûmî said: "It is a commanded repeated twice."

As for Fiqh terminology, Abû 'Ubayd and Ibn Abû Shaybah narrated from the Prophet (peace and blessings of Allah be upon him) that he said: "No charity is to be given twice." Its meaning, according to the majority of Fiqh scholars, is that there is no repetition in Zakâh. That is, it is not taken twice a year. This is explained by Ibn Qudamah's interpretation of the term "Tinâ" as "an obligation to pay Zakâh twice in one year for one reason."

Abu 'Ubayd mentioned in "Al-Amwâl" two interpretations of the word "Thinâ" that is forbidden in the ḥadīth, and he said: "The origin

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of the term *Thinâ* in their speech is repeating something and putting it in the wrong place. He says: If *Zakâh* is delayed for a year such that their wealth is destroyed, it will not be paid twice in return for the last year's *Zakâh*, but they will pay it in full. If *Zakâh* has been due for years, then this is not *Thinâ*; because it is a right that is taken from the property of the livestock while it is still in their possession, and so they pay *Zakâh* for the last period. In addition, there is another aspect of *Thinâ* that *Zakâh* should not be taken twice in a year. This is also the case of putting something in the wrong place. Abû 'Ubayd said: The first interpretation is more acceptable to me because it is narrated with an explanation on the authority of Ibn Shihâb.

As for the term *Thaniyy*, it refers to sheep that entered the third year, and cows as well, and for camels that entered in the sixth year. The female is referred to as "*Thaniyyah*." According to the doctrine of Ahmad Ibn Hanbal: *Thaniyy* refers to sheep and goats that entered the second year, and cows that entered the third year, as said by Ibnul-Athîr.

• *Thunyâ* (Exception)

ثُنْيَا

Linguistically, *Thunyâ* is to return to what is past or from what is past. It was mentioned in the Prophet's *hadîth*, where Muslim narrated from the Prophet (peace and bless-

ings of Allah be upon him) that he "*Forbade Thunyâ*."

It is stated in "*An-Nazm Al-Musta'dhab*": *Thunyâ* in a sale is when the seller excludes the benefit of the item sold or something from it, as if he returned some of the item sold to him.

What is meant by "*Thunyâ*" which is forbidden in the *hadîth* is selling something with the exception of an unknown part of it. This is because the sold item becomes unknown except for the known part thereof, and thus the contract is not valid due to the sold item being unknown. But, if he excludes a common, known or specific part, then there is nothing wrong with it according to Shairah. An-Nawawî said: "*Thunyâ* that invalidates the sale is his saying: I sold you this aloe except some of it, or these trees or sheep or clothes and the like except some of it, so the sale is not valid. This because the part excluded is unknown. If he said: "I sold you these trees except this tree, or this tree except a quarter of it, or this aloe except a third of it, or I sold you for a thousand dirhams, or other form of known exception," the sale is valid, according to scholarly consensus."

As for the term "*Bay' Ath-Thunyâ*": it is when the seller and the buyer agree upon the sale contract that the seller has the right to recover what he sold whenever he returns to the

buyer the price, he took from him. It is one of the terms used only by the Malikites. The Hanafites scholars call this sale “*Bay’ul-Wafâ*” (Fulfilment Sale) and “*Bay’ul-Mu’âmalah*” (Sale of Transaction), the Hanbalites call

it “*Bay’ul-Amânah*” (Trust Sale), and the Shafi’ites call it “*Bay’ul-‘Uhdah*.” It is also called “*Ba’yul-Tâ’ah*” and “*Al-Bay’ul-Jâ’iz*.”



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Jîm (ج)

• Jâ'ihah (Blight/Calamity) جائحة

Linguistically, *Jâ'ihah* means blight. Likewise, it means a calamity befalls a person's wealth. Al-Azharî said: The word *Jâ'ihah*, whose plural form is "*Jawâ'ih*", is a blight that affects the fruit due to excessive heat, squeezing, hail, or cold that increases its size and makes the fruit to fall.

According to Malikites, *Jâ'ihah* is any blight that cannot be prevented when determined whether it is caused by human action, such as armies and thieves, or without his action, such as cold, heat, snow, rain, locusts, and the like.

The Hanbalites disagreed with them on this, saying: It is every blight that is not caused by a human being. However, what is caused by a human being is not considered a *Jâ'ihah*. Likewise, Ash-Shâfi'î is reported to have said: "The *Jâ'ihah* is anything that affects the fruit, or some of it, by nature without a human act."

An-Nawawî said the *ḥadīth* saying "He commanded to make deductions in the payment of that stricken with a calamity" means that the seller is required to reduce the price

for the fruit stricken with calamity. Al-Fayyûmî said: The meaning is of the *ḥadīth* is he command *Zakâh* for the fruit stricken with a calamity to be dropped.

• Jâ'izah (Reward)

جائزة

Linguistically, reward means gift.

Abû Hilâl said: The difference between reward and gift is that the reward is what the praiser and others give as a way of honor, and it can only be given to someone who is higher than the giver. The gift denotes general meaning.

Fiqh scholars use this word with the same linguistic meaning when they talk about the ruling regarding the Sultan's reward and about the competition money, which is the financial reward that is placed between the two contestants for the winner.

The reward was mentioned by the Prophet in the sense of a hospitality and generosity, as Al-Bukhârî and Muslim related that the Prophet (peace and blessings of Allah be upon him) said: "*He who believes in God and the last day should honour his guest. Provisions for the road are what will serve for a day and a night; hospitality extends for three days; what goes beyond that is Sadaqah.*" Al-Khattâbî said: What he means by the reward is provide him on the first day with whatever kindness and generosity he can afford, and

gives him on the second and third day whatever he had in his presence, and no more than what he is accustomed to, and whatever comes after the three days is charity (*Sadaqah*) and kindness. If he wants, he does it, and if he wants, he leaves it. It was said: What is meant by his reward is to give him something that supports him during his travel and is sufficient for a day and a night after his hospitality.

• Jâliyah (Expatriate Community)

جالية

Linguistically, the term “Jâliyah” donates to the group who were evacuated from their homeland. That is: they left. Accordingly, the Jews who were evacuated by ‘Umar Ibnul-Khattâb from the Arabian Peninsula were call “Jâliyah” and then the term was used to refer to the tribute that was taken from them.

Then, this name became related to all of the People of the Book and the Magians in every country who were required to pay tribute, even if they were not expelled from their homelands. The Fiqh scholars also used the term *Jaliyah* to mean every tribute taken, even if its owner had not been evacuated from his homeland.

• Jâmikiyyah (Monthly Salary)

جاميكية

Jâmikiyyah is a Turkish word that means what is assigned for job hold-

ers in endowments. It is like ‘*Atâ*’, except that ‘*Atâ*’, is given annually while *Jâmikiyyah* is given monthly.

Ibn Nujaym said: “*Jâmikiyyah* in endowments has a similarity to a wage, a similarity to *Silah*, and a similarity to charity, so each one is given what suits it.” It was considered as similar to wage as it also is given to the rich. That is, if it were pure charity, it would not be permissible for someone who is. It has similarity to *Silah* because ff the employee died or was dismissed during the year, and he had received the entire year’s *Jâmikiyyah* before that, the share of what remained would not be recovered. This is because *Jâ-mikiyyah* is acquired by receipt, and if it were a pure wage, the remaining part thereof would be recovered. It is also considered to be similar to charity to correct the origin of the endowment, as it is not valid for the rich originally. This is because his saying “endowed forever” and the like is a condition for the validity of endowment.

This term is one of Fiqh terms that was used exclusively by the late Hanafites and Shafi’ites.

• Jubâr (Unretaliated)

جبار

Jubâr linguistically and in the use of Fiqh scholars donates to waste. That is, ff they describe a human or other act as *Jubâr*, this means that what is damaged due to that act is a waste for which no one is liable

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for retaliation, blood money, or compensation for the lost money. It was stated in “*Al-Qawâ'id Al-Fiqhiyyah*”: “The wound caused by beasts is *Jubâr*,” that is “unretaliated”. This means that there is no liability for its owner if it escapes by itself and destroys a person or property, if that does not result from its owner’s transgression or negligence in preserving it.

• *Jibâyah* (Collection/Taxation)

جباية

Linguistically, *Jibâyah* means collection.

The collector refers to the person who collects the tax and the like. The same applies to those who collect water for camels.

In Fiqh terminology: Ibn ‘Âbidîn defined taxation as “what the Sultan imposes based on a right or otherwise.”

• *Juhûd* (Denial)

جحد

Linguistically, *Juhûd* has the same meaning as denying something while knowing it. Ar-Râghib said: *Juhûd* is to deny something that that is affirmed or to affirm something that is denied.

The difference between *Juhud* and denial (which is the opposite of affirmation) is that if the person who denies is telling the truth, his words are called denial and are not called *Juhud*, and if he is a liar, his

words are called *Juhud* and denial as well. Accordingly, every *Juhud* is a denial while not every denial is *Juhud*.

Ibnul-Qayyim said: *Juhud* does not occur except after acknowledgment with the heart or tongue. Accordingly, it is not appropriate to use the word *Juhud* in case of absolute denial in the matter of lawsuits and other things. This is because the denier may be right and therefore cannot be called *Jahid*.

• *Jidah* (Richness)

جدة

Linguistically, *Jidah* means an abundance of money, and “*Wâjid*” is the rich person.

As for the one who is mentioned in the *hadîth*: “Delay in payment on the part of one who possesses the means, makes it lawful to dishonor and punish him,” is that who is able to pay off his debt. The *hadîth* has been narrated by Abû Dâwûd, An-Nasâ’î, Ibn Mâjah, Al-Hâkim, and Ahmad.

• *Jarî* (Agent)

جري

Linguistically, the word “*Jarî*” refers to messenger, employee, and agent. Judge ‘Iyâd said: “*Jarî* is the Messenger, as Al-Khalîl said, and Abû ‘Ubayd said: He is the agent, and Abû Bakr said: He is the one who acts as an agent before the judge and others. It was stated in the *hadîth* that: “and do not let the devil make you his agents.”

The hadîth has been narrated by Abû Dâwûd, An-Nasâ'î, Ahmad and others.

• Jizâf (Estimation)

جزاف

"Jizâf" is Arabized Persian word that originally means ignorance of a thing, and it also means assessment and guessing.

As for a Jizâf sale in Fiqh terminology, it is a sale of something whose value is not known in detail. That is, based on assessment, without measure, weight or count (or other customary standard units).

• Jizyah (Tribute)

جزية

In defining Jizyah linguistically, Ibnul-Anbârî said: It is the tax collected from the people of the Dhimmah. The Fiqh scholars differed as to its reality. The Shafi'ites and Hanbalites held that it is money taken by mutual consent to settle the people of Dhimmah in the land of Islam, or to spare their blood, descendants, and money, or to stop the Muslims from fighting them. It was called that way because it is a compensation for securing them and protecting their blood, their families, and their money, or enabling them to live in the land of Islam.

Hanafites and Malikites held that it is more general than that, and that what is meant by it is everything that is taken from the people of the Dhimmah, whether it is caused by

oppression, domination, and the forced conquest of the land, or a Dhimmah contract that is established by mutual consent.

Moreover, the Fiqh scholars use the term *Jizyah* to refer to the money taken from them, on the contract, and on both.

• Sulhiyyah Jizyah (Conciliatory Tribute)

الجزية الصلحية

Ibn Rushd (the grandfather) said: "*Jizyah* is that which is taken from the people of disbelief as a compensation for their security and protection of their lives, along with acknowledgment of their disbelief. It has two aspects: Sulhiyyah (conciliatory) and 'Anwiyyah *Jizyah*. As for Sulhiyyah Jizyah, there is no limit to it since they are not forced to pay it, and because they withheld themselves and their money until they came to an agreement over it. It is only what the Imam agrees to with them, whether little or much, for them to stick to their religion in country and subject to the rulings of Muslims, and jizyah is taken from them by hand while they are submissive. This is what Ibn Habîb stated in *Al-Wâdihah*."

Imam Ibn 'Arafa defined the Sulhiyyah Jizyah as "Whatever a disbeliever undertakes to pay protect himself while staying in his country under the rule of Islam, where it is applied to him."

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The opposite of *Sulhiyyah Jizyah* in Fiqh terminology is *'Anwiyyah Jizyah*.

• ***'Anwiyyah Jizyah* (Compulsory Tribute)** الجزية العنوية

It is, as Ibn Rushd (the grandfather) said: "the tribute (*Jizyah*) that is imposed on those who were conquered in their country and stayed in it."

Ibn Arafah defined it as "the wealth that the disbeliever is obligated to provide for his security to live under the rule of Islam and its preservation." Ar-Rassâ' commented on that by saying: Ibn Arafah used the term "undertake" in *Sulhiyyah Jizyah* and the term "obligated" in *'Anwiyyah Jizyah* because the person to pay this *Jizyah* was defeated and oppressed, so the people of Islam obligated him to pay money for as a conciliation on his remaining on the land to develop it for the benefit of the Muslims. The people of *Sulhiyyah Jizyah* are the owner of land, and the commitment has been made by them before they are conquered. If they demand that they be made peace and they commit themselves, then it is more correct that it is *Jizyah* for them, and fighting must be stopped against them if they are called upon to do so, and the rule of Islam applies to them.

The Fiqh scholars differed regarding the amount of *'Anwiyyah Jiz-*

yah, and some of them said: Its limit is what was imposed by 'Umar Ibn-ul-Khattâb, namely four dinars for the owner of gold, and forty dirhams for the owner of silver. It was said: The maximum limit is what 'Umar imposed, and there is no minimum limit for it. It was also said: The maximum limit is what 'Umar imposed, and the minimum limit is a dinar or ten dirhams.

• ***Ji'alah* (Wage)**

جعالة

Linguistically, *Ji'alah* is used to refer *Ju'l*, which is what is given to a person for his work, which is More general than wage and reward.

In Fiqh terminology, it is an obligation for a known compensation for a specific, known or unknown work that is difficult to determine.

Its form is when a person allocates for another person a known wage provided that he works for him in a known or unknown time, which is of benefit to the person who gives *Ju'l* (wage), provided that if he completes the work, he gets the appointed *Ju'l* (wage), and if he does not complete it, then he will not be given anything since there is no benefit in it for the person who is to give *Ju'l* (wage) until after its completion. Accordingly, Ibn Rushd Al-Jadd defined it by saying: "It is when a person assigns to another person *Ju'l* (wage) for work that he does for him if he completes the work, and if he does not complete it, he does

not get anything, and his effort is in vain.”

• Ju'l (Wage)

جعل

Linguistically, *Ju'l* is the wage that a person receives in exchange for work he performs. It is also used to refer to what a Mujahid is given to help him in his Jihad.

Fiqh scholars use the term “*Ju'l*” in the chapter on *Khul'* to refer to what is made as a compensation for it. An-Nasafi said: The *Ju'l* for the runway salve and for the hired worker has the same meaning.

• Jallâs (Broker)

جلاس

In Fiqh terminology, *Jallas* is “the broker who has an office - such as a shop or the like - in which he sits, and goods are placed there for sale on behalf of their owners, in exchange for a fee that he takes for that.” Also, it is called *Jalis*.

It was stated in “*Kashf Al-Qinâ*” by Al-Ma'dânî that: “*Jalis* is the one who sets himself up in a store to buy luggage.” Some Fiqh scholars defined *Jullâs* (the plural of *Jâlis*) as “those who sell in shops to people for a fee.”

This term is one of the terms used only by the *Malikites*.

• Jalab (Brought Thing)

جلب

Linguistically, *Jalab* is the thing that is brought. That is, what is brought from one country to another.

The Fiqh scholars used it to refer to the goods and food that are brought from one country to another for trade.

Abû Dâwûd, Al-Tirmidhî, and An-Nasâ'î narrated from the Prophet (peace and blessings of Allah be upon him) that he said: “There is no *Jalab* and no *Janab*.” As for the term *Jalab*, it has two interpretations according to the Fiqh scholars and commentators of the *hadîth*:

First: In *Zakâh*, it is for the collector to come to the people of *Zakâh*, settle in a place, and then send someone to bring the livestock to him from their places to take their *Zakâh*. This was forbidden and the collector was ordered to come personally to the place where the livestock is located and take their *Zakâh* there.

Second: in horse racing, it means having someone to urge on a horse from behind in a race, which is forbidden.

However, Judge Ibnul-'Arabî objected to the second interpretation, saying: “In my view, this is weak in evidence, even though they mentioned it on the authority of our imam. This is because I permit it, and there is nothing wrong with it, because it is meant to help in winning the race for a compensation for danger, so it is permissible for him to pursue it with this.”

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As for the term “*Talaqqî Al-Jalab*,” (meeting the brought goods), in the language of Fiqh scholars it means meeting arrivals who carry goods and supplies to buy them from them before they reach the market. This term is commonly used by Hanafites, Shafi‘ites and Hanbalites call it “*Talaqqî Ar-Rukbân*” (meeting caravans) and the *Malikites* call it “*Talaqqî As-Sila*.” (meeting goods).

• **Janab (the Avoided Thing)** جنب

Linguistically, the term *Janab* means to avoid.

It was stated in the *hadîth* narrated by Abû Dâwûd, At-Tirmidhî, An-Nasâ‘î, and Ahmad from the Prophet (peace and blessings of Allah be upon him) he said “There is no *Jalab* nor *Janab* in Islam.” The Fiqh scholars and commentators of *hadîth* have interpreted the term *Janab* in two ways:

The first definition of this term is related to *Zakâh*: it is when the collector of *Zakâh* stays at a distance from the places of the people who bring their animals to him and orders the animals to be brought to him, which is forbidden. *Zakâh* should be collected in its place. It was said also: It is when the owner of wealth (or animal) keeps his wealth away from the place where *Zakâh* is collected to make it difficult for the collector to come to such place,

as a way of avoidance payment of *Zakâh*.

The second definition of the term is related to horse race, namely, to have someone to urge on a horse from behind in a race, having a horse beside the one that is being ridden in a race to which the rider may transfer ignorance, which is forbidden.

• **Jahâlah (Ignorance)**

جهالة

Linguistically: *Jahâlah* (or ignorance) the opposite of knowledge.

Fiqh scholars use the term “*Jahâlah*” when ignorance is related to something external to the person, such as something sold, rented, price, etc. As for the word “*Jahl*,” they often use it when a person is described by it regarding his belief, thought, word, or action.

Fiqh scholars have stated that ignorance leading to disputes in financial compensation contracts leads these contracts invalid. As-Sarkhasî said: “Ignorance is only effective if it leads to a dispute that prevents delivery and receipt.” He also said: “Ignorance that does not lead to dispute does not prevent the validity of the contract.” Ibnul-Qayyim said: “The ignorance that prevents the validity of the contract is what leads to gambling or *Gharar* (deception), where the contracting party does not know the subject of

the contract.” Ash-Shawkani said: “Consent, which is the basis for the validity of buying and selling contract, is not achieved with ignorance.”

As for the difference between *Jahalah* (ignorance) and *Gharar* (deception), Al-Qarâfi mentioned that *Gharar* is what is not known whether it will happen or not? Like selling birds in the air and fish in water. As for what is known to happen and its description is unknown, it is the *Ma-jhûl* (unknown), like a person selling what is on his sleeve. It definitely happens, but it is not known. Ibn Taymiyyah believed that *Jahâlah* is a type of *Gharar*. All forms of *Jahâlah* include *Gharar*, but not all forms of *Gharar* include *Jahâlah*.

• Jihbiz (Expert)

جهيز

Linguistically, *Jihbiz* is a person who is expert critic.

In Fiqh terminology, *Jihbiz* refers to a person who is expert at differentiating good dirhams and dinars from bad ones. That is: a critic who is an expert in matters of gold and silver money, and who is skilled in distinguishing good from bad.

• Jihat Al-Waqf (Endowment Entity)

جهة الوقف

It is stated in (Article no. 7) of *Ithâf Al-Akhlâf* in *Ahkâm Al-Awqâf*: “The endowment entity is the entity to which the donor given the benefits of his endowment.”

• Jawâbir (Compensatory Acts) جوابر

Linguistically, the term *Jabar* means to fix.

In Fiqh terminology: *Jawâbir* donates “whatever rulings were enacted to make up for lost interests.” *Zawâjir*, however, donates whatever rulings enacted to ward off expected evils.

Al-Izz Ibn ‘Abdus-Salâm said: “*Jawâbir* are permissible to bring back lost interests.” Then he said: “The purpose of the *Jawâbir* is to make amends for what has been lost in the interests in the rights of Allah or the rights of His servants. It is not a condition for this that the person upon whom *Jawâbir* is required to be a sinner, and for this reason *Jawâbir* is prescribed for error and intentionality (mistakes), ignorance and knowledge, remembrance and forgetfulness, and for the insane and children, unlike *Zawâjir*, most of which is only obligatory for a disobedient person to rebuke him from disobedience.

Al-Qarâfi said: “*Jawâbir* occur in acts of worship, souls, organs, benefits of organs, wounds, wealth, and benefits.” Then he said: “As for the *Jawâbir* of wealth, the basic principle is that the wealth should be given in kind if possible. But, if he brings it with the full essence and attributes, his liability will be discharged. If wealth lacks some attributes,

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it will be compensated with the value... But if he brings it (the wealth) with the value lacking in some cases, he is not liable. This is because what is lost is people's desires, and they are not estimated by Shari'ah nor established in kind. Fungible items, however, are to be compensated for by fungible items. This Because fungible items is closer to the return of the item itself, which is the original - than the value. If they are not fungible items, they will be compensated for by something similar in value and price.

• **Jawâz Al-'Aqd (Permissibility of the Contract)** جواز العقد

Linguistically, *Jâ'iz* (permissible) means valid.

In Fiqh terminology, the terms *Jâ'iz* refers generally to everything in which the two matters are equal according to Shari'ah, so that it includes the permissible thing that the Lawgiver has authorized to do and not do, and it also includes the action of a boy to which the Shari'ah's discourse is not related at all. Accordingly, Al-Kafawî said in his "Kulliyât": "*Jâ'iz* in Shari'ah is what is tangible and considered, and whose effectiveness has been demonstrated in the right of the ruling assigned to it, while being safe from condemnation and sin according to Shari'ah."

Jawâz (permissibility), in the view of many Fiqh scholars, donates that the thing is not *Makrûh* (abomi-

nable), while the impressible (thing) covers both abominable and forbidden things.

Ash-Shihâb Ar-Ramlî, a Shafi'ite scholar, said: "Being impossible in the words of Fiqh scholars implies prohibition, and permissibility may be used to relieve embarrassment, and is more general than being obligatory, recommended, or abominable, or at the level of both parties, which is the choice between action and omission."

In terms of contracts, permissibility in Fiqh terminology carries two meanings:

First: eliminating embarrassment about action and omission, which is: permissibility. It is the one that is often used.

Second: Each one of the contracting parties, or one of them, is able to legally terminate the contract by his own will, without depending on the consent of the other party, either because the contract is not inherently binding, such as: deposit, loan, agency, *Mudârabah*, *Ja'alah*, and partnership, or because one of the contractual options is provided for in a binding contract, such as sale or lease to one or both parties. The permissible contract in this sense is the equivalent of the binding contract, because contracts are essentially divided in terms of obligation and its absence into binding and permissible.

• *Jiyâd* (Good)

جِيَاد

Linguistically, *Jiyâd* is the plural form of *Jayyid*, which means good.

The good dirhams, **in Fiqh term-**

inology, are those made of pure silver, exchanged in trade, and placed in the treasury.



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Ha' (ح)

• Al-Hâjah Al-Asliyyah (Original Need) الحاجة الأصلية

This is a term used by the Hanafites in the Book of *Zakâh*, as they stipulated for the obligation of *Zakâh* in terms of *Nisâb* that it be in excess of the original need of its owner. Accordingly, it was stated in “Al-Fatâwâ Al-Hindiyyah”: “The condition is that the *Nisâb* must be in excess of his original need, which is his dwelling, his dwelling furniture, his clothes, his servant, his vehicle, and his weapon.”

Ibn Malik explained the original need by saying: “It is what prevents destruction from a person as a matter of fact, such as maintenance, housing, war equipment, and the clothing needed to ward off heat or cold, or by estimation, such as debt, since the debtor needs to pay its debt from the *Nisâb* in his possession in order to protect himself from the imprisonment that is like destruction, and the tools of the craft, the furniture of the house, the animals for riding, and the books of knowledge for its owners, where ignorance for them is like destruction. So, if he owns dirhams that

must be spent on those needs, they become as if they were non-existent. Likewise, the water needed to relieve thirst is like nonexistent, and so it is permissible for him to perform *Tayammum*.”

• Hâ'it (Wall)

حائط

Linguistically, *Hâ'it* means the wall that surrounds a place. It also refers to garden because it is surrounded by walls.

The author of “An-Nazm Al-Musta'dhab” mentioned that it is also used to refer to palm trees that are surrounded by a wall or something else.

In Fiqh terminology: *Hâ'it* is used to refer to a garden, whether surrounded by a wall or not. In this regard, Abû Dâwûd and An-Nasâ'i narrated from the Prophet (peace and blessings of Allah be upon him) that: “He ruled that the people of *Hâ'it* (garden) are responsible for guarding it in the day.”

The terms *Hâ'it* also means a building, not a garden. In this regard, An-Nasâ'i narrated that Allah's Messenger (peace and blessings of Allah be upon him) that he, “decreed the right of option regarding everything which is shared, whether a dwelling or a garden, when it had not been divided.”

Ibn Batish said: What is intended in this *hadîth* is the dwelling not the garden, because palm trees are

sold individually, so no right of option to be applied on them.

• **Hibâ' (Dowry Gift)**

حباء

Linguistically, *Hibâ'* means to give something without compensation.

In Fiqh terminology: Fiqh scholars use *Hibâ'* to refer to the situation where "the person takes from his daughter's dowry for himself."

• **Hubus (Retainment)**

حبس

Logistically, *Habs* (confinement or retainment) is the opposite of release.

As for *Hubus*, it is the plural of *Habis*, which is everything you have retained (or assigned) for the sake of Allah, the Almighty, whether it be an animal, land, house, or anything else. It is said: retainment and endowment have the same meaning. It was mentioned in the Prophet's saying (peace and blessings of Allah be upon him) to 'Umar regarding his palm trees: "Freeze it and donate its fruits." That is, make the property as a permanent endowment that cannot be sold, given away, or bequeathed, and make its fruits for the sake of Allah, the Almighty.

• **Al-Hubus Al-Mu'aqqab (Successive Retainment)**

الحبس المعقب

Al-Hubus Al-Mu'aqqab is such type of *Hubus* (retainment) that includes the successors and descend-

ants. The poor are included in this ruling because they always exist and accordingly the waqf (retained money) for them becomes the same as that for successors. It is stated in *Sharh Khalîl* by Az-Zurqânî, Al-Khurashî, and Ad-Dardîr that: "*Al-Hubus Al-Mu'aqqab* is related to an existing and non-existent." One of its most important jurisprudential rulings is that no one can rule on it except the judge. Because it is a judgment over an absent. Ibn Sahl said: Eight things that only the judge can rule on, including *Al-Hubus Al-Mu'aqqab*.

As for non-successive retainment (*Al-Hubus Ghayr Al-Mu'aqqab*), such as retainment made for Zayd, or on so-and-so and so-and-so people, the ruling regarding it is not restricted to the judges because it is not a ruling of judgment on an absent.

This term is mentioned only by the *Malikites* and not by other Fiqh scholars.

• **Hajb (Blocking)**

حجب

Linguistically, *Hajb* means prevention.

In Fiqh terminology, AJ-Jurjânî defined it as "preventing a specific person from his inheritance, either all or some of it, in the presence of another person." The first is called *Hajb Al-Hirmân* and the second is called *Hajb An-Nuqsân*.

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An example of Hajb An-Nuqsân is when: the husband's share (of inheritance) is moved by a son from half to a quarter, the wife from a quarter to an eighth, the mother from a third to a sixth, and the father from the whole to a sixth.

An example of Hajb Al-Hirmân is blocking a brother's son by a brother, a grandfather by a father, a grandmother by a mother, a son's son by a son, and every son of a descendant of a son related to the son of a son higher than him.

• Hajr (Seizure)

حجر

Linguistically, Hajr means prevention. The term used in the terminology of Fiqh scholars for specific type of prevention, which is the prevention from disposing of money. According to them, there are two types of Hajr. The first type of Hajr is that applied on a person for his own interest and that applied for someone else's interest.

As for Hajr on a person for his own interest, it is the same as Hajr on the child and the insane, and as for Hajr on a person for the benefit of others, it is like Hajr on the bankrupt person for the right of the creditors, on the mortgager for disposing of the mortgaged property for the benefit of the mortgagee, and on sick person during his death illness for the right of the creditors and the right of the heirs.

• Hadiqah (Garden)

حديقة

Ar-Raghib mentioned that garden can be linguistically defined as: "a piece of land with water." It was called this because of the analogy to the shape of the pupil (Hadaqah) of the eye and the production of water in it.

Ibnul-Athîr said: "It is everything that the building surrounded, such as orchards and other things. A piece with palm trees is called a garden, even if it is not surrounded by it.

It is stated in "Al-Misbâh": "The garden is the orchard surrounded by a wall".

The term is used in the Fiqh terminology with the same meaning.

• Huzya (Gift)

حذيا

Linguistically, Huzya means a gift.

The Fiqh use of the word does not deviate from its linguistic meaning.

It is stated in "Fiqh Al-Lughah" by Al-Thu'âlibî: "Huzya is the gift of the bringer of the good news."

• Hirâsah (Guarding)

حراسة

Linguistically, Hirâsah means protection or guarding. Ar-Râghib said: "The guard is the person who protects."

Abû Hilâl Al-'Askarî mentioned that there is a difference between guarding (Hirâsah) and Hifz (protection). He said: "Guarding is continuous

protection, and that is why the guard is called a guard because he guards all night, or because that matter is his work. Guarding is to continuously keep pests away from a thing before they permanently infect it. If they, however, infect such thing and he turns them away from it, that is called Takhliṣ (rescue).

• **Haraj (Embarrassment)** حرج

Linguistically, Haraj means embarrassment, hardship, and distress. As for Fiqh terminology, what is deduced from the statements of the Fiqh scholars is Haraj is “everything that leads to excessive hardship to the body, soul, or property, immediately or in the future,” and that what they mean by removing Haraj is: removing what leads to this aforementioned hardship.

As for the subject of lifting and removing, they are the rights of the Almighty Allah. Because it is built on forgiveness. This occurs either by removing the sin for the act that is difficult to abandon, or by removing the demand for the act that is difficult to perform. There is no disagreement among Fiqh scholars that Haraj is removed in Fiqh obligations. Allah, the Almighty, says: {“**And He has not placed upon you any hardship in religion**”} [Al-Hajj: 78].

• **Hirz (Safekeeping)** حرز

Linguistically, Hirz means safekeeping.

In Fiqh usage, Hirz (safekeeping) is something that is usually made to preserve and maintain people’s money, such as house, shop, safe, etc.

Ibn Qudāmah said: “Hirz what is considered Hirz according to custom, because anything not described explicitly in Shari’ah texts must be described or defined according to custom and traditions. This is because there is no way to define it except by custom and traditions, which applies to reception and separation in sales, and the like.” Al-Khatīb Ash-Shirbīnī said: “The ruling regarding the Hirz is custom, because it is not defined in Shari’ah texts or in the language, so it is referred to custom, such as reception and revival. There is no doubt that it varies according to money, circumstances, and times. A thing may be regarded as Hirz at a certain time according to the goodness or corruption of people’s circumstances, and the strength and weakness of the ruler.”

• **Hirz Al-Mithl (Safekeeping of the Similar)** حرز المثل

In Fiqh terminology, Hirz Al-Mithl means “that which the one who places something like a thing in it is not considered to have been lost by custom.” That is, according to the custom of the people, and what they deem appropriate to preserve the thing, considering its condition in terms of preciousness, low value, scarcity and abundance, and

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the condition of the people in terms of righteousness and corruption, and this differs according to the difference in money, circumstances, times, and countries.

The majority of Fiqh scholars have stated that the depositary must keep the deposit in a similar safekeeping -if its owner does not specify for him a specific safekeeping in which to keep it, otherwise he will be its guarantor. Accordingly, it is stated in (Article no. 782) of "*Majallat Al-Ahkâm Al-'Adliyyah*": "The property entrusted for safe keeping must be kept in the same way as properties similar thereto are kept. Consequently, placing property such as cash and jewels in such places as stables and barns amounts to negligence, and if they are destroyed or lost while there, the loss must be made good." It is stated in (Article no. 1348) of "*Majallat Al-Ahkâm Ash-Shar'iyyah 'Alâ Madhhab Ahmad*": "The depositary is obligated to keep the deposit in the same way as properties similar thereto are kept."

The concept of "*Hirz Al-Mithl*" in a deposit differs from the concept of "*Hirz*" in theft. This is because if the depositary places the cash or jewelry in animal stables or barns, then he is to be considered a guarantor. This is because this place is not traditionally considered a safekeeping for precious deposits. It is established

in Fiqh that placing a deposit in a place where similar things are not placed is negligence, and the point of guaranteeing the deposit is negligence regarding it. However, if it is stolen from him, the one who stole it will have its hand amputated. This is because what is regarded as a safekeeping for one type of property (in theft) is regarded as a safekeeping for all other types of properties.

The scholar Ibn 'Âbidîn pointed out this and justified it by saying: "Because what is considered in amputating the hand of the thief is his violation of the safekeeping, and that does not vary in consideration of the properties kept in safekeeping. What is considered in guaranteeing the deposited properties is transgression and negligence in safekeeping. If he places the deposit in his fortified home and leaves, and his wife was dishonest, he will be considered guarantor, although if a thief steals it, his hand will be amputated. This is because the house is a safekeeping, but he guarantees it due to his negligence in preserving it. If he puts it in the house and goes out, and the door is open, and none of his family are in the house, or in the bathroom, or the mosque, or the road, or the like, and he is absent from it, he is considered liable for it, despite the fact the one who steals it will not have his hand amputated. If we consider the deposit to be the kept article no. considered

in theft, it is necessary that he will not be considered guarantor in these and other matters.”

• **Harîf (Craftsman)**

حريف

Linguistically, *Hirfah* means earning.

The term “*Harîf*” has been mentioned in the Hanafites statements with the same meaning, including their saying: “A man who has a *Harîf*, one of the moneychangers. He ordered him to give a man a thousand dirhams to pay for it, or he did not mention that it would be paid for him, and he did so, so he returns to the one who ordered it, even if he was not a *Harîf*. If he says: It is done on my behalf, he will return to him.”

• **Harîm (Vicinity of an Object)**

حریم

Linguistically, *Harîm* means prevention. It also means the partner. *Harîm* of the house is the rights and facilities that are attached to it. *Harîm* of the well refers to its surrounding facilities and rights. Al-Fayyûmî said: “*Harîm* of a thing is its surrounding facilities and rights. It is called so because it is forbidden for anyone other than its owner to exploit it.

As for the Fiqh terminology, it is stated in “*Mughnî Al-Muhtâj*”: “*Harim* is what is urgently needed to fully benefit from the inhabited property, even if the original benefit

occurs without it.” An-Nawawî said: “*Harim* is the nearby places that are needed for complete benefit.”

Ahmad and Ibn Mâjah narrated that the Prophet (peace and blessings of Allah be upon him) said: “*Harim* (the land around) of a well is forty cubits.” Ibnul-Athîr said: “It is the place surrounding it where its soil is thrown; That is, the well that a man digs in a dead place, its *Harim* is for no one to descend into or dispute with him over. It is named like that because it is forbidden for its owner to prevent it, or because it is forbidden for others to dispose of it.

As for the size of *Harîm*, it contains details between *Harim* of the well, the spring, the river, the trees, the canal, and the building, and there is a difference in estimating each one of them among the Fiqh scholars, and the ruling regrading it is what is required by possession to achieve full benefit, and to repair the property, and this varies in things according to their types, just as it differs according to time, place, and method of use.

• **Hazrah (Valued Wealth)**

حزرة

Linguistically, *Hazrah* means the best of wealth. An-Nawawî said: “It is the best of wealth and its precious things that are kept due to their beauty.” Al-Azharî said: “the best of wealth is called “*Hazrat An-Nafs*” and “*Hazrat Al-Qalb*”.

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Mâlik narrated in “Al-Muwat-ta’” on the authority of ‘Umar Ibnul-Khattâb saying to the *Zakâh* collector “Do not subject people to trials. Do not take from the Muslims those of their wealth which are the best (*Hazarât*).

• ***Hisbah* (Reward)** حسبة

Linguistically, *Hisbah* means reward, good management, and consideration.

In Fiqh terminology, the majority of Fiqh scholars have defined *Hisbah* as: enjoining what is right if it is apparent that it has been neglected, and forbidding what is evil if it is apparent that it has been done.

• ***Hashrî* (Inheritance of One with No Heirs)** حشري

Linguistically, *Hashr* means collection.

As for Fiqh terminology: Al-Khuwarizmî said: “*Hashrî* is the inheritance of one who has no heir.” He mentioned that this term is one of the topics of the writers of the *Diwan Al-Kharâj*.

• ***Al-Hissah Ash-Shâ’i’ah* (Common Share)** الحصة الشائعة

Linguistically, *Hissah* (share) is a section or piece of a whole. It means share. As for commonness, it means mixed properties. Hence, an undivided share is said to be common, as if it is mixed with something else, because it is not distinct.

Al-Azharî said: “The common article no. is that article no. which is not distinguished.

Accordingly, the Fiqh scholars defined what is common possession or property as that which is relating to a relative, unspecified part of the total thing, no matter how small or large that part is, such as half a house, a quarter of an orchard, or a hundredth or more of a piece of land, a car, or something else.

They also defined the common share as: “the share applicable to each part of the common property.”

• ***Hatîtah* (Deduction)** حطية

Linguistically, *Hatîtah* means lowering something.

As for the sale of *Hatîtah in Fiqh terminology*, it is a sale for the same price as the first price that the seller bought it for, with a known amount deducted from it. It is a type of *Amanah* (trust) sale, and Fiqh scholars classify it under it. This because the seller is entrusted with informing the buyer of the capital.

• ***Hazz* (Share)** حظ

Linguistically, *Hazz* means an estimated share.

As for Fiqh terminology, Ibn ‘Âbidîn and At-Tahtâwî from the Hanafites school said: “*Hazz* is the share allocated for the imam out of an endowment.”

• **Hifz (Saving/Memorizing)** حفظ

Linguistically, *Hifz* means to memorize. It also means protection and saving.

The Fiqhi use of the word does not deviate from its linguistic meaning. Moreover, the expression “saving the deposit” is frequently used by Fiqh scholars, and what they mean by it is to place the deposited wealth in a place where its similar properties are placed or saved.

Abul-Hilâl Al-‘Askarî mentioned that there is a difference between *Hifz* (saving) and *Ri‘ayah* (preservation), and he said: The opposite of saving is loss, and the opposite of preservation is negligence. Negligence is what leads to loss. Based on this, *Hifz* is to protect something from harms, while preservation is the action of protecting something from harms.

He also pointed out that there is a difference between preservation and protection and said: Protection is for what cannot be kept and put in a safe place, such as land and country. Preservation is for what is acquired and kept, such as dirhams and belongings.

He also explained that there is a difference between guarding and preserving, and he said: Guarding is continuous preservation, meaning that the pests are continuously removed from the thing before they infect it. Preservation does not

include the meaning of continuity.

• **Hifz Al-Mâl (Saving Money)**

حفظ المال

Linguistically, saving implies preservation and abandonment of wastage.

The term “saving money” is also used in the sense of preserving it, protecting it from loss, and not wasting it. Abul-Fadl Ad-Dimishqî mentioned: Saving money requires five things:

First: A person should not spend more than he earns, because once he does that, the wealth will soon perish, and nothing will remain of it at all.

Second: What a person spends should not equal to what he earns, but rather it should be less than it, so that what remains can be used in case of emergency and the like.

Third: A man should be careful not to use his wealth in whatever he cannot achieve, such as when someone uses his wealth in a village that he is unable to rebuild, or in scattered estates that he cannot manage by himself or with his qualified assistants.

Fourth: He should not use his wealth to trade in anything on which there is no demand.

Fifth: He should be quick to sell his goods, even if his profit is small, and slow in selling his property, even if his profit is large.

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• **Huq (Right)**

حق

Linguistically, right is that which can be denied. Ar-Râghib said: The origin of right is conformity and agreement. In Fiqh terminology: Fiqh scholars use the term "right with many meanings and in different places, all of which is related to its linguistic meaning:

A) They use it in a general sense that includes everything that is established to a person in terms of features and capabilities, whether the establish item is something financial or non-financial.

B) They also use it in exchange for owned assets and benefits, meaning legitimate legal interests that do not exist except according to the law, such as the right of pre-emption, the right of divorce, and the right of custody and guardianship.

C) They also sometimes refer only to the linguistic meaning, as in their saying: rights of the house, which are its facilities, such as the right to rise, the right to drink, and so on. This is because these rights are attached to the house and necessary for it. They say: contract rights, and by that they mean the obligations and claims that follow the contract related to the implementation of

its provisions. For example, the contract of sale is governed by the transfer of ownership of the item sold, and its rights include delivery of the item sold and payment of the price.

• **Huqûq Al-'Aqd (Contract Rights)**

حقوق العقد

This is a Fiqhi term used by Hanafites and Hanbalites Fiqh scholars, by which they mean "every act required by the contract and required of each of the contracting parties, related to observing its provisions and implementing them, or annulling it and recovering what was paid when a reason for that arises." The Shafi'ites used to call it "the provisions of the contract," and there is no disagreement about the terminology.

For example, the rights of a sale contract include delivering the sold item to the buyer, receiving the price from him, recovering the price from the seller if the sold item appears to be due, returning the sold item in case it is defected, and disputing that before the court, and so on.

What the Fiqh scholars intend by this term becomes clear when they speak in the chapter on agency over the rights of the contract undertaken by the agent. Does it relate to the agent or to the principal, as they differed on this matter as follows:

The Hanbalites scholars say: "The rights of the contract relate to the principal absolutely, whether the contract is something that can be attributed to the agent, such as a sale, or is only valid to be attributed to the principal, such as marriage. The principal demands the price of what his agent bought for him, and the dowry of a woman whom his agent married to him, and he must guarantee the money, and he has the right to return it based on the option of defect and the like, and what his agent sold for him with a defect, or the like shall be returned to him." (Article no. 1221 Al-Majallah Ash-Shar'iyyah Al-Hanbaliyyah).

The Hanafites say: "If the agent contributes the financial compensation contract to himself, all the rights of the contract shall return to him. If it is for a sale, lease, or settlement on the part of the plaintiff, he is required to deliver what he sold or rented, and he has the right to claim the price, rent, and compensation for the settlement. If the sold item, the rented property, or the settlement is due, the buyer, the lessor, the defendant, or the settlement party shall have the right to claim the price or the settlement amount from him.

If he is an agent to buy or rent something or make a settlement on it on the part of the defendant, he shall have the right to take posses-

sion of what he bought or rented, and he must pay its price or rent and the compensation for whatever he made the settlement on.

If he contributed the contract his principal, all his rights would return to his principal, and neither the agent nor he would have any claim on the rights and duties resulting from the contract. (Part 281 of Murshid Al-Hayrân).

It is stated in "Rawdat At-Tâlibîn" by an-Nawawî: "The provisions of the contract in buying and selling relate to the agent and not the principal, so that the agent's inspection of the sold item is that which is considered not that of the principal, and the agent's departure from the council is that which is considered not that the principal. The same applies to the delivery of capital in Salam contracts and the exchange contracts, where the annulment based on the council option and the inspection option, if confirmed, shall be given to the agent not the principal."

• **Hukm Al-'Aqd (Ruling of the Contract)** حكم العقد

The ruling on the contract In Fiqh terminology is "is the original effect that is arranged by Shari'ah law and fixed in the subject of the contract." Or in other words, it is the intended effect for which the contract is made.

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For example, the ruling on a sale is transferring ownership of the item sold to the buyer, and ownership of the price to the seller, the ruling on a gift is the transfer of ownership of the gift without compensation, the ruling on leasing is transferring ownership of the benefits to the lessee for compensation, the ruling on agency is authorizing the agent to act on behalf of the principal in what he has delegated, and the ruling on marriage is the permissibility of sexual intercourse between the spouses, etc.

• **Hikumah ‘Adl (Fair Judgment)**

حكومة عدل

Linguistically, *Hikumah* means to repel the oppressor from injustice, and to do justice to the one who has the right. Accordingly, it is said the judge undertakes *Hikumah* and settles disputes.

In Fiqh terminology, the term “*Hikumah*” appears in the case of injuries for which there is no known compensation, and its percentage cannot be determined based on estimated compensation. This is when a person is injured in a place on his body where a scar remains, and the organ is not destroyed, then the ruler determine compensation for him by saying: If this injured person were a slave without defect, this scar with this injury would be worth a thousand dirhams, and with this defect

it is worth nine hundred dirhams, so the defect has reduced the value by tenth. So, the person who caused the injury must pay a tenth of his compensation in the free person because the injured is a free person.

This is the meaning of what the Fiqh scholars say: If there is no estimated defect, then the composition will be calculated based *Hikumah*. By this they meant “the financial obligation assessed by a just person in a crime in which there is no estimated compensation, and its percentage cannot be calculated based on an estimated compensation.”

The reason for the name is that the stability of *Hikumah* depends on the rule of a respected ruler or arbitrator, and therefore if someone else practices diligence on it, it would have no effect.

• **Hulwân (Gift/Payment)** حلوان

Linguistically, *Hulwân* means gift, payment or wage, such as the payment given for the soothsayer in return for his soothsaying.

Al-Bukhârî and Muslim narrated that Allah's Messenger (peace and blessings of Allah be upon him) “forbade payment given the soothsayer.” Al-Khattâbî said: The soothsayer's payment is what he takes in return for his soothsaying, which is forbidden and void. *Hulwân* is also used to mean dowry.

The use of the word by Fiqh scholars does not deviate from its linguistic.

• **Hulûl (Being Due/Maturity/Immediate Payment)** حلول

Linguistically, *Hulûl* means that the debt has become due.

In Fiqh terminology, *Hulûl* is the opposite of delay or deferred, as As-San'ânî and others said.

The Shafi'ites and Hanbalites Fiqh scholars used the term "*Hulûl*" when they spoke about the conditions of the exchange contract and the sale of usurious funds for each other, meaning the absence of the credit (Nasî'ah) in the two exchanges. They said: It is a condition for the validity of the exchange and sale of usurious funds for each other, such as selling gold for gold, or gold for silver, or wheat for wheat, or barley for barley etc., that payment of receiving should occur together before separation.

What they mean by *Hulûl* is for the contract to be concluded on the basis that each of the two exchanges should be paid on the spot and not delayed, which is a condition for the validity of the contract. It is sufficient for this to be achieved, as Al-Qalyûbî said, that no term is mentioned in the contract at all.

As for the conditional exchange, it means that the receipt and delivery take place in each of the two

exchanges before the contracting parties leave the meeting. This is a condition for the contract to remain valid, not for its validity. The conditional item does not precede its condition.

In this regard, Al-'Izz Ibn Abdus-Salâm says: "*Hulûl* is a condition for the validity of the transaction on usurious funds, and receipt of the two compensations is a condition for the continuation of the contract."

• **Himâ (Protected Property)** حمى

Linguistically, *Himâ* means something that cannot be approached or dared to touch.

In Fiqh terminology, *Himâ* is a place in the dead land, protected by the imam, who prevents people from grazing the pasture therein, so that he can isolate it from them, for the benefit of the Muslims and not for himself. Az-Zurqânî said: "The Legal pasture is for the imam to protect a special place, where he prevents the livestock from grazing, so that special animals are available for grazing."

The origin of the *Himâ* means that if a rich Arab man in pre-Islamic times seized a fertile land, he would put a dog on a mountain if it was, or on a desert if it was not a mountain, then the dog would park, and someone would stand at the furthest place where the parking would reach, and

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where the parking reaches would be the limit of Himâ from all sides, and he would graze with other people in other lands be prevent others from sharing the pasture with him.

• **Hamâlah (Suretyship)** حمالة

Linguistically, Hamalah means guarantee.

The Fiqh use of the word does not differ from its linguistic meaning, and the Fiqh scholars who most frequently use this word in the sense of suretyship and guarantee in their books are the *Malikites*. Judge ‘Abdul-Wahhâb Al-Baghdâdî said: “The meaning of Hamâlah, suretyship, sponsorship, and guarantee is the same.”

As for the meaning of the “Hamâlah” which is mentioned in the *hadîth* of Muslim in which the Prophet (peace and blessings of Allah be upon him) said: “*Begging is not lawful except to one of three (people): a man who has become a guarantor for a payment ...*”, An-Nawawî said: “It is the money that a person should pay to *settle* disputes, such as reconciliation between two tribes and the like. Al-Khattâbî said: “The interpretation of Hamâlah is that quarrels occur between people over blood and wealth, and because of them enmity and hostility arise, so the person mediates between them, and seeks to reconcile the dispute, and pay money to those people who

have right until the turmoil calms down, and affinity returns among them. “.

• **Al-Hamâlah Al-Mutaraqqabah (Suretyship to Be Due)**

الحالة المترتبة

In Fiqh terminology, Al-Hamâlah Al-Mutaraqqabah, as Ibn Râshid Al-Qafsî said, is: “For a person to bear (i.e., be responsible for) what is proven against so-and-so, or what the judgment requires of him.”

This is a term that is only mentioned by the *Malikites*. Yet, the Shafi‘ites called it “*Damân Mâ Sa-Yajib*.” (Suretyship to be due).

• **Himayah (Protection)** حماية

Linguistically, Himayah means protection.

The difference between protection (Himayah) and saving (Hifz), as Abû Hilâl Al-‘Askarî said: “Protection is for what cannot be kept and limited, such as land and country. You say: He protects the land and the country, and the country is protected by him. Saving is used for what can be kept and limited. You may say: He saves his money and belongings” and may not say: He protects his money and belongings, nor: He protects the land and the country.

• **Humlân (Carriage Fees/Animal)**

حملان

Linguistically, Humlân are used

to refer to animals which carries things, especially gift, or to refer to the carrying itself, or to the rent.

In Fiqh terminology: Hanafites use this word with three meanings in the language, including their saying in the chapter on renting: “He has no reward for their carrying.” Likewise, their saying: “He hired some camels, and a man with responsible for carrying. As for their saying: “The imam does not have the right to give them money or carrying,” it can be interpreted in two ways: the animal on which it is carried, and the fee for the carrying.

• **Hawâlah (Transfer)** حوالة

Linguistically, *Hawâlah* means transfer from one place to another.

As for the Fiqh terminology, the majority of Fiqh scholars have argued that the *Hawâlah* is “the transfer of debt from one debtor to another debtor.” It is derived from transformation because it transfers the right from the assignor to the assignee. Accordingly, Al-Munâwî defined it by saying: “It is the exchange of one debt for another debt for the creditor.”

It is reported on the authority of Muḥammad Ibul-Ḥasan Ash-Shaybânî that he said: It is the transfer of the claim only, with the debt remaining in the liability of the assignor.

• **Al-Hawâlah Al-Mutlaqah (Absolute Transfer)** حوالة مطلقة

The Hanafites scholars only divide transfer into two parts: absolute and restricted transfers. They say: The absolute transfer is one that is not restricted by giving from the debtor’s money that is in the transferee’s possession or under his control by way of trust or guarantee. The giving shall be from the transferee’s own property, whether or not the transferor has money, or a debt owed to him. It is an obligation related to the transferee only, without linking it to anything else. Accordingly, it is stated in (Article no. 878) of “Murshid Al-Ḥayrân”: “An absolute transfer is when the debtor transfers his debt for his creditor another person in an absolute transfer, not restricted by his payment of the debt that the transferor owes to the transferee, or from the property that he has as a deposit or usurped, or transfers it to a person who has nothing and does not owe him anything.”

• **Al-Hawâlah Al-Muqayyadah (Restricted Transfer)** الحوالة المقيدة

The Hanafites scholars only divide transfer into two parts: absolute and restricted transfers. They say: The restricted transfer is the one that is restricted by giving from the debtor’s money that is in the transferee’s liability, or under his control by way of trust or guarantee. Such

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as a debtor saying to another: I transferred so-and-so to you for the thousand that I owe you, and he accepts, or when he says to him: I transfer to you so-and-so for the thousand that he owes me on the condition that you pay it to him with the dirhams that I deposited with you, or on the condition that you pay it to him from the dirhams that you usurped from me, and he accepts and permits the transfer in all cases.

• **Hiyâzah (Possession)** حيازة

Linguists say: Whoever attaches something to himself has acquired possession of it. As for Fiqh terminology, *Hiyâzah* is often used in the Malikites doctrine, and they use it in their books in two meanings, one of which is more general than the other.

In the more general sense, by possession, they mean proving possession of the thing and controlling it, which is the same meaning of taking delivery according to other Fiqh scholars. In the more specific sense, possession is title deed for the person who claims it. It is taking possession and disposal of the thing possessed, such as the owner disposing of his property by building, planting, demolishing, and other forms of disposal. It is actual authority over something, exercised by a person who may or may not own that thing.

• **Hilah (Trick)** حيلة

Linguistically, *Hilah* means cleverness in managing matters.

In Fiqh terminology, Fiqh scholars divided trick into two parts: prohibited and permitted.

As for is prohibited trick it is, as Ibn Qudâmah said, to use a permissible contract, while intending to do something forbidden or waiving a duty, or avoiding payment of a right, and so on.

As for the permissible trick, it is a trick that helps to get rid of hardship and embarrassment, and used to get rid of sin, through a way by which one can achieve the permissible, abandon the forbidden, redeem the right, or repel falsehood.

Concerning this, Ibnul-Qayyim says: "Tricks are of two types: the type by which one achieves doing what Allah Almighty has commanded, abandoning what he has forbidden, getting rid of what is forbidden, taking the right of the oppressor who prevents it, and releasing the oppressed from the hand of the oppressor. This type is praiseworthy, and its doer and teacher will be rewarded. The other type includes dropping duties, permitting what is forbidden, revealing the oppressed as an oppressor, the oppressor as an oppressed, the truth as falsehood, and falsehood as truth. This is the type that the predecessors agreed to condemn."

Ash-Shâtibî says: “The tricks that have been previously invalidated, condemned, and forbidden are those that destroy a legal principle, or contradict a legal interest. If we assume that the trick does not destroy a legal principle, and does not contradict a considerable legal interest, then it is not included in the prohibition.” He also says: “It is not possible to provide evidence in Sharia to invalidate every trick, just as there is no evidence to validate every trick. Rather, what is invalidated from it is that which is contrary to the intention of the Shari‘ah in particular, which is agreed upon by all Muslims, and disagreement occurs in issues in which the evidence conflicts.”

• Haylûlah (Prevention) حيلة

Linguistically, Haylûlah means prevention.

As for Fiqh terminology, Haylûlah means “causing, by actual or verbal action, the owner of the property or right from accessing it, benefiting from it, and disposing of it.”

Fiqh scholars have considered, in general, Haylûlah as one of the reasons for financial guarantee and its legal obligations, although there is a difference between them regarding the extent of its guarantee and its conditions.

It is stated in “Al-Ashbâh Wan-Nazâ‘ir” by As-Sayûtî: Rule: The rea-

sons for guarantee are four: **First:** the contract, such as the item sold and the price specified before receipt. **Second:** trust, such as a deposit and a partnership if the violation occurs, or not, such as usurpation, compensation, and a loan. **Third:** destroying life or property. **Fourth:** Haylûlah.

Az-Zarkashî also mentioned: There are four reasons for guarantees: contract, trust, destruction, and Haylûlah. Then he said: Haylûlah is like if someone usurped a slave and the slave ran away, or a garment and it was lost, or he transferred it to another country, then the usurper shall pay its value for preventing the owner from making use of his property.

Haylûlah is of two types, as Az-Zarkashî said in his “rules”: “Haylûlah between the entitled person and his right is of two kinds: verbal and actual. The actual Haylûlah definitely requires guarantee, like usurpation. There are two sayings regarding the verbal Haylûlah, the most correct of which is that requires guarantee, as if he said: This house belongs to Zayd, but rather to ‘Amr. We rule that it belongs to Zayd, and Amr is to be fined for its value, according to the more correct opinion.” What this means is that if he acknowledges that the house in his hand is for Zayd, then Zayd is entitled to it, and then if he acknowledges that it is for Amr, then he pays its

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value to ‘Amr. This is because he prevented ‘Amr from taking the house by admitting it to Zayd.

Al-‘Izz Ibn Abdus-Salâm said in his “Al-Qawâ‘id Al-Kubrâ”: Causing properties to be missed is of two types, one of them is missing by destruction, such as eating food, drinking drinks, and burning clothes. The second is missing by *Haylûlah*, which is of two types:

One of is *Haylûlah* that cannot be removed. It requires a stable guarantee. This is like the dirhams and dinars lost in the hands of people and falling into the depths of the

seas. They are permanent objects, but when they are usually inaccessible, they resemble what its parts are separated by eating and burning.

The second: *Haylûlah* that is expected to disappear, such as a *Haylûlah* between the owner and fixed and movable assets. They are guaranteed by their value due to preventing the intended use of objects by means of *Haylûlah*; There is no difference between the two types of *Haylûlah* except when one if them is expected to disappear while the other is not.



Khâ' (خ)

• Kharâj (Land Tax)

خَرَج

Linguistically, the term 'Al-Kharâj' means yield.

In Fiqh terminology, it refers to the rights imposed on the non-'Ushr lands that are to be paid to the state treasury. This is because the farmers who work in these lands have rented them in return for a known yield.

The connection between the land tax (*Al-Kharâj*) and the tribute (*Al-Jizyah*) is that they are obligatory upon the people of Dhimmah (non-Muslim subjects), and are spent in the designated channels for *Fay'* (the booty gained without fighting). As for the difference between them, the tribute is imposed on individuals, while the land tax is imposed on the land. Also, the tribute is waived with Islam, whereas the land tax is not waived with Islam and remains applicable whether with Islam or non-Islam.

As for *Al-Kharâj* mentioned in the *ḥadīth* stating: "Yield (*Al-Kharâj*) follows the assumption of responsibility (*Damân*)", it refers to what is obtained from the produce of the sold property, regardless of its con-

dition. For example, if a person buys an item, and utilizes it for a period, but later he discovers an old defect in it, he is entitled to return the item and take back the price that he has paid. Whatever he has utilized from it during that period belongs to him because if the item had been damaged while in his possession during that period, it would be under his guarantee, and the seller would not be liable for anything. Therefore, yield (*Al-Kharâj*) is due because of the guarantee.

• Al-Kharâj As-Sulhî (Agreement-Based Kharâj)

الخَرَج الصُّلْحِي

In Fiqh terminology, the agreement-based *Kharâj* (*Al-Kharâj As-Sulhî*) refers to the tax imposed on the land over which its people made a peace agreement that it would be kept in their possession in return for paying a known tax on it. Al-Bâḥi said, "Whatever they have agreed to keep in their possession from their wealth is considered a *Sulh* property, whether it is land or otherwise."

According to Fiqh scholars, the agreement-based *Kharâj* (*Al-Kharâj As-Sulhî*) is a counterpart for the compulsion-based *Kharâj* (*Al-Kharâj Al-'Anwî*).

• Kharâj Al-'Abd (Slave's Tax)

خَرَج الْعَبْد

Ibn Taymiyyah stated, "The slave's tax (*Kharâj Al-'Abd*) is a tax that the

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slave pays to his master from his own wealth.”

This definition belongs to the Hanbalites. The Hanafites mentioned a similar definition, but they commonly call to it ‘*Darîbat Al-‘Abd*’, who define it as: “The tax imposed by the master on his slave, for example, ten dirhams every day.”

The legitimacy of imposing the tax (*Al-Kharâj*) on the slave, and his right to possess the remainder of his earnings, has been proven by the *hadîth* related by Al-Bukhârî and Muslim on the authority of Anas Ibn Mâlik when he was asked about the earnings of a cupper. He said, “Allah’s Messenger (peace and blessings of Allah be upon him) got himself cupped. His cupper was Abû Taybah, so he (peace and blessings of Allah be upon him) ordered that he is given two *Sâ’* of food, and spoke to his masters to reduce his tax.”

An-Nawawî said, “This refers to the permissibility of making a settlement-based *Kharâj* between the master and his slave with their mutual consent. Its form is that the master says to his slave, ‘You earn and give me a certain amount from your earnings every day, for example, a dirham, and the remainder is yours, or such-and-such every week, and their mutual consent is stipulated.’”

Ibnul-Qayyim said, “This refers to the permissibility of imposing

known tax on one’s slave, to be paid every day according to his capability, and the slave is entitled to dispose of what is in excess of his tax. If he is prevented from disposing of it, then all of his earnings would be considered a tax, and there would be no benefit in its estimation. Rather, what is in excess of his tax, it would be a form of ownership from his master to him, and he can dispose of it as he wishes.”

• *Al-Kharâj Al-‘Anwî* (Compulsion-Based *Kharâj*) خَرَجُ الْعَنْوِي

In *Fiqh terminology*, the compulsion-based *Kharâj* (*Al-Kharâj Al-‘Anwî*) refers to the tax imposed on the land that was conquered by force after the Muslim ruler has made it an endowment for all Muslims.

This type includes the tax imposed on the land whose people have fled out of fear from the Muslims, and the tax imposed on the land over which its people made a peace agreement that it would be for Muslims and consent to pay a known tax on it.

• *Kharâj Al-Muqâsamah* (Share-Based *Kharâj*) خَرَجُ الْمُقَاسَمَةِ

In *Fiqh terminology*, the share-based *Kharâj* (*Kharâj Al-Muqâsamah*) refers to the tax imposed on the land over which a common share of its produce is to be paid, such as one-half, one-tenth, one-quarter, or

one-fifth. This tax is related to the produce of the land, not the ability to cultivate it. Therefore, if it is neglected, no tax is due from its owner. Since the tax is related to the produce of the land, it is taken repeatedly whenever the land produces during the year.

According to Fiqh scholars, the share-based *Kharâj* (*Kharâ Al-Muqâsamah*) is a counterpart for the capability-based (*Kharâj* (*Kharâj Al-Wazîfah*)).

• ***Kharâj Al-Wazîfah* (Capability-Based *Kharâj*)** خراج الوظيفة

In Fiqh terminology, the capability-based *Kharâj* (*Kharâj Al-Wazîfah*) refers to the tax imposed in liability on the landowner in relation to being able to cultivate the land, even if the cultivation did not actually take place. In this case, the landowner is obligated to pay the tax because the ability to utilize the land is ascertained, but he has failed to attain its benefit, so he bears the consequences of his negligence.

This type is also referred to as '*Kharâj Al-Muqâta'ah*' and '*Kharâj Al-Misâhah*' because the Muslim ruler takes into account the area of the land and the type of produce it gives when assessing the tax on it.

The difference between the capability-based *Kharâj* (*Kharâj Al-Wazîfah*) and the share-based *Kharâj* (*Kharâ Al-Muqâsamah*) is that the

former is taken once in each agricultural year and has not been taken repeatedly whenever the land produces, while the latter is taken repeatedly whenever the land produces (during the year).

• ***Khars* (Estimation)** خَرَص

Linguistically, the term '*Al-Khars*' means speculation and guessing.

This term is commonly used among scholars in the context of *Zakâh* (obligatory almsgiving), where the majority agree that it is recommended for the ruler to estimate what the date trees will produce of dates and what the vineyard will produce of grapes, especially after their ripeness has been appeared, by sending his knowledgeable and trustworthy estimators to make these estimates. This is to determine their quantity and the amount of *Zakâh* due on them in advance. This practice is based on the *hadîth* related by Abû Dâwûd, At-Tirmidhî, An-Nasâ'î, and Ibn Mâjah, in which the Prophet Muḥammad (peace and blessings of Allah be upon him) commanded: "*Grapevines (for collecting Zakâh) are to be estimated exactly as palm trees are estimated, and their Zakâh is taken in raisins as the Zakâh on palm trees is taken in dried dates.*"

Al-Khattâbî explained, "The benefit and meaning of estimation

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(*Al-Khars*) is that the poor are partners with the wealth owners in the produce. If the owners are prevented from their rights and from benefiting from the produce until the fruit reaches its peak ripeness, it would prejudice them. If their hands are extended to it, it would prejudice the poor's share of it, as not everyone adheres to honesty in fulfilling trusts. Therefore, the Shari'ah has set this standard so that the wealth owners can benefit while preserving the poor's rights. This is done at the beginning of the time when its ripeness appears before it is eaten and consumed, to determine the share of *Zakâh* due on it. So, *Zakâh* is given after it dries up, in accordance with its quantity, as taken in raisins and dried dates.

• *Khazzân* (Wholesale Merchant)

خَزَّان

Linguistically, the term '*Al-Khazzân*' refers to the one who stocks goods and keeps them hidden.

Terminologically, it is used to refer to a category of merchants who buys goods when they are unmarketable and the prices are low, then he stocks them waiting until they become saleable and the prices rise to sell them.

In the book "*Al-Ishârah Ilâ Mahâsin At-Tijârah*" by Abû Al-Fadl Ad-Dimashqî, it is stated: "Merchants are divided into three categories:

itinerant merchant (*Ar-Rakkâd*), wholesale merchant (*Al-Khazzân*), and supply merchant (*Al-Mujahhiz*) ... The custom practice of wholesale merchant (*Al-Khazzân*) is to buy the item at the time of its unmarketability, easiness of its transportation, there are many sellers for it and few buyers. Then, he withholds it and waits for its marketability, unavailability, difficulty in its transportation, delay in its arrival, and an increase in its demand."

• *Khizandâr* (Treasurer) خَزَّندَار

The term '*Al-Khizandâr*' refers to the treasurer or custodian of the treasury.

The Shari'ah ruling regarding the treasurer (*Al-Khizandâr*) is that he acts as an agent for the treasury's funds, and is subject to the rules governing trustees. At-Tâj As-Subkî mentioned him and then said, "It is incumbent upon him not to delay those who are referred to him, but to promptly deliver what is ordered for them in an easy and expedited manner."

• *Khasârah* (Loss) خَسَارَة

The Fiqh usage of the term '*Al-Khasârah*' does not go beyond its linguistic meaning, which denotes a decrease where growth is the normal expectation. It is opposite to profit (*Ar-Ribh*). Ar-Râghib said, "It refers to a decline in capital."

• **Khittah** ('Territory')

خطة

Linguistically, the term 'Al-Khittah' refers (as explained by Al-Juharî) to the land that a person marks out for himself by making a sign on it or drawing a line around it, indicating his intention to claim it for building purposes later.

In Fiqh terminology, it refers to an ownerless land that a person marks out for himself in order to enclose and build on it with the intention of its vivification. To this regard, An-Nasafi stated: "The statement of the Prophet Muhammad (peace and blessings of Allah be upon him): 'Whoever revives a dead land, it belongs to him, and the one who encloses it does not have a right after passing three years (without being vivified)' refers to the one that the Muslim ruler permits him to revive a dead land. That is, to utilize a land that is unusable by marking stones around it to indicate that he has taken its possession to build on it, or by drawing lines around to demarcate it from anyone attempting to seize or build on it, and then he goes away for a period or engages in another work. So, the land should not be encroached upon and is left for him. If three years have passed (without working on the land), this indicates that he has abandoned it and does not intend to build on it. Therefore, he is no longer entitled to it and it is permissible for someone else to take it."

• **Khilâbah** (Deception)

خلافة

Linguistically, the term 'Al-Khilâbah' means deception and cheating.

As for its usage in contracts, it was defined by Professor Az-Zarqâ as: "An act of deception or cheating of one party to the contract by the other party, through deceptive means (an act or a statement) leading him to agree to the contract under circumstances he would not have agreed to otherwise."

Regarding the deception (Al-Khilâbah) in transactions, the Fiqh scholars have mentioned three forms:

- 1- Selling the commodity at an excessively unjust price.
- 2- Lying about the price, such as when the seller says to the buyer: I have bought it for twenty dinars, and I will sell it to you with an increase such-and-such or a decrease such-and-such or at the same price, while he is lying about its actual cost. Al-'Adawî said, "The reason for it being a deception is that it involves an illusion that the commodity is good because it is priced high."
- 3- Marking up the commodity higher than its purchase price without disclosing it, which is a form of fraud.

It is related by Al-Bukhârî that a man complained to the Prophet

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Muhammad (peace and blessings of Allah be upon him) about being deceived in transactions. The Prophet advised him, saying: “When you engage in a transaction, say: ‘No deception’.”

Al-Khattâbî explained, “The Prophet Muhammad (peace and blessings of Allah be upon him) made this statement akin to the cooling-off option (*Khiyâr Ash-Shart*), so that he would have a recourse if he discovered that he had been deceived.”

In “*Fath Al-Bâri*”, it was stated: “The scholars said that the Prophet Muhammad (peace and blessings of Allah be upon him) instructed him to utter these words at the time of selling so that the other party would realize that he lacks insight into the nature of goods and their values, so the seller would consider for the buyer what he considers for himself as both buyers and sellers are encouraged to offer honest advice, according to the *hadîth* of *Hakîm Ibn Hizâm* stating: “If they tell the truth and make everything clear, they will be blessed in their transaction.”

• **Khilât (Combination)** خِلَات

Linguistically, the term ‘*Al-Khilât*’ means to mix or combine two or more things together.

In Shari’ah terminology, it is mentioned in the context of *Zakâh* in the *hadîth* stating: “There should be

no combination (*Khilât*) or deceitfulness (*Wirât*).”

Al-Muṭarrizî said, “The combination (*Al-Khilât*) is that a person who has eighty sheep combines them with someone who has forty sheep, so that only one sheep would be taken as *Zakâh*. This is because if they were separated, two sheep would be taken as *Zakâh*.”

Ibnul-Athîr said, “It means that a person combines his camels, cows, or sheep with another person’s camels, cows, or sheep to avoid paying Allah’s right and to withhold the *Zakâh* collector by giving him less than what is due. This is the meaning of the *hadîth* related by Al-Bukhârî stating: “There should neither combine the separate (portions of the property) nor separate the combined (property into various portions) in order to avoid paying *Zakâh*.”

Combining the separate (portions of the property) is referred to as: ‘*Al-Khilât*’. In “*Al-Muwatta*”, Mâlik explained: “This occurs when there are three individuals, each of whom has forty sheep, and it is obligatory that each of them should pay one sheep (as *Zakâh*). When the *Zakâh* collector come to them, they combine their sheep so that they pay only one sheep (as their due *Zakâh*), so they were forbidden to do so.”

As for separating the combined (property into various portions),

Imam Mâlik explained that it occurs when two individuals (partners), each of whom has a hundred and one sheep, and it is obligatory that they should pay three sheep (as *Zakâh*). When the *Zakâh* collector come to them, they separate their sheep so that each one of them pays only one sheep (as his due *Zakâh*), so they were forbidden to do so.

• ***Khalt* (Mixing)**

خَلْط

The Fiqh usage of the term '*Al-Khalt*' does not go beyond its linguistic meaning, which refers to the act of mixing or combining parts of two or more things together, whether liquid, solid, or dissimilar.

Fiqh scholars use the expression of 'mixing the two wealth' in the context of *Zakâh*. They state, "If two individuals (who are obligated to pay *Zakâh*) mix their property in a way that makes it difficult to distinguish them, then the *Zakâh* of one individual can be applied to both according to some scholars.

In partnership agreements, scholars disagreed regarding the stipulation that the two wealth should be mixed before the contract in order for the partnership to be formed. The majority of scholars held the view that it is not a stipulation.

Regarding the guardianship, scholars mention that it is permissible for a guardian to mix the wealth of a minor with his own wealth for

convenience and mutual benefit, provided that the minor receives a benefit of mixing..."

• ***Khultah* (Partnership)**

خُلْطَة

Linguistically, the term '*Al-Khultah*' means mixing or intermingling the parts of things with each other.

In Fiqh terminology, the partnership (*Al-Khultah*) has two types:

- 1- *Khultah A'yân* (Common Partnership): This is how the Shafi'ites and the Hanbalites call it, and the Shafi'ites also call it: '*Khultah Sharikah*' and '*Khultah Shuyû*'. This type occurs when two or more individuals are sharing the ownership of undivided property. For example, two individuals jointly purchase a herd of cattle, each of them having an undivided share in it, or they may inherit it or receive it as a gift, and they keep it undivided, whether the shares are equal or not.
- 2- *Khultah Awsâf* (Defined Partnership): This is how the Shafi'ites and the Hanbalites call it, and the Shafi'ites also call it: '*Khultah Jiwâr*' and '*Khultah Mujâwarah*'. This type occurs when each co-owner has his own separate, clearly defined, and independent share. Then they mix their shares in facilities for convenience and mutual benefit, such as pastures, pens, or watering places, to the

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extent that their shares become indistinguishable. The purpose is often to facilitate the affairs of wealth owners, such as when a group of villagers own a small number of sheep each, so they combine their sheep together with one shepherd who takes care of them in return for a fee or voluntarily, and he houses them in a single pen, and gather them in watering, milking, ...etc. This will be more efficiently and easier for them than if each person takes care of his own sheep individually. Likewise, in the case of joint farming where the convenience and mutual benefit could be attained by sharing the caretaker, the waterman, the plowman, and the worker...etc.

The topic of the partnership (*Al-Khultah*) and its rulings holds significant implications for the issues related to *Zakâh* (obligatory almsgiving).

• *Khul'* (Wife's Self-Redemption)

خُلْع

The Fiqh usage of the term '*Al-Khul'*' does not go beyond its linguistic meaning, which means putting off or taking off a thing. It is commonly used when a woman dissolves the marriage bond with the husband by redeeming herself with her money.

Al-Ba'li said, "The wife's self-re-

demption (*Al-Khul'*) occurs when a woman dissolves the marital bond in return for some compensation paid to her husband. Its benefit is freeing her from the husband in a way that is irrevocable unless with her consent and a new marriage contract."

Ibn 'Arafah described it as: "An exchange-based contract for sexual intercourse, whereby the woman owns herself, and the husband owns the compensation."

Al-Jurjânî defined it as: "The removal of marital rights in return of compensation."

In "*Bid'ayat Al-Mujtahid*", it is stated: "The wife's self-redemption (*Al-Khul'*), the ransom (*Al-Fidyah*), the reconciliation (*As-Sulh*), and the mutual release (*Al-Mubârâh*) all essentially mean the same thing; i.e., a woman's offering compensation (ransom) in return for her divorce. However, the wife's self-redemption is specifically used when she gives back everything she received from her husband, and the reconciliation is used when she gives back some of it, and the ransom is used when she gives back most of it, and the mutual release is used when she relinquishes a right she has against him. This is according to the majority of Fiqh scholars."

Ar-Rassâ' said, "As for the difference between the wife's self-redemption (*Al-Khul'*), the mutual rele-

ase (*Al-Mubâr'ah*), and the ransom (*Al-Fidyah*), Imam Mâlik said: "The mutual release refers to a woman who relinquishes a right she has against his husband before consummation, and the wife's self-redemption refers to a woman who dissolves the marital bond by giving back everything that is hers, and the ransom refers to a woman who gives back some of what is hers. All of these concepts are the same. According to Muḥammad Ibn Yahyâ, "The mutual release refers to a woman who neither takes nor gives anything."

• **Khil'ah (a Garment Granted As a Gift)** خِلَّة

Linguistically, the term '*Al-Khil'ah*' refers to what a person grants to someone else in terms of clothing.

Al-Fayyûmî defined it as: "The act of granting a garment as a gift from one person to another."

• **Khuluww (Vacuity Payment)** خُلُوْ

Linguistically, the term '*Al-Khuluww*' signifies emptying or vacating something.

In Fiqh terminology, the vacuity payment (*Al-Khuluww*) is commonly used in shops and similar places to signify the act of purchasing the right to occupy and reside in a place permanently in return for a rental fee only, without the right to

evict the occupant. This is when the owner, endower, or caretaker of the shop sets a specific amount of money to be taken from the resident, and gives him a legitimate possession of it. After this arrangement, the owner, endower, or caretaker would be unable to evict the resident who has obtained the right of vacuity payment, or to lease the shop to someone else unless the agreed-upon sum is paid back to him.

Accordingly, some Fiqh scholars define it as: "The abstract benefit established for a known fee, represented by the right of occupancy and possession." According to Article no. (360) of "*Qânûn Al-'Adl Wa Al-Insâf Li Al-Qadâ' 'Alâ Mushkilât Al-Awqâf*", "The vacuity payment refers to the establishment of a right of occupancy and possession by the mere act of benefiting in return for a specific amount paid to the owner or the administrator in order to assist him in maintaining the endowment property."

Furthermore, the holder of vacuity payment has an entitlement to decide on such property, and it is inheritable to his heirs, and he can waive the occupancy rights to whomever he chooses with the permission of the administrator.

The vacuity payment (*Al-Khuluww*) is a type of contracts that has emerged relatively late in Islamic history, known by this term in Egypt

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and the Levant. However, in the Maghreb region, it is referred to as: ‘*Al-Jilsah*’, ‘*Az-Zinah*’, or ‘*Al-Miftâh*’.

• *Khalîṭ* (Co-Owner) خَلِيط

Linguistically, the term ‘*Al-Khalîṭ*’ means intermingling the parts of things with each other.

Fiqh scholars use this term to refer to a co-owner or co-sharer in a specific property. In the context of pre-emption (*Ash-Shuf’ah*), scholars say: “The co-owner has more right than the partner, and the partner has more right than the neighbor, and the neighbor has more right than others.” According to them, the co-owner (*Al-Khalîṭ*) is the one who shares a specific portion of a property, and the partner (*Ash-Sharîk*) is the one who shares rights such as the right to use a specific drinking well or a specific road, and the neighbor (*Al-Jâr*) is the adjacent neighbor in general.

Fiqh scholars sometimes use the term ‘*Al-Khalîṭ*’ to refer to someone with whom you engage in dealings, financial transactions, and some arrangements without being a partner.

• *Khumus* (One-Fifth) خُمُس

Linguistically, the term ‘*Al-Khumus*’ refers to one-fifth, or one of five equal parts of something.

In Shari’ah terminology, it is used in the context of *Al-Ghanîmah* (the

spoils of war), *Al-Fay*’ (the booty gained without fighting), *As-Salab* (the extra share given to a horseman over his due portion of the spoils as an incentive for him to engage in battle), and *Ar-Rikâz* (buried treasures or natural ores), as they are the type of wealth from which one-fifth is taken. However, there may be scholarly disagreement regarding taking one-fifth of anything other than spoils of war, as well as its conditions and recipients.

As for the spoils of war, there is no disagreement regarding the obligation to take one-fifth of it. This is based on the clear Quranic Verse that mentions taking one-fifth in relation to war spoils.

In “*Al-Amwâl*”, Abû ‘Ubayd said: “Regarding ‘*Al-Khumus*’: It is one-fifth of the spoils of war and the ordinary *Rikâz* (i.e., buried treasures or natural ores). However, there is scholarly disagreement about some items such as minerals, precious stones, and treasure found in the sea. Some scholars say that one-fifth of these items should be distributed among the five categories mentioned in the Quranic Verse.... while others say that they follow the same rulings as the spoils of war and it should be distributed according to the discretion of the Muslim ruler: if he deems it appropriate to allocate it to those designated by Allah (the five categories), he does

so, or he can use it for other purposes that he deems to be more beneficial for Muslims.

• **Khiyâr (Option)**

خيار

Linguistically, the term ‘*Al-Khiyâr*’ is a noun derived from ‘*Al-Ikhtiyâr*’ which denotes the act of choosing.

In Fiqh terminology, it is used in contracts to signify the right of a contracting party to choose the better of two options: either to proceed with the contract or to terminate it. It is mentioned in Article no. (208) of “*Majallat Al-Ahkâm Ash-Shar‘iyyah ‘Alâ Madhhab Ahmad*”: “The option is the right of the contracting party to terminate or proceed with the contract.”

Explanation: The general rule is that once a contract has been entered into, neither party can unilaterally terminate it unless the Legislator grants one or both of the contracting parties the right to terminate. This is done by giving the contracting party the option to either proceed with the contract or to terminate it for reasons deemed valid by the Legislator for having the right of choice or by a prior agreement between the contracting parties to grant this right to one or both of them. Accordingly, Fiqh scholars defined the option (*Al-Khiyâr*) as: “The state of one of the contracting parties being at liberty to choose ei-

ther proceeding with the contract or terminating it.”

• **Khiyâr At-Ta’yîn (Either-or Option)**

خيار التعيين

In Fiqh terminology, the either-or option (*Khiyâr At-Ta’yîn*) is defined as: “The right of a contracting party to specify one or more items out of several items that the contract was concluded upon in an unspecified manner within a stipulated period of time.”

Its form is that the seller says to the buyer, “I sell you one of these three garments for such-and-such a price, and you have the option to choose whichever one you desire.” Similar expressions can be used, whether the statement is made by the seller or the buyer.

Some Hanafites refer to this option as the specification option (*Khiyâr At-Tamayîz*), while the Malikites terms the contract that includes it as the option sale (*Bay‘ Al-Ikhtiyâr*).

• **Al-Khiyâr Al-Hukmî (Default Option)**

الخيار الحكمي

In Fiqh terminology, the default option (*Al-Khiyâr Al-Hukmî*) refers to the option that is originally established in Shari‘ah by default, and arises when its reason is fulfilled, without the need for its stipulation in the contract.

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The Legislator has established this option to protect the interests of the contracting party who needs it without seeking to have it. Its example is the defect option (*Khiyâr Al-'Ayb*), also known as the deficiency option (*Khiyâr An-Naqîṣah*). It is thus a counterpart for the cooling-off option (*Khiyâr Ash-Shart*), which arises and is confirmed only by the mutual agreement and consent of the contracting parties, such as the deliberation option (*Khiyâr At-Tarawwî*), also known as the cooling-off option (*Khiyâr Ash-Shart*).

This option is used specifically by the Malikites, against other Fiqh scholars.

In “*Al-Qawâ'id*” by Al-Maqqarî, it is stated: “Rule: They differed regarding whether the default option is like the cooling-off option or not.” Similar statements are found in “*Idâh Al-Masâlik*” by Al-Wansharîsî and in “*Sharh Al-Yawâqit Ath-Thamînah*” by As-Sijilmâsî.

Al-Hattâb said, “The general rule in sale transactions is to be binding, and the option is contingent. It is divided into the deliberation option (*Khiyâr At-Tarawwî*) and the deficiency option (*Khiyâr An-Naqîṣah*) because it may arise either from the part of the contracting party, or from the part of the subject matter of the contract. If it arises from the part of the contracting party, either one or both of the parties to

the transaction stipulate it, then it will be the deliberation option (*Khiyâr At-Tarawwî*), also known as the cooling-off option (*Al-Khiyâr Ash-Shart*). The term ‘*At-Tarawwî*’ means deliberation and reconsideration of the matter.

If it arises due to the emergence of a defect in the sale or any entitlement, then it will be the deficiency option (*Khiyâr An-Naqîṣah*), also known as the default option (*Al-Khiyâr Al-Hukmî*). It may be said that the reason for the option is either concurrent with the contract or predates it. The former is the deliberation option (*Khiyâr At-Tarawwî*) because it is based on the condition stipulated by one of the contracting parties at the time of making the contract, and the latter is the deficiency option (*Khiyâr An-Naqîṣah*) because the defect that necessitates the option predates the contract.”

• **Khiyâr Al-Khiyânah (Breach of Trust Option)** خيار الخيانة

In Fiqh terminology, the breach of trust option (*Khiyâr Al-Khiyânah*) has two forms:

- 1- Selling an item on the basis of *At-Tawliyah* (sale at cost), or *Al-Murâbahah* (markup), or *Al-Waḍî'ah* (sale below cost), but the buyer discovers it to be otherwise. In this case, the buyer has the option to either return or keep it.
- 2- Selling an animal as a goat, but it

turns out to be a sheep, or selling it as a camel, but it turns out to be a cow, or selling a cow as a pregnant, but it is not pregnant. In such cases, the sale is valid, and the buyer has the option to accept or reject the purchase.

• **Khiyâr Ar-Ru'yah (Inspection Option)** خيار الرؤية

In Fiqh terminology, the inspection option (*Khiyâr Ar-Ru'yah*) is defined as: "A right established for the purchaser to terminate or proceed with the contract upon seeing the purchased item that was not seen at the time of making the contract."

This option involves attributing the cause to its effect. In other words, the inspection option arises from the lack of prior sight of the object being sold. Such option is permissible in Shari'ah by default due to the situation of the contracting party who purchases an unseen item without prior inspection, which may not meet his purpose or be suitable for his needs. Therefore, the Legislator allows the buyer to inspect the item and decide whether it meets his needs or not, and grants him the option to either terminate the contract or proceed with it upon seeing the item.

The inspection option does not require any stipulation according to the majority of Fiqh scholars who

recognize it, except for the Malikites. In their view, this option is a stipulatory right in terms of the sale of unseen items to rectify any potential issues.

• **Khiyâr Ash-Shart (Cooling-off Option)** خيار الشرط

In Fiqh terminology, the cooling-off option (*Khiyâr Ash-Shart*) is defined as: "A right established for one or both of the contracting parties, which entitles the party stipulating it to terminate the contract within a stipulated period of time."

This right is called the cooling-off because it arises from a stipulation made by one or both of the contracting parties at the time of contracting, which grants the stipulator the right to terminate or proceed with the contract within a specified period. During this period, if the stipulator has terminated the contract, explicitly or implicitly, the contract is considered null and void. However, if the stipulator has proceeded with the contract or he did not exercise the right to terminate it until the specified period has elapsed, or if there is a reason that nullifies the option before its expiry, then the right of the option ceases, and the contract becomes binding and irrevocable.

Fiqh scholars use several names for this option, including: '*Al-Khiyâr Ash-Shartî*' and '*Bay' Al-Khiyâr*'

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as commonly used by the Malikite school, and ‘*Khiyâr At-Tarawwî*’ as commonly used in the Shafi’ite school.

• **Khiyâr Al-‘Ayb (Defect Option)**

خِيَارُ الْعَيْبِ

In Fiqh terminology, the defect option (*Khiyâr Al-‘Ayb*) is defined as: “An option to return the sold item because of discovering a defective description that diminishes its value or misses its essential utility, which is not existent in other items of its type.”

The criterion for determining whether the defect is significant (which confirms the right of option) relies on the customary understanding of experts in commerce, such as merchants, manufacturers, and the like, according to the specific nature of each item.

The majority of Fiqh scholars, including: the Hanafites, the Shafi’ites, and the Hanbalites, use this term to refer to this type of options. However, the Malikites mostly refers to it as: the deficiency option (*Khiyâr An-Naqîṣah*).

• **Khiyâr Fawât Al-Wasf Al-Marghûb (Breach of Description Option)**

خِيَارُ قَوَاتِ الْوَصْفِ الْمَرْغُوبِ

In Fiqh terminology, the breach of description option (*Khiyâr Fawât Al-Wasf Al-Marghûb*) is defined as: “A right to revoke the contract due

to the breach of specific description stipulated by the buyer in the purchased item.”

This option is also referred to as: ‘*Khiyâr Khulf Al-Wasf Al-Mashrûṭ*’, ‘*Khiyâr Al-Khulf*’, and ‘*Takhalluf As-Safqah*’.

An example of this option is when a person buys an item and stipulates a specific description for it, such as purchasing a horse on the condition that it is a purebred Arabian horse, but it turns out to be a crossbreed horse, or buying a horse on the condition that it is a trotter (a horse that can walk fast easily), but it turns out to be slow or walks with difficulty, etc. In such cases, the buyer has the right to either terminate the contract or proceed with it.

• **Khiyâr Al-Kashf (Discovery Option)**

خِيَارُ الْكَشْفِ

In Fiqh terminology, the discovery option (*Khiyâr Al-Kashf*) is defined as: “A right to revoke the contract by the buyer who discovers that the sold item is not as he had expected.”

The Hanafites use other names for this option, including: ‘*Khiyâr Kashf Al-Hâl*’, or ‘*Khiyâr Inkishâf Al-Hâl*’, or ‘*Khiyâr At-Takashshuf*’.

This option applies to the sale of goods whose quantities are known by standard units (such as weight and volume), when they are sold using specific units of measurement

instead of the standard ones. An example commonly used by Fiqh scholars is when a person sells an item that is typically sold by weight or volume, but instead of using the standard units to determine the quantity, they sell it using a specific container whose volume is unknown, or a specific stone whose weight is unknown, and so on.

• **Khiyâr Al-Kammiyyah (Amount Option)** خِيَارُ الْكَمِّيَّةِ

In Fiqh terminology, the amount option (*Khiyâr Al-Kammiyyah*) is defined as: “The seller’s right to revoke the contract if the amount of the price is unknown at the time of contracting.”

This option arises from the seller’s ignorance of the exact amount of the price due to the lack of clear sight of it, such as when the price is placed in a container that does not clearly reveal its amount.

This type of options is recognized by the Hanafites and the Zaidites, against other Fiqh schools.

• **Khiyâr Al-Majlis (Session Option)** خِيَارُ الْمَجْلِسِ

In Fiqh terminology, the session option (*Khiyâr Al-Majlis*) is defined as: “The right of the contracting parties to either proceed with the contract or cancel it in the contract session, from the time of contracting until they part ways or

make choice (i.e., mutual choice).”

This option grants each party the right to either proceed with the contract or terminate it as long as they are still present together in the place where the contract is being concluded, from the moment of offer and acceptance are made until they separate and each party has his own independent session. The same ruling applies to mutual choice (*At-Takhâyur*), wherein one party offers the other the choice to either proceed with the contract or cancel it.

This is one of the options established in Shari’ah by default, without the need for the contracting parties to agree on its stipulation. Once the contract is concluded, the session option is automatically confirmed by Shari’ah.

Most Fiqh scholars use this term to describe this option, while a few of them refer to it as: ‘*Khiyâr Al-Mutabâyi’ayn*’.

• **Khiyâr An-Naqd (Payment Option)** خِيَارُ النَّقْدِ

In Fiqh terminology, the payment option (*Khiyâr An-Naqd*) is defined as: “A right stipulated by the contracting party that enables him to revoke the contract if the other party fails to make payment (on the due date).”

This option is a stipulatory right that is only established by the explicit

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agreement of both contracting parties, and it has two forms according to Fiqh scholars:

- 1- Making the contract on the condition that if the buyer fails to make payment within the stipulated period, the contract is considered null and void.
- 2- Making the contract on the condition that the buyer makes payment, with an agreement that if the seller returns the consideration (payment) within a specified period, the contract is considered null and void. This form is closely similar to the concept of selling with repurchase right (*Bay' Al-Wafâ*), which made some scholars include '*Bay' Al-Wafâ*' within '*Khiyâr An-Naqd*'.

• **Khiyânah (Breach of Trust)** خيانة

The Fiqh usage of the term '*Al-Khiyânah*' does not go beyond its

linguistic meaning, which implies a breach of trust by breaking the covenant in secret.

The difference between breach of trust (*Al-Khiyânah*) and hypocrisy (*An-Nifâq*) is that the former pertains to covenants and trust, while the latter pertains to faith and religion.

As for the difference between the breacher of trust (*Al-Khâ'in*), the thief (*As-Sâriq*), and the wrongful appropriator (*Al-Ghâsib*), the breacher of trust is the one who betrays what is entrusted to him, and the thief is the one who takes money stealthily from a place to which it is forbidden to enter, and the wrongful appropriator is the one who seizes the property of others overtly, relying on his strength.



Dâl (د)

• *Dakhl* (Income)

دَخل

The Fiqh usage of the term ‘*Ad-Dakhl*’ does not go beyond its linguistic meaning, which means the revenue that a person gains from his real estate or trade. Some Fiqh scholars define it as: “The revenue that you acquire from your property.” It is opposite to ‘*Al-Kharj*’ (i.e., outflow of funds, expenditure).

• *Dilâlah* (Auctioneering)

دِلَالَة

Linguistically, the term ‘*Ad-Dilâlah*’ means brokerage, and ‘*Ad-Dallâl*’ is the one who links between the two parties in a sale transaction. It is a synonym for a broker (*As-Simsâr*). The term ‘*Ad-Dilâlah*’ is used also to refer to the fee given to the auctioneer in return for his work.

Fiqh scholars use the term ‘*Ad-Dallâl*’ to mean the professional auctioneer, i.e., the one who calls for goods in markets to be sold at public auction through him.

Its form is that a person gives his goods (merchandise) to the auctioneer to announce and offer them for sale in public markets. When the bidding stops on these goods, the auctioneer asks the owner for per-

mission to sell them. If the owner agrees to the sale, the auctioneer carries it out and he is entitled to the full fee. If the owner does not give permission, they are not sold, and the auctioneer receives nothing.

Some scholars differentiate between the auctioneering (*Ad-Dilâlah*) and the brokerage (*As-Samsarah*). It is said: “The brokerage is announcing the arrival of goods and the like, while the auctioneering is hiring someone to sell them.” It is also said, “The broker is the one who moves around with the goods to show them, while the auctioneer is the expert who is skilled in buying and selling: He sits in the shop, sells to whoever wants to sell, and buys from whoever wants to buy.” Other opinions have been said as well.

The reason for this differentiation is the difference in customs and practices, and their variation according to times and places.

• *Dihqân* (Landowner)

دِهْقَان

The term ‘*Ad-Dihqân*’ is a Persian-Arabized word used linguistically to denote someone who powerful in managing affairs with harshness, a village chief, a merchant, or someone who possesses wealth and property. Judge ‘*Iyâd*’ said, “They are the leaders of the non-Arab peasants and the heads of the regions. They were called this because of their luxury and comfortable living.”

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In Fiqh terminology, it refers to the landowner, and it is opposed to the farmer and the tenant.

• Dayn (Debt)

دَيْن

Linguistically, the term ‘*Ad-Dayn*’ refers to any future right established in a person’s liability, without it being in any particular form, money or something else.

Fiqh scholars use it in two meanings, one is more general than the other. In its general meaning, it refers to the absolute ‘obligatory right established in the liability’, so that it includes all types of wealth established in the liability, regardless of the cause for its obligation, or the pure rights like all other acts of worship such as prayer, fasting, pilgrimage, vows, etc.

As for its more specific meaning (i.e., concerning wealth), the scholars have two opinions regarding its essence:

- 1- According to the Hanafites, it is: “The wealth established in the liability due to exchange-based transaction, destruction, or loan.” Accordingly, everything that is established for other causes is excluded, such as *Zakâh*, the blood money, the restitution for a bodily injury, etc.
- 2- According to the Shafi’ites, the Malikites, and the Hanbalites, it is: “The wealth established in the liability due to a cause that gives

rise to it.” Accordingly, it includes all wealth established in the liability, whether it is in exchange for a financial asset or a usufruct, or a right for Allah without compensation, such as *Zakâh*.

• Ad-Dayn Al-Hall (Due Debt)

الدَّيْنُ الْحَالِ

According to Fiqh scholars, the due debt (*Ad-Dayn Al-Hall*) refers to a debt that must be paid upon the creditor’s request, so it is permissible (for the creditor) to demand payment immediately, and to sue for it in court (to enforce payment). It is opposite to the deferred debt (*Ad-Dayn Al-Mu’ajjal*).

Furthermore, there are some debts that can only occur as due according to Shari’ah, such that it is not permissible to defer them. If they are deferred, the contract is invalidated, such as the capital of *Salam* contract and both the counter-values in currency exchange according to the consensus of scholars, and such as the capital of profit-sharing (*Mudârabah*) according to the Hanafites, the Shafi’ites and the Malikites, as well as the rental in the lease of liability according to the Shafi’ites and the Malikites.

• Dayn Allâh (Allah’s Debt) دَيْنُ اللَّهِ

According to Fiqh scholars, Allah’s debt (*Dayn Allâh*) refers to any debt where no one among people

claims it as his right. It comes in two types:

- 1- A type that involves acts of worship and drawing closer to Allah, with no worldly benefit for the legally accountable person, such *Zakâtul-Fitr* (fast-breaking *Zakâh*), expiation for breaking fasting, vows debt, and atonements. These are acts of worship performed by Muslims in obedience to Allah's command and as a means of drawing closer to Him.
- 2- A type that is imposed to enable the state to fulfil the public interests of the nation. This type usually involves a worldly benefit for the legally accountable person and is considered a form of provision or tax on wealth, such as the taxes imposed on the *'Ushr* and *Kharâj* lands, one-fifth of the spoils of war, the booty gained without fighting, and what the ruler imposes on the rich people to meet the interests that the state treasury is unable fulfil.

In Fiqh terminology, Allah's debt (*Dayn Allâh*) is a counterpart for the human debt (*Dayn Al-'Abd*).

• **Dayn As-Sihhah (Health Debt)**

دَيْنُ الصَّحَّةِ

According to Fiqh scholars, the health debt (*Dayn As-Sihhah*) refers to a debt that is established in a person's liability during his state

of health, whether it is proved by his admission or by evidence. This ruling involves the debt established in his liability while he is terminally ill if it is proven by evidence, such as when someone gets married with a dower of the like (the customary dower) while he is critically ill, or when he purchases something for its full value, or when he damages another person's property, and all of this is in the presence of witnesses.

In Fiqh terminology, the health debt (*Dayn As-Sihhah*) is a counterpart for the illness debt (*Dayn Al-Marad*).

• **Ad-Dayn As-Sahih (Valid Debt)**

الدَّيْنُ الصَّحِيحُ

According to Fiqh scholars, the valid debt (*Ad-Dayn As-Sahih*) refers to a debt that is established and cannot be discharged except by payment or release, such as the price of a sold item, the rent of a house, the loan debt, the dowry debt, the consumption debt, and the like.

In Fiqh terminology, the valid debt (*Ad-Dayn As-Sahih*) is a counterpart for the invalid debt (*Ad-Dayn Ghayr As-Sahih*), as scholars divide debt based on the causes of its discharge into two categories: valid debt, and invalid debt.

• **Ad-Dayn Ad-Da'if (Weak Debt)**

الدَّيْنُ الضَّعِيفُ

According to Fiqh scholars, the

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weak debt (*Ad-Dayn Ad-Da'if*) refers to any debt whose ownership is transferred to a person by means of his action and not in exchange for something, such as inheritance. It can also be incurred by means of a person's action, but not in exchange for something, such as a will. Further, it can be incurred by means of a person's action in exchange for something that is not money, such as the dowry, the compensation for *Khul'*, the reconciliation for intentional murder, the blood money, or the compensation resulting from a manumission by contract.

In Fiqh terminology, the weak debt (*Ad-Dayn Ad-Da'if*) is a counterpart for both the medial debt (*Ad-Dayn Al-Mutawassit*) and the strong debt (*Ad-Dayn Al-Qawi*). This categorization is attributed to Imam Abû Hanifah (may Allah have mercy on him).

• ***Ad-Dayn Az-Zanûn or Ghayr Al-Marjû* (Doubtful or Non-Repayable Debt)** **الدَّيْنُ الظَّنُّون (غَيْرُ الْمَرْجُو)**

In Fiqh terminology, the doubtful or non-repayable debt (*Ad-Dayn Az-Zanûn or Ghayr Al-Marjû*) refers to a debt where the creditor despairs of obtaining it, either because the debtor is insolvent, or repudiated while there is no evidence, or for any other reason.

According to Fiqh scholars, the

doubtful or non-repayable debt (*Ad-Dayn Az-Zanûn or Ghayr Al-Marjû*) is a counterpart for the repayable debt (*Ad-Dayn Al-Marjû*).

The doubtful debt has specific rulings regarding its *Zakâh* when the creditor obtains it. These ruling should be referred to in their respective topics of *Zakâh*.

• ***Dayn Al-'Abd* (Human Debt)**

دَيْن الْعَبْدِ

According to Fiqh scholars, the human debt (*Dayn Al-'Abd*) refers to any debt owed by an individual to another who claims it as his right, such as the price of a sold item, the rent for a house, the repayment of a loan, the compensation for damage, the restitution for a bodily injury, and the like. The creditor has the right to demand it from the debtor and to sue him for payment if he refuses to fulfil it, so that the judge compel him to fulfil his obligation using the legitimate means prescribed by Shari'ah, which force the procrastinating debtor to pay.

In Fiqh terminology, the human debt (*Dayn Al-'Abd*) is a counterpart for Allah's debt (*Dayn Allâh*), as scholars divide debt based on the creditor into two categories: Allah's debt, and human debt.

• ***Ad-Dayn Ghayr As-Sahih* (Invalid Debt)** **الدَّيْنُ غَيْرُ الصَّحِيحِ**

According to Fiqh scholars, the

invalid debt (*Ad-Dayn Ghayr As-Sahih*) refers to a debt that is discharged by payment, release, or other reasons that cause it to be forfeited, such as the debt resulting from a manumission by contract, which is forfeited by the slave's inability to pay, and the debts due to Allah, which are forfeited by the person's death according to some scholars.

• ***Ad-Dayn Ghayr Al-Mustaqirr* (Unconfirmed Debt)**

الدَّيْنُ غَيْرُ الْمُسْتَقَرِّ

The unconfirmed debt (*Ad-Dayn Ghayr Al-Mustaqirr*) refers to a debt on which the creditor's ownership has not been confirmed since the debtor did not receive its countervalue, as it is liable to be forfeited - in whole or in part - by the termination of the contract that gave rise to it due to some potential emergencies. Examples include the dowry before consummation of marriage, the wage before work, or the rent before the usufruct has been received if the lease is based on a work, such as sewing a garment, or its term has expired if the lease is based on a stipulated period, such as renting a house for a month.

As-Suyûti stated, "All debts that remain in liability after being established and receiving their countervalue are confirmed debts, except for the debt of *Salam* contract, which - even though it is binding, is unconfirmed because it is possible

that the sold item becomes unavailable on the delivery date, which would annul the contract."

• ***Ad-Dayn Ghayr Al-Mushtarak or Al-Mustaqill* (Non-Joint or Independent Debt)**

الدَّيْنُ غَيْرُ الْمُشْتَرَكِ (الْمُسْتَقِيل)

In **Fiqh terminology**, the non-joint or independent debt (*Ad-Dayn Ghayr Al-Mushtarak* or *Al-Mustaqill*) refers to a debt that is established in the debtor's liability due to a cause different from other debts in his liability. For example, if two persons lend a sum of money to someone else, each of them separately, or they jointly sell a common property belong to them, and at the time of sale, each mentioned a price for his share separately.

One of the most important differences between the non-joint or independent debt (*Ad-Dayn Ghayr Al-Mushtarak* or *Al-Mustaqill*) and the joint debt (*Ad-Dayn Al-Mushtarak*) in terms of rulings, as mentioned by the Hanafites, is that if the debts owed by the debtor are independently owned, each creditor has the right to demand repayment of his debt separately from the debtor, and whatever sum is received by one of the creditors is counted as part of his specific debt, not shared with other creditors. However, if the debt owed by the debtor is jointly owned by two or more creditors,

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each one of the creditors has the right to claim his portion of it, and the sum received by any of them is not exclusively his but it is jointly owned by all the creditors, each having a right to it in proportion to his share of the debt.

• **Ad-Dayn Al-Qawî (Strong Debt)**
الدَّيْنُ الْقَوِيُّ

In Fiqh terminology, the strong debt (*Ad-Dayn Al-Qawî*) refers to a debt that arises from the repayment of a loan or trade goods.

According to the categorization of Imam Abû Hanîfah, the strong debt (*Ad-Dayn Al-Qawî*) is a counterpart for both the medial debt (*Ad-Dayn Al-Mutawassit*) and the weak debt (*Ad-Dayn Ad-Da'îf*), as he divides debts based on their strength into three categories: strong debt, medial debt, and weak debt.

• **Ad-Dayn Al-Mutawassit (Medial Debt)**
الدَّيْنُ الْمُتَوَسِّطُ

In Fiqh terminology, the medial debt (*Ad-Dayn Al-Mutawassit*) refers to a debt that arises from the exchange of an item not primarily intended for trade, such as the price of work attire, uniform, servant, and residence.

According to the categorization of Imam Abû Hanîfah, the medial debt (*Ad-Dayn Al-Mutawassit*) is a counterpart for both the strong debt (*Ad-Dayn Al-Qawî*) and the weak debt (*Ad-Dayn Ad-Da'îf*).

• **Ad-Dayn Al-Marjû (Repayable Debt)**
الدَّيْنُ الْمَرْجُو

In Fiqh terminology, the repayable debt (*Ad-Dayn Al-Marjû*) refers to a debt that is collectable, and the creditor anticipates and hopes for its repayment because it is owed by a present and solvent debtor who is unrepudiated, or even repudiated, but there is evidence for it.

According to Fiqh scholars, the repayable debt (*Ad-Dayn Al-Marjû*) is a counterpart for the doubtful or non-repayable debt (*Ad-Dayn Az-Zanûn* or *Ghayr Al-Marjû*), as they divide debts in the context of *Zakâh* based on the creditor's confidence in their collection into two categories: repayable debt, and doubtful or non-repayable debt.

• **Dayn Al-Marad (Illness Debt)**
دَيْنُ الْمَرَضِ

In Fiqh terminology, the illness debt (*Dayn Al-Marad*) refers to a debt that arises from a person's admission of it while he is in a terminal illness, and there is no other way to prove it except through that admission, whether the cause for the debt was claimed to have occurred during his state of health or the terminal illness.

According to Fiqh scholars, the illness debt (*Dayn Al-Marad*) is a counterpart for the health debt (*Dayn As-Sihhah*).

• **Ad-Dayn Al-Mustaqirr (Confirmed Debt)**
الدَّيْنُ الْمُسْتَقَرُّ

The confirmed debt (*Ad-Dayn Al-Mustaqirr*) refers to a debt on which the creditor's ownership has been confirmed, such as the price of a sale, the value of a damaged property, the compensation for *Khul'*, the repayment of a loan, the restitution for a bodily injury, the dowry after consummation of marriage, or the rent for which the usufruct has been received if the lease is based on a work, such as sewing a garment, or its term has expired if the lease is based on a stipulated period, such as renting a house for a month.

• **Ad-Dayn Al-Mushtarak (Joint Debt)**
الدَّيْنُ الْمُشْتَرَكُ

In **Fiqh terminology**, the joint debt (*Ad-Dayn Al-Mushtarak*) refers to a debt whose cause has been established in the debtor's liability jointly. This could include the price of a sold item shared between two or more parties in a single transaction without specifying the share's price of each joint partner in the contract, or it could be a debt that is devolved by inheritance to several heirs, or it could be the value of consumed property shared between partners, or it could be the repayment of a loan borrowed from a common wealth shared by two or more people.

• **Ad-Dayn Al-Mutlaq (Absolute Debt)**
الدَّيْنُ الْمُطْلَقُ

According to Fiqh scholars, the absolute debt (*Ad-Dayn Al-Mutlaq*) refers to an unrestricted debt that is related to the debtor's liability only, without any connection to any of his wealth, whether such wealth is owned by him when the debt has been established or acquired afterward. All of the debtor's wealth are valid for the repayment of any absolute debt established in his liability, and the absolute debt does not prevent him from disposing of his wealth in any manner.

In **Fiqh terminology**, the absolute debt (*Ad-Dayn Al-Mutlaq*) is a counterpart for the secured debt (*Ad-Dayn Al-Muwaththaq*), as scholars divide debts based on their connection into two categories: absolute debt, and secured debt.

• **Ad-Dayn Al-Muwaththaq (Secured Debt)**
الدَّيْنُ الْمُوْتَقَّ

According to Fiqh scholars, the secured debt (*Ad-Dayn Al-Muwaththaq*) refers to a debt that is related to a financial property of the debtor's assets, confirming the creditor's right and ensuring repayment of the debt, such as when the debtor pledges collateral for the debt, thereby the debt is connected to the pledged asset. In such case, the debtor cannot dispose of the collateral without the permission of the

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creditor, and the creditor has priority in recovering his debt from the collateral over other creditors.

In Fiqh terminology, the secured debt (*Ad-Dayn Al-Muwaththaq*) is a counterpart for the absolute debt (*Ad-Dayn Al-Mutlaq*).

• ***Ad-Dayn Al-Mu'ajjal* (Deferred Debt)** الدَّيْنُ الْمُؤَجَّل

In Fiqh terminology, the deferred debt (*Ad-Dayn Al-Mu'ajjal*) refers to a debt that needs not be repaid before it falls due (i.e., on its maturity date). However, the repayment can be made any time before the due date, rendering the liability duly discharged.

The deferred debt may be structured into instalment payments, each with a specified due date and a defined amount. The debtor should not be compelled to repay the entire debt before all instalments are due.

Some debts are established to be deferred in instalments, such as the blood money (*Diyah*) on the near male relatives from the father's side. It has been established by consensus that it is paid in instalments over three years, one-third each year.

According to Fiqh scholars, the deferred debt (*Ad-Dayn Al-Mu'ajjal*) is a counterpart for the due debt (*Ad-Dayn Al-Hall*), as they divide debts based on the time of their payment into two categories: due (immediate) debt, and deferred debt.

• ***Diyah* (Blood Money)** دِيَّة

Linguistically, the term '*Ad-Diyah*' refers to the financial compensation payable as retribution for the loss of life.

In Fiqh terminology, scholars have not unanimously agreed on its definition:

Some Hanafites and Malikites define it as: "The mandatory financial compensation payable in case of (the wrongful) killing of a free human being as retribution for his blood." They restricted it to the financial compensation paid as retribution for the loss of life.

On the other hand, the Shafi'ites, the Hanbalites, and some Malikites and Hanafites have adopted a broader definition of it to include any compensation paid for harms, whether on one's life or other injuries. According to this view, they define it as: "A prescribed compensation payable as retribution for killing of a human being or causing harm to a part of his body, and it is paid to the victim or his guardian or his heir due to a bodily injury." It was called '*Diyah*' because it is typically paid as a form of retribution, and is rarely pardoned due to the sanctity of human life.

• ***Dîwân* (Register)** دِيْوَان

The term '*Ad-Dîwân*' is a Persian-Arabized word used linguistically

to denote the accounting ledger. Later, it is used for the one who makes accounts, then it is referred to the place where these accounts are kept.

Terminologically, it is a register or ledger where names or documents are recorded, particularly those related to the affairs and funds of the state, including military personnel and government officials.

In its early development, it was divided into four sections: (1) Soldiers' register (*Dîwân Al-Jund*), which is responsible for the military affairs, including registration and payments. (2) Works register (*Dîwân Al-A'mâl*), which is responsible for managing the works, including the fees and rights. (3) Workers register (*Dîwân Al-'Ummâl*), which is responsible for the affairs of workers, including appointment and removal. (4) Treasury register (*Dîwân Bayt Al-Mâl*), which is responsible for recording income, expenditures, and public funds.

Al-Khawârizmî further divided it into six sections: revenue register (*Dîwân Al-Kharâj*), treasury register (*Dîwân Al-Khazn*), postal service register (*Dîwân Al-Barîd*), army register (*Dîwân Al-Jaysh*), estates and expenditures register (*Dîwân Ad-Diyâ' Wa An-Nafaqât*), and water reg-

ister (*Dîwân Al-Mâ'*).

According to the author of "*Ma'l-amat Al-Fiqh Al-Mâlikî*", "The term '*Ad-Dîwân*' is a Persian-Arabized word. It refers to a collection of registers used to record the assignments of grants and their fees. Later, it was used to denote the places where these registers were kept. In Baghdad, there was an endowment register, similar to what is known today as "the endowment administration", as it is responsible for managing properties whose owners endowed them for the public benefit. It was known in the Abbasid state since the sixth century AH."

• *Dîwānah* (Customs) ديوانة

This is a well-known term used in the Arab Maghreb countries, referring to the customs imposed by the state on goods entering or exiting the country.

The customs duties (*Rusûm Ad-Dîwānah*) are the customs fees imposed on these goods. They are also referred to as: '*As-Sâkah*'.

The customs offices (*Ad-Dîwânât*) are the customs centres in ports, harbours, and other entry points open to foreign countries.



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Dhâl (ذ)

• *Dharî'ah* (Pretext or Means) ذَرِيعَة

Linguistically, the term '*Adh-Dharî'ah*' refers to the means by which something is accomplished in general, and blocking it means preventing its occurrence.

Al-Jubbî stated that the origin of '*Adh-Dharî'ah*' is that a camel is deliberately left unattended in the wilderness or deserts, so the wild animals, such as antelopes, wild cattle, and other preys, felt comfortable with it. Then its owner, who the camel had recognized, would come out to hunt those animals, as they would come close whenever the camel approaches, and the hunter would catch from them whatever he wishes. Then it was referred to everything which was a cause for another thing that was perished by it, just as these wild animals perished by being deceived by this camel.

In Shari'ah terminology, it refers to actions or things that appear to be permissible, but they can lead to a prohibited act.

Ash-Shâtîbî said, "Its reality is employing something that is beneficial to achieve something harmful."

Ibn Taymiyyah said, "In the context of Islamic Fiqh, it is a term for what ultimately leads to a prohibited act, and if it were not to lead to corruption, there would be no harm in it."

• *Dhimmah* (Liability) ذِمَّة

Linguistically, the term '*Adh-Dhimmah*' means covenant, security, and guarantee.

In Shari'ah terminology, the Hanafites considers the liability (*Adh-Dhimmah*) as a Shari'ah-based description that the Legislator has proposed or assumed to exist in a person, as an indication of his eligibility to have rights and obligations. Thus, this description signifies the person's capacity to have rights and obligations. Accordingly, it is a moral condition that is assumed to exist in a person, allowing for obligations to be established, debts and other liabilities to be attached, and rights to be vested.

Some scholars disagreed with the Hanafites on this regard, and stated that the liability (*Adh-Dhimmah*) is not a proposed or assumed description, but it is connected to the person's physical and moral existence. When it is said, "The wealth is established in the liability of so-and-so", or "attached to his liability", or "his liability is discharged", or "his liability is occupied", then the liability here refers to the person's

physical and moral existence; because ‘*Adh-Dhimmah*’ in language means covenant and trust, and they are connected to the person’s physical and moral existence.

• ***Dhawb* (Being Established) ذَوْب**

Linguistically, when it is said that fat, snow, or other substances is *Dhâba*, *Yadhûbu*, *Dhawban* and *Dhawabânan*, it means that it liquefies and becomes molten. This is opposite to what is solid and hardened. Ibnul-Athîr said, “‘*Adh-Dhawbah*’

refers to the remnant of wealth that a person retains (after it has been used up).”

Fiqh scholars use the term ‘*Dhawb*’ in the sense of a right that has been established and became obligatory. When they say: “Whatever has proven (*Dhâba*) for you against so-and-so”, they mean whatever has been recognized, confirmed, and established for you.”



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Râ' (ر)

• Râtib (Wage)

رَاتِب

The terminological usage of the term 'Ar-Râtib' does not go beyond its linguistic meaning, which implies to be stationary and fixed.

The Fiqh scholars uses it in their discussion regarding the expenditures of the state treasury. For example, they say: "*An-Nafaqât Ar-Râtibah*", meaning the fixed expenditures that are necessary, unlike the incidental expenditures which occur unexpectedly.

In Fiqh terminology, the term 'Al-Murattab' refers to: "Something that is given to someone for free without any compensation in return for his knowledge, righteousness, or poverty."

They also use the expression of 'Al-Imâm Ar-Râtib' to denote the Imam appointed by the ruler, his deputy, the *Waqf* (endowment) administrator, or the Muslim community to lead Prayers ahead of others, even if others are more qualified, such as being more knowledgeable or proficient in recitation. Similarly, the expression of 'Al-Mu'adhdhin Ar-Râtib' is used in the same context.

As for the term 'As-Sunan Ar-Rawâtib' in Prayers, it refers to the recommended (Sunnah) Prayers that associate with the obligatory (*Fard*) Prayers, whose time is linked to the time of the obligatory Prayers they associate with.

Contemporary Fiqh scholars also use the term 'Ar-Râtib' in the context of *Waqf* (endowment) and *Ijârah* (lease), referring to: "A fixed amount of rent or pay that is permanently assigned to a person."

• Ra's Al-Mâl (Capital) رَأْسُ الْمَالِ

Linguistically, the term 'Ra's Al-Mâl' refers to the principal amount of money without any profit or increase. In the Quranic Verse about usury, Allah says: {"*But if you repent, you may have your principal (capital); you do no wrong, nor are you wronged.*"} [Al-Baqarah (The Cow): 279]. It is also referred to as: the capital (*Sulb Al-Mâl*), as mentioned in a *hadîth* related by An-Nasâ'î regarding the endowment of the well of Rûmah: "*I bought it with my capital (Sulb Mâlî).*" As-Sindî commented, "That is, from the principal and capital of my wealth, not from the increase that the money has yielded. The capital is considered the most precious thing to merchants."

This term is used by Fiqh scholars in various contexts:

- In the context of *Salam* contracts to denote the advance payment

made by the purchaser (*Rabb As-Salam*) to the seller (*Al-Musalam Ilayh*) for a commodity to be delivered at a later date.

- In the context of *Mudârabah* contracts to denote the total amount of capital provided by the wealth owner (*Rabb Al-Mâl*) to the managing partner (*Al-Mudârib*) for investment by utilizing and exchanging it in different types of trades.
- In the context of capital partnerships to denote the amount of capital contributed by partners to be jointly managed and invested for the purpose of generating profits.
- In the context of the sales of trust, which include *Al-Murâbahah* (markup), *At-Tawliyah* (sale at cost), and *Al-Wad'iah* (sale below cost), to denote the original price for which the seller bought.
- In the context of usury to denote the principal amount of a loan or the agreed-upon original price of a deferred sale without any increase or profit in return for the deferment.

• *Rabb Al-Mâl* (Wealth Owner)

رَبُّ الْمَالِ

Linguistically, the term '*Rabb*' means the owner of something. It can also be used to denote the owner of anything that is not rational, such as: the owner of debt (*Rabb*

Ad-Dayn), and the owner of wealth (*Rabb Al-Mâl*).

The terminological usage of the term '*Rabb Al-Mâl*' does not go beyond its linguistic meaning.

• *Ribâ* (Usury)

رِبَا

Linguistically, the term '*Ar-Ribâ*' means the increase in its absolute sense.

In Shari'ah terminology, it is used in two meanings: specific and general.

- 1- The specific meaning of usury refers to the stipulated increase in return for delaying the settlement of a loan, or for any subsequent deferment of a debt after it has fallen due, whether the underlying cause is a loan, or a deferred payment sale (with additional fee), or any similar transactions - which is referred to as: the debt-based usury (*Ribâ Ad-Duyûn*), the deferment usury (*Ribâ An-Nasî'ah*), the pre-Islamic usury (*Ribâ Al-Jâhiliyyah*), and the apparent usury (*Ar-Ribâ Al-Jalî*).

It also refers to the increase in amount or period in terms of the sale of interest-bearing property for each other, as illustrated in the hadîth of 'Ubâdah Ibnus-Sâmit stating: "*Gold (is to be paid) for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, like for like*

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and equal for equal, hand to hand (i.e., payment being made on the spot). If these items differ, then sell as you wish as long as it is hand to hand.” This type is known as the sale-based usury (*Ribâ Al-Buyû*) and the non-apparent usury (*Ar-Ribâ Al-Khafî*) including its two forms: the excess usury (*Ribâ Al-Fadl*) and the deferment usury (*Ribâ An-Nasâ*).

- 2- The general meaning of usury refers to the debt-based usury (*Ribâ Ad-Duyûn*) and the sale-based usury (*Ribâ Al-Buyû*), as well as any invalid or prohibited transactions according to Shari‘ah. This is mentioned by scholars such as As-Sarakhsî, Ibn Hajar Al-‘Asqalânî, Ibn Juzayy, Ibn Rushd (the grandfather), Ibnul-‘Arabî, Ibn Rajab, and others.

Abû Al-‘Abbâs Al-Qurtubî in his book “*Al-Mufhim*”, and Abû ‘Abdullâh Al-Qurtubî in his “*Tafsîr*”, both stated that usury, in its general meaning, applies in Shari‘ah to any prohibited financial transaction or any illicit and forbidden earning, regardless of its underlying cause.

• ***Ribâ Al-Buyû*’ (Sale-Based Usury)**

ربا البيوع

In Fiqh terminology, the specific meaning of usury is divided into two types:

- 1- Deferment usury (a form of *Ribâ Ad-Duyûn*): This is the apparent

form of usury, which was prevalent among the Arabs during the pre-Islamic period, and its prohibition was revealed in the Qur’an.

- 2- Non-apparent usury (a form of *Ribâ Al-Buyû*): This is the subtle form of usury, whose prohibition was established in an authentic *hadîth* narrated by ‘Ubâdah Ibnus-Sâmit and others from the Prophet Muhammad (peace and blessings of Allah be upon him) who said: “Gold (is to be paid) for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, like for like and equal for equal, hand to hand (i.e., payment being made on the spot). If these items differ, then sell as you wish as long as it is hand to hand.” This is the type of usury that scholars refer to in their Fiqh compendiums, despite differences in their Fiqh schools. It was not known among the Arabs during the pre-Islamic period, and its prohibition was not revealed until the Battle of Khaybar in the seventh year of Hijrah.

The sale-based usury (*Ribâ Al-Buyû*) can be further subdivided into two forms: the excess usury (*Ribâ Al-Fadl*) and the deferment usury (*Ribâ An-Nasâ*). When someone sells something to another person, for example, a dinar for two dinars or a *Sâ*’ of dates for two *Sâ*’s of dates,

with a simultaneous exchange of the two countervalues, then this constitutes excess usury. When he sells him a dinar for ten dirhams or a Sâ' of dates for a Sâ' of barley, but he delays exchanging one of the two countervalues, then this constitutes deferment usury. When he sells him a dinar for a dinar and a half, but he delays exchanging one of the two countervalues, then this constitutes both excess usury and deferment usury.

Fiqh scholars differed regarding whether the prohibition mentioned in the hadîth is restricted to the six items stipulated therein or extends to other items as well. If it extends, then what are the underlying cause of its prohibition, both in presence and absence?

• **Ar-Ribâ Al-Haqîqî (Actual Usury)**
الرِّبَا الْحَقِيقِي

The actual usury (*Ar-Ribâ Al-Haqîqî*) refers to the stipulated increase in return for delaying the settlement of a loan, or for the deferment of a debt after it has fallen due.

It also refers to the increase in the sale of interest-bearing property for its same kind on the spot. Thus, it includes both the debt-based usury (*Ribâ Ad-Duyûn*) and the excess usury (*Ribâ Al-Fadl*) in sales.

Waliyyul-Lâh Ad-Dahlawî restricted it to the deferment usury (*Ribâ*

Ad-Duyûn), while the Hanafites restricted it to the excess usury (*Ribâ Al-Fadl*).

In Fiqh terminology, the actual usury (*Ar-Ribâ Al-Haqîqî*) is a counterpart for the constructive usury (*Ar-Ribâ Al-Hukmî*).

• **Ar-Ribâ Al-Hukmî (Constructive Usury)**
الرِّبَا الْحُكْمِي

The constructive usury (*Ar-Ribâ Al-Hukmî*) refers to the excess (increase) in the deferred payment regarding the sale of interest-bearing property, either of the same kind or a different kind, in case they agree on the underlying cause of usury, since there is an advantage to the immediate payment over the deferred one.

Ibn 'Âbidîn stated, "The deferred payment in either of the two countervalues is a constructive excess, without any compensation." This means that the constructive usury (*Ar-Ribâ Al-Hukmî*) is the same as the deferment usury (*Ribâ An-Nasâ'*) in sales, and this is the view of the Hanafites.

However, Waliyyul-Lâh Ad-Dahlawî disagreed with them and stated that it is the same as the excess usury (*Ribâ Al-Fadl*).

In Fiqh terminology, the constructive usury (*Ar-Ribâ Al-Hukmî*) is a counterpart for the actual usury (*Ar-Ribâ Al-Haqîqî*).

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• **Ar-Ribâ Al-Halâl (Permissible Usury)** الرِّبَا الْحَلَالُ

In Fiqh terminology, the permissible usury (*Ar-Ribâ Al-Halâl*) refers to gift for a return, which means that a person gives something to someone else with the intention of being rewarded with something better in return.

It is called ‘*Ribâ*’ in this context because it involves seeking an increase from the recipient of the gift. Ibnul-‘Arabî said, “The usury is permissible in gifts for a return. ‘Umar Ibnul-Khattâb said, ‘Whichever man gives a gift with the intention of receiving a reward, then he keeps his gift until having satisfaction from it. This is an exception to the general prohibition of usury.’”

The majority of Fiqh scholars and commentators have stated, in explaining the Quranic Verse: {“*And whatever you give for interest (Ribâ) to increase within the wealth of people will not increase with Allah.*”} [Ar-Rûm (The Romans): 39], that there are two types of usury: prohibited usury, which has been previously explained, and permissible usury, which is the gift for a return.

Ibnul-‘Arabî mentioned in his interpretation of this Quranic Verse, “We have clarified usury and its meaning in Surah Al-Baqarah, and explained its reality and ruling, which is prohibited there, and here

it is permissible. Accordingly, this establishes that usury has two categories: one is permissible, and the other is prohibited.”

In “*Hilyat Al-Fuqahâ*”, it is stated: “Usury has two forms: one is permissible, and the other is prohibited. As for the permissible form, it is when a person gives a gift to another for reward and seeks more than what he gave. This is permissible, although it is reprehensible.” This is confirmed by the Quranic Verse, {“*And whatever you give for interest (Ribâ) to increase within the wealth of people will not increase with Allah.*”}.

• **Ribâ Al-‘Ajlân (Spot Usury)**

رِبَا الْعَجْلَانِ

The term ‘*Ribâ Al-‘Ajlân*’ is used by Fiqh scholars in two meanings:

- 1- The excess usury (*Ribâ Al-Fadl*): It is reported in “*Al-Mabsûṭ*” that ‘Umar Ibnul-Khattâb said while he is on the pulpit: “O people, do not sell a dirham for two dirhams, for that is *Ribâ Al-‘Ajlân*.” As-Sarakhsi commented on this, saying: “His saying ‘for that is ‘*Ribâ Al-‘Ajlân*’ means the cash usury (*Ribâ An-Naqd*), indicating that usury has two types: the cash usury (*Ribâ An-Naqd*) and the deferment usury (*Ribâ An-Nasî‘ah*).”
- 2- The tax-farming (*Al-Qabâlah*): It is mentioned in “*Al-Istikhrâj*” by

Ibn Rajab that Ibn ‘Umar said: “*Al-Qabâlât* (tax-farming) is usury.” Ibn Taymiyyah explained that it is when a person guarantees a land with palm trees and farmers for a certain amount of its produce, while he does not contribute anything in terms of labour or capital. Instead, the farmers do the work and he pays *Al-Qabâlah* (tax-farming) and receives its exchange. This is seeking profit in the exchange of wealth without engaging in profession or trade, and this constitutes usury.

Abû ‘Ubayd reported in “*Al-Amwâl*” that it was said to Ibn ‘Umar: “We lease land in return for some of its produce (meaning the excess).” He replied: “That is the spot usury (*Ribâ Al-‘Ajlân*).”

• *Ribâ Al-Fadl* (Excess Usury)

ربا الفضل

The term ‘*Ribâ Al-Fadl*’ refers to the sale of interest-bearing property for its same kind on the spot, with an increase in one of the counter-values over the other, such as selling a dinar for two dinars in cash or a *Sâ’* of wheat for two *Sâ’s* of wheat with simultaneous exchange. (It is one of the two types of sale-based usury).

The interest-bearing property are the items mentioned in the *ḥaḍīth* of ‘Ubâdah Ibnuṣ-Ṣâmit and

others: “*Gold (is to be paid) for gold, silver for silver, ...*”, as well as what is analogous to these items according to the majority of scholars who have extended their ruling to other similar items. However, there is disagreement among them regarding the underlying cause of specifying these particular items. The Hanafites and Hanbalites argue that the underlying cause for gold and silver are being measured by weight, while wheat, barley, dates, and salt are being measured by volume. On the other hand, the Shafi‘ites and Malikites argue that the underlying cause for gold and silver are their capacity of being standard of value, while wheat, barley, dates, and salt are being commodities for consumption.

• *Ribâ Al-Qurûd* (Loan-Based Usury)

ربا القروض

This refers to the increase in the amount or the benefit stipulated for the loaner in return for delaying the settlement of a loan.

As-Sughdî said, “The loan-based usury has two forms: (1) To loan ten dirhams for eleven or twelve dirhams and so forth. (2) To stipulate a benefit for himself (the loaner) due to the loan, or it is stipulated for him.”

This term is used in the *Fiqh* compendiums of the Hanafite school and the Shafi‘ite school.

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• **Ribâ Al-Muzâbanah (Barter-Based Usury)** ربا المزابنة

This term is mentioned by some Malikite scholars, including Abû Al-Hasan Al-Mâlikî in his commentary on “*Ar-Risâlah*”, in the context of dividing the sale-based usury (*Ribâ Al-Buyû*) into three categories: excess usury (*Ribâ Al-Fadl*), deferment usury (*Ribâ An-Nasâ*), and barter-based usury (*Ribâ Al-Muzâbanah*). He said: “The barter-based usury is the sale of a measured amount of a commodity for an unmeasured amount, or the sale of an unmeasured amount for an unmeasured amount, of the same kind”, meaning from among the interest-bearing property.

Al-Mâzarî stated, “Regarding its usury, it is due to the possibility that one of the two countervalues may be more than the other, and there is no difference between its possibility and its certainty in terms of prohibition.” The basis for this is that similarity is a condition for the validity of the sale, and the assumed excess in it is the same as the certain excess, as stated in the rules of the school, so it is prohibited due to the differentiation.

As for ‘*Al-Muzâbanah*’, which means selling an item of unknown weight, measure, or number for a known quantity of the same kind, or for an unknown quantity of the same kind, in cases other than in-

terest-bearing transactions, the Malikite scholars stated that it is permissible if one of the two items is more than the other, and it does not fall under the category of usury.

• **Ribâ An-Nasâ’ (Deferment Usury)** ربا النسياء

This refers to delaying one of the two countervalues in the sale of interest-bearing property, either of the same kind or a different kind, in case they agree on the underlying cause of usury. This cause is their weight and measure according to the Hanafites and the Hanbalites, and their capacity of being standard of value and being commodities for consumption according to the Shafi’ites and the Malikites, since there is an advantage to the immediate payment over the deferred one.

It is one of the two types of sale-based usury (*Ribâ Al-Buyû*), and some scholars refer to it as: ‘*Ribâ An-Nasî’ah*’ because it means delay, like ‘*An-Nasâ*’.

• **Ribâ An-Nasî’ah or Ribâ Ad-Duyûn (Deferment Usury Or Debt-Based Usury)** ربا النسبة (ربا الدينون)

This refers to the stipulated increase on the principal amount in return for delaying the settlement of a loan, or for the deferment of a debt. For example, if someone loans another person ten dirhams

for eleven dirhams or the like to be delivered at a later date, or if a debt is established in someone's liability to another (whether it arises from a loan, a sale, or otherwise). So, when its maturity date has fallen due, the loaner demands for repayment, but the debtor says to him: "Lengthen the term for me and I will increase your dirhams", so he accepts.

In Shari'ah terminology, this type of usury is also referred to as: the debt-based usury (*Ribâ Ad-Duyûn*), the pre-Islamic usury (*Ribâ Al-Jâhiliyyah*), and the apparent usury (*Ar-Ribâ Al-Jalî*). It is categorically prohibited, and to which the prohibition of usury is prescribed in origin.

Exegetes highlighted its forms in their explanations of the Quranic Verses of usury:

- (a) Al-Jassâs stated, "It is established that the pre-Islamic usury (*Ribâ Al-Jâhiliyyah*) was typically a deferred loan in return for a stipulated increase, where the increase served as a compensation for the deferment. So, Allah has invalidated and prohibited it."
- (b) Al-Fakhr Ar-Râzî said, "As for the deferment usury (*Ribâ An-Nasî'ah*), it refers to the practice that was common and widely recognized during the pre-Islamic period, where people used to loan money on the condition

that they would take a certain amount every month while the principal remained untouched. Then, when the debt has fallen due, they would demand the debtor to pay the principal. If the debtor was unable to pay, they would increase both the debt amount and the period of repayment."

- (c) Mâlik related in "*Al-Muwatta'*" on the authority of Zayd Ibn Aslam saying: "Usury in the pre-Islamic period was that a man would give a loan to a man for a set term. When the maturity date has fallen due, he would say, 'Will you pay it off or increase me?' If the man paid, he took it. If not, he increased him in his debt and lengthened the term for him."

• Ribâ An-Naqd (Cash Usury)

ربا النقْد

This refers to the increase of one of the two countervalues in the sale of interest-bearing property for its same kind in advance, such as selling a dirham for two dirhams, hand-to-hand (i.e., payment being made on the spot).

Terminologically, the cash usury (*Ribâ An-Naqd*) is synonymous with the excess usury (*Ribâ Al-Fadl*), and it is used specifically by the Hanafites and the Shafi'ites, against other Fiqh scholars.

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• **Ribâ Al-Yadd (Hand-To-Hand Usury)** ربا اليد

This refers to delaying the receipt of one or both of the countervalues, without specifying a term, in the sale of interest-bearing property, either of the same kind or a different kind, in case they agree on the underlying cause of usury.

The hand-to-hand usury (*Ribâ Al-Yadd*) is attributed to the 'hand' because the receipt typically occurs through the hands.

This term is used specifically by the Shafi'ites, against other Fiqh scholars, and it is so close in meaning to the deferment usury (*Ribâ An-Nasâ'*), except that they made a precise distinction between them. They said, "In the hand-to-hand usury, one of the contracting parties leaves the contract session before the mutual receipt occurs without any agreement or mention of deferment, unlike the deferment usury, where the term or condition of deferment is explicitly stated for one of the two countervalues, even if it is for a short period."

• **Ribâ' (Residential Buildings)** ربا ع

Linguistically, the term '*Ar-Ribâ'*' refers to a place of residence or dwelling, as mentioned by Al-Mu-tarrizî.

Al-Fayyûmî said, "It is the people's place and home, and it has been used met aphorically to refer to the

people themselves."

It is stated in "*Al-Matla*" and "*An-Nihâyah*": "*Ar-Rab°* is the house and the place of residence." Ibn Battâl Ar-Rakbî said, "*Ar-Rab°* is the house in its entirety wherever it may be located."

An-Nasâ'i related: *Allah's Messenger (peace and blessings of Allah be upon him) ruled that pre-emption is to be given in everything that is shared in which the division is not clear, whether it is a house or a garden.*"

Ibn Bâtîsh said: "*Ar-Rab'ah*' and '*Ar-Rab°*' is the house in which a person settles and resides.

Ibnul-Athîr said: "*Ar-Rab'ah*' is more specific than '*Ar-Rab°*'"

In Fiqh terminology, Al-Mujaddidî (a Hanafite scholar) defined '*Ar-Rab°*' as: "The house in its entirety wherever it may be located, and likewise the dwelling place and the surrounding area of the house."

• **Ribh (Profit)** ربح

Linguistically, the term '*Ar-Ribh*' refers to the increase obtained from trade. It may be used figuratively to denote any benefit or gain that comes from one's work.

In Fiqh terminology, it denotes the increase obtained on capital as a result of utilizing wealth in various exchange transactions.

Ibn Khaldûn said, “Know that trade is the pursuit of profit through the growth of wealth, by purchasing goods at low prices and selling them at high prices. This applies to any type of commodity, whether it be flour, crops, livestock, or cloth. This amount of growth is called profit (*Ribh*).

The pursuer of this profit can either stockpile the commodity and waits for market fluctuations, buying them when prices are low and selling them when prices are high, then he maximizes his profit; or transport it to another region where there is a higher demand for that particular commodity than in the region of purchase, then he maximizes his profit; or sell it at high prices on deferred payment basis.”

Judge Ibnul-‘Arabî said, “Profit is what a person earns in excess of the value of the exchanged item, and it was made permissible for him if he owns the original value of the item exchanged in the transaction. This profit is determined according to the need of the buyer and the seller to conclude the deal, so the excess is always given by the needy party. If the seller is the needy party, he will give an excess of the price of his commodity value, and if the buyer is the needy party, he will give an excess of the price.”

According to Shari‘ah, there are two types of profit: permissible and

prohibited. If it arises from a permissible contract, it is lawful and acceptable. If it arises from prohibited transactions, it is illicit and prohibited.

Profit is a kind of growth, and therefore all profit is growth, but not all growth is profit. This is because growth can be profit, yield, or benefit.

• Ribh Mâ Lam Yudman (Profit of Non-Guaranteed Property)

ربح ما لم يُضْمَن

This is a Fiqh term mentioned by the Prophet Muḥammad, as related by Abû Dâwûd, At-Tirmidhî, An-Nasâ’î, Ibn Mâjah, Aḥmad, Ibn Khuzaymah, Ad-Dâraqutnî, and Al-Ḥâkim, when he (peace and blessings of Allah be upon him) “*prohibited the profit of non-guaranteed property*”.

Fiqh scholars differed in its meaning:

- As-Sughdî (a Hanafite scholar) interpreted it as: “When a person purchases a commodity and it remains in the seller’s possession, then a third party causes damage to it, so the buyer follows the damager and takes from him more than the original purchase price, then it is not permissible for the buyer to have more than the original purchase price.”
- A group of scholars interpreted it

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as: "Selling an item has not been yet taken possession", and it is expressed by 'Profit' because it considers its cause, in the context of attributing the effect to its cause.

- The majority of scholars interpreted it as: "The profit obtained from selling purchased items before the buyer takes possession of them and they are transferred from the seller's guarantee to the buyer's guarantee." However, they differed in the underlying cause of its prohibition, based on four opinions:

1- At-Tahâwî and others mentioned that profit is not permissible for anyone unless the item falls under his guarantee. So, if the buyer sells the item before taking possession of it, its profit is not permissible for him because it is under someone else's guarantee. Once he takes possession of it, it falls under his guarantee, so it is permissible for him to sell it where he wishes, and its profit becomes permissible.

2- Ibnul-'Arabî stated, "As for the profit of non-guaranteed property, it is not permissible because its sale is not allowed. This is because the non-guaranteed asset is either not owned, which falls under selling what you do not have, or it is not possible to deliver it,

which falls under uncertainty and risk."

3- It is argued that it means, "The profit, which includes the benefits and excesses obtained from the sold item, such as milk and eggs, is only permissible for a person if the loss would be borne by him. If the loss would not be borne by him, such as the damage of the sold item before taking possession of it, then its guarantee falls on the seller, and it is not permissible for the buyer to recover the benefits and excesses obtained by the seller before taking possession of it, because the sold item does not fall under the buyer's guarantee through taking possession. So, it is not permissible for him to have any profit before taking possession of it."

4- Ibnul-Qayyim said, "The underlying cause of prohibiting the profit of non-guaranteed property has been problematic for some Fiqh scholars, and it is one of the virtues of Islamic Shari'ah. This is because the buyer has not taken possession of it, and the seller's attachment to it has not been severed, so the seller aspires to annul the sale and refrain from its delivery if he sees that the buyer has profited from it.

If the seller delivers it to the buyer, he does so only due to ignorance or regret over missing out on profit, as his desire remains attached to it. This is evident observationally. One of the perfections and virtues of Shari'ah is the prohibition of profiting from it until its ownership is established and falls under his guarantee, so the seller despairs of annulment, and his attachment to it is severed."

It seems that Ibnul-Qayyim's cause is based on the opinion of his Sheikh Ibn Taymiyyah regarding the underlying cause of prohibiting the sale of what is not yet taken possession of: "It is not the consecration of the two guarantees, but rather the inability of the buyer to deliver it; because the seller may or may not deliver it, especially if the seller sees that the buyer has profited from it, so he seeks to annul the sale either by repudiation or fraud in annulment. According to this underlying cause, it is permissible to sell as per the purchasing price without making profit (*Tawliyyah*) before receiving the sold item.

• **Radd (Surplus Redistribution or Return)** 35

Linguistically, the term '*Ar-Radd*' means redistribution.

In Fiqh terminology, it is used

in the context of inheritance to denote: "Redistributing the surplus property of inheritance, where there are no rightful agnatic heirs, among those with prescribed shares proportionate to their shares." This occurs by an increase in portions and a decrease in shares. The surplus redistribution (*Ar-Radd*) is an opposite of the proportionate reduction of the heirs' shares (*Al-'Awl*).

As for the term '*Ar-Radd*' in the context of suspended transactions according to Fiqh scholars, it refers to any indication of refusal by the one whose ratification is necessary to execute and enforce the contract. There is no distinction whether it is expressed by a statement or an action that implies his consent... This is because if the holder of this ratification chooses to reject the transaction, he has the right to do so, and once the rejection had been expressed, he cannot ratify it afterward because his rejection renders the transaction invalid.

Regarding the return (*Ar-Radd*) due to the option, it refers to annulling a contract by the party who is entitled to this option, and returning the sold item to the seller and recovering the price, as in the case of returning the sold item due to defect option, inspection option, breach of description option, or the like.

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• **Radd Al-Mazâlim (Redressing Grievances or Rectification of Injustices)** رَدُّ الْمَظَالِمِ

Linguistically, the term ‘*Ar-Radd*’ denotes sending back or returning.

Within the context of Islamic Fiqh, the term ‘*Radd Al-Huqûq*’ or ‘*Radd Al-Mazâlim*’ refers to the act of returning rights and wealth to their rightful owners, whether they were taken rightfully or wrongfully. For example, returning deposits, loans, and other trusts to their owners, and returning the appropriated or stolen items, the property acquired through bribery or embezzlement, or any other means of consuming wealth wrongfully, to their rightful owners.

• **Rizq (Provision or Stipend)** رِزْق

Linguistically, the term ‘*Ar-Rizq*’ refers to the sustenance that Allah provides to all living beings for nourishment, which sustains their bodies and promotes their growth.

Abû Hilâl Al-‘Askarî said, “The stipend (*Ar-Rizq*) is the ongoing grants allocated by the ruler on a fixed basis.”

In Fiqh terminology, it refers to the stipend allocated from the state treasury according to necessity and sufficiency, whether on a daily payment or a monthly payment, for soldiers, judges, muftis, Imams, muez-

zins, and anyone else who serves the public interest. They are called: “*Al-Murtazaqah*” (i.e., those who receive the stipend).

The difference between the stipend (*Ar-Rizq*) and the rent (*Al-Ajr*) given in a lease contract, as mentioned by Al-Qarâfi in his “*Al-Furûq*”, is that: “Both involve giving money in return for benefits served by others. However, the concept of ‘*Al-Arzâq*’ is more closely associated with the concept of ‘*Al-Ihsân*’, and are further removed from the concept of ‘*Al-Mu‘âwadah*’, whereas the concept of ‘*Al-Ijârah*’ is further removed from the concept of ‘*Al-Musâmahah*’, and is more closely associated with the concept of ‘*Al-Mukâyasah*’.”

Some scholars highlighted the difference between the stipend (*Ar-Rizq*) and the grant (*Al-‘Atâ*), stating that the grant is imposed yearly, not based on necessity, but according to the receiver’s patience and his richness regarding the religious interests, while the stipend is allocated according to sufficiency. It is also said that the grant is given annually or monthly, while the stipend is provided day by day. In “*Mukhtasar Al-Karkhî*”, it is mentioned that the grant is imposed for soldiers, while the stipend is imposed for the poor.

However, upon examining the scholars’ statements regarding the stipend (*Ar-Rizq*) and the grants

(*Al-ʿAtâyâ*), one notices that they generally do not differentiate between them in most of their usages.

• **Risâlah (Messengership)** رسالة

Linguistically, the term ‘*Ar-Risâlah*’ refers to the transmission of a matter from the sender to the recipient. Its origin is ‘*Al-Majallah*’, meaning a sheet that contains a few issues of the same type.

In Fiqh terminology, the messengership is defined as: “The transmission of information by one person to some other person by means of some third person who is not privy to the matter in question.” This means that messengership (*Ar-Risâlah*) is simply made for the purpose of conveying the message and delivering the sender’s exact words to the recipient. Its condition is that the contract is explicitly attributed to the sender. That is, the messenger should clearly state: “I am a messenger and I have sold you this property for such and such money...” In Article (1454) of “*Majallat Al-Ahkâm Al-ʿAdliyyah*”, it is stated: “Messengership is not of the same nature as agency. So, if A sends his servant to fetch him money which his banker is going to loan him, the servant is A’s messenger, not his agent to borrow money.”

The most important differences between the messengership (*Ar-Risâlah*) and the agency (*Al-Wakâlah*)

are that the messengership is mostly conveyed by the exact words of the sender, while agency is usually concluded by any words of agency. Additionally, the messenger is required to explicitly attribute the contract to the sender, whereas the agent has the option to either attribute the contract to himself or to the principal. Furthermore, the contract rights in agency belong to the agent because he has the legal capacity to enter into contract, whereas the contract rights in messengership do not belong to the messenger because he acts solely as a communicator for entering into the contract, and all rights belong to the sender because he is the one who has the legal capacity to enter into contract.

• **Rasm (Fee)** رسم

Linguistically, the original meaning of the term ‘*Ar-Rasm*’ is to mark or write on something. It also refers to the trace, or its remnant.

In modern finance, the fee is an amount of money levied compulsorily by a public authority from the individuals in exchange of a service it provides for them.

In Fiqh terminology, this term is not used in this sense. Al-Fâdil Ibn ʿÂshûr mentioned that it is used by some Malikite scholars to mean a “title deed” or “ownership document”.

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• **Rushd (Discretion)**

رُشد

Linguistically, the original meaning of the term ‘*Ar-Rushd*’ or ‘*Ar-Rashad*’ is guidance and uprightness.

As for its association with adulthood which follow childhood and makes the person eligible enough to reasonably manage his wealth, Fiqh scholars differed regarding its nature and criteria into two approaches:

The first approach is held by Abū Hanīfah, Mālik, and Aḥmad. According to them, the discretion (*Ar-Rushd*) in a young person refers to his ability to manage and grow his wealth in a rectitudinous manner without losing or squandering it, regardless of his uprightness or corruption in religion. Whoever attains this characteristic, his wealth is entrusted to him, even if he is morally corrupt. Accordingly, ‘*Ar-Rashid*’ is defined as: “Someone who is rectitudinous in managing his wealth”, meaning someone who preserves his wealth, avoids extravagance, and refrains from unnecessary spending.

The second approach is held by As-Shāfi‘ī, Ibnul-Mawwāz, and Ibn Al-Mājishūn (a Malikite scholar). According to them, the discretion (*Ar-Rushd*) involves the rectitude in both wealth and religion. Accordingly, wealth should only be entrusted

ed to someone who is rectitudinous in managing his wealth who manages his wealth and is incorrupt in his religion.

• **Rishwah (Bribery)**

رشوة

Linguistically, the term ‘*Ar-Rishwah*’ signifies bribery.

In Fiqh terminology, Al-Jurjānī defined it as: “Anything given to abolish a right or to establish a falsehood.”

An-Nawawī stated, “Bribery is absolutely prohibited for judges and other officials because it is given to them either to judge justly or to refrain from injustice, both of which are obligatory for them, so it is not permissible to take compensation for it. As for the one who pays a bribe, if this leads to a falsehood, it is prohibited for him, and this is what is meant by the cursed briber. However, if it leads to the attainment of a right or the prevention of an injustice, then it is not prohibited. The permissibility and obligation of accepting it vary depending on the circumstances.”

Ibnul-Qayyim said, “The difference between the gift and the bribery, although they may appear similar outwardly, lies in intention. The briber intends to abolish a right or establish a falsehood, and he is cursed by the Prophet Muḥammad (peace and blessings of Allah be upon him): If he bribes to ward off

injustice from himself, the bribee alone is singled out by curse. As for the gift-giver, he intends to bring about affection, love, and benevolence: If he intends to reward, then he is a reciprocator, and if intends to gain a profit, then he demands much (in return).”

• **Ridâ (Satisfaction)**

رضا

Linguistically, the term ‘*Ar-Ridâ*’ (contentment and satisfaction) is an opposite of ‘*As-Sakhat*’, which means discontent and unsatisfaction.

The human’s satisfaction with Allah means not to dislike what He decrees for him. That is, he should be satisfied with what befalls him and what he misses without complaint or objection. Allah’s satisfaction with a human means seeing him fulfilling His commands and refraining from His prohibitions.

Fiqh scholars differed regarding the meaning of satisfaction into two opinions:

The first opinion is held by the Hanafites. According to them, the satisfaction refers to the completeness of choice, i.e.; reaching its ultimate point, so that its effects appear outwardly in the form of cheerfulness on the face and the like. Some of the Hanafites express it as: “The preference of something and finding it pleasing.”

The second opinion is held by

the majority of scholars, including the Shafi‘ites, the Malikites, and the Hanbalites. According to them, the satisfaction refers to the intention to do an act without coercion.

Accordingly, the Hanafites’ definition of the satisfaction is more specific than the majority’s definition. The mere intention to achieve a certain outcome is considered a satisfaction according to the majority, even if the choice does not reach its ultimate point and the pleasure does not appear. However, according to the Hanafites, it is only considered satisfaction if pleasure and preference are achieved at the very least.

• **Radkh (Small Gift)**

رضخ

Linguistically, the term ‘*Ar-Radkh*’ originally means a small or paltry gift. It is also used to refer to the act of giving a small amount of something.

In Fiqh terminology, it refers to the small amount out of the spoils of war gifted by the Muslim ruler as he deems appropriate, and it is distributed among the non-combatants who are not obliged to fight except in cases of necessity and those who have performed some useful services during the war, such as women, discerning minors, and the like who are not obligated to participate in fighting but it is necessary to give them a share for their participation.

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• **Ri'âyah (Care)** رِعَايَة

Linguistically, the term '*Al-Ri'â-yah*' means oversight, protection, and taking care of something.

Abû Hilâl Al-'Askarî mentioned that there is a difference between the care (*Ar-Ri'âyah*) and the preservation (*Al-Hifz*). He said, "The opposite of preservation is loss, while the opposite of care is neglect. That is why when the livestock is left without a shepherd, it is considered neglected (*Hamal*). The neglect (*Al-Ihmâl*) refers to any action leads to loss. Accordingly, the preservation involves preventing harm from something to avoid its destruction, while the care involves taking action to prevent that harm. Hence, it is said that someone takes care of the covenants between him and another person, meaning he preserves the factors that maintain these covenants. This is similar to a shepherd of livestock who oversees them and removes any potential causes leading to their loss."

• **Rifd (Gift)** رِفْد

Linguistically, the term '*Ar-Rifd*' means gift and assistance.

In pre-Islamic period, the Qura-ysh tribe used to practice a form of communal support called: "*Ar-Rif-âdah*". This involved a cooperation so that each person in the tribe would contribute as much as he could, so they would collect a great amount of money which was then

used to purchase food and raisins for making wine, feed the people and give them water during the days of pilgrimage until the season of pilgrimage ended.

This concept is referred to in a Prophetic *hadîth* about *Zakâh*, stating: "... and who gives the *Zakâh* on his wealth agreeably with a willing soul, and it was a '*Râfidah*' for him..." Ibnul-Athîr explained, "*Ar-Râfidah*' is the active participle of '*Ar-Rifd*', which means assistant, as his soul helps him perform it."

In another *hadîth* about the signs of the Hour, the Prophet Muhammad (peace and blessings of Allah be upon him) said: "... and that the spoils of war (*Al-Fay*) becomes a '*Rifd*'." Ibnul-Athîr explained, "That is, an assistance and a gift. It implies that '*Al-Kharâj*' and '*Al-Fay*' obtained, which belong to the Muslim community, render as assistances and gifts, and are allocated for certain individuals without others, so they are not distributed appropriately."

• **Ruqbâ (Donation under Expectation)** رُفْبَى

Linguistically, the term '*Ar-Ruqbâ*' means awaiting in anticipation.

In Fiqh terminology, it is a type of gift. Its form is that the owner of a house or similar property says to someone, "I have donated this house to you, or it belongs to you, for the

rest of your life. However, if you die before me, then it returns to me, and if I die before you, then it belongs to you and your heirs.” It is as if he is saying, “It belongs to whichever of us outlives the other, or to the last of us to die.”

It is called so because each one of them is awaiting in anticipation for the death of the other.

• **Raqûb (Favor under Expectation)**

رَقُوب

Linguistically, the term ‘*Ar-Raqûb*’ is used in the context of the aged and widows, meaning those who are unable to earn a livelihood or do not have any wealth. They are called so because they wait a gift and an assistance from others.

It is also used in the context of a woman whose children are dying after childbirth, so she anticipates the death of her child due to the frequent death of her children.

• **Rikâz (Buried Treasures or Natural Ores)**

رِكَاز

Linguistically, the term ‘*Ar-Rikâz*’ refers to any property buried under the ground either by a human being like a treasure, or naturally like minerals.

Fiqh scholars differed regarding the precise definition of ‘*Ar-Rikâz*’ into two opinions:

1- According to the majority of sch-

olars, including the Shafi‘ites, the Malikites, and the Hanbalites, it refers specifically to the property buried during the pre-Islamic period.

2- According to the Hanafites, it refers to any property buried under the ground, either naturally or being deposited in it (by a human being), so it applies to both natural minerals and buried treasures.

• **Rakkâd (Itinerant Merchant)**

رَكَاز

Linguistically, the term ‘*Ar-Rakkâd*’, as stated by Al-Muṭarrizî, means to strike the animal with your legs to spur it on. It is also used metaphorically for running.

As for the term ‘*Ar-Rakkâd*’, it refers to a merchant who engages in buying and selling goods in different regions.

Abû Al-Faḍl Ad-Dimashqî stated, “Merchants are divided into three categories: itinerant merchant (*Ar-Rakkâd*), wholesale merchant (*Al-Khazzân*), and supply merchant (*Al-Mujahhiz*) ... The essence of trade in buying and selling goods is to buy from someone who is willing or compelled to sell for the price, and to resell to someone who is willing or in need to buy. This is one of the most reliable means of ensuring the marketability of the purchased item and the attainment of profit. The

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merchant needs to have as much bad suspicion as he has good suspicion, because if he has bad suspicions, this would serve as a means of preserving his capital, and if he has good suspicions, this would endanger his capital and what is feared to happen to it would exceed what he has expected.”

• *Rihân* (Bet)

رِهَان

The Fiqh usage of the term ‘*Ar-Rihân*’ does not go beyond its linguistic meaning, which refers to pledge, wager, or bet.

• *Rahn* (Pledge)

رَهْن

Linguistically, the term ‘*Ar-Rahn*’, as described by Ibn Fâris, denotes holding something as security for a right or something else.

According to Fiqh scholars, it is used to refer to two things: the contract itself, and the pledged item. When referring to the contract, it is defined as: “Setting aside property from which it is possible to obtain payment or satisfaction of some claim.” When referring to the pledged item, it is defined as: “The property served as security for the debt to be collected from its value if the debtor fails to pay off.”

• *Rawâj* (Circulation)

رَوَاج

Linguistically, the term ‘*Ar-Rawâj*’ refers to the state of being marketable or requested.

Fiqh scholars use it to refer to the

currency accepted in transactions among people. They say, “The dirhams are in circulation”, meaning it is widely accepted in transactions among people. It is an opposite of ‘*Al-Kasâd*’, which terminologically means: “The situation where a particular type of currency loses its circulation and acceptance as a medium of exchange throughout the entire country.”

At-Tâhir Ibn Âshûr used the term ‘*Ar-Rawâj*’ in another meaning, not expressed by other scholars. He mentioned that one of the purposes of Shari’ah regarding wealth is to be in circulation. Then, he defined ‘*Ar-Rawâj*’ as: “The circulation of wealth in the hands of as many people as possible in a legitimate manner.” He further explained, “One of the intended meanings of circulation is to exchange wealth with a greater number of individuals within the country in a manner that does cause a sin to whoever acquires it, whether through trade or through rents paid to workers by the wealth owners. Facilitating the circulation of wealth among individuals and preventing it from being monopolized by a few individuals or groups, or the exchange of wealth from one person to another, is a legitimate purpose. This concept is inferred from the Quranic Verse regarding the distribution of spoils of war (*Al-Fay*): {“... so that it will not be a perpetual distribution among the

rich from among you”} [Al-Hashr (The Mustering): 7], where the “perpetual distribution” implies the circulation of wealth among people and exchanging it with them. That is, so that the wealth of the spoils is not received by the rich from the rich, like the firstborn son from his father, or a friend from his friend.”

• **Ray‘ (Yield)**

رَيْع

Linguistically, the term ‘*Ar-Ray*’

means increase and growth.

In Fiqh terminology, the majority of scholars interpret it in the sense of ‘*Al-Ghallah*’, and they use both terms interchangeably to refer to the same concept: the increase, growth, and income generated from crops, fruits, milk, land rent, house rent, and the like.



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Zây (ز)

• Zarnaqah (Buy-Back Arrangement)

زَرْقَاةٌ

Linguistically, the term ‘Az-Zarnaqah’ carries several meanings, including: debt, increase, buy-back (‘Inah), perfect beauty, or watering using a pulley system (Az-Zarnûq).

The term ‘Az-Zurnûq’ refers to a narrow watercourse or small river. ‘Az-Zurnûqân’ refers to the two lantern-like structures built over a well, or the two walls or pillars supporting a crossbar from which a pulley is suspended for drawing water.

In Fiqh terminology, as mentioned by Al-Azharî in his book “Az-Zâhir”, “The buy-back arrangement (Az-Zarnaqah) is a transaction whereby one buys a commodity on a deferred payment basis for a specific price, and then resells it to someone other than its original seller on the spot. This practice is permissible according to the majority of scholars. It is narrated from ‘Āishah (may Allah be pleased with her) that though she used to take her allocation (‘Atâ’), which was 10,000 dirhams, from Mu‘âwiyah, she used to deal with the buy-back arrangement (Az-Zarnaqah), which

is the permissible form of ‘Al-‘Inah.’”

This term is included by Al-Muzanî in his “Mukhtasar” of the words of Imam Ash-Shâfi‘î, and its meaning is known among the Hanbalites as: ‘At-Tawarruq’.

• Zakâh (Obligatory Alms-Giving)

زَكَاةٌ

Linguistically, the term ‘Az-Zakâh’ signifies growth, increase, blessing, purification, and righteousness.

In Shari‘ah usage, it refers to the determined portion of wealth prescribed by Allah for those who deserve it. It is also used to refer to the act of paying this portion. Al-Mâwardî and others define it as: “A term denotes taking a determined share, out of a specific wealth, with specific descriptions, for particular categories (of people).”

An-Nasafî stated, “It is called ‘Zakâh’ because it purifies the wealth with blessing, and purifies the person with forgiveness.”

• Ziyâdah (Addition)

زيادة

Linguistically, the term ‘Az-Ziyâdah’ denotes introducing a matter not existent in the essence of something. Ar-Râghib stated, “It is the act of joining something to the original essence of a thing.”

The Fiqh usage of the term ‘Az-Ziyâdah’ does not go beyond its linguistic meaning.

According to Fiqh scholars, it is categorized into two types: connected (*Muttasilah*) and disconnected (*Munfasilah*). Each type can be further classified into: born (*Mutawallidah*) and non-born (*Ghayr Mutawallidah*). The born connected addition, such as: fat or beauty, and the non-born connected addition such as: dyeing or sewing. The born disconnected addition such as offspring or fruit, and the non-born disconnected addition such as wages or profits.

• Zuyûf (Counterfeit)

زُيُوف

Linguistically, the term ‘Az-Zayf’ denotes something of poor quality. It is used to describe coins, money, or other objects that are not genuine or of poor quality.

In Fiqh terminology, it is mentioned in “*Fatâwâ At-Tatârkhâniyyah*”: “There are four types of dirhams: pure dirhams (*Jiyâd*), debased dirhams (*Nabahrajah*), counterfeit dirhams (*Zuyûf*), and base dirhams

(*Sattûqah*)... “The counterfeit dirhams (*Az-Zuyûf*) are the adulterated ones. The majority of scholars stated, “The counterfeit dirhams (*Az-Zuyûf*) refer to the dirhams considered as counterfeit and are rejected by the state treasury, but they are still accepted in transactions by merchants. There is no harm in buying with these dirhams, but it is made clear to the seller that they are counterfeit.”

It is mentioned in “*Anfa‘ Al-Wasâ’il*”, “It is understood from their statement that the counterfeit dirhams are purer, then comes the debased dirhams, and then the base dirhams. the counterfeit dirhams are considered purer than the debased dirhams because the first are considered counterfeit and rejected by the state treasury without merchants, and the latter are rejected by merchants, and the state treasury is more likely to reject it.”



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Sin (س)

• Sâ'î (Zakâh Collector) ساع

Linguistically, Sâ'î means the ruler of any matter or people.

In Fiqh usage, Sâ'î means *Zakâh* collector, the person who is authorized to collect the *Zakâh* of grazing animals on the authority of the imam.

• Sâ'ibah (She-Camel Let Loose for Free Pasture for False Gods) سائبة

Linguistically, Sâ'ibah means something which is neglected. It is applied to money that its owner leaves behind; That is, he neglects it without making it anyone's property or an endowment for any charitable cause.

In Quran and sunnah, Sâ'ibah refers to a camel that is let loose and is not prevented from pasture, because of a vow related to the recovery of a sick person, the arrival of an absent person, or something else.

The terms Sâ'ibah is also used linguistically and by Scholars of Fiqh to refer to a slave who is freed, and the one who freed him has no loyalty over him, so he puts his wealth

wherever he wants, because he has no heir.

• Sâ'imah (Grazing Animals) سائمة

Linguistically, Sâ'imah means livestock that grazes on its own.

The Fiqh use of the word does not deviate from its linguistic meaning. In Shari'ah, Sâ'imah is such animals that graze on their own for most of the year.

• Sabaq (Race Prize) سبق

Linguistically, Sabaq means what the contestants bet on, so whoever comes first takes it.

Scholars of Fiqh differ regarding what is permissible for race, according to two opinions:

The first opinion is adopted by the Hanafites scholars, which is that it is only permissible in the four types: hoof, camel-toe, e blade, and foot, and not in any other case.

The second opinion is adopted by the majority of Scholars of Fiqh, which is that it is permissible only in three cases: blade, camel toe, and hoof only.

Here, blade means an arrow with a blade, hoof means horse, and camel-toe means camel.

• Sattûqah (Fake Money) ستوة

In Fiqh terminology, Sattûqah means "counterfeit or fake dirhams"

• **Sijill (Record)**

سجل

Linguistically, the record is everything that is written in it.

In Fiqh terminology, the record is called the judge's book that includes the implementation of what was proven to him and the implementation of what he ruled. Accordingly, An-Nawawî defined it by saying: "It is the one in which the minutes are written, and in which the execution of and implementation of the judgment is recorded."

Al-Fayyûmî said: "The judge recorded is when he decides, rules and records his ruling in the record."

Al-Mâwardî said: "As for the minutes, it is the statement of the situation, and what happened between the disputants of the claim, admission, denial, evidence, and oath.

As for the record, it is the implementation of what is proven to him, and the implementation of what he ruled. This is the difference between minutes and a record.

If the execution of the ruling is mentioned in the minutes, it will have the same meaning as the record. If the statement of the situation is mentioned in the record, it will have the same meaning as the minutes.

It is stated "Mu'allimat Al-Fiqh Al-Mâlikî" that: "Records are documents of notarization, which were

supervised by specialized experts, one of whom was called a writer of conditions or a notary, such as the Faqih Alî Ibn `Abdullâh Ibn Ibrâhim Al-Mutaiti, the judge of Shari'ah, who was the notary of Fez and the holder of its records in the sixth century AH.

• **Suht (Unlawful Wealth)**

سحت

Linguistically, *Suht* means the peel that is removed.

In Fiqh terminology, it means: "All unlawful wealth or food that it is not permissible to earn or eat." Ibn Faris said: It was called *Suht* because it has no permanence. An-Nasafi said: It was named so because it destroys what eats it, meaning it eradicates it. Judge `Iyâd said: This is because *Suht* corrupts wealth, that it removes its blessing.

Ar-Râghib Al-Asbahânî mentioned: "*Suht*" refers to the forbidden thing that brings shame to its owner. This is because it removes his religion or his chivalry.

• **Sakhâ' (Generosity)**

سخاء

Linguistically, *Sakhâ'* means generosity.

In Fiqh terminology, Al-Munâwî defined "*Sakhâ'*" by saying: It is generosity and giving what is due to however deserves it. Al-Mâwardî said: "The definition of generosity is giving what is needed when it is needed to those who deserve it."

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• **Sukhrah (Forced Labor)** سخرة

Linguistically, Sukhrah means making fun of someone.

Also, Sukhrah means forced labor.

Accordingly, some Scholars of Fiqh defined Sukhrah as: "A servant, an animal, or anything else that is employed without compensation or price."

• **Sadd Az-Zarâ'i' (Blocking Pretexts)** سد الذرائع

What is meant by Sadd Az-Zarâ'i' in Fiqh terminology is: "preventing permissible things that are used as a pretext to do evil and prohibited actions." In other words, it is the elimination of the means of corruption if the righteous action that does not include corruption is used as a means of causing corruption. Judge `Abdul-Wahhâb Al-Baghdadî said: "It means that a permissible thing is prevented if there is clear evidence that it is used as a means or pretext to commit a prohibited action."

The difference between tricks and blocking pretexts, as Ibn Taymiyyah said: "The trick is when its owner intends something that is forbidden in Shari'ah, so this must be prevented from his corrupt intention. As for blocking the pretexts, this is done with the validity of the intention, for fear that this will lead to a trick." (pretext).

• **Sariqah (Theft)** سرقة

Linguistically, Sariqah (theft) means taking what does not belong to you secretly. In this sense, it does not differ from its Shari'ah meaning, as it was defined according to it as: taking the wealth of others secretly and by concealment.

This is the reality of theft, regardless of whether it requires amputation or not. As for theft in which the hand is to be amputated, according to the Scholars of Fiqh, it is when a sane, adult person who adheres to the provisions of Islam takes a share of wealth with the intention of stealing it from a place where similar items are usually kept and saved.

Ibn Qutaybah said: "The thief, in language, is one who takes what is not belonging to him secretly. If he takes it while he is entrusted with it secretly, then he is a traitor. It is said: Every traitor is a thief, but not every thief is a traitor. If he declares his theft and does not conceal it, then he is a usurper. Then, the Sunnah makes it clear that amputation is to be applied only on specific cases of theft, on specific matters, and on specified amount.

• **Si`r (Price)** سعر

Linguistically, price is the compensation for which items are sold.

The use of the word by Scholars of Fiqh does not deviate from its linguistic meaning. Judge `Iyâd said:

The price is the compensation at which the goods in markets are evaluated, and pricing implies setting a certain price that cannot be increased. Yûsuf Ibn `Abdul-Hâdî said: "The price of a commodity is its price that is often known among people."

• Suftajah (Bill)

سفتجة

Linguistically, Suftajah means restricted or established thing.

In Fiqh terminology, Suftajah it is a piece of paper, a book, or an instrument that a person writes to his representative or debtor in another country, obligating him to pay a sum of money to someone who lent him a similar amount. This transaction has been called "Suftajah" because of the strictness and documentation of the matter and the avoidance of trouble and risk.

• Sifsîr (Broker)

سفسير

Linguistically, Sifsîr means broker.

This word is also applied **linguistically** to the servant, the follower, the one who is responsible for the thing, and the genius who is skilled in his craft.

• Safah (Foolishness/Prodigality)

سفه

Linguistically, Safah means foolishness and carelessness.

In Fiqh terminology, Safah me-

ans extravagance or wasting wealth in a way contrary to the requirements of reason or Shari'ah, even if it is for good, such as if a person spent all his wealth on building a mosque without a general need.

Article 946 of "*Al-Majallah Al-'Adliyyah*" states: "A prodigal person is a person who by reckless expenditure wastes and destroys his property for no purpose. Persons who are deceived in their business owing to their being stupid or simple-minded are also considered to be prodigal persons."

• Saqqât (Seller of Poor Goods)

سقاط

Linguistically, Saqqât means bad goods, and a mistake in words and deeds.

Saqqât and Saqtî both refers to the one who sells bad goods.

In the *hadîth* of Ibn `Umar: "He used to go out in the morning and not pass by a Saqqât or a salesman without greeting him."

• Suqût (Dropp off/Falling/Canceling)

سقوط

Linguistically, Suqût refers to throwing something from a high place to a low place, such as a person falling from the roof.

Scholars of Fiqh use the word erect to mean cancellation of necessity or requirement. Dropping an obligation from an insane person

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means cancellation of the requirement to do what is commanded and abandoning what is forbidden. Waiving alimony from a person means that it is not necessary for him and the obligation to do it has been dropped. Forfeiting a debt means absolving one's liability of obligation to pay it, and waiving an obligation means that his requirement and command to fulfill it is waived, etc.

• **Sikkah (Road)** سكة

The word “*Sikkah*” refers **linguistically** to the wide alley, the post office, the road lined with palm trees, the iron with which the land is plowed, and the engraved iron on which dirhams and dinars are minted.

In Fiqh terminology, Scholars of Fiqh used “*Sikkah*” to mean the engraved iron with which silver dirhams and gold dinars are minted and printed on, just as they called it the minted money itself.

Abû Dâwûd and Ibn Mâjah narrated from the Prophet (peace and blessings of Allah be upon him) that he “(He) forbade breaking the coins of the Muslims that are in circulation among them, without any necessary reason”

• **As-Sikkah A-Ma'bûrah (Palm orchard)** السكة المأبورة

As-Sikkah A-Ma'bûrah means

a garden of lined palm trees. It also refers to the road on which houses are lined.

• **Suknâ (Residence)** سكنى

Linguistically, *Suknâ* means residence in the house

Al-Munâwî defined it idiomatically and said: “*Suknâ* to be granted residence in a house without rent.” Moreover, the term “*Suknâ*” is used by Scholars of Fiqh when they speak about the wife's right over her husband, when she is required to pay maintenance and housing, and when she is prevented from it.

Their “right of residence” is also mentioned in endowments and wills, where they say: Whoever is entitled to live in an endowment house, he has the right to live in it for the duration of his life with his family, relatives, and servants, and he has the right to have someone else live in it without compensation. After his death, the right of residence is transferred to his son if the donor permits this right, otherwise, it goes to the channel for which the donor assigned the house.

Whoever is entitled, by making a will, to live in a house, if the ownership of the house comes from a third of the testator's money, he has the right to live in it with his dependents, relatives, and servants for the duration of his life if the will is absolute or stipulates for

life-duration residence, or to live in it until the expiration of the period if the period of benefit is specific, and after that the right is returned to the heirs of the testator. If the ownership of the house does not come out of the third, then the legatee has the right to live in the amount that comes out of the third if the heirs do not allow the will to be for life duration, and the heirs have the right to benefit from what exceeds what comes out of the third of the estate.

• Salab (Stolen Item)

سلب

Linguistically, *Salab* means something that is stolen. That is, what is taken from a person **In Fiqh terminology**, it is the ridding animal of the dead person and the weapons, clothes, saddles, bridles, etc., on it.

At-Tahanâwî and others said: Other than what he has of a boy, another riding animal, luggage, etc., it is not Salabah, but rather among the total spoils. It was stated in the narration: "Whoever kills a dead person gets his plunder." Judge 'Iyâd said: *Salab* is that which is taken from the dead person, including his clothing or instrument. This interpretation agrees with the previous statement.

Salab, however, it is the taking of something from another by force. It is said: I robbed him of his clothes. That is, I took it from him by force.

• Silah (Commodity)

سلعة

Linguistically, commodity means goods and possessions. Ibn Fâris said: It is the thing that is sold, because it is not a property that can be held. Ibn Battâl Al-Rakbî said: "The commodity is the thing that is traded in, whatever it may be." He also said: "It is the property that is bought or sold for trade."

The commodity is synonymous with supply, and its counterpart is cash. It is something other than money, including than dirhams and dinars. The use of the word by Scholars of Fiqh does not deviate from its linguistic meaning.

• Salaf (Loan)

سلف

In language and in Fiqh usage, Salaf refers to Salam contract. However, the term Salam is used by the people of Hijâz, and Salaf is used by of the people of Iraq. Judge 'Iyâd said: Its origin comes for advanced payment. It was called such a way because of the payment of capital in advance.

• Salam (Forward Sale)

سلم

Salam, **Linguistically**, means giving, leaving, and lending. **In Fiqh terminology**, it is a sale described in the liability for a consideration that is given immediately. The Scholars of Fiqh differed in its definition depending on their differences in its conditions. The Hanafites and

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Hanbalites, who stipulated for its validity that the capital be received in the meeting and the postponement of the subject matter of the Salam, in order to avoid immediate Salam, defined it as a deferred sale for an immediate one. The Shafi'ites, who stipulated for its validity that the capital be received in the meeting and allowed the peace to be immediate or deferred, defined it as a contract for a specified item in the liability in return for a consideration to be given immediately. As for the Malikites, who prohibited immediate Salam, but they did not stipulate that the capital should be delivered in the contract meeting, and allowed it to be postponed for two or three days due to the lightness of the matter, they defined it as a sale specified in the liability limited to the description of a present property or something similar for a known period.

• **Samâhah (Tolerance/Lenience)**

ساحة

Samâhah, **linguistically**, means generosity.

In Fiqh terminology, *Samâhah* is defined by As-Sharîf Aj-Jurjâni and Al-Munâwî as: "giving what is not obligatory out of kindness."

Al-Bukhârî narrated from Jâbir Ibn `Abdullâh that: Allah's Messenger (peace and blessings of Allah be upon him) said: "May Allah have mercy on a person who is lenient

when he sells, lenient when he buys, and lenient when he asks for payment."

• **Samsarah (Brokerage)** سمسرة

Samsarah is an Arabized Persian word that means mediating between the seller and the buyer to conclude the sale.

In Fiqh terminology, *Samsarah* refers to the work of an auctioneer who mediates between people to conclude a commercial deal such as selling, renting, and the like. A broker is an employee who receives a wage in exchange for his efforts to promote a commodity or rent a property at the highest possible price.

• **Sahm (Share)**

سهم

Linguistically, *Sahm* means share.

In the terminology of inheritance science, *Sahm* is defined as "the portion given to each heir of the original estate, which is the shares of heirs, or the number of their heads."

• **Sawâqit (Fallen Items)** سواقط

Linguistically, *Sawâqit* is defined as something that has fallen. Al-Maṭraẓî said: "It is the fruit that falls before ripening."

In the ḥadīth: he (peace and blessings of Allah be upon him) gave Khaybar half of it, and said: "You have the fallen ones." That is,

whatever falls from the palm trees is yours without division, said by Al-Matrazî. Khuwâharzadah is reported to have said: What is meant by *Sawâqit* is the falling branches, not the fruits, because they are for Muslims.

• Sawm (Offering)

سوم

Linguistically, *Sawm* is when the seller offers a commodity a price; That is, he offers it for sale and mentions its price. It is also used when the buyer offers to buy the item offered for the determined price thereof. The use of the word by Scholars of Fiqh does not deviate from its meaning linguistically.

• As-Sawm 'Alâ Sawm Al-Ghayr (Offering a Price Higher Than That of Another)

السوم على سوم الغير

Al-Bukhârî and Muslim narrated from Abû Hurayrah (may Allah be pleased with him) that Allah's Messenger (peace and blessings of Allah be upon him) said: "None of you should not purchase in opposition to his brother."

The example of this is when the owner of the item has agreed with the person who wants it to sell it, but they have not concluded it, and a third person says to the seller: I will buy it from you for such and such an increase, or he says to the buyer: I will sell you a similar one for a less price. An-Nawawî said: "This is forbidden after the price is

determined." As for the price on the commodity that is sold to the one who pays higher price (i.e. in an auction sale), it is not forbidden."

• Siyâsah (Politics)

سياسة

Linguistically, *Siyâsah* means taking care of something and disposing of it in a way that improves it. Al-Kafawî defined it in his "Al-Kulliyât" as: reforming people by guiding them to the path of salvation now and in the future. This definition is similar to the definition of *c*: *Siyâsah* means surrounding the people with what is best for them, with kindness and violence.

Some Scholars of Fiqh stated that it is: doing something by the ruler for an interest he views, even if there is no legal evidence for this act. Ibn 'Aqîl said: *Siyâsah* is an act with which people are closer to righteousness and farther away from corruption, even if the Messenger (peace and blessings of Allah be upon him) did not establish it or it was not revealed by revelation. Ibn Nujaym said: "*Siyâsah* is what the ruler does for the benefit of the public, without being mentioned in Shari'ah," and he quoted from Al-Maqrîzî: It is the law established to protect morals, interests, and the organization of funds, and that *Siyâsah* is of two types: fair *Siyâsah*, extracting the right from the immoral oppressor, and it is from the Shari'ah. The other type is unjust *Siyasah*, which is forbidden by Shari'ah.

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Ibn ‘Ābidīn mentioned: *Siyāsah* is used by Scholars of Fiqh in a more specific sense than that, which involves rebuking and disciplining, even by killing. As they said regarding the sodomite and the thief: If they repeat their action, it is permissible to kill them out of *Siyāsah*. Therefore, some of them defined it as: “the aggravation of a punishment for felony that has a Shari‘ah ruling to prevent corruption.” It was said: *Siyāsah* and Ta‘zīr (discretionary punishment) are synonymous.

• **Sayb (Buried Treasures or Natural Ores)** سَيِّب

Sayb, **linguistically**, means giving or donating. It also comes in the sense of buried treasure. It is said: He poured out his anger upon the people.

In Fiqh terminology: It was narrated from the Prophet (peace and blessings of Allah be upon him) that he said: “Fifth is to be paid from buried treasure.”



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Shîn (ش)

• Shubhah (Doubtful Matter/Suspicion) شبهة

Linguistically, *Shubhah* means confusion. **In Fiqh terminology**, *Shubhah* is something that resembles a fixed thing, but is not fixed in reality. Accordingly, it is defined as “the resemblance of truth to falsehood, and falsehood to truth in a sense that, if it is carefully examined, shall be refuted.”

Al-‘Izz Ibn ‘Abdus-Salâm said: “Everything that is permissible by its description and cause is clearly permissible, and everything that is forbidden by its description and cause is clearly forbidden. Whatever the scholars differed regarding its description or its cause, or its description without its cause, or its cause without its description, or both, is the subject of suspicion. Doubtful matters are that which resembles the permissible in one respect, and resembles the forbidden in another respect, either by description, cause, or confusion with something else. Doubtful matters are limited to hesitation between interests and harms.”

As for suspicion regarding money and gains, what is meant by it is that

unlawful money or gain is mixed with lawful, and the matter becomes suspicious and cannot be distinguished.

Suspicion **in Fiqh terminology** also applies to a situation in which the perpetrator of the crime is considered to have an excuse that prevents applying the related punishment. Accordingly, it is stated in the “Fiqh Rules”: “No penalty (is given) on suspicious proof.”

Suspicion, here, is of three types:

- Suspicion of the act: It is called suspicion of doubt, such as having intercourse with an irrevocable divorced woman while she is in the waiting period, thinking that she is permissible for him.
- Suspicion of the subject matter: It is called suspicion of judgment, and suspicion of ownership, such as having intercourse with a woman (he is not married to) thinking that she is his wife.
- Suspicion of the contract, which is a form of fictitious, not real contract, such as when a person marries a woman without witnesses, or a woman who is not permissible for him, such as one of his unmarried women, or to have the two sisters as his wives at the same time, and so on.

• Shuh (Stinginess) شح

Linguistically, *Shuh* means miserliness combined with greed.

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As for Shari'ah terminology, a group of scholars have termed *Shuh* as "the extreme eagerness that drives the person to take things without being permissible, and to deny them their rights."

• ***Shaht* (Price Exaggeration) شحط**

Linguistically, *Shaht* means exceeding.

The term *Shaht* is use with the price of a camel to shows that the price of the camel reaches, or even exceeds, the maximum value thereof.

• ***Shakhṣiyyah* (Personality) شخصية**

Shakhṣiyyah (Personality) is a modern legal term that means natural or legal entity to which both the right and the obligation are attached, and they cannot be separated from it. Originally, it meant nothing other than the natural personality that is manifested by every individual human being, as each one of them is an independent person with his own personality, through which he has rights and duties.

Then the legal perspective developed regarding the concept of personality since ancient times, and the idea of legal personality appeared for bodies of fixed and permanent public entities that are not specific to a specific person, and are represented by individuals who look into their interests. Then, the idea devel-

oped and the legal or moral personality became dealing with organized bodies in which the efforts and funds of many persons are united for the sake of common gain or public benefit, and enjoy independent financial liability, such as companies, associations, various institutions, and so on.

• ***Ash-Shirâ' `Alâ Shirâ' Al-Ghayr* (Purchasing over the Purchase of Others) الشراء على شراء الغير**

Al-Bukhârî and Muslim narrated from Abû Hurayrah (may Allah be pleased with him), that he said: Allah's Messenger (peace and blessings of Allah be upon him) said: "None of you is to sell over the sale of others."

This means, as Ibn Hajar Al-Haytamî said: It is when a man to say to a buyer of a commodity during the time of option: Cancel this sale, and I will sell you something similar for a cheaper price, or something better for the same price."

The Scholars of Fiqh stated that the same ruling applies to the purchase on the purchase of another person, and its form is when the person asks the seller, before the sale is final, to cancel the sale so that he buys the sold item from him for more than the price for which he sold it.

This form of sale or purchase is prohibited because of the harm it

causes, including discord and hatred. An-Nawawî said: “It is also forbidden to purchase over the purchase of someone else, which is to say to the seller during the option period: Cancel this sale, and I will buy it from you for more than this price, and so on.”

• **Bay‘ Mâ Fî Al-‘Idl (Sale Based on a Sample/Description)**

بيع ما في العدل (على البرنامج)

Linguistically, Al-Barnamij means the books in which it is written the description of items offered for sale in a (closed) bag or container.

Some Scholars of Fiqh expanded its meaning and used it to refer to the exact description of what is inside the closed container, whether written or unwritten. Only the Malikites’ books stipulate that “It is permissible to buy what is inside a closed bag/container based on its description,” such that if the buyer finds the offered item in conformity to its description, he shall be obligated to buy it, and he shall have no option to cancel the sale, and if he finds it different from the description, he shall have the option either to conclude or cancel the sale.

• **Shirb (Right of Taking Water)**

شرب

Linguistically, *Shirb* means a portion of water. **In Fiqh terminology** it is the share or portion of water for

lands and other things, or the share of the use of water for agriculture and livestock. It is one of the legal easements imposed on a property for the benefit of another person’s property.

• **Shirb Khâs (a Private Right of Taking)**

الشرب الخاص

Shirb Khâs is a Fiqh term used by Hanafites Scholars of Fiqh in pre-emption, by which they mean the right to a portion of running water reserved for a limited number of people. That is, a portion or source of water which is designated for watering and irrigating the farms of those people. But, the right of taking water from rivers used by the public does not belong to this class

• **Shart (Condition)**

الشرط

Linguistically, *Shart* is a sign. Sukuk are also called *Shart* because they are signs of authentication.

Shart, **in Fiqh terminology**, is what the confirmation of the ruling depends on. Scholars of Fiqh have divided *Shart* into two parts, based on the source of its requirement, *Ja’li Shart* and *Shar’i Shart*.

• **Ash-Shart Al-Jazâ’i (Penal Clause)**

الشرط الجزائي

This is a modern legal term that was not known to our ancient Scholars of Fiqh by this name, although its

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concept and meaning were known to them and researched in the chapters on contractual conditions in their Fiqh books.

As for the definition of the penalty clause in the modern sense: it is an agreement between the contracting parties to estimate in advance the compensation that the creditor or obligee deserves if the obligor or debtor does not fulfill his obligation or delays its implementation. The reason for this name is that it is usually placed as a condition within the terms of the original contract on the basis of which the creditor or obligee is entitled to compensation.

The principle of a penalty clause is that it should be a fair estimate presented to compensate for the damage that befalls the obligor or the creditor as a result of non-performance or delay in it, but it may be used for other purposes, such as when they agree on a large amount that greatly exceeds the damage that they expect, and in this case, it is a financial threat. They may agree on a small amount that is much less than the expected damage, so the penalty clause serves as an exemption or alleviation of responsibility. Its purpose may be to confirm the obligation of the pledger on others to specify the amount of compensation for which he will be responsible if he does not force the third party to fulfill the pledge.

• **Ash-Shart Al-Ja'li (Conditional Clause)**

الشرط الجعلي

It is what came from the will of the person, to make his contract or commitment dependent on him and linked to him, so that if the condition (*Shart*) exists, that contract or commitment exists, and if that condition is not fulfilled, then the conditional is not fulfilled, so the conditional is linked to it in existence and non-existence.

The reality of the *Ja'li Shart*, as mentioned by the Scholars of Fiqh, is that it is make something conditional on another thing, such that if the first thing exists, the second thing exists. Accordingly, it is defined as: "Every known ruling relates to a matter that occurs with its occurrence, and that matter is like a sign for it." An example is when a person makes his guarantee conditional on something appropriate to it, and says to the creditor: If your debtor travels so-and-so today, or if he does not return from a trip today, then I will be the guarantor of your debt that you owe from him. If the debtor travels or does not return from his travel, it becomes a condition for confirmation of the guarantee on the person who offered such guarantee. If this condition is fulfilled, the guarantee is proven, and if it is not fulfilled, he is not considered a guarantor committed to paying the debt.

• **Ash-Shart Ash-Shar`i (Shari'ah Imposed Condition)** الشرط الشرعي

Ash-Shart Ash-Shar`i (Shari'ah Imposed) is what the Lawgiver stipulated, and made its fulfillment necessary for the fulfillment of another matter to which it was linked, so that if the condition is not fulfilled, that matter will not be fulfilled, and if the condition exists, it does not necessitate the existence of the conditional matter.

For example, marriage is a condition for divorce. If there is no marriage, there is no divorce, and the existence of marriage does not necessitate the existence of divorce. Ablution is a condition for the validity of performing prayer. If there is no ablution, then performing prayer is not valid, and the presence of ablution does not require performing prayer. The same applies to all the conditions stipulated by the Sharia in matters of worship, transactions, crimes, and so on. Accordingly, Scholars of Fiqh and fundamentalists defined the *Ash-Shart Ash-Shar`i (Shari'ah Imposed)* as "that on which the existence of a thing depends, which is outside its essence, and does not affect its existence."

• **Shartân Fî Bay` (Two Conditions in One Transaction)** شرطان في بيع

This is a term that was mentioned by the Prophet (peace and blessings

of Allah be upon him) according to what Abû Dâwûd, At-Tirmidhî, Ad-Dârimî, and An-Nasâ'î narrated on the authority of Ibn `Umar: Allah's Messenger (peace and blessings of Allah be upon him) said: "It is not permissible to lend on the condition of a sale, or to have two conditions in one transaction."

Ibnul-Qayyim said: "The prohibition of two conditions in one transaction has caused confusion among most Scholars of Fiqh, in that if the two conditions are invalid, then any of them is forbidden, so what is the benefit obtained of mentioning the two conditions? Even if they are valid, they are not forbidden."

Accordingly, the Scholars of Fiqh differed in the interpretation of the two conditions prohibited in a transaction.

• **Shirk (Portion/Share)** شرك

Linguistically and terminologically, *Shirk* is defined as a share or portion.

"*Shirk*" is also used as a term for sharing land in the form of sharecropping and *Mukhâbarah*.

• **Sharikah (Partnership)** شراكة

Linguistically, *Sharikah* means distributing something between two or more people in common. **In Fiqh terminology,** *Sharikah* refers the mixing of two or more shares, such that one is not distinguished

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from the other. The term *Sharikah* was then used to refer to the contract, even if the two shares were not mixed. It was said: "It (*Sharikah*) is the gathering of two or more people in an entitlement or action."

According to Scholars of Fiqh, *Sharikah* (partnership) is divided into two main types: ownership partnership and a contract partnership.

Ownership partnership is when the thing is shared between two or more people due to one of the reasons for ownership, such as purchase, gift, will, inheritance, or mixing or mingling of funds in a way that they cannot be distinguished or separated. The ownership partnership is divided into a debt partnership or property, rights, etc., partnership.

A contract partnership is a contract between two people who share assets and profits. It is divided in terms of equality and disparity of funds, disposition, and debt into two types: *Mufâwadah* partnership and an 'Inân partnership.

In terms of its capital, it is divided into three types: corporations, vocational partnerships, and liability partnership.

• **Ash-Sharikah Fî Al-Bay` (Partnership in Sale)** الشركة في البيع

In Fiqh terminology, partnersh-

ip in sale is "release at cost price," meaning: the buyer sells some of the purchased good to others for his share of the price for which he bought it. Accordingly, Al-Adawî defined it by saying: "it is when a buyer assigns a part of the item purchased for someone other than its seller in return for a share of the price." An-Nawawî said: "it is when he buys something, then shares it with someone else, so that some of it becomes his for his share of the price."

Ibn Qudâmah said: "As for release at a cost price and partnership in what may be sold, they are permissible. This is because they are two types of sales, but they are designated with names, just as *Murâbahah* and *Mu`âwadah* sales are designated with names. If he buys something, and a man says to him: Share half of it with me for half the price, and he says: I have share it with you, the transaction is valid the item purchased becomes owns by them both jointly.

• **Sharikat Al-Ibâhah (Common Sharing Partnership)** شركة الإباحة

It is when the common people share the right to own property by taking and possessing permissible things that are not originally owned by anyone, such as water, pastures, and trees growing in permissible mountains.

• **Sharikat Al-Abdân (Skilled Trade Partnership)** شركة الأبدان

Ash-Shîrâzî said: Abdân (skilled trade) partnership is the partnership in what they gain by their work. The Hanbalites defined it as: “the sharing of two or more people in the permissible work they perform, or which they accept in their liabilities.” They said: Its description is that two or more people, without capital, participate in accepting the work they in their liabilities for wage, or in owning permissible things such as hunting, scavenging, and gathering wood, provided that the gain between them is in halves, thirds, quarters, or something else. It was called that because they participate in the work of their bodies.

• **Ash-Sharikah Al-Ikhtiyâriyyah (Optional or Voluntary Partnership)** الشركة الاختيارية

In Fiqh terminology, ownership partnership is divided into two types: voluntary and compulsory.

Voluntary partnership is the one that is made at the will of the two partners or partners, whether with or without a contract, and whether the contract is signed jointly from its beginning, or their participation occurred thereafter, or the partnership occurred in partnership after the contract.

An example of what is through

a partnership contract from the beginning is when two people buy a car for transportation or shipping or goods that they trade in.

An example of what is through a contract after which partnership in funds occurs is where the purchase is made by one person, then another partner is partnered with him, and the other accepts the partnership with or without compensation.

An example of what is without a contract is when two people hunt a game with a snare they set, or scoop up water with a bucket they lowered and then lift it up, or reclaim a dead land together, and so on.

Accordingly, the Scholars of Fiqh defined the voluntary partnership by saying: “It is when two partners or partners own money through purchase, gift, bequest, or mixing of their money by choice.”

• **Sharikat Al-A`mâl (Vocational Partnerships)** شركة الأعمال

It when two or more people contract to accept one or more specific types of work, or not specific but general, and for the wage between them to be in a known proportion. This includes sewing, dyeing, construction, installing sanitary ware, and so on.

• **Sharikat Al-Aqdâm (Effort-Based Partnership)** شركة الأقدام

The author of “*Hilyat Al-Fuqahâ*”

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defined it by saying: "Aqdâm Partnership is when two or more people share whatever they earn from their work"

• **Sharikat Al-Amwâl (Wealth Partnership)** شركة الأموال

It is a contract between two or more people to trade in their capital, and the profit is divided between them based on a known proportion, whether the amount of capital is known at the time of the contract or not. This is because it is defined at the time purchasing, whether they stipulate that they all participate in every purchase and sale, or they stipulate that each one be alone in his transactions, or do not put any condition. This is its concept according to the Hanafites. The Hanbalites say: "Wealth partnership is a participation in the entitlement of a property with or without its benefits, or the entitlement of the benefits only without the property."

• **Sharikat Al-Jabr (Compulsory Partnership)** شركة الجبر

It is a type of partnership that the Malikites were the only ones to prove and some of them defined it as: "the entitlement of a person to partner with a purchaser in a commodity from the market prepared for it, in a specific way"

They mentioned seven conditions for it, three of which are specific to the commodity:

- To be purchased in the market prepared for sale.
- it must be purchased for trade, not for ownership.
- The trade intended for purchase must be in the same country, not in another place.

Three others are specific to the partner, which are:

- To attend the purchase.
- Not to offer price higher than that offered by the buyer.
- he must be a merchant of the purchased commodity.

There is one condition for the buyer, which is that he does not make it clear to any of the merchants present that he wants to monopolize the commodity, and does not accept partnership in it, and so whoever wants to bid may do so.

If all of these conditions are met, the right to force the partnership is established for any merchant present, no matter how long it takes, as long as the purchased commodity remains, and the buyer will be imprisoned until he accepts the partnership if he refuses to do so.

• **Ash-Sharikah Al-Jabriyyah (Compulsory Partnership)**

الشركة الجبرية

In Fiqh terminology, ownership partnership is divided into: voluntary and compulsory partnerships:

Compulsory partnership is that which occurs without the will of any of the two partners or partners, as in the participation of the heirs in the estate, and as if the bags burst and what is in them is mixed, which makes it difficult to separate some of it from the other so that its shares can be distinguished, such as some grains and funds owned by two or more people. Accordingly, the Scholars of Fiqh defined the compulsory partnership by saying: "It is when two partners or partners own property by inheritance or by mixing the two kinds of funds without the choice of the owners, such a mixing that it is not possible to truly distinguish them, as if they are of the same type, or it is possible to distinguish between them with difficulty and expense, as if they are of different types."

• **Sharikat Al-Khâs (Special Partnership)**

شركة الخاص

It is one of the types of funds partnership in the terminology of some Hanafites Scholars of Fiqh, and it is also called "*Al-Khayr* partnership" among them. As-Sughdî defined it by saying: "It is when they inherit an inheritance, or accept a will, or an equal gift is given to them, or they buy an asset, a slave, an animal, or something else, in one transaction. This is a partnership signed to them, as we mentioned,

and it is not a contract partnership that they contract for. The profit and loss are divided according to the capital. It is not permissible to prefer profit or loss in this company.

This partnership, as its definition appears, is a type of "ownership partnership" and perhaps the reason for calling it *Khayr* partnership is that *Khayr* linguistically means money, and it is called private partnership according in a reference to (Private ownership partnership).

• **Sharikat Al-Khammâs (One Fifth Partnership)**

شركة الخماس

It is a sharecropping contract between the landlord and the worker (*Al-Khammâs*), with the first providing everything needed for agriculture in terms of land, seeds, and machinery, and the other doing the work only, and the output is divided into shares between them, so the worker takes the fifth, for example, and the other, who gave the land, seeds, and the machine, take what remains of the crop

This term is used and known among the Malikites but not other schools of Fiqh, and the basic principle for it is prohibition, because it violates the rules of Shari'ah law, given the unknown amount of the wage if the planting is done, and the presence of *Gharar* if a pandemic occurs. Many of their Scholars of Fiqh, however, permitted it out of

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necessity, and it was done by the people of Andalusia and Fez.

• **Sharikat Ad-Dallâlin (Brokers Partnership)** شركة الدالين

It is when two or more people participate in calling for someone else's property, offering it for sale, bringing the customer, and selling it to him.

This term is uniquely mentioned by the Hanbalites. Imam Ahmad stated that this partnership is permissible, and he said in the narration of Abû Dâwûd: He was asked about a man who takes a garment to sell it, then gives it to another person to sell it for him, and gives him half of the profit? He said: The profit goes to the one who sold it, unless they participate in what they get.

The Hanbalites, in their School of Fiqh, see that this transaction is invalid because the legitimate partnership does not deviate from the agency and the guarantee, and there is no agency here, as it is not possible for one of them to be appointed to the other to sell the property of others, and there is no guarantee either, because thus no debt becomes owed by either of them, and no work is accepted.

Ibn Taymiyyah chose its permissibility, and he said: "The basis of its validity is that the sale and purchase of the auctioneer is like the tailoring of a tailor and the carpentry of

a carpenter and all other joint employees, and each of them has the right to delegate it, even if the agent does not have the right to delegate it."

The matter of disagreement is in the partnership between the brokers, which includes a contract. As for simply calling, offering, and bringing the customer, there is no disagreement in the doctrine regarding its permissibility.

• **Sharikat Ad-Dayn (Debt Partnership)** شركة الدين

The ownership partnership is divided according to Scholars of Fiqh into a debt Partnership and other types of partnership (such as an asset, a right, or a benefit). As for the debt partnership: it is when the debt is owed to two or more people, such as one hundred dinars owed by a retail trader to the partners with which he deals. Accordingly, the Scholars of Fiqh defined it by saying: "It is when two or more people own a debt due to one of the reasons for ownership."

• **Sharikat Ash-Shuhûd (Partnership of Witnesses)** شركة الشهود

It is when two or more people participate, with one of them taking the other's place in the testimony, and the reward each one of them has earned for his testimony is divided into shares among them, such

that if one of them writes and testifies, for example, the other shares with him, even if he does not work. Accordingly, some Scholars of Fiqh defined it as “the participation of two or more people in what they gain through testimony.”

This term is uniquely used by the Hanbalites, and this partnership is not valid in their doctrine because the legitimate partnership does not deviate from the agency and guarantee, which are not available in this type of partnership. Ibn Taymiyyah considered it valid as a kind of “Abdân Partnership.”

• **Sharikat Al-`Inân (Contractual Partnership)** شركة العنان

It is when two or more people participate in a type of trade or in general trade, such that the contracting parties are committed to paying each of them a specific share of the capital, and the profit is divided between them is according to what they agree upon, and the loss is divided according to the amount of money paid. This is the Hanafites concept of this term.

The Hanbalites defined it by saying: “Al-`Inân Partnership: It is a partnership contract between a number of people with a known capital, each of whom has a specific amount for all of them to work on, provided that each of them has a known share of the profit.”

Imam Al-Râfi`î said: “`Inân partnership is taken from the rein of the animal, either because the two partners are equal in the authority to annul and dispose of it and entitlement to the profit according to the amount of capital, like the two parts of the rein are equal, or because each one of them prevents the other from disposing of what he desires, like the rein prevents the animal, or because the one who takes the rein of the animal has one hand on the rein, and the other is free to use for whatever it wants. Likewise, the partner in the partnership prevents himself from disposing of the joint property as he desires, and he is free to dispose of the rest of his property.”

• **Sharikat Al-`Ayn (Property Partnership)** شركة العين

Property partnership in Fiqh terminology means “two or more people own a property due to one of the reasons of ownership, such as a house, a car, a factory, and the like.”

The basis for this is that, according to Scholars of Fiqh, the ownership partnership is of two types: a debt partnership, and a partnership with something else (such as an asset, a right, or a benefit). A non-debt partnership is a partnership that exists in the property, right, or benefit, as is the case with cars, textiles, or food in a shared store, and the right of pre-emption of the two partners in what a third person sells,

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and the right to inhabit the house or cultivate the land for its tenants in common.

• **Ash-Sharikah Al-Mushâ`ah (Common Partnership)** الشركة المشاعة

This term is used by some Hanafites only, and it represents one of the aspects of the partnership of funds in the classification of As-Sughdî, who defined it by saying: "It is when two men each have property, so they value the property, and the two values are equal, so each one of them sells half of his property for half of the other party's property in an undivided share." Then they agreed to buy and sell jointly and separately. If they make profit, it will be divided between them in two halves, and if they incur loss, then loss will be divided between them in two halves. This is permissible. Likewise, if each one of them brought one hundred closed bags of good wheat, mixed them, then bought and sold as we mentioned, then it is permissible. The same applies to all measurable and weighable items.

• **Ash-Sharikah Al-Mutlaqah (Absolute Partnership)** الشركة المطلقة

It is a partnership not restricted by Ja'î (Conditional Clause) condition that is dictated by the will of one or more partners, such as one thing in trade without another thing, or a time without time, or a place with-

out another place, or with some people but not with others etc., such as when two people participate in all types of trade, and they make this partnership absolute, so they do not refer to anything else other than such absoluteness, with its time-related and other aspects.

The opposite of absolute partnership in **Fiqh terminology** is the restricted partnership.

• **Sharikat Al-Mufâwadah (Delegation Partnership)** شركة المفاوضة

It is every partnership in which the partners are equal in terms of funds, management, and debts from the beginning till the end of the partnership until its end. Accordingly, As-Shirazi defined it by saying: "It is to enter into a partnership that they share in what they acquire with funds and work, and that each of them guarantees what the other owes by usurpation, sale, or guarantee." Al-Jurjânî said: "It includes agency and guarantee, and is equal in terms of funds, disposal, and debt."

It was stated in (Article 1778) of "Majallat Al-Ahkâm Ash-Shar'iyah 'Alâ Madhhab Ahmâd": "Delegation partnerships are of two types:

First: each of the two partners delegates his partner to buy, sell, speculate, assign money, travel with money, pledge, guarantee, and accept whatever business he sees fit.

This type combines all types of partnership.

Second: Partnership in everything that is proven for or against them.

• *Ash-Sharikah Al-Muqayyadah*
(Registered Partnership)

الشركة المقيدة

It is a partnership that is restricted to certain things, times, places, or the like, such as the trade in grains, textiles, or cars, or restricted to the summer of this year, or to a specific city, or a specific country, etc.

The opposite of the restricted partnership **in Fiqh terminology** is the absolute partnership.

• *Sharikat Al-Milk* (Ownership Partnership)

شركة الملك

Partnership originally is a relationship between two or more people. Accordingly, the Scholars of Fiqh divided it into two types: **First:** Ownership Partnership; It occurs due to one of the reasons of ownership, such as purchase, donation, etc. **Second:** Contract Partnership: It occurs through an offer and acceptance between the partners. Other form of this partnership is *Ibahah* (Common Sharing) partnership, which is the fact that the common people share in the authority to own ownership by taking and possessing permissible things that are not originally owned by anyone.

The author of “*Muntahâ Al-Irâdât*” defined Ownership Partnership as: “a participation in entitlement.” Its commentator, Al-Buhûti, said: “It is of various types:

First: partnership in benefits and people, such as a slave and a household owned jointly by two or more people, by inheritance, sale, or the like.

Second: partnership in people, such as a slave bequeathed for his benefit, inherited by two or more people.

Third: partnership in benefits, such as benefit bequeathed for two or more people.

Fourth: Partnership in rights of people, such as a punishment for slander, when a person accuses a group, one of them is usually imagined to have committed adultery with a single word. If they all demand the right for slander punishment, a single punishment is made for all of them.”

Article 1060 of “*Majallat Al-Ahkâm Al-Adliyyah*” states: “Joint ownership of property owned in absolute ownership is brought about when more than one person join in the ownership on any particular thing, that is to say, where such thing belongs to them, as where ownership therein is acquired by any of the causes of acquiring ownership such as purchase, or taking by way of gift,

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or by acceptance of a bequest, or inheritance or by mixing or causing to mix one property with another, that is to say, by uniting them in such a way that they cannot be distinguished or separated the one from the other.

Al-Kâsânî said: "Property partnerships are of two types: a type that is established by the actions of the two partners, and a type that is established by other than their actions. As for what is established by their action, it is like they buy something, or it is given to them, or it is bequeathed to them, or they are given alms, and they accept, so the item bought, gifted, bequeathed, or given as charity becomes a joint ownership partnership between them. As for what is established without their action, it is inheritance, when they inherited something, so the inherited property is jointly owned by them as an ownership partnership."

Ownership Partnership is divided into two parts: Property Partnership and Debt Partnership. It is also divided into two types: Voluntary and Compulsory partnerships.

• **Sharikat Al-Wujûh (Reputation or Liability Partnership)**

شركة الوجوه

It is when two or more people who do not have money, but who have goodwill among people stipulate that they buy on credit and sell

for cash, and whatever profit they gain will be divided between them. Accordingly, article (1776) of *Ma-jallat Al-Ahkâm Ash-Shar'iyyah 'Alâ Madhhab Ahmād*" defines it as: "the participation of two or more people in the profit of what they buy on credit based on their goodwill."

It is called that because only people with goodwill can buy on credit.

For its validity, according to the Hanafites, Ibn 'Aqîl, and Judge Abû Ya'lâ among the Hanbalites, the entitlement to the profit and the loss in this partnership must be by guarantee, because the partnership falls upon it in particular. Since they have no money to work together on it, the guarantee is based on the amount of ownership in the purchased property. The Hanbalites, in the doctrine, hold the opinion that profit in it is based on the condition of equality or differentiation. This is because one of the partners may be more trustworthy to merchants and more knowledgeable about trade than the other, and it is permissible for him to take an increase in profit in return for that. As for the loss due to damage or selling for a price lower than the purchase price, it is based on the amount of ownership, because the loss is an increase in capital, and it is specific to its owners, so it is distributed between them according to the amount of shares.

• **Shatat (Excessive Increase)** شطط

Linguistically, Shatat comes in the sense of injustice, exaggeration, exceeding the limit, and being far from the truth. Al-Raghib said: Shatat means excessiveness in going away (from the standard value).

It is stated in the hadith narrated by Abû Dâwûd, At-Tirmidhî, and An-Nasâ'î from the Prophet (peace and blessings of Allah be upon him) that he said: "No decrease or increase." Judge 'Iyâd said. Al-Khattâbî said: "Shatat (Excessiveness) implies aggression." It is an increase on what is due." Ibn Bâtîsh said: "It is an increase in value."

• **Shif (Profit/Increase)** شف

Shif comes in the sense of profit and increase. It is narrated on the authority of the Prophet (peace and blessings of Allah be upon him) that he "*forbade profiting off of what is not possessed*". The Prophet (peace and blessings of Allah be upon him) also said "Do not sell gold for gold except like for like and do not increase one part over another part." Al-Bâjî said: "It requires preventing even a small increase, because *Shif* is only used in simple increase."

Shif also comes in the sense of decrease.

• **Shuf'ah (Pre-emption)** شفعة

Linguistically: *Shuf'ah* is a name

for the ownership pre-empted by your ownership.

In Fiqh terminology, *Shuf'ah* means pre-emption. it is the right to own the sold property or part thereof, even if it is forced upon the buyer for the price and supplies, he paid.

Al-Waqqshî said in his commentary on "Al-Muwatta": "Pre-emption is called pre-emption because in pre-Islamic times, if a man wanted to sell a house or a wall, the neighbor or partner would come to him and intercede for him regarding what he sold with people who would intercede for him, so that he would sell it to him only and to any other person."

• **Shiqs (Part)** شقص

Linguists said: *Shiqs* is a piece of land, and a part of something. It also means part, share, and portion.

Shiqs linguistically also partner or a small part of everything.

In Fiqh usage, Najmud-Dîn An-Nasafi Al-Hanafi said: "There is no pre-emption in the portion of a property made as a dowery. What is meant by this is that if a man marries a woman with a dowery as half of this house or a known part of it, then the partner in it does not have the right of pre-emption according to our opinion, contrary to Ash-Shâfi'î."

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• ***Shanaq* (Camel Not Liable to Zakâh)** شَنْق

In Fiqh terminology, *Shanaq* refers to “whatever is between the two obligatory duties is all the livestock on which *Zakâh* is due.” For example, in camels, what is more than

five to nine, and what is more than ten to fourteen. It was narrated on the authority of Ahmad Ibn Hanbal that *Shanaq* means anything less than the obligatory due at all, just as less than forty in sheep.



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Sad (ص)

• Sa'ih (Shouter)

صائح

Linguistically, shouting means raising one's voice.

As for Fiqh terminology, some Maliki Scholars of Fiqh used the term "Sa'ih" to refer to the broker who shouts and calls for the commodity in the market seeking an increase in its price, in exchange for a fee. Ibn Farhūn described him in "At-Tabṣīrah" as "the one who is hired for shouting, i.e. brokering."

• Subrah (Pile)

صبرة

In Fiqh usage, *Subrah* refers to "a collected pile of food or belongings, without measuring it by measure, weight, or other customary standard units."

Al-Azharī said: "Subrah is a collected pile of food."

• As-Sabī Al-Mumayyiz (Perceptive Boy)

الصبي المميز

Linguistically, perception means the ability to differentiate between similar or mixed things.

According to Scholars of Fiqh, "age of perception" is the age by which a boy will be able to discriminate between what is good and what is

bad for him

The term "Perceptive boy", used by Scholars of Fiqh in the chapters on financial transactions, means the young man who understands the meaning and intent of the contract. In other words, it refers to the boy in stage of discernment. That is, the stage in which the boy begins to know some of what is going on around him, and he is able to some extent to know what is harmful from what is beneficial, and what is beneficial from what is not in general matters. He knows, for example, that selling takes the sold product out from possession, and buying brings it back to possession, and that buying and selling are intended to achieve profit and increase, and he distinguishes outrageous injustice.

Scholars of Fiqh do not have a specific age for discrimination due to the difference in its beginning according to the environments and regions, although the Hanbalites and some Hanafites scholars tended to specify it at the age of seven. This because it is common for a boy of average condition, when he reaches that age, to develop a kind of understanding through which he can be discriminative.

Moreover, the perceptive boy has special Fiqh provisions regarding his contracts and financial transactions, which can be found in related topic in the books of Islamic Fiqh.

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• ***Sihhat Al- 'Aqd* (Validity of Contract)** صحة العقد

In Fiqh terminology, the valid contract is the contract that fulfills its terms and conditions, such that it has the legal effects required of it. Accordingly, the Hanafites Scholars of Fiqh defined it as: “a contract which is legitimate by its origin and description, such that its effect can be demonstrated when it enters into effect.”

What is meant by the origin of a thing is what the perception of a thing depends on its existence. The legitimacy of its origin is that it be in a condition that the lawgiver has considered; its pillar comes from its people, added to a subject that can be governed its condition. The legitimacy of its description is that the lawgiver has considered the description of that thing to be correct and free of defects, and to be free of any of the conditions that invalidate the contract.

An example of this is that the Lawgiver has considered that the origin of the sale must be through an offer and acceptance that lead to ownership and possession, that they come from rational people, and that their subject, which is the price and the sold item, must be valuable money. If this origin exists as the lawgiver considers it, then the sale is legitimate in terms of its origin. The lawgiver also considers that the

original should be described with specific descriptions, such as the price being postponed for a specified period, and so on. If these descriptions exist as the lawgiver considers them, the sale is legitimate in terms of its description.

The legitimacy of the origin and description in the contract makes it valid for its effects.

• ***Sadâq* (Marriage-Portion)** صداق

In Fiqh terminology, *Sadâq* is a name for what a woman is entitled to after marriage. In custom, it is called a dowry and a *Sadâq*. Accordingly, Ibn Salmon defined it as “what the husband gives to the wife in the marriage contract.”

Abû Hilâl Al-‘Askarî differentiated between the dowry and *Sadâq*, saying: “*Sadâq* is a name for what a man gives to a woman voluntarily, without obligation, and the dowry is a name for the same and also for what he is obligated to pay. This is why the stipulators define it in the books of dowries as: (her *Sadaq* for which he married her).

Moreover, some writers refer to the marriage document as *Sadâq*

• ***Sadaqah* (Charity)** صدقة

Linguistically, *Sadaqah* means a charity given, seeking reward from Allah, the Almighty. **In Fiqh terminology**, *Sadaqah* is defined as transferring ownership during life

without compensation for the sake of Allah, the Almighty. Ibn Taymiyyah said: “*Sadaqah* is what is given for the sake of Allah out of pure worship to a specific person, and without requesting compensation on his part, but it should be given the appropriate channels of charity, such as the fulfillment of needs.”

The Scholars of Fiqh use the term “*Sadaqah*” to refer to five things:

First: *Zakâh*, which is obligatory charity, according to what is stated in the Quran: {*Alms are for the poor and the needy...*} [At-Tawbah (Repentance): 60].

Second: voluntary *Sadaqah*, which is often the absolute meaning in Fiqh terminology.

Third: endowment, where Al-Bukhârî narrated that ‘Umar Ibnul-Khattâb gave some of his property in charity during the time of Allah’s Messenger (peace and blessings of Allah be upon him) and it was called *Thamgh*. Therefore, the Prophet (peace and blessings of Allah be upon him) said: “Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity.”

Fourth: What a person gives up of his right, such as Allah’s saying: {*...and for wounds is legal retri-*

bution. But whoever gives [up his right as] charity, it is an expiation for him} [Al-Ma’idah (The Table): 45], and His saying: {*And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew*} [Al-Baqarah (The Cow): 280]. So, whatever is given up for the insolvent is regarded as charity.

Fifth: Every act of kindness. Al-Bukhârî and Muslim narrated from the Prophet (peace and blessings of Allah be upon him) that he said: “Every act of kindness is *Sadaqah*.”

• As-Sadaqah Al-Jâriyah (Continuous Charity) الصدقة الجارية

The term *As-Sadaqah Al-Jâriyah* “Continuous *Sadaqah*” is mentioned in the *ḥadīth* narrated by Muslim, Abû Dâwûd, At-Tirmidhî, and An-Nasâ’î from the Prophet (peace and blessings of Allah be upon him) in which he said: “When a man dies no further reward is recorded for his actions, with three exceptions ...” and the continuous *Sadaqah* (charity) is one of them.

Al-Munâwî said: What is meant by “no further reward is recorded for his actions” is that the reward of his action, and the renewal of his reward, will not be further recorded except for three things, for their reward does not cease because it is a permanent act of kindness, with

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continuous benefit, and because he was the reason for its acquisition, he will have its reward. The meaning of “continuous” is that it is permanent and continuous, and its reward lasts as long as it lasts.

The majority of scholars and commentators on the hadîth have stated that what is meant by continuous charity is endowment. Judge ‘Iyâd said: Charity that continues after death is endowment. Ibnul-Athîr said: It is a continuous benefit-generating charity, such as endowment made for charity channels. Al-Baghawî said: “This hadîth indicates the permissibility and desirability of endowment for charitable causes, and this is what is meant by continuous charity.”

Al-Mullâ ‘Alî Al-Qârî Al-Hanafî said: “It is the one whose benefit will continue, and its reward will last, such as endowment for charitable causes. In “Al-Azhâr”: Most of them said: It is an endowment and the like that has lasting benefits. Some of them said: It is the canal and the flowing spring. I said: This is included in the generality of the first, and perhaps they wanted this specific, but there is no reason for specification.

• ***Sadaqat Al-Fitr* (Zakâh of Fast Breaking)**

صدقة الفطر

The origin of the meaning of charity is the thing that is given for

the sake of Allah, the Almighty. *Al-Fitr* means breaking the fast.

Sadaqah Al-Fitr in Sharia terminology can be defined as a charity that is obligatory upon breaking the fast of Ramadan. It is added to breaking the fast because it is the reason for its obligation. Rather, it is mentioned before fasting because it is an obligatory financial act of worship, like *Zakâh*.

In the terminology of Scholars of Fiqh, it is also called “*Zakât Al-Fitr*” because it purifies the soul.

• ***Sarf* (Exchange)**

صرف

Linguistically, *Sarf* means exchanging one thing for another thing. **In Fiqh terminology**, *Sarf* means “selling cash for cash.” It is as if the dinar is exchanged for dirhams Ibnul-Arabî said: “Chapter on *Sarf*: This is a word that does not exist in the Quran or Sunnah, but it is an eloquent Arabic word, the verbal form of it came in the hadîth of Talha, in which he said: we discussed the matter, and he agreed to change (my Dinars). In (Lisân Al-‘Arab), *Sarf* means selling the two currencies (gold and silver) for each other.

According to the majority of Scholars of Fiqh, it includes whether currency is sold for its kind, such as selling gold for gold, and silver for silver, or for something other than its kind, such as selling gold for silver, or selling one of them for money.

• **Sa'āfiqah (Speculators)** صعافقة

Abū Hilāl Al-`Askarī said: “*Sa'āfiqah* are those who trade in people's capital, like speculators. The singular form *Sa'āfiqah* is *Sa'fūq*.”

It is stated in “*An-Nihāyah*” by Ibnul-Athīr: “In the *ḥadīth* of Ash-Sha'bī: “Whatever comes to you from the companions of Muḥammad (peace and blessings of Allah be upon him) take it, and abandon what these *Sa'āfiqah* say.” They are the ones who enter the market without capital, so if the merchant buys something, he shares it with him. They are like merchants who have no capital.

• **Safqah (Deal)** صفقة

Linguistically, *Safqah* means to strike by one hand on another hand or on another person's during a sale deal. It was the custom of the Arabs, if a sale become obligatory, for one of the sellers to strike his hand on the hand of his partner. The term *Safqah* is then used in the sense of the sale contract itself in custom and **in Fiqh terminology** as well.

Accordingly, Al-Māwardī said: “As for *Safqah*, it is a contract, because it is the prevailing custom between contracting parties that each one of them strikes the hand of the other when the contract is concluded.

The term “*Safqah*” is also used **in**

Fiqh terminology to mean a final, binding contract in which there is no option. An-Nasafī said: `Umar (may Allah be pleased with him) said: “Sale is a *Safqah* or an option.” That is, a complete, binding sale, or a sale with an option. As-Sarkhasī said: “*Safqah* is binding and enforceable sale contract.”

• **Safqatayn Fī Safqah (Two Deals in One Deal)** صفقتين في صفقة

Aḥmad, Al-Bazzār, and At-Tabarānī narrated from Simāk, on the authority of `Abdur-Raḥmān Ibn `Abdullāh Ibn Mas'ūd, on the authority of his father, who said: “*Allah's Messenger (peace and blessings of Allah be upon him) forbade two deals in one deal.*”

The narrator of the *ḥadīth* explained the two deals as when someone sells the thing and says: This on credit for such-and-such, and on cash for such-and-such. That is, they separate without the buyer specifying at what price he buys. Aḥmad, Ash-Shāfi'ī, and Abū `Ubayd Al-Qāsim Ibn Sallām agreed with Simāk on this interpretation.

Al-Kamāl Ibnul-Humām said that two deals in one deal are more general in general than two sales in one sale, because they are one type of deals, which is sale.

Ash-Shawkānī said: The meaning of two deals in one deal is two sales in one sale.

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Ibn Qayyim Al-Jawziyyah stated: The interpretation of the two deals in one deal is identical to the two sales in one sale, which is that when one person sells the commodity to another person for a hundred to be paid after one year and buys it on the spot from him for eighty, then he said: "He combines the two deals of cash and credit in one deal and one sale, and he intends sell a number of dirhams immediately for more number of deferred dirhams. He is only entitled to his capital, which is the lesser of the two deals. If he insists on the bigger deals, he takes usury in this case." This interpretation is supported by Ibn Hibbân's narration of the discontinued hadîth, saying: "The "two deals in one deal" is usury."

• Saqab (Closeness)

صقب

Linguistically, Saqab means proximity and closeness. Al-Waqqashî said: Saqab may mean Saqab closeness or the close thing itself.

Al-Bukhârî, Abû Dâwûd, Al-Nasâ'î, and Ibn Mâjah narrated from the Prophet (peace and blessings of Allah be upon him) that he said: "*The neighbor has more right (to be given preference) to the property which is near to him.*" Ibnul-Athîr said: "What is meant here is pre-emption." That is, the neighbor has more right to pre-emption if he is an adjacent neighbor. He also said: "Saqab means proximity and close-

ness.

Al-Khattâbî said: "This may be used by those who consider pre-emption to be due to neighborhood, even if it is based on sharing, but this word is ambiguous and needs clarification, and there is no mention of pre-emption in the hadîth, so it is possible that he meant pre-emption, and it may be possible that he meant that he (the neighbor) has more right to be taken care of by his neighbor (than anyone else)."

• Sakk (Instrument)

صك

Linguistically, Sakk means book. In custom and terminology, Sakk means the book in which transactions and financial reports and other things are recorded. As-Sarkhasî said: "Sakk is a special name for what is a document of due rights."

• Sukûk Al-Muqâradah (Debt Sukuk)

صكوك المقارضة

They are bonds issued for the purpose of investing endowment by financing others in a new transaction that was not known in Islamic jurisprudence before. Its form is as follows: The Endowments Department conducts an economic study of a specific project, showing the expected cost and expected profit, then through a specialized body, it issues bonds with a total value equal to the expected cost of construction, and offers the bondholders (financing the construction) to share

the rental income in a ratio that it determines in light of the economic study. A portion of the revenue owned by the Endowments Department is allocated to amortize the bonds - that is, buying them from their holders gradually - until - after a period of time - the full ownership of the building returns to the Endowments Department, noting that the amortization of these bonds is linked to a specific period of time, and it may be the government is a guarantor to amortize these bonds upon their maturity if the Endowments Administration is unable to do so, provided that what the government pays is an interest-free debt owed by the Endowments Administration. In this form, Law No. (10) was issued in Jordan in 1981.

• Sulh (Reconciliation)

صلح

Linguistically, Sulh means reconciliation, as opposed to disagreement and dispute. As for Fiqh terminology: the four schools of thought have agreed that reconciliation is a contract by which conflict between parties is solved, and by which agreement is reached between those who disagree. It is a contract made to resolve the dispute after it occurred by mutual consent.

In the view of Scholars of Fiqh, reconciliation is divided into three categories: reconciliation based on acknowledgment, reconciliation based on denial, and reconciliation based on silence.

• Silah (Tie/Relation/Connection)

صلة

Linguistically, Silah is the opposite of abandonment. It means righteousness, benevolence, compassion, and kindness.

The Scholars of Fiqh' definition of the word does not deviate from its linguistic meaning, and this is clear in Al-Munâwî's saying: "Silah is acts of kindness without compensation." Al-Mâwardî say: Righteousness is of two types: Silah and favor. As for Silah is to donate for praiseworthy causes without required compensation.

As for family ties, it is a metaphor for being kind to relatives by lineage and in-laws, being kind to them, and taking care of their interests.

• Sinâ'ah (Profession)

صناعة

Linguistically, Sinâ'ah means profession or craftsman.

However, the Scholars of Fiqh limited the definition of Sinâ'ah to crafts in which a machine is used. Al-Qalyûbî said: "Sinâ'ah is where a machine is used, and craft is more general than it."

Since the use of a machine requires training and practice, practice and training are requirements of Sinâ'ah, and accordingly it is said: Every work is not called Sinâ'ah until it is trained, practiced, and mastered.

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The reality of *Sinâ'ah*, as Ash-Sharîf Al-Jurjânî and others said, is that it is a psychological faculty from which voluntary actions emerge without forethought, and based on that, it is defined as "a faculty by which one is able to use artifacts wisely to achieve one of the purposes as much as possible."

Ar-Râghib said: "*Sinâ'ah* is of two types: theoretical and practical.

Theoretical *Sinâ'ah* is where the help of the limbs of the hand and foot is not required, such as knowledge and arithmetic.

Practical *Sinâ'ah* is where the help of the limbs is required. It is of two types:

First: something that ends with the cessation of the craftsman's movement, such as dancing, singing, and imitation.

Second: Something whose impact remains, which is of two types: the first type is that which has a reasonable but not tangible impact, such as medicine and veterinary medicine, and the second type has a tangible impact, like building and writing."

• *Sanjah* (Scale Weight) صنجة

Sanjah (or scale weight) is metals or stones to measure an amount of weight used by people in their transactions.

• *Sawwâgh* (Jeweler) صواغ

Linguistically, *Sawwâgh* is a person who uses gold and silver to make jewelry and other materials.

• *Sawâfi* (Uninheritable Properties) صوافي

Sawâfi are properties and lands whose owners have died and have no inheritance, and the abandoned property that the Sultan recovers for his own.

• *Sawâ'ir* (Destinations/Costs) صوائر

Linguistically, *Sawâ'ir* means destinations.

The later Malikites use the term (*Sawâ'ir* (legal costs) of the lawsuit) and say: The unjust opponent who causes such costs to be incurred is legally obligated to bear it, not the wronged right holder. They mean by *Sawâ'ir*: the money spent on the lawsuit, such financial expenses and costs.

• *Sûriyyah* (Fictitiousness) صورية

Linguistically, *Sûriyyah* is derived from the Arabic word "*Surah*" (image), which means something that is not real.

• Absolute *Sûriyyah*: It is a *Sûriyyah* that includes the complete fabrication of behavior that does not exist in reality.

- Relative *Suriyyah* by concealment: concealing one behavior in the form of another behavior, such as concealing a gift in the form of a sale.

As for the term “fictitious contract,” it is newly used term, and it means that the agreement of the two parties in the contract is only apparent, while the real will is absent in it. If this type of agreement exists between two parties, the contract is fictitious. That is, it contains only the appearance and form of the contract, not its reality and essence.

- *Sayd* (Hunting/Game) صيد

Linguistically, *Sayd* means hunting or the game itself. Ar-Râghib said: in Shari’ah, *Sayd* means hunting wild animals that are not owned. The same word is also used to refer to the game, which is a wild animal that cannot be hunted except by trickery.”

- *Sayrafah* (Money Exchange / Banking) صيرفة

In linguistics and Fiqh usage, *Sayrafah* means experience and knowledge in distinguishing good gold and silver money from bad ones, and selling some of them for what is necessary for that.

Sayrafah is also used by Scholars of Fiqh to refer to the profession of person who works in *Sayrafah*.

- *Sayrafi* (Money Exchanger/Banker) صيرفي

Linguistically, the word “*Sayrafi*” refers to the expert in the affairs of money, such as gold and silver.

In Fiqh terminology, the word “*Sayrafi*” refers to the one who usually handles the exchange of money for people by distinguishing the good from the bad, exchanging some for others, collecting it for its owners, keeping it for them, and lending it to them, according to his profession, which is called “*Sayrafah*” and “*Jahbadhah*”. Accordingly, Ibn ‘Abidin said: “What is meant by *Sayrafi* is the person from whom merchants borrow and collect money for them.”

- *Sighah* (Form/Forming) صيغة

Linguistically, *Sighah* means form.

As for the form of the contract, it refers to the words and phrases that make up the contract, that is, the reciprocal phrases that indicate the agreement of the two parties and their consent to establish the contract, which is called in the language of jurists the offer and acceptance. Accordingly, some modern Scholars of Fiqh defined it by saying: “It is what the contract is made of, including oral, implied, or written conditions, clarifying the intention of the contracting party.”

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Dâd (ض)

• Darar (Harm or Injury) ضَرَر

Linguistically, the term ‘Ad-Darar’ and ‘Ad-Dirar’ means harm or injury.

In Fiqh terminology, it is used in the sense of causing harm to others in general, whether in terms of property, rights, or persons.

As for the difference between ‘Ad-Darar’ and ‘Ad-Dirar’ mentioned in the Prophetic hadîth stating: “*There should be neither harming nor reciprocating harm*”, the term ‘Ad-Darar’ means causing harm to others initially, while ‘Ad-Dirar’ means causing harm to others in retaliation, because it is a derivative noun indicating mutual involvement.

There is no disagreement among scholars that the prohibition of harm does not apply to such harm permitted by Shari’ah, such as retribution (Al-Qisâs), prescribed punishments (Al-Hudûd), and discretionary punishments (At-Ta’zîr), and that the scope of prohibiting harm applies only to financial rights, because expanding its scope to include the harm permitted by Shari’ah would widen the circle of actual harm and would not actually redress the harm

that has been caused. So, if someone destroys your property, it is not permissible to judge that a similar property of his be destroyed in return. Instead, he should be ordered to pay compensation that will redress your harm and transfer the loss to him. This is unlike the assault on life and body for which retribution is prescribed by the Shari’ah. So, whoever kills shall be killed, and whoever inflicts bodily injury shall have similar retaliation, because these injuries are deterred only by a punishment of their kind, so that the assaulter knows that harming others is ultimately like harming oneself.

• Darûrah (Necessity) ضُرُورَة

Linguistically, the term ‘Ad-Darûrah’ is a noun derived from ‘Al-Idditirâr’, which denotes coercion and compulsion.

In Fiqh terminology, it refers to a desperate situation where a person is forced to commit what is prohibited or to abandon what is obligated by Shari’ah, in such a manner that the legally accountable person reasonably believes that if he does not commit what is prohibited, he will perish or suffer severe harm to his body, property, or honor, which makes him dissatisfied with his action, even if he chooses it due to being outweighed harm (lesser evil).

The Shari’ah has made this exceptional situation as a justification for lifting the original obligatory ruling

that requires performing or refraining from an act. To this regard, Allah says: {“... while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled.”} [Al-An’âm (Cattle):119], and His saying: {“But whoever is forced (by necessity), neither desiring (it) nor transgressing (its limit), there is no sin upon him.”} [Al-Baqarah (The Cow): 173]. Accordingly, it is stipulated in “Al-Qawâ'id Al-Fiqhiyyah”: “Necessity renders prohibited things permissible”, and “Necessity is estimated by the extent thereof.”

It is clear that the necessities we have presented here are different from what is termed by the Uṣūl scholars (in their discussion of the purposes of Shari'ah) as the ‘essentials’ that must be preserved because they are the basis of the interests (*Al-Maṣāliḥ*) in both religion and worldly life, and if they were compromised, the affairs of people would lead to corruption and chaos in this worldly life, along with the loss of salvation and bliss in the Hereafter. The essential (*Darûriyyah*) is a counterpart of both the needful (*Hâjiyyah*) and the complementary (*Tahsîniyyah*), because the needful refers to the urgent and compelling circumstances in which the Legislator has made exceptions to alleviate the burden on the accountable person and to absolve him from sin, while the complementary

refers to the pillars of the interests in both religion and worldly life that the Legislator has commanded the accountable person to achieve, complete, and preserve inherently. Al-Munâwî defined it by saying: “The essential refers to something where the need for it reaches the point of necessity, such as preserving religion, soul, intellect, lineage, wealth, and honor.”

• Ad-Darûriyyah Ad-Dîniyyah (Religious Necessity) الضَّرُورِيَّةُ الدِّينِيَّةُ

The religious necessity (*Ad-Darûriyyah Ad-Dîniyyah*) refers to what is so established to be part of religion, such that it is widely known by the majority of Muslims, including those who are not qualified for reasoning and deduction, such as the Oneness of Allah, the obligation of Prayer, the prohibition of alcohol, and the obligation of performing *Zuhr* Prayer with four units (*Rak'ahs*).” The Fiqh and Uṣūl scholars express it as: “What is known from religion by necessity.”

To this regard, Ash-Shîrâzî said: “The Shari'ah rulings involves two types:

- 1- Rulings that are known from religion by necessity, such as the obligation of the five daily Prayers per day and night, *Zakâh* (obligatory alms-giving), fasting the month of Ramadan, *Hajj* (pilgrimage to Mecca), and the

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prohibition of alcohol, adultery, and homosexuality...

- 2- Rulings that are not known from religion by necessity, but they are recognized by reasoning and deduction, such as the subsidiary issues related to the acts of worship, transactions, and marriage, and other rulings where *Ijtihād* (Shari'ah-based-reasoning) concerning them and their methods are applicable."

Therefore, the religious necessity is known to both the educated and the layperson, the scholar and the ignorant, and to every individual in the Islamic community. No one denies or doubts them, and no one is required to provide any evidence or basis for them, as they are conclusive and certain without any doubt.

As a term, the religious necessity (*Ad-Darūriyyah Ad-Dīniyyah*) is used in contrast to the deduction (*Al-Istidlāliyyah*), reasoning (*Al-Ijtihādiyyah*), reflection (*An-Nazariyyah*), and acquisition (*Al-Kasbiyyah*), which are only known through reasoning and deduction.

I think that this concept is derived from the logicians' terminology, where they divide the knowledge of people into two categories: necessary and reflective. They define the necessary knowledge as: "The knowledge acquired without thinking or considering evidence", such as knowing the impossibility

for two contraries to coexist and understanding the meaning of 'one is half of two'. The reflective knowledge is defined as: "The knowledge that requires reflection and contemplation", such as understanding the meaning of 'one is half of a sixth of twelve'.

• *Darīb* (Partner)

ضريب

Linguistically, the term '*Ad-Darīb*', as mentioned by Ibn Fāris, is the equivalent or the counterpart.

In Fiqh terminology, it refers to the partner. Al-Munāwī said, "*Ad-Darīb*' is the partner, because each co-owner partners with a share in what they own in common."

• *Darībah* (Tax)

ضريبة

The Fiqh usage of the term '*Ad-Darībah*' does not go beyond its linguistic meaning, which means the imposed land tax; i.e., fixed and determined.

An-Nawawī said, "The imposition of tribute means fixing and determining it. The amount taken is called '*Darībah*', and its plural is '*Darā'ib*'. This was also indicated by Al-Munāwī when he said, "*Al-Kharāj*" is usually used to refer to the tax on land." Similarly, Al-Khwārizmī defined '*Al-Max*' as: "A tax that is taken from merchants on goods at checkpoints."

It is noted that this term is not commonly used by Fiqh scholars

in this sense. Rather, the terms which are used by them in similar contexts include: royal or governmental expenses, levies, duties, tributes, tithes, dues, and taxes. By these terms, they generally refer to the amount of money that the state obliges the individuals to pay in order to cover the state's public expenses, and to regulate the political, economic, and social life. This payment is not necessarily in exchange for a specific service or benefit received by each payer in particular.

• **Da' Wa Ta' ajjal (Reduce and Hasten Repayment)** ضَعَّ وَتَعَجَّلَ

This term is a well-known Fiqh issue among scholars, which falls under the category of settlement of release (*Sulh Al-Ibrâ*), or settlement of relinquishment (*Sulh Al-Isqât*), or settlement of reduction (*Sulh Al-Hatîtah*), which is one of the two types of debt settlement expressed by Fiqh scholars. It means that the creditor and the debtor agree, before the due date of a deferred debt, that the creditor waives a portion of his debt in exchange for the debtor accelerating the repayment of its remaining amount.

In "*Al-Kâfi*" by Ibn `Abdul-Barr, it is reported from Imam Mâlik that its form is as follows: "A man owes another person twenty dinars, due within a year from a sale or a loan. When half the year has passed, the creditor needed the debt, so he

asked the debtor to settle it, but the debtor refused except until the due date. So, the creditor said to him: 'Give me ten now, and I will waive the remaining ten.' This is: '*Da' Wa Ta' ajjal*.'"

This term is derived from a Prophetic *hadîth* related by Al-Hâkim and Al-Bayhaqî on the authority of Ibn `Abbâs, who said: "When the Prophet (peace and blessings of Allah be upon him) ordered the expulsion of Banû An-Nadîr from Medina, some of them came to him and said: 'O Messenger of Allah, you have ordered their expulsion, but they have debts owed to people that have not yet become due.' So, he (peace and blessings of Allah be upon him) said: 'Reduce and Hasten Repayment (*Dha'û Wa Ta' ajjalû*).'"

Fiqh scholars differed regarding the permissibility of this issue into three opinions: The Shafi`ites and the Malikites considered it a form of usury and therefore it is prohibited. The Hanbalites and the Hanafites said that it is permissible only in the debt of manumission by contract (*Al-Mukâtabah*). Imam Ahmad held it permissible, and it is the opinion of Ibn `Abbâs and An-Nakha`î, and it is the choice of Ibn Taymiyyah, Ibnul-Qayyim, and Ash-Shawkânî. Also, the resolution no. 64 (2/7) was issued by the Islamic Fiqh Academy in Jeddah, which holds its permissibility.

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• **Di`f (Double or Multiply)** ضَعَف

Linguistically, the term ‘*Ad-Di`f*’ refers to doubling a thing by multiplication up to ten times of its own value or more.

Al-Azharî said, “In the Arabic language, ‘*Ad-Di`f*’ originally means doubling something by its own value. Then, it was used to refer to any form of multiplication, regardless of how many times, where no limit to multiplication... According to the common people, ‘*Ad-Di`f*’ is to multiply something by two times or more.”

In “*Mukhtasar Al-Karkhî*”, it is reported from Abû Yûsuf that if someone says: “I owe so-and-so three dirhams doubled”, it means he owes him six dirhams. But if he says: “I owe so-and-so three dirhams doubled and multiplied”, then he owes him eighteen dirhams because the double of three is three (three times), and then we double it again due to his saying: “multiplied”.

Imam Ash-Shâfi`î said, “If a man says: ‘The double of what my son receives is for so-and-so,’ then I will give him twice as much, but if he says: ‘Two doubles,’ and he receives a hundred, I will give him three hundred, as I will double the hundred that he receives once and then again.”

The author of “*Az-Zâhir*” commented on this saying: “Ash-Shâfi`î

extended the meaning of double (*Ad-Di`f*) to multiply (*At-Tad`if*), which is commonly known among people, ...”

• **Dimâr (Inaccessible)** ضِمَار

Linguistically, the term ‘*Ad-Dimâr*’ is used by the Arabs to refer to debts and promises that are not expected to be fulfilled, and to everything of which you are not confident. It is also used to denote any property other than the accessible or deferred wealth.

It is said, “The basis of ‘*Ad-Dimâr*’ is something that has been unjustly withheld from its rightful owner.” Al-Mutarrizî reported that it is derived from ‘*Al-Idmâr*’, which means absence or concealment.”

As for ‘*Ad-Dimâr*’ in terms of wealth, it refers to the absent wealth whose collection is not hoped for. If its collection is hoped for, then it is not considered a ‘*Dimâr*’.

• **Damân (Guarantee)** ضَمَان

Linguistically, the term ‘*Ad-Damân*’ refers originally to putting something into something that contains it. Then it was used to mean the undertaking, considering that the guarantor encompasses the obligor’s liability and adds it to his own.

As for the Fiqh scholars, they use the guarantee in five meanings:

1- The Shafi`ite, the Malikite, and the Hanbalite scholars use it to

mean suretyship, which denotes: “Joining the guarantor’s liability to the debtor’s liability in terms of the fulfilment of an obligation.” Ad-Damîrî said, “This is derived from the concept of ‘*At-Tadam-mun*’, which means adding the debt to the liability of someone who has not owed it, while it remains established in the debtor’s liability.”

- 2- The Hanafite scholars use it to mean: “An undertaking to compensate someone for the damage incurred”. They said, “The guarantee is to return the like for the damaged item, if it is fungible, or its equivalent value if it is non-fungible.”
- 3- Most of the scholars use it in a more general meaning, which is: “The general liability for damage”. That is, the obligation to bear the consequences of destruction. In this sense, the Prophet Muhammad (peace and blessings of Allah be upon him) said: “Yield (*Al-Kharâj*) follows the assumption of responsibility (*Damân*)”. [Related by Abû Dâwûd, At-Tirmidhî, and An-Nasâ’î]. Al-Khat-tâbî said, “This *hadîth* means that if the sold item generates an income or yield, then the owner of the property owns its yield and benefits because the original property is under his guarantee. So, if a man buys land and utilizes it, or buys livestock and breeds

it, or buys an animal and rides it, or buys a slave and uses him, but later he discovers a defect in it, he is entitled to return the item. Further, the buyer is not liable for whatever he has utilized from it; because if the item had been damaged while in his possession from the period of contracting until revocation, it would be under his guarantee, so he should be entitled to the yield in return.”

- 4- Some scholars use it to mean: “An undertaking to pay the compensation in financial commutative contract.” To this regard, Az-Zayla’î (a Hanafite scholar) said: “The profit in creditworthiness or reputation partnership (*Sharikat Al-Wujûh*) is entitled by guarantee, which is proportionate to the share of ownership in the purchased property.” This means that each partner’s entitlement to profit in creditworthiness or reputation partnership is in exchange for his guarantee; that is, his undertaking to pay the price of his share in the purchased property...

Also, Ibn Taymiyyah said: “The most accepted view is the permissibility of “guaranteeing orchards”, which means leasing land with its fruit-bearing trees before their fruits have begun to ripen, for a specified period, in return for a specified payment. He further said, ‘This contract was called “guarantee” due to the

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general undertaking in terms of the exchange-based contracts.”

Similarly, it is mentioned in “*Radd Al-Muhtâr*”: “In our traditional usage, the sale of fruits on the trees is called a guarantee. So, if someone says to another, ‘I guarantee you these fruits for such and such price,’ and the other party accepts, it should be valid.”

5- Many scholars use it to mean: “An undertaking to perform something”. To this regard, Al-Kâsânî said: “If a craftsman accepted a work for a certain fee, but then he assigns the work to another person for less, he is entitled to the surplus fee, and no reason for his entitlement to it except the guarantee.”

Also, the Hanafites and the Hanbalites said regarding the partnership for the acceptance of work (*Sharikat At-Taqabbul*), which is called ‘*Sharikat Al-Abdân*’, ‘*Sharikat As-Sanâ’i*’, and ‘*Sharikat Al-A`mâl*’: “The partner in ‘*Sharikat At-Taqabbul*’ is only entitled to profit by the guarantee”; i.e., whether he worked or not. Al-Mullâ `Alî Al-Qârî said, “And the profit between them is determined according to what they have stipulated, even if one of them did the work, whose entitlement to the fee is obvious. As for the one who does not work, he is obliged to work by acceptance, and he is a guarantor to it, then he is entitled

to the fee by such guarantee.” Ibn Qudamâh said, “The acceptance of work requires the guarantee from the acceptor, and he is entitled to the profit accordingly.”

• ***Damân Al-Itlâf* (Destruction Guarantee)** ضَمَانُ الْإِتْلَافِ

The destruction guarantee (*Damân Al-Itlâf*) refers to a guarantee arising from the destruction of another person’s life or property, whether directly or indirectly.

Ibn Rajab defined the destruction as: “The act that directly causes destruction by any means entailing it, such as killing or burning, or the act that indirectly causes destruction, such as digging a well in someone else’s land without permission, then a person or an animal falls in it and dies accordingly, or lighting a fire on a windy day, then it spreads to damage someone else’s property, or releasing a water that has been restrained..., or opening a cage to a bird, then it flies away... because he caused the destruction of another thing in the normal course of events.”

The destruction guarantee according to Islamic Shari’ah is to return the like for the destroyed property if it is fungible, and its equivalent value if it is non-fungible.

In his book “*Al-Burhân*”, Al-Juwaynî said: “The guarantee of property is based on making up for the

loss incurred, while the guarantee of lives is based on quenching the thirst for vengeance.”

Az-Zarkashî mentioned in his “*Al-Qawâ'id*” that a person may be held liable for the damages that he causes to his own property, either because Allah’s right or a human being’s right is attached to it, such as when a person who is in a state of ritual consecration (*Ihrâm*) kills his own game animal, then he is obligated to make atonement. Similarly, if the pledgor destroys the pledged property, he should guarantee it with a similar item, which is rendered as a collateral in lieu of the destroyed property... Furthermore, someone else may guarantee what a person causes of destruction to his own property, such as when someone tells another person to throw his belongings into the sea, and he will be held liable for its guarantee.

• **Damân Al-Istihqâq (Entitlement Guarantee)** ضَمَانُ الْاِسْتِحْقَاقِ

In **Fiqh terminology**, the entitlement guarantee (*Damân Al-Istihqâq*) refers to a guarantee to pay the price of the sold property to the buyer upon the occurrence of entitlement (vindication; i.e., if it appears that the sold property belongs to a person other than the seller). Accordingly, it is defined as: “The guarantee for the payment of the price to the buyer contingent upon the occurrence of vindication.” This

is the same as the misrepresentation or money-back guarantee (*Damân Ad-Darak*) according to many scholars. Others argued that the entitlement guarantee is a kind of the misrepresentation guarantee, which involves the defect in addition to the vindication.

• **Damân Al-A'yân (Assets Guarantee)** ضَمَانُ الْأَعْيَانِ

In Islamic Fiqh, there are two types of the property guarantee (*Damân Al-Amwâl*): assets guarantee (*Damân A'yân*) and debts guarantee (*Damân Duyûn*). The assets guarantee has three categories:

- 1- The guarantee of assets secured by itself to whoever holds them in his possession, such as the appropriated property, or the item received on a purchase bargain, or the specified dowry. This type of guarantee is: “An undertaking to recover the guaranteed asset for its owner, when it is in the possession of another party, and to return it to him by itself if it remains intact, or to return a similar asset (if it is fungible), or its equivalent value if it is non-fungible (in the event of its damage).” This is the view held by the Hanafites and the Hanbalites. However, the Shafi'tes defines it as: “An undertaking to return the guaranteed asset to its owner as long as it remains intact. If it is damaged, the guarantor is

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not held liable to compensate for a similar asset or its equivalent value.”

- 2- The guarantee of assets secured by others, such as the assets that have been sold but not yet delivered to the buyer. The Hanafites said, “This is because the asset that is sold but not yet delivered is guaranteed by the price, not by the asset itself. This means that if the asset is lost or destroyed while it is still in the seller’s possession, the seller would not be held liable for anything. However, the buyer is no longer obligated to pay the purchase price.

- 3- The guarantee of assets held as a trust in the possession of its holder, such as deposits or leased property. They are not originally guaranteed to be returned by whoever holds them in his possession. Its guarantee means: “An undertaking to return the asset by itself if it remains intact, or to return a similar asset or its equivalent value in the event of its damage.”

• **Damân Al-Basâtîn (Orchards Guarantee)** ضَمَانُ الْبَسَاتِين

In Fiqh terminology, the orchards guarantee (*Damân Al-Basâtîn*) means: “The leasing of agricultural land with its fruit-bearing trees (before their fruits have begun to ripen) for a specified period, such as a year or several years, in return for

a specified payment, part of which is paid in return for the land itself and the other part is paid in return for the fruits.”

Ibn Taymiyah defined it as: “Leasing one’s garden or orchard, which contains palm trees, grapes, and other trees, to someone who maintains and cultivates its land, in return for a specified payment.”

The early scholars called this contract as: tax-farming (*Qabâlah*), while the common people in the Levant called it: guarantee (*Damân*). It is known in the books of Ibn Taymiyah and Ibnu-Qayyim as: orchards guarantee (*Damân Al-Basâtîn*) and gardens guarantee (*Damân Al-Had-â’iq*).

Ibn Taymiyah stated that the reason for calling it a guarantee (*Damân*) is that it is neither a straightforward sale nor a straightforward lease. This is because the orchard becomes fruitful only through the work of the tenant. Therefore, it falls under the general obligation in the exchange-based contracts and the like, which is the guarantee (*Ad-Damân*).

Scholars have three opinions regarding the ruling of this contract:

- 1- It is not permissible under any circumstances, given that it falls under the Prophet’s prohibition of selling fruits before they ripen. This is the opinion of the

Hanafites, and the Shafi'ites. It is also a statement by Ahmad.

- 2- It is permissible if the land's usufruct is the primary purpose and the trees are considered subsidiary. This is because it is permissible in selling the fruit before the appearance of its ripeness what falls under it implicitly and subsidiarily. This is the opinion of Mâlik who considers the fruits to be subsidiary if their value is one-third or less of the total value.
- 3- It is permissible under any circumstances, even if the trees are the primary purpose. This is the opinion of Ibn 'Aqîl. Ibn Taymiyyah said, "This opinion is the consensus of the early scholars, despite being contrary to the well-known view of the predecessors." He also said, "This is the most accepted opinion, as it removes hardship from the Muslims."

• **Damân Al-Khusrân (Loss Guarantee)** ضَمَانُ الْخُسْرَانِ

In Fiqh terminology, the loss guarantee (*Damân Al-Khusrân*) means: "A person says to someone else: "Sell in the market, and whatever loss you incur, I will be held liable for it." This concept is mentioned by Ibn 'Âbidîn in "*Rad Al-Muhtâr*", and he said: "It is not permissible".

In his commentary on "*Ad-Durr*

Al-Mukhtâr", At-Tahâwî said: "The loss guarantee is not a valid contract. This is because the guarantee can only be made for something that is certain, and the loss cannot be guaranteed to anyone. Even if someone were to say: "Sell in the market, and whatever loss you incur, I will be held liable for it," or if someone says to the buyer of a slave: "If your slave runs away, I will be held liable for him," then it would not be considered valid.

This term is mentioned in the Hanafites' books, but I did not find it in the compendiums of other Fiqh schools.

• **Damân Al-Khalâs (Clearance or Delivery Guarantee)** ضَمَانُ الْخَلَاصِ

The clearance guarantee (*Damân Al-Khalâs*) refers to a guarantee that the sold property will be free from any entitlement (vindication; i.e., if it appears that the sold property belongs to a person other than the seller), and that it will be delivered to the buyer without fail. This definition was provided by Imam Abû Hanîfah, who declared it as invalid because it guarantees something that cannot be fulfilled. The Hanbalites also deemed it invalid because if the sold property turns out to have a rightful owner or is discovered to be free, it cannot be delivered. It is reported from Imam Ahmad Ibn Hanbal that he was asked about a man

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who sold a slave or bondmaid, and guaranteed its clearance (delivery) to the buyer. He responded, "How could he guarantee clearance if it turns out that he is set free?"

However, the clearance guarantee can be considered valid in case it is conditional on the clearance of the sold property if he is able to deliver it, or otherwise (if he cannot deliver it) he should return the price. This is because it involves fulfilling something within his capability, which either to deliver the sold property if the rightful owner approves the sale or to return the price if he does not approve it. This interpretation is provided by the two companions of Imam Abû Ḥanîfah (Abû Yûsuf and Muḥammad) regarding the clearance guarantee, where they deemed it permissible as it falls within the context of the misrepresentation or money-back guarantee (*Damân Ad-Darak*).

- ***Damân Ad-Darak* (Misrepresentation or Money-Back Guarantee)** ضَمَانُ الدَّرَكِ

Linguistically, the term '*Ad-Darak*' refers to responsibility or liability.

In Fiqh terminology, it is a guarantee to refund the price to the buyer upon the occurrence of entitlement (vindication; i.e., if it appears that the sold property belongs to a person other than the seller), by

saying: "I have warranted or guaranteed to you any entitlement that may arise regarding this sold property." It is called '*Darak*' because it entails the liability when the vindicator claims his rightful property.

Some scholars said, "The misrepresentation entitlement or money-back guarantee (*Damân Ad-Darak*) is used customarily in terms of the vindication or entitlement guarantee (*Damân Al-Istihqâq*), which is to guarantee the price if it turns out that the sold property belongs to a person other than the seller. Other scholars view it as a type of the contractual obligation guarantee (*Damân Al-'Uhdah*). Some others stated that the misrepresentation guarantee is essentially the same as the contractual obligation guarantee, so they have the same ruling, but they differed only in wording.

- ***Damân As-Sûq* (Market Guarantee)** ضَمَانُ السُّوق

In Fiqh terminology, the market guarantee (*Damân As-Sûq*) is a guarantee for what a merchant owes of a debt, and what he receives from the guaranteed assets.

Ibn Taymiyyah said, "It is that the guarantor is held liable for the debts owed by the merchant to the people."

This term is used specifically by the Hanbalite scholars, against other Fiqh scholars. This is reflected

in Article no. (1093) of “*Majallat Al-Ahkâm Ash-Shari’yyah*” according to the school of Imam Ahmad, which states: “The market guarantee is valid. For example, if someone guarantees what a merchant owes, or what remains due to the merchants, or what the merchant receives from the guaranteed assets, then the guarantee is valid.”

• **Damân At-Talab (Location Guarantee)** ضَمَانُ الطَّلَب

The location guarantee (*Damân At-Talab*) is a term used specifically by the Malikite scholars, against other Fiqh scholars. It refers to an undertaking by the guarantor to search for and locate the debtor, and provide information to the creditor about his location without bringing him to the creditor.

In the location guarantee, the guarantor is required to search for the debtor if he is missing or in hiding, and to inform the creditor about his location so that he could collect his debt from him without bringing the debtor physically.

• **Damân Al-‘Aqd (Contract Guarantee)** ضَمَانُ الْعَقْدِ

The Shafi’ite scholars classified the pre-delivery guarantees into two categories, based on the consideration payable under guarantee: contract guarantee (*Damân ‘Aqd*) and in-possession guarantee (*Damân Yadd*).

Az-Zarkashî defined the contract guarantee (*Damân Al-‘Aqd*) as: “The guarantee of the specified consideration in a straightforward exchanged-based contract, such as the sold item and the specified price before taking possession, or the specified capital in a *Salam* contract, or the specified rent in a lease before delivery.”

He then went on to say: “The difference between the contract guarantee (*Damân Al-‘Aqd*) and the in-possession guarantee (*Damân Al-Yadd*) is that the contract guarantee refers to the property guaranteed by its equivalent consideration as agreed upon or established by Shari’ah. For example, the item sold in the possession of the seller, which is guaranteed by the price if it is damaged, not by a similar item or an equivalent of its value. Similarly, if the subject matter of *Salam* is rescinded or terminated, it is guaranteed by the capital, not by the value of the subject matter of *Salam*. As for the in-possession guarantee, it refers to the property guaranteed in case of damage by a similar property or an equivalent of its value.”

An example of the contract guarantee, according to the Shafi’ites (in their most accepted opinion), is the guarantee of property specified as a dowry if it is destroyed in the possession of the husband before being received by the wife. This is

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because it is owned through an exchange-based contract, so it resembles the sold item in the possession of the seller. In such case, the marriage contract is annulled, and it is assumed that he has recovered its possession before the destruction. According to Ash-Shîrâzî, "She has a right of recourse to him for the dower of the like (the customary dower), since it is a specified compensation that is destroyed before being received, and it is not possible to return the compensation, so it is obligatory to return the equivalent of the compensation, as if he bought a garment for a slave, then he took possession of the slave and did not deliver the garment, and it was destroyed in his possession, then he should pay the value of the garment."

This classification is used specifically by the Shafi'ite scholars, against other Fiqh scholars.

• **Damân Al-'Uhdah (Contractual Obligation Guarantee)** صَمَانُ الْعَهْدَةِ

Al-Azharî said, "The contractual obligation suretyship (*Kafâlat Al-'Uhdah*) refers to the guarantee of a contractual defect in the liability of the seller, or an entitlement (vindication) established by evidence for the vindicator, so that the commodity is delivered to him, and the buyer has a right of recourse to the seller for the price he paid. For instance, one might say, 'I secured

aguarantee from so-and-so for what I bought from him,' meaning that I took a guarantor to the commodity in case of any entitlement (vindication) or defect that may arise. Al-Mutawallî said, "This guarantee has been called so because the guarantor undertakes to return whatever is in the liability of the seller."

It is mentioned in "*Al-Mughnî*" by Ibn Qudâmah, "It is permissible to guarantee the contractual obligation of the sold item on behalf of the seller to the buyer, and on behalf of the buyer to the seller. In this context, the guarantee on behalf of the buyer involves guaranteeing the price required by the sale before its delivery, and in case of any entitlement (vindication) or defect that may arise, then the seller has a right of recourse to the guarantor. Conversely, the guarantee on behalf of the seller involves guaranteeing the price on behalf of the seller upon the occurrence of entitlement (vindication; i.e., if it appears that the sold property belongs to a person other than the seller), or it is returned due to a defect, or as a result of the defect compensation. In both cases, the contractual obligation guarantee involves guaranteeing the price or part thereof from one party to the other."

The contractual obligation '*Al-'Uhdah*' is originally a document in which the sale contract is written

and the price is mentioned, so it is expressed by it for the price that it guarantees.

The expressions used for the contractual obligation guarantee (*Damân Al-'Uhdah*) include phrases like: "I guarantee its contractual obligation, its price, or its misrepresentation", or "I guarantee your clearance from him", or "Upon the occurrence of entitlement (vindication), I guarantee the price for you."

Az-Zayla'î stated, "The contractual obligation suretyship (*Kafâlat Al-'Uhdah*) is not permissible. Its form is that a person buys a slave from someone, then a third party guarantees the contractual obligation for the buyer. This is because the term 'Al-'Uhdah' is a common name, which might refer to an old document because it is akin to the document of contractual obligation, which belongs to the seller, and he is not obligated to deliver it. Therefore, if someone guarantees its delivery to the buyer, then he has guaranteed something beyond his control, which is invalid. However, this term is applied to the contract, because it is derived by the undertaking (and the contract and the undertaking are the same), and to the obligations of the contract, because it is the result of the contract, and to the misrepresentation or money-back (*Ad-Darak*), and to the conditional option, as evidenced by

the *hadîth* stating, "*The contractual obligation of a slave is three days*", referring to the conditional option regarding it. Thus, acting upon it before clarification renders the guarantee void due to ignorance, unlike the misrepresentation (*Ad-Darak*), which remains valid because it entails guaranteeing the price upon the occurrence of entitlement (vindication; i.e., if it appears that the sold property belongs to a person other than the seller), which is known and can be delivered."

• ***Damân Al-Gurûr* (Deception Guarantee)**

ضَمَانُ الْغُرُورِ

Terminologically, the deception guarantee (*Damân Al-Ghurûr*) refers to the guarantee arising from deception which occurs in the financial commutative contracts, or resulting from the suretyship of the misrepresentation guarantee to the deceived party.

To this regard, Al-*Hasakafi* said, "The basis is that the deceived party has a right of recourse to the deceiver if deception occurs in a commutative contract or if the deceiver guarantees the misrepresentation to the deceived party.... And the deception guarantee in reality is the same as the suretyship guarantee, not as the destruction guarantee."

An example of the first type:

A father says to merchants in the market: "Sell to my son so-and-so,

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I have given him permission to engage in trade". However, it later turns out that the boy is the son of some other person. In this case, the father would be held liable under the misrepresentation guarantee for the obligations established to them in the liability of his son under the transaction contract.

Ibn `Âbidîn said, "Deception in commutative contracts that require the integrity of the consideration provides a reason for guarantee, given that it is a means to avert harms as much as possible."

Accordingly, it was stated in Article no. (658) of *"Majallat Al-Ahkâm Al-'Adliyyah"*: "If any party to a contract based upon consideration deceives another party thereto, such party must make good any loss caused to the other. Examples: (1) A buys a piece of land and erects a building thereon. Thereupon, a person appears who proves to be entitled to such land and takes possession thereof. A is entitled to recover the value of the land from the vendor and in addition the value of the building at the time of handing it over. (2) A requests certain merchants to sell certain goods to his son, who is a minor, stating that he has given him permission to engage in trade. It is later proved that the boy is the son of some other person. The merchants are entitled to recover the value of the good which they have sold to the boys from A."

An example of the second type: When someone says to a person, "Take this road, for it is safe, and if your money is taken, I am a guarantor." So, he took that road, but the thieves took his money, then the one who gave the guarantee will be held liable as a guarantor. At-Tahâwî said, "This is because deception necessitates the entitlement of recourse if it is subject to the condition." That is the guarantee condition.

This term is widely used in this meaning by the Hanafite scholars, against other Fiqh scholars.

• **Damân Al-Ma`rifah (Identity Guarantee)** ضَمَانُ الْمَعْرِفَةِ

In Fiqh terminology, the identity guarantee (*Damân Al-Ma`rifah*) is when a person guarantees to someone else the identity and creditworthiness of a third party who comes to him for a loan, but he refuses to give him because he does not know his identity, so when that person guarantees his identity and creditworthiness, he (the creditor) proceeds with the loan accordingly.

Ibn `Aqîl Al-Hanbalî categorized the identity guarantee as a form of creditworthiness for the wealth owner. In essence, he says to the creditor, "I guarantee his presence whenever you wish, because you do not know him and cannot bring someone you do not know. But I know him, and I am liable to bring

him to you whenever you wish.” It is akin to saying, “I guarantee his physical presence”, so he is required to bring him.

This Fiqh categorization of the identity guarantee entails the guarantor’s obligation to bring him, because the wording: “I guarantee you his identity”, is as strong as the wording: “I guarantee bringing him”. This is because the guarantee does not have a specific wording that it cannot be valid without it, rather it can be valid by every wording that indicates the meaning of creditworthiness. If the guarantor fails to bring him, he will be held liable to pay what he owes to the creditor. Further, it is not enough for the guarantor to merely identify the debtor to the creditor by his name or location.

According to some Hanbalite scholars, the ruling on this guarantee involves the guarantor’s obligation to search for the debtor whose identity and location are guaranteed by him if he is missing or in hiding, and to guide the creditor to him. Failure to do so would result in the guarantor being liable for the creditor’s rights because the creditor did not give him except based on the guarantor’s undertaking to identify this person and his location.

Abû Hanîfah and Muḥammad, however, argue: “The identity guarantee is not considered part of the suretyship at all. This is because the

suretyship involves an obligation to claim, but here the obligation is restricted to identity without the obligation to claim, so it is akin to his undertaking to guide him to that person.” Abû Yûsuf disagreed with this view, and stated: “No, indeed he is a guarantor based on the customary practice, as they intend to provide guarantee through it.”

This term is used specifically by the Hanafite and the Hanbalites scholars, against other Fiqh scholars.

• ***Damân Al-Wajh (Appearance Guarantee)*** ضَمَانُ الْوَجْهِ

The appearance guarantee (*Damân Al-Wajh*) is an undertaking to bring the debtor (the person who owes the debt) when needed, and hand it over to the creditor (the person to whom the debt is due), so that he can collect the debt from him.

Az-Zurqânî said, “The appearance guarantee means bringing the face, ... The word ‘face’ here metaphorically refers to the person in its entirety, in the context of using a part to represent the whole.”

It is also referred to as: soul guarantee (*Damân An-Nafs*), body guarantee (*Damân Al-Badan*), soul suretyship (*Al-Kafâlah Bi An-Nafs*), and body suretyship (*Al-Kafâlah Bi Al-Badan*).

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• **Damân Al-Yadd (In-Possession Guarantee)** ضَمَانُ الْيَدِ

The in-possession guarantee (*Damân Al-Yadd*) is an undertaking by the possessor in the event of loss or damage to return the like for the damaged item, if it is fungible, or its equivalent value if it is non-fungible, whether his possession is not considered as a trustee (such as: the appropriator or the one who has taken possession of an item for purchase), or it is considered as a trustee (such as: a bailee, a partner, or an agent) in case of a tort or negligence.

The Shafi'ite scholars mentioned differences between in-possession guarantee (*Damân Al-Yadd*), contract guarantee (*Damân Al-'Aqd*), and destruction guarantee (*Damân Al-Itlâf*).

To this regard, Az-Zarkashî said: "The difference between the contract guarantee (*Damân 'Aqd*) and the in-possession guarantee (*Damân Yadd*) is that the contract guarantee refers to the property guaranteed by its equivalent consideration as agreed upon or established by Shar'îah. For example, the item sold in the possession of the seller, which is guaranteed by the price if it is damaged, not by a similar item or an equivalent of its value.... As for the in-possession guarantee, it refers to the property guaranteed in case of damage by a similar property or an

equivalent of its value."

He further elaborated, "The difference between the destruction guarantee (*Damân Al-Itlâf*) and the in-possession guarantee (*Damân Yadd*) is that the liability in the destruction guarantee should rest with the person who committed the act of destruction directly, not the one who facilitated the act, while the liability in the in-possession guarantee should rest with both of them because it established in each of them. According to our school, the in-possession guarantee compensates for the loss of the owner's possession, while the ownership remains intact because there has been no transfer of ownership. The owner loses possession and disposal, so the guarantee compensates for this loss. However, according to the Hanafite school, the guarantee compensates for the item that must be returned, so the guarantee is a replacement for the item."

• **Damânah (Responsibility)** ضَمَانَةٌ

Linguistically, the term '*Ad-Damânah*' means preservation and caretaking.

The Prophet Muḥammad (peace and blessings of Allah be upon him) said, "*The Imams (Prayer leaders) are responsible (Dumanâ)*." [Related by Abû Dâwûd and At-Tirmidhî]. This means that they are responsible for any mistakes that their followers

may make during Prayer, but this responsibility (guarantee) does not entail any compensation.

Al-Harawî explained, “The Prophet means that the Imams (Prayer leaders) are responsible for preserving the people’s Prayers. The meaning of the responsibility (*Ad-Damânah*) is preservation and caretaking.”

Al-Khattâbî and Ibn Bâtîsh also reported from the linguists that the term ‘*Ad-Dâmin*’ in Arabic language means the caretaker, and ‘*Ad-Damân*’ means caretaking. Therefore, the meaning of the Imam being responsible (*Dâmin*) is that he is a caretaker responsible for preserving the people’s Prayer and the proper number of its units (*Rak’ahs*).

• *Diyâfah* (Hospitality) ضيافة

Linguistically, the term ‘*Ad-Diyâfah*’ means hospitality or guest reception.

In Shari’ah terminology, it refers to: “The act of offering shelter and food for three days free of charge by the resident of a village or city to someone other than its residents upon his request for accommodation.”

This is an established religious right for a Muslim over other Muslims who are hosting him, as evidenced by the *hadîth* related by Al-Bukhârî and Muslim, where the

Prophet Muhammad (peace and blessings of Allah be upon him) said: “*He who believes in Allah and the Last Day should honor his guest with his due reward. It was said: ‘O Allah’s Messenger, what is his due reward?’ He said: ‘His day and His night. Hospitality is for three days, whatever is beyond that is charity for him. And it is not permissible for a Muslim to stay with his brother until he makes him sinful.’ It was said: ‘O Allah’s Messenger, how he would make him sinful?’ He said: ‘He stays with him (so long) that nothing is left with him to entertain him.’*”

There is no disagreement among the scholars regarding the legitimacy of hospitality, but they differed as to whether it is obligatory or recommended, and regarding the conditions for establishing this right, its fulfilment, and its duration.

• *Dayzan* (Steward) ضييزن

Linguistically, the term ‘*Ad-Dayzan*’ carries various meanings, including: a trustworthy guardian, a treasurer, a partner, someone who competes for water at a well, and a man’s children and his dependents.

Terminologically, it refers to: “The trustworthy person appointed to accompany the *Zakâh* collectors or officials, and ensure keeping what they collect of taxes and the like.”

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It was commonly used in Iraq in the sense of a treasurer (*Bundâr*), as he is responsible for keeping and treasuring the collected funds.

Al-Khuzâ`î mentioned that it was prevalent in the Maghreb region in the sense of a supervisor (*Mushrif*), as he is responsible for overseeing and supervising the activities of *Zakâh* collectors.

• Day`ah (Estate)

ضَيْعَة

Linguistically, the term '*Ad-Day`ah*' refer to real estate (immovab-

le property), as opposed to movable property.

It also refers to craft and profession.

The Fiqh usage of the term '*Ad-Day`ah*' does not go beyond its linguistic meaning. However, the scholars sometimes use it to refer to dependents, particularly the minor children and the elderly who are unable to take care of themselves.



Tâ' (ط)

• Târif (Newly Acquired) طارف

Linguistically, the term '*At-Tâ-rif*' refers to something that is new or recently acquired.

The wording '*Al-Mâl At-Târif*' or '*Al-Mâl At-Tarîf*' refers to the newly acquired wealth or property, in contrast to the wording '*Al-Mâl At-Tâlid*' or '*Al-Mâl At-Talîd*' which refers to the wealth or property that has been inherited or passed down through generations. Ath-Tha'âlibî said, "If the wealth is inherited, it is considered '*Tilâd*', and if it is acquired, it is considered '*Târif*'."

Fiqh scholars sometimes use the term '*At-Târif*' in the context of inheritance to denote: "The property acquired by an apostate (someone who has renounced Islam) after his apostasy", whereas the term '*At-Tâlid*' denotes: "The property acquired by an apostate (someone who has renounced Islam) while he was still a Muslim." Some scholars differentiate between them in ruling, and consider '*At-Târif*' as a *Fay'* (booty gained without fighting) in the state treasury, while '*At-Tâlid*' as an inheritance for his Muslim heirs. This is the opinion of Abû Hanîfah,

Ath-Thawrî, Ishâq, and others who agree with them. However, other scholars do not differentiate between them, though there may be difference among them regarding its inheritance, whether it should be considered as a *Fay'* in the state treasury or it should be distributed (as inheritance) to his Muslim heirs. They have two opinions to this regard.

• Tasq (Fixed Levy) طَشَقْ

The term '*At-Tasq*' is an Arabized Persian word, derived from the word '*Tashk*', which means rent.

Terminologically, Al-Khwârizmî said: "It refers to a fixed tax or levy that is imposed on various types of crops, for every *Jarîb* (a known quantity of food).

Ibnul-Athîr stated, "In the narration of 'Umar, it is mentioned that he wrote to 'Uthmân Ibn Hunayf about two men from the people of Dhimmah (non-Muslim subjects) who embraced Islam, stating: 'Remove the tribute (*Al-Jizyah*) on their individuals and take the fixed levy (*At-Tasq*) on their lands.' '*At-Tasq*' means the fixed tax or levy that is imposed on the area or productivity of the land."

• Tu'mah (Provision or Land Granted Lifetime) طُعْمَة

Linguistically, the term '*At-Tu-m*' means food or something to eat,

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and ‘*At-Ta‘âm At-Tu‘m*’ is the food which satisfies a person’s hunger.

The term ‘*At-Tu‘mah*’ refers to the meal or what is served as food.

It is also used metaphorically as a means of provision. For example, it is said: “The Sultan made this estate a ‘*Tu‘mah*’ for so-and-so”, meaning a means of provision. It is reported from Mu‘âwiyah that he gave ‘Amr the *Kharâj* of Egypt, meaning he gave him a ‘*Tu‘mah*’. The plural is ‘*Tu‘am*’.

The term ‘*At-Ti‘mah*’ refers to the source from which provision is obtained.

Terminologically, Al-Khwârizmî said: “It is an estate (a piece of land) given to a person to cultivate and pay a tenth of its produce, and it remains in his possession for the duration of his life, and when he dies, it returns to the grantor’s heirs, unlike ‘*Al-Qat‘ah*’, which passes down to the grantee’s descendants after him. According to Abû Hanîfah, the act of granting a land (*Al-It‘âm*) is specific to lending land for agriculture.

• Talab At-Taqrîr (Making Claim)

طَلَبُ التَّقْرِيرِ

This term is used by the Hanafite scholars in the context of pre-emption (*Ash-Shuf‘ah*) to signify that the pre-emptor would make a claim in the presence of witnesses by the

side of the seller if the real estate is still in his possession, or by the side of the buyer even if the real estate is not in his possession, or by the side of the property sold, that he asserts his claim and demand the right of pre-emption thereto at that moment.

This is outlined in Article no. (1030) of “*Majallat Al-Ahkâm Al-‘Adliyyah*”: “After having made a claim immediately upon hearing of the sale, the person claiming the right of pre-emption must make a claim formally and in the presence of witnesses. Thus, such person must say in the presence of two witnesses, and by the side of the property sold, that such and such a person has bought the real property in question, or, being by the side of the purchaser, must say that such person has bought such and such a piece of real property or, if the property sold is still in the possession of the vendor, must say by the side of the vendor that the latter has sold the real property in question to such and such a person, but that he has a right of pre-emption thereto, and that he calls such person to witness that he has made a further claim at that moment. If the person claiming the right of pre-emption is in some distant place and is not in a position personally to make a claim formally and in the presence of witnesses, he may appoint a person as his agent to do so. If he is

unable to find an agent, he may send a letter.”

• *Tama* (Stipend)

طَمَعَ

Linguistically, the term ‘*At-Ta-ma*’ refers to the heart’s attachment to something without any preceding reason for it. Ar-Râghib said, “It is the inclination of the soul towards something out of desire for it.” It is often used for something that is close to be obtained.

It is used metaphorically to mean stipend. The plural is ‘*Atmâ*’, so it is said, “‘*Atmâ*’ of the soldiers”, meaning their stipends, or it could refer to the time of their receipt.

Terminologically, Al-Khwârizmî said: “In the register of Iraq, ‘*Al-Atmâ*’ is called ‘*Ar-Razqât*’ (regular payments or stipends).”

The expression ‘*Iqâmat At-Ta-mâ*’ refers to the act of initiating or establishing the regular payments or stipends.

Al-Khwârizmî mentioned that this term is a specific convention adopted by the scribes of army register (*Diwân Al-Jaysh*).

• *Tawwâf* (Itinerant)

طَوَّافٌ

Linguistically, the term ‘*At-Ta-wf*’ means walking around something. The term ‘*At-Ta’îf*’ refers to a person who goes around the house as a guardian, as mentioned by Ar-Râghib.

Ibnul-Athîr said, “‘*At-Ta’îf*’ is the servant who serves you with kindness and care, and ‘*At-Tawwâf*’ is an active participle derived from it.”

In Fiqh terminology, it refers to: “The broker who goes around with the goods offered for sale seeking to increase their price.” The brokers have different types: Some sit in their shops, and takes goods to sell on behalf of their owners in return for a commission, and this type is called: ‘*Al-Jallâs*’ or ‘*Al-Jalîs*’. Others move around with the goods in the markets to bid on them (to maximize the seller’s profit), and this type is called: ‘*At-Tawwâf*’. There are other types as well.

This term is used specifically by the Malikite scholars, against other Fiqh scholars.



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Zâ' (ظ)

- **Az-Zafar Bi Al-Haqq (Recovering One's Right)** الظفر بالحق

Linguistically, the term 'Az-Zahafar' means achieving what is sought or attaining the desired outcome.

In Fiqh terminology, the term 'Az-Zafar Bi Al-Haqq' refers to the act of recovering one's due financial right without the consent of the per-

son holding it in his possession or the issuance of a judgment thereto. This occurs when a rightful claimant finds his property in the possession of an appropriator, thief, or oppressor, and he retrieves it without his permission or the judge's permission. Similarly, it applies when someone has a debt owed by another person who refuses to repay willingly, so he takes the amount of his debt, whether in kind or in description, from the debtor's property without his consent or the judge's permission.



‘Ayn (ع)

• ‘Ādah (Habit)

عادة

Linguistically, the term “‘Ādah” means repetition.

In Fiqh terminology, ‘Ādah is “a repeated matter without a rational relationship.” Scholars of Fiqh have included in its concept involuntary natural influences, such as the heat and cold of the region in terms of accelerating puberty, menstruation, and the like. It is considered reliable in the Fiqh view, and hence the Scholars of Fiqh stipulated in their comprehensive rules that “‘Ādah is decisive,” except that ‘Ādah is only considered if it is repeated or prevails.

As for the difference between habit (‘Ādah) and custom, some Scholars of Fiqh said: They are in the same sense because their meaning is the same. Others differentiated between them on the grounds that habit emanates from the individual, as he has a habit of doing such-and-such or saying such-and-such, as is understood from the linguistic meaning of the word. As for custom, they said: It is often attached to a group of people.

• ‘Āriyyah (Lending a Property to Benefit from Its Usufruct) عارية

Linguistically, the term ‘Āriyyah is derived from alternation and circulation. **In Fiqh terminology**: it is a “contract of donation of the usufruct,” as if the lender gave someone else an assignment to usufruct from his property, provided that the assignment returns to him by redeeming it whenever he wishes.

This definition of usufruct is a departure from the disagreement of the Scholars of Fiqh: Is ‘Āriyyah an ownership of the usufructs or a permissibility of them? Whereas the Hanafites and Malikites held that it was ownership of the usufructs for free, while the Shafi`ites and Hanbalites held that it was the permissibility of the usufructs without compensation.

Al-Qûnawî, a Hanafites scholar, stated that ‘Āriyyah is of two types: real and Fictitious.

The real ‘Āriyyah is lending items that can be used while the same remains intact, such as clothes, a car, a house, and the like.

Fictitious ‘Āriyyah is lending something that cannot be used except through consumption, such as dirhams, dinars, and food that is measured, weighed, or in close numbers. This is a loan in form, while a loan in meaning.

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• **‘Âqilah (Payers of Blood Money)**
عاقلة

Linguistically, the word “‘Âqilah” is the plural form of “‘Âqil,” and they are the ones who bear blood money.

The Fiqh use of the word does not deviate from its meaning Linguistically.

According to most Scholars of Fiqh, ‘Âqilah refers to a group of people in the clan. According to the Hanafites scholars, it is the people of the court for the same group to which the person belongs, and a tribe that protects him for those who are not the same group.

• **‘Âmil (Worker)**
عامل

Linguistically, the term ‘Âmil (worker) is derived from the word “work”.

In Faqih terminology, a worker is the one who deserves a wage or a share of the profit or yield in exchange for the work he performs. This word is used by Scholars of Fiqh in their discussion about sharecropping, *Musâqâh* (sharecropping) and *Mudârabah* (speculation) as a party to the contract versus the owner of the land or the owner of trees or the owner of capital. In *Zakâh*, however, the term ‘Âmil means the person responsible for collecting *Zakâh* due on funds. In royal rulings, ‘Âmil means the governor of the region and so on.

In Andalusia, the position of “Sheikh of Workers” was given to the person entrusted with collecting money and taxes.

• **‘Itq (Emancipation)**
عتق

In Fiqh terminology, the term ‘Itq means emancipation, which is the end of slavery, or exit from slavery. It is a form of the master waiving his rights against his slave in a specific way, through which the slave becomes free.

• **‘Ajz Al-Waṣī (Inability of Trustee)**
عجز الوصي

In Fiqh terminology, inability of trustee refers to the inability of the trustee to do what is entrusted to him and to dispose of it properly. Scholars of Fiqh use this term in their talking about will when they talk about the conditions of the trustee. They say: The inability of the trustee, due to illness, old age, or the like, prevents the validity of making a will to him. There is no benefit to be gained from a will it to someone whose situation is like this. It is also a reason for the end of his guardianship if it happens later. This is because the condition of the trustee being able to do what is entrusted to him is as it is considered in the beginning, so it is considered in continuity as well.

• **‘Adâlah (Straightforwardness/Equity)**
عدالة

Linguistically, the term “‘Adâlah”

means straightforwardness, equity and uprightness. According to Scholars of Fiqh, it means staying on the path of truth by avoiding what is prohibited in religion. It is said: It is a characteristic that must be taken into account in order to beware of what is usually violates one’s chivalry. A single minor lapse or distortion of speech does not visibly impair chivalry. This because of the possibility of mistake, oversight, and misinterpretation, other than if this is known and repeated by a person, then it is apparent that there is a breach. The custom of each person and what he is accustomed to, such as his clothing, buying and selling, carrying luggage, etc., is considered. If he does something that does not suitable to this without necessity, he is not considered a straight person.

Some Scholars of Fiqh combined the two concepts and defined it by saying: “It is a faculty in the person that leads to constant piety and chivalry.”

Imam Ash-Shâfi’î said in “Ar-Risâlah”: “A person being straight has no sign that distinguishes him from non-straight person in his body or speech, but rather it is a sign of his sincerity based on what is tested from his state in himself. If most of his matter is apparently good, he will be accepted (as straight person), even if he commits some minor mistakes. This is because no one is known of not making any sins. If

he mixes sins and good deeds, then there is nothing to do except estimating his status based on the majority of his deeds, by distinguishing between what is good and what is bad. If this is so, then the scholars must disagree about this matter.”

Al-Bâjî said: “a straight person is the one who is known for performing the obligations, complying with what is commanded, and avoiding what is forbidden, which impairs chivalry.”

• ‘Idah (Promise)

عدة

Linguistically, ‘Idah means a promise without addition or subtraction, and it is informing that a person will do something beneficial in the future related to others.

The Fiqh use of the word does not deviate from its linguistic meaning. Accordingly, Al-Hattâb, of the Malikites, said: “As for ‘Idah, it does not require the person to obligate himself to do anything now, but rather it is, as Ibn ‘Arafah said: information about the informant’s establishment of a favor in the future.”

• ‘Adadî (Numerical)

عددي

Linguistically, the terms ‘Adadî (numerical) is attributed to number, which is the quantity consisting of units. Therefore, one is not a number because it is not multiple.

As for numerical and countable in Fiqh terminology, it is what

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is determined by its quantity by counting. Counting is adding numbers to others and counting them in detail.

Numerical is one of the members of the “measured” things, those whose quantities are determined by measure, weight, size, or number. This includes measured items, the amount of which is known and determined by volume according to the customary standard unit of volume taken into account; weighted items, whose amount is known and determined by weight according to the customary standard weight unit taken into account; and sizable items, whose size is known and determined in length according to the customary standard unit for the lengths taken into account in this regard; and numbered items, whose amount is known by numbers, and are divided according to Scholars of Fiqh into two categories: close numbered items, and uneven numbered items.

- **As for close numbered items:** they are those that do not have a significant difference in value between their individuals and their units. They are considered fungible items.
- **As for uneven numbered items:** they are those whose individuals and units have a significant difference in value. They are considered to be of the same type as measur-

able items, not fungible items.

• ‘Adl (Justice)

عدل

Linguistically, the term ‘Adl means moderation in matters, which is contrary to injustice. Ibnul-Qayyim said: Justice is adopting the middle ground between the two extremes of excess and negligence, and based on it, the interests of this world and the hereafter are based. Indeed, the interests of the body cannot be achieved without it. It also used linguistically in the sense of equality.

It is stated in “Al-Wâdih” by Ibn ‘Aqîl: “Justice: is uprightness in action. It is said: It is turning to the truth. It is also said: It is putting something in its rightful place.

• ‘Udhr (Excuse)

عذر

Linguistically, the term ‘Udhr (excuse) is what person use to justify his sin, by saying: I did not do it, or I did this thing for such and such, and he mentions what takes it away from it being a sin, or I did it and I will not do it again, which is repentance. Therefore, every repentance is an excuse, but not the opposite.

Scholars of Fiqh have defined the excuse as “what makes it impossible to carry out the obligation of Sharia except by bearing extra harm.”

• ‘Urâdah (Gift)

عراضة

Linguistically, ‘Urâdah means gift. It is also used to mean the gift

that one who comes from a journey brings. Ibnul-Athîr said: “‘*Urâdah* is a gift for someone coming back from his journey. In “*Fiqh Al-Lughah*” by Ath-Tha‘alabi: “‘*Urâdah*: a gift given by someone coming from his journey.”

• ‘*Arâyâ* (Lent Palm Trees) عرايا

Linguistically, ‘*Arâyâ* is the plural from of ‘*Âriyyah*, which is a distinguished or unique thing.

In Shari‘ah usage, ‘*Âriyyah* is used to refer to a palm tree that is assigned or given by its owner to someone else to eat its fruit for a year or two or more. If the period has elapsed, the property (palm tree) is returned to him.

Al-Mâwardî said: ‘*Âriyyah* is of three types: consolation, favoritism, and consent.

As for consolation: it is for a man to give some of his palm trees in charity to the poor, or to give it to some poor people, and to separate it from the rest of his property, so it becomes a distinct property. This is desirable.

As for favoritism: it is when harvesters would harvest a man’s palm trees, they would leave some of his palm trees not harvested for him to eat from it, knowing that he would give more than a third of them in charity, and this is permissible.

As for consent: the Scholars of

Fiqh differed regarding it and what is meant by it. Ash-Shâfi‘î held that it is the sale of fresh dates for a measure of dates on the tops of palm trees for a measure of dates on the ground in five Wasqs or less, with speedy receipt. Mâlik said: ‘*Âriyyah* is when you give a man the fruit of palm trees from a wall, and the gift is complete according to him acceptance alone. Abû Hanifah said: Rather, ‘*Âriyyah* is when you give a man the fruit of palm trees that he does not take, then he thinks of taking it back, so they agree to leave it, and to give the amount of dates in its place, so it is permissible.

• ‘*Urbûn* (deposit) عربون

Linguistically and in the usage of Scholars of Fiqh, ‘*Urbûn* (deposit) sale is when a man buys the commodity and pays the seller a sum of money, with the condition that if the sale is completed, that amount is calculated from the price, and if it is not completed, it goes to the seller.

• ‘*Arṣah* (Unconstructed Place) عرصه

Linguistically, ‘*Arṣah* is every spot in which there is no structure. ‘*Arṣah* of the house is its courtyard. It is a wide area in which there is no building. Al-Azhari said: The courtyard of the house was called “‘*Arṣah*” because the boys used to play and have fun in it.

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• ‘Ard (Goods Stocked for Trade)

عرض

Linguistically, the terms ‘Ard refers to all types of goods or property other than gold and silver.

In Scholars of Fiqh’ terminology, the word “‘Ard” is most frequently used in the chapter on *Zakâh*, and they differed regarding its meaning in three opinions:

The first one is adopted by Abû ‘Ubayd Al-Qâsim Ibn Sallâm: ‘Ard is merchandise that is estimated by measure or capacity, and it is not an animal or real estate.

“*Majallat Al- Ahkâm Al-‘Adliyyah*” uses similar definition, but it does not exclude real estate from merchandise, but rather considered it one of them. Article 131 of it says: “Merchandise consists of things such as goods and piece-goods other than cash, animals, things estimated by measure or capacity and things estimated by weight.

The second one is adopted by Ibn Qudâmah, Abul-Hasan Al-Mâlikî, Ibn ‘Âbidîn and others: Merchandise is “everything that is not cash” and this is because animals, things estimated measure, things estimated by capacity, and real estate are included in commercial merchandise if their owner intends to do so. Accordingly, he said in “merchandise is every good other than cash prices, of various kinds, from

plants, animals, real estate, and all other wealth.”

The third one is adopted by Al-Buhûtî: Merchandise is more general than that, as it is everything that is prepared for buying and selling for the sake of profit, even if it is cash. So, he includes cash in the merchandise if it is taken for trade.”

• ‘Ard Al-Ihtikâr (Monopoly Goods)

عرض الاحتكار

Monopoly goods, as defined by Ibn ‘Arafah, is what is owned in return for compensation, gold or silver, and is kept for its price to increase.”

This is one of the Fiqh terms that is used only by Malikites.

• ‘Ard Al-Idârah (Management Goods)

عرض الإدارة

Ar-Rassâ‘ defined it by saying: “It is what is owned in return for compensation, gold or silver, for profit or for exchanging, and is not kept for price increase.”

This is one of the Fiqh terms in the Malikites school of Fiqh, and is not known among other schools of Fiqh.

• ‘Ard At-Tajr (Trade Goods)

عرض التجار

Ibn ‘Arafah defined it by saying: “It is what is owned for compensation, gold or silver, for profit or exchanging.”

This term is used only by the Malikites and not other scholars.

• ‘Ard Al-Ghallah (Merchandise)

عرض الغلة

In Fiqh terminology, ‘Ard Al-Ghallah (merchandise) “is what is owned for a compensation, whether gold or silver, or in exchange for gold and silver for the purpose of yield.”

This is one of the Fiqh terms that is used exclusively by the Malikites and not by other Scholars of Fiqh.

• ‘Urd Al-Mâl (Wealth Part)

عرض المال

Linguistically, the terms ‘Urd means a specific part of something. Accordingly, ‘Urd Al-Mâl can be defined as a specific part of the wealth.

• ‘Urf (Custom)

عرف

Linguistically, ‘Urf is the opposite of denial. Its well-known origin is goodness, righteousness, and benevolence, then it was given to what people get accustomed to among themselves.

According to the Scholars of Fiqh, ‘Urf (custom) it is what has settled in the souls from the point of view of the minds, and which the sound natures receive with acceptance. It is said: It is what rational people know to be good, and the lawgiver has approved it.

It is revealing evidence since there is no text or consensus regarding its consideration or cancellation, such as renting for an unknown compensation that does not lead to a dispute.

Custom in financial transactions is considered as a condition, and accordingly it is stated in “Al-Qawâ'id Al-Fiqhiyyah”: “What is known according to custom is like what is stipulated under a condition,” “what is known among merchants is like what is stipulated between them,” and “determining by custom is like specifying by a provision.”

• Al-‘Irq Az-Zâlim (Unjust Root)

العرق الظالم

Abû Dâwûd, At-Tirmidhî, Mâlik, and Ahmad narrated in the hadîth “Reviving the Dead Land” on the authority of the Prophet (peace and blessings of Allah be upon him) that he said: “the unjust root has no right.”

Mâlik said: “The unjust root is everything that is dug up, taken, or planted unjustly.” Al-Khattâbî said: “The unjust root is when a man implants something in someone else’s land without his permission. He is to be ordered to uproot it unless the land owner is satisfied with leaving it.” Al-Azharî said: “It is when a man comes to another man’s land and implants seedlings on it in order to claim or exploit it, and then proof

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is established for its owner of the validity of the property, so the planter is ordered to uproot his seedlings, and the stems of those seedlings have no right to the land because the planter was unjust, so the root of what he planted was unjust.” Ibn Fâris said: “The unjust root is when a man comes to land that someone else has revived, and he builds on it, or plants trees on it, or does work on it to claim the possession of the land for himself.” Rabī‘ah said: The unjust root may be apparent, or it may be hidden. The hidden root is what the man dug of wells or extracted from minerals, and the apparent root is what he built or planted.

• ‘*Asab Al-Fahl* (Stallion’s Semen)

عسب الفحل

Linguistically, ‘*Asab Al-Fahl*’ refers to stallion’s covering, semen, and offspring. Then it is used to refer to the rent that the owner of the stallion takes in return for the stallion’s covering (impregnation).

At-Tirmidhî, Al-Nasâ’î, and Ibn Mâjah narrated on the authority of the Prophet (peace and blessings of Allah be upon him) that he forbade the stud fee of the stallions.

The commentators on the *ḥadīth* have stated: What is meant by the forbidden “‘*Asab Al-Fahl*” is renting the stallion for covering or selling the stallion’s covering or its semen. There is no disagreement among the

Scholars of Fiqh regarding the impermissibility of this, although there is a difference between them in its justification, as Al-Kâsânî explained the prohibition by saying that it is a sale of inexistent item at the time of the contract, and Ash-Shawkānî explained that it is a sale of something undetermined, unknown, and cannot be delivered.

• ‘*Ushûr* (Tithe)

عشور

Linguistically, ‘*Ushûr*’ is the plural of ‘*Ushr*’ (tenth), which is one of ten equal parts of something.

In the terminology of Scholars of Fiqh, tithes are of two types: One of them is the *Zakâh* tithe, which is what is taken as *Zakâh* on crops and fruits. The second: what is imposed on the disbelievers regarding their money prepared for trade if they move it from one country to another in the land of Islam. It was called that because the amount taken is a tenth, or added to the tenth, such as half a tenth.

Although tithes and *jizyah* are both obligatory on the people of Dhimmah and entrusted people of war, and are spent on the same channels as spoils, there is an important difference between them, which is that the *jizyah* is only imposed on heads, and it is a known amount that does not vary according to the person, whereas tithes are imposed on money and vary according to it.

• ‘Asabah (Agnate)

عصبة

Linguistically, the term “‘Asabah” is the plural from of ‘Āsib, that is the father of person, his sons, and his male relatives to his father.

The Fiqh use of the word does not deviate from its linguistic meaning, and accordingly some Scholars of Fiqh defined ‘Asabah as “every male relative, with no female between him and the deceased.”

• ‘Āta’ (Yearly Salary)

عطاء

Linguistically, the term “‘Āta” means something given. In terminology of Scholars of Fiqh, “It is what the imam gives from the public treasury to the rightful people at a specified time.”

• ‘Afw (Waiver/Forgiveness/Giving up)

عفو

Linguistically, ‘Afw means forgiveness.

In Fiqh terminology, the term the term “‘Afw” is used with the term “right” to mean wavering or dropping off the right.

• ‘Aqār (Real Estate)

عقار

Linguistically, the term ‘Aqār means real estate, such as a house, land, palm trees, farm, or anything else.

In Fiqh terminology, the Scholars of Fiqh have differed regarding what is meant by ‘Aqār, based on

two opinions:

The first opinion is adopted by Hanafites scholars who define ‘Aqār as “something with a fixed property that cannot be transferred,” such as lands and houses. As for building and trees, they are considered movable property, unless they are attached to the land, in which case the ruling on ancillary property applies to them.

The second opinion is adopted by Shafi‘ites, Malikites, and Hanbalites, where they held that ‘Aqār is used to refer to land, buildings, and trees.

• ‘Iqāl (Rope)

عقال

Linguistically, the term ‘Iqāl means rope.

In Fiqh terminology, Muslim, Abū Dāwūd, and At-Tirmidhī narrated on the authority of Abū Bakr As-Siddīq that he said: “By Allah I will fight them even to secure ‘Iqāl which they used to give to Allah’s Messenger (peace and blessings of Allah be upon him).” Scholars differed in the interpretation of the ‘Iqāl in the ḥadīth of Abū Bakr, based on five opinions:

First: it is what the Zakāh collector takes from items on which Zakāh is due. If he took camels themselves, for example, it is said: He took ‘Iqāl. If he took the price, it is said: he took cash.

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Second: It is the rope with which the camel is tied, which was given as *Zakâh*. This is because its owner must deliver it, but it is delivered when it is tied. Rather, it used it as an example to reduce what they might prevent. They used to take the camels out to the *Zakâh* collector, and they would tie them with the rope until he took them in this condition. This is the doctrine of many investigators.

Third: Everything taken as *Zakâh*, including livestock and fruits. This is the opinion of Abû Sa`îd Ad-Darîr.

Fourth: It has the same meaning as *Zakâh*. It is as if he said: If they prevent me anything from *Zakâh*. This is the opinion of Abû ‘Ubayd Al-Qâsim Ibn Sallâm.

Fifth: It is a general *Zakâh*. This is the opinion of a group of Scholars of Fiqh and many linguists. This opinion has been criticized as being arbitrary and far from the way of the Arabs. Because the speech came out in a manner of narrowness, emphasis, and exaggeration, so it implies the scarcity and smallness of what is attached to the rope, and if it is interpreted as general *Zakâh*, this meaning will not be obtained.

• ‘Aqd (Contract)

عقد

Linguistically, the term “*Aqd*” has a number of meanings, including tightening, binding, and bring-

ing together the ends of a thing.

Ibn ‘Aqil said: “*Aqd*, in language, is the connection of two parties to one another. In Fiqh, it is the connection of two covenants and two promises regarding what the covenant is signed between two contracting parties, which can connection between two people through marriage, sale, partnership, or lease.

By extrapolating the words of the Scholars of Fiqh about the concept of the contract and its meaning, we find that they used the word “contract” in their terminology in two meanings:

The first meaning (which is the well-known): the connection that occurs between two words - or what takes their place, such as implication and writing - in a way that results in a legal ruling. If it is said: I got him married and I got married, there is a legal meaning, which is marriage, which results in a legal ruling, which is the permissibility of marital enjoyment. Likewise, if it is said: I bought and I sold, there is a legal meaning, which is sale, which results in a legal ruling, which is the transfer of ownership of the contractual matter from the seller to the buyer. A contract in this sense requires the presence of two parties, each party having a will that agrees and is compatible with the will of the other party. Accordingly, it is stated in (Article 262) of “Murshid

Al-Hayrân": "The contract is the connection of the offer issued by one of the contracting parties with the acceptance of the other in a way that shows its effect on the contracted item."

The second meaning is establishing an action based on a firm determination and resolve, whether one person initiates it, or more than one person participates in it. This meaning is more general than the first. It does not require the presence of two parties to it in all cases, and therefore it includes the connection that occurs between two parties, such as sale, lease, agency, marriage, and the like, and it also includes actions that take place by one party. That is, by unilateral will, such as endowment, vow, divorce, emancipation without money, acquittal, and the like, because it involves determination and a contract of will to implement it.

• **'Aqd At-Taqiyyah (Protection Contract)** عقد التقية

Linguistically, *Taqiyyah* means protection, which is for a person to protect himself from blame or punishment by what he appears to do, even if it is contrary to what he conceals.

As for the term "Taqiyyah contract," it is used by the Malikites but not other scholars, and what they mean by it is the *Istir'â'* contract, as

if a man would say: When I make a contract to emancipate my servant so-and-so, I only emancipate him out of fear that I will be forced to sell him by an oppressor, and I am not obligated to emancipate him. If he emancipates him after issuing *Istir'â'* - that is, after he testifies secretly that he is only doing so to flee and not sell him to that oppressor, then he is not obligated to emancipate.

• **'Aqd At-Taqiyyah Ma'a At-Tahbis (Protection Contract with Retention)** عقد التقية مع التحبس

This is a Malikites term, what means, as stated in "Tabṣirat Al-Hukkâm": for a person to write a certificate of *Istir'â'* in which he says: So-and-so, the witnesses of this letter, testified with testimony of *Istir'â'* and concealment of the testimony that when he concludes a contract on his house as a retention for himself from his children or to one of the people, then he is doing it for a reason he expects it to be done for himself or for his aforementioned money, and to keep it for himself, and to cancel this contract when he is safe from what he fears, and that he did not intend to conclude the contract for the sake of good deeds or for the sake of retention, but rather for what he fears, and that he is not bound the contract he concludes out of retention, and have this contract to be witnessed in such-and-such date.

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• *Al-`Aqd Al-Mubham* (Ambiguous Contract) العقد المبهم

Al-`Aqd Al-Mubham (ambiguous contract) in the terminology of the Malikites is the contract that can be determined as valid or invalid.

Al-Manjûr said: "The ambiguous contracts are those contracts that cannot be precisely determined whether they are valid or invalid contracts" Some Scholars of Fiqh are of the opinion that these contracts are to be considered valid, while other scholars of Fiqh hold the opinion that they are to be considered invalid.

This term is used only by the Malikites and not by other scholars.

• *Al-`Aqd Al-Mudâf* (Future Contract) العقد المضاف

A future contract is a contract that can be executed as a certain point in the future. According to Scholars of Fiqh future contract is concluded immediately but only executed in the specified time in the future.

An example of this form of the contract is when the landlord said: I rented this house to you for such and such a year from the beginning of the next month, or the principal said (to the agent): I have appointed you to handle all my affairs starting from the beginning of the following year.

• *Al-`Aqd Al-Mu`allaq* (Suspended Contract) العقد المعلق

A suspended contract is a contract that is made conditional on a non-existent condition or on an independent event. This is taken from the definition of suspension or conditionality by Scholars of Fiqh, which is linking the occurrence of something with the occurrence of something else or arranging a future event on the occurrence of a future event, while associating it with one of the conditional tools.

An example is when someone says to another: If your debtor travels, I will be responsible for what you owe him. Thus, the speaker has linked the conclusion of the guarantee to the debtor's travel. Another example is when the creditor says to another: If the judge decides that I owe so-and-so a debt, then I have appointed you to collect the debt from him, or if such-and-such merchandise of mine arrives tomorrow, I have appointed you to sell it.

The suspending contract, according to Scholars of Fiqh, is a contract whose conclusion is delayed due to the presence of the condition. When the condition is fulfilled, it is concluded and become effective. It is stated in "*Al-Qawâ'id Al-Fiqhiyyah*": "What is made suspended on a condition must shall be realized when the condition is fulfilled."

• **Al-`Aqd Al-Munajjaz (Immediate Contract)** العقد المنجز

An immediate contract is a contract that is made in an absolute form, not conditional and not linked to a future time. This type of contract becomes effective immediately, unlike future contracts, which is concluded immediately but comes into effect in specified point in the future.

• **`Aqd Al-Muwâlâh (Guardianship Contract)** عقد المولاة

This term is used only in the Hanafites School, and they defined it as: "A contract concluded between two parties, one of them is principal who have a relative heir, that is, from the lineage, so he says to another: You are my guardian, you inherit from me if I die, and you pay the indemnity or the blood money on my behalf if I commit a mistake, and the other accepts."

In this contract, the *Muwâlâh* relationship is established between the contracting parties, and the acceptor (the guardian) is obligated to bear the consequences of the wrongdoing committed by the offeror (the granter of *Muwâlâh*). He is also entitled to his entire estate as an inheritance under this contract if he dies, unless he has a spouse, in which case the acceptor is entitled to the remainder of the estate after the inheritance of one of the spouses,

according to the fact that the offeror is a man or a woman.

This *Muwâlâh* contract is permissible and legitimate and gives effectives to inheritance and liability for indemnity or blood money, according to Abû Hanîfah and his companions, An-Nakha'î, Al-Hakam and Hammâd, and it is the opinion of `Alî and Ibn Mas'ûd among the Companions (of the Prophet, peace and blessings of Allah be upon him), in contrast to the majority of the Shafi'ites, Malikites and Hanbalites who said that it is not legitimate at all, and no inheritance or reliability for indemnity or blood money can be attached to it due to its invalidity.

• **'Uqr (Origin)** عقر

Linguistically, 'Uqr means the center or the origin of something.

In Fiqh terminology, Al-Munâwî said: "'Uqr is the indemnity for a woman's private parts if she is subjected to rape. Then its meaning has been expanded to include the dowry." Most Scholars of Fiqh believed 'Uqr is what a woman is given on suspicious sexual intercourse, and thus they defined it as: "a woman's dowry if she has sexual intercourse on suspicion."

• **'Aql (Reason)** عقل

The linguists said: 'Aql means prevention. It has been defined as

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an instinct that prepares a person to understand speech.

'Aql also means blood money. It is said blood money is called 'Aql because it was paid as camels among the Arabs, and the killer was tasked with driving them to the courtyard of the heirs of the murdered person, and then tied them up.

The Fiqh use of the word does not deviate from its linguistic meaning.

• 'Uqûd Al-Idhân (Adhesion Contracts) عقود الإذعان

Linguistically, *Idhân* means adhesion, submission, compliance, and obedience.

As for "adhesion contracts," it is a contemporary legal term derived from modern Western legal jurisprudence. It includes contracts issued by monopoly companies for public utilities and necessary goods in light of contemporary economic systems, such as electricity, gas, water, telephone, postal, and public transportation companies, etc. The most important legal provisions related to it is giving the judicial authority the right to amend or cancel arbitrary terms in those contracts in favor of the adhered party, according to what justice requires, as an exception to the rule of "the contract is the law of mutual contractors."

Adhesion contracts have four distinctive characteristics:

First: that the subject of the con-

tract be goods or benefits that the general public urgently needs and cannot do without, such as water, electricity, gas, telephone, mail, etc.

Second: The service provider has a legal or actual monopoly on those goods, benefits, or facilities.

Third: The service provider alone sets the details and conditions of the contract, which are mostly for his benefit, without the other party having any right to discuss them or cancel or amend any of them.

Fourth: Issuing the offer to the public, unified in its details, and in a continuous manner, that is for an unlimited period.

• Al-'Uqûd Al-Asliyyah (Principal Contracts) العقود الأصلية

Professor Az-Zarqâ defined principal contracts as follows: Principal contracts (*Al-'Uqûd Al-Asliyyah*): Any contract that exists independently not related to any subordinate item that contributes to its existence or disappearance. Examples are *bay'* (Sale), *Ijârah* (Lease), *Idâ'* (deposit), *I'ârah* (lending a property), etc. The opposite of principal contract in the Fiqh classification is accessory contracts.

• 'Uqûd At-Tab'iyyah (Accessory Contracts) عقود التبعية

Professor Az-Zarqâ defined accessory contracts as follows: Accessory contracts (*'Uqûd At-Tab'iyyah*): Any

contract that is supplementary to another right and related to its existence and disappearance i.e. are *Rahn* (Mortgage) and *Kafâlah* (Suretyship), which are both for documentation of other rights. Thus, they are not contracted in the absence of another permanent or anticipated right.

Rahn can be contracted for a promised debt like when a person promises to loan another person, and takes an advance collateral for his debt.

Kafâlah can be contracted for a debt not yet real like when a person tells another trade with so and so and he will be the guarantor for whatever they will owe you

The above two contracts also disappear with the disappearance of the contracted right the same way how a subsidiary drops with the fall of its principal. Thus, if a creditor releases a debtor (of obligation to pay the debt), the guarantor's *kafâlah* also drops as a consequence of the release.

Similarly, in *Rahn*, the collateral becomes void with the release of the debtor by the creditor.

The opposite of accessory contract in the Fiqh classification is principal contracts

• **'Uqûd At-Tamlikât (Giving Possessions Contract)** عقود التملكيات

The Hanafites divided contracts,

in the more general sense of the contract, which is the establishment of an action based on a firm persistence and intention, whether sealed by one person or more, into several groups, each group organized into a subjective unit that makes it a separate type, namely, giving possessions, omissions, and discharge. partnership, trust contracts, and retention contracts.

Accordingly, the scholar Ahmad Ibrâhîm said: Giving possessions is a type of contract, and it includes transactional contracts and donation contracts.

1- Transactional contract is a type of giving possessions, and can be classified as:

- A) Exchanging money for money.
- B) Exchanging money for benefit.
- C) Exchanging money for something other than money or benefit in the sense that Scholars of Fiqh have agreed upon. This includes the exchange of a benefit for a benefit, and the exchange of a benefit for something that is neither money nor a benefit in terminology.

Accordingly, it includes all types of sale, including absolute sale, replacement, *Salam* (Forward Sale), exchange, *Istisnâ'* (Manufacturing)

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which is composed of sale and lease, reconciliation based on consent, division of assets or "adjusted" benefits, rent and lease, marriage whether the dowry is money or benefit, and divorce as well.

2- Donations are a type of giving possessions, and can be divided into:

- A) Intended donations, from beginning to end
- B) Donations within a transactional contract.
- C) donations in beginning, which may end up being transactional contracts or donations.

Accordingly, it includes the following: gift, charity, will, loan, lending, guarantee, transfer, and favoritism in transactional contracts. They also include endowment and discharge of obligation, although on the other hand they are omissions.

• *Al-'Uqûd Ghayr Al-Musammâh* (Innominate Contracts)

العقود غير المسماة

Under this classification, contracts are divided into two categories:

Innominate contracts are those contracts that have no specific Fiqh-related term for their subject nor has the Shari'ah approved specific rulings that result from their initiation.

Professor Az-Zarqa defined it by

saying: "These are contracts that have no specific term for their subject nor has the legislation approved specific rulings that result from their initiation." By legislation, he means Islamic Fiqh in general, whether for one Fiqh doctrine, one Faqih, or majority of Scholars of Fiqh, or all Scholars of Fiqh.

He said: this type of contracts is many and uncountable because they can be modified according to the need of the contracting party, the subject matter agreed upon within the legal objectives... The same thing applies to certain contracts in the present era such as the contract of publishing and advertising in the newspapers or other media. Likewise, the contract of *Al-Mudâ'afah* (boarding and lodging), which is made up of two contracts: leasing with regard to the place, and service and sale with regard to food and drink. Thus, it is a contract that has not yet been assigned a name despite its spread and necessity. Similarly, the contracts between certain countries and exploration companies to search for sources of oil and minerals in their lands, which today come under the "concession agreements".

• *Al-'Uqûd Al-Fawriyyah* (Instant Contracts)

العقود الفورية

Professor Mustafâ Az-Zarqâ defined instant contracts as: "Instant contracts (*Al-'Uqûd Al-Fawriyyah*):

contracts whose enforceability does not need a prolonged time, rather take effect immediately at the time chosen by the two contracting parties, for example, the contract of *bay`* (Sale) even by deferred payment *Sulh* (Reconciliation), *Qard* (Loan), and *Hibah* (Gift). These contracts are enforced once each of the contracting parties has received what the contract empowers him to obtain, and hence ending the obligations at one time.”

The opposite of instant contracts in **Fiqh terminology** is continued contracts.

• **Al-`Uqûd Al-Mustamirrah (Continued Contracts)** العقود المستمرة

Professor Mustafâ Az-Zarqâ defined instant contracts as: “Continued contracts (*Al-`Uqûd Al-Mustamirrah*): Contracts which require a prolonged time to execute, depending on their subject, and the time factor plays an integral role in their enforcement. This is why they are also known as timed contracts such as *Ijârah* (Lease), *I`ârah* (lending a property), *Sharikat Al-`Aqd* (contractual partnership), and *Wakâlah* (Agency). Enforcement of such contracts needs ample time to allow the continuous flow of the ruling of the contract.”

He also said: “From the legal perspective today, the partnership contract in periodicals such as mag-

azines and newspapers, and the agreement to supply food and beverage on daily basis to a restaurant, hotel or hospital for instance, is also considered a continuous contract even if it is actually a sale contract. In the legal terms, it is known as supply contact.

The opposite of continued contracts in **Fiqh terminology** is instant contracts.

• **Al-`Uqûd Al-Musammâh (Nominate Contracts)** العقود المسماة

Professor Az-Zarqâ said: There are many types of contracts, differing from each other in names and provisions according to their different topics, and that after the contract is needed and becomes widespread, people, scholars, or legislation give it a name that distinguishes it from everything else, and accordingly contracts are divided into two groups: nominate contracts and innominate contracts.

Then he defined named contracts as: “Nominate contracts: These are contracts which the legislation has approved both the name that denotes their particular subject and original rulings that rest from initiating them.”

They are also called specific contracts, such as *bay`* (Sale), *Ijârah* (Lease), *Sharikah* (partnership), and *Wakâlah* (Agency), *Wadî`ah* (deposit), *Mudârabah* (Speculation),

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Qismah (division), *Tahkîm* (arbitration), *Mukhârajah* (exiting), *Qard* (loan), *Sulh* (reconciliation), ‘*Umrâ* (Donation for lifetime), *Muwâlâh* (guardianship) *Iqâlah* (cancellation), and *Zawâj* (marriage), etc.

Then he stated that it is not enough to consider any contract one the nominate contracts which are not approved by Shari’ah.

By legislation, he means Islamic Fiqh in general, whether for one Fiqh doctrine, one Faqih, or majority of Scholars of Fiqh, or all Scholars of Fiqh

Then he said: “Numerous new contracts have been created in the Islamic *fiqh* in different eras, and scholars have given them particular names and resolved certain rulings about them. Thus, they became named contracts, such as *Bay’ Al-Wafâ’*, ‘*Aqd Al-Ijâratayn*, *At-Tahkîr* in *Waqf* properties, *bay’ Al-Istijrâr*, which is a form of what is presently known as current account”

Some contracts may remain unnamed for a period of time until a name is designated for them. For example, in the past, it was uncertain whether *Bay’ Al-Wafâ’* is a form of sale or mortgage. Similarly, it was uncertain whether *Istisnâ’* is sale, promise and lease.”

• ‘*Aks Al-Înah* (Reversed ‘*Înah*)

عكس العينة

Al-Mardâwî said: “Reversed ‘*Înah*

is when he sells the commodity at an immediate price, then buys it for a lower price than that.” Al-Buhûti said: “It is when he sells something for cash on hand, then buys it from his buyer or agent for more cash than the first of its kind, not received.”

Its Shari ruling is like the ruling on ‘*Înah* because it is similar to it in that it is used as a means or trick to usury loans.

• ‘*Âlaqah* (Relationship) علاقة

Linguistically, ‘*Âlaqah* means clinging to something. It is said: So-and-so has ‘*Âlaqah* in this house, which means remainder of a share.

‘*Âlaqah* is used by Scholars of Fiqh in the sense of dowry as that the relationship between the spouses is established by it.

• ‘*Umâlah* (Wage) عمالة

In Fiqh terminology, ‘*Umâlah* is the wage the worker receives for his work.

• ‘*Umri* (Donation for Lifetime)

عمري

‘*Umrâ* is a type of donation, which means to give someone something for lifetime.

Its form is when someone says to another: I give you my house as a donation for your/my lifetime.

Therefore, it is a donation of something for the life of the donee or

donor, on the condition of recovery after the death of the donor or donee.

The Fiqh use of the word does not deviate from its linguistic meaning.

• ‘Amal (Work)

عمل

Linguistically, ‘Amal means profession or action. Al-Khuzâ‘î said: Profession means service.

The original meaning of ‘Amal is: “Every action that made by a human intentionally.” It can only be applied to what is based on thought and deliberation.

‘Amal includes the actions of the hearts and limbs. If the body or heart moves in a way that agrees with the Sharia, it is called obedience, and if it moves in a way that contradicts the Sharia, it is called disobedience.

In the view of Scholars of Fiqh, the work (‘Amal) is more general than profession. This is because the work refers action, whether a person is skilled at it or not.

• Al-‘Amal ‘Ind Al-Hanâbilah (Work According to the Hanbalites)

العمل عند الحنابلة

Hanbalites use the term “‘Alayh Al ‘Amal” and sometimes “‘Amal An-Nâs” to refer to the weak opinion in the doctrine if the Hanbali “judges” apply it with no objection, and some of them consider this to be supportive of correcting, giving

prevalence to, and applying such opinion.

• Al-‘Amal ‘Ind Al-Malikiyyah (Work According to the Malikites)

العمل في المذهب المالكي

One of the principles of the Malikites is the work0 (‘Amal) of the people of Medina, which in fact goes back to what was authentically done on the authority of the Prophet (peace and blessings of Allah be upon him). Then, with the passage of time and the spread of the Maliki doctrine in the Islamic West, the concept of ‘Amal developed and appeared in a way that was consistent with ‘Amal of the people of Medina in principle, but it differed from it in some considerations and in some ways.

Examples include: work of the people of Andalusia, Kairouan, Fass, Rabat, and Qurtubah (Cordoba), etc. What is meant by this “‘Amal,” as established by the opinion of the Malikites in Morocco, is “to turn away from the correct or well-known opinion on some issues to the weak opinion in them,” taking into account the interest of the nation and what its social and economic situation requires.” It is said: It is the choice of a weak opinion, issuing ruling and fatwas based on it, and the rulers and muftis agreed after choosing it to act according it for a justifiable reason.

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To illustrate the matter, some issues involve disagreement among the Scholars of Fiqh of the doctrine, so some judges resort to a ruling based on an opinion that contradicts what is well-known for some reason, such as preventing corruption, fear of strife, or applying custom in rulings that are based on custom only, or achieving an interest, or the like. Then someone comes after that and follows the same opinion as long as the reason for which the well-known opinion has been contradicted, in such a country and at that time, remains in place.

• **'Umûm Al-Balwâ (Widespread Affliction)** عموم البلوى

Scholars of Fiqh use the term “*'Umûm Al-Balwâ*,” and they use it as a title for: what is difficult for the accountable person to protect himself from, including impurities or prohibitions. The Lawgiver has forgiven the widespread affliction for two reasons:

First: The urgent need for it in all circumstances, such that it is difficult to avoid it except with excessive hardship.

Second: the prevalence of occurrence and confusion, such that it is difficult to guard against it or avoid it except with excessive hardship.

• **'Ahd (Covenant)** عهد

Linguistically, *'Ahd* means keeping and observing something now

and in the future. This is its origin, then it is used with the meaning of the documented covenant that must be observed.

In “*Al-Kulliyyât*”: “*Ahd* is a documented covenant that is made for what would be observed and undertaken, such as speech, decision, oath, will, guarantee, preservation, time, and matter.

As for the difference between a *Wa'd* (promise) and *'Ahd* (covenant), Abû Hilâl Al-'Askarî said: A covenant is a promise coupled with a condition, like your saying: If you do this, I will do that, and as long as you keep doing that, I will do that.

The covenant requires fulfillment, and the promise requires keeping. It is said: He broke the covenant and violate the promise.

Abû Hilal said: The difference between *'Aqd* (contract) and *'Ahd* (covenant) is that a contract is stricter than a covenant. You say: I entrusted so-and-so with such-and-such; That is: I obligated him to do so. And I made a contract with him, if you bind him with a document. And you say: The servant made a covenant to his Lord, and you do not say: The servant made a contract with his Lord. It is not permissible to say: He has made a documented covenant with his Lord.

Then he said: The difference between *'Ahd* (covenant) and *Mithâq*

(pledge) is that pledge is an affirmation of the covenant.

As for the term “people of the covenant,” the Scholars of Fiqh apply it to the infidels who made peace with the Muslims on the condition that they line in their land, whether the reconciliation is over money or something other than money, and that the rulings of Islam are not applied to them as they are applied to the people of the Dhimmah, but they must stop fighting the Muslims. These people are also called: People of Peace and People of Truce.

• ‘Uhdah (Custody)

عهدة

Linguistically, the term ‘Uhdah is derived from the term ‘Ahd (covenant). **In Fiqh terminology**, it means holding the seller responsible for every defect that occurs in the item sold while it is with the buyer within a known period.

This issue is only used by the Malikites, and it is an exception to the general Fiqh principle that the buyer is to be held responsible for every defect that occurs in the sold item after taking possession thereof. This is because it is in his possession and under his disposal. Ad-Dardîr defined it as “the attachment of the warranty of the sold item to the seller at a specific time.” Then he said: It is of two types: A one-year warranty, and a three-day warranty... and they are specific to slaves

by condition or custom. Ibn Rushd Al-Hafîd stated that there is no disagreement among Muslims that the sold item is guaranteed by the buyer after receipt, except in cases of warranty and ruin.

• ‘Awârid Al-Ahliyyah (Impediments to Legal Competence)

عوارض الأهلية

Linguistically, the term “‘Awârid” means occasional things are different from the origin, and accidents that are different from what is established.

The issues that have the effect of changing some rulings while the competence remains have been called “‘Awârid Al-Ahliyyah (impediments to legal competence) because they prevent rulings related to full legal competence from being established, completely invalidating them, or making them dependent on the approval of those who have the right to approve them.

The Scholars of Fiqh have divided impediments to legal competence to two types: heavenly (natural) impediments and acquired (human) impediments. As for the heavenly impediments, they are the ones in whose existence and occurrence no person has anything to do with. The matter of their confirmation is due to the Almighty Allah. As for the acquired impediments, they are something that occurs due to a reason attributed to the person.

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• **‘Iwad (Compensation)** عوض

Linguistically, the term *‘Iwad* means compensation or replacement.

Abû Hilâl Al-‘Askarî mentioned that there are differences between compensation and replacement, in that compensation is what given in return for something as a price. It is said: This dirham is in compensation for your ring, and this dinar is in compensation for your dress. As for the replacement it is what takes the place of something without being a price. Also, the compensation the replacement that is used to benefit from it. If it is not made in the manner in which it is beneficial, it is not called a compensation. As for the replacement, it is something that is placed in the place of someone else in order to benefit from it first.

He also said that there is a difference between compensation and reward, in that the reward falls on the side of reward for rights, and compensation falls on the side of price in sales.

• **‘Awl (Increase)** عول

Linguistically, *‘Awl* means elevation, leaning, and increase.

In Fiqh terminology, this word appears in the science of inheritance in the sense of “an increase in the shares of the estate over the original due share, and a decrease in the

portions.” This is when the holders of the due share are entitled to several shares, the sum of which exceeds the correct one, then each shareholder does not take his full share, but rather it is reduced from it in proportion to this increase... Just as if there is a husband, a full sister, and a maternal sister, then it has two halves and a sixth, so it is out of six, and the two halves take it. Then an equivalent of one-sixth of it is added to it, so it reaches seven (so its origin is six, and it increased to seven). Accordingly, *‘Awl* is the opposite of decreasing.

An-Nawawî. said: *‘Awl* is the increase of the shares over the parts of the original calculation. If the estate cannot cover the shares of the people of the due shares, the calculation is increased, that is, its shares are increased so that the deficiency will be imposed on each person according to its due share. This is because each person takes his full share if he is alone, so if the estate is not sufficient, their shares must be divided according to the amount of rights, like people of debts and wills.

• **‘Ayb (Defect)** عيب

Linguistically, *‘Ayb* means defect or fault.

According to Scholars of Fiqh, *‘Ayb* is decrease in asset, funds, or desire. They divided defect into two types: slight and excessive defect. As

for slight defect, it is the defect that causes decreases within the limit set by expert evaluators. Excessive defect, however, is that which causes decrease beyond the limit set the expert evaluators who are impartial experts.

However, the word “defect” is used by Faqih with the word “option”, so they say: “the option of defect,” and the Malikites called it as the option of deficiency. Al-Ghazâlî said: Every reprehensible description for which custom often requires that the sold item be often free from. It is stated in (No. 527) of “Murshid Al-Hayrân”: “A defect that causes the item sold to be returned is something that reduces the price, even if only slight, or something that loses a valid purpose, provided that the similar items do not often have such defect.”

Moreover, the texts of Scholars of Fiqh have stated that the reference regarding the fact that the defect leads to a decrease in value, and that the similar items do not originally have such defect is the subject matter experts. Al-Kâsânî said: Reliance in the matter is on the custom of the merchants, so whatever decreases the price according to their custom is a defect that gives the option (to cancel the sale). Accordingly, it is stated (Article 338) of “*Majallat Al-Ahkâm Al-Adliyyah*”: A defect consists of any faults which, in the

opinion of persons competent to judge, cause a depreciation in the price of the property.

• ‘Îr (Caravan)

عير

The term “‘Îr” **linguistically**, as Ar-Râghib said, is “The people who have loads of supplies. This is a name for men and camels bearing supplies, although it may be used in each case but not the other.”

Al-Khuzâ’î said: ‘Îr is caravan, camels, and animals that carry loads, food, and trade, and it is not called ‘Îr unless it is like that.

Al-Matrazî said: ‘Îr was used to refer donkeys or camels carrying food, then it has been widely used to refer every caravan. A similar definition is given by Al-Fayyûmî, Al-Mujaddidî and others.

The Fiqh use of the word does not deviate from its linguistic meaning.

• ‘Ayn (Money/ Asset)

عين

Linguistically, the term “‘Ayn” is used to refer to different things, including insight, ‘Ayn Al-Ma’ (spring), ‘Ayn Ash-Shams (the sun), and the minted dinars. It also means an asset or property and is used also to refer to the best of the luggage. Ibn Fâris said: ‘Ayn means money that is present.

Likewise, Scholars of Fiqh use the word “‘Ayn” to refer present money, in contrast to debt, and they

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say: “‘Ayn” is a specific, identified thing, such as a house, car, horse, a pile of wheat, and a pile of present dirhams. Unlike debt, which is something that is proven in the liability without being specified and specific, whether it is in cash or otherwise. It is stated in “*Al-Qawâ'id Al-Fiqhiyyah*”: “What is in-kind cannot be established in the liability, and what is established in the liability cannot be in-kind.”

The basis for distinguishing between ‘Ayn (in-kind) and debt according to Scholars of Fiqh is the difference and discrepancy in attachment, as the debt is related to the debtor’s liability, and its fulfillment is by paying any similar item of the same type as the debt. This is why transfer and clearing are valid in debt, unlike in-kind items. The right relates to itself, and fulfillment when committed to it is only achieved by performing it itself. For this reason, the transfer or clearing is not valid for in-kind items. This is because they are recovered by themselves, not by their likes.

- **‘Īnah (Sale for Immediate Cash to Repurchase the Object with a Profit)** عينة

Linguistically, the term “‘Īnah” means lend or loan.

The majority of Scholars of Fiqh have interpreted “‘Īnah” as meaning that when person purchase some-

thing from someone else for a deferred price, delivers it to the buyer, and then its seller buys it before receiving the price for cash that is less than the deferred price.

The reality of the “‘Īnah” is a loan in the form of a sale to consider increase in return for the term (usury), as the process results in a loan of ten to return fifteen, and the sale is a fictitious means to justify such increase.

It is narrated on the authority of Imam Ahmad that he said: “‘Īnah” is when has a person has goods and does not sell them except on credit.” Similarly, ‘Īnah is interpreted by As-Sharīf Aj-Jurjānī.

Malik said: Whoever asks a man to sell something from him on credit, and he says: I do not have it, but I will buy it for you, then he negotiates with him for a profit, then he buys it, and then sells it to him on credit. Malik said: This is the disliked (*Makrūh*) ‘Īnah. Likewise, if he says: Buy me such-and-such commodity, and I will make you such-and-such a profit for such-and-such term, then it is disliked ‘Īnah, as if he paid gold for more than it.

It is stated in “Rad Al-Muhtâr”: “The sheikhs differed in the interpretation of “‘Īnah” that was prohibited. Some of them said: It is to introduce a third party between them, so the lender sells his dress

to the borrower for twelve dirhams (i.e. deferred), and hands it over to him, then the borrower sells it to the third party for ten, and hands it over to him, then the third owner, who is the lender, sells it for ten, hands it over to him, takes the ten from him, and pays it to the borrower, so the borrower gets ten, and the owner of the dress gets twelve dirhams.”

This transaction has been called “*‘Inah*” because the person who buys the commodity on credit takes another commodity in exchange for it from the seller in cash. An-Nasafi said: It is called “*‘Inah*” because it has been used as a means to move from debt to *‘Inah* (i.e., cash/in-kind).”



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Ghayn (غ)

• Ghârim (Debtor)

غَارِم

Linguistically, the term ‘*Al-Ghârim*’ refers to someone who owes a debt, a fine, or an obligation that must be paid.

In Shari‘ah terminology, it is used in two contexts:

- (a) In the context of *Zakâh* to denote a debtor who cannot fulfill his debt (under conditions and restrictions that differ from one Fiqh school to another). Such person is one of the eight categories deserving a portion of *Zakâh*, as mentioned in the Quranic Verse: {“*and for those in debt*”} [At-Tawbah (Repentance): 60].

Scholars differ regarding his description:

The Hanafites define the debtor as someone who owes a debt and does not own wealth in excess of his debt (even if he has money with other people but he cannot collect it from them).

According to the Shafi‘ites, the Malikites, and Ahmad, there are two types of debtors:

- 1- A debtor who loans for personal

needs, such as sustenance, clothing, medical treatment, marriage, or the like, if he does not have a surplus over his need from which he can repay, and his debt becomes due, while there are debts owed to him by other parties, and his debt does not arise from extravagance in permissible things or spending in a sinful channels, such as if his indebtedness is caused by a disaster such as a fire or flood that took away his wealth.

- 2- A debtor who loans for the benefit of society, such as someone who borrows money to release a captive or to reconcile between Muslims and the like, and thus he is considered a debtor, even if he is wealthy.
- (b) In the context of suretyship to denote someone who undertakes to guarantee and stand surety for a financial obligation. It was stated in a Prophetic *hadîth* that the Prophet Muhammad (peace and blessings of Allah be upon him) said, “*The guarantor is held responsible.*” [Related by Abû Dâwûd, At-Tirmidhî, and Ibn Mâjah]. Ibnul-Athîr explained it saying: “*the guarantor*” refers to the one who stands surety, and “*held responsible*” refers to the one who undertakes to guarantee the obligation, and fulfils it.

• **Ghibtah (Descent Envy or Bringing Benefit)** غَيْبَة

Linguistically, the term ‘*Al-Ghibtah*’ means good fortune or prosperity.

It refers to wishing someone else’s good fortune without wanting it to be taken away from him, because one admires his good fortune and considers it to be of great value.

In Fiqh terminology, it is used to mean what is most suitable, beneficial, or favorable. For instance, Al-Ghazâlî says in his book “*Al-Wasîl*” regarding the rulings on contract partnership: “The first ruling on contract partnership is that each partner has the right to dispose of the property on condition of ‘*Al-Ghibtah*’ (i.e., bringing benefit).” He also mentions regarding the rulings on agency: “The agent’s sale on credit is valid on condition of ‘*Al-Ghibtah*’ (i.e., bringing benefit) if his principal has authorized him to do so under any circumstances.”

Similarly, the Shafi’ites and the Hanbalites stated that the guardian can sell the real estate of a person whose legal competence is restricted if there is ‘*Al-Ghibtah*’ for him. This means that there is an interest, benefit, and advantage for the ward in the sale.

According to the author of “*An-Nazm Al-Musta’dhab*”, “In the sale of real estate, ‘*Al-Ghibtah*’ is to sell

the property at a price that he would be decently envied for and that others would wish they had.”

Al-Buhûtî states that the standard for ‘*Al-Ghibtah*’ in the sale of real estate is: “The price offered should be significantly higher than the price of its equivalents, without being restricted to one-third.”

Ash-Shîrâzî explains, “It is to seek for a price higher than its value, so he sells it for that price, and then buys something similar for a portion of that price, because there is benefit and advantage in the sale in these two cases.” The underlying principle is: “The guardian should not dispose of the minor’s property except with careful consideration and caution, and only engage in transactions that bring benefit and exultation.”

• **Ghabn (Overcharge or Misrepresentation)** غَبْن

Linguistically, the term ‘*Al-Ghabn*’ originally denotes shortfall.

In Fiqh terminology, it refers to the shortfall in one of the two counter-values, where one of them is of lesser value compared to the other upon contracting. On the part of the one who overcharges (*Al-Ghâbin*), he transfers the ownership of a property for more than its value, while on the part of the one who is overcharged (*Al-Maghbûn*), he owns a property for more than its value. Thus, the overcharge (*Al-Gh-*

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abn) occurs when there is an unfair exchange between the two counter-values due to the disparity between what one of the contracting parties receives and what he gives.

Ar-Râghib Al-Aṣbahânî defined it as: "To undercharge your partner in a transaction between you and him through some form of concealment."

According to Fiqh scholars, the overcharge has two types: insignificant and significant.

- The insignificant overcharge refers to what people usually overlook or accept in ordinary transactions. That is, the disparity that they do not guard against it in transactions. Accordingly, it is defined as: "What is typically within the range of what experienced estimators would consider reasonable." That is, the estimation of experts who are trustworthy and honest. This type is widely common in transactions and is hardly to avoid it.

- The significant overcharge refers to what people do not usually overlook or accept in ordinary transactions. That is, the disparity that they guard against it in transactions. Accordingly, it is defined as: "What typically exceeds the range of what experienced estimators would consider reasonable."

The Fiqh applications of this sta-

ndard to distinguish between the insignificant overcharge and the significant overcharge varies according to items, times, and customs. For example, the significant overcharge was determined in Article no. (165) of "*Majallat Al-Aḥkâm Al-'Adliyyah*" as: "Flagrant misrepresentation is representation which is practiced with regard to no less than one twentieth in the case of merchandise; one tenth in the case of animals; and one fifth in the case of real property." The basis for this determination is the customary practice at the time of its enactment. The basis for this, as stated by Al-Buhûti: "The Shari'ah did not determine it, so it was referred to the customary practice, such as taking possession and safekeeping. If it does not typically exceed the range of the customary practice, then there shall be no annulment, because it is overlooked."

• **Gharâmah (Fine or Financial Obligation)** غَرَامَة

Linguistically, the term '*Al-Gharâmah*' refers to something that a person is obligated to fulfil.

Al-Muṭarrizî stated, "It is that a person undertakes what is not required."

In Fiqh terminology, Ibn 'Âbidîn defined it as: "The money taken by oppressors, whether from the people of a village, locality, or craft, regularly

or non-regularly, with a cause or without a cause.”

Some Fiqh scholars defined it as: “The money given out unwillingly out of fear of harm and hardship.” It is also said: “The money that a person is obligated to pay.” It is derived from ‘*Al-Ghurm*’, which is the loss or shortfall.

• *Gharar* (Uncertainty) عَرَر

Linguistically, the term ‘*Al-Gharar*’ denotes risk or uncertainty. It is also said that it originally means shortfall.

In Fiqh terminology, it refers to a situation where the outcome is unknown or uncertain. *Gharar* contract is whose outcome is unknown or wavers between gain and loss. Ibnul-Qayyim explained it as: “The wavering between existence and non-existence, thus the *Gharar* sale is prohibited because it resembles gambling, ... It is considered gambling when one of the two parties to the contract gets money while the other may or may not get it.

As for the difference between ‘*Al-Gharar*’ and ‘*Al-Jahâlah*’, it is clarified by Al-Qarâfi in his book “*Adh-Dhakhîrah*”: “The uncertainty (*Al-Gharar*) is something whose attainability and non-attainability is almost the same, even if known, like a runaway slave known to both parties. The ignorance (*Al-Jahâlah*), on the other hand, is something whose

description is not known, even if its attainability is definite, such as the contractual agreement regarding what is in the sleeve. However, they may overlap, as in the case of a runaway slave who is not known. Thus, it should not be assumed that the uncertainty and the ignorance are the same, rather each is more general and specific in one aspect.”

• *Ghurrah* (the Best Quality) غُرَّة

Linguistically, the term ‘*Al-Ghurrah*’ carries several meanings, including: The first or best part of something, the slave, the slave-girl, the white spot on the forehead of a horse.

Al-Mutarriẓi stated: “‘*Ghurrah*’ of wealth is its best type (i.e., the most valuable or desirable part of it).”

In Fiqh terminology, it is used to refer to the blood money (*Diyah*) payable for the death of a foetus who separated dead from its mother’s womb (due to a criminal act against her). It is a slave or slave-girl whose value is half a tenth of the blood money.

Accordingly, Ibn ‘Arafah defined it as: “The blood money (*Diyah*) for a legally free Muslim foetus, who separated dead from its mother’s womb due to a criminal act of human being.”

Al-Munâwî stated, “In criminal acts, ‘*Al-Ghurrah*’ is a slave or slave-girl whose value is half a tenth of the blood money.”

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This is based on a Prophetic hadîth related by Al-Bukhârî and Muslim on the authority of Abû Hurayrah (may Allah be pleased with him) that two women from the tribe of *Hudhayl* (fought with each other) and one of them threw (a stone at) the other, causing her to have a miscarriage. Allah's Messenger (peace and blessings of Allah be upon him) gave a judgement that a slave or slave-girl of the best quality should be given (as a *Diyah*).

• **Ghuṛm (Risk-Sharing or Loss)**

غُرْم

Linguistically, the term '*Al-Ghuṛm*' denotes damage or loss (or a cost incurred).

Ar-Râghib stated, "It is any financial loss or harm that befalls a person without him committing a crime or acting treacherously."

In "*An-Nihâyah*" by Ibnul-Athîr, it is mentioned: "It refers to the fulfilment of an obligation."

It is related by Ibn Hibbân, Ad-Dâraqutnî, Al-Hâkim, and Al-Bayhaqî that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: "*Mortgage should not be foreclosed from its owner who should get its benefit and bear its expenses.*" Al-Azharî commented, "The wording '*and bear its expenses*' has two meanings: (1) He bears the responsibility for the cost of redeem-

ing the mortgaged item, which is the repayment of the obligation to its mortgagee. (2) He bears the responsibility for its loss or damage. '*Al-Ghuṛm*' is the loss or shortfall ... and it may even signify destruction."

Abû Dâwûd, At-Tirmidhî, Ibn Mâjah, and Aḥmad related that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: "*Begging is not permissible except for the one who is in perilous debt (Ghuṛm Mufzi').*"

Ibnul-Athîr explained, "That is, a pressing need arising from a heavy financial burden."

Al-Khattâbî said, "A perilous debt (*Ghuṛm Mufzi'*) refers to a situation where an individual is burdened by perilous and heavy debts, until he is no longer able to meet his basic needs, so he becomes eligible for *Zakâh* and is given from the share of debtors."

• **Gharîm (Debtor or Creditor)**

غَرِيم

Linguistically, the term '*Al-Gharîm*' refers to someone who owes a debt or other obligations. It also refers to someone who has a debt in the liability of another.

In Fiqh terminology, it is used to refer to both the creditor and the debtor. Judge 'Iyâd stated, "Its origin is the obligation." Al-Munâwî explained, "*Al-Gharîm*' is used for the

one who has a debt in the liability of another because it is obligatory on the debtor, and for the one who owes a debt to another because the debt is obligatory for the creditor.”

• Ghish (Fraud)

غِش

Linguistically, the term ‘*Al-Ghish*’ means deception or fraud. It is an opposite to sincere advice.

It essentially involves showing something contrary to one’s true intention (to deceive others), often accompanied by embellishing the harmful act.

The terminological usage of the term ‘*Al-Ghish*’ does not go beyond its linguistic meaning.

According to Ibn ‘Arafah’s definition of ‘*Al-Ghish*’ in sale transactions: “‘*Al-Ghish*’ is to give an illusion of the existence of a missing quality whose existence is intended in the sold item or to conceal the existence of an intended quality whose nonexistence is intended.”

Judge ‘Iyâd stated, “It is to conceal anything that the buyer would dislike it if he knew it.”

Ad-Dardîr said, “‘*Al-Ghish*’ has two types: the first type is to show the superior quality of something that is not good, and the second type is to mix one thing with something else, like mixing milk with water, or butter with fat, or an inferior qual-

ity of its kind, such as mixing good wheat with bad wheat.”

Fiqh scholars mentioned that the standard for the prohibited fraud is that the seller or the buyer knows something about the commodity that if the person who wants to buy it had known about it, he would not either buy it for that price, or would have refrained from buying it altogether.

As for the difference between the fraud (*Al-Ghish*) and the misrepresentation (*At-Tadlîs*), most scholars argue that ‘the fraud is more general than the misrepresentation, while some argue the opposite.

• Ghasb (Wrongful Appropriation)

غَصَب

Linguistically, the term ‘*Al-Ghasb*’ refers to taking something wrongfully and forcibly.

In Fiqh terminology, it is defined as: “The act of appropriating a denominated and an inviolable property overtly, without the permission of its owner.”

As for the difference between the thief (*As-Sâriq*) and the wrongful appropriator (*Al-Ghâsib*), the thief is the one who takes money stealthily from a place to which it is forbidden to enter, and the wrongful appropriator is the one who forcibly and overtly seizes the property of others, relying on his strength.

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• **Ghalâ' (Expensiveness or High Price)** غَلَاء

Linguistically, the term 'Al-Ghalâ' refers originally to increasing or exceeding the limit in anything. It also refers to rise in prices.

In "Al-Ishârah Ilâ Mahâsin At-Tijârah", Abû Ja'far Ad-Dimashqî mentioned the meaning of expensiveness (Al-Ghalâ') and its conditions in his time, saying: "Every commodity and everything that can be sold has an average value known to experts. So, any increase beyond this is given different name according to its extent. If the increase is slight, it is said: "The price has moved up". If it increases slightly more, it is said: "The price has soared". If it increases even more, it is said: "The price has become expensive". If it increases further, it is said: "The price has risen". If it increases even further, it is said: "The price has exploded". If this increase relates to something essential, such as food, it is termed as: "The great and enormous expensiveness".

On the other side, there are terms for decreasing prices. If the decrease is slight, it is said: "The price has moved down". If it decreases slightly more, it is said: "The price has dipped". If it decreases even more, it is said: "The price has become lower". If it decreases further, it is said: "The price has become cheap". If it decreases slightly further, it is said: "The price has become stagnant". If

it decreases even further, it is said: "The price has fallen". And so forth.

• **Ghallah (Yield)** غَلَّة

Linguistically, the term 'Al-Ghallah' refers to what a person obtains from the produce of his land.

Ibnul-Athîr stated, "Al-Ghallah' is the income obtained from crops, fruits, milk, lease, production, and similar sources."

The majority of Fiqh scholars use the term 'Al-Ghallah' to refer to any type of income obtained from the produce of a land, its rent, the rent of a house, the rent of a vehicle, or any other utilitarian asset that generates income while remaining intact.

The Malikite scholars use this term in a more specific meaning, in contrast to the concept of benefit (Al-Fâ'idah). According to them, the term 'Al-Ghallah' denotes the income that regenerates from commercial items without selling their underlying assets, such as the fruits of trees, and the wool or milk regenerated from livestock purchased for trade before selling the livestock themselves, and the rent of a house, and the earnings of other goods-stocked for trade. This also includes the increase in the selling price of an item bought for trade, such as buying something for twenty and then selling it for fifty since its value increases due to growth or market

conditions. The increase obtained from all these items is called yield (*Ghallah*) by the Malikites. This is unlike the increase obtained from the items purchased for personal use (*Qunyah*), which they called a benefit (*Fâ'idah*), not yield (*Ghallah*).

The Hanafite scholars apply the term '*Al-Ghallah*' to the dirhams circulated in the market for everyday needs, which are accepted and exchanged by merchants, but they are rejected by the state treasury due to a defect therein.

• Ghalaq Ar-Rahn (Foreclosure)

عَلَقَ الرَّهْنُ

Linguistically, the term '*Al-Ghalaq*' originally means closure or blockage.

In the context of mortgage, the term '*Ghalaq Ar-Rahn*' refers to the act of withholding or refusing to redeem the mortgage.

It is mentioned in a Prophetic *h*adith that the Prophet Muḥammad (peace and blessings of Allah be upon him) said, "*Mortgage should not be foreclosed from its owner ...*" This means that the mortgagee does not acquire full ownership of the mortgaged asset if the mortgagor fails to redeem it, but it remains in his possession as a security for him until he redeems it.

In "*Al-Bâri*", it is stated: "*Ghalaq*

Ar-Rahn' is when a man mortgages an item, saying: 'If I fail to repay the debt for you by such and such time, then the mortgaged asset will be yours for the debt.' The Prophet Muḥammad (peace and blessings of Allah be upon him) prohibited this practice, saying: "*Mortgage should not be foreclosed...*" indicating that the creditor does not own it for his debt, but rather it belongs to its owner."

Imam Mâlik interpreted '*Ghalaq Ar-Rahn*' as: "The mortgaged asset is transferred to the mortgagee's ownership if the mortgagor fails to repay the debt within the stipulated period. Judge 'Iyâd said, "It means that the debt is not absolved if the mortgaged asset is lost. If it is lost while it is in the possession of the mortgagee, the creditor has a right of recourse to the debtor for his own debt." Abû 'Ubayd objected to this interpretation based on linguistic grounds.

Al-Waqqashî said in his commentary on "*Al-Muwatta*": "*Ghalaq Ar-Rahn*' in language has two ways:

- 1- The guarantee refuses to return it to the mortgagor, especially if the mortgaged asset's value exceeds the debt's value.
- 2- The mortgagor refuses to redeem it if he knows that the mortgaged asset's value is less than the debt's value.

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• **Ghulûl (Misappropriation)** غُلُول

Linguistically, the terms ‘*Al-Gh-ulûl*’ and ‘*Al-Ghulûl*’ refers to a breach of trust, and taking something secretly.

In Fiqh terminology, the term ‘*Al-Ghulûl*’ is specifically used in the context of spoils of war (*Ghanîmah*).

Judge ‘Iyâd stated, “Every act of treachery is considered ‘*Ghulûl*’, but in the customary practice of Shari‘ah, it has become specific to the breach of trust regarding spoils of war.”

Accordingly, Fiqh scholars define ‘*Al-Ghulûl*’ as a breach of trust regarding spoils of war, specifically when referring to theft from the spoils before their distribution.

• **Ghinâ (Wealthiness)** غِنَى

Linguistically, the term ‘*Al-Ghinâ*’ is an opposite to poverty. It is said that a person is ‘*Ghanî*’ when he becomes wealthy and self-sufficient due to the abundance of his wealth.

In Fiqh terminology, the scholars differed regarding the definition and threshold of wealthiness:

- Ash-Shâfi‘î, Mâlik, Ibn Hazzam, and Ahmad (in a narration belongs to him) said, “The wealthiness is the threshold which achieves sufficiency, and the wealth person is the one who does not need anyone.”

- The Hanafites said, “The wealthy person is someone who is not entitled to receive *Zakâh* (obligatory almsgiving), meaning the individual who possesses a *Nisâb* (i.e., minimum amount determining a person’s zakatability) on which *Zakâh* is obligatory, such as cash, goods-stocked for trade or the like, in excess of his essential needs.”

- Imam Ahmad (in his most accepted narration), Ath-Thawrî, Ishâq, An-Nakha‘î, and Ibnl-Mubâ-rak said, “The wealthy person is someone who owns fifty silver dirhams or their equivalent in gold.”

It was also said otherwise.

In this regard, Fiqh scholars mention three categories of wealthiness: wealthiness that prevents one from receiving *Zakâh*, wealthiness that obligates the payment of *Zakâh*, and wealthiness that prevents one from begging, with a difference between scholars regarding the threshold of each category.

• **Ghunm (Profit-Sharing or Gain)** غُنْم

Linguistically, the term ‘*Al-Ghunm*’ carries several meanings, including: profit, gain, or benefit.

It is mentioned in a Prophetic *hadîth* that the Prophet Muhammad (peace and blessings of Allah be upon him) said, “*The mortgaged*

asset belongs to the one who mortgaged it, who should get its benefit and bear its expenses...

Ibnul-Athîr said, “*Its benefit*’ means its increase, growth, and surplus value.”

Al-Azharî said, “The mortgagor acquires full ownership of the mortgaged asset and what it generates of increase or benefit, such as milk, yield, and produce.”

This concept is also found in the Fiqh maxims, as stated in Article no. (87) of “*Majallat Al-Ahkâm Al-‘Adliyyah*”: “Gain is linked to the bearing of expenses.” It is derived from the Prophetic *hadîth* stating: “*Yield (Al-Kharâj) follows the assumption of responsibility (Damân)*”, which is established as a Fiqh maxim, and expresses the opposite of its meaning.

Al-Fayyûmî said, “Gain is linked to the bearing of expenses means that the gain is in exchange for the bearing of expenses, just as the owner receives the gains and no one else shares them with him, he bears the expenses and no one else bears them with him. This is the meaning of their saying: “The bearing of expenses is made up for by the gains.”

Another meaning of this maxim is that the expenses and losses incurred from the thing are borne by the one who benefits from it as stipulated by Shari‘ah.

Accordingly, Fiqh scholars stipulate that the expenses of returning the borrowed item to the lender are borne by the borrower, unlike returning the deposit, where the expenses are borne by the depositor because the deposit serves his interest. Similarly, the cost of repairing and maintaining the jointly owned property is born by the partners in proportion to their shares... etc.

• *Ghanîmah* (Spoil) غَنِيْمَة

Linguistically, the term ‘*Al-Ghanîmah*’ originally signifies profit, gain, or advantage.

In Fiqh terminology, it refers to the wealth or property taken forcibly from the infidel warriors during warfare when hostilities are ongoing. Its plural form is ‘*Ghanâ‘im*’.

An-Nawawî stated, “Our scholars said that the wealth taken from infidels is divided into types: what is obtained without fighting or driving horses and mounts, and what is obtained with fighting or driving horses and mounts. The former is termed ‘*Fay*’ and the latter is termed ‘*Ghanîmah*’. Furthermore, Al-Mas‘ûdî and a group of our scholars stated that each of these two types of wealth applies to the other if they are mentioned separately, but if they are combined, they are distinguished, similar to the distinction between the terms ‘*Al-Faqîr*’ and ‘*Al-Miskîn*’.”



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Fâ' (ف)

• Fâhish (Exorbitant or Excessive)

فاحش

Linguistically, the term 'Al-Fâhish' means ugly or repulsive.

Fiqh scholars use it to describe anything that exceeds the normal or acceptable limits. For example, they say: 'Gharar Fâhish', 'Ghabn Fâhish', 'Jahâlah Fâhishah', 'Darar Fâhish'. By all these, they mean that it exceeds the limit that people usually overlook.

As for its definition, there is no standard agreed-upon among scholars for it, because there is no Shari'ah text specifying it. So, the scholars refer to the prevailing customs and practices, which vary with time, place, and items. However, they developed indicators to help identify and determine its definition because some Shari'ah rulings are relevant to it. For example:

- They define the excessive uncertainty (*Al-Gharar Al-Fâhish*) as: "The uncertainty which prevails in the contract to the extent that the contract can be described by it."
- They define the excessive misrepresentation (*Al-Ghabn Al-Fâhish*)

as: "The misrepresentation which people do not consider fraudulent, such that it does not fall within the range that the trustworthy experts deem appropriate for a specific purpose."

- They define the excessive ignorance (*Al-Jahâlah Al-Fâhishah*) as: "The lack of knowledge of the descriptions that leads to conflict and dispute between the contracting parties."
- They define the excessive damage (*Ad-Darar Al-Fâhish*) in the context of neighboring relationships as: "The unusual damage that is not tolerated or forgiven in the normal course of events, such as the damage which causes structural weakness to a building or leads to its collapse, or prevents its essential uses, i.e., the benefits for which it was originally intended by construction."

• Fâ'idah (Benefit or Interest) فائدة

Linguistically, the term 'Al-Fâ'idah' refers to the benefit taken, whether of knowledge or wealth.

Fiqh scholars use it in its more general meaning, referring to any increase that a person obtains from something in his possession.

Accordingly, Al-Kafawî said: "Terminologically, the benefit (*Al-Fâ'idah*) is what arises from something and is obtained from it, in the sense that it is acquired from it."

The Malikite scholars use it in its more specific meaning in the context of transactions to refer to any growth or increase in non-commercial goods. They represented it with everything a person gains by way of inheritance or gift, and anything that exceeds the price of non-commercial goods (*Qunyah*; i.e., goods that a person acquires for personal use, not for trading) when the buyer sells them for more than their original price. Likewise, it includes what is generated from livestock and trees, such as wool, milk, or fruits, if their underlying assets were purchased for personal use, not for trade.

It has also been mentioned in some of Ibn Taymiyyah's books that it means the usurious increase in a loan.

• Fidyah (Ransom)

فدية

Linguistically, the term '*Al-Fidyah*' means the redemption of a captive (by the payment of a ransom).

Fiqh scholars use the term '*Al-Fidyah*' in this meaning. Accordingly, some of scholars define it as when a Muslim ruler leaves a non-Muslim captive and takes money or a Muslim captive in exchange.

In Shari'ah terminology, it is used to mean: "The money that a person spends to compensate for not fulfilling a religious obligation properly, such as the expiation for breaking oaths or missing fasts." This is men-

tioned in the Quranic Verses: {"... *a ransom of fasting (three days) or charity...*"} [Al-Baqarah (The Cow):185], and {"... *a ransom (as substitute) of feeding a poor person (each day) ...*"} [Al-Baqarah (The Cow):184].

In Fiqh terminology, it is used to mean: "A woman's offering compensation (ransom) in return for her divorce."

Al-Munâwî said, "The woman ransomed herself from her husband means that she gave him money until she got rid of him through divorce."

Al-Azharî said, "Allah, the Almighty, called '*Al-Khul*' in the Qur'an as a ransom, and what a woman offers from her own money to ransom herself is called '*Fidyah*'."

In "*Bidâyat Al-Mujtahid*", it is stated: "The wife's self-redemption (*Al-Khul*'), the ransom (*Al-Fidyah*), the reconciliation (*As-Sulh*), and the mutual release (*Al-Mubâr'ah*) all essentially mean the same thing; i.e., a woman's offering compensation (ransom) in return for her divorce. However, the wife's self-redemption is specifically used when she gives back everything she received from her husband, and the reconciliation is used when she gives back some of it, and the ransom is used when she gives back most of it, and the mutual release is used when she relinquishes a right she has against him. This is according to the majority of Fiqh scholars."

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• **Farâgh (Vacation)** فَرَاحٌ

Linguistically, the term 'Al-Farâgh' is an opposite of 'Ash-Shughl', which means vacation as opposed to occupation.

In Fiqh terminology, it refers to: "Waiving one's position to another party, whether for compensation or without compensation." This term is used specifically by the Hanafite school, against other Fiqh schools.

This issue has been elaborated in "Qânûn Al-'Adl Wa Al-Insâf Li Al-Qadâ' 'Alâ Mushkilât Al-Awqâf" as follows:

- **"Article no. (165):** "It is valid to vacate the position of endowment administrator or other positions, provided that it is based on a decision of the judge. Vacation, as determined by the judge, is a removal of the vacating party himself, not an authorization."
- **Article no. (166):** "Whoever vacates his position before the judge, the ruler, or the administrator who are authorized to appoint or dismiss thereto, his right to this position has been forfeited, and it cannot be returned to him after vacation, whether it was the judge himself or someone else who decided on his vacation. However, whoever vacates his position without being before the legitimate ruler, his vacation is not valid, and his right to it does not forfeit

by mere vacation without a legitimate decision."

- **Article no. (1670):** "Positions are counted from the abstract rights, so it is not permissible to compensate for them with money. If the holder of a position vacates it in return for compensation paid to him, the vacator has the right to reclaim the compensation paid for the vocation, unless it was given as a reward for the service rendered, or he had a general release or a specific release from him. In such cases, he has no right to reclaim any compensation for the vocation."

• **Farâ'id (Obligations)** قَرَائِصُ

Linguistically, the term 'Al-Farâ'id' is the plural of 'Farîdah'. It is derived from 'Al-Fard', which means estimation or determination.

Some scholars said, "'Al-Fard' is the verbal noun of everything that is imposed, making it obligatory for a person to a certain extent. The noun form is 'Al-Farîdah'. For instance, the obligation on camels in the context of Zakâh (obligatory almsgiving), which are called so because it is imposed or prescribed; meaning it was made obligatory in a specific number of camels. It is therefore called 'Mafrûdah' and 'Farîdah'.

As for the science of inheritance ('Ilm Al-Farâ'id): "It is a science that comprises principles from both

jurisprudence (Fiqh) and accounting that define the rights of each inheritor from the estate.” The essence of this science is composed of two aspects: First: Identifying the rightful inheritors and those who are not entitled to inheritance. Second: Knowing the method of distribution and its application. The first aspect relies on Fiqh, while the second aspect relies on accounting. The integration of Fiqh with accounting led to the establishment of this distinct field of knowledge known as ‘*Ilm Al-Farâ'id*’, and it became an independent science.

As for the reason for calling it so, it is said: “Because the word ‘*Farîdah*’ is mentioned in the context of inheritance laws in the Quranic Verse: {“... (*These shares are*) *an obligation (imposed) by Allah...*”} [An-Nisâ’ (Women): 11]”, and it is said: “It is derived from the term ‘*Al-Farîdah*’, meaning: obligatory or determined, because the shares of the inheritors are being determined.”

• **Fard (Obligation)**

فَرَض

Linguistically, the term ‘*Al-Fard*’ means obligation. For example, when it said: “Allah has obligated Prayer as an obligation”, it means that He made it obligatory. Similarly, when referring to the financial obligation imposed by a ruler in terms of maintenance or alimony, it is called ‘*Fard*’. Also, the dowry is called ‘*Farîdah*’ in the Allah’s saying:

{“... *and you have already specified for them an obligation...*”} [Al-Baqarah (The Cow): 237] because the husband has committed to it and made it obligatory upon himself.

The term ‘*Al-Fard*’ also refers to the allotted gift or what one obligates upon oneself to give or bestow without expecting anything in return. It can refer to the soldiers’ stipends in the registry or the soldiers to whom these stipends have been allotted.

It is also said, “I incurred neither a loan (*Qard*) nor a gift (*Fard*) in this.” Abû Hilâl explained the difference between the loan and the gift as follows: “The loan (*Al-Qard*) is something that is obligatory to be given, while the gift (*Al-Fard*) is something that is not obligatory to be given. So, saying: “He has neither a loan (*Qard*) nor a gift (*Fard*)” implies that he has no good for anyone, whether for the one on whom he is obliged to maintain or for the one on whom he is not obliged to maintain.

• **Fasâd (Corruption or Invalidity)**

فَسَاد

Linguistically, the corruption (*Al-Fasâd*) is an opposite of the righteousness (*As-Salâh*). The corruption originally denotes a deviation of something from the sound state, and its departure from moderation. It has been used then in all matters that deviate from uprightness.

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In Fiqh terminology, there is no disagreement among scholars that ‘*Al-Fasâd*’ is synonymous with ‘*Al-Butlân*’ (i.e., invalidity) in the context of non-contractual and financial transactions in general, and in these transactions according to non-Hanafite scholars. According to these scholars, the void contract does not have any legitimate ruling or effect due to its violation of the Shari’ah command and prohibition regarding the contractual norms. As for the Hanafite scholars, they use it to denote a state where the contract is considered flawed in some subsidiary aspects, placing it in a category between validity and invalidity: It is neither entirely invalid and uncontracted because its violation of the Shari’ah norms is not as primary as in the case of invalidity, nor is it entirely valid and recognized because it violates the contractual norms, albeit it is in a subsidiary aspect not a primary one. Accordingly, they define it as: “What is valid in itself but is invalid as regards matters incidental thereto”, meaning it was issued by its competent party regarding a subject matter under his authority, but an impermissible external particular was attached to it, so the contract became prohibited according to the Shari’ah due to this particular.

• **Faskh (Revocation)**

فَسْخ

The Fiqh usage of the term ‘*Al-*

Faskh’ does not go beyond its linguistic meaning, which means removal, termination, and annulment.

Ibn Nujaym defines it in the context of contracts as: “The dissolution of the contractual relationship.”

Al-Qarâfi defines it as: “The revocation of each of the two counter-values to the other countervalue.”

Others define it as: “The termination of a contract based on the same terms that existed prior to it, without any increase or decrease.”

Based on the statements of Fiqh scholars, this termination may either arise from a voluntary cause, such as the right of rescission, the defect option, the cooling-off option, and the like, which is termed ‘*Faskh*’, or it may arise from an accidental involuntary cause, such as the rescission of a sale due to the destruction of the sold item before its delivery to the buyer, rendering the contract impossible to execute through delivery after the destruction of its subject matter. In such case, the contract is rescinded due to the loss of the essential element upon which its validity relies. Similarly, in cases like the rescission of partnership (*Ash-Sharikah*), profit-sharing (*Al-Mudârabah*), sharecropping (*Al-Muzârah*), or irrigation (*Al-Musâqâh*) due to the death of one of the contracting parties, because these contracts establish ongoing practical obligations with

renewed consequences, contingent upon the continued existence of the contracting parties in addition to the subject matter. This termination is termed ‘*Infisâkh*’.

Some modern scholars have defined the term ‘*Al-Faskh*’ in its most general meaning that encompasses both voluntary cause and involuntary cause, as: “The termination of a valid contract as a result of a condition stipulated by the contracting parties in the contract, or a condition prescribed by the Shari‘ah, or the impossibility of fulfilling the obligation.” It is noted that this definition does not mention revocation due to the abstention from performing the obligation, since the Islamic Fiqh does not recognize such abstention as a valid cause for revoking the contract.

• **Faskh Ad-Dayn Fî Ad-Dayn (Cancellation of a Debt for Another Debt)**

فَسْخُ الدَّيْنِ فِي الدَّيْنِ

The Malikite scholars classify ‘*Bay‘ Al-Kâli‘ Bi Al-Kâli*’, which is prohibited by Shari‘ah, into three categories: Exchange of a debt for a debt, cancellation of a debt for a debt, and sale of a debt for a debt. Al-Khurashî said, “Although the sale of a debt for a debt (*Bay‘ Ad-Dayn Bi Ad-Dayn*) linguistically implies the three categories, the Malikites gives each category a specific name, ... Then they stated that the “cancellation of a debt for a debt” refers in

their terminology to two things:

- 1- Selling a deferred debt (has already been established in liability) to the debtor to be delivered at a later specified time in exchange for an increase of it. Fiqh scholars unanimously agreed on its prohibition and invalidity, as it is akin to the pre-Islamic usury (*Ribâ Al-Jâhiliyyah*). The creditor would say to the debtor when the term has fallen due: ‘Will you pay it off or increase me?’ If the debtor did not pay off, he lengthened the term for him in exchange for an increase of the amount.”
- 2- Selling a deferred debt (has already been established in liability) to the debtor for a deferred debt of a different kind. In this case, the buyer of the debt is the debtor himself, and its seller is the creditor. The majority of Fiqh scholars (including: the Hanafites, the Shafi‘ites, the Malikites, and the Hanbalites) prohibited this practice. Imam As-Subkî reported that there was a consensus on its prohibition. However, Ibn Taymiyyah and his student Ibnul-Qayyim disagreed with them and deemed it permissible. They provided detailed arguments for their view, which cannot be fully explained here.

Al-Khurashî stated, “The cancellation of a debt for a debt is to cancel

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what is established in the debtor's liability for more than its kind to be delivered at a later specified time, or to cancel what is established in his liability for a different kind to be delivered at a later specified time, such as ten for fifteen on a deferred payment basis, or for a deferred commodity."

The term '*Faskh Ad-Dayn Fî Ad-Dayn*' is used specifically by the Malikites, against other Fiqh scholars. As for its meaning, it is known to other scholars by the terms: '*Bay' Al-Kâli' Bi Al-Kâli*' or '*Bay' Ad-Dayn Bi Ad-Dayn*', which is similar to what Ibn Taymiyyah and Ibnul-Qayyim used to call: '*Qalb Ad-Dayn*' (i.e., debt modification).

• **Fudûlî (Uncommissioned)** فُذُولِي

Linguistically, the term '*Al-Fudûlî*' is a description applied to someone who busies himself with things that are none of his business.

In Fiqh terminology, it is used to describe a person who discharges the affairs of others without having a right to do so by virtue of Shari'ah. This is because his act is undertaken without being an owner, agent, or guardian.

• **Faqîr (Poor)** فقير

Linguistically, the term '*Al-Faqîr*' refers originally to a person with a broken vertebra, and the vertebra is a backbone.

In Shari'ah terminology, it is used in four aspects, as stated by Ar-Râghib Al-Aṣbahânî:

- 1- Existence of basic need: This aspect is general for human beings as long as they live in this worldly life, as indicated in the Quranic Verse: {**"O mankind, you are those in need of Allah, ..."**} [Fâtir (The Originator): 15].
- 2- Poverty of the soul: This aspect is mentioned in the saying of the Prophet Muḥammad (peace and blessings of Allah be upon him): *"Truly, wealth is the richness of the soul."*
- 3- Poverty towards Allah: This aspect is highlighted in the supplication of the Prophet Muḥammad (peace and blessings of Allah be upon him): *"O Allah, make me rich by needing You, and do not make me poor by dispensing with You."*
- 4- Lack of material possessions: This aspect is mentioned in the Quranic Verse: {**"Zakâh expenditures are only for the poor and for the needy..."**} [At-Tawbah (Repentance): 60]. However, the scholars differed regarding its definition:
 - The Shafi'ites and the Hanbalites hold that the poor (*Al-Fuqarâ*) are those who have nothing at all, while the needy (*Al-Masâkin*) are those who have some possessions but not

enough to meet their basic needs.

- The Malikites hold that the needy (*Al-Miskîn*) is in a worse state than that the poor (*Al-Faqîr*), as the poor is the one who does not have enough food for a year, while the needy is the one who possesses nothing at all.
- The Hanafites hold that the poor (*Al-Faqîr*) is the one who possesses less than the *Nisâb* of *Zakâh* (i.e., minimum amount determining a person's zakatability), while the needy (*Al-Miskîn*) is the one who possesses nothing at all.
- Other scholars hold that the poor (*Al-Faqîr*) is the one who is in need and asks people (for assistance), while the needy (*Al-Miskîn*) is the one who does not ask people despite being in need.

• *Fulûs* (Pennies)

فُلُوس

Linguistically, the term '*Fulûs*' is the plural of '*Fils*', which is the lowest value of coin.

In Fiqh usage, it refers to coins minted from metals other than gold and silver, and have become currency in customary dealing and price in the common parlance of people.

In Fiqh perspective, the term '*Al-Fulûs*' refers to currency by convention, not by nature; because its value

is not intrinsic like the coins of gold dinars and silver dirhams, but rather it is assumed by convention and the dealings of people.

• *Fawât* (Missing out or Loss)

فَوَات

Linguistically, the term '*Al-Fawât*' refers to the act of missing out or losing something.

Ar-Râghib stated, "*Al-Fawât*' is the distance of something from a person, so that it becomes impossible to reach or grasp it."

In Fiqh terminology, it denotes going away or loss.

Al-Munâwî defined it as: "The loss of benefits of an owned property, such as withholding a property that has a benefit for which it can be rented out."

It is used also to indicate the passing of the time for an act. Hence their saying: '*Fawât As-Salâh*' means that the Prayer's time has passed without it being performed, and their saying: '*Qadâ' Al-Fawâ'it*' means performing the obligatory Prayers whose time has passed before they are performed as a making up for them.

Furthermore, it can signify the absence, non-existence, or loss. For example, the phrase: "*Khiyâr Fawât Al-Wasf Al-Mashrû'î*" implies that the absence of the desired description stipulated by the contracting party proves his right to terminate

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the contract due to missing out the intended purpose of its stipulation.

• **Fay' (Booty)** فَيْء

Linguistically, the term '*Al-Fay'*' refers to returning or restoring.

In Fiqh terminology, it refers to the wealth or property taken from the infidel warriors under a peace agreement without fighting, or after the war has laid down its arms, such as land tax (*Al-Kharâj*), tribute (*Al-Jizyah*), and the like.

This wealth was called '*Fay'*' because Allah has granted it as booty to Muslims; so it was restored to them without a fight.

Abû 'Ubayd said, "As for the wealth of '*Fay'*', it includes:

- The property collected from the people of Dhimmah (non-Muslim subjects) from what they have been reconciled upon for their head tax, for which their blood was protected and their wealth was forbidden.
- The land tax imposed on lands conquered by force but the Mus-

lim ruler left them in the possession of the people of Dhimmah on a condition of paying a fixed tax or levy.

- The regular payment imposed under a peace agreement on the lands which their people withheld thereof until they reconciled with them on the basis of paying a specified *Kharâj* (land tax).
- The levy that the tenth-taker collects from the wealth of the people of Dhimmah who pass by him in return for their trade transactions.
- The levy taken from the infidel warriors during warfare when they enter Islamic territories for trade purposes.

All of this wealth is considered booty (*Fay'*), and it serves to benefit all Muslims, both rich and poor. It is also used for paying the soldiers' stipends, their families' sustenance, and the needs of the ruler to ensure the welfare of Islam and its adherents."



Qâf (ق)

• Qabâlah (Surety or Tax-Farming)

قَبَالَة

Linguistically, the term ‘*Al-Qabâlah*’ carries the meaning of suretyship, and ‘*Al-Qabîl*’ is the surety. The plural is ‘*Qubul*’ and ‘*Qubalâ*’.

In Fiqh terminology, Al-Munâwî said: “*Al-Qabâlah*’ is a written document outlining a person’s commitment to perform a specific task, pay a debt, or fulfill any other obligation.” This is because when an individual agrees to undertake a task for another party and formalizes this agreement through a written contract, the resulting document is called ‘*Qabâlah*’, and the task or obligation itself is referred to as ‘*Qibâlah*’ as it represents a form of craftsmanship.

As-Sarakhsî said, “The term ‘*Al-Qabâlah*’ is akin to the term ‘*Al-Kafâlah*’ (suretyship), as the surety is referred to as ‘*Qabîl*’, which is the act of undertaking an obligation or commitment. Hence, the document, which is a deed, is called ‘*Qabâlah*’.”

The term ‘*Al-Qabâlah*’ is mentioned also by Fiqh scholars to mean the tax that is paid to the state treas-

ury. It was then used in Morocco and Andalusia to refer to fees imposed on craftsmen or goods sellers.

As for the scholars’ term “*Qabâlat Al-Ard*”, it means that a person accepts the land, and the ruler grants it to him; meaning he gives it to him on the basis of *Al-Muzâra’ah* (sharecropping) or *Al-Musâqqâh* (irrigation), whether it is a dead land or an agreement-based land, as the Prophet Muḥammad (peace and blessings of Allah be upon him) handed over Khaybar’s land to its people.

Also, the term ‘*Taqbîl*’ of the black land (agricultural land) and the like is used by Fiqh scholars. In “*Sharḥ Al-Kharâj*”, Ar-Rahbî explained it as: “The Sultan or his deputy hands over a territory, a town, or a village to a man for a one-year period on the basis of a lease arrangement in return for a known amount of money that he will pay to him from the land tax and the head tax of its people if they are people of Dhimmah (non-Muslim subjects), and he accepts it, and a document is written to him thereon.”

As for the term ‘*Al-Qabâlah*’ which was mentioned in the ḥadīth of Ibn ‘Umar: “*Al-Qabâlât (tax-farming) is usury*”. Ibn Taymiyyah explained it as: “It is when a person guarantees a land with palm trees and farmers for a certain amount of its produce, such as a man having

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a village with trees and land, and farmers working for him, and it yields wheat and dates to him after the farmers having their wages or share, and another man guarantees it for a specific amount of wheat, dates, and the like. This is a manifestation of calling it usury.”

As for guaranteeing the white land (non-agricultural land) for dirhams and dinars, it is not considered usury. Rather, he is a tenant who works on the land with his effort and capital, and the produce is his earnings, unlike if there are farmers who do the work, in which case he does not contribute anything in terms of labor or capital. Instead, the farmers do the work and he pays *Al-Qabâlah* (tax-farming) and receives its exchange. This is seeking profit in the exchange of wealth without engaging in profession or trade, and this constitutes usury.

• **Qabd (Taking Possession)** قَبْضُ

Linguistically, the term '*Al-Qabḍ*' signifies the act of grasping or taking hold of something using the entire hand. It can be metaphorically used to mean acquiring or receiving something even if the hand is not involved.

There is no disagreement among Fiqh scholars that '*Al-Qabḍ*' signifies taking possession of something and gaining control over it, wheth-

er it is physical object that can be grasped with the hand or not. Al-'Izz Ibn 'Abdus-Salâm said, "When they say, 'I have taken possession of the house, land, slave, or camel,' they mean taking control over it and having the authority to dispose of it."

As for the term '*Al-Qabḍ*', it refers to what is collected from the spoils of war. Judge 'Iyâd said, "Whatever money is received is called '*Qabḍ*'."

• **Al-Qabḍ 'Alâ Sawm Ash-Shirâ' (Possession on a Purchase Bargain)**

الْقَبْضُ عَلَى سَوْمِ الشِّرَاءِ

Fiqh scholars use the term '*Al-Qabḍ 'Alâ Sawm Ash-Shirâ'*' to mean that a prospective buyer takes something from the seller with the intention of purchase if it pleases him. For example, the seller would say to the buyer: "Take this garment for such an amount, and if you are satisfied with it, you will buy it." The buyer takes it on the condition that if it pleases him, he will purchase it.

Scholars have detailed discussions about the guarantee of what is possessed on a purchase bargain, which can be found in the book of sales.

• **Al-Qabḍ 'Alâ Sawm An-Nazar (Possession on an Inspection Bargain)**

الْقَبْضُ عَلَى سَوْمِ النَّظَرِ

The Hanfite scholars use the term '*Al-Qabḍ 'Alâ Sawm An-Nazar*' to

mean that a person takes possession of something to inspect it or show it to someone else, without the intention of purchase if it pleases him. For example, the seller would say to someone: "This garment is yours for ten dirhams", and the person responds: "Let me inspect it", or "Let me show it to someone else", without saying: "If I am satisfied with it, I will take it".

There is a difference in Fiqh perspective between the guarantee of what is possessed on a purchase bargain (*Al-Qabḍ 'Alâ Sawm Ash-Shirâ'*) and what is possessed on an inspection bargain (*Al-Qabḍ 'Alâ Sawm An-Nazar*), which should be examined in its relevant contexts.

• Qabûl (Acceptance)

قبول

Linguistically, it is said: "*Qabil-tu Al-Qawl*" meaning: I believed the report, or "*Qabil-tu Al-Hadiyyah*" meaning: I took the gift.

In Fiqh terminology, the Hanafites define '*Al-Qabûl*' as: "The statement issued by the other contracting party after the offer (*Al-Ījâb*) has been made, expressing his approval of it. The one who initially makes his statement is always considered the offeror (*Al-Mujib*), and the other party is the acceptor (*Al-Qâbil*), whether the initiator is, for example, the seller in a sale contract by saying: "I sold", or the buyer by saying: "I bought", or the lessor in a lease

contract by saying: "I leased out", or the lessee by saying: "I rented", and so on for all types of contracts." Accordingly, it was stated in Article no. (102) of "*Majallat Al-Ahkâm Al-'Adliyyah*": "Acceptance is the statement made in the second place with a view to making a disposition of property. The contract becomes completed thereby."

The non-Hanafite scholars view that the offer (*Al-Ījâb*) is the statement issued by the contracting party expressing the transfer of ownership of the subject matter (*Mahall Al-'Aqd*), whether it is issued first or last. The acceptance (*Al-Qabûl*) is the statement issued by the other party expressing his approval of it. Ibn Qudâmah stated in "*Al-Mughnî*": "The offer is to say: 'I sold to you', or 'I transferred the ownership to you', or any expression indicating both. The acceptance is to say: 'I bought', or 'I accepted' ..."

• Qirâḍ (Profit-Sharing or Mudârabah)

قراض

Linguistically, and in the Fiqh usage, the term '*Al-Qirâḍ*' means profit-sharing (*Al-Mudârabah*), which is a partnership where one party provides capital to another to trade with, under the agreement that profits will be shared between them according to a pre-agreed ratio, while losses are borne solely by the capital provider.

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Al-Azharî said, “*Al-Qirâḍ*” is originally derived from ‘*Al-Qard*’, which means cutting. This is because the capital provider cuts off a portion of his wealth for the managing partner (*Al-Mudârib*), and he cuts off for him a known amount of the profit therein ... This term is specifically used for the *Mudârabah* partnership because each party has a defined share of the profit, which is a ‘cut’ portion that does not exceed it.

• Qard (Loan)

قَرْض

Linguistically, the term ‘*Al-Qard*’ originally means cutting.

In Fiqh terminology, it is the act of giving money to someone who benefits from it, on the condition that he returns its equivalent amount. The money itself given in this manner is also called ‘*Qard*’ in the terminology of Fiqh scholars.

Scholars also use the term ‘*As-Salaḥ*’ to refer to ‘*Al-Qard*’, which is well-known and commonly used. Mâlik related in “*Al-Muwatta*” on the authority of Ibn ‘Umar (may Allah be pleased with him) that he said: “Loans (*As-Salaḥ*) are of three types: A free loan which you lend by which you desire the pleasure of Allah, and so you have the pleasure of Allah. A free loan which you lend by which you desire the pleasure of your companion, so you have the pleasure of your companion, and a free loan which you lend by which

you take what is impure by what is pure, and that is usury.” That is, the prohibited usurious loan. The ‘impure’ refers to the prohibited increase, and it is only taken as compensation for the ‘pure’, which is the lawful thing that he gave; because it was pure before he loaned it on the basis of usury.

As for the relationship between the loan (*Al-Qard*) and the debt (*Ad-Dayn*), it is stated in “*Al-Fatâwâ Al-Hindiyyah*”: “The loan is to lend dirhams and dinars or similar fungible item to be repaid with their equivalent later. The debt is to sell something for a price to be paid at a specified future time.”

Abû Hilâl Al-‘Askarî said, “The difference between the loan (*Al-Qard*) and the debt (*Ad-Dayn*) is that the loan is more commonly used for cash and dirhams, where you take a dirham from a person to return an equivalent dirham later, so it remains a debt on your liability until you repay it. So, every loan is a debt, but not every debt is a loan. This is because the prices of items bought on credit are debts but not loans, and the repayment of the loan should be of the same kind as what was borrowed, which is not the case with debt.”

• Al-Qard Al-Hasan (Good Loan)

الْقَرْضُ الْحَسَنُ

The term ‘*Al-Qard Al-Hasan*’ is

mentioned in the Quranic Verse: *{“Who is it that would loan Allah a goodly loan so He may multiply it for him many times over?”}* [Al-Baqarah (The Cow): 245]. Its meaning, as explained by Ilkiyâ Al-Harârî: “Encouragement to do righteous deeds and spend in good channels with the most gentle and eloquent words. It is called a ‘loan’ to confirm the entitlement to reward; for it is not a loan unless the compensation is due in return.”

Al-Wâhidî stated, “The loan (*Al-Qard*) is anything given in expectation of reward. It is said: ‘A lent B’; meaning he gave him something for which he expects a return. The term for this is ‘loan (*Qard*)’, referring to what you give to be rewarded for. This is the consensus of the linguists.”

The word ‘*Al-Qard*’ in this Quranic Verse is a noun, not a verbal noun - as stated by An-Nawawî and Al-Qurtubî. If it were a verbal noun, it would have been ‘*Iqrâd*’. The use of the word ‘*Al-Qard*’ in the Verse is only a matter of familiarity and a way of making the concept more relatable to people by using a term they understand. Allah, being self-sufficient and praiseworthy, has likened the believer’s giving in this worldly life in hopes of a reward in the Hereafter to a loan, just as He has likened the giving of lives and properties in exchange for Paradise to buying and

selling in the Verse: *{“Indeed, Allah has purchased from the believers their lives and their properties (in exchange) for that they will have Paradise.”}* [At-Tawbah (Repentance): 111].

The Quran exegetes say, “This is a gracious invitation from Allah, the Almighty, to all acts of righteousness. Therefore, He attributed the loaning to Himself, as if it were said: ‘Who is it that would act like the loaner, by giving in this world, so that he would take many times what he gave in a time of his poverty and need?’ And its interpretation is: ‘Who is it that would present to Allah, the Almighty, what he would find its reward with Him?’”

As for the characteristics of good loan when it is given as charity or spent in the way of Allah, scholars said: “It should be collected from lawful sources; to be from the best and most valuable of what one owns, not the inferior; to be given in a state of health, need, and hope of life; to be given to those who are most deserving and in need; to be given secretly; not to follow up it with reminders of generosity or with injury; to solely intend by it the sake of Allah, not for show off; not to consider it a large amount; and to be from the most beloved of one’s wealth. So, when a person accomplishes these characteristics, it is considered a good loan.”

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• ***Al-Qard Al-Hukmî* (Constructive Loan)** القَرْضُ الحُكْمِيُّ

This term is specifically mentioned by the Shafi'ites, and it refers to: "The payment of money on behalf of a person for his benefit - either by his order or without it - with the intention of it being a loan." They said, "Examples of this include: spending on a needy foundling, feeding the hungry, clothing the naked if he is not poor with the intention of it being a loan, giving money to someone based on another's order and for his benefit with the intention of it being a loan, such as giving money to a poet or an oppressor, or feeding a poor person, or ransoming a captive, and saying: 'sell this and spend it on yourself', with the intention of it being a loan. This type of loans does not require an offer and acceptance."

However, the connotation of this term is also found in the Malikite school and the Hanbalite school with more detail and explanation. Its concept is concisely present in the Hanafite school as well, in situations where a person orders another to pay his debt to the creditor, and they considered it a constructive loaning from the ordered party. Al-Kâsânî stated, "This is because the order to repay the debt from someone else's money is a form of borrowing from him."

• ***Qur'ah* (Lot)** قُرْعَة

Linguistically, the term '*Al-Qur'ah*' means a share or portion. Drawing lots is a method used to determine a person's share or portion.

It is used by Fiqh scholars with the same linguistic meaning, where it is considered a method for dividing non-fungible common items.

Upon examining the Fiqh scholars' statements on '*Al-Qur'ah*', there is no strict obligation on a specific method of drawing lots. However, some of the Shafi'ites consider it invalid if it is conducted with different items, such as an inkwell, pen, and pebble, or uneven sticks. They responded to this argument by stating that the one drawing the lot should not know what each item signifies, and he may not know anything at all, so his heedlessness is required. It is even preferable that a young child draws the lot, as per their school.... The Hanbalites explicitly state that '*Al-Qur'ah*' is valid regardless of the method used or the items involved, even with rings or pebbles after putting a distinctive mark on each of them; because this is sufficient to achieve the intended purpose, which is to distinguish the shares.

• ***Qasâmah* (Compurgation or Collective Oath)** قَسَامَة

Linguistically, it is said: "The distributor (*Al-Qassâm*) has divided

the money among the partners; that is, he distributed it among them and determined their shares.” And ‘*Al-Qisâmah*’ is the craft of the distributor, such as butchery and carpentry.

As for the term ‘*Al-Qusâmah*’, it refers to what the distributor (*Al-Qassâm*) takes for himself during distribution.

This term was mentioned in a Prophetic *ḥadīth* related by Abû Dâwûd in his “*Sunan*” on the authority of Abû Sa’îd Al-Khudrî that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: “*Beware of Al-Qusâmah.*” We asked: “*What is Al-Qusâmah?*” He said: “*It means a thing which is shared by the people, and then it is reduced.*”

Ibnul-Athîr said, “‘*Al-Qusâmah*’ is what the distributor takes for himself from the capital as his wage, just as brokers take a fixed commission, not a known fee, such as when they agree to take a specific amount from every thousand, which is considered unlawful.”

Al-Khattâbî said, “This does not prohibit the payment of the distributor’s wage if he takes it with the consent of those who are being divided for. Rather, this (*ḥadīth*) refers to someone who was in charge of a people, and was their chief or leader, and if he divided the shares among them, he keeps something for him-

self to take advantage of them. This was explained in another *ḥadīth* that follows it, on the authority of ‘Atâ’ Ibn Yasâr that narrated a similar narration from the Prophet Muḥammad (peace and blessings of Allah be upon him). This narration adds: “*a man is appointed on groups of people, and takes (wages) from the share of this, and from the share of this*”.

As for ‘*Al-Qasâmah*’, it refers to an oath, akin to swearing (*Al-Qasam*). According to Ibnul-Athîr, its reality is that fifty avengers of blood heir swear on their entitlement to the blood of their relative if they find him killed among a people, where no one knows who the murderer is. If they are fewer than fifty, those present swear fifty oaths, and there should not be among them a child, a woman, a madman, or a slave, or else these oaths may be sworn by the suspects to deny the accusation against them. If the claimants swear, they are entitled to the blood money, and if the suspects swear, they are not obligated to pay the blood money.

• Qismah (Partition)

قِسْمَة

Linguistically, the term ‘*Al-Qismah*’ refers to partition.

In Fiqh terminology, it signifies defining the rights of each partner and partitioning the common shares into identified sets for each partner. This is why partition is defined as:

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“The gathering of an undivided share in a specific individual” In other words, it is the identification of undefined shares of a particular person.”

It was the gathering of a share after it has been partitioned because the share (before partition) was distributed among all the parts of the shared property. There is no part, no matter how small, but each of the partners has a share in it in proportion to his share in the total. Then, after partition, the share becomes confined to a specific part that is not shared by the rights of any of the other partners, even if the partition is considered in terms of time, as in the case of time-sharing (*Mu-hâya'h*).

• **Qismat Al-Ifrâz (Partition by Separation)** قِسْمَةُ الْإِفْرَاز

The partition by separation (*Qismat Al-Ifrâz*) is a partition of an item consisting of identical parts based on quantity, by separating each share individually according to its specified standard in Shari'ah, such as measure, weight, cubit, or count.

It is also known as 'partition by parts' due to this consideration, and it is termed 'partition by similar items' because it applies only to items whose shares are identical without any noticeable or significant difference.

The subject matter of this parti-

tion is applied to the fungible items of the same type, such as the currency of a particular country, and the wheat, rice, or oil of identical parts, and to the non-fungible items of the same type, including books, pens, watches, or shoes, etc.

This type of partition is used and highlighted specifically by the Shafi'ites (although its connotation is known to all Fiqh schools), and they made it a counterpart for the partition by adjustment (*Qismat At-Ta'dîl*) and the partition by restitution (*Qismat Ar-Radd*).

• **Qismat At-Tarâdî (Partition by Consent)** قِسْمَةُ التَّرَاضِي

Fiqh scholars divide partition (*Al-Qismah*), based on the will of the two joint owners of property, into two categories: partition by consent (*Qismat Tarâdî*), and partition by compulsion (*Qismat Ijbâr*). This is because partners may collectively desire to divide their shared property, or some may desire for it while others agree to a division between them and to the way in which partition will be carried out. It is then termed the partition by consent (*Qismat At-Tarâdî*) or the partition by agreement (*Qismat Ar-Ridâ*). It was defined in Article no. (1121) of "*Majallat Al-Ahkâm Al-'Adliyyah*" as: "Partition by consent consists of a partition made by agreement of the two joint owners of property held in absolute ownership, whereby they

mutually agree to a division between them, or whereby the Court makes a division with the assent of all parties.” This is consistent with the definition given by the Hanafites.

On the other hand, the Hanbalites define the partition by consent as: “A partition among partners in which there is harm to any of them, or a return of compensation from one to another for adjustment.”

• **Qismat At-Ta’dil (Partition by Adjustment)** قِسْمَةُ التَّعْدِيلِ

The partition by adjustment (*Qismat At-Ta’dil*) is a partition of an item based on its value and usufruct, not based on its quantity. This is used when there is a need to assess the distributed item because the shares are not inherently equal, but they are adjusted (and equalized) based on value. This is because the lesser portion may be equivalent to the larger portion in terms of value and usufruct.

This is illustrated when the jointly owned property may be divided equally between two individuals, but the value of one-third of it, due to its specific advantages, equals the value of the remaining two-thirds. In such a case, the mentioned one-third is allocated as a share against the half (for a partner) and the remaining two-thirds as another share against the other half (for the other partner).

This term is used and highlighted specifically by the Shafi’ites (although its connotation is known to all Fiqh scholars), and they divided it into two categories: partition by separation (*Qismat Al-Ifrâz*), and partition by restitution (*Qismat Ar-Radd*).

• **Qismat At-Tafrîq (Partition by Allotment)** قِسْمَةُ التَّفْرِيقِ

The Hanafite scholars categorized partition, based on the unity and numerousness of the jointly owned items, into two types: partition by allotment (*Qismat At-Tafrîq*), and partition by units (*Qismat Al-Jam’*).

In the Hanafite terminology, the partition by allotment refers to dividing a specific thing owned jointly and of allotting a part in respect to the undivided shares relating to each portion. This is known as partition by allotment, or individual partition, as where a piece of land is divided into two parts.

The partition by allotment is divided into two categories: partition by consent (*Qismat At-Tarâdî*), and partition by order of the court (*Qismat Al-Qadâ’*).

• **Qismat Al-Jam’ (Partition by Units)** قِسْمَةُ الْجَمْعِ

The Hanafite scholars categorized partition, based on the unity and numerousness of the jointly owned items, into two types: partition by

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units (*Qismat Al-Jam'*), and partition by allotment (*Qismat At-Tafrîq*).

In the Hanafite terminology, the partition by units refers to dividing specific objects owned jointly, that is, numerous and jointly owned things being separated into parts, the divided shares belonging to each individual being united in one part. This is called partition by units, as where thirty sheep which are jointly owned between three persons are divided up into tens.

The partition by units is divided into two categories: partition by consent (*Qismat At-Tarâdî*), and partition by order of the court (*Qismat Al-Qadâ'*).

This division and terminology are known among other Fiqh scholars, but they do not specifically use this term to describe it.

• **Qismat Ar-Radd (Partition by Restitution)** قِسْمَةُ الرَّدِّ

The partition by restitution (*Qismat Ar-Radd*) is a partition of an item whose shares are not inherently equal, and cannot be adjusted (and equalized) based on value and usufruct. Instead, the shares are left with different values, either by choice or necessity, such that the person who takes the larger share is then obligated to return to his partner the value of his rightful share from that surplus.

It is called the partition by restitution (*Qismat Ar-Radd*) because it involves the need to return the property that is not part of the joint partnership to some of the partners... Although it is of the same type as the partition by adjustment, but it is distinguished from it by the fact that it involves a compensation; because when the partition by adjustment is used, it refers to the shares that can be equalized based on value without the need for a compensation.

This term is used and highlighted specifically by the Shafi'ites, and they divided it into two categories: partition by separation (*Qismat Al-Ifrâz*), and partition by adjustment (*Qismat At-Ta'dîl*).

The essence of this division is that if the shares of a thing are equal in type and value, it is a partition by separation (*Ifrâz*). If there is no need to return anything else, it is a partition by adjustment (*Ta'dîl*), or otherwise, it is a partition by restitution (*Radd*).

• **Qismat Al-Qadâ' or Al-Ijbâr (Partition by Order of the Court or by Compulsion)**

قِسْمَةُ الْقَضَاءِ (الإجبار)

Fiqh scholars divide partition (*Al-Qismah*), based on the will of the two joint owners of property, into two categories: partition by consent (*Qismat Tarâdî*), and partition by

compulsion (*Qismat Ijbâr*). This is because one or more partners may desire to divide their shared property, but others refuse, even regarding the way in which partition will be carried out. If the party desiring partition resorts to the judiciary, the judge shall undertake the partition of the jointly owned property as established by Islamic Shari'ah. This partition is then termed as partition by compulsion (*Qismat Ijbâr*), or partition by order of the court (*Qismah Qadâ'iyyah*). Accordingly, it is defined as: "A partition that is made by the judiciary because the partners do not agree on it." It was stated in Article no. (1122) of "*Majallat Al-Ahkâm Al-'Adliyyah*": "Partition by order of the court consists of a partition which is obligatory and has the force of law, and which is made upon the application of certain of the owners of the jointly owned property." This is consistent with the definition given by the Hanafites.

On the other hand, the Hanbalites define the partition by compulsion as: "A partition in which there is neither harm to any of the partners, nor a return of compensation."

• Qadâ' Al-Haqq (Fulfilment of the Obligation) قَضَاءُ الْحَقِّ

Linguistically, the term '*Al-Qadâ'*' means to settle something or finish it. It also refers to the enforceability of a judgement. Hence, a ju-

dge is called a '*Qadî*' because he issues and enforce legal judgments. So, it is used commonly to refer to the judiciary.

As for the term '*Qadâ' Al-Haqq*' according to Fiqh scholars, it signifies the fulfilment of an obligation and the restitution of what is owed to its rightful owner. On the other hand, the term '*Iqtidâ' Al-Haqq*' means taking possession of it.

It is noted that the terms '*Al-Qadâ'*' and '*Al-Iqtidâ'*' in this context are specifically used in Fiqh to refer to debts rather than tangible assets. For instance, one may say that someone '*Qadâ'*' his debt, meaning he has repaid it to its creditor, and one may say that someone '*Iqtidâ'*' his debt, meaning he has received and taken possession of it.

• Qitâ'ah (Conditional Manumission) قِطَاعَةٌ

Linguistically, the term '*Al-Qat'*' means separating some parts of a body or an object from others. The term '*Al-Qutâ'ah*' is a portion that is cut off from something, or a section of land if it is separated. Additionally, it is said: "I contracted with so-and-so for such-and-such wage and work"; meaning: I made an agreement with him.

In Fiqh terminology, the term '*Al-Qitâ'ah*' means: "A manumission contract conditional upon an immediate payment of a specified

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sum of money by the slave.” Ad-Dusûqî said that it differs, in terms of maturity and deferral of the consideration, from the contractual emancipation, which is: “A manumission contract conditional upon a deferred payment of a specified sum of money by the slave.”

This term is used specifically by the Malikite scholars, against other Fiqh scholars.

• **Qit'ah (Section or Portion) قِطْعَة**

Linguistically, the term ‘*Al-Qit'ah*’ means a section or a portion of something.

According to the Malikites, it means (as mentioned by Muhammad Al-Fâdil Ibn ‘Ashûr): “The act of disclaiming responsibility for the consequences of the actions of others.”

• **Qutût (Written Rations or Gifts) قُتُوط**

Linguistically, the term ‘*Al-Qutût*’ is the plural form of ‘*Al-Qitt'*’, which originally refers to a written document or deed that records something related to a person. It is used metaphorically to denote a portion or share that is allocated or allotted to someone.

It was reported on the authority of Zayd Ibn Aslam and Ibn ‘Umar that they did not see any harm in the sale of ‘*Al-Qutût*’ if they were issued. According to Ibnul-Athîr,

“*Al-Qutût*’ refers to rations or gifts that rulers used to give to people and governors, documented in written records. The sale of these documents is deemed impermissible according to Fiqh scholars unless what is recorded in these documents comes into the possession of the one for whom they were written.”

Al-Azhari said, “*Al-Qutût*’ are gifts and rations. They were called so because they used to be issued in separate documents or deeds.

• **Qatī'ah (Land Allotment) قَطِيعَة**

Linguistically, the term ‘*Al-Qatī'ah*’ is used to denote a piece of land that is allotted to someone. For example, if someone asks for a piece of land from the ruler and he grants it to him, it is referred to as ‘*Qatī'ah*’. Similarly, when the ruler allots a piece of land to someone for development or cultivation, it is also termed as ‘*Qatī'ah*’. This term can be used to refer to a section of land allotted by the ruler to the soldiers, meaning that he allocated its revenue and produce to them. It is also said that the master imposed a ‘*Qatī'ah*’ on his slave; meaning that he imposed a regular payment or tax on him.

The terminological meaning of the term ‘*Al-Qatī'ah*’ does not go beyond its linguistic meaning, as Al-Qadûrî (a Hanafite scholar) defined it as: “A piece of dead land allocated

by the ruler to a group of people, so they took its ownership.” Al-Mutarizî said, “This is what is meant by the statement: ‘It is permissible to sell the land of ‘Al-Qatî‘ah.’”

• **Qafiz At-Tahhân (Miller’s Qafiz)**

قَفِيزُ الطَّحَّانِ

Linguistically, the term ‘Al-Qafiz’ is a unit of measure that people agree upon as a standard for measurement.

As for the term ‘Qafiz At-Tahhân’, it was mentioned in a Prophetic hadîth related by Ad-Dâraqutnî, Al-Bayhaqî, and Abû Ya‘lâ, in which the Prophet Muḥammad (peace and blessings of Allah be upon him) prohibited the miller’s Qafiz (i.e., handful of flour from the grains which is given to the miller as his wage for grinding). Al-Fayyûmî said, “Its form is that a person says: ‘I hired you to grind this amount of wheat in exchange for a pound of its flour, for example, whether there is something else or not.’ Ibnul-Athîr said, “It means that a man hires someone to grind a known quantity of wheat for him in exchange for a Qafiz (a measure of food stuff) of its flour.”

In “Talibat At-Talabah”, it is mentioned: “It is prohibited to engage in the practice of the miller’s Qafiz; which is to hire a miller to grind a quantity of wheat in exchange for a Qafiz of its flour. This is not per-

missible because he is hired to perform a task in which he is a partner.”

In “Al-Mughnî” by Ibn Qudâmah, it is stated: “Ibn ‘Aqîl said: ‘Allah’s Messenger (peace and blessings of Allah be upon him) prohibited the practice of the miller’s Qafiz; which is that a miller is given a known amount of wheat (Qafizs) to grind in exchange for a Qafiz (a measure of food stuff) of it. The underlying reason for prohibiting this practice is that the miller is essentially receiving a portion of the wheat itself as payment for his work, and this makes the grinding an obligation upon him. However, we do not know this hadîth, and its authenticity is not established according to us. By analogy with Ahmad’s statement, it is permissible.”

Al-Albânî classified this hadîth as Sahîh (authentic) in his book: “Irwâ‘ Al-Ghalîl”, while Ibn Hajar in his book: “Ad-Dirâyah” cited weakness in its chain of transmission. Ibn Taymiyyah in “Majmû‘ Al-Fatâwâ” elaborated: “This hadîth is invalid and has no basis. Further, it is not found in any of the authenticated hadîth collections, nor is it narrated by any of the prominent Imams. In Medina, there were neither millers who ground for wages nor bakers who baked for wages. Moreover, the measure called ‘Qafiz’ was not known among the people of Medina during the Prophet’s time. It was

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introduced later when Iraq was conquered and land taxes were imposed on them. Iraq was not conquered during the time of the Prophet Muhammad (peace and blessings of Allah be upon him). This, among other evidence, indicates that this statement does not belong to the Prophet (peace and blessings of Allah be upon him), but rather it is the wording of some Iraqis who did not support such statement as quoted from their own *Ijtihâd* (Shari'ah-based-reasoning)."

• **Qalb Ad-Dayn (Debt Modification)**

قَلْبُ الدَّيْنِ

This is a Fiqh-based term mentioned in some books of Ibn Taymiyyah and his student Ibul-Qayyim. It was not known among scholars before that, but some of the later Hanbalite scholars mentioned it along with its rulings on the authority of Ibn Taymiyyah. It has been used in two meanings:

- 1- Deferring the debt whose maturity date has fallen due, whether it is the repayment of a loan, the price of a sold item on credit (deferred payment basis), or the like, in exchange for an increase in the amount owed in return for extending the term for the debtor. This is essentially the same as usury practiced in the pre-Islamic period that a creditor would say to the debtor when the matu-

rity date has fallen due: 'Will you pay it off or increase me?' If the debtor paid, he took it. If not, he increased him in debt and lengthened the term for him. This practice is unanimously prohibited by Fiqh scholars.

In "*At-Turuq Al-Hukmiyyah*", it is stated: "When a usurer considers it permissible to modify the debt by saying to the debtor: 'Either you pay it off, or you increase the debt and lengthen the term,' then he is deemed a disbeliever and must be called to repentance."

- 2- Deferring the debt whose maturity date has fallen due in exchange for an increase in its amount, which the creditor attains through a transaction (not intended in itself) that is cleverly contrived to achieve this purpose.

Ibn Taymiyyah mentioned the consensus of Fiqh scholars on its prohibition in this context if the debtor is insolvent. In his book "*Al-Hisbah*", he stated: "Some of these transactions are unanimously deemed unlawful by Muslim scholars, such as those transactions where the debt is modified for an insolvent debtor. It is obligatory for the creditor to grant him a respite, and it is not permissible to increase the debt on him through any transaction or otherwise, according to the consensus of Muslim scholars." Similar

statements can be found in “*Majmû‘ Al-Fatâwâ*” in multiple places.

If the debtor is not insolvent, Ibn Taymiyyah stated: “The later Muslim scholars differed regarding this issue. As for the companions of the Prophet (peace and blessings of Allah be upon him), there was no dispute among them that this is prohibited, for deeds are to be judged only by intentions, and the traditions reported from them regarding this matter are many and well-known.” He also stated, “Whoever is indebted and is solvent, then it is obligatory for him to pay it off.” This statement implies a general prohibition of this practice, in his view, even if the debtor is solvent.

It is worth mentioning that the Malikite scholars had another term closely related to the concept of ‘*Qalb Ad-Dayn*’ in terms of meaning and concept. This term was known in their books as: ‘*Faskh Ad-Dayn Fi Ad-Dayn*’ (Cancellation of a debt for another debt).

• *Qalb Ar-Rahn* (Turning the Mortgage)

قَلْبُ الرَّهْنِ

This is a Fiqh-based term used specifically by the Malikite school, against other Fiqh schools, and it represents a form of debt sale. According to Mayyârah in his commentary on “*Sharh At-Tuhfah*”, “It involves a person holding a mortgage as security for a deferred debt,

and he needs the amount of his debt before the maturity date. So, he sells this deferred debt for what it is worth, such as when the debt is in dinars or dirhams, as is common in mortgage sale, the creditor can sell it for a commodity in cash, taking into account the other conditions that make selling the debt permissible. The debt’s buyer then takes the place of the original mortgagee in possession and usufruct (if granted), and the sale of the mortgage is done by the authorization granted to the mortgagee (the debt’s seller), and so on.”

In “*Hulâ Al-Ma’âsim*” by At-Tâ-wudî, it is stated: “Note: Among the forms of debt sale is the practice commonly known as ‘*Qalb Ar-Rahn*’, which involves a person holding a mortgage as security for a deferred debt, and he needs the amount of his debt. So, he sells it for what it is worth. The debt’s buyer then takes the place of the original mortgagee in possession and usufruct (if granted), and the sale of the mortgage is done by the authorization granted to the mortgagee (the debt’s seller), and so on.”

• *Qimâr* (Gambling)

قِمَار

Linguistically, the term ‘*Al-Qimâr*’ means gambling or wagering. Al-Maghrâwî stated that the origin of gambling in Arabic speaking is deception.

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In Fiqh terminology, it is used to describe any game or activity where it is a condition that the winner takes something from the loser. Its essence is wagering on a pure uncertainty and suspending the ownership on risk for both parties. Ibn Taymiyyah defined it as: "The act of taking someone's money while gambling, uncertain if compensation will be obtained or not." Others defined it as: "The act of suspending the entitlement to money on risk."

Many Fiqh scholars use the term '*Al-Maysir*' in the sense of '*Al-Qimâr*', although the word '*Al-Qimâr*' is originally more general than the word '*Al-Maysir*', as it applies to all types of betting. This is unlike '*Al-Maysir*', which refers specifically to gambling with arrows to divide slaughtered camels in a specific way practiced by the people of pre-Islamic period.

• *Qimatr* (Book Chest)

قِمَاطَر

Linguistically, the term '*Al-Qimatr*' refers to a chest or receptacle where books are stored and preserved.

In "*Az-Zâhir*" by Al-Azharî, it is stated: "'*Al-Qimatr*' is ledger books and similar items folded and collected in one place, packed and tied. It is said, 'I organized the ledger books into a *Qimatr*', meaning I packed and tied them."

• *Qunû* (Requesting with Humility)

قُنُو

Linguistically, the term '*Al-Qâni*' refers to a beggar or someone who asks for charity. It is derived from '*Al-Qunû*', which means to beg or request with humility. This is distinct from '*Al-Qanâ'ah*', which is the contentment with what one has and being satisfied with it.

It is mentioned in the Quranic Verse: {"... and feed '*Al-Qâni*' and '*Al-Mu'tar*'"} [Al-Hajj (The Pilgrimage): 36]. Al-Fayyûmî stated, "'*Al-Qâni*' is the beggar who asks people, while '*Al-Mu'tar*' is the beggar who goes around and does not ask people." Az-Zajjâj said, "'*Al-Qâni*' is the beggar who asks without pressing further and accepts what is given to him graciously." However, there are other interpretations as well.

Judge Ibnul-'Arabî mentioned two meanings for '*Al-Qâni*': The first refers to the one who is content with what he has, and the second refers to the one who requests with humility. Both meanings are often applied to the needy, because he is humiliated. If he is satisfied with his livelihood, then he is a self-contained needy, but if he is not satisfied, then he is a mendicant.

As for '*Al-Qanâ'ah*', it refers to the act of being satisfied or content with one's destiny.

• **Qiwâm (Pillar or Underlying Components)** قَوَام

Linguistically, the term ‘*Al-Qiwâm*’ refers to the foundation or pillar upon which something stands or is built, as stated by Al-Fayrûz Âbâdî. Al-Fayyûmî defined it as the pillar or support upon which something is established and organized.

It also refers to the means by which a person sustains himself. It was mentioned in a Prophetic *ḥadīth* related by Muslim, Abû Dâwûd, and An-Nasâ’î regarding the begging that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: “... *and a man who has been smitten by poverty, for whom begging is lawful until he gets sufficient means of sustenance.*” Ibnul-Athîr explained it as: “This is which fulfils his essential needs.” Al-Qurtubî explained it as: “This is which sustains life.” Judge ‘Iyâd explained it as: “This is which provides him with sufficiency.”

Al-Khattâbî commented on this, saying: “It indicates that the limit at which giving in charity should stop is the sufficiency, which allows one to sustain his livelihood and fulfil his basic needs. This is determined for each individual according to his circumstance and living condition. There is no fixed limit that can be applied to all people, given the differences in their circumstances.”

As for the term ‘*Al-Qawâm*’, it refers to balance and moderation.

Allah says in the Quranic Verse: {“... *but maintain moderation.*”} [Al-Furqân (The Criterion): 67].

Regarding the term ‘*Qiwâm Al-‘Aqd*’ used by Professor Mustafâ Az-Zarqâ, it refers to the “underlying components” that are indispensable for the formation of a valid contract, whether these components are the pillars of the contract in its terminological meaning (i.e., constituent part of the contracting process and its meaning, such as offer and acceptance), or other rational requirements (such as the contracting parties and the subject matter).

These components are distinct from the Shari’ah conditions of the contract, because the conditions are merely complementary descriptions that the Legislator has prescribed for those underlying components of the contract. These conditions may include specific capacity in the contracting parties or special characteristics in the subject matter of the contract. The Shari’ah conditions can, in principle, be imagined as absent from a contract, were it not for the fact that the Lawgiver has stipulated their existence and made the contract contingent upon them for legislative purposes. This is in contrast to the elements we have termed ‘underlying components’, such as the contracting parties and the subject matter of the contract, without which the existence of a contract cannot be conceived.

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• **Quwwah (Strength or Capability)** قُوَّة

Linguistically, the term ‘*Al-Quwwah*’ means strength or capability. When someone is capable of something, it means that he can afford it.

Al-Jurjânî said, “*Al-Quwwah*’ is the ability of an animal to perform strenuous works”, meaning the power.

Ar-Râghib Al-Aṣbahânî mentioned that ‘*Al-Quwwah*’ is sometimes used to mean the strength, as in the Quranic Verse: {“*Take what We have given you with strength*”} [Al-Baqarah (The Cow): 63], and at other times it denotes the readiness or potential inherent in something, as in the phrase “*An-Nawâ Bi Al-Quwwah Nakhl*”, meaning that the palm kernels have the potential to develop into a palm tree.

The term ‘*Al-Quwwah*’ in the context of potential or readiness is more commonly used by Philosophers, and they use it in two ways: First, it can refer to something that was existent but is not actively used, as in saying: “so-and-so is writing by ‘*Al-Quwwah*’; meaning he has the knowledge of writing, but he does not use it.” Second, it can refer to what is potential, as in saying: “so-and-so can write by ‘*Al-Quwwah*’, it does not mean that he has knowledge of writing, but it means that he can learn to write.

In Fiqh terminology, the term ‘*Al-Quwwah*’ is used in the contexts of *Al-Muzâra’ah* (sharecropping), *Al-Musâqâh* (irrigation), and land leasing. It refers to the resources necessary for cultivating and utilizing land, such as seeds, cattle, farming implements, and water tanks for irrigation. Ibn Taymiyyah mentioned, “And for this reason, it is said: ‘Whoever enters with strength (*Quwwah*) should exit with its equivalent.’ So, if the tank is full of water when you enter, fill it when you leave.”

• **Qayyim (Trustee)** قَيِّم

Linguistically, the term ‘*Al-Qayyim*’ is derived from ‘*Qâma*’, which means to preserve something and look after its interests. ‘*Al-Qayyim*’ refers to a master or someone in charge of affairs, or someone responsible for managing what has been entrusted to him. It can also denote someone who takes charge of overseeing the affairs of others.

In Fiqh terminology, the term ‘*Al-Qayyim*’ is used to refer to the guardian appointed by a judge to manage the debts of a deceased person, execute his will, redress his grievances, and take care of the affairs of his children if not specified by the deceased. The plural form is ‘*Quwwâm*’. The Shafī’ites call him ‘*Qayyim Al-Qâḍī*’, while the Malikites call him ‘*Muqaddam Al-Qâḍī*’.

The Hanafites also use the term ‘*Al-Qayyim*’ to refer to the endowment administrator. The author of “*Tartîb As-Sunûf*” said, “Some Fiqh scholars used terms like ‘*Al-Qayyim*’, ‘*Al-Mutawallî*’, and ‘*An-Nâzir*’ interchangeably. According to other scholars, ‘*Al-Qayyim*’ is the person entrusted with the affairs of preservation, collection, and distribution. In this sense, the trustee (*Al-Qayyim*) is the one who works under the supervision and authority of the administrator.

Al-Mujaddidî said, “The difference between the guardian (*Al-Wasî*) and the trustee (*Al-Qayyim*) is that the guardian is entrusted with both preservation and administration, while the trustee is entrusted only with preservation without the authority to administer.”

• Qîmah (Value)

قيمة

Linguistically, the term ‘*Al-Qîmah*’ refers to the price at which an item is valued or assessed.

In Fiqh terminology, it signifies the actual price of an item. It can be expressed as the average price of the item in the market or as what the item is perceived to be worth by those desiring it under normal circumstances. It is known that value differs according to custom and habit, depending on the time, place, and circumstances.

Ibn ‘Âbidîn stated, “The differen-

ce between the price (*Ath-Thaman*) and the value (*Al-Qîmah*) is that the former is what the contracting parties agree upon, whether it is more or less than the value, while the latter is the real price of an item, acting as a standard, without increase or decrease.”

Fiqh scholars sometimes use the terms ‘*Qîmat Al-Mithl*’ (reasonable value) and ‘*Thaman Al-Mithl*’ (reasonable price) interchangeably.

As for valuation (*At-Taqwîm*), it refers to the process of assessing the value of goods, determining their worth and value. It can be said, “I valued the item”, meaning I assigned a specific value to it.

It is also used figuratively, such as saying: “The item cost me such and such”, indicating the expense incurred.

• Qiyamî (Non-Fungible)

قيمي

Linguistically, the term ‘*Al-Qiyamî*’ is derived from ‘*Al-Qîmah*’ (value), referring to the items which cannot be categorized based on their physical characteristics to which they are attributable. This is unlike the items which can be categorized based on their physical characteristics, such as grains and moderate animals, which are attributable to their form and shape. For example, it is said: ‘*Mithlî*’, meaning an item that has a similar form and shape from its physical characteristics.

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In Fiqh terminology, the term ‘*Al-Qiyamî*’ refers to the non-fungible items whose individual units differ, either in terms of quality or value, to the extent that one unit cannot replace another without a distinction, or the fungible items whose individual units are equal but they are not found in the market.

Examples include: all things that are based on variation in type or value or both, such as animals whose individual units differ like horses, camels, cattle, and sheep, as well as houses and handicrafts that vary in their components and descriptions. Each individual of these items possesses unique features not found in others, giving it a specific value that cannot be compared to the value of other items.

They also include the fungible

items that are not found in the market or become scarce, such as some old artifacts that have disappeared from the markets but now hold special value that transfers them to the category of non-fungible items.... Likewise, any unit that is no longer equivalent to its counterparts of fungible items, due to a defect, use, or other reasons, will also become a non-fungible item. This applies to tools, machines, and cars after they have been used, due to the changes in their characteristics and value.

The Shafi’ite scholars use the term ‘*Al-Mutaqawwim*’ to refer to the non-fungible property.

In Fiqh terminology, the non-fungible (*Al-Qiyamî*) is a counterpart for the fungible (*Al-Mithlî*).



Kâf (ك)

• Ka'l (Debt Swap)

كَالْ

Al-Fayrûz Âbâdî said, “*Al-Ka'l* is the act of buying or selling a debt owed to you by one person in exchange for a debt owed to him by another person.”

• Al-Kâli' Bi Al-Kâli' (Deferred Payment for Deferred Payment)

الكالى بالكالى

Linguistically, the term ‘*Al-Kâli*’ means deferred. It is mentioned in Prophetic *ḥadīth* that the Prophet Muḥammad (peace and blessings of Allah be upon him) forbade ‘*Bay' Al-Kâli' Bi Al-Kâli'*’. According to Fiqh scholars, this refers to the sale of deferred object that has not been received for the deferred object that has not been received, or the sale of deferred debt for another deferred debt. It has five forms outlined by the scholars:

1- Selling a deferred debt that has not established in liability for another deferred debt as well. For example, a person buys an item clearly described in liability to be delivered later at a specified time in exchange for a deferred price

clearly described in liability. The Malikites refer to this form as: the exchange of a debt for another debt (*Ibtidâ' Ad-Dayn Bi Ad-Dayn*).

2- Selling a deferred debt (has already been established in liability) to the debtor for a deferred debt of a different kind. In this case, the buyer of the debt is the debtor himself, and its seller is the creditor. The Malikites refer to this form as: the cancellation of a debt for another debt (*Faskh Ad-Dayn Fi Ad-Dayn*).

3- Selling a deferred debt (has already been established in liability) to the debtor himself to be delivered at a later specified time in exchange for an increase of it. This was the common practice in the pre-Islamic period (*Ribâ Al-Jâhiliyyah*): The creditor would say to the debtor when the term has fallen due: ‘Will you pay it off or increase me?’ If the debtor did not pay off, he lengthened the term for him in exchange for an increase of the amount.”

4- Selling a deferred debt (has already been established in liability) to someone other than the debtor in exchange for a deferred price clearly described in liability. The Malikites refer to this form as: the sale of a debt for another debt (*Bay' Ad-Dayn Bi Ad-Dayn*).

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5- Selling a deferred debt (has already been established in liability) for another deferred debt - whether of the same kind or of a different kind - to another person owed by the same debtor. For example, if someone has a debt owed to him by a person, and another person has a similar debt owed by that person, and one of them sells his debt to the other for what the latter has on the same debtor, regardless of whether the debts are of the same kind or of different kinds.

• **Kadik (Improvements to Rented Property)** كَدِكْ

'Al-Kadik' is an Arabized term used in Fiqh terminology to refer to the physical improvements owned by the tenant, whether they are permanently attached to the shop (like structures), or they are temporarily attached to the shop (like machinery and equipment installed there). It also applies to things owned by the tenant (*Al-Kirdâr*) in terms of agricultural lands, such as buildings and plantings. The term '*Al-Kirdâr*' refers to the improvements made by the farmer to the land, such as building, planting, or leveling.

The physical improvements permanently attached to the land, whether through building, planting, or installing, are considered non-fungible property that can be sold and inherited. Their owners have a right

to stay, and they can retain it for a reasonable remuneration or rent.

In view of the right to stay arising from '*Al-Kadik*' in the context of Waqf (endowment) shop, it is defined in Article no. (148) of "*Tartîb As-Sunûf*" as: "The right to stay which is established for the tenant upon constructing or installing (with his own money) buildings, machinery, or equipment for his business operations within the shop premises, with the permission of the endowment administrator. This right is contingent upon the tenant paying a reasonable rent for the shop as if it were devoid of these modifications."

This term was used by the later Hanafite scholars during the Ottoman Empire in the context of Waqf (endowment), against other Fiqh scholars.

• **Kirâ' (Rental)** كِرَاء

Linguistically, the term '*Al-Kirâ'*' is a noun derived from the verb '*Kârâ*', meaning to rent.

In Fiqh terminology, it is used to refer to both the rent itself and the lease contract. However, the Malikites made a precise distinction between the two terms of '*Al-Ijârah*' and '*Al-Kirâ'*'. They said, "*Al-Ijârah*' and '*Al-Kirâ'*' have the same meaning, except that the contracts which pertain to the usufructs provided by a human being and the movable assets other than ships and mounts

are often called 'Ijârah', while the contracts which pertain to the usufructs provided by the immovable assets such as houses and lands, and the movable assets in terms of ships and mounts are called 'Kirâ'. It is also said, "Al-Ijârah" is used in terms of transferring the usufructs of animate objects, while 'Al-Kirâ' is used in terms of transferring the usufructs of inanimate objects, and they sometimes are used interchangeably for convenience."

• Kirâ' Al-'Uqbah (Turn Rental)

كِرَاءُ الْعُقْبَةِ

Linguistically, the term 'Al-'Uqbah' means turn or shift, and the plural form is "Uqab'. When two persons take turns riding an animal, it means they alternate; each one rides for a turn ('Uqbah). This is said because each one follows the other and rides in his place.

As for the term 'Kirâ' Al-'Uqbah' as mentioned in the Hanbalites' books, or the term 'Kirâ' Al-'Uqab' as mentioned by the Shafi'ite scholars, it refers to renting one's riding animal to someone else to ride it for a certain distance to cover part of the road (such as half or a quarter of it), and the owner of the animal rides the other part alternately (one rides while the other walks, and then they switch). It can also refer to renting one's riding animal to two persons so that each of them

rides the animal for a certain time or distance alternately.

• Kirâ' Al-Wajîbah (Regular Payment Rental)

كِرَاءُ الْوَجِيَّةِ

Linguistically, the term 'Al-Wajîbah' means regular payment. It also refers to enforcing a sale transaction and then gradually taking possession of the sold item until you have fully received the entire payment. This definition is provided by Al-Fayrûz Âbâdî.

As for 'Kirâ' Al-Wajîbah', it is a Malikite term which represents one of the two forms of rental agreements in their Fiqh school. They state that the rental contract for houses, shops, and residential buildings can be made in two ways:

- 1- Specifying the duration and naming the rent. For example, someone might say: "I have rented your house for this year, or this month, or today, at such-and-such price." Or, "I have rented it from you for the month of X or the year of Y at such-and-such price." Or, "I have rented it from you for one month or two months, or one year or two years, at such-and-such price." Or, "I have rented it from you until a specific time at such-and-such price."

This type of contracts is called 'Kirâ' Al-Wajîbah'. The defining characteristic of this type, as stated

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by Al-‘Adawî: “The duration is specified, such as a specific year, and the rent is fixed and obligatory even if it has not been paid.” According to the Malikite school, ‘*Al-Wajîbah*’ signifies the specified duration. Mayyârah explains, “This term was used by earlier scholars, while the contemporary scholars refer to ‘*Al-Wajîbah*’ as the rent paid for the usufructs. For example, a notary might say: “Individual X rented the entire house from Individual Y for one year, at a regular payment (*Wajîbah*) of such-and-such dirhams per month for the specified duration.”

2- Naming the rent per month or year without specifying the duration. For example, someone might say: “I have rented this house of yours from you, each month for a dinar, or each year for ten dinars, or each day for such-and-such amount.” The first form is called the monthly rent (*Kirâ’ Al-Mushâharah*), the second form is called the yearly rent (*Kirâ’ Al-Musânahah*), and the third form is called the daily rent (*Kirâ’ Al-Muyâwamah*). Al-‘Adawî said, “The defining characteristic here is that the duration is unspecified, and the rent is only obligatory proportionate to the period for which it has been paid.”

• **Karâ’im Al-Amwâl (Best and Most Expensive Belongings)**

كرائم الأموال

Al-Bukhârî, Muslim, Abû Dâwûd, At-Tirmidhî, and Ibn Mâjah related on the authority of Mu‘âdh that the Prophet Muḥammad (peace and blessings of Allah be upon him) prohibited taking the best belongings of people as (a share of) *Zakâh*.

Al-Muṭarrizî stated, “*Karâ’im Al-Amwâl* are the best and most expensive belongings of people, in a metaphorical sense.”

Ibnul-Athîr said, “This is also referred to in the Prophetic ḥadîth of *Zakâh*, stating: “... and beware of (taking as a share of *Zakâh*) their best (most expensive) belongings...”, meaning the precious items that the soul of its owner is particularly attached to and reserves for itself, as it always desires to keep the most perfect items for itself. The singular form is ‘*Karîmah*’.”

• **Karâmah (Honorarium)** كرامة

Linguistically, the verb ‘*Karuma*’ means to be valuable or glorious. The noun is ‘*Karîm*’, and its plural form is ‘*Kirâm*’ and ‘*Kuramâ*’.

In Shari‘ah terminology, the term ‘*Al-Karâmah*’ refers to a payment given by the owner of a female camel (*Nâqah*) to the owner of a male camel (*Jamal*) in exchange for allowing

the male to mate with the female. This is given as an act of generosity.

This term is illustrated in a Prophetic *ḥadīth* related by At-Tirmidhī in his “*Sunan*”, on the authority of Anas Ibn Mālik, that a man from (the tribe of) *Kilāb* asked Allah’s Messenger (peace and blessings of Allah be upon him) about charging stud fees for a stallion. He forbade him to do that, but he (the man) said: “We stud the stallions so that we get honorarium (from the owners of the female horse)!” So, he (PBUH) permitted it for honorarium. At-Tirmidhī commented that this *ḥadīth* is ‘*Ḥasan Gharīb*’ (good, singly-reported), and mentioned that some scholars permitted accepting the honorarium based on this *ḥadīth*.

In “*Al-Āridah*”, Al-Qâḍī Ibnu-l-Ārabī stated, “*Al-Āsb*’ in reality is the fee for the male sperm, and ‘*Al-Itrâq*’ is letting the male camel mount the female to mate with her.” He further explained the rulings of the *ḥadīth*, “If one hires the stallion for insemination and fulfills his need, it is permissible to accept the honorarium (*Al-Karâmah*) in return, because the mutual honorariums are often exchanged in return for fulfilling needs, and such reciprocal acts and compensations are permissible according to the Shari’ah and fall under the category of gift for a return, which the Shari’ah has excluded from the general

prohibition of uncertain compensations.”

• *Kirdâr* (Certain Things Owned by the Lessee) کِرْدَار

In *Fiqh terminology*, the term ‘*Al-Kirdâr*’ refers to: “The right to stay that arises from leveling the Waqf land, constructing buildings, and planting trees on it”, as stated in Article no. (145) of “*Tartīb As-Sunuf*”.

In some countries, it is called “the right to stay”, which involves constructing buildings and planting trees by the tenant of Waqf land. For example, if someone were to take owned soil from one place and collect it on rocky land, making it suitable for farming or planting, that right would be called ‘*Kirdâr*’.

This term was used by the later Hanafite scholars during the Ottoman Empire in the context of Waqf (endowment), against other *Fiqh* scholars.

• *Karam* (Generosity) کَرَم

Al-Fayrûz Âbâdī stated, “Generosity (*Al-Karam*) is an opposite of meanness (*Al-Lu’m*).”

In “*Al-Mufradât*” by Ar-Râghib, it is stated: “When the generosity (*Al-Karam*) is attributed to Allah, it refers to His manifest benevolence and bounty. When a person is described with it, this refers to praiseworthy morals and actions that

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appear from Him. One should not be called generous (*Karîm*) until his actions reflect it.”

Al-Munâwî said, “The generosity (*Al-Karam*) entails providing what is due without expecting anything in return. Thus, whoever gives money for the sake of bringing benefit, averting harm, or redeeming oneself from blame, he is not considered generous.”

Al-Fayyûmî added, “*Al-Makrumah*’ is a noun derived from ‘*Al-Karam*’, and performing good deeds is considered ‘*Makrumah*’, meaning it is a cause for generosity or honor. ‘*Al-Karam*’ is also used to refer to forgiveness.”

• **Kasâd (Depressed Market)** كَسَاد

The Fiqh usage of the term ‘*Al-Kasâd*’ does not go beyond its linguistic meaning, which refers to the state of being unmarketable or unrequested due to a lack of demand or interest.

As for the term ‘*Kasâd An-Naqd*’, it is used by Fiqh scholars to denote: “The situation where a particular type of currency loses its circulation and acceptance as a medium of exchange throughout the entire country.”

• **Kasb (Earning)** كَسْب

Linguistically, the term ‘*Al-Kasb*’ is used originally to denote the act of collecting or acquiring some-

thing. It is then applied to any action that leads to obtaining benefit or averting harm.

Ar-Râghib said, “*Al-Kasb*’ refers to what a person seeks to acquire for the purpose of gaining benefit and obtaining a share. Sometimes, it may be used for actions that are initially perceived as beneficial but ultimately lead to detrimental consequences.”

Fiqh scholars use the term ‘*Al-Kasb*’ to refer to acquiring wealth or property through any means. They categorize it, based on its source, into two types:

- 1- Permissible and lawful: This refers to what is acquired through legitimate means according to Shari’ah.
- 2- Impermissible and unlawful: This refers to what is acquired through illegitimate means.

Ibn Juzay mentioned in “*Al-Qawânîn Al-Fiqhiyyah*” that there are two types of earnings:

- 1- Earning without compensation, which includes four categories: (a) inheritance, (b) spoils of war, (c) gifts and endowment, and (d) ownerless property (such as firewood, wild game, and vivification of dead land).
- 2- Earning with compensation, which includes four categories: (a) transactions involving money,

(b) labor (such as renting out one's services), (c) compensation for marriage (such as dowry), and (d) compensation for bodily injuries (such as blood money).

On the other hand, Fiqh scholars use the term '*Al-Kasb*' to mean: "The gain acquired as a result of the asset and is not part of it", such as the earnings of a slave or the like. This is in contrast to the term '*An-Namâ*' (growth), which refers to the natural increase or yield gained from the asset itself, such as the milk or offspring of livestock.

• ***Al-Kasb Al-Khabîth* (Illicit Earning)**

الْكَسْبُ الْخَبِيثُ

Linguistically, the term '*Al-Khabîth*' refers to something corrupt or impure, and it is an opposite of wholesome (*At-Tayyib*). Ar-Râghib said, "*Al-Khubth*" refers to what is disliked for its badness and meanness, whether physical or abstract ... This includes falsehood in belief, lying in speech, and ugliness in deeds.

In Shari'ah terminology, "*Al-Khabîth*" is used to describe what is prohibited, impure, distasteful in taste or smell (like garlic and onions), and to what is corrupt or reprehensible in speech and action."

As for the illicit earning (*Al-Kasb Al-Khabîth*), it has two meanings in Fiqh terminology:

- 1- Prohibited earning: This refers to the earnings obtained through actions or transactions that are impermissible according to Shari'ah. Examples include: theft, wrongful appropriation, bribery, usury, invalid contracts, the earnings of a prostitute, the charges taken by a soothsayer and the like.
- 2- Evil earning: This refers to the earnings that, although their source is permissible and legitimate, are considered despicable by custom, such as the earnings of a cupper. Muslim, Abû Dâwûd, At-Tirmidhî, and Ahmad related that the Prophet Muhammad (peace and blessings of Allah be upon him) said: "*The earnings of a cupper are impure.*" Although it has been proven from him that cupping is permissible according to Shari'ah and it is allowed to take payment for it, as related by Al-Bukhârî, Muslim, and Abû Dâwûd on the authority of Ibn 'Abbâs that Allah's Messenger (peace and blessings of Allah be upon him) got himself cupped and gave the cupper his wages.

Ibnul-'Arabî said, "As for giving him his wage, this is evidence of absolute permissibility, in view of the fact that the Prophet (peace and blessings of Allah be upon him) does not engage in anything dubious

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due to his high status and due infallibility.”

Ibnul-Qayyim said, “It provides evidence for the permissibility of earning a living through the profession of cupping, even though it is considered undesirable for a free person to consume his wages, without it being forbidden to him. The Prophet Muhammad (peace and blessings of Allah be upon him) gave him his wage and did not prevent him from consuming it. Calling it ‘impure’ is akin to calling garlic and onions ‘impure’, which does not necessitate their prohibition.”

An-Nawawî said, “The majority of the predecessors and later scholars said that the earnings of a cupper are not prohibited, and they are not forbidden for a free person or a slave to consume it. This is the well-known opinion of the Hanbalite school, who said that if it were prohibited, the Prophet (peace and blessings of Allah be upon him) would not have given it to him. They interpreted the hadîths that prohibit it as recommending abstention and distancing oneself from despicable earnings, and encouraging noble morals and lofty deeds.”

• *Kafâf* (Sufficiency or Subsistence)

كَفَافٌ

Linguistically, the term ‘*Al-Kafâf*’ is derived from ‘*Al-Kaff*’ which

means to abstain or refrain. For instance, ‘*Kaffa ‘An Ash-Shay*’ means to leave or abandon it, and ‘*Kafaftu-hu Kaffan*’ means I prevented him, and ‘*Qûtu-hu Kafâf*’ means his livelihood is sufficient to meet his needs without excess or deficiency. It is called as such because it suffices one from asking people and makes him independent of them. Al-Azhari said, “It is said: so-and-so has ‘*Kafâf*’ of livelihood, meaning he has what is sufficient and saves him from asking and needing people.”

The Fiqh usage of the term ‘*Al-Kafâf*’ does not go beyond its linguistic meaning. Accordingly, Ash-Sharîf Al-Jurjânî defined ‘*Al-Kafâf*’ as: “Having what is just enough to meet one’s need, from which nothing is surplus, and it suffices him from asking others.”

• *Al-Kafâlah Bi At-Taslîm* (Guarantee for Delivery)

الْكَفَالَةُ بِالتَّسْلِيمِ

It was defined in Article no. (615) of “*Majallat Al-Ahkâm Al-‘Adliyyah*” as: “A guarantee for delivery is constituted by a person becoming guarantor for the delivery of something.” This includes the guarantee to deliver the property before taking possession of it, such as: the sold property, the pledged property, the leased property, and all entrusted property. This term is specifically used by the Hanafite school, against other Fiqh schools.

Al-Attâsî, the commentator on “*Al-Majallah*”, stated that the intended meaning of ‘something’ in definition includes both debt and property. He then said:

“The first type (as mentioned in “*Al-Bahr*” from “*Fatâwâ At-Tatârkhâniyyah*”) could be an instance where a person has a debt owed to him by another person. A third person says to the creditor, ‘I guarantee you the debt owed by so-and-so. I will collect it and pay it to you.’ The creditor responds, ‘This is not a guarantee to pay the debt from the guarantor’s own money. Rather, it is a guarantee to collect it from the debtor and pay it to me.

The second type could involve a guarantee for the delivery of an item secured by itself, such as the wrongful appropriated property or the like that must be returned by itself if it remains intact, or guaranteed by a similar item or its equivalent value in the event of its destruction. In this context, just as a guarantee for the item by itself is valid, a guarantee for its delivery is also valid, and it becomes void if the item is destructed, just like the personal guarantee (*Al-Kafalah Bi An-Nafs*; i.e., a guarantee on ensuring presence of certain person).

The second type also includes a guarantee for the delivery of an item secured by others, such as

a mortgaged asset, and an item that is not originally guaranteed, such as a trust. Although it is not valid to guarantee these items themselves, it is valid to guarantee their delivery, and it has the same ruling as the personal guarantee (*Al-Kafalah Bi An-Nafs*).”

On the other hand, the Hanafite scholars distinguish between the guarantee for delivery (*Al-Kafâlah Bi At-Taslîm*) and the guarantee to deliver the guaranteed asset (*Kafâlat Al-‘Ayn Al-Madmûnah*) in terms of essence and ruling:

- **In terms of essence:** They state that the guarantee to deliver the guaranteed asset is to guarantee the payment of the price of the asset, while the guarantee for delivery is to guarantee the delivery of the item only.
- **In terms of ruling:** They state that in case of the guarantee to deliver the guaranteed asset, the guarantor is obligated to deliver the asset itself to its owner if it remains intact, or to deliver a similar asset in the event of its destruction, and the guarantor is not discharged if the item is damaged. As for the guarantee for delivery, the guarantor is only required to deliver the item if it remains intact, and he is no longer liable if the item is damaged, and then the claim is dropped.

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• **Kafâlat Ad-Dayn (Debt Guarantee)**
كَفَالَةُ الدَّيْنِ

Linguistically, the term ‘*Al-Kaf-âlah*’ means to bear or undertake a liability.

In Shari’ah terminology, there are four different views among Fiqh scholars regarding the definition of debt guarantee:

- 1- The Shafi’ites and the Hanbalites define it as: “Joining the guarantor’s liability to the debtor’s liability in terms of the obligation to pay the debt.” Thus, the debt is established in both their liability, and the creditor would be entitled to demand payment from either of them.
- 2- The Malikites define it as: “Joining the guarantor’s liability to the debtor’s liability in terms of the obligation to pay the debt.” It is the same previous definition, but they stated that the creditor would not be entitled to demand payment from the guarantor unless he is unable to collect it from the principal debtor. This is because the guarantee is a security, and the right cannot be collected from it except in cases where it is impossible to collect from the debtor, such as a mortgage.
- 3- The Hanafites define it as: “Joining the guarantor’s liability to the principal debtor’s liability in terms of the obligation to pay,

not in the obligation of the debt itself.”

- 4- Ibn Abû Laylâ, Dâwûd, Abû Thawr, and Aḥmad (in a narration belongs to him) hold that the debt is transferred by the guarantee to the guarantor’s liability, as in the case of *Hawâlah* (transfer of debt). After this transfer, the creditor would not be entitled to demand anything from the principal debtor.

• **Kafâlat Al-‘Ayn Al-Maḍmūnah (Guarantee to Deliver the Guaranteed Asset)**
كَفَالَةُ الْعَيْنِ الْمَضْمُونَةِ

The Hanbalites defines the guarantee to deliver the guaranteed asset (*Kafâlat Al-‘Ayn Al-Maḍmūnah*) as: “An undertaking to recover the guaranteed asset for its owner, when it is in the possession of another party, and to return it to him by itself if it remains intact, or to return a similar asset (if it is fungible), or its equivalent value if it is non-fungible (in the event of its damage).” They gave examples of the guaranteed asset as: the wrongful appropriated property, the loaned property, or the items possessed on a purchase bargain in the context of a sale or lease.

The Shafi’ites define it as: “An undertaking to return the guaranteed asset to its owner when it is in the possession of another party (such as: the wrongful appropriated property, the sold item that has

not been delivered, or the borrowed item) as long as it remains intact. If it is damaged, the guarantor is not held liable to compensate for a similar asset or its equivalent value.”

According to the Hanafites, the guaranteed asset falls into two categories:

- 1- The guarantee of assets secured by itself, such as the appropriated property, or the item possessed on a purchase bargain, or the specified dowry.
- 2- The guarantee of assets secured by others, such as the assets that have been sold but not yet delivered to the buyer, or the mortgaged item in the possession of a mortgagee.

• **Al-Kafâlah Al-Mudâfah (Guarantee Effective at a Future Date)**

الكَفَالَةُ الْمُضَفَّةُ

In Fiqh terminology, the guarantee effective at a future date (*Al-Kafâlah Al-Mudâfah*) is a type of guarantee which is constituted upon a future time. The guarantee becomes effective and binding only when the specified time comes, and the guarantor is held liable for what is stipulated in it. However, before the specified future date comes, the guarantor cannot be held liable for the guarantee.

Fiqh scholars categorized the guarantee, based on the nature of the

contract, into three types: immediately effective guarantee, conditional guarantee, and guarantee effective at a future date.

- 3- Immediately effective guarantee (*Kafâlah Munajjazah*): This type of guarantee is constituted independently of any condition or of any future time.
- 4- Conditional guarantee (*Kafâlah Mu'allaqah*): This type of guarantee is constituted upon the fulfillment of a specific condition.
- 5- Guarantee effective at a future date (*Kafâlah Mudâfah*): This type of guarantee is constituted upon a future time.

• **Al-Kafâlah Al-Mu'allaqah (Conditional Guarantee)**

الكَفَالَةُ الْمُعَلَّاقَةُ

In Fiqh terminology, the conditional guarantee (*Al-Kafâlah Al-Mu'allaqah*) is a type of guarantee which is constituted upon the fulfillment of a specific condition. The guarantee becomes effective and binding only when the stipulated condition is fulfilled. However, if the condition is not fulfilled, the guarantee becomes void and is no longer binding. Examples include:

- If someone says to another: “If so-and-so does not pay what he owes to you, I will pay it for you.” So, if the creditor demands payment from the debtor but that debtor does not fulfill the payment

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or dies before doing so, then the guarantor becomes liable for the debt at that moment immediately and can be demanded to pay it.

- If someone says to another: "If your debtor, so-and-so, does not pay the debt he owes to you by a certain date, I will pay it for you." So, if the stipulated period passes and the debtor does not give him his debt, then the guarantor becomes obligated to pay it.
- If a man says to another: "Sell such-and-such an item to so-and-so, and if he does not give you the price, then I will pay it for you," this guarantee becomes effective and binding. So, if the seller demands the price from the buyer after the sale has been concluded and the buyer does not pay it, the seller would be entitled to demand payment from the guarantor.
- If someone says to another: "If I do not bring your debtor to you tomorrow, I will pay you the debt he owes to you." So, if the next day comes and the debtor is not brought to the creditor, the guarantor is obligated, based on that conditional guarantee, to pay the debt.

• ***Al-Kafâlah Al-Munajjazah* (Immediately Effective Guarantee)**

الكَفَالَةُ الْمُتَجَزَّة

In Fiqh terminology, the imme-

diately effective guarantee (*Al-Kafâlah Al-Munajjazah*) is a type of guarantee which is constituted independently of any condition or of any future time. For example, if a person says: "I guarantee so-and-so for his debt owed to so-and-so", or "I guarantee the delivery of such-and-such money to so-and-so", or "I guarantee to bring so-and-so to him".

The immediately effective guarantee (*Al-Kafâlah Al-Munajjazah*) is a counterpart for both the conditional guarantee (*Al-Kafâlah Al-Mu'allaqah*) and the guarantee effective at a future date (*Al-Kafâlah Al-Mudâfah*), as the Fiqh scholars divided the guarantee, based on the nature of the contract, into three types: immediately effective (*Munajjazah*), conditional (*Mu'allaqah*), and effective at a future date (*Mudâfah*).

• ***Kalâlah* (Childless and Parentless)**

كَلَالَة

In both linguistic and Fiqh terminology, the term '*Al-Kalâlah*' refers to a specific situation in inheritance law where a person dies without leaving direct ascendants (parents) or descendants (children).

Abû 'Ubayd said, "It is derived from the verb '*Takallala*' in the context of kinship, which means surrounding. Given that the parents and children are the two branches of a man, so if he dies without leaving either of them behind, then he

has died with the loss of his two branches (and his other relatives surround him; i.e., they become his inheritors)....”

The word ‘*Al-Kalâlah*’ can be applied to both the inheritor and the deceased. Al-Wâhidî said in “*At-Tafsîr*”: “Whoever dies without leaving a father or a child behind is considered ‘*Kalâlah*’ of his inheritors. And every inheritor who is not a child of the deceased nor a parent is considered ‘*Kalâlah*’ of his deceased. ‘*Al-Kalâlah*’ is a term that applies to both the inheritor and the deceased if they have this description.”

• *Kumbiyâlah* (Bill of Exchange)

كُنبِيَالَة

In modern legal terminology, the bill exchange (*Al-Kumbiyâlah*) is a written order issued in a particular legal form from a person, known as the drawer, to another person, known as the drawee, to pay a certain sum of money at a particular or determinable date, to a third person, called the beneficiary, (or to the bearer of that order without designation as per some laws). The parties involved in this drawing process

can be natural persons or legal entities such as banks.

In most cases, the drawee is to be indebted to the drawer for an amount sufficient to cover the payment, known as the “funds for payment”, and the drawer is to be indebted to the beneficiary (or bearer) as well. However, neither of these requirements is obligatory.

The term ‘*Al-Kumbiyâlah*’ is not known in Arabic language or in the Fiqh usage.

• *Kanz* (Hoarding or Treasure) كَنْز

Linguistically, the term ‘*Al-Kanz*’ is an opposite of development. It refers to the act of accumulating wealth and saving it. It is also used to refer to money that is kept in a container. It is also used to describe money that is hoarded or preserved. It is also said to be money that is buried.

Al-Munâwî said, “In the context of debt, it describes any wealth from which the obligatory dues have not been paid out, even if it is not actually buried.”



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Lâm (ل)

• Luzûm Al-`Aqd (Contract Bindingness) لُزُومُ الْعَقْدِ

Linguistically, the term ‘*Al-Luzûm*’ means stability and permanence.

In Fiqh terminology, the contract bindingness (*Luzûm Al-`Aqd*) means that it has become conclusive and neither party has the right to terminate, nullify, or disengage from it unilaterally. Once the contract becomes binding, neither party can retract or revoke it without mutual agreement to rescinding. This is because revoking the contract would alter the legal status established between the contracting parties. Therefore, revoking the contract is contingent upon mutual consent, just like the formation of the contract itself.

The absence of bindingness in contracts is expressed in Fiqh terminology by permissibility.

Al-Qarâfi stated, “Rule: Contracts are of two types:

- 1- Contracts whose benefits are realized by the mere conclusion of contract, and thus they are inherently binding, such as the con-

tracts of sale and lease, whose benefits lie in the transfer of ownership, which occurs and takes effect upon the conclusion of contract.

- 2- Contracts whose benefits are not realized by the mere conclusion of contract, such as remuneration (*Al-Ju`alah*), whose benefit and purpose are realized upon fulfilling the stipulated task, which is not obtained at the time of the contract being concluded due to its uncertainty. This applies also to similar contracts; such as: agency, share-agriculture (*Al-Mughârasah*), deposit, arbitration, and profit-sharing (*Al-Qirâd*). So, they were rendered permissible.”

Al-‘Izz Ibn ‘Abdus-Salâm said, “There are several types of transactions:

- 1- Transactions whose benefits and purposes cannot be realized except by being binding on both parties, such as sales, leases, marriages, endowments, guarantees, and gifts.
- 2- Transactions whose benefits lie in their permissibility for both parties, such as partnerships, agencies, remunerations (*Al-Ju`alah*), wills, profit-sharing (*Al-Qirâd*), loans, and deposits.
- 3- Transactions whose benefits lie in being binding for one party and permissible for the other,

such as mortgages, manumission contracts, and tribute (*Al-Jizyah*) agreements.”

It is worth noting that contracts that are originally binding by their nature may lose their bindingness in some cases, such as when one of the contractual options is proven, or in cases of coercion or invalidity.

• **Luqatah (Found Property)** لُقَطَة

Linguistically, the term ‘*Al-Luqatah*’ refers to something that you find lying around and pick it up.

In Shari‘ah terminology, it refers to lost property that has been found by someone other than its owner.

Accordingly, some Fiqh scholars define it as: “Anything that is found of a lost and an inviolable property, whose owner is unknown to the finder.” It is also called: ‘*Luqâṭah*’ or ‘*Luqât*’.

• **Lu‘m (Meanness)** لَوْم

Linguistically, meanness (*Al-Lu‘m*) is an opposite of generosity (*Al-Karam*).

According to Al-Fayyûmî, “The term ‘*La‘îm*’ refers to someone who is stingy and lowly in spirit, despicable, and the like.”

Ath-Tha‘alibî said, “When a man is described as ungenerous, he is called mean (*La‘îm*).”

In “*Al-Ishârah Ilâ Mahâsin At-Ti-*

jârah” by Abû Al-Faḍl Ad-Dimashqî, it is stated: “Meanness (*Al-Lu‘m*) is refraining from acts of kindness, such as helping one’s relatives, bestowing favors on friends, caring for those who have rights over us, and engaging in charitable deeds, such as giving charity to the needy. All these should be done according to one’s capacity, means, and ability.”

• **Layy (Procrastination)** لَيّ

Linguistically, the term ‘*Al-Layy*’ means procrastination or delay. In the context of debt, it refers to the act of delaying or putting off payment.

This term is used in a Prophetic ḥadîth related by Abû Dâwûd, An-Nasâ’î, Ibn Mâjah, Ahmad, and Al-Hâkim that the Prophet Muḥammad (peace and blessings of Allah be upon him) said: “*Delay in payment on the part of one who possesses the means makes it lawful to dishonor and punish him*”, meaning his procrastination in paying off his debt.

The Fiqh usage of the term ‘*Al-Layy*’ does not go beyond its linguistic meaning.

• **Liyât (Usury)** لِيَاط

In both linguistic and Shari‘ah usage, the term ‘*Al-Liyât*’ refers to usury. It is mentioned in the letter of the Prophet Muḥammad (peace and blessings of Allah be upon

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him) to the tribe of Thaḳîf when they embraced Islam: *“And whatever debt owed to them on a deferred payment basis and its maturity falls due (at the time of their conversion to Islam), it would be considered usury (Liyât), and would be forgiven by Allah.”*

Ibnul-Athîr explained, “The word ‘*Liyât*’ means usury; because anything attached to or added to something else is considered to be added (*Ulîta*) to it, and usury is an addition to the principal amount.”



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Mîm (م)

• Mâl (Funds/Property)

مال

Linguistically, the term “*Mâl*” means livestock, and is used also to mean gold and silver and other forms of funds or money.

The Scholars of Fiqh differed in defining the term “*Mâl*” due to the difference in their points of view on its reality, and this is according to two schools:

The first is the Hanafites, and they define “*Mâl*” as an existing thing that can be saved in a state of abundance and choice, and it has a material value among people.

The second is the Shafi’ites, Malikites and Hanbalites, and they defined “*Mâl*” as what has an intended benefit that is permissible by Shari’ah for no need or necessity, and it has a material value among people.

It is noted that the Hanafites did not make the permissibility of benefiting from something by Shari’ah among the elements of finance, which led them to divide “*Mâl*” (property) into valuable and non-valuable property, while the rest of the Scholars of Fiqh considered it. This is why they did not need such

division. The Hanafites also are the only scholars who stipulated the possibility of saving for a time of need, so they excluded benefits from being considered property, and the majority disagreed with them in this stipulation, as they considered benefits as a form of property.

The reason for the Hanafites’ disagreement with other Scholars of Fiqh in defining property is the difference in customs regarding what is considered property and what is not; since property has no specific definition in language or in Shari’ah, so its definition is based on custom in the first place.

• Al-Mâl Al-Isti’mâlî (Unconsumable Property/Funds) المال الاستعمالي

In Fiqh terminology, “*Al-Mâl Al-Isti’mâlî*” (or unconsumable property) is what can be benefited from by using it repeatedly while its asset remains, due to its ability, according to its nature, to be used repeatedly, such as real estate, home furniture, tools, industrial machines, cars, and airplanes. This form of property is not consumed by using it for the first time, but rather has a relative duration that varies in length and shortness according to its nature and ability to remain.

Unconsumable property is that which is permissible according to Shari’ah to be subject to contracts whose subject is use only, with the obligation to return the asset itself

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to its owner, such as renting and lending, while it is not acceptable to be the subject of any contract whose goal is consumption, such as a loan. This is simply because the borrower's intention is to consume what he owns through the loan to meet his need, by disposing of it in a way that leads it to be consumed actually or constructively in exchange for the borrower's obligation to return a similar item.

The opposite of unconsumable property according to Scholars of Fiqh is consumable property.

• **Al-Mâl Al-Istihlâkî (Consumable Property)**

المال الاستهلاكي

"Al-Mâl Al-Istihlâkî" (or consumable property) is that which cannot be usually benefited from, according to its nature, except by consuming it, because its use is limited to consuming it, which leads to its asset being finished or changed.

What is meant by this is consuming it by simply using it once, whether its destruction comes from the destruction of its essence actually, such as food, drink, and firewood, or constructively, such as money, which is constructively consumed when disposed of to fulfill obligations and meet needs, even if its essence remains as it is when transferred from one person to another, or its destruction comes from changing its essence, such as paper for writing, and yarn for weaving,

and similar materials that are manufactured and its essence is not destroyed by manufacturing them.

Consumable property, according to Shari'ah, may not be subject matter for contracts that are only use, with the obligation to return the asset (the item itself) to its owner, such as renting and lending. This is simply because the contract requires achieving benefit while preserving the essence of the item, and consumable property cannot be benefited from except by consuming its essence, so the purpose of these contracts contradicts the nature of the contract. Hence, the Scholars of Fiqh stated in the chapter on renting that everything that is benefited from while its essence remains may be rented, otherwise it is not. They explained in the chapter on lending that if it is for consumable property such as money, grains and foods in general, the loan is not valid, and the contract is considered, metaphorically, a loan, in view of the purpose, so the provisions of the loan are established in it, and the property is guaranteed by the borrower to return similar item, not a trust at his hand. The opposite of consumable property, according to the Scholars of Fiqh, is unconsumable property.

• **Al-Mâl Al-Harâm (Unlawful Property)**

المال الحرام

Unlawful property is what a person has acquired through a reason

that is forbidden by Shari'ah, such as theft, usurpation, embezzlement, bribery, usury, corrupt contracts, a soothsayer's fee, a prostitute's dowry, and similar means through which the Lawgiver has prohibited of possession property.

There is no disagreement among the Scholars of Fiqh that acquiring unlawful property is an act of disobedience that leads to a sin, and that the one who takes such property must take the initiative to return it to its owner.

• **Al-Mâl Al-Halâl (Lawful Property)**

المال الحلال

Lawful Property is what a person has acquired through a legitimate means, such as agriculture, industry, various types of trade, partnerships, obtaining permissible things, hunting, inheritance, wills, gifts, and the like, if it occurs in a manner permitted by Shairah.

It is the good provision that its owner has the right to spend, benefit from, and dispose of in all legitimate ways.

• **Al-Mâl Al-Halâl Al-Mukhtalat Bil-Harâm (Lawful Property Mixed With Unlawful Property)**

المال الحلال المختلط بالحرام

Lawful property mixed with unlawful property is a mixture of lawful and unlawful property. The Scholars of Fiqh have mentioned two forms for it:

First: when the unlawful property is distinct, such as if it is a stolen or usurped item or a denied deposit and the like, and it is mixed with the lawful property in a way that makes it ambiguous while its essence is distinct. The one who takes this unlawful item is not permitted to benefit from it or dispose of it, and he must hasten to return it to its owner.

Second: when the unlawful property is mixed with the lawful property in a way that makes one of them not distinguishable from the other, as is the case with the mixing of similar things with each other, such as mixing one unlawful dinar with ten lawful ones, or one hundred lawful dirhams with one thousand unlawful ones. In this case, the one who collects the unlawful property must take out an amount from his property and pay it to its rightful owner, and the rest at his hand will be lawful.

• **Al-Mâl Al-Khâs (Private Property)**

المال الخاص

Private property is what is owned by a specific individual or group, not shared by the public, and its owner is entitled to ownership and benefit from it.

Private money may become public, as if a person endowed his property to be a mosque, or his land to be a cemetery, or the state forcibly seized a property from its private owner for the public interest to build

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a public road or expand a mosque, street or cemetery. etc.

The opposite of private money, according to Scholars of Fiqh, is public money.

• **Al-Mâl Ad-Dimâr (Lost/Doubtful Property)** المال الضار

Linguistically, the term “*Ad-Dimâr*” refers to everything that you are not confident of, and “*Al-Mâl Ad-Dimâr*” is used for the lost property whose return is not expected.

In Fiqh terminology, Scholars of Fiqh use the term “lost property” to refer to property that its owner is unable to develop; because he lost it, and his hope of its return has been cut off. Accordingly, the author of “*Al-Muhîl*”, the Hanafites, defined it by saying: “It is everything whose essence remains in his possession, but has been removed from his hand in a way that is usually not expected to return.” Sibṭ Ibnul-Jawzî said: “The interpretation of loss is that the property is still there, but the way to reach it is blocked.”

Examples of this according to Scholars of Fiqh include: usurped property if its owner has no proof of it, lost property such as a stray camel or a runaway slave, as it is as if it had perished because its owner cannot get it. The same applies to property that falls into the sea, as it is considered nonexistent, property buried in a wilderness or desert if its owner

forgets where it is, and a denied debt if the debtor denies it publicly and its owner has no proof of it.

• **Al-Mâl Al-Âm (Public Property)** المال العام

In Fiqh terminology, what is allocated for the interest and benefits of the general public, and its owner is the entire nation, so it is not subject to individual private ownership, nor does one individual or specific individuals have the right to monopolize it, whether it is land, a building, cash, commercial goods, or other, such as: the properties of the treasury, the sanctuary, roads, streets, public cemeteries, large rivers, lands endowed to the Muslim community, and all public facilities of the state.

However, public property may become private in some cases, as if the interest of the nation requires the sale of something from the state’s properties or the interest of the endowment requires the replacement of some of its assets, then that sold item becomes the property of the one who bought it and property specific to him.

The opposite of public property, according to Scholars of Fiqh, is private property.

• **Al-Mâl Ghayr Al-Qâbil Lil-Qismah (Undividable Property)**

المال غير القابل للقسمة

Undividable property is that which will be damaged if divided or

separated into parts, such that the benefit that the asset had before the division does not remain constant for each part of it after the division.

Examples of it include: a cup, a chair, a car, and a pearl, because each one of them if divided, its original benefits would be lost.

As for real estate, such as houses, shops and lands, some of them are dividable and some are not. Whatever can be divided so that each part of it remains benefited from as the asset is dividable, otherwise it is not.

One of the most important rulings on undividable property is that its assets cannot be divided by force upon the partners at the request of one of them, but only by voluntary division.

• **Al-Mâl Al-Qâbil Lil-Qismah (Dividable Property)** المال القابل للقسمة

Dividable property is that which will not be damaged if divided or separated into parts. Accordingly, Scholars of Fiqh have defined it as “property suitable for division, such that the intended benefit is not lost by division.” The ruling for this is that the type of benefit that the asset has before division is constant for each part of it after division.

The quantity of wheat, barley, oil, ghee, etc. is dividable, given that its parts are equal in benefit and value in relation to the original divided property.

Among the characteristics of dividable property if it is shared is that a judicial division of separation is carried out in it by force on the partners at the request of one of them, and a judicial division of congregation is also carried out on it by force, if it is of the same type, such as a group of identical chairs or a quantity of grains.

The opposite of dividable property, according to Scholars of Fiqh, is undividable property.

• **Mâl Al-Qinyah (Property Kept for Acquisition and Personal Use)**

مال القنية

In Fiqh terminology, property kept for acquisition is what a person kept for himself, not for trade. Al-Khatîb Ash-Sharbini said: “Property kept for acquisition is that which is acquired for benefit.” It is stated in “Az-Zâhir”: Property kept for acquisition is the property that a person establishes and retains for himself and does not sell it for trade.

This term is frequently used by Scholars of Fiqh in the book of *Zakâh*.

The opposite of property kept for acquisition, according to Scholars of Fiqh, is trade property.

• **Al-Mâl Al-Ma'mûn (Safe Property/Funds)** المال المأمون

The term “*Al-Mâl Al-Ma'mûn*” is used linguistically to mean such

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property that is lawful and rightly owned by its holder.

In Fiqh terminology, Abû 'Imrân Al-Fâsî Al-Mâlikî defined it by saying: "Safe property means houses and lands. It is said: *Al-'Ayn* (Funds) is referred to as safe property when it increases in number or quantity"

The term "*Al-'Ayn*" means minted gold, unlike silver and it may refer to unminted gold. It is sometimes used for funds such as dinars and dirhams, unlike goods.

This term is only used by the Malikites.

• ***Al-Mâl Al-Mubâh* (Unrestricted Property)**

المال المباح

The term "*Al-Mâl Al-Mubâh*" refers to such property which not originally owned by anyone, such as water in its sources, and game on land and sea, and trees and their fruits in the desert. Its ruling is that every person can seize as much of it as he can, and whoever seizes something of it owns it. This also includes dead lands, so whoever revives dead land, he owns it.

The two opposites of permissible property, according to Scholars of Fiqh, are restricted property and owned property.

• ***Al-Mâl Al-Mahjûr* (Restricted Property)**

المال المحجور

The term "*Al-Mâl Al-Mahjûr*"

refers to any property that are restricted by Shari'ah to be owned as private property or to be traded. It cannot be the subject of ownership, either because it is a Waqf, or because it is allocated for public interests, such as public roads, mosques, public cemeteries, and other Waqf properties.

However, restriction on this form of property may be raised in exceptional Shari circumstances, such as if the public road is diverted, and its original location is no longer needed, so it is sold on behalf of the treasury, and becomes the private property of the one who bought it. The same applies to all other public funds and state properties that are no longer needed, and if necessity calls for replacing the Waqf property, it is replaced with something that is more beneficial to the Waqf, and the Waqf property becomes the private property of its buyer.

The two opposites of restricted property, according to Scholars of Fiqh, are unrestricted property and owned property.

• ***Al-Mâl Al-Marjû* (Expected to Be Recovered Property)**

المال المرجو

The term "*Al-Mâl Al-Marjû*" refers to such property that its owner expects that it will be recovered, because the person who seizes this property acknowledges its ownership for the original owner and does

not refrain from returning it upon request or upon the arrival of the deadline set for its return. This includes the debt which the creditor expects to collect because the debtor is present, acknowledges the debt, solvent, and willing to pay it, or refuses to pay it, but the creditor has evidence against him.

The opposite of the expected to be recovered property, according to the Scholars of Fiqh, is lost or doubtful property.

• **Al-Mâl Al-Mustaqil (Distinct or Non- Shared Property)**

المال المستقل

Distinct property is that which an individual owns and has exclusive ownership of its asset and benefit.

This distinct property may become shared property, by concluding a partnership of property with another person or more, or by mixing it with the property of another person voluntarily, or by mixing it with the property of another person without the owners' choice, a mixing that makes it impossible to distinguish them in reality, if they are of the same type, or it is possible to distinguish between them with difficulty and cost, if they are of different types. Likewise, shared property may become distinct property by division, where the common ownership disappears, and the ownership

of each person in his share becomes distinct.

The opposite of distinct property, according to Scholars of Fiqh, is shared property.

• **Al-Mâl Al-Mushtarak (Shared Property)**

المال المشترك

Shared property is defined as a property that is shared between two or more people due to one of the reasons for ownership, such as purchase, gift, will, inheritance, or by mixing or blending property in a way that does not allow distinction and separation, or by virtue of a contract of property partnership.

The shared property, according to Scholars of Fiqh, is the subject of "common ownership": which is related to a proportional, unspecified part of the whole thing, no matter how large or small that part is, such as when a person owns half a house or a quarter of an orchard or a tenth of a car and so on. According to the ruling on common ownership, every part of the shared property is not allocated specifically to any of the shareholders, but rather the ownership of all of them is attached to the whole property because the common share "is the share that extends to every part of the shared property."

The opposite the shared property, according to Scholars of Fiqh, is distinct property.

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• ***Al-Mâl Al-Mamlûk (Owned Property)*** المال المملوك

Owned property is the property that is owned by a person, whether it is individual or a legal person such as the state, public institutions and associations, and whether it is distinct property or shared between multiple owners, and whether it is movable or immovable.

Whenever property is legally owned by a person, the owner is granted all legal rights arising from ownership, including benefit, use, consumption and transfer to others with or without compensation through legally permissible methods.

The two opposites of owned property, according to Scholars of Fiqh, are unrestricted property and restricted property.

• ***Al-Mâl An-Nâmî (Growing Property)*** المال النامي

Linguistically, growth means increase.

In Shari'ah, growing property it is of two types, real and constructive growth. Real growth implies increase through procreation, reproduction and trade. Constructive growth, however, is when the property is capable of growth due to the fact that it is at the disposal of its owner or his representative. Accordingly, the Scholars of Fiqh stipulate in the chapter on *Zakâh* that it is only obligatory on growing prop-

erty, even if growth is constructive, that is, the property is prepared and assigned for growth, even if it does not actually grow.

Ibn Nujaym said: Property is of two types: *Khalqî* (innate) and *Fi'î* (Intention-oriented) properties.

Khalqî (innate) property include gold and silver; because they are suitable for benefiting from their essence in meeting basic needs, so there is no need for the person to prepare them for trade based on intention since the intention is meant to make designation. Gold and silver, however, are designated for trade by their nature, so *Zakâh* is obligatory on them, whether the person intends trade or not, or intends to spend them.

Fi'î (Intention-oriented) property is any property other than gold and silver, such as goods which are prepared or assigned for trade by intention, as well as livestock, where the intention of grazing is required (for it to be subject to *Zakâh*). This is because just as it is suitable for milk and offspring, it is suitable for carrying and riding. Also, the intention of trade and grazing is not to be considered unless the act of trade and grazing is exercised.

• ***Mubâh (Permissible/Available)***

مباح

Linguistically, the term "*Mubâh*" means permissible or available.

In **Fiqh terminology**, the word “*Mubâh*” is used by Scholars of Fiqh to mean what the *Mukallaf* (accountable) person is permitted to do or not to do according to Shari’ah, as contradictory to obligatory and due actions, forbidden and detestable (*Makrûh*) actions. Accordingly, they said in defining it as: The action which has the same effect in either case, meaning that no reward is entitled for doing it and nor punishment is imposed for not doing it.

They also use the term “*Mubâh*” to define a property which is permissible to be owned by acquisition when it is not legally owned or possessed by someone else. That is why they say: acquisition “*Mubâh*” (permissible) property is one of the reasons for ownership, and they mean by it what was originally unrestricted, such as grass in the wilderness, firewood in the forests, water in rivers and seas, and the like. Accordingly, they defined “*Mubâh*” property as: Everything that Allah created for people to benefit from in a customary manner, and is not in the possession of anyone while it can be acquired or possessed, and every person has the right to own it by acquisition, whether it is an animal, a plant, or an inanimate object.

• **Mubâdalah (Exchange/Replace)**

مبادلة

Linguistically, the word “*Mubâdalah*” means exchanging or repla-

cing, giving something in replace or in exchange for something else.

In **Fiqh terminology**, the word “*Mubâdalah*” means the exchange between two things. In their view, exchange transactions are that which includes the exchange of property for another property, the exchange of property for benefit, and the exchange of property for something other than property or benefit. The exchange of benefit for benefit, and the exchange of benefit for something other than property or benefit are all kinds of exchange transactions. It includes all types of sales, such as absolute sale, barter, exchange, *Salam*, *Istisnâ’*, reconciliation based on acknowledgment, division of assets, exit transactions, transfer of rights, rent, commission, *Muhâya’ah* (usufruct sharing), marriage, *Khul’* (i.e. compensatory divorce), etc.

This elaboration on the issue is derived from the Hanafites.

The term “*Mubâdalah*” according to the Malikites has a special meaning, which is “selling minted currency for the same in numbers”, as they divided the sale of currency for currency into three categories: *Murâṭalah* (weight-based exchange), *Mubâdalah* (exchange), and *Sarf* (money exchange). By *Murâṭalah* they meant selling currency for its like in weight, and by exchange they meant what is mentioned above, and

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by *Sarf*, the meant selling currency for currency of a different type, such as selling gold for silver or selling one of them for property.

• **Mubâra'ah (Mutual Discharge of Liability)** مبارأة

Linguistically, the term "*Mubâra'ah*" means mutual discharge of liability, that is when each partner discharges the other partner

Ibn Rushd said: *Khul'* (i.e. compensatory divorce), *Fidyah* (Ransom), *Sulh* (reconciliation), and *Mubâra'ah* all have the same meaning, which is the woman giving compensation for her divorce. However, the name *Khul'* refers to the wife giving her husband all what he gave her, and *Sulh* refers to only some of it, and *Fidyah* refers to most of it, and *Mubâra'ah* is used when the wife drops a right owe to her from her husband, according to what the Scholars of Fiqh claim."

The term "*Mubâra'ah*" is also used by the Malikites to mean "an agreement that ends a dispute by each party acknowledging the discharge of the party's liability." This term was mentioned by the scholar Muḥammad Al-Fâḍil Ibn 'Āshûr.

• **Mubartîs (Broker)** مبرطس

Linguistically, the term "*Mubartîs*" means broker, who intermediates between the seller and the buyer in exchange for a fee.

Ibnul-Athîr said: "In the pre-Islamic era, 'Umar was a *Mubartîsh*, who intermediates between the seller and the buyer, similar to a broker.

Al-Fayrûzabâdî and Abû Hilâl Al-'Askarî said: "*Mubartîs*" is the one who rents camels and donkeys to people, and takes a fee for that.

• **Mabî' (Item Sold)** مبيع

Linguistically, the word "*Mabî'*" is means the commodity that is sold. **In Fiqh terminology**, "*Mabî'*" is what is a property that is sold, and it is the original purpose of the contract of sale. This is because the benefit is only from the assets, and the prices are a means of exchange.

As for how to distinguish between property sold and the price in the sale, there are several trends of Scholars of Fiqh as follows:

The price is what comes after "for", and the sold item is what comes before "for", like when you say: I sell you such and such for such and such, so the first is the sold item and the second is a price.

The price is cash in general, and the item sold is what is given in exchange for it. If there is no cash in the contract or the two exchanges are cash, then the price is what comes after "for", and the price is what comes before it.

The price is what is established in the liability as a debt upon

exchange, which is the two cashes (gold and silver) and fungibles if they are in-kind and exchanged for in-kind items, or not in-kind comes after “for”, and the item sold is what is exchange for it.

• **Mut'at At-Talâq (Divorced Woman's Compensation)** منعة الطلاق

In Fiqh terminology, the term “Mut'at At-Talâq” (divorced woman compensation) refers to the property given to the divorced woman to benefit from during her waiting period. Al-Khurashî defined it as: “It is what the husband gives to his divorced woman to compensate for the pain she suffered due to separation.” It was also said: It is what the husband gives the divorced woman after her divorce as a kindness to her. Scholars of Fiqh have divided it into two parts:

- 1- Compensation given to the woman is she divorced before consummation if no dowry was specified for her at the time of her marriage.
- 2- Compensation given to the woman (by her husband) when she is divorced in cases other than mentioned above.

The basis for its legitimacy is Allah's saying: {“**And for divorced women is a provision according to what is acceptable - a duty upon the righteous**”} [Al-Baqarah (the Cow): 241], and His saying: {“**There is no**

blame upon you if you divorce women you have not touched[94] nor specified for them an obligation. [95] But give them [a gift of] compensation - the wealthy according to his capability and the poor according to his capability - a provision according to what is acceptable, a duty upon the doers of good”} [Al-Baqarah (The Cow): 236]. The man's condition is considered in it, whether he is wealthy or poor, as in the case of alimony.

• **Mutaqawwam (Valuable)** متقوم

Linguistically, the term “Mutaqawwim” means evaluated or of specific value

The expression “Al-Mâl Al-Mutaqawwim” (property with specific value) is mentioned by Scholars of Fiqh with four meanings:

The first meaning is held by Hanafites, which is “what is permissible to benefit from according to the Shari'ah in a state of abundance and choice.” As for property of non-specific value, according to them, it is “what is not permissible to benefit from in a state of choice,” such as wine for a Muslim.

The basis for this is that the Hanafites did not make the permissibility of benefiting from something permissible as one of the elements of financing in their terminology, and were satisfied with the condition of the object being in-kind,

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provides the usual benefit, the possibility for people to use it as finance because it is considered property. Their commitment to this concept of property led them to divide property into property of specific value and property of non-specific value, and to stipulate for the validity of financial exchange contracts that the contracted upon object be property of specific value.

As for the rest of the Scholars of Fiqh, they considered the permissibility of benefiting (from the property) to be an element of financing, and that if something is not permissible to benefit from according to Shairah in the case of choice, then it is not property at all, and therefore they did not appear to divide property into property of specific value and property of non-specific value in the sense intended by the Hanafites.

The second meaning is also used by the Hanafites, which is “the acquainted property” as they sometimes use the term “of non-specific value” for property that is permissible before acquisition, such as fish while in the sea, wild animals, trees in the forests, and birds in the sky. If it is hunted or cut down, it becomes property with specific value by acquisition. Accordingly, Article (127) of *“Majallat Al- Ahkâm Al-Adliyyah”* states: “Property of some specific value is spoken of in two senses:

- (1) It is a thing the benefit of which is lawful to enjoy;
- (2) The other is acquired property.

Example: A fish while in the sea is not of any specific value. When it is caught and taken, it becomes property of some specific value.

The commentator on *“Majallat Al-Ahkâm Al-Adliyyah”*, ‘Alî Haydar, stated that the first meaning of the property of specific value is the Shari’ah-based meaning, and the second is the customary meaning.

The third meaning is given by the Malikites, Hanbalites and Shafi’ites, which is: “What has a financial value in the customary sense.” Accordingly, Al-Khatîb Ash-Shirbînî said: “The property of specific value is what has a value, so that money can be paid in exchange of it. If it does not have a value, either because it is forbidden, or because it is cheap, or because it is small, then spending money in exchange for it is foolishness and waste.”

The fourth meaning is provided by the Shafi’ites as well, which is: “What has no equivalent in the market, or which has equivalent but with a significant difference in value.”

This is the same meaning of “valuable” property, which is the opposite of “fungible property” in the terminology of the Hanafites and Hanbalites. Accordingly, it is stated

in *“Al-Ashbâh Wan-Nazâ’ir”* by Ibnus-Subkî: “Ruling: the fungible item is that which can be guaranteed by something of its kind, and the evaluated property is that which can be guaranteed by its value.”

• **Mutamawwal (Items Taken As Property)** متمول

Linguistically, the term “*Mutamawwal*” donates anything that can be taken or dealt with as property.

The term “*Mutamawwal*” is used In Fiqh terminology to mean “what has an intended benefit, and has a financial value according to people’s customs.”

Al-Fayyûmî said: “The Scholars of Fiqh say: the term “Items taken as property” donates any item that is considered property according to custom.” As-Suyûtî said in *“Al-Ashbâh Wan-Nazâ’ir”* that there are two rules for item taken as property:

First rule: Everything that is estimated to be benefited from is an item that can be taken or dealt with as property, and everything that cannot be benefited from, due to being in small quantity, does not belong to item that can be taken as property.

Second rule: An item that can be taken as property is that which has a value when prices rise, and item that does not belong to this category is that which does not have such value.

Ibn Abidin said in the context of his definition of property according to the Hanafites school: “An item is proven to be a property when all or most people use such item as a property, and it is proven to be of specific value when it has financial value and is permissible to be benefited from according to the Shari’ah. So, what is permissible without financial value is not property, like a grain of wheat, and what has financial value without the permissibility of benefiting from is not of specific value, like wine.”

• **Mutawllî (Al-Waqf) (Trustee (of Endowment))** متولي (الوقف)

In Fiqh terminology, “*Mutawllî Al-Waqf*” means trustee of the endowment, who is the person appointed to preserve, care for and manage the affairs and interests of the endowment according to the conditions of the endower and within the provisions of Shairah. (Article (103) of *Tartîb As-Sunûf*).

Article (8) of *“Itihâf Al-Akhlâf”* defined it as: “The one appointed to carry out the affairs of the endowment and consider its interests according to what the endower stipulated in his endowment document.”

There are two types of trusteeship:

- 1- Conditional trusteeship: which is given to a person according to the condition of the endower.

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2- Unconditional trusteeship: which is not stipulated by the endower for a specific person, and therefore it is managed the endower during his lifetime, and to the trustee appointed and chosen by the endower to assume this role after his death. However, if the endower did not choose a trustee during his lifetime, the judge may appoint a trustee. (Article (104) of *Tartīb As-Sunûf*. See Article (8) of *Iti-hâf Al-Akhlâf*).

Some Scholars of Fiqh call the trustee of the endowment “*Al-Qayyim*” (the guardian) and “*Al-Mutaklim ‘An Al-Waqf*” (representative of the endowment), while others believe that the trustee is the person to whom the affairs of preservation, collection and distribution have been delegated, meaning that he works under the supervision of the trustee and according to his orders. (Article (106) of *Tartīb As-Sunûf*). Great scholar ‘Alî Haydar said: “However, if the endowment has a trustee and a guardian, it is not permissible for the trustee to dispose of the endowment unless he takes the guardian’s opinion on this disposal”. This is because the guardian of the endowment was appointed to supervise the actions of the trustee of the endowment, and to be a reference for the trustee to act according to his opinion in the affairs of the endowment. Accordingly, (Article 108) of “*Tartīb*

As-Sunûf” defined him as: “The person who supervises the actions of the trustee of the endowment, and the trustee refers to him in the affairs of the endowment.” ‘Alî Haydar commented on this by saying: “However, since guardianship in the custom of some countries means trusteeship, the guardian in these countries is the trustee himself. This is because people’s custom is an argument that must be acted upon.”

It was said: The guardian, the trustee, and the supervisor, according to Scholars of Fiqh, have the same meaning.

• Mithl (Similar/Equivalent) مثل

Linguistically, the term “*Mithl*” means something that is similar and equal. Al-Munâwî said: “If “*Mithl*” is of the same kind, it is what takes the place of something else of the same kind. If it is of another kind, it means something that has a meaning that makes it similar to something else, just as it is similar to its kind.”

Al-Kafawî said: “*Mithl*” (similar) is the most general of the words used for similarity, and “*Nazîr*” (equivalent) is more specific, as is “*Nidd*” (peer). It is said of what shares it in essence only, and so is “*Shabîh*” (similar), *Musâwî* (equal), and “*Shakl*” (form)... and the absolute equivalent of a thing is what is equal to it in all its descriptions.

The Scholars of Fiqh used the term “the price of the equivalent” to donate the real value of the thing, and “the wage of the equivalent” to donate to the compensation equal to the benefit contracted upon in reality, and which is applied to all similar things by custom, and “the dowry of the equivalent” to donate it the dowry that the husband usually pays to who is equal to that woman in all the descriptions.

• *Mithlî* (Fungible)

مثلي

Linguistically, the term “*Mithlî*” is an item that has a description that is controlled by it, such as grains and moderate animals. It is attributed to its image and shape, so it is said: “*Mithlî*” is a thing that has similar thing in shape and image from the original creation, said by Al-Fayyûmî.

In Fiqh terminology, the term “*Mithlî*” (Fungible) is what its units or parts are similar, such that some of them can take the place of others without a significant difference, and it has a counterpart in the markets.

It usually refers to things that are estimated by measure, weigh, capacity, or number. So, fungible items are properties available in the market, its types are subject to the customary standard units, which are: weight, volume, length, and number. An example of this is all the manufactured goods produced by factories today, in which there is a commit-

ment to qualitative uniformity and not changing the model, including clothes, tools, engines, machines, cars, and other things that have a counterpart in the market.

• *Majrâ* (Course)

مجرى

Linguistically, the term “*Majrâ*” means course.

The channel or watercourse is one of the legitimate rights of easement. **In Fiqh terminology**, it is the right of the course of rainwater or the water of the stream or other watercourses designated for a property over the property of another person. Its implication is that if a person has a channel of running water or rainwater or a stream with an old right in the property of another person, its owner does not have the right to prevent it.

• *Mujahhiz* (Preparer/Supplier)

مجهز

Linguistically, the term “*Mujahhiz*” means preparer or supplier

Al-Muṭarrizî said: “*Mujahhiz*: is the person who sends the merchants with the most luxurious goods or travels with them.”

In Fiqh terminology, the term “*Mujahhiz*” is used to refer to a merchant who has a headquarters that he does not leave, and has agents in other countries who undertake trade there with his property and goods exported to them on his behalf, in

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return for a share of the profits. Abû Al-Fadl Ad-Dimashqî explained this in his book “*Al-Ishârah Ilâ Mahâsin At-Tijârah*” when he said: “Merchants are divided into three categories: *Rakkâd* (hawker), *Khazzân* (stockmen), and *Mujahhiz* (supplier).” Then he said: “The principle for the supplier is that someone is appointed for him in the place to which he supplies to receive the goods that he exports to him, and this receiver is responsible for selling them and buying other items... and he has a share in the profit in everything he sells or buys.” The term “*Mujahhiz*” is used by Scholars of Fiqh in the Book of Hajj to mean: “The one who is prepared, that is: the provisions and equipment he needs are prepared for him, to perform Hajj on behalf of someone else.”

• **Majhûl (Unknown)**

مجهول

Linguistically, the term “*Majhûl*” means unknown, the antonym of “known”.

The “*Majhûl*” (unknown) is the contracted upon item according to Scholars of Fiqh whose ignorance is related to:

- Name of item, such as selling a commodity without naming it;
- Type of item, such as selling an animal without specifying its type;
- The item itself, such as selling a sheep from a herd of varying numbers;

- The description of the item, such as selling a known amount of wheat that was not specified by description or record;
- The amount of item, such as when a person bought clothes whose amount is not known, or selling the estimated items for items estimated by weight or measure by a measure or weight whose amount is not known; or
- The delivery date, such as when a person bought at a price deferred to an unknown time.

• **Muhâbah (Favoritism)**

محابة

Linguistically, the term “*Muhâbah*” means favoritism or nepotism.

In Fiqh terminology, *Muhâbah* means an intentional donation within a transactional contract.

Accordingly, Ibn Bâtish defined it as: “when someone removes his property out of his possession (sell) for less than its compensation”; i.e., the compensation of similar property.

Examples of it include: selling for less than the value, and buying for more than the value, with the intention of benefiting the buyer in the sale and benefiting the seller in the purchase; because it is a donation in meaning.

Accordingly, if a person sells to another something worth ten dirhams for seven, he has intentionally

favored him with three, so it is as if in the case of seven parts out of ten parts of it, it is an exchange of property for property, and in the case of three parts out of ten parts of it, it is a gift and a donation. This is because those three parts are given without compensation.

Mayyârah Al-Mâlikî explained the reality of favoritism (*Muhâbbâh*) and the difference between it and fraud (*Ghabn*) by saying: "...Scholars of Fiqh use the term "favoritism" to donate selling for much less than the value with the intention of benefiting the buyer, and buying for more than the value with the intention of benefiting the seller. Whatever is less than the value in the sale or more than it in the purchase is a gift and a donation from the one who favors the buyer or seller. If it is not with the intention of benefiting, but rather due to ignorance of the price, then it is fraud."

• Muhâssah (Sharing)

محاسبة

Linguistically, the term "*Muhâssah*" means sharing or diving something into shares.

The terminological meaning of the word does not deviate from its linguistic meaning. Al-Qalyûbî: "If the endowment is too small for its beneficiaries, some of them are not given precedence over others, but rather it is divided among them according into shares."

The majority of Scholars of Fiqh also stated that if the bankrupt debtor, whose property is overwhelmed by debt, is placed under interdiction by the judge, then the creditors will divide his property in shares among themselves.

Ad-Dardîr said: "That is, the property obtained is divided in proportion to the debts, and each creditor takes from the bankrupt's property according to that proportion. The way to do this is to collect the total debts and calculate the proportion each debt to the total, so each creditor takes from the bankrupt's property in according to such proportion... Another possible way is to calculate the proportion of the bankrupt's property to the total debts." For example: A man went bankrupt, and owes one hundred to one person, and owes thirty to another person, and owes twenty to a third person, and owes ten to fourth person, and his property is forty.

It is said: The total debt is (160) one hundred and sixty, so we multiply the creditor of the hundred by forty (the bankrupt's property) and divide it by one hundred and sixty, which results in twenty-five, so this the share who takes from the property. Likewise, we multiply the creditor of the thirty by forty and divide it by one hundred and sixty, which results in seven and a half, and so on.

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• **Muhâqalah (Selling Crops for Wheat)** عاقلة

Linguistically, the term “*Muhâqalah*” is derived from the Arabic term “*Haql*”, which means field or the land cultivated.

In Fiqh terminology, the meaning of the term “Sale of *Muhâqalah*” has been differed upon by Scholars of Fiqh in several sayings, the most famous of which is that “it is the sale of wheat while in ears for pure wheat. It was said: Selling wheat while in ears for wheat equal to its measure, as an estimate. It was said: Renting land for wheat, or renting it for a portion of what comes out of it.

• **Mahdar (Record/Place of Attendance)** محضر

Linguistically, the term “*Mahdar*” is used to refer to the place of attendance.

In Fiqh terminology, An-Nawawî defined it by saying: “It is the place in which the factual statements of the two litigants are written and states what happened to them in the court of law.”

Al-Fayrûzabâdî said: “*Mahdar* is a line written at the end of statements of witnesses, confirming the validity of what was included in its beginning. Abû Naṣr As-Samarqandî said: “records are based on claims, and it is necessary to narrate the claim in the records.”

Al-Mâwardî said in “*Al-Hâwî*”: “record is the narration of the situation, and what happened between the disputants of claim, admission, denial, evidence and oath. As for the register, it is the implementation of what is proven and the ratification of judgement. This is the difference between the record and register.”

• **Mahal Al-‘Aqd (Subject Matter of the Contract)** محل العقد

The subject matter of a contract is defined by professor Az-Zarqâ, as the object or thing on which the contract based and it rules depends. Example of this is the sale property in a sale contract, gift object in the contract of gift, the guaranteed debt in the contract of guarantee, and the mutual cohabitation in marriage contract, etc...”

It is stated in (Article 302) of “*Murshid Al-Hayrân*”: “Every contract must have a subject matter to be added to it that is susceptible to its law, and it is valid for the subject of the contract to be property, whether it is an object, a debt, a benefit, or a work.”

• **Mukhâbarah (Plantation)** مخابرة

Linguistically, the term “*Mukhâbarah*” means plantation. Then it was *Muzâra‘ah* (temporary sharecropping) of the land for a third or a quarter or a half or less than that or more, that is for a common share

of what comes out of the cultivated land.

The use of the word by Scholars of Fiqh does not go beyond this meaning.

As for the difference between it and *Muzâra'ah* it is that *Muzâra'ah* is a transaction on the land for some of what comes out of its crops and the seed is provided the owner of the land, and *Mukhâbarah* is the same as *Muzâra'ah* except that the seed is provided by the worker. It is said: They have the same meaning.

• **Mukhârajah (Salve tax)** مخارجة

Linguistically, the term “*Mukh-ârajah*” refers to agreement between the master and his slave on a tax that the latter will pay to the first at end of each month.

The use of the word by Scholars of Fiqh does not deviate from its linguistic meaning, and accordingly An-Nawawî defined it by saying: “*Mukhârajah*: is when the master agrees with the slave on a known tax that the slave will pay to the master every day, and the rest of the earnings will be for the slave, and he will be independent in earning, and they have the right to cancel such agreement at any time.”

• **Mukhâdarah (Selling Fruit Before They Ripen)** مخاضرة

The term “*Mukhâdarah*” is used linguistically and thermionically to

mean selling fruits before they appear to be ripe. It has been said: It is selling fruits while they are still green before they are ripe.

Ibnul-‘Arabî said: “In the *hadîth* also, there is a prohibition of the sale of *Mukhâdarah*, and perhaps it means buying fresh dates for dry dates as one usurious transaction, or buying fresh dates for fresh dates which is also one of usurious transactions, or buying fruit before it is ripe, and the like, or perhaps it is buying it before it is available, which is *Mu’âwamah* that is prohibited in the *hadîth*, and it is buying fruit for years, and it is possible that it is meant for all of them, from the perspective of applying the single word to multiple different things.”

• **Mukhâtarah (Risk/Bet/Wager)**

مخاطرة

Linguistically, the term “*Mukh-âtarah*” means wager or bet.

In Fiqh terminology, Ibnul-Qayyim said: “*Mukhâtarah* is of two types:

The first type of “*Mukhâtarah*” is the risk taken by merchants when they buy commodities with the intention of making profit.

The second type of “*Mukhâtarah*” gambling or wager, which includes earning property unjustly. This is what Allah the Almighty and His Messenger (peace and blessings of

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Allah be upon him) have forbidden, such as, sale of *Mulâmasah* (sale by touching), *Munâbadhah* (trading items by throwing), *Habal Al-Habalah* (sale of an unborn fetus or its anticipated offspring), *Malâqih* and *Madâmîn* (sale of unborn fetuses), and selling fruits before they are ripe.

Ibn Taymiyyah said: "Likewise, each of the two parties to a transaction for a commodity hopes to profit from it and fears that he will lose, so such a risk is permissible according to the Book, the Sunnah, and consensus. The merchant is a risk taker, as is the worker who is given a reward for returning a runaway slave or building a wall. He may need to spend property, so he is hesitant between losing or gaining, and yet it is permissible. If risk is taken by from both sides is closer to justice and fairness, such as *Mudârabah* (Speculation), *Muzâra'ah* (temporary sharecropping), and *Musâqâh* (sharecropping) because one of them takes a risk and may or may not make a profit.

• *Mudd Ajwah* (Mudd of Ajwa Dates)

مد عجة

Mudd is a well-known measure, which is the smallest of the measures, and its amount is a quarter of a Sâ'. Ajwa is a type of the best dates in Madinah, and its palm tree is called *Linah*.

As for the issue of "a Mudd of Ajwa dates," it is one of the terms commonly used by Scholars of Fiqh in the chapter on usury and exchange. It is, as Ibn Taymiyyah defined it: "It is a sale of usurious property for the same genus, and with them or with one of them is another type of a different genus."

This is like selling two dirhams or a dirham and a garment for a dirham and a Mudd of Ajwa dates, and like selling something decorated with gold or silver, such as a sword, for the same genus of ornament as it.

• *Murâbahah* (Sale for a Profit)

مراجعة

Linguistically, the term "*Murâbahah*" is derived from the word "*Ribh*", which means profit, growth, and increase.

In Fiqh terminology, the word "*Murâbahah*" denotes the sale of what a person owns for its price with an increase. It is the sale of the commercial goods for the price at which were bought, with an increase of a known amount of profit.

According, the author of "*Al-Qawânîn Al-Fiqhiyyah*" defined it as: "It is when the owner of the commodity informs the buyer of how much he bought it for, and takes a profit from him, either in general, such as saying: I bought it for ten and you will make me a profit of one

or two dinars, or in details, which is to say: You will make me a dirham profit for every dinar, or something else.”

It was stated in (Article 175) of “*Majallat Al-Ahkâm Ash-Shar‘iyyah ‘Alâ Madhhab Ahmâd*”: “Sale of *Murâbahah* is when the buyer sells something for its capital with a specific profit, even if it is proportional.”

Scholars of Fiqh classify sale of *Murâbahah* under sales of Amanah (trust), because the seller is trusted to inform the buyer of the price for which he purchased the sold item.

• **Murâdâh (Mutual Consent)** مراضاة

Linguistically, the term “*Murâdâh*” means consent between two or more parties, which in the language means: the desire to do or say something with consent, as opposed to refusal.

Scholars of Fiqh use this word with the same linguistic meaning when the two contracting parties agree to establish the contract without coercion or other defects of consent. Therefore, they describe this contract as having been concluded by mutual consent or satisfaction, and accordingly their definition of sale came as “exchanging property for property by mutual consent.”

• **Murâtalah (Weight-Based Exchange)** مراطة

In Fiqh terminology, the term

“*Murâtalah*” is the sale of property for its genus by weight, such as selling gold for gold or silver for silver by weight.

This term is used only by the Malikites, and not to other Scholars of Fiqh; “, as they divided the sale of currency for currency into three categories: *Murâtalah* (weight-based exchange), *Mubâdalah* (exchange), and *Sarf* (money exchange). By *Murâtalah* they meant selling currency for its like in weight, and by exchange they meant what is mentioned above, and by *Sarf*, the meant selling currency for currency of a different type, such as selling gold for silver or selling one of them for property.

• **Mursad (Assigned)** مرصد

Linguistically, the term “*Mursad*” means something that is prepared or assigned.

In Fiqh terminology, the word “*Mursad*” is defined as “a debt that is settled on the *Waqf* (endowment) entity for the tenant who has built from his property a necessary building in one of the *Waqf*’s properties for the *Waqf* with the permission of its observer or the judge, when there is no property available in the *Waqf*, and there is no one to rent it for an immediate rent from which it can be built.”

This is proven when the judge or oversee permits the tenant of the

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Wâqif (Waqf owner) to build on the *Wâqif* land when the *Wâqif* does not provide return for construction. Accordingly, what he spends on building and construction is a debt on the *Wâqif* that he collects from his rent in installments, and the building becomes the property of the *Wâqif*, provided that its owner has the right to decide on the *Wâqif* property and it is inherited from him, and the right to assign it to another person by taking transferring its debt to him, so that he replaces him in the property with the permission of the judge or the oversee.

This word is one of the Fiqh terms that later Hanafites Scholars of Fiqh only have been accustomed to using.

• **Mirfaq (Facility/Elbow)** مرفق

Linguistically, the term “*Mirfaq*” means facility, which is everything that a person benefits from and has benefit in it.

The facility of the house is everything that is benefited from in it, such as the kitchen, the toilet, the ablution area, the water outlet, and the like.

The term “*Mirfaq*” means also the human elbow, which is the last bone of the arm connected to the humerus.

The Fiqh usage of the word does not deviate from its linguistic meaning.

• **Marammah (Repair/Restoration)**

مرمة

Linguistically, the term “*Marammah*” means repair or restoration.

In Fiqh terminology, the word “*Marammah*” means construction or restoration.

It is stated in (Article 140) of (*Ta-rtīb As-Sunûf*) that restoration construction is of two types:

First: consumable contraction, which is repair or restoration works that cannot be taken and separated from buildings, such as painting, plastering, and the like, which cannot be separated from what is connected to it. If it is separated and taken from what is connected to it, no property remains. for example, if the plaster is taken from the wall to which it is attached, then it will not remain property, but rather dirt.

Second: unconsumable construction, which is repair and restoration works that can be separated and taken from buildings, such as new construction, hanging glass frames, marble stones that are used to cover halls, and the like, which can be separated from buildings while remaining property as it was.

This term is one of the terms used by the Hanafites in the chapter on endowment.

• **Muzâbanah (Selling Dried Dates for Fresh Dates)** مزانة

Linguistically, the term “*Muzâbanah*” means delivery.

The Scholars of Fiqh, however, differed in defining “*Muzâbanah*”. Most of them held the opinion that it is the sale of something fresh for something dry of the same genus by estimation, such as selling fresh dates on palm trees for dates cut for the same measure, and such as selling grapes on the vineyard for raisins.

Malik said: “*Muzâbanah*” is everything sold in bock, while its measure, weight, or count, is not known, for something known of its genus.

Ibn Rushd, the grandson, said: It is the sale of something of an unknown quantity for something else of unknown quantity.

In “*Al-Muṭlī*”: “*Muzâbanah*” is the sale of a known thing for an unknown thing of the same genus, or the sale of an unknown thing for an unknown thing of the same genus....

• **Muzâra’ah (Temporary Sharecropping)** مزاعة

Linguistically and terminologically, sharecropping is a contract for cultivation between the landlord and the farmer, on the condition that the land produce is to be divided between them according to the shares they agree upon at the time

of the contract. It is a type of partnership, with the land is provided by one party and the work is provided by the other party, on the condition that the land is cultivated and its produce is shared between them.

It is stated in Article (1949) of “*Majallat Al-Ahkâm Ash-Shar’iyyah ‘Alâ Madhhab Ahmad*” that: “*Muzâra’ah*” and “*Mukhâbarah*” are forms of agreement between two parties where one party provides the land and grain to the other party who will cultivate and take care of the land, or take care of a crop in the land, in return for a known, shared portion of the proceeds.”

An-Nawawî said: “*Muzâra’ah*” is the transaction on the land for some of what comes out of its crops, where the seeds are provided by the landlord, and “*Mukhâbarah*” is similar to it except that the seeds are provided by the worker. It is said: they have the same meaning. The first definition is correct one and held by the majority of scholars.”

• **Muzâyadah (Bidding/Auction)**

مزايده

Linguistically, the term “*Muzâyadah*” means bidding.

In Fiqh terminology, the term “auction sale” is when the seller displays his goods in the market, and the buyers bid on them, and they are sold to the one who pays the highest price.

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Ibn Juzayy Al-Mâlikî defined it as follows: "It is when an announcement is made about the goods and people bid on them one after the other, until it reaches the last bidder who takes them."

It is stated in "*Al-Fatâwâ Al-Hindiyyah*" that auction sale is the sale of the poor and the sale of someone whose goods have stagnated, and some Scholars of Fiqh have called it "the sale of the needy" and "the sale of the bankrupt." The difference between auction and "offering price above that offered by another person", which is prohibited, is that if the owner of the property is calling for his goods, and someone offers for a price for them, and he stops calling and accepts what that person offered, then no one is allowed to offer higher price, which is "offering price above that offered by another person". If he does not stop calling, then there is nothing wrong with any other person of offering higher price, which is an auction sale, not "offering price above that offered by another person". If the broker is the one calling for the goods, and someone offers a price for them, and the broker says: "I will ask the owner," then there is nothing wrong with any other person to offer higher price in this case. If the broker informs the owner and he says: "Sell it for that and take the price," then no one is allowed

to offer an increase over that price, which is "offering price above that offered by another person". This is in "*Al-Muḥiṭ Al-Burhânî*", one of the Hanafites' books.

• Musâqâh (Sharecropping) مساقاة

Linguistically, the term "*Musâqâh*" is derived from "*Saqî*", which means irrigating.

"*Musâqâh*" is an agreement whereby a person is entrusted to irrigate and tend palm trees and vineyards, and he gets a known portion of the proceeds, as defined by Ibn Faris.

The use of the word by Scholars of Fiqh does not go beyond this meaning, and accordingly it was terminologically defined as: "A contract to hand over trees and vineyards to someone who will tend them in return for a known portion of their fruit."

Article (1947) of "*Majallat Al-Ahkâm Ash-Shar'iyah 'Alâ Madhhab Ahmad*" states: "*Musâqah* is handing over a known planted tree with edible fruit to someone who tends them in return for a known common portion of its fruit." The owner of the tree is called "*Musâq*" and the other party is called "worker."

Therefore, "*Musâqâh*" is a type of partnership whereby trees are provided by one party and cultivation is made the other party, and the fruits are divided between them.

This contract is also called “*Mu’âmalah*.” As-Saghânî said: “*Mu’âmalah* in used of the people of Iraq for “*Musâqâh*” that is used in the language of the Hijazis.”

• **Musâmahah (Forgiveness/Leniency/Easiness)** مسامحة

Linguistically, the term “*Musâmahah*” means leniency, easiness, or forgiveness.

In Fiqh terminology, Al-Mâwardî said: leniency “is of two types: in contracts and in rights.

As for contracts, it when contracts are easy to negotiate about, imply less argues, are safe from backbiting, deceit and trickery.

As for rights, leniency is of two types: in conditions and in property.

As for leniency in conditions, it is abandoning the dispute over ranks, and leaving competition for advancement.

As for leniency in property, it is divided into three types: Leniency of waiver due to lack of property, leniency of alleviation due to inability, and leniency of postponement due to hardship.

• **Musâwamah (Bargaining)** مساومة

Linguistically, the term “*Musâwamah*” means bargaining between the seller and the buyer over the commodity and the definition of its price.

As for the sale of bargaining according to the Scholars of Fiqh, it means the sale at what the two sellers agree upon without the seller informing the buyer of the price at which the sold item was bought, whether the buyer knows it or not.

Accordingly, Ibn Juzayy Al-Mâlikî defined it by saying: “Bargaining is when the buyer negotiates with the seller on the price until they agree on it, without specifying how much he bought it for.”

• **Mustarsil (Reassured)** مسترسل

Linguistically, the term “*Mustarsil*” is derived from the word “*Is-tirsâl*”, which reassurance.

Scholars of Fiqh use the term “*Is-tirsâl*” in sales to mean: a person’s reassurance and trust in the person he is contracting with.

Ibn Juzayy Al-Mâlikî said: “*Istirsâl* is when a man says to the seller: Sell to me at the market price or for what you sell to people.”

Accordingly, Scholars of Fiqh defined “*Mustarsil*” as the one who is ignorant of the value of the commodity and does not know how to negotiate in sales.

Imam Aḥmad said: “*Mustarsil*” is the one who does not bargain,” as if he is reassured with the seller and took what he gave him without bargaining or knowing that he was being cheated.

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The Scholars of Fiqh differed on the validity of the option of return for “*Mustarsil*” if he was deceived in a way that goes beyond the norm, according to three opinions:

The first opinion is held by the Malikites and the Hanbalites, which is the validity of the option for him between cancelling or accepting the sale.

The second opinion is a narration from the Hanafites, which is the validity of the option for him if he was deceived by the seller.

The third opinion is held by the Shafi‘ites and the apparent meaning of the narration from the Hanafites, which is the invalidity of the option for him.

• ***Mustaghraq Adh-Dhimmah* (Unlawfull Wealth Holder)**

مستغرق الذمة

In Fiqh terminology is, the term “*Mustaghraq Adh-Dhimmah*” the one whose entire wealth is unlawful.

It is stated in “*Nawâzil Al-Burzulî*” and “*Al-Mi‘yâr*” by Al-Wan-sharîsî: “The charity of the one who is “*Mustaghraq Adh-Dhimmah*” (his entire wealth is unlawful) is not accepted.”

It is stated in “*Hâshiyat Al-Dusûqî*”: “As for the one whose entire wealth is unlawful, which is “*Mustaghraq Adh-Dhimmah*”, it is forbidden to deal with him or lend him money, and he is forbidden from

financial and other transactions, contrary to those who said: He is like the one whose wealth is surrounded by debt, so he is forbidden from donations but not from financial transactions. The way to dispose of his wealth, if it is not possible to return it to its owners, is given as charity to the poor only. It is said: It is spent on all the benefits of Muslims, such as building bridges and closing gaps. There is a disagreement regarding if it is taken from him to be spent on the interests of Muslims, whether something of it left for him or not? The accepted view is that he is left with what will satisfy his hunger and cover his private parts.” Something similar is stated in “*Hâshiyat As-Sâ-wî ‘Alâ Ash-Sharh As-Saghîr*”.

• ***Mustaghzir* (One Giving a Gift to Receive a Greater One)**

مستغزر

Linguistically, the term “*Mustaghzir*” means someone who gives something as a gift in order to receive back more than he gave. This was stated by Al-Fayrûzabâdî.

The Fiqh usage of the word does not deviate from its linguistic meaning; it was stated in the hadîth: “” *Mustaghzir*” is the person who is rewarded for his gift.” “*Mustaghzir*” is the person who asks for more than he gave.”

• ***Mustaghall* (Exploited Assets)**

مستغل

In chapter on endowments, the

term “*Mustaghall*” “is the property that is endowed in order to guarantee, through its yields and revenues, the payment of requirements and expenditures of the management of charitable institutions” (Article (110) *Tartīb As-Sunûf*). This property may be real estate, such as a vineyard, orchard, inn, and bathhouse, or movable, such as endowed property that is conditionally profitable, and the necessary industrial machines known as “*Kadak*.” (Article (14) of *Ithâf Al-Akhlâf*).

Charitable institutions in this context implies the charitable properties established and endowed by charitable people, such as hospitals, schools, buildings, book houses, travelers’ houses, healing houses, bridges, wells, cemeteries, etc. (Article (112) of *Tartīb As-Sunûf*, article (16) of *Ithâf Al-Akhlâf*).

• *Mustawfi* (Collector) مستوفي

In **Fiqh terminology**, the term “*Mustawfi*” can be defined as “The person whom the Imam sends to collect money from the workers and present it to him.” This was said by Al-Khuzâ’î and Al-Kattânî.

• *Musaqqaf* (Roofed) مسقف

Linguistically, the term “*Musaqqaf*” means a roofed building.

Abul-Faḍl Ad-Dimashqî said: “Real estate is of two types:

Frist: roofed building, such as

houses, hotels, shops, baths, mills, presses, potteries, ovens, tanneries, and porches.

Second: cultivated areas, such as orchards, vineyards, pastures, and thickets, and what they contain of springs and rights in river waters.

The term “roofed” is used in the chapter on endowments to mean “the exploited property that includes roofed buildings” (Article (15) of *Ithâf Al-Akhlâf*).

It is stated in (Article 111) of “*Tartīb As-Sunûf*”: “The roofed property of the endowment: is the exploited property that has a roof” such as a house, a shop, and the like.

Exploited property is more general than roofed property because it includes the unroofed, such as the farm and the orchard, and the roofed property is more specific, but due to the phrase being used as “the exploited and the roofed endowments”, and the general being used in contrast to the specific in usage, “the unroofed property” became what is meant by the exploited property, since the rule is that “if the general is mentioned in contrast to the specific, then what is meant by the general is other than that specific”, otherwise repetition would be required.

• *Al-Mushâraḥah Al-Mutanâqishah* (Diminishing Partnership)

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Al-Mushâraḥah Al-Mutanâqishah

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(Diminishing Partnership) is new Fiqh-based formula for financing, introduced by Islamic banks to invest their funds and meet the financing needs of clients away from usurious loans. It is sometimes called "partnership ending with ownership."

In most of its forms, it is "an agreement between two parties to establish a joint ownership partnership between them in a project, real estate, or other thing that they purchase, with the share of one of the partners (the financier) gradually being transferred to the other through independent, successive contracts."

In this partnership, the Islamic bank usually contributes to the capital of a company, commercial establishment, buildings, factory or agriculture with one or more partners. Then, each of the partners is entitled to his share of the profits according to the agreement upon contracting, with the Islamic bank promising to waive its rights by selling its shares to its partners, and the partners promising to buy the bank's shares and replace it in ownership, whether in one payment or in installments, as required by the agreed upon conditions require.

It is worth noting that this transaction is based on a system of interconnected parts, which was established to perform a specific financing function, according to the

conditions that govern it as a single transaction that does not accept dismantling, division or separation.

Perhaps the oldest definition of this formula is introduced in (Article 2) of the Jordanian Islamic Bank Bylaw issued in (1978), which states: "Diminishing participation: the bank enters as a financing partner, in whole or in part, in a project with an expected income, based on an agreement with the other partner that the bank will obtain a relative share of the net income actually achieved, with its right to retain the remaining part or any amount of it that is agreed upon so that this part will be allocated to repay the capital of finance provided by the bank."

• *Mushâ'* (Shared/Common) مشاع

Linguistically, the term "*Mushâ'*" is the common thing that is not divided or what contains common shares.

In Fiqh terminology, the "common property" is the property related to a relative, unspecified part of the whole thing, no matter how big or small that part is, such as a person owning half a house, or a quarter of an orchard, or a tenth of a car, and the like. This is what they call the "common share" in the common thing.

According to the rule of communism, every part of the common property is not specific to any

of the share owners, but rather the ownership of all of them is related to it. Accordingly, the Scholars of Fiqh defined the common share as “the share that extends to every part of the common property.” They described it as a part scattered throughout the whole.

It is clear that when the common property is divided among the partners, the common ownership is removed, and the ownership of each one in his share becomes a distinct ownership.

• **Mushâharah (Monthly)** مشاهرة

Linguistically, the term “*Mushâharah*” means monthly or every month.

This word is mentioned by Scholars of Fiqh in the context of mentioning the time of payment of installments of the deferred price or rent in the rental of assets or works and the like. So, it is said: The contract was concluded to pay the price or rent estimated at so-and-so on ten monthly installments.

In his “*Al-Mu’allim*”, Al-Mâzarî states: “They agreed on the permissibility of renting a house on a monthly basis, with the permissibility of the month being thirty or twenty-nine days.”

• **Mushidd Ad-Dawâwîn (Diwan Officer)** مشد الدواوين

At-Tâj As-Subkî said: It is a job

name for the person who collect what is decided in the Diwân from those who are difficult to be collected.

• **Mashadd Al-Muskah (Right to Cultivate Land)** مشد المسكة

This is a Fiqh term that was used by the later Hanafites in the Ottoman era, and is not known to others. It means the right to plow in someone else’s land. Terminologically, it is the right to plow, that is, someone’s right to cultivate someone else’s land.”

• **Mashghûl (Occupied)** مشغول

Linguistically, the term “*Mashghûl*” means occupied.

The use of the word by Scholars of Fiqh does not deviate from its linguistic meaning. Scholars of Fiqh use this word when talking about the delivery of the contracted upon object in financial replacements, as it was mentioned by Hanafites and Shafi’ites: It is a condition for the validity of the possession that the sold item is not occupied by the seller’s right. If the sold item is a house occupied by the seller’s goods, the possession is not completed until it is delivered unoccupied.

It is stated in (Article 440) of “*Murshid Al-Hayrân*”: “It is a condition for delivery that the sold item be separated and not occupied by the seller’s right. If the sold item is a house occupied by the seller’s goods or land occupied by his crops,

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then delivery is not valid unless he empties the house of its goods and the land of its crops.”

• **Mashaqah (Hardship)** مشقة

Linguistically, the term “*Mashaqqah*” means hardship, severity, difficulty and distress.

This word has been used In Fiqh terminology with the same meaning, but the Scholars of Fiqh differentiated between two types of hardships in obligations:

First: usual, familiar hardship, which is associated with all Shair obligations. Because if the work required by Shari’ah was free of obligation, which is a type of hardship, it would not be called an obligation.

Second: Extreme hardship, which confuses the people in their behavior due to their inability to bear it, and if it is associated with work, it leads to the accountable person to stop doing it or some of it due to the conflict of rights or boredom and weariness, or it leads to a defect in the accountable person to do it, or his property, or any of his conditions. This type of hardship is made by the Shari’ah a reason for permission and leniency in accordance with the conditions of accountable persons.

• **Musâdarah (Confiscation)** مصادرة

Linguistically, the term “*Musâdarah*” means confiscation.

As for confiscation in the use of Scholars of Fiqh, it means “The ruler’s order to transfer the ownership of certain things from the person to the treasury.” The author of “*Majma’ Al-Anhur*” defined it as: “The sultan or someone else taking property unjustly.” Ibn ‘Âbidîn differentiated between confiscation and usurpation by saying that “confiscation is to order him to bring the property, and usurpation is taking the property directly by force.”

• **Musâna’ah (Bribery)** مصادنة

Linguistically, the term “*Musânâ’ah*” implies bribery.

In Fiqh usage, An-Nasafi said: “*Musânâ’ah*” is to give something to a person without asking for it to stop him from doing something bad to you. It is the bribery given to oppressive tyrant.

• **Musaddiq (Zakâh Collector)**

مصدق

In Fiqh terminology, the term “*Musaddiq*” refers to “the person who collects *Zakâh* from people required to pay *Zakâh*.”

The term “*Musaddiq*”, however, is the owner of the property for which *Zakâh* is paid.

• **Masrif (Expenditure Channel/Bank)** مصرف

In Fiqh terminology, the term “*Masrif*” refers to the place or the

channel where wealth is spent. For example, the *Zakâh* channels is the ways in which *Zakâh* is paid out.

In contemporary usage, the term “*Masrif*” means bank, which is the exchange of one currency for another, or in the Fiqh expression: “selling cash for cash”, considering that it is the place where this transaction takes place.

• *Maslahah* (Interest/Suitability)

مصلحة

Linguistically, the term “*Maslahah*” means interest, good thing, or suitability.

At-Tûfi said: “The word “*Maslahah*” is derived from the word “*Salah*”, which means suitability, such as a pen that is in its suitable form for writing with, or a sword that is in its suitable form for striking with.

As for its definition according to custom, it is the cause that leads to suitability and benefit, like trade that leads to profit. According to the Shari’ah, it is the cause that leads to the purpose of the Lawgiver, whether as an act of worship or a habit.

Al-Ghazâlî said in “*Shifâ’ Al-Gh-alîl*”: “*Maslahah*” implies achieving benefit or repelling harm.”

The word “*Maslahah*” is used by Scholars of Fiqh to mean pleasure and its causes, joy and its causes, as opposed to corruption, which means pain and its causes, grief and

its causes. They said: Both are psychological, physical, worldly, and otherworldly.

The author of “*Al-Mustasfâ*” said: “By “*Maslahah*” we mean preserving the purpose of the Shari’ah for creation, which is to preserve their religion, soul, mind, offspring, and wealth. Everything that includes preserving these assets is an interest (*Maslahah*), and everything that destroys them is corruption, which is repelled by an interest.”

Judge Ibnul-‘Arabî said: “Interest is every meaning that the law of the Shari’ah has established, and through which the public benefit is achieved for people.”

• *Al-Maslahah Al-Khâssah* (Private Interest)

المصلحة الخاصة

The Scholars of Fiqh divided the interest based on its general and specific benefit into two types: private and general interests.

They defined private interest as everything that has partial benefit that accrues to a specific individual or a few individuals from the nation.

Sheikh Ibn ‘Âshûr called it: the partial interest.

• *Al-Maslahah Al-‘Âmmah* (Public Interest)

المصلحة العامة

It is everything that has a general benefit for the entire nation or a large group of it.

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Sheikh Ibn ‘Āshûr called it the overall interest.

The opposite of public interest, according to Scholars of Fiqh, is private interest.

Al-Ghazâlî pointed out this division in “*Shifâ’ Al-Ghalîl*” where he said: “And the interest is divided into another types in addition to its levels in clarity and obscurity, some of them relate to a general interest for the entire nation, some of them relate to the interest of the majority, and some of them relate to the interest of a specific person in a rare incident.

Al-‘Izz Ibn ‘Abdus-Salâm mentioned in his “*Al-Qawâ’id Al-Kubrâ*” that the Shari’ah’s concern for public interests is more than its concern for private interests. Accordingly, it was stated in “*Al-Qawâ’id Al-Fiqhiyyah*” that “public interests take precedence over private interests”; that is, when they conflict, and that “the public interest is like a private necessity.”

• **Mudârabah (Speculation) مضاربة**

In Fiqh terminology, the term “*Mudârabah*” (Speculation) refers to a transaction where one person pays a specific, known amount of money to someone who trades in it with a known, shared portion of the profit. The people of Iraq call this contract *Mudârabah*, and the people of Hijaz call it *Qirâd*.

This contract was called “*Mudârabah*” because the workman usually do works to achieve profit. It is also said: because each one of them has a share in the profit.

“*Majallat Al-Ahkâm Al-‘Adliyyah*”, in Article (1404) defined *Mudârabah* as: “A partnership of capital and labor is a type of partnership where one party supplies the capital and the other the labor. The person who owns the capital is called the owner of the capital and the person who performs the work is called the workman.”

Al-Jurjânî explained its nature and Fiqh-based classification by saying: “It is a deposit first, an agency upon performing the work, a partnership if he (workman) achieves profits, usurpation if he violates, merchandise if it is stipulated that all the profit is for the owner (of the capital), and a loan if it is stipulated that all the profit is for the workman.” *Mudârabah*, according to Scholars of Fiqh, is of two types: absolute and restricted *Mudârabah*. Absolute speculation is that which is not restricted by time, place, type of trade, or by specifying a seller or buyer. If it is restricted by one of these, then it is restricted *Mudârabah*.

• **Madâmin (Stud’s Semen/Embryon) مضامين**

Linguistically, the term “*Madâmin*” means studs’ semen, The author

of “*Al-Muḥkam*” said: “*Madāmīn* is everything in the wombs of pregnant females”

The author of “*Matāli‘ Al-Anwār*” narrated on the authority of Imam Mālik that he said: “*Madāmīn* is the fetuses in the wombs.”

It is narrated on the authority of Ibn Ḥabīb by his companions that he said: “*Madāmīn* is the studs’ semen.” He said: “It is said: It is what is in the fetuses in wombs, like *Habal Al-Ḥabalah* (sale of an unborn fetus or its anticipated offspring).”

In any case, whether the first or second meaning is intended, the sale of *Madāmīn* in the Fiqh view is considered a sale of unknown description and not possible to be delivered, and the Prophet (peace and blessings of Allah be upon him), forbade it.

• *Al-Maḍmūn Bi-Ghayriḥ* (Items Guaranteed By Something Else)

المضمون بغيره

The Hanafites divided guaranteed items into two categories, namely items guaranteed by themselves, and items guaranteed by something else. This is similar to the Shafi‘i division of guarantee into an item guaranteed by hand and items guaranteed by contract. That is, what is guaranteed by itself is an item guaranteed by hand, and what is guaranteed by something else is an item guaranteed by contract.

The Hanafites gave an example of the items guaranteed by something else as the sold object in the seller’s possession, which if it is damaged before being delivered to the buyer, then it is guaranteed by him for the price, so the contract is annulled and the price is dropped from by the buyer. They said: The same applies to the mortgaged object if it is damaged in the mortgagee’s possession, then it is guaranteed for the lesser of its value and the debt. If the value of the mortgaged property is equal to the amount of the debt, the debt is dropped in its entirety from the mortgagor and the mortgagee is deemed to have recovered his right. However, if the value of the mortgaged property is more than the debt, the debt is dropped from the mortgagor. However, the mortgagee is not obligated to pay the excess and he is not liable for it to the mortgagor if the mortgaged property is destroyed without transgression or negligence on his part. If it is less than the debt, the debt is dropped in proportion to the value of the mortgaged property, the mortgagee can claim what remains of the debt from the mortgagor.

• *Al-Maḍmūn Bi-Nafsiḥ* (Items Guaranteed By Themselves)

المضمون بنفسه

The Hanafites divided guaranteed items into two categories, namely, items guaranteed by themselves, and

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items guaranteed by something else.

They said: As for item guaranteed by itself, it is what must be replaced by similar item if it perishes and is fungible, or what its value is to be paid if it is estimated item, such as what is usurped, what is received at the purchase transaction, and the like.

This division according to the Hanafites is similar to the division of the Shafi'ites, which a division into: items guaranteed by contract and items guaranteed by hand. As-Suyûtî said in *"Al-Ashbâh Wan-N-azâ'ir"*: "The difference between item guaranteed by contract and items guaranteed by hand is that item guaranteed by contract is to be replaced or compensated for based on what the two contracting parties agreed upon, while item guaranteed by hand is to be compensated for by similar item or its value."

Therefore, items guaranteed by themselves according to the Hanafites have the same concept as items guaranteed by hand according to the Shafi'ites.

• **Matl (Procrastination)** مطل

Linguistically, the term "*Matl*" means procrastination with regard to fulfilling the right.

The use of the word by the Scholars of Fiqh does not go beyond its linguistic meaning. Al-Hâfiz Ibn

Hajar said: "procrastination includes any delay to fulfil an obligation, such as the husband's obligation to his wife, master's obligation to his slave, ruler's obligation to his subjects, and vice versa."

The Scholars of Fiqh do not consider delaying the payment of a debt as a form of procrastination if the debt is deferred and has not yet become due, because when the debtor agrees to delay it, he has dropped his right to accelerate payment, and he no longer has the right to recover it before the due date. Therefore, the one who refuses to pay in this case is not considered to procrastinate, but rather to be holding on to a legal right.

Then, the debtor's procrastination in paying a due debt in Shari'ah is of two types, permissible and impermissible procrastination.

As for permissible procrastination, it is procrastination exercised by insolvent debtor who cannot pay his debt, so he is given time until he becomes solvent, and he is left to seek provision for himself, his children and to pay for the creditors.

As for impermissible procrastination, it is procrastination of the part of someone who is solvent and able to pay the debt without an excuse, and it is one of the major sins, and one of the injustices that necessitates punishment that leads to payment.

• **Al-Mazâlim Al-Mushtarakah (Shared Grievances)** المظالم المشتركة

Linguistically, the term “*Mazâlim*” means grievance, which is a name for what is taken unjustly.

As for the term “*Al-Mazâlim Al-Mushtarakah*” (shared grievances), it means, according to Scholars of Fiqh, charges, taxes and royal duties that are imposed unjustly on people, such as those who share a village or city or a craft, or other than that who are united by a common description, according to the number of their heads, or according to the amount of their property, or according to the number of their animals or trees, or that which is imposed on those who trade for food, clothing, animals, fruits and other things, so it is sometimes imposed on the sellers and other times on the buyers, and so on.

The term “grievances” was used by the Hanbalites, and Ibn Taymiyyah wrote a separate treatise on it, which he called “Shared Grievances.” As for the Hanafites, they call them “fines,” and Ibn Abidin, one of their scholars, defined them as: “What the oppressors take from the people of a village, neighborhood, or profession, arranged at specific times, or not arranged, with or without a reason.”

The ruling on these grievances in general is that those who are forced

to pay those funds according to themselves, their property, their sales, or other things must adhere to justice in what is requested of them. Some of them do not have the right to wrong others in what is taken from them. So even though the original request is a form of injustice, justice is to be observed required in distributing that injustice among them, so that one of the parties or persons is not wronged twice, so that the injustice against him becomes repeated. The basis of that is that just as they must adhere to justice in what is taken from them rightfully, they must adhere to justice in what is taken from them unjustly.

• **Mu’aradah (Sale of Goods for Goods)** المعاوضة

Linguistically and terminologically, the term “*Mu’aradah*” refers to selling goods for goods; i.e. exchanging property for property, both of which are not cash.

• **Mu’âtâh (Mutual Handing over/Exchange)** معاطاء

Linguistically, the term “*Mu’âtâh*” means handing over. However, Scholars of Fiqh used this word in a specific form of handing over, saying: *Mu’âtâh* (handing over) in a sale is when the buyer takes the sold item and pays the price to the seller, or the seller gives the sold item to the person wishing to buy, and the

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other party pays him the price, and this is by mutual consent, without speaking or indicating.

Handing over may be in a sale and in other forms of financial exchanges.

• **Mu'awadah (Exchange)** معاوضة

Linguistically, the term "Mu'awadah" means exchange.

According to the majority of Scholars of Fiqh, it refers to the exchange between two replacements. According to them, it is divided into two types: pure and non-pure exchanges. As for the pure exchange, it is the one in which property is intended from both sides, and as for the non-pure exchange, it is any form of exchange that is not like that.

The Malikites have defined it as a type of financial replacements, which is "barter sale". It is stated in "*Sharh Mayyârah*": "Exchange is the sale of an item for an item, so it is one of the types of sale, except that since the two items are equal in that they are usually two priced items not two prices, the sale of one for the other is called in the terminology of the Scholars of Fiqh by a special name, which is exchange, and the public calls it transaction." There is no dispute in the terminology.

As for "exchange contracts," **In Fiqh terminology**, they are a type

of ownership, based on the establishment of reciprocal rights and obligations between the two contracting parties, unlike donations, which are based on kindness, assistance, and a grant from one party to another without compensation.

• **Mu'awadat Al-Irfâq (Lenient Exchange)** معاوضة الإرفاق

This is a term used by the Shafi'ites and not by other Scholars of Fiqh, and by which they mean: financial exchange that is intended to provide assistance, lenience and help, and it requires complete similarity between the two replacements in type, amount and characteristics, unlike pure exchange that is based on bargaining and is intended to make a profit. Examples of this include loans and transfers.

Given the meaning of license and assistance in these two contracts, they were ruled permissible in Shari'ah, as an exception to the rule of usury in sales, which requires the two replacements to be paid immediately (in the exchange of cash for cash) due to need. This was mentioned by Sheikh Zakariyyâ Al-Ansârî, Al-Khatîb Ash-Shirbînî, and other scholars of the Shafi'ites.

This term sometimes appears in Shafi'i books with the expression "*Mu'awadat Al-Irtifâq*", with the same meaning.

• **Mu'awamah (On a Yearly Basis)** معاومة

Linguistically, the term “*Mu'awamah*” means on a yearly basis.

In Fiqh terminology, Scholars of Fiqh use the term “*Mu'awamah* sale” to refer to selling many years ahead, that is, the sale of what his tree, palm tree, or orchard produces for more than one year before it appears.

Muslim, At-Tirmidhî, and Abû Dâwûd narrated: “The Prophet (peace and blessings of Allah be upon him), forbade *Mu'awamah*.”

Judge ‘Iyâd said: “*Mu'awamah* sale is the sale of the fruit of the tree for years, and it is a form of selling fruits before they ripen. Some of them said: It is the rental of land for years.”

• **Mu'ayarah (Calibration)** معايرة

Linguistically, the term “*Mu'ayarah*” means calibration.

Standard measurement is the measurement by which something else is measured.

• **Mu'tar (Beggar)** معتر

Linguistically, the term “*Mu'tar*” means beggar, poor, or needy. Allah, the Almighty, says, {“...*And feed the needy* [who does not seek aid] *and the beggar...*”}.

In Fiqh terminology, *Mu'tar* has two meanings:

First: The weak person who does not ask with his mouth, but rather approaches you personally and shows himself to you without asking you.

Second: The poor one who goes to doors and approaches people asking with his mouth and person.

• **Ma'gûz At-Taslîm (Undeliverable)** معجوز التسليم

Ma'gûz At-Taslîm (undeliverable item) in the chapters of transactions according to the Scholars of Fiqh is what is not possible to be delivered. Anything that can be described as such may not be sold according to the majority of Scholars of Fiqh, such as a runaway slave or a stray camel whose location is not known and the like because it is a form of *Gharar* (uncertainty) sales.

Also, if an item intended for sale becomes underivable due to a natural disaster or the like, -after it was deliverable, before the buyer takes possession thereof, then it necessitates the annulment of the contract because it is impossible to implement it, and there is no benefit from keeping it concluded.

• **Ma'dîn (Mineral/Place of Permanent Residence)** معدن

Linguistically, the word “*Ma'dîn*” refers to the place where its people reside and do not move from it in winter or summer. It is also used to

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refer to minerals, such as gold and silver.

In Fiqh terminology, Scholars of Fiqh use the word “minerals” with two meanings:

First: the spots or places where metals, such as gold, silver, copper, and others metals occur.

Second: what extracted out of the gems of the earth through work and refining, such as gold, silver, iron, and others.

Scholars of Fiqh also divide minerals into two categories:

Apparent minerals: These are minerals that do not require a search to obtain, as they are distinct from the earth, and can be reached without effort.

Hidden minerals: These are minerals that require a search to obtain, as they are not distinct from the earth and can only be reached through work and effort.

• **Ma'dûm (Non-Existent)** معدوم

Linguistically, the term “Ma'd-ûm” means non-existent.

The majority of Scholars of Fiqh from the Hanafites, Shafi'ites, Malikites and Hanbalites have stated that the sale of something that does not exist and will exist in the future is invalid, except for a *Salam* sale with its special conditions. Ibn Taymiyyah and Ibnul-Qayyim disagreed with

them on this opinion, saying that it is permissible to sell non-existent item that does not include *Gharar* (uncertainty) or gambling, while they prohibit such sale if it includes *Gharar* and gambling.

Ibnul-Qayyim said: The non-existent is divided into three categories:

- Non-existent item described in the liability: This is permissible to sell by consensus.
- Non-existent item that is subordinate to an existent item even if it is more than it, and it is of two types: A type agreed upon, which is the sale of fruits after the ripening of one of them even if the rest of the fruits are non-existent at the time of the contract. A type that is disputed, such as the sale of *Maqâthî* (Cucumis) and *Mabâtikh* (vegetables and other plants that can be cooked) if they are ripe.
- Non-existent item which is not known whether it will exist or not, and its seller is not sure that it will exist, and the buyer is at risk if he buys it, this is what the Lawgiver has prohibited its sale, not because it does not exist, but because it is a form of *Gharar*, such sales of *Habal Al-Habalah*, *Mulâmash*, *Munâbadhah*, *Malâ-qîh*, and *Madâmîn*.

• **Mu'rid (Borrower)**

معرض

Linguistically, the term “Mu'rid”

means the person who get in people's way and borrows from whom-ever he can.

Also, it refers to a person who incurs debts which he is not careful to repay

• **M'alûm (Known)**

معلوم

Linguistically, the term "M'al-ûm" means known.

The Scholars of Fiqh have stated that for financial exchange contracts to be valid, the subject of the contract must be known, because its pillar, which is the consent indicated by Allah's saying: {"**but only [in lawful] business by mutual consent**"} [An-Nisâ' (The Women): 29], cannot be achieved unless each of the contracting parties is aware of the outcome of the contract, that is, of his right and what he has obligated upon himself in it, when it is established.

Therefore, if the condition of "knowledge" is not met due to the contracting party not knowing, upon establishing the contract, the amount he will take or what he will pay or its description according to it, then the pillar of consent is defective and flawed, and this results in the prohibition of the contract and its invalidity according to Shari'ah.

On the other hand, the defect of this condition may prevent delivery and receipt, which is the intention of the contracting parties, and leads

to their dispute over them, and the contract becomes useless.

Knowledgably is achieved by any method by which knowledge of the thing contracted upon is obtained, knowledge that negates gross ignorance and ends dispute and conflict. It differs according to the difference of things, although its basis is the perception of the thing with its distinguishing characteristics from others, such as an examination, or a description that clarifies the genus, type, quantity, and the like.

For example: Article (201) in "Majallat Al- Ahkâm Al-'Adliyyah" states: "The fact that the thing sold is known is ascertained by referring to its state and description which distinguish it from other things. Example: A specific quantity of red corn, or a piece of land bounded by specific boundaries. If these are sold, the nature thereof is known and the sale is valid."

What is considered in the knowledge is the perception that is concurrent with the contract or precedes it by a short period of time during which the thing does not change.

The opposite of knowledge is ignorance. Al-Qarâfi stated that if the lack of knowledge is due to the occurrence of the thing or its non-occurrence, then it is *Gharar*, and if it is due to the characteristic of the thing only, then it is unknown.

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• **Mughârasah (Agricultural Partnership)** مغارسة

Linguistically, the term “*Mughârasah*” (Agricultural Partnership) is derived from the word planting or sprouting.

In Fiqh terminology, The Hanafites said: It is when a person gives his uncultivated land to another for a known period to plant trees in it, on the condition that what is obtained from the planting and fruits is divided between them in half, or otherwise.

The Hanbalites said: “*Mughârasah*” and “*Munâsabah*” both refer to giving known tree with edible fruit that is not planted with land to someone who plants them in the land, and works on it until it bears fruit, in return for a known shared portion of the same tree or its fruit or both.”

Ibn Yunus from the Malikites said: “*Mughârasah* is when a person gives his land to another person to plant a type or types of trees that he names, and when it reaches a limit that he named in its height, the land and the tree are shared between them according to a known portion.”

Judge Abul-Walîd Ibn Rushd mentioned in “*Al-Muqaddimât*” that *Mughârasah* is of three types:

First: That it is on the basis of

leasing; such as saying to him: Plant for me this land with grapes or figs or the like, and you will have such and such.

Second: That it is on the basis of a reward; Such as saying to him: Plant figs or grapes or something similar on this land, and you will get such and such for every fruit that grows.

Third: to agree with him on planting the land for a part of it, based on what the Sunnah has permitted in *Musâqâh* (sharecropping). This is not a separate lease, nor a separate reward, but rather it similar to a lease and a reward. It is similar to a lease in that it is binding by contract, and it is similar to a reward in that the planter is not entitled to anything except after the plant sprouts and reaches the stipulated limit. If the planting is damaged before that, he is not entitled to anything, and he has no right to do it again.

• **Mufâsalah (Separation/Dissolution)** مفاصلة

Linguistically, the term “*Mufâsalah*” is derived from the word “separation” or “dissolution”

In Fiqh terminology, it was mentioned by some of the Malikites to mean “resolving what is between the two partners upon the dissolution of the partnership”, as mentioned by Muḥammad Al-Fâḍil Ibn ‘Āshûr.

• **Muqâssah (Setting-Off/Offsetting)** مقاصة

Linguistically, the term “*Maqâssah*” means setting-off or offsetting.

In Fiqh terminology, it refers to “dropping a debt owed to a person from another person in exchange for a debt owed by that person to the second person.”

Maqâssah is divided in Fiqh into two parts: compulsory (automatic) and optional (conventional).

• ***Al-Muqâssah Al-Ikhtiyâriyyah* (Optional Offsetting)**

المقاصة الاختيارية

It is made with the consent of both parties without any Shari‘ah prohibition resulting from it, such as if the two debts are of two different types or different description, or one of them is due and the other is deferred, or one of them is good (expected to be paid) and the other is bad, then they do not fall by means of offsetting except with the consent of the two parties, whether their cause is the same or different.

The conditions for the validity of optional offsetting in reciprocal debts are:

First: The consent of both parties. There is no disagreement among the Scholars of Fiqh regarding this condition.

Second: Establishment of the two debts. If they or one of them is

a *Salam* debt, offsetting cannot be made; because it is a disposition of *Salam* debt before it is recovered. The condition is set by the Hanbalites.

Third: The due date of the two debts must be the same if they are two different currencies, so that it does not lead to a delayed exchange. This condition is set by the Malikites.

Fourth: The two debts should not be from a sale if they are food, because it is from the sale of food before receiving it. This condition is set by the Malikites.

Fifth: No right of third party is attached to one of the two debts. This condition is set by the Hanbalites.

• ***Al-Muqâssah Al-Jabriyyah* (Compulsory Offsetting)** المقاصة الجبرية

It occurs between two reciprocal debts in two liabilities, identical in every respect, automatically without waiting for the consent of both parties or the request of one of them, due to the lack of benefit from their remaining.

Its form is as follows: The creditor’s liability to the debtor is occupied with what he owes him in type, quality and maturity, so the two debts are dropped together if they are equal in amount, and if they differ in amount, the greater is dropped by the amount of the lesser

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and the excess remains, so the set-off is in the common amount, and one of them remains indebted to the other for the excess. This is the opinion adopted by the majority of Scholars of Fiqh.

The Malikites said: Set-off does not occur unless one of the two parties requests it. Some Scholars of Fiqh went to the view that it is not completed except by mutual consent.

The conditions for the compulsory set-off in debts are:

First: The two debts must be equal in type, description, and time of payment. There is no disagreement among Scholars of Fiqh regarding this requirement.

Second: The two debts must be due and payable. If the two debts are deferred to one term, then compulsory set-off between them does not occur. This is a requirement of the Hanafites.

Third: The establishment of the two debts. If both or one of them is a Salam debt, then there is no set-off. This is a requirement of the Shafi'ites and the Hanbalites.

Fourth: They must be cash. If the two debts are other fungibles such as food, grains, etc., then set-off does not occur. This is a requirement of the Shafi'ites.

Fifth: No right of third party

should be attached to one of the two debts. If the mortgagor sold the mortgaged property to pay off the mortgagee's debt to someone who has a right over him, equal to the price he sold it for, then there is no set-off, because the mortgagee's right is attached to it. This is a requirement by the Hanbalites.

• *Muqâsarrah* (Sale of Livestock Share) مقاصرة

This is a Hanafites Fiqh term, and its meaning according to them is: "The sale of one of the two partners in the livestock his share to the other partner."

It is stated in "Rad Al-Muhtar" by Ibn Abidin: "And likewise, they have come to use the word "*Muqâsarrah*" in the sale of one of the two partners in the livestock his share to the other partner...."

• *Muqâta'ah* (Quitrent) مقاطعة

This is a Fiqh term that was used in the chapter on endowments by the later Hanafites in the Ottoman era, and is not known to others. They mean by it: "The annual rent paid to the endowment by the person disposing of the property whose land was endowed and whose buildings, vineyards, and trees were owned." (Article 143 of *Tartīb As-Sunûf*).

This lease is also called land lease, and the land is called "*Hikr*" when it is linked to the quitrent.

If someone rents land from the trustee for an annual rent of its equivalent, on the condition that he owns everything he builds on it, or any vineyards and trees he plants in it, this rent is called “*Hikr*” (quit-rent), and the equivalent rent that the trustee receives from him annually is called “quitrent allowance” or “land rent”.

• **Muqâydah (Exchange)** مقايضة

Linguistically, the term “*Muqâydah*” means exchange.

In Fiqh terminology, it means exchanging one item for another, that is: exchanging property for property, both of which are not cash. Some have defined it as: selling an item for an item, or selling a commodity for a commodity.

The term “*Muqâydah*” is commonly used by most Scholars of Fiqh except the Malikites. The Malikites have agreed to call it “*Mu’âwadah*” (exchange).”

• **Muqtadâ Al-‘Aqd (Implication of the Contract)** مقتضى العقد

In Fiqh terminology, the term “*Muqtadâ Al-‘Aqd*” (implication of the contract) is defined as “everything that the Shari‘ah has arranged for the contract in terms of provisions and obligations that aim to achieve its purpose and the purpose for which it was legislated.” It is also called “the obligation of the contract.”

For example, the implication of a sale contract is transferring ownership of the sold item to the buyer and ownership of the price to the seller, the seller’s obligation to deliver the sold item to the buyer, and the buyer’s obligation to pay its price to the seller.

This is explained by what is stated in (Article 307) of “*Murshid Al-Hay-rân*”: “If the contract of exchange from both sides regarding financial assets is concluded and meets the conditions of validity, it requires proof of ownership for each of the contracting parties in exchange for his ownership, and the obligation of each of them to deliver his ownership contracted upon to the other.”

Also, what is stated in (Article 308) thereof: “If the contract of exchange from both sides is concluded on the benefits of financial assets and meets the conditions of validity and enforceability, it requires the disposer of the asset to commit to delivering it to the beneficiary, and the beneficiary to commit to delivering what is due in exchange for the benefit to the owner of the asset.”

• **Muqaddarât (Estimated Items)** مقدرات

Linguistically, the term “*Muqaddarât*” is the plural of “*Muqaddar*”, which means an estimated item.

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According to Scholars of Fiqh, “*Muqaddarât*” is the things whose quantities are estimated by measure, weight, length or count, and they are the customary standard units that people dealt with in the past.

Weight means testing something against its equivalent to know its weight. Measurement means testing something against its equivalent to know its volume. Length means testing something against its equivalent to know its length in cubit. Counting means knowing the quantity of something according to the number of its similar units.

• **Mukâbalah (Prevention/Withholding)** مكابلة

Linguistically, the term “*Mukâbalah*” means prevention, retention, or withholding.

Also, “*Mukâbalah*” means delaying the payment of debt. **In Fiqh terminology**, it is also used to mean a process where a house next to someone’s house is offered for sale and he waits until someone else buys it, then he takes it by pre-emption.

• **Mukâtabah (Contract of Manumission)** مكاتبه

Linguistically, the term “*Mukâtabah*” is derived from the word “*Kitâbah*”, which means “writing”

In Fiqh terminology, it refers to the contract of manumission, whereby the master agrees with his

slave on a consideration that the slave gives him in instalments during a known period of time, and he is then emancipated.

Based on the above, the Scholars of Fiqh defined “*Mukâtabah*” as: “giving the slave the freedom to work for himself immediately and emancipating him upon paying the consideration so that the master has no right to obtain what the slave gains.”

An-Nawawî said: “The contract of manumission is outside the scope of regular contracts, because it is between the master and the slave and because the two replacements are provided by the master. This is because the “*Mukâtib*” (the slave), in this case, cannot be considered as completely free or completely slave. That is, he is not independent like the free man nor is he restricted like the slave. This transaction, however, is required by need, and so it is permitted. The master does not allow emancipation for free, so the Shari’ah makes permissible in it what cannot be made permissible in other forms of transaction, out of a desire for emancipation.”

• **Mukâramah (Generosity)** مكارمة

Linguistically, the term “*Mukâramah*” means to give someone a gift so that he gives you something in return as a reward.

It is stated in “*An-Nihâyah*” by Ibnul-Athîr: “*Mukâramah*: is to give

something to someone so that he can reward you for it...”

• **Al-Mukârî Al-Muflis (Bankrupt Renter)** المكاري المفلس

The Scholars of Fiqh defined him as the person who rents an animal and takes the rent, and when the time comes to travel, it becomes clear that he has no animal to rent, and no property to buy it with.

Az-Zayla‘î said: “He is the one who accepts the rent to rent camels, and he does not have camels to rent, nor does he have property with which to buy animals, and the people depend on him, and pay him the rent, and he spends what he took from them on his needs, and when the time comes to travel he disappears, and the people’s property is lost and their needs are not met.”

• **Mukâfa‘ah (Reward/Pay off/ Re-compensation)** مكافأة

Linguistically, the word “*Mukâfa‘ah*” means recompensation or pay off. Also, it may mean reward.

Al-Fayyûmî said: “everything that is equal to something until it becomes like it, is a recompensation for it, recompensation between people has the same meaning.”

Al-Raghib defined “*Mukâfa‘ah*” as “Equality and reciprocity in action.”

In Fiqh terminology, Al-Mujad-

didî from the Hanafites defined it by saying: “It is the reciprocation of kindness with the like of it or with more.” It is stated in “*Dustûr Al-‘Ul-amâ*”: “*Mukâfa‘ah* is to meet a good deed with something similar or more. It is more correct to generalize it by saying it is to meet an action, whether good or bad, with its recompensation.”

Abû Hilâl Al-‘Askarî mentioned the differences between recompensation and gratitude, saying: “Gratitude for a blessing is called gratitude for it even if it does not match it in value, like the gratitude of a servant for the blessings of Allah upon him. Recompensation for something is not a recompensation for it unless it is similar to it... recompensation is also made for benefit and harm, while gratitude is only for benefit or what leads to benefit, and gratitude is only by words, while recompensation may be made by words and actions and what used in their place.”

• **Maks (Tax)** جباية

Linguistically, the term “*Maks*” means tax or duty, which was collected from sellers of goods in the markets in the pre-Islamic era. It also means injustice or decrease.

Al-Khuârizmî defined it by saying: “It is a tax taken from merchants in markets.” Abû Hilâl Al-‘Askarî said: “It refers to the tax that is taken in the markets”; that is, on buying and selling.

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In Fiqh terminology, the term “*Maks*” has been used to refer to illegal taxes, and hence Al-Haythamî considered in “*Az-Zawâjir*” the collection of taxes as a major sin, because the tax collector takes this tax unjustly, and it is spent unjustly, so it is paid to the undeserving. This is how the Scholars of Fiqh interpreted the saying of the Prophet (peace and blessings of Allah be upon him): “One who wrongfully takes an extra tax will not enter Paradise,” narrated by Al-Hâkim.

In the Abbasid state, “*Maks*” was a tax collected on goods transported from one region to another by land or river within Iraq, or on goods brought from outside the country.

As for the term “*Maks* in sale,” it means as used by Scholars of Fiqh: a reduction in price made by the buyer.

• **Malâ'ah (Solvency/Capability/Wealth)**

ملاءة

Linguistically, the word “*Malâ'ah*” means having wealth.

Imam Ahmad defined the “wealthy” man who encourages the creditor to be referred to him, based on what Al-Bukhârî and Muslim narrated from the Prophet (peace and blessings of Allah be upon him), who said: “If one of you is referred to a rich man (to help repay a debt), he should accept that referral.”

The Malikites use the term “ap-

parently solvent” to refer to the debtor who is most likely to be able to pay his debt, but he does not show any goods or property through which he may pay his debt. If this such goods or property are shown, they call him “known solvent.” Some of them express the known solvent who procrastinates by saying: “the one who is now willing to pay people’s property.”

• **Mulâzamah (Accompanying)**

ملازمة

Linguistically, the term “*Mulâzamah*” means accompanying. The Fiqh usage of the word does not deviate from its linguistic meaning.

This term is mentioned by Scholars of Fiqh in the context of their talk about the debtor who is unjustly delaying payment, and the Shairah supports to compel him to pay, where they included in them the creditor’s accompanying him, and they meant by that “that the creditor or his agent be with the debtor wherever he is, and that is at the time of his earning, without preventing him from working to meet his need and completing his work and interests,” and they mentioned that the purpose of this accompanying is two things:

First: to annoy the solvent debtor who is delaying payment so that he hastens to pay his debt, as accompanying him is a type of captivity.

Second: Keeping the creditor or his agent aware of the wealth and earnings that he receives, so that he will not be able to hide them and claim hardship in order to evade paying the debt and fulfilling rights.

• **Mulâmasah (Sale by Touching)**

ملامسة

Linguistically, the term “*Mulâ-masah*” means to touch something with your hand.

Al-Bukhârî and Muslim narrated on the authority of Abû Hurayrah (may Allah be pleased with him) that Allah's Messenger (peace and blessings of Allah be upon him) that he forbade sale by touching. Scholars of Fiqh have differed on the meaning of sale by touching in four opinions:

First: According to Imam Malik, which is when a man touches the garment and does not spread it out or see what is in it, or buys it at night and does not know what is in it. Al-Bâjî said: It is called sale by touching because examining and knowing the characteristics of the sold item is limited to touching, which does not allow the buyer to know what he needs to know about the characteristics of the sold item whose price differs or varies according to them. The meaning of this is that the sale is concluded on the condition that the buyer is satisfied with touching it, so the reason for

the prohibition is *Gharar* arising from ignorance of the characteristics of the sold item.

Second: Two men bargain over a commodity, and if the buyer touches it, the sale becomes binding, whether the owner is satisfied with that or not. Thus, touching is an indication of the binding nature of the sale, whether the buyer knows about the item sold or not. This is what the Hanafites said, and they justified its prohibition by saying that it is a type of gambling.

Third: The seller says to the buyer: If you touch the garment, I will sell it to you for such-and-such. They make the touching a substitute for the wording of the contract. This is what some Shafi'ites said.

Fourth: The seller sells the thing to the buyer on the condition that if the buyer touches it, the conditional option of the option (to cancel the sale) at the session is terminated. This is another view according to the Shafi'ites.

An-Nawawî justified its prohibition by saying that it is one of the sales of *Gharar*, and that it is included in the prohibition of the sale of *Gharar*, and the Prophet (peace and blessings of Allah be upon him) only mentioned it because it is one of the well-known sales of the pre-Islamic era.

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• **Malasâ (Smooth / Soft / Slippery)**

ملسى

Linguistically, the term “*Malasâ*” is derived from the word “*Am-las*”, which means smooth, soft, or slippery.

It is said in sale: “(An item sold as) *Al-Malasâ* has no guarantee”, means that once sold the sale becomes final. The seller says: I sell you (this item) as *Al-Malasâ*, no guarantee. Al-Azharî said: That is, a sale that is smooth and final, so you do not return to me, and you have no guarantee from me.

Some of them mentioned that the meaning of their saying: “*Al-Malasâ* has no guarantee” is that the one who sells as such has no responsibility. He got out of the matter safely, so he got away from it with no responsibility or encounter responsibility.

It was said: The meaning of “*Al-Malsâ*” is that a man sells a commodity that he has stolen, takes the price, then disappears, and if it is taken from the buyer’s hand, he will not be able to demand the seller to guarantee it.

• **Milk (Ownership)**

ملك

Linguistically, the term “*Milk*” means ownership, which is accumulating something and the ability to manipulate it.

In Fiqh terminology: it is a legal

connection between a person and something, which gives him the absolute right to dispose of it, and prevents others to dispose of it, and it is an ability that the Sharia initially establishes for disposal.

It has been said in its definition: it is “a Shari’ah ruling on an object or benefit, which requires the ability of the one to whom it is attributed to benefit from it and to obtain compensation for it”

• **Al-Milk At-Tâm (Complete Ownership)**

الملك التام

In Fiqh terminology, complete ownership is that which grants its owner the right to absolute disposal of the thing that he owns; it permits him to dispose of it by selling, gifting, and endowment, and to dispose of the usufruct by obtaining it himself or giving it to someone else to rent, and it also permits him to lend the item and to bequeath its usufruct.

Article (11) of “Murshid Al-Hay-rân” stipulates that complete ownership is such that the owner can dispose absolutely of what he owns in terms of its essence, usufruct, and exploitation. He benefits from the owned essence, its yield, fruits, and produce, and disposes of its essence in all permissible ways.

The opposite of complete ownership is incomplete ownership.

• ***Al-Milk Ghayr Al-Mustaqir* (Unstable Ownership)** الملك غير المستقر

Az-Zarkashî, in his “*Al-Qawâ'id*” divided ownership into two types: stable and unstable ownership. Then he defined the unstable ownership as: “what is likely to fall due to its damage or the damage of its consideration,” such as rent before the usufruct is received, because its ownership is exposed to falling due to the collapse of the house. Rather, whenever a period of time passes, its ownership becomes stable based on its equivalent rent. The same applies to the price before receiving the sold item, which is unstable. Therefore, if a person sells something whose price reaches the *Nisâb* (minimum amount determining a person's Zakatability) of *Zakâh* and receives the price, but the buyer does not receive the sold item until a year has passed, the seller is not obligated to pay *Zakâh* until the buyer receives it, according to the most correct opinion, like rent.

Then he followed that division and explanation with the following Fiqh rule: “Unstable ownership that is subject to loss is not treated as stable ownership,” and the Fiqh issues that branch off from it.

• ***Al-Milk Al-Mustaqir* (Stable Ownership)** الملك المستقر

Az-Zarkashî, in his “*Al-Qawâ'id*”, defined stable ownership as “that

which cannot be lost due to its damage or the damage of its consideration,” such as ownership of the price in a sale after the buyer has received the sold item, and the rent in a lease by fulfilling the usufruct, or by receiving the leased item and keeping it until the lease term expires even if it is not used, and the dowry after consummation. This is with regard to ownership of the price, rent, and dowry.

As for what is related to the sold item and the like such item sold by Salam and consideration of reconciliation, the ownership becomes stable by delivery, as As-Suyûtî stated in “*Al-Ashbâh Wan-Nazâ'ir*.”

• ***Al-Milk Al-Mutlaq* (Absolute Ownership)** الملك المطلق

Absolute ownership is that which is not restricted by any of the causes of ownership, such as inheritance, purchase from a specific person, gift, and the like.

As for ownership that is restricted by one of these causes, it is called “Ownership by cause” or “Restricted ownership”.

For example: If claimant says: “this property is mine and the defendant has unlawfully seized it, then I demand to take it from him”, then he has claimed absolute ownership.

But, if he claims, saying: This property is mine, I bought it from

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so-and-so, son of so-and-so, or so-and-so gave it to me as a gift, or gave it to me as charity and handed it over to me, or it was inherited from my father so-and-so, so I ask to take it from him, then he has claimed restricted ownership.

• **Al-Milk An-Nâqis (Incomplete Ownership)** الملك الناقص

In Fiqh terminology, incomplete ownership is that which its owner does not have the complete right to dispose thereof.

As in the case of owning the object without its usufruct; such as the ownership of the object by the heirs in the case of a temporary bequest of its usufruct to another, or owning the usufruct without the essence, such as the lessee's ownership of the usufruct in a lease contract, or the ownership of usufruct that arises from permission for others to benefit without its owner owning the compensation for it.

Also, in case the ownership is for the essence and the usufruct together but an obstacle prevents disposing of them; such as the property of the debtor who is under interdiction, where the owner of the debt is entitled to it from him, so it is an incomplete ownership.

• **Mumâkasah (Bargaining)** مأكسة

Linguistically, the word "Mumâkasah" means reduction.

The Scholars of Fiqh say "Mumâkasah" in sale means bargaining, with the aim to buy something at lower price.

• **Mamlûk (Owned)** مملوك

The term "Mumlûk" means owned item, or an item over which ownership has been established, so that the one to whom it is attributed by the ruling of Shari'ah is able to benefit from it and exchange it and prevent others from disposing of it.

• **Munâbadhah (Trading Items by Throwing)** منابذة

Linguistically, the term "Munâbadhah" is derived from the word "Nabdh", which means throwing.

The Scholars of Fiqh differed in the interpretation of "Munâbadhah sale" into four opinions:

First: When a man throws his garment to another man, and the other throws his garment to him, and that is their sale without examination or consent. This is the opinion of Imam Mâlik.

Second: When the two men bargain over a commodity, and if the seller throws it to the buyer, the sale becomes binding between them, and the buyer is bound by the sale, and he does not have any right but to accept it. This was said by the Hanafites.

Third: When the buyer says to

the seller: whichever garment you throw, I have bought it for such-and-such. This is the apparent meaning of Ahmad's opinions.

Fourth: When the seller says to the buyer: If I throw it to you or you throw it to me, I have sold it to you for such-and-such. This is the opinion of As-Shâfi'.

It is noted in the first and third scenarios that the sold item is unknown to the buyer, and in the second, the contract is suspended on a condition, which is throwing the garment to him, and in the fourth, the two parties to the transaction make the throwing itself a sale, using it instead of the regular sale formula.

• **Munâjazah (Immediate Transaction)** مناجزة

Linguistically, the term "*Munâjazah*" is derived from the word "*Najz*", which means hastening.

The term "*Munâjazah*" is one of the terms used by Maliki Scholars of Fiqh in the chapters of financial transactions, and they mean by it: receiving the two replacements at the time of the contract, or hand to hand. Ibn Râshid Al-Qafî said: «*Munâjazah* is an expression for the speed of exchange."

• **Munâdî (Auctioneer)** منادي

Linguistically, the term "*Munâdî*" means caller.

The term "*Munâdî*" was used by the Hanbalites of Fiqh to mean the broker or auctioneer who calls out about the commodity in order to increase its price, in return for a fee. Al-Ba'î said: "*Munâdî* is the broker who comes intermediate between the seller and the buyer to finalize the sale."

• **Munâsakhah (Transferring/Replacing)** مناسخة

Linguistically, the term "*Munâsakhah*" is derived from the word "*Naskh*", which means transfer and replacement. Ar-Râghib said: "*Munâsakhah*" in inheritance is when heirs die after heirs and the inheritance is still in existence and has not been divided."

The use of this word by Scholars of Fiqh does not go beyond its linguistic meaning, and accordingly, Ash-Sharîf Aj-Jurjânî defined it as: "The transfer of the share of some of the heirs upon his death before the division to those who inherit from him."

So, if a person dies leaving property and heirs, and before it is divided among them, some of them die and his share goes to someone else, so the inheritance is divided among the shares of the rest, and this is *Munâsakhah*.

• **Munâqasah (Tendering)** مناقصة

Munâqasah (tendering) or "buying

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by tender” is a modern legal term, which is not mentioned in the Scholars of Fiqh’ records. Its meaning and purpose are for the buyer to reach the lowest price for the commodity or usufruct that he wants to buy, by people reducing the price of the goods or usufructs offered for purchase, one by one, until it reaches the lowest price at which it is tendered, and it is bought at that price.

The Kuwaiti Encyclopedia of Islamic Jurisprudence defined purchasing by tender as “the buyer offering to purchase a commodity determined by certain descriptions, so the sellers compete to offer the sale at a lower price, and the sale is awarded to the one who accepts the lowest price.”

Today, tendering is subject to a specific system in purchasing a commodity, usufruct or service, where by bidders are invited to submit their bids (proposals) according to specific terms and specifications, in order to reach the cheapest bid, assuming that the bids are equal in terms and specifications.

• **Munâqalah (Exchange/Transfer)** مناقلة

Linguistically, the term “*Munâqalah*” is derived from the word “*Naql*”, which means transfer.

In Fiqh terminology, it is “the exchange of a property or a common share of it for a property or

a portion of another property.”

Hanbalites of Fiqh use “*Munâqalah*” in Waqf to mean exchanging the Waqf property for another property; that is, the Waqf is sold directly for free ownership, and is made a Waqf in place of the first, and the Waqf that was sold becomes free.

• **Munâhadah (Travel Supplies Sharing)** مناهلة

Linguistically, the term “*Munâhadah*” refers to the process when the people take out their expenses and mix them when traveling with others.

In Fiqh terminology, it is defined as when each one of the traveling companions gives a share of the supplies expenses, even if these shares are not equal, and they give them to whoever spends on them from it, and they all eat, and there is nothing wrong with one of them eating more than his companion.

• **Minhah (Grant)** منحة

Linguistically, the term “*Minhah*” means grant, which is what is given to someone so that he may consume what is generated from it, such as fruit, milk, and the like, on the condition that the essence is returned after a period of time. An example is when a person gave someone livestock to drink its milk or a tree to eat its fruit and then return it.

Judge 'Iyâd said: "*Minhah* among the Arabs has two aspects: One of them is the gift or gratuity itself and *Silah* (something given to one's relatives). The other is specific to dairy animals and agricultural land; he gives him a she-camel, sheep or cow to benefit from its milk, hair and wool for a period of time and then gives it on him, or he gives him his land to cultivate for himself and then gives it on him, and it is also called gratuity...."

The use of the word by Scholars of Fiqh does not deviate from its linguistic meaning.

• *Manfa'ah* (Usufruct/Benefit)

منفعة

Linguistically, the term "*Manfa'ah*" means usufruct, which is everything that is gained from something, whether it is accidental or material, such as milk and offspring in relation to animals, and fruit in relation to trees, and the like.

Most Scholars of Fiqh believe that usufruct is only applied to the incidental benefit that is gained from things by way of using them, such as living in houses, riding a car, wearing clothes, and the work of a worker, and it does not include material benefits, like milk in relation to animals, fruit in relation to trees, and wages in relation to rented goods, and the like, and they call it "yield."

As-Sarkhasî said in "*Al-Mabsûṭ*": "Usufruct is an accident that occurs in the asset, and the asset is an essence in which the accident occurs, and the difference between them is not hidden from anyone. Usufructs do not last for two periods of times, and the essence remains for several period of times, and between what remains and what does not remain there is a great difference."

Az-Zarkashî said: "What is understood from usufruct is that it prepares the object for the meaning intended by it, like a house prepared for habitation, and the preparation exists now, and will continue in future times."

Al-Qarâfî pointed out that among the rulings that are based on customs and differ according to their differences: usufructs in rentals, that is, the usufructs the lease contract is made for them.

• *Manqûl* (Movable)

منقول

Linguistically, the term "*Manqûl*" means movable.

As for the movable property in **Fiqh terminology**, it is the opposite of real estate, and it has been defined as "everything that can be moved and transferred", and includes wealth, goods, animals, cars, ships, airplanes, items estimated by measure and weight items, and the like.

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• **Muhâya'ah (Usufruct Sharing)**

مهاياة

Linguistically, the term "*Muhâya'ah*" means rotation. According to Scholars of Fiqh, it is the division of usufructs in succession and rotation. This is when the partners agree on a matter and accept it, meaning that each of them is satisfied with one condition and chooses it.

In this sense, there are two types of rotation: temporal and spatial.

Temporal rotation is when two people agree to cultivate the land they share, one of them one year and the other another year, or to live in the house they share in turns, one of them one year and the other another year.

Spatial rotation is when two people agree on the land they share as such one of them cultivates half of it and the other the other cultivates the other half, or on the house they share, such that one of them lives on one end and the other on the other end, or one of them lives on the upper floor and the other on the lower floor, or in two houses they share, such that one of them lives in the first and the other in the second.

• **Mahr (Dowry)**

مهر

Linguistically, the term "*Mahr*" means the woman's dowry. The prostitute's dowry means the wages of the wicked woman.

The Fiqh usage of the word does not deviate from its linguistic meaning, and some Scholars of Fiqh have defined it as "what is equivalent to the sexual intercourse in terms of lawful property."

• **Muwâthabah (Prompt Assertion of Claim)**

مواثبة

Linguistically, the term "*Muwâthabah*" means initiative or prompt action.

Scholars of Fiqh say: "The preemption is for the one who claims it promptly before other,"

Scholars of Fiqh have defined prompt claim by saying: It is when the preemptor takes the initiative to request preemption immediately in the session in which he learns of the sale, the buyer and the price, even if he learns of that after a while, as long as he does not do anything that indicates aversion.

Article (1029) of "*Majallat Al-Ahkam Al-Adliyyah*" states: "The person claiming the right of pre-emption must at the moment he heard of the conclusion of the sale, make a statement showing that he claims the right of pre-emption, as by saying that he is the person who has the right of the property sold subject to pre-emption, or that he claims the property by way of pre-emption. The claim is referred to as the claim made immediately upon hearing of the sale."

• **Muwâjabah (Reciprocal Obligations/Duties)** مواجهة

Linguistically, the term “*Muwâjabah*” means reciprocal obligations.

The term “obligation of sale” is used in Fiqh to mean the conclusion of the sale. Judge ‘Iyâd said: “The sale became obligatory between them: it is concluded and binding.”

It is stated in “*Al-Muwatta*”: “Mâlik said about someone who sold a commodity to a man, and the seller said when the sale was due: I will sell to you on condition that I consult so-and-so. If he agrees, then the sale is valid, and if he dislikes, then there is no sale between us... etc.”

What is meant by the obligation of the sale is its conclusion. This term is only used by Maliki Scholars of Fiqh.

• **Mawârîth (Inheritances)** موارث

Linguistically, the term “*Mawârîth*” is the plural of “*Mîrâth*, which means inheritance, which a something that belongs to people and then goes to others by lineage or cause.

In Fiqh terminology, it refers to the property and rights left behind by the deceased and are legally due to others upon his death.

As for “Fiqh of inheritance,” it is science used to determine who inherits and who does not, and the share allocated to each of the heirs

according to the different circumstances.

• **Muwâsâh (Charity)** مواسة

Linguistically, the term “*Muwâsâh*” means charity and support which does not cause hardship to the owner and is sufficient for the poor. Al-Fayrûzabâdî said: “*Muwâsâh* is the charity given from sufficient property, if it is given from extra property, then it is not *Muwâsâh*.”

Ibn Al-Athir said: “*Muwâsâh* means sharing and contributing in livelihood and sustenance...”

In Fiqh terminology, Al-Mujaddidî Al-Hanafî defined it by saying: “It is to put another in the same position as himself in benefiting him and defending him.”

Al-Mâwardî mentioned in “*Al-Hâwî*” that the term “*Muwâsâh*” is one of the types of ‘*Âriyah* (lending a property to benefit from its usufruct), where he mentioned that “‘*Âriyah*” is divided into three types, then he said: “As for *Muwâsâh* is when a man gives some of his palm trees in charity to the poor, or gives it to specific people from the poor and separates it from the rest of his property, so it becomes a distinct “‘*Âriyah*”.

• **Muwâta’ah (Agreement)** موآاة

Linguistically, the term “*Muwâta’ah*” means agreement.

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In Fiqh terminology, the terms “*Tawâtu*” and “*Muwâta'ah*” are used to refer to several matters, the most important of which are:

- The agreement of the will of two parties, explicitly or implicitly, to conceal their intention to deal with a trick or usurious pretext in the form of legitimate contracts, to make as permissible what Allah has forbidden.
- Protection by the two parties showing a contract that they did not intend in reality, which is what is called “*Talji'ah* (coercion).”
- The hidden agreement between two parties to carry out a lawful act or transaction, which is used to reach a lawful way out (a commendable trick).
- The agreement of the will of the two parties in the preliminary deliberation that precedes the conclusion of the agreement (deal) composed of a group of successive interconnected contracts and promises, subject to conditions that govern them as a single system that aims to perform a specific intended function, to implement them after concluding them in the manner previously agreed upon (this is newly emerging financial transactions).

Agreement on contracts and promises in Fiqh view has three characteristics:

First: It is a prior agreement to conduct contracts and implement specific promises in the future.

Second: This agreement is considered a condition precedent to those contracts and promises, and its provisions apply to it in terms of permissibility and prohibition, validity and invalidity.

Third: The binding force of the agreement is the same as the binding force of the conditions precedent to the contracts (and the promises attached to them), which the Scholars of Fiqh differed about in two opinions:

First: an opinion adopted by the Hanafites, Shafi'ites and Zahirites; which is that the condition precedent to the contract has no effect on the contract at all, and therefore it is not necessary to fulfill it judicially; because it is null and void and is not taken into account.

Second: an opinion adopted by the Malikites and Hanbalites; which is that the condition precedent to the contract is like the condition accompanying it in validity and the obligation to fulfill it, or in invalidity and cancellation, because the condition noted is like the one stated, and there is no difference between the conditions stipulated in the body of the contract and those agreed upon before it as long as the contract is based on them.

• **Muwâ'adah (Reciprocal Promising)** مواعدة

Linguistically, the term “*Muwâ'adah*” means reciprocal promising, which implies creating two mutual promises from two people, one promises someone something, and the other promises him something in return.

In Fiqh terminology, it refers to “an announcement by two people of their desire to establish a contract in the future, the implications of which will be attributed to them.”

The Scholars of Fiqh who use this term the most are the Malikites, and Al-Hattâb defined it, in marriage, by saying: “reciprocal promising is when each one of the two partners promises the other to marry, so it is a reciprocal act, and it only occurs between two people. If it is made by one person only, it is called “promise”.”

• **Mu'âkarah (Sharecropping)** مؤاكلة

Ibnul-Athîr said: “*Mu'âkarah*” is an agreement of sharecropping for a known share of what is planted in the land, and it has the same meaning as *Mukhâbarah* (Plantation).

• **Mu'âkalah (Feeding Each Other)** مؤاكلة

Ibnul-Athîr said: “*Mu'âkalah* is when a man owes another man something, so he gives him something to delay it and refrain from collecting

it. It is called *Mu'âkalah* because each one of them feeds the other.”

• **Mûjib (Implication/ Consequence)** موجب

Linguistically, the term “*Mûjib*” means implication or consequence.

In Fiqh terminology, “It refers to implication. Accordingly, An-Nawawî said: “The implication of the sale is the consequence of the sale.”

• **Al-Mu'lafatu Qlûbuhum (People Whose Hearts Are Reconciled)** المؤلفة قلوبهم

Linguistically, the word “*Al-Mu'allaḥ*” means reconciled.

In Fiqh terminology, those whose hearts are to be reconciled are those who are one of the categories of those who are entitled to *Zakâh*: those whose hearts are to be won over to Islam by being honored with generosity and giving, or those whose hearts are not settled with Islam, so they are given property that will strengthen them and endear them to Islam and its people.

As for those whose hearts are to be reconciled who were in the era of the Prophet, Al-Muṭarrizî defined them by saying: “They are a group of the nobles of the Arabs to whom the Prophet (peace and blessings of Allah be upon him), used to give charity, for some of them to prevent their harm to the Muslims, for some of them out of hope for their

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conversion to Islam, and for some of them to strengthen their recent conversion to Islam.”

• **Ma’ûnah (Supply/Expenditure/Burden)** مؤونة

Linguistically, the term “*Ma’ûnah*” means supply, hoard, or expenditure.

This word is mentioned by Scholars of Fiqh in the chapters on *Zakâh* and *Hajj* (Pilgrimage) in the sense of expenditure.

It also used in sales in the sense of burden and expenses, such as expenses related to delivering the sold item, including as the fee for measuring and weighing and the fee of a broker, and related to delivering the price, such as the fee for counting and weighting and the fee for writing documents and evidence.

As for their description of the replacement in exchanges as “that which has a load and a burden”, they mean that which has a weight that requires an animal or a porter to carry it.

• **Mîrah (Ration/Supplies/Provision)** ميرة

Linguistically, the term “*Mîrah*” means ration, supplies, provision, or food.

It was stated in the *hadîth*: “No *Zakâh* is to be paid for camels carrying provisions.” Ibnul-Athîr said: He (peace and blessings of Allah be upon him) means that camels that carry provisions, which are food and the like that are brought for sale, no *Zakâh* is paid for them because they are working animals.



Nûn (ن)

• Nâjiz (Immediately Effective)

نَاجِز

Linguistically, the term ‘*An-Nâjiz*’ refers to something that is present or immediate, and its origin is to accelerate or hasten. The phrase ‘*An-Nâjiz Bi An-Nâjiz*’ signifies “cash for cash”, which is an opposite of ‘*Al-Kâli*’ *Bi Al-Kâli*”, which signifies “deferred payment for deferred payment”.

Fiqh scholars say, “He sold it ‘*Nâjiz Bi Nâjiz*,’” meaning a hand-to-hand (cash transaction). And “He sold it ‘*Ghâ’ib Bi Nâjiz*,’” meaning credit (deferred payment) for cash.

• Nâzir Al-Waqf (Endowment Administrator)

نَظِيرُ الْوَقْفِ

The term ‘*An-Nâzir*’ is an active participle derived from the word ‘*An-Nazar*’, which implies contemplation and careful consideration in matters of management. It is used linguistically to signify preservation or guard.

Al-Fayrûz Âbâdî said, “‘*An-Nazar*’ is to think about something, to evaluate and measure it.”

In the book “*Ad-Durr An-Naqî*”,

it is stated: “‘*An-Nâzir*’ of something is the one who oversees its affairs, such as the endowment administrator (*Nâzir Al-Waqf*) and the like.”

In Article no. (180) of “*Qânûn Al-‘Adl Wa Al-Insâf Li Al-Qadâ’ Alâ Mushkilât Al-Awqâf*”, it is stated: “The role of the endowment administrator (*Nâzir Al-Waqf*) is to manage its benefits and care for its affairs; including leasing its revenue-generating assets, collecting its rents and yields, and disbursing the collected funds to its legitimate channels as specified by the endower.”

If there is an administrator (*Nâzir*) and a custodian (*Mutawallî*) for the endowment, it is not permissible for the custodian to dispose of the endowment property without consulting the administrator regarding such disposal.

In the book “*Ithâf Al-Akhlâf*”, it is mentioned: “The endowment administrator (*Nâzir Al-Waqf*): He is the one appointed to administer the transactions of the custodian (*Al-Mutawallî*) concerning the endowment property, and to serve as a reference for the custodian in matters related to the endowment. In some regions, the administrator is referred to as the custodian, on the basis of the customary usage of the term ‘administration’ (*An-Nizârah*) in the sense of ‘custodianship’ (*At-Tawliyah*).”

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Hanafite scholars sometimes refer to the administrator (*An-Nâzir*) as the supervisor (*Al-Mushrif*), as indicated in Article no. (158) of "*Qânûn Al-'Adl Wa Al-Insâf Li Al-Qadâ' 'Alâ Mushkilât Al-Awqâf*": "If he (the endower) appoints both a custodian (*Mutawallî*) and a supervisor (*Mushrif*) for his endowment property, the custodian cannot independently dispose of the endowment affairs, such as selling, leasing, etc., without the permission, opinion, and knowledge of the supervisor."

• *Nâfiq* (In Circulation) نَافِق

In Fiqh usage, the term '*An-Naqd An-Nâfiq*' refers to the currency that is currently in circulation and widely accepted. The term is derived from '*An-Nafâq*', which linguistically means circulation (*Ar-Rawâj*). Its opposite is unsalable or rejected currency (*An-Naqd Al-Kâsid*).

It was narrated on the authority of Ibn 'Umar that he said, "We used to come to the land of Ash-Shâm (the Levant), and with us is heavy silver that is *Nâfiqah* (i.e., currently in circulation and widely accepted), whereas there, they have light silver that is *Kâsidah* (i.e., unsalable or rejected) ..." This refers to what we have mentioned. Similarly, it is said: "*Nafaqat As-Sil'ah Nafâqan*", meaning the commodity became widely sought after and in demand, and this is the reason for its rapid sale.

• *Nâ'ibah* (Calamity or Levy) نَائِبَة

Linguistically, the term '*An-Nâ'ibah*' refers to a calamity or miserable event that befalls a person. The plural form is '*Nawâ'ib*'.

In Fiqh terminology, it is defined as: "A tax or levy imposed by the ruler on the subjects for their benefits; such as constructing and repairing bridges, filling holes (on sides of rivers), dredging and cleaning rivers, and similar works."

It is also called '*Nawâ'ib Ar-Ra'iyah*' (the subjects' levies) or '*Nawâ'ib Al-Muslimîn*' (the Muslims' levies).

• *Nitâj* (Offspring) نِتَاج

In both linguistic and Fiqh usage, the term '*An-Nitâj*' refers to the offspring produced by livestock, such as sheep, camels, cows, and other animals.

Many Fiqh scholars distinguish between the offspring (*An-Nitâj*) and the profit (*Ar-Ribh*). The offspring specifically refers to what is naturally generated from the capital itself, meaning the offspring produced by the parent animals. In contrast, the profit is obtained on capital as a result of good trading and utilizing wealth in various exchange transactions, which involves taking on risks.

Accordingly, in the context of the wrongful appropriation, it is stated:

“The wrongful appropriator is required to return the offspring (*An-Nitâj*) but not the profit (*Ar-Ribh*).”

• **Nithâr or Nuthâr (Scattered Items)** نِثَار

Linguistically, the term ‘*An-Nithâr*’ or ‘*An-Nuthâr*’ means something that is scattered or dispersed. It refers to anything that is thrown or dispersed in a scattered manner.

It is also said that ‘*An-Nithâr*’ is what falls or scatters from something, resembling leftover bits that are thrown away. The term is derived from ‘*An-Nathr*’, which, according to Ibn Fâris, denotes: “An origin that indicates casting something in a dispersed manner.”

In Fiqh terminology, it refers to the practice of scattering items like walnuts, almonds, sugar, and other goodies over people at weddings, where they are then picked up and collected by the attendees. So, whoever picks up any of these items or gets some of them in his lap becomes its rightful owner.

• **Najsh (Deceitful Bidding)** نَجْش

Linguistically, the term ‘*An-Najsh*’ originally refers to allurement and extraction. Hence, the hunter was referred to as a ‘*Nâjish*’ for his act of alluring the game and extracting it from its place.

In Fiqh terminology, it means:

“To increase the price of a commodity, with no intention to buy it, but to deceive and mislead others, so that they will increase the price and buy it.”

The person who engages in this practice is called so because he arouses the interest in the commodity, and extracts from the buyer a price he would not otherwise intend to pay.

It is a prohibited deceitful practice according to the consensus of the majority of scholars. This is based on the Prophetic *hadîths* related by Al-Bukhârî, Muslim, An-Nasâ’î, Ibn Mâjah, Mâlik, and Aḥmad, on the authority of Ibn ‘Umar (may Allah be pleased with them both) that the Prophet Muḥammad (peace and blessings of Allah be upon him) prohibited the deceitful bidding (*An-Najsh*).

Fiqh scholars mentioned that the deceitful bidding (*An-Najsh*) can occur from the part of the deceitful bidder (*An-Nâjish*) without the seller’s knowledge, in which case the sin is solely on the bidder. It can also occur from the part of the seller when the buyer does not know that he is the owner of the commodity, in which case the sin is solely on the seller. Further, it can occur from the part of the deceitful bidder with the collusion of the seller, in which case they share the sin.

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Ash-Shâfi'î stated, “*An-Najsh*’ is a deception, and it is not characteristic of the faithful.”

• *Najm* (Star or Installment) نَجْم

Linguistically, the term ‘*An-Najm*’ refers to any celestial body. The plural form is ‘*Anjum*’ and ‘*Nujûm*’. The Arabs used to time occurrences by the rising of the stars because they did not know how to count or keep track of time using numbers. Instead, they would memorize the seasons and months by observing the constellations. They metaphorically referred to the due date of payments as ‘*Najm*’ because the timing for payment was traditionally known by the appearance of certain stars. This is evident in Ash-Shâfi’î’s statement regarding the postponement of the compensation resulting from a manumission by contract: “The minimum postponement is two stars”, meaning two months.

Then, they expanded its meaning to refer to the installment or payment due at a specific time. This originates from the practice of associating payment times with the rising of certain stars.

This term is also used in a tradition reported on the authority of ‘Umar that he discounted the first ‘*Najm*’ for a slave’s contractual emancipation (i.e., the first installment of the compensation resulting from a manumission by contract) that be-

came due. Ibn Fâris said, “*An-Najm*’ means the due installment of anything, and every installment is called ‘*Najm*’.”

• *Nihlah* (Generous Gift) نِيْهْلَة

Linguistically, the term ‘*An-Nihlah*’ refers to a gift given willingly without any expectation of anything in return. It is more general than ‘*Al-Hibah*’, as every ‘*Hibah*’ is a ‘*Nihlah*’, but not every ‘*Nihlah*’ is a ‘*Hibah*’.

The term ‘*An-Nihlah*’ is used to describe ‘*As-Sadâq*’ (i.e., dowry) in marriage because it is given without the expectation of any financial return, merely for the purpose of enjoyment and fulfilling marital obligations. Similarly, it can refer to the gift that a father gives to his son.

In Fiqh terminology, as defined by the Malikite scholar Mayyârah: “‘*An-Nihlah*’ refers to what is given (as a gift) by the father of the groom to his son at the time of his marriage, or by the father of the bride to his daughter at the time of her marriage, and the marriage contract is concluded based on that.” This term is specifically used in the Malikite school.

• *Nakhkhâs* (Animal or Slave Trader) نَخَّاس

Linguistically, the verb ‘*Nakhasa*’ means to prod or poke an animal with a stick or similar object,

causing it to move or become more active. The person who does this is called a ‘*Nâkhis*’, and ‘*An-Nakhkhâs*’ is its intensive form.

The term ‘*An-Nakhkhâs*’ originally refers to a trader who sells animals. He is called so because of his practice of prodding the animals to make them more active. This term is also used for a slave trader. Over time, it has customary used to refer to sellers of both animals and slaves. The profession is called: ‘*An-Nikhâsah*’ and ‘*An-Nakhâsah*’.

Both Al-Mutarrizî and Al-Fayyûmî mentioned that the animal broker is called ‘*Nakhkhâs*’. In his “*Nawâzil*”, Al-Burzulî described ‘*An-Nakhkhâs*’ as a type of brokers.

• *Nakhkhah* (Salves, or Working Cattle) نَحَّة

Linguistically, the term ‘*An-Nakhkhah*’ is used in the context of news or information to refer to something whose truth cannot be distinguished from falsehood, and it is also used in the context of rain to mean light or gentle rain.

It is mentioned in a tradition: “*There is no (obligatory) almsgiving in ‘An-Nakhkhah’.*” Ibnul-Athîr explained, “*An-Nakhkhah*’ refers to the slaves. It is also said: donkeys or working cattle. Some say it refers to any animal used for labor.” Al-Farrâ said, “*An-Nakhkhah*’ is when the the *Zakâh* collector takes a dinar for

himself after completing the collection of *Zajkâh*.” Al-Fayrûz Âbâdî said, “The term ‘*An-Nakhkhah*’ could also refer to the dinar itself.”

• *Nazâhah* (Integrity or Uprightness) نَزَاهَة

Linguistically, the term ‘*An-Nazh*’ means moving away, and ‘*At-Tanzuh*’ means distancing oneself.

In Fiqh terminology, the term ‘*An-Nazâhah*’ is defined as stated by Ash-Sharîf Al-Jurjânî: “To earn money without being subjected to humiliation or causing injustice to others.” Al-Munâwî defined it as: “To earn money without being subjected to humiliation or injustice, and to spend it in good ways.”

As for the characteristic of “integrity away from greed”, mentioned in the characteristics attributed to the judge by the Caliph ‘Umar Ibn ‘Abdul-‘Azîz, it means, as explained by An-Nasafi, distancing oneself and refraining from accepting bribes.

• *Naz’ Al-Milkiyyah Al-Jabri* (Compulsory Expropriation) نَزْعُ الْمِلْكِيَّةِ الْجَبْرِي

The compulsory expropriation, also known as forced acquisition or eminent domain, is a modern legal term that refers to the acquisition of someone else’s property by force, without compensation. Its concept is well established among Fiqh scholars, and its provisions fall

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under what they call coercive contracts and coercive acquisitions to remove harm. Among its branches and forms in Islamic Fiqh are: the right of pre-emption, the sale of monopolist's property, the sale of bankrupt's property, the partition by compulsion, and so forth.

Professor Mustafâ Az-Zarqâ mentioned two cases of compulsory expropriation:

1- Direct coercive contracts: These are contracts conducted directly and explicitly by the judiciary on behalf of parties who have failed to fulfill their contractual obligations. Examples include: the forced sale of a debtor's property to settle his debt, and the ruler's sale of monopolized assets to their owners when their monopoly harms people.

2- Coercive acquisition: This includes the right of pre-emption, and the expropriation for public interests, such as expropriating the land adjacent to a mosque when its owners refuse to sell, and the mosque becomes overcrowded and in need of expansion, and expropriating the land for road widening when the need arises, and that is for a compensation equal to the value of the expropriated property.

• **Nasî'ah (Deferment or Postponement)** نَسِيئَة

In both linguistic and Fiqh terminology,

the terms '*An-Nasî'ah*' and '*An-Nasâ*' mean postponement or deferment. It is an opposite of '*An-Naqd*' (immediate payment) and '*At-Ta'jîl*' (prompt payment). It involves '*An-Nasî*' practiced by the Arabs in the pre-Islamic period, referring to the postponement of sacred months.

The term '*Bay' An-Nasî'ah*' refers to the sale of a present item on a deferred payment basis. As-Sughdî, a Hanafite scholars, defined it as: "The sale of something for one hundred dirhams to be paid later at a specified period." Ibn Juzay, a Maliki scholar, defined it as: "Delaying the payment while hastening the delivery of the item." It is mentioned in "*Majallat Al-Ahkâm Al-'Adliyyah*": "In the case of a sale on credit, there is no right of retention on the part of the vendor. He must deliver the thing sold to the purchaser forthwith in order to receive payment on due date."

• **Nisâb (Threshold)**

نِصَاب

Linguistically, the '*Nisâb*' of anything is its origin, and its plural form is '*Nuṣub*' and '*Ansibah*'.

In Fiqh terminology, the term '*An-Nisâb*' is used in the context of *Zakâh* (obligatory almsgiving) to refer to the minimum amount of wealth on which *Zakâh* is due. It is the threshold below which *Zakâh* is not obligatory.

• **Nadd (Liquidation)**

نَضْر

Linguistically, it is said that water is ‘*Nadda*’ when it comes out little by little, and it is said that water is ‘*Nadda*’ from the spring when it gushes out.

Also, when the debt is collectible and repaid, it is described as: ‘*Nadd*’, and when payment for a purchase is expedited, it is described as: ‘*Nadd*’. In the dialect of the Hijaz region, the words ‘*Naddan*’ and ‘*Naddan*’ refer specifically to dirhams and dinars,

In Fiqh terminology, Fiqh scholars use the term ‘*An-Nadd*’ in the context of *Al-Mudârabah* and *Az-Zakâh*. For example, they might say: “The wealth has been ‘*Nadda*’ to indicate that it has been converted into cash after previously being in the form of goods and merchandise.”

• **Nizârat Al-Awqâf (Endowment Administration)**

نِظَارَةُ الْأَوْقَافِ

Al-Fayyûmî stated, “The term ‘*An-Nazârah*’ is used by non-Arabs to mean strolling or leisurely walking in gardens and orchards.”

Al-Fayrûz Âbâdî stated, “The term ‘*An-Nazârah*’, in the sense of strolling or leisurely walking, is an incorrect usage by some Fiqh scholars.”

In “*Shifâ’ Al-Ghalîl*” by Al-Khafâjî, it is stated: “The endowment ad-

ministration (*Nizârat Al-Awqâf*) is a term not used by the Arabs in this specific sense, as it is a modern concept, although its usage in another context is valid. I have seen in the writings of some of our scholars a text that states: ‘*An-Nizârah*, in the form of *Kitâbah* and *Firâsah*, is derived from ‘*An-Nazar*’ (to look or observe) at the condition of something. It was borrowed for what is now widely accepted and used among people...”

• **Ni‘mah (Blessing)**

نِعْمَةٌ

Linguistically, the term ‘*An-Ni‘mah*’ refers to favor, goodness, and wealth.

As for ‘*An-Na‘ama*’, it refers to the act of enjoying or benefiting from a blessing or favor. Al-Muṭar-rizî stated, “It is said, ‘How many are those who possess blessings but do not enjoy them?!’; meaning: ‘How many are those who have wealth but do not find enjoyment of it?’”

Ar-Râghib said, “‘*Al-In‘âm*’ is the act of conveying benevolence to others. This term is specifically used when the recipient is a human being, for it is not appropriate to say: ‘So-and-so bestowed blessings upon his horse.’”

Terminologically, Ash-Sharîf Al-Jurjânî defined ‘*An-Ni‘mah*’ as: “Something that is intended for benevolence and benefit, not for any ulterior motive or compensation.”

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• **Nafâdh Al- 'Aqd (Contract Execution)** نَفَاذُ الْعَقْدِ

Linguistically, the verb 'Nafadha' means to penetrate, pass through, or pierce through. It also refers to a matter or statement when it goes into effect.

In Fiqh terminology, the contract execution (*Nafâdh Al- 'Aqd*) means that the contract produces its legal consequences immediately upon its conclusion. For example, the execution of a sale contract means that once it was validly concluded, ownership of the sold item has been transferred to the buyer and ownership of the price has been transferred to the seller, and it has imposed on both parties all other contractual obligations that arise from it, such as the obligation to deliver and receive, and the guarantee of any pre-existing defect in the item sold if a defect appears later in it... etc.

The opposite of the executory contract (*Al- 'Aqd An-Nâfidh*) is the conditional contract (*Al- 'Aqd Al-Mawqûf*), which, although it is valid upon conclusion, does not immediately produce its legal consequences. Instead, these consequences are held pending and contingent upon the ratification of the party whose right is dependent upon. If this party ratified it, the contract becomes executory, and the contract consequences are retroactively applied to

the time of conclusion. If that party disapproves it, the contract becomes void.

• **Nafaqah (Maintenance)** نَفَقَة

Linguistically, the term 'An-Nafaqah' is a noun derived from 'Al-In-fâq', which means spending and giving out.

In Fiqh terminology, it refers to the act of providing something with the means necessary for its sustenance. Or, it is what something depends on for its sustenance, such as food, clothing, and shelter.

Through induction, it has been established that the Shari'ah reasons for obligatory maintenance are three: marriage, ownership, and kinship. Accordingly, Al-Munâwî defined it as follows: "In Shari'ah, 'Al-Nafaqah' is what a person is obligated to spend on those who are his dependents, such as his wife, slave, or animal."

As for the term 'public expenditures' that is commonly used in our present time, it was not known to the Fiqh scholars by this designation. However, its concept was well established among them, referring to any right or obligation that necessitates expenditure from the state treasury for the welfare of the Muslims.

Al-Khawârizmî divided this type of expenditures into two categories:

- **Regular expenditures:** These are

the fixed and constant expenditures that are essential and cannot be avoided.

- **Incidental expenditures:** These are the expenditures that arise according to the occasional needs and circumstances.

• **Naqd (Cash)** نَقْد

Linguistically, as Ibn Fâris said, the term '*An-Naqa*' is: "An origin that means to project something and thrust it out."

This involves '*Naqd Ad-Darâhim*', which refers to checking the dirhams' state to detect whether they are real or not, or otherwise.

The terms '*An-Nâqid*' and '*An-Naqqâd*' refer to the person who possesses the ability to distinguish between good and bad dirhams.

In Fiqh terminology, the term 'cash' (*An-Naqa*) is an opposite of 'deferred payment' (*An-Nasî'ah*). Fiqh scholars use it to denote the act of paying and delivering, especially when the item given is money. For example, they say: "*Naqadtu Ar-Rajul Ad-Darâhim*", meaning: "I gave him the dirhams", and "*Fa Intaqadaha*", meaning: "he received it."

They referred to the act of handing over dirhams and dinars as '*Naqa*' because it originally involves distinguishing and checking their quality, as well as removing any counterfeits from them, by both the

giver and the receiver.

They also use the term '*An-Naqa*' to refer to gold and silver themselves. Hence, they defined the contract of currency exchange (*As-Sarf*) as: "Selling cash for cash", meaning the exchange of dirhams and dinars.

As for the term '*Bay' An-Naqa*' (cash sale), it refers, as the Malikite scholar Ibn Juzayy said, to: "A transaction in which both the price and the sold item are exchanged on the spot." Al-Mâzarî stated that it refers to: "A transaction in which both parties simultaneously exchange the two countervalues."

• **Naqs (Diminution)** نَقْص

The Fiqh usage of the term '*An-Naqs*' does not go beyond its linguistic meaning, which implies diminution or deficiency. The opposite of diminution (*An-Naqs*) is the increase (*Az-Ziyâdah*).

• **Namâ' (Growth)** نَمَاء

Linguistically, the term '*An-Namâ*' means increase or growth. It has been said that everything on the surface of the earth is either growing (*Nâmî*) or non-growing (*Sâmit*). The growing refers to things like plants and trees, which grow, while the non-growing refers to things like stones and mountains, which do not grow.

Linguists mentioned that '*An-Namâ*' is used figuratively when applied

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to money. In contrast, it is used literally when applied to livestock, because livestock increases through reproduction (offspring).

Most Fiqh scholars use the term ‘*An-Namâ*’ to refer to the natural increase or yield gained from the asset itself, such as the milk or offspring of livestock. This is in contrast to the term ‘*Al-Kasb*’, which refers to the gain acquired as a result of the asset and is not part of it”, such as the earnings of a slave or the like.

As for trade money, Al-Kamâl Ibnul-Humâm stated: “The growth (*An-Namâ*) in the context of trade money occurs as a result of the increase in value. This increase in value is not limited to the natural increase of livestock (such as offspring), but it can also occur by delaying its sale from one season to another or by transporting it from one place to another.”

The Malikite scholars categorize the growth (*An-Namâ*) into three types: profit (*Ribh*), yield (*Ghallah*), and benefit (*Fâ'idah*). In their terminology, every profit is considered growth, every yield is considered growth, and every benefit is considered growth. However, not every growth is necessarily profit, yield, or benefit in a restrictive sense, because the growth is a general term encompassing all these types without limitation.

• *Namûdhaj* (Sample)

نَمُودَج

The terms ‘*Namûdhaj*’ and ‘*Unmûdhaj*’ are Arabicized Persian words. They refer to an object that represents the characteristics of something. It is also said that they mean: a small part of a larger whole.

Fiqh scholars use the term ‘*An-Namûdhaj*’ to mean a sample of something that represents its characteristics and properties, such that its individual units do not differ. For example, if a person shows someone else a heap of wheat whose measure is *Sâ'*, and then sells it to him as being of the same kind as that *Sâ'*, then the *Sâ'* that is being offered to the buyer is called: ‘*Namûdhaj*’ and ‘*Unmûdhaj*’.

• *Nahb* (Plunder)

نَهَب

Linguistically, the terms ‘*An-Nahb*’ and ‘*Al-Intihâb*’ refer to the act of a person taking what does not belong to him openly, i.e., forcibly. The term ‘*An-Nahb*’ also refers to the property taken without giving anything in return.

The Fiqh usage of the term ‘*An-Nahb*’ does not go beyond its linguistic meaning. Accordingly, some Fiqh scholars defined ‘*An-Nahb*’ as: “The act of taking a property from a town or village by force.” Some scholars stated that ‘*An-Nahb*’ refers to ‘*Al-Ghanîmah*’ (spoils of war).

As for the difference between the

plunder (*An-Nahb*) and the embezzlement (*Al-Ikhtilâs*), the plunder involves no concealment whatsoever, whereas the embezzlement involves concealment on the part of the embezzler at the beginning of embezzlement. Additionally, the

embezzlement relies on speed in taking the item, unlike the plunder in which the speed is not a determining factor.



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Hâ' (هـ)

• Hâ'a and Hâ'a (Spot or Hand-To-Hand Exchange) هَاءٌ وَهَاءٌ

In “*Sharh Gharib Alfâz Al-Mu-dawwanah*”, Al -Jubbî said: “*Hâ'a* and *Hâ'a'* means: Take and give, hand to hand.” Al-Khattâtî said: “*Hâ'a* and *Hâ'a'* means mutual handing over.” The word ‘*Hâ'*’ is simply what a man says to his companion when he hands him something, saying ‘*Hâka'*’ (meaning: ‘Take’). They omitted the ‘*Kâf*’ from the word and replaced it with a prolongation (*Madd*) instead of the ‘*Kâf*’.

This expression also appears in the *hadîth* of the Prophet Muḥammad (peace and blessings of Allah be upon him): “*Gold for gold is usury unless both hands over on the spot (Hâ'a and Hâ'a)*”. Fiqh scholars interpreted it to mean that these sales are not permissible unless each of the contracting parties says to the other: “*Hâ'*”, meaning “Take”, which indicates taking possession.

• Hibah (Gift) هِبَة

Linguistically, the term ‘*Al-Hibah*’ refers to giving without receiving anything in return.

The majority of Fiqh scholars

mentioned that the terms: gift (*Al-Hibah*), present (*Al-Hadiyyah*), alms (*As-Sadaqah*), and grant (*Al-Ātiyyah*) have closely related meanings. All of them imply transferring ownership during one’s lifetime without expecting anything in return. The grant is the most general term as it encompasses all these concepts, and so the gift.

However, there is a distinction between the alms (*As-Sadaqah*) and the present (*Al-Hadiyyah*), because the Prophet Muḥammad (peace and blessings of Allah be upon him) would accept a present but would not accept alms. The difference between them is that giving something to draw closer to Allah and help those in need is considered alms, while giving something to a person freely with the intention of drawing closer to him and gaining his affection is considered a present.

• Hibat Ath-Thawâb (a Return-Based Gift) هِبَةُ الثَّوَابِ

In Fiqh terminology, the return-based gift (*Hibat Ath-Thawâb*) refers to: “A grant given with the intention of receiving something (as a compensation) in return from the recipient.”

According to Fiqh scholars, it involves three forms:

- 1- A gift with unspecified and unstipulated return (i.e., the giver expects a compensation in return

without specifying or stipulating it).

- 2- A gift with stipulated but unspecified return (i.e., the giver stipulates a compensation in return but does not specify exactly what it should be).
- 3- A gift with stipulated and specified return (i.e., the giver both stipulates and specifies the compensation in return).

Each of these forms has its own specific rulings.

Judge Ibn Rushd (the grandfather) said, "The basis for the permissibility of the return-based gift (*Hibat Ath-Thawâb*) is the Quranic Verse stating: {***And whatever you give for interest to increase within the wealth of people will not increase with Allah. ...***} [Ar-Rûm (The Romans): 39]. This refers to a situation where a person gives something to another person with the intention of receiving something greater in return. So, when Allah informs that whoever gives a gift seeking growth and increase in his wealth from the recipient's wealth will not have any increase or purification with Allah, this indicates that the giver does not have a gift except for what he intended to increase his wealth and receive a compensation in return from the recipient, not from Allah (the Almighty). However, this is permissible, and the giver of such a gift neither earns reward nor in-

curs sin for his gift because it is considered a form of sale transactions, which is permissible and lawful, but not one that is recommended and desirable."

From the Fiqh perspective, the return-based gift (*Hibat Ath-Thawâb*) is treated as the sale transactions. Consequently, these gifts should subject to the Shari'ah rulings applicable to sale transactions, including the stipulation that the price or compensation should be clearly known and specified, as well as the absence of sale-based usury in it.

In "*Al-Qawânîn Al-Fiqhiyyah*", it is stated: "The ruling on the return-based gift (*Hibat Ath-Thawâb*) is the same as that for the sale transactions. Whatever is permissible in sale transactions is permissible in it, and whatever is prohibited in sale transactions regarding deferred payment and other similar matters, is also prohibited in it."

In "*Al-Mudawwanah*", Imâm Mâlik stated: "The compensation-based gift (*Hibat Al-'Iwad*) is a form of sale transactions; it should be treated as the sale transactions in terms of both the gift and the compensation."

• Hady (Sacrificial Animal) هَدْي

Linguistically, the term '*Al-Hady*' refers to something offered or presented by the inferior to the superior.

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In Shari'ah terminology, it refers to: "The sacrificial animals that are slaughtered as an offering to Allah and are brought to the Sacred House (Kaaba)."

Al-Jurjânî said, "It refers to: 'The sacrificial animals that are brought to the Sacred House (Kaaba) for slaughtering.'"

An-Nawawî reported on the authority of the author of "*Al-Bahr*" that it refers to: "The sacrificial animals and other types of wealth that are brought to Mecca and its Sacred House (Kaaba) as an offering to Allah. However, when the term '*Al-Hady*' is used without restriction, it primarily refers to the sacrificial animals."

In "*Al-Mughrib*", it is mentioned: "*Al-Hady*' is the sacrificial animals that are brought to the Sacred House (Kaaba) as an offering from sheep, cow, or camel."

• Hadiyyah (Present) هَدِيَّة

Linguistically, the term '*Al-Hadiyyah*' refers to something given or offered as a present. It is also said to be something you send to someone else by way of gratification.

In Fiqh terminology, it is defined as: "A gift given with the intention of gratification, affection, or reward."

In Article no. (834) of "*Majallat Al-Ahkâm Al-'Adliyyah*", it is stated: "A present is property brought or

sent to someone by way of gratification."

Ibn Taymiyyah clarified the difference between the present (*Al-Hadiyyah*) and the alms (*As-Sadaqah*) saying: "The alms refer to something given for the sake of Allah, as a purely religious act of worship, without the intention of benefiting a specific person or seeking any reward in return. Rather, it is spent in the designated channels where alms are needed, such as to those in need. On the other hand, the present is intended to gratify a specific person, either out of love, friendship, or to seek some benefit. For this reason, the Prophet Muhammad (peace and blessings of Allah be upon him) would accept a present and used to make return for it, so that no one would have a favor over him, and he would not accept what people used to purify themselves from their sins with, which are the alms."

Abû Hilâl Al-'Askarî explained the difference between the present (*Al-Hadiyyah*) and the gift (*Al-Hibah*) saying: "The present refers to something by which the giver seeks to draw closer to the recipient, and this is not the case with the gift. For this reason, it is not appropriate to say that Allah presents something to a person, but it is said that He gifts him something. Allah (the Almighty) says: {*"So gifts me from*

Yourselves an heir.”} [Maryam (Mary): 5]. However, you can say: “The subordinate presents something to the superior”, and “The superior gifts something to the subordinate...”

• *Halâk* (Destruction)

هَلَاك

Linguistically, the term ‘*Al-Halâk*’ is synonymous with the term ‘*At-Talaf*’, which means damage or destruction of something.

Ar-Râghib Al-Aṣbahânî outlined several forms in which the destruction (*Al-Halâk*) can occur, including: when something is no longer in your possession but still exists with someone else, or when something

is destroyed through a process of transmutation or damage, or when someone/something dies, or when something is totally obliterated or being non-existed in the world, which is referred to as the ultimate form of destruction, known as annihilation.

The Fiqh scholars often use destruction (*Al-Halâk*) and damage (*At-Talaf*) interchangeably to describe the state where something no longer serves the intended benefit it usually provides.



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• Wâqî'ah (Incident/Issue) واقعة

Linguistically, the term “Wâqî'ah” is derived from the word “W-uqû”, which means falling, and it is only said in cases of hardship and accidents.

In Fiqh terminology, it means a new issue or matter that has occurred among people, and there is no specific Shari text for it, so the Faqih seeks to deduce its ruling from the Shari evidence, or to derive it from the rules of his school of thought, or to issue a fatwa on it according to one of the narrations, sayings, or aspects in the school of thought.

As for the modern Fiqh-related term “*Al-Wâqî'ah Ash-Shar'îyyah*” (Shari'ah incident), it is an incident or a state that occurs without a person's choice, such as birth, death, insanity, wealth, and the passage of time. The Shari'ah has a ruling on it. It is not a verbal act like contracts, or an actual act like killing, usurpation, picking up and reviving dead land, but rather a physical act that occurs without a person's choice, and the Shari'ah has a ruling on it.

• Wa'y (Promise) واعي

Linguistically, the term “Wa'y”

means promise. It was mentioned in the *hadîth* of 'Abdur-Rahmân Ibn 'Awf: “I had a “Wa'y” (promise) with Allah's Messenger (peace and blessings of Allah be upon him).” Az-Zamakhsharî said: “Wa'y is the promise that a man makes to himself and intends to fulfill.”

Abû Hilâl Al-'Askarî differentiated between “Wa'y” and promise, saying: “The promise can be temporary or non-temporary. The temporary promise is like their saying: ‘The promise of your Lord has come.’ The non-temporary promise is like their saying: ‘If Zayd promised, he broke his promise,’ and ‘If 'Amr promised, he fulfilled his promise.’ “Wa'y” is a form of promise which is not temporary.

Judge 'Iyâd said: “Wa'y” is the guaranteed promise. It is said: “Wa'y” is the promise without explicitly stating it. The promise is the explicit statement of the gift.”

Al-Magharâwî mentioned in “*Sharh Gharîb Ar-Risâlah*” that “Wa'y” is in fact a promise that is not complete, as if it is an indication to the promise.

• Wathîqah (Document) وثيقة

Linguistically, the term “Wathîqah” means document.

The debt document, **in Fiqh terminology**, is an instrument that confirms the debt. It is named thus because of the reliance on it in

collecting the debt when it is impossible.

If we follow the Scholars of Fiqh' use of the term "documentation of debt," we will find that they use it to refer to two things:

First: to strengthen and confirm the creditor's right to what he has in the debtor's liability of wealth with something that can be relied upon, such as writing and testimony, to prevent the debtor from denying it, reminding him when he forgets, and preventing him from claiming an amount less than the debt, or to prevent the creditor from claiming an amount more than the debt that or claiming that the debt is due or overdue while it is not, and so on. Accordingly, if a dispute or disagreement occurs between the parties, this documentation is considered a strong means that can be used as evidence to prove the disputed debt before the judiciary.

Second: to establish the creditor's right to what he has in the debtor's liability of wealth, so that when the debtor refuses to pay for any reason, the creditor can collect his debt from a third party who guarantees the debtor with his wealth, or from a financial asset to which the creditor's right is related and which is a pledge for his debt.

• **Wajibah (Specified Period)** وجيبة

Linguistically, the term "*Wajib-*

ah" means job and also refers to a specified period in some forms of sale or lease transactions.

The Malikites use the term "*Wajibah*" in the topic of lease to mean a specified period of lease. This includes their saying: The lease contract for houses and shops occurs in two ways:

First: defining the rent for each month, year, or day while not specifying the period of lease

Second: specifying the lease period and determining the rent, and it is called "*Wajibah* rent"; that is, the specific, fixed period; As if he said: I rented this house from you this month or such and such month for such and such rent, or this year or such and such year for such and such rent, or I rented it until such and such month or such and such year for such and such rent. Mayyârah said: "This is the terminology of the ancient Scholars of Fiqh, while the recent Scholars of Fiqh use the term "*Wajibah*" to mean the rent paid for usufructs. Here, the notary says: So-and-so rented the entire house from so-and-so for example for a year for a fee of such rent (*Wajibah*) and such a date for each month of the mentioned period."

• **Wadī'ah (Deposit)** وديعة

Linguistically, the term "*Wad-î'ah*" means deposit.

Scholars of Fiqh use the term

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“deposit” to refer to the item that is placed with someone else to be kept, and to deposit contract itself.

However, Scholars of Fiqh differed in defining this contract based on their differences in some of its conditions:

The Hanafites and the Malikites, who stipulated that the deposited item should be wealth, and did not stipulate that preservation should be a donation, defined it as: “The owner empowering someone else to preserve his money.”

The Shafi‘ites, who stipulated that the deposited item should be wealth or something considerable and beneficial, such as beneficial item, and did not stipulate that preservation should be a donation from the custodian, defined it as: “Authorizing someone to preserve owned or considerable item.”

The Hanbalites, who considered the deposited thing to be wealth or considerable item, and stipulated that its preservation by the depositor be a donation, defined it as: “Authorizing someone to preserve an owned or considerable item as a way of donation by the custodian.”

• **Wirât (Deception/Fraud)** وراط

Linguistically, the term “*Wirât*” means deception and fraud.

In Fiqh terminology, Ibnul-Athîr said: “It is when the sheep are

in a lower area so that they are hidden from the tax collector. Al-Mu-tarrizî said: “*Wirât* is when a person has forty sheep, and he gives his companion half of them so that the *Zakâh* collector does not take anything from them.”

Al-Fayrûzabâdî said: “*Wirât* in *Zakâh* is to combine what is scattered, or the opposite, or hiding it in someone else’s camels or in a lower area so that the *Zakâh* collector does not see them, or dispersing them, or when someone says to the *Zakâh* collector: So-and-so has animals on which *Zakâh* is due, but he does not.”

• **Wîsr (Deed)**

وصر

Linguistically and terminologically, the term “*Wîsr*” means the deed of purchase. Az-Zamakhsharî said “*Wîsr*” is the deed.

It was mentioned in the *hadîth* of Shurayh: “*This man bought land from me and took its deed, but he neither returned the deed to me nor give me the price.*”

• **Wasf (Description)**

وصف

Linguistically, the term “*Wasf*” means description.

According to the Scholars of Fiqh, it refers the opposite of the essence. Hence, the Hanafites defined the valid contract as: “what is permissible in its essence and description.” As for the scholars of *Uşûl*

(Principles of Fiqh), they use the term “*Wasf*” to refer to the cause.

As for the “option of missing the desired description,” according to the Scholars of Fiqh, it means the right to cancel the contract due to the absence of a desired description that the contracting party stipulated in the contracted item, such as when a person buys a horse believing that it is purebred Arabian horse, then it turns out that it is a hybrid horse, or when he buys a cow believing that it is a milking cow, then it turns out that it is not.

• **Wasî (Guardian/Trustee/Administrator)** وصي

Linguistically, the term “*Wasî*” means guardian or trustee.

In Fiqh terminology, guardian-ship is limited to a person appointing someone else in his place after his death to admin the affairs of his estate and what is related to it from debts and wills, and the affairs of his minor children. This appointed person is called a guardian.

As for appointing someone else in his place to carry out some of his affairs during his life, it is not called guardianship in the Fiqh terminology, but rather it is called agency.

• **Wasiyyah (Will)** وصية

Linguistically, the term “*Wasiyyah*” means will.

In Fiqh terminology, it refers to

“transferring ownership of an item after death by way of donation.”

• **Wad’ (Dropping/Remitting)** وضع

Linguistically, the term “*Wad’*” means dropping, reducing, or remitting.

It is mentioned in the hadîth of the Prophet: “*He who grants a respite to one who is in straitened circumstances or remits his debt...*”;

• **Wad’ Al-Jawâ’ih (Dropping or Reduction Due to Blight or Disaster)** وضع الجوائح

Muslim, Abû Dâwûd, Ad-Dâraqutnî, Al-Bayhaqî and Al-Hâkim narrated on the authority of Jâbir Ibn ‘Abdullâh: *Allah’s Messenger (peace and blessings of Allah be upon him), commanded that unforeseen loss be remitted in respect of what is affected by blight.*”

Linguistically, the term “*Jâ’ihah*” means blight, disaster, or calamity.

The term “*Wad’*”, however, means dropping, reduction, or remitting.

The term “*Wad’ Al-Jawâ’ih*” means that the seller reduces the price for the buyer of the fruits after he has received them, if some of the fruit is damaged by a blight that cannot be prevented or remits it completely if all of fruits are damaged.

Ibnul-Qayyim defined it as follows: “It is to reduce the price for the buyer of the fruits by the amount of

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the fruit damaged by the blight, and to keep the rest with its share of the price.”

The issue of “*Wad‘ Al-Jawā‘ih*”, which means that the compensation for the destruction of the sold fruits by a blight after the buyer has received them is from the seller’s money, is an exception to the general Fiqh principle, which is that if the sold item is completely or partially destroyed in the buyer’s possession after receiving it, then it is his responsibility, because it is in his possession and under his control. This opinion is held by the Malikites, the Hanbalites, and the Shafi‘ites in the old School, in contrast to the Hanafites, the Shafi‘ites, Ath-Thawrî, Al-Layth, and Ibn Hazm, who did not approve the principle of “reduction in price due to blight”, arguing that if the fruits are affected by blight while in the buyer’s possession, he is to be deemed responsible for the loss.

• **Wadī‘ah (Loss/Decease)** وضیعة

Linguistically, the term “*Wadī‘ah*” means loss or decrease.

In Fiqh terminology, it refers to the duty that is on the property. Ibnul-Athîr said: “It is what is required from people to pay as charity and *Zakâh* on their wealth.”

• **Wazîfah (Job/Work/Portion)**

وظيفة

Linguistically, the term “*Wazîf-*

ah” means job, work, estimated amount of work, provision, and food.

The Scholars of Fiqh used this word with multiple meanings that do not go beyond its linguistic meaning:

a) Al-Khuwarizmî said: “Employment is that a worker is assigned to carry a known sum of wealth for a specified period, so the wealth here is the job or the work.” He mentioned that this word is used as title for one topic in *Diwan Al-Khazin*.

b) Al-Qûnawî defined it in “*Anîs Al-Fuqahâ*” by saying: “It is what is estimated for a person every day in terms of food or provision.”

c) The scholar ‘Alî Haydar defined it in the chapter on endowments as: “The allocated salary that is given from the yield of the endowment.” (Article 115 of *Tartîb As-Sunûf*).

d) Many Scholars of Fiqh used it to mean the estimated tax or the designated tax.

• **Wa’d (Promise)**

وعد

Linguistically and according to many Scholars of Fiqh, the term “*Wa’d*” means promise, which is informing about a person’s future action related to another, whether it is good or bad.

Accordingly, a promise may be for a good deed, such as a good loan, or giving ownership of something or a benefit for free to the person for whom the promise is given, or it may be a connection, kindness, or companionship, such as visiting a sick person, visiting a friend, maintaining family ties, accompanying someone on a journey, or living together in neighborhood. It may be for marriage, as in the case of a woman's engagement, or it may be for a sin, as when someone promises someone to help them drink alcohol, commit an immoral act, or unjustly and aggressively destroy property, and so on.

• **Wafâ' (Loyalty/Fulfilment) وفاء**

Linguistically, the term "Wafâ'" means loyalty or fulfillment.

Abû Hilâl Al-'Askarî differentiated between "Wafâ'" and *Injâz* (performing), saying that "Wafâ'" is used with covenants, while "Injâz" is used with promises.

As for the term *Wafâ'* in its more specific meaning in debts and obligations, it is mentioned by Scholars of Fiqh to mean performance or fulfillment.

• **Waqas (Less Than Nisâb) وقص**

In Fiqh terminology, "Waqas" is the singular from of *Awqâs*, which refers, in the *Zakâh* of livestock, to what is between the two duties of

what is related to *Zakâh*, such as when the camels reach five, then the *Zakâh* is one sheep for them, and nothing in the excess until it reaches ten, and accordingly what is between five and ten is *Waqas* which means amount less than the *Nisâb* (minimum amount determining a person's Zakatability).

It was said: *Awqâs* is only for cows and sheep, not camels. It was said: it is for cows specifically.

• **Waqf (Endowment) وقف**

Linguistically, the term "Waqf" means absolute retention, whether it is physical or moral.

Al-Khuzâ'i said: "The origin of *Waqf* is prevention and retention, so in the case of an animal it is preventing it from moving and restraining it, and in the case of a house it is preventing it and retaining it so that it cannot be disposed of in a way other than that for which it was retained."

The term "Waqf" is also used to refer to the endowed thing itself.

In Fiqh terminology, it refers to "the retention of the asset and the allocation of the usufruct to charity for the poor, even in general, or in a form of righteousness. This means that giving charity with the usufruct may be from the beginning to a charitable cause, such as the poor, mosques and hospitals, and the income may be first for the founder as long as he is alive, then

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for his offspring, etc. If the offspring ceases, the income is to be spent on a charitable cause designated by the founder.

The definition we mentioned is a way out of the jurisprudential disagreement regarding the ruling on the waqf property: Does it transfer to the ownership of the person to whom it was endowed, or transfer into a public ownership, or remains the ownership of the waqf founder? As the Scholars of Fiqh adopted three trends regarding this issue, and each group of them defined the waqf based on their doctrine regarding the ruling on the waqf property, so their definitions of the waqf differed according to that difference.

The explanation of is that the Shafi'ites and the two companions of the Hanafites went to the view that the *Waqf* property transfers into public ownership, while Abû Hanîfah and the Malikites went to the view that it remains the ownership of the waqf founder, and the Hanbalites went to the view that it transfers to the ownership of the person to whom it was endowed.

Waqf, according to Fiqh, is divided into two types, charitable *Waqf* and family *Waqf*. This is explained below.

• *Al-Waqf Al-Ahlî* (Family Endowments)

الوقف الأهلي

Some modern Scholars of Fiqh

have divided *Waqf* (endowment) into two categories based on the nature of the entity to which they are endowed, family and charitable *Waqf*.

By family endowment, they meant that *Waqf* the proceed thereof is allocated first to the founder, for example, then to his offspring or others, which is not considered to be purely charitable causes, and then to an uninterrupted charitable cause, according to the will of the founder. This endowment is also called hereditary endowment, and the endowment on the descendants.

The concept of this type of endowment is known to the Scholars of Fiqh of the Islamic schools, but without these names.

• *Al-Waqf Al-Khayrî* (Charitable Endowments)

الوقف الخيري

Some modern Scholars of Fiqh have divided *Waqf* into two categories based on the nature of the entity to which it is endowed, charitable and family *Waqf*.

By charitable *Waqf*, they meant that *Waqf* the proceed thereof is initially allocated to a well-known continuous charitable cause, such as the poor, mosques, schools, shelters, hospitals, libraries, forts, students of knowledge, and the like.

This type of endowment is called charitable because its benefit is

limited to general charitable fields and goals.

• **Waqf As-Sabîl (Public Endowments)** وقف السبيل

If Fiqh terminology, it refers to the endowed that is allocated to public interest, such as mosques, cemeteries, schools, and the like, as stated in (Article 98) of “*Tartîb As-Sunûf*”.

• **Waqf Al-‘Awârid (Emergencies Endowments)** وقف العوارض

In Fiqh terminology, it refers to an endowment established in such a way that the proceeds thereof are to be spent on the emergencies of the people of a village or neighborhood and on their needs, such as endowments established for their proceeds to be spent on preparing and shrouding the deceased poor people of the village or neighborhood, and on spending on the sick who are unable to earn and work, and on paving the streets of the village or neighborhood, and repairing their water channels when needed.

• **Waqfiyyah (Endowment Deed)** وقفية

Article (25) of “*Ithâf Al-Akhlâf*” states: “*Waqfiyyah* is the legal deed that includes what the founder decided on his endowment, and the ruler’s registration of the endowment”, that is, the ruling that it is binding. (Article 6 of *Ithâf Al-Akhlâf*).

Article (129) of “*Tartîb As-Sunûf*” states that “*Waqfiyyah* is the legal deed that includes the ruler’s ruling that the endowment is binding as a result of the trial conducted in his presence, based on the founder’s claim to recover the endowment.”

• **Wakâlah (Agency/Authorization/Delegation)** وكالة

Linguistically, the term “*Wakâlah*” means delegation to another and referring the matter back to him.

In Fiqh terminology, it refers to appointing someone else in place of oneself in matters that are acceptable for representation. It is an expression of delegating a matter to someone else to do it in one’s life with special conditions.

Al-Munâwî defined it by saying: “*Wakâlah*” in Shari’ah is to authorize someone who is permitted to act as one’s representative in matters over which he has authority or power to act.

It is stated in (Article 915) of “*Murshid Al-Hayrân*”: “*Tawkîl* (power of attorney) is appointing someone else in place of oneself in a permissible and known matter.”

• **Wakâlah Khâssah (Special Agency)** الوكالة الخاصة

“*Wakâlah Khâssah*” is an agency limited on some of the things that

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are valid for delegation. It is specific to what the principal has given to the agent in terms of receipt, sale, litigation, marriage, gift, or other things that are acceptable for representation or delegation. The agent is called the “special agent” and the “specialized agent.”

The opposite of special agency, according to Scholars of Fiqh, is *Wakâlah ʿĀmmah* (general agency).

• **Wakâlah Dawriyyah (Periodic Agency)** الوكالة الدورية

It is the renewable, rotating agency, in which whenever the principal dismisses his agent, he returns to being an agent again. It is a completed agency with an agency suspended by dismissal. An example is when a person says to another: I have appointed you to do such-and-such, and whenever I dismiss you, I have appointed you as an agent. That person becomes an agent by his acceptance, and whenever the principal dismisses him, his agency is renewed periodically.

The reason for calling this agency periodic is this renewal, as it rotates with dismissal, so whenever the principal dismisses him, he returns to being an agent.

• **Wakâlah ʿĀmmah (General Agency)** الوكالة العامة

It is a general authorization that is not specific limited to one thing

only, such as when a person says to another: You are my agent in everything, or: In all my affairs in which agency is permitted. It includes all matters that are acceptable for representation, such as financial matters, marriage, divorce, litigation, and other matters, except for what the principal excludes. The agent is called the “general agent” and the Malikites sometimes call him “delegated agent.”

The opposite of general agency, according to Scholars of Fiqh, is *Wakâlah Khâssah* (special agency).

• **Wakâlah Muṭlaqah (Unrestricted Agency)** الوكالة المطلقة

It is the agency in which the delegation is not suspended on condition or attributed to a time or restricted by a requirement, such as a person saying to another: I have appointed you to sell my house so-and-so, or: to buy me a car, and the like, without suspending that agency for the sale or purchase on a condition, or attributing it to a specific time, or restricting it by specific requirement.

The opposite of absolute agency, according to Scholars of Fiqh, is *Wakâlah Muqayyadah* (restricted agency).

• **Wakâlah Muqayyadah (Restricted Agency)** الوكالة المقيدة

It is the agency in which the delegation is suspended on a condition

or attributed to a time or restricted by a requirement. An example of this is when one person says to another: I have appointed you to sell my car if so-and-so the merchant comes here, and the agent accepts that, then the agency is concluded pending the merchant's arrival, and the agent has the right to sell the car if the merchant comes, otherwise not; or he says to him: I have appointed you to sell these goods of mine in the month of Ramadan, and the agent accepts that, then he becomes his agent upon the arrival of the month of Ramadan, and he has the right to sell the goods in that month. However, before it arrives, he will not be authorized to sell them; or he says to him: I have appointed you to sell this watch of mine for a thousand dirhams, and the agent accepted that, so his agency is restricted to not selling for less than what he specified for him.

The opposite of of restricted agency, according to Scholars of Fiqh, is *Wakâlah Mutlaqah* (unrestricted agency).

• Waks (Depreciation/Decrement)

وكس

Linguistically and terminologically, the term "*Waks*" means depreciation or decrement, or less than the standard value.

The Prophet (peace and blessings of Allah be upon him) says "No

decrease and no excessive increase", meaning, no less and no much more than the defined limit. Judge 'Iyâd said this means that no decrement and no increase in value, and no exaggeration in the price.

Ibn Bâtîsh said: "*Wakas* is the reduction in value and the decrease from the price of the equivalent."

The Scholars of Fiqh saying, in the division of the building, "The owner of the lesser is to be considered", means the one who gets a place of less value than the other.

• Al-Wakîl Al-Musakhkhar (Unpaid Agent)

الوكيل المسخر

Linguistically, the term "*Taskhîr*" means unpaid or forced labor.

In Fiqh terminology, the term "*Al-Wakîl Al-Musakhkhar*" (unpaid agent) refers to the agent appointed by the ruler for the defendant who did not appear in court of his own free will, and it was not possible to bring him to court by force, and he is called "the absent opponent".

The explanation of this is that if the defendant refuses to appear and send a representative to the court, and it is not possible to bring him, he is summoned to the trial by sending him three times the lawsuit paper specific to the trial on different days at the request of the plaintiff. If he refuses, the judge informs him that he will appoint a representative

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for him, and will hear the plaintiff's lawsuit and evidence. If the defendant does not appear in the court after that and does not send a representative, the judge appoints an unpaid representative to protect his rights, and hears the lawsuit and evidence in the presence of the aforementioned representative. If it is confirmed that they are valid and the right is proven, he rules accordingly.

This term was used by the Hanafites during the Ottoman era.

• **Walâ' (Loyalty/Right of Inheritance)** ولاء

Linguistically, the term "Walâ'" is derived from the term "Waly", which implies closeness. Ar-Râghib said: This is used to refer to closeness in terms of place, in terms of lineage, in terms of religion, in terms of friendship, support and belief.

In Fiqh terminology, Al-Haythamî defined it as: "Agnation arising from freedom that occurred after the loss of ownership, and is not related to agnatic kinship, which requires the emancipator and his agnates to inherit, to have guardianship over marriage, to pray over him, and to pay blood money for him."

This *Walâ'* is a special characteristic of emancipation, and its cause is the loss of ownership through freedom. Al-Hisnî said: "Its ruling

is the ruling of agnatic kinship in his absence, that is, in the absence of the emancipator, so *Walâ'* is transferred to the agnates of the emancipator without the rest of the heirs, that is, the owners of the fixed shares and those to whom the agnatic kinship is related."

The Scholars of Fiqh agreed that whoever frees his slave, his *Wala'* will vest with him because of his favor upon him by freeing him, as narrated by Al-Bukhârî, Muslim and the compilers of the Books of Sunan from the Prophet (peace and blessings of Allah be upon him), that he said: "*Walâ' is for the one who manumits (the slave).*"

Ibn Qudâmah said: "They agreed that the master inherits all his freed slave's wealth if he dies, if their religions are the same and he does not leave behind any other heirs. This is due to the saying of the Prophet (peace and blessings of Allah be upon him): "*Walâ' is a relationship like the relationship of blood relatives (lineage).*" (Narrated by Ad-Dârimî, Al-Bayhaqî and Al-Hâkim).

This type of *Walâ'* is called by the Scholars of Fiqh *Wala'* of manumission and *Walâ'* of emancipation. There is no other form of *Walâ'* except it according to the majority of Scholars of Fiqh from the Shafi'ites, Malikites and Hanbalites, in contrast to the Hanafites and some scholars who went to that there is

another form of Wala' besides it that is proven by the contract of allegiance, and it is called "Walâ' of allegiance"

• **Wilayah (Jurisdiction/Authority/Rule/Patronage)** ولاية

Linguistically, the term "Wilayah" means patronage and support as well as authority and jurisdiction.

In Fiqh terminology, "Wilayah" (authority/ jurisdiction/ Guardianship) is divided into two types: general and special *Wilayah*.

As for the general *Wilayah*, it is the authority to manage the public interests of the nation, and to manage the affairs of the people and to command and prohibit them, and all Shari'ah authorities fall under this definition; such as the great imamate, the emirates of regions and countries, the ministry, the judiciary, the police, grievances, *Hisbah* (enjoying good and forbidding evil), the emirate of jihad, and the collection of alms and taxes, etc.

As for the special *Wilayah*, it is an authority that enables its holder to directly conduct contracts and arrange their effects without depending on the consent of others, and it is not related to managing public affairs. It is of two types: Authority (guardianship) over people and authority (guardianship) over wealth.

a) *Wilayah* over people is an au-

thority that focuses on discipline, education, and marriage for those who need it. Its causes include childhood, femininity, insanity, and imbecility.

b) *Wilayah* over wealth is the authority to dispose of wealth, and it is of two types: limited and transitive authority.

As for limited authority, it is the authority of a person over his own wealth if he enjoys full capacity to perform, and there is no restriction on him.

As for the transitive authority, it is the authority of a person over the wealth of another, and it is of two types:

Inherent authority: It is proven by the proof of the Lawgiver without the need for human proof, and is limited to the guardianship of the father and grandfather over the wealth of their minor son.

Representative authority: It is the authority that its holder derives from another person, such as the guardian and the agent.

• **Walimah (Banquet)** وليمة

Linguistically, the term "Walimah" means banquet or feast. It refers particularly to the wedding feast.

Some Scholars of Fiqh said: "Walimah" refers to any food prepared for a joyful event, except that it is used more for wedding feast.

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Ibn Qudâmah said: “There is no disagreement among the people of knowledge that the feast is a prescribed Sunnah at a wedding, based on the hadîth stating that the Proph-

et (peace and blessings of Allah be upon him), commended and performed it.”



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Yâ' (ي)

• Yadd (Arm or Hand)

اليَد

Linguistically, the term ‘Al-Yadd’ refers to the part from the shoulder joint to the tips of the fingers. It is also used metaphorically to denote blessing, power, acquisition, and ownership.

Fiqh scholars use this term to mean the acquisition of a thing, and the ability to use and benefit from it. For example, they say: “The evidence of the one who places his hand on an object is given precedence in terms of production over the evidence of any someone else.” This refers to the beneficiary acquirer.

Az-Zarkashî said, “The hand has two types: physical and moral.

The physical hand, in our view, extends from the fingers to the elbow, and the arm is included in this by association, not in reality.

As for the moral hand, it refers to taking possession of something through acquisition. It is a metaphor for the preceding (physical hand), because actions are performed by the hand.

Al-‘Izz Ibn ‘Abdus-Salâm said, “The hand refers to closeness and

connection whose degrees vary, some of which are stronger in implication than others.”

As for the term ‘hand-to-hand’ used in the context of the sale of usurious goods to each other, it is commonly used by the majority of scholars to refer to the simultaneous exchange of the two countervalues in the same session of the contract. For example, they say: “I sold it to him hand-to-hand”, meaning immediately and both countervalues were handed over in the session before either party separates from the other. Al-Fayyûmî explained, “The meaning here is: “I sold it to him while he was extending his hand with the price, and while I was extending my hand with the sold item. It is as if he said: ‘I sold it to him while both hands were extended with the respective countervalues.’”

The Hanafites disagreed with them in this regard and stated that the term ‘hand-to-hand’ in the sale of such items means specification, not the simultaneous exchange of the two countervalues.

• Yadd Al-Amânah (Trusted Hand)

يَدُ الْأَمَانَةِ

In Fiqh terminology, the term ‘Yadd Al-Amânah’ refers to the acquisition of a thing by someone with the owner’s permission when there is no intention to own it, rath-

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Nûn
Hâ’
Wâw
Yâ’

er it is for the interest of the owner (like: the depositor, agent, private employee, guardian, custodian of an orphan's property, administrator of endowment or public treasury), or it is for the interest of the person acquiring it (like: the lessee, mortgagee, borrower, and the possessor on an inspection bargain), or it is for their common interest (like: the *Mudârib*, partner, tenant, and irrigator).

The ruling on this trusted hand is that it does not bear liability for the destruction of the property in its possession unless there is a tort or negligence in its safekeeping. If any of this happens on its part, it becomes a guarantor and is obligated to compensate the owner for the loss. The compensation should be in kind for fungible items and in value for non-fungible items.

Although Fiqh scholars agree that the hand of a depositor, lessee, *Mudârib*, partner, messenger, private employee, unpaid agent, guardian, trustee, custodian, the possessor who has expressed the intention to identify it, or someone into whose house an item was blown by the wind... is considered a trusted hand, they differ regarding the hand of a borrower, mortgagee, paid agent, shared employee, and manufacturers. Some scholars have deemed it a trusted hand, while others have deemed it a guaranteed hand.

• *Yadd Ad-Damân* (Guaranteed Hand) يَدُ الضَّمان

In Fiqh terminology, the term '*Yadd Ad-Damân*' refers to the acquisition of a thing by someone without the owner's permission (as a wrongful act, delict, tort), like the possession by a thief or usurper, or with the permission of the owner, but with the intention of owning it, like the possession of one bargaining for it or one who has expressed the intention to own it.

The Shafi'ites and Hanbalites hold that the hand of a borrower is a guaranteed hand, and the Malikites agree with them regarding borrowed items that can be concealed (e.g., jewelry and clothes). The Hanafites hold that the hand of a mortgagee is a guaranteed hand, and the Malikites agree with them regarding the property that can be concealed.

The ruling on this guaranteed hand is that it bears liability under no circumstances. This means that it is held liable for any loss or destruction of the property in its possession, regardless of the cause of its destruction or loss. Accordingly, the possessor should return a similar item if the property is fungible, or its equivalent value if the property is non-fungible.

• *Yasâr* (Affluence) يَسَار

Linguistically, the term '*Al-Yasâr*' refers to richness and affluence

Abû Hilâl Al-`Askarî said, "There is a difference between richness (*Al-Ghinâ*), wealth (*Al-Jiddah*), and affluence (*Al-Yasâr*). The wealth denotes the abundance of money only. The richness refers to both financial wealth and other forms of strength and support that eliminate the need or dependency. The affluence indicates the amount sufficient to meet one's livelihood needs and does not imply abundance. For example, you would say: 'So-and-so is an affluent merchant', but you would not say: 'A king is affluent', because the merchant's wealth is small compared to what the king owns."

The Fiqh usage of the term '*Al-Yasâr*' generally does not go beyond its linguistic meaning. It is commonly used by Fiqh scholars in the context of a wife's or a relative's maintenance. However, they distinguish between the standard of wealth in these two cases. Al-Khatîb Ash-Shirbînî said, "The affluence (*Al-Yasâr*) considered for a wife's maintenance is different from that for a relative's maintenance. For a relative, an affluent person is one whose wealth exceeds his and his dependents' sustenance. As for a wife, an affluent person is one whose income is greater than his expenses."

• *Yasîr* (Paltry or Insignificant)

يسير

Linguistically, the term '*Al-Yasîr*' refers to something that is easy

to obtain or seek. It can also mean something small or insignificant.

In Fiqh terminology, the term '*Al-Yasîr*' is used to describe several things, such as uncertainty, overcharge or misrepresentation, ignorance, damage, and others. For example, it is said: insignificant uncertainty (*Al-Gharar Al-Yasîr*), insignificant overcharge or misrepresentation (*Al-Ghabn Al-Yasîr*), insignificant ignorance (*Al-Jahâlah Al-Yasîrah*), insignificant damage (*Ad-Darar Al-Yasîr*), etc. The meaning here is: "Something small in amount that people usually overlook," and such amount is forgiven in transactions according to Shari'ah. Accordingly, its existence does not render a contract void, nor does it create an option for rescission, or entail financial liability or other legal consequences. This is because financial transactions generally cannot be completely free of insignificant ignorance, overcharge, misrepresentation, or uncertainty, and the neighboring relationships cannot be entirely free of insignificant damage. Therefore, the Shari'ah overlooks that small amount to ease the burden on people.

As for its definition, there is no standard agreed-upon among scholars for it, because there is no Shari'ah text specifying it. So, the scholars refer to the prevailing customs and practices, which vary with time,

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place, items, and other factors. However, they developed indicators to help identify and determine its definition. For example:

- They define the insignificant misrepresentation (*Al-Ghabn Al-Yasîr*) as: "The amount added to the reasonable value that people usually accept in customary dealings, such that it falls within the range that the trustworthy experts deem appropriate for a specific purpose."
- They define the insignificant uncertainty (*Al-Gharar Al-Yasîr*) as: "The uncertainty which cannot be completely eliminated from sale transactions and is generally overlooked by people."

- They define the insignificant ignorance (*Al-Jahâlah Al-Yasîrah*) as: "The lack of knowledge of the descriptions that does not lead to conflict and dispute between the contracting parties."
- They define the insignificant damage (*Ad-Darar Al-Yasîr*) in the context of neighboring relationships as: "The damage that prevents benefits which are not considered essential in a building (i.e., the benefits for which it was originally intended by construction), or causes structural weakness, or leads to its collapse."



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We strive at the Shari'ah Group to contribute to the growth of Islamic banking through developing forms and contracts, innovating products, and solving problems. This publication series aligns with this approach, and we ask Allah, the Almighty, to bless our efforts.

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Senior Vice President,
Head of Shari'ah Group,
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Transliteration System

Arabic Character	Symbol	Example	Arabic Character	Symbol	Example
ء	'	Qur'an/'Ishâ'	غ	gh	Maghrib/Ghasaq
أ	a	Athletic/Athar	ف	f	Fifth/Fiqh
ب	b	Birth/Bismillâh	ق	q	Qatar/Qarḍ
ت	t	Tacit/Tasmiyah	ك	k	Karat/Kawthar
ث	th	Thank/Thaqîf	ل	l	Lunar/Luqmân
ج	j	January/Janâbah	م	m	Marble/Marwah
ح	h	Muḥammad/Aḥmad	ن	n	Narration/Nasî'ah
خ	kh	Bukhârâ/Khurâsân	هـ	h	History/Hilâl
د	d	Duplex/Du'â'	ة	h /at	Zakâh/Zakâtul-Fitr
ذ	dh	Dharî'ah/Dhimmi	و	w	Witch/Witr
ر	r	Rich/Ribâ	ي	y	Yashmak/Talbiyah
ز	z	Zinc/Zindîq	اَ	a	Fact/Faḍl
س	s	Sample/Saqar	اِ	i	Fiction/Fiqh
ش	sh	Shari'ah/'Ishâ'	اُ	u	Supervisory/Suwâ'
ص	s	'Asr/Uṣûl	آ	â	Madame/Siwâk
ض	d	Ifâdah/Îdâh	وْ	û	Pool/Dâwûd
ط	t	Tawâf/Tahârah	يِ	î	Marine/Hanafî
ظ	z	Zuhr/Zulm	وِ	aw	Aware/'Awrah
ع	`	Shari'ah/Rak'ah	أَي	ay	Ayatollah/Aymân

Lexicon of Financial and Economic Terms in the Language of Fiqh Scholars

This Lexicon is a product of extensive scholarly expertise in the field of Fiqh and its fundamentals. The author, through his encyclopedic and lexicographic work, has endeavored to collect the terminology used by scholars from all Islamic schools of Fiqh, and arrange them alphabetically for ease of use. This facilitates the reader's search, making the Lexicon a comprehensive reference that contains definitions and explanations of terms used in Islamic Fiqh and the science of Uṣūl Al-Fiqh, clarifying their meanings and Sharī'ah usages.

The Lexicon aims at providing a reliable reference for those studying and interested in Fiqh and the science of Uṣūl Al-Fiqh. It offers precise and comprehensive explanations of specialized terms relevant to these sciences, thereby aiding beginners in understanding the basic Fiqh and Uṣūl concepts, and providing researchers, scholars, and students with a valuable source for citation. Hence, this Lexicon represents the crowning achievement of previous valuable works in this field.

The Lexicon includes a wide range of terms, covering Sharī'ah rulings, principles, basic Fiqh and Uṣūl concepts, in addition to definitions.

The author has also supplemented it with examples and further explanations to clarify the context and usage of terms in Islamic Fiqh.

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