# Shariah Analysis of Bitcoin

## 1. Introduction:

Following the global financial crisis in 2008, Satoshi Nakamoto (a pseudonym), introduced the idea of digital peer-to-peer (P2P) payment system in the form of Bitcoin and suggested reducing the intermediary role of financial institutions in the financial transactions. The system was introduced as an alternative to building trust among the parties of a transaction at a distributed network while maintaining their anonymity, and that too without having a third party to establish that trust. He initiated the idea by developing the Bitcoin system and uploading it as an opensource program in 2009.

The inception of Bitcoin sparked the crypto phenomenon as many people started thinking of introducing decentralized products and services that go beyond monetary and financial sectors. Now, cryptos have become a full asset class, where “cryptocurrencies” are only a part of it. There are many types of crypto assets, i.e., NFTs, security tokens, utility tokens, payment tokens, etc. Bitcoin falls under the category of payment tokens/coins or virtual currencies because it is designed and used as such. While other cryptos may have a different design and purpose.

## 2. Bitcoin Defined:

Some experts define Bitcoin as:

*“Bitcoin is a collection of concepts and technologies that form the basis of a digital money ecosystem.”*[[1]](#footnote-0)

*“Bitcoin is a decentralized digital currency.”[[2]](#footnote-1)*

In other words, bitcoin (BTC) is a form of digital cash that uses cryptographic techniques to securely perform the transactions at a decentralized network, called blockchain. In this sense, it is a medium of exchange, created and stored electronically on the blockchain, using encryption techniques to control the creation of monetary units and to verify the transfer of funds. It is a privately issued currency that derives its value from the trust of people in the system.

## 3. Bitcoin’s Popularity and Usability:

People trust the Bitcoin system due to its transparency, security, and decentralized nature. The Bitcoin system is an opensource program that is driven and maintained by the community. The system was set to issue only 21 million bitcoins (BTC) using proof-of-work (PoW) consensus algorithm.

Bitcoin price was $0 when first introduced, and most people obtained it via mining, which only required moderately powerful devices (e.g., PCs) and mining software. The first known Bitcoin commercial transaction occurred on May 22, 2010, when programmer Laszlo Hanyecz traded 10,000 Bitcoins for two pizzas worth only $25. In July 2010, Bitcoin first started trading, with the Bitcoin price ranging from $0.0008 to $0.08 at that time. As of 12 March 2022, one bitcoin is worth $40,160 with total market capitalization of more than $763 billion at the current supply of just above 19 million BTC. The daily trading volume of bitcoins exceeds $36 billion, and it holds 41% dominance in the crypto market.

Since the creation of bitcoin in 2008, it has been the subject of uncertainty, skepticism, hype, and disillusionment. While still early as a technology category, it is now maturing and has demonstrable utility. People can trade/exchange bitcoins at 505 exchanges (as per CoinMarketCap), other than P2P transactions. Many large corporations, i.e., Microsoft, Wikipedia, PayPal, Starbucks, AT&T, Overstock, Amazon, and thousands of small and retail businesses also accept bitcoins as mode of payment. Many financial institutions and exchanges, i.e., JP Morgan, Goldman Sachs, Binance, have introduced bitcoin-based derivatives, ETFs, and other financial products and services. People can use it for cross-border transactions and foreign remittances as well.

Many shariah scholars have analyzed Bitcoin from halal and haram perspective. However, due to its technological complications and innovative approach, their Islamic legal opinions are confusing, or mixed at the best. These fatwas clearly show misconceptions, lack of technological understanding, missing out economic and commercial aspects, and absence of genuine experience in the field. Hence, some fatwa issuing authorities in Egypt, Palestine, Indonesia, India, Pakistan, Turkey, etc., consider it haram. However, many individual shariah scholars, i.e., Mufti Irshad Ahmed (Pakistan), Mufti Billal Omarjee (UK), Dr Daud Bakar (Malaysia), Sheikh Nizam Yaqubi (Bahrain), Dr Abdullah Nadwi (United Arab Emirates), etc., who have conducted independent deep research in the area, consider it halal.

## 4. Shariah Objections on Bitcoin:

Some of the famous shariah objections and their responses are worth mentioning here.

### 4.1. Non-Existent Object:

Some scholars think that Bitcoin is a non-existent currency (due to its digital nature) whose value is imaginary. This objection is based on the lack of understanding of the technology part. Bitcoins digitally exist in the form of tokens on blockchain. These tokens (or units) are distinguishable, people can electronically store and transfer them. In this way, people can own, possess, save, and exchange them whenever they like. Therefore, it not only means that these tokens do exist, but also fulfill the requirements of a property/asset (mal) in shariah. Scholars can simply see it as a form of intangible and virtual asset. Furthermore, the utilities and benefits of the Bitcoin system give value to its units. Hence, people consider it as a valuable asset for which they are willing to pay $40,160 (current market price) to own it.

### 4.2. High Volatility in Price:

Some muftis object that its price highly fluctuates and is unstable. This causes the element of speculation, and even gambling, to occur for the traders. This argument is also flawed because price fluctuation and instability does not necessarily entail gambling. Because gambling, from shariah perspective, only occurs when there is a game of chance and a zero-sum game combined in a transaction. Although, people may gamble using bitcoins, it does not mean that its simple trading or exchange is gambling in nature.

As for the speculation angle, in an active and dynamic market, everything changes its price based on the principle of supply and demand. A businessperson speculates on the price of an object and hopes that it will go up, so he could realize profit by selling that object at a higher price. This type of speculation exists in every business and object. Every businessperson speculates/estimates the price direction because nobody knows the future. Such price volatility can be found even in the value of national currencies on foreign exchange. Such fluctuations cannot be equated to prohibited speculation.

### 4.3. Black Market Activities:

Some people argue that Bitcoin is mostly used in illegal activities. It is true that Bitcoin market is one of the largest unregulated markets in the world. Due to this fact, until 2018, approximately one-quarter of users of Bitcoin were involved in illegal activities. Around USD 76 billion worth of illegal activities per year involved Bitcoin and other crypto assets (46% of bitcoin transactions), which was close to the scale of the US and European markets for illegal drugs. However, the illegal share of Bitcoin activities has been declining with mainstream interest in the space and with the emergence of tracing techniques for Bitcoin. According to the Chainalysis 2022 Crypto Crime Report, criminal activities in crypto fell quite dramatically, from 2.1% in 2019 (approximately USD 21.4 billion worth of transfers) to <0.5% in 2020 (USD 10 billion in transaction volume).

Another argument against this objection is that hard cash is also widely used for illegal activities because it is difficult to trace it. But it does not mean that hard cash or the physical currency of a country can be considered as haram in its nature. It is an external factor which may not have any relevance to the subject matter – Bitcoin in our case – per se.

### 4.4. Absence of Government Support and Regulatory Ban:

The legal stance of Bitcoin has been taking quite a tumultuous ride in various countries, with the ultimate question: to regulate or not to regulate it. While speculation and fake news regarding the topic highly influence the Bitcoin market and its price, many governments are still confused in choosing to decide their path for now.

There are significant differences in the legal premise of crypto assets among the various regulatory agencies. Therefore, the legal categorization and status of Bitcoin and products based on it in various jurisdictions is a huge point of discussion currently. How can the challenge of multi-regional laws be tackled while dealing with Bitcoin? The issues of KYC, tax evasion, terrorist financing, black market transactions, and compliance also need in-depth discussion from the regulatory and compliance perspective.

Some scholars argue that due to the current regulatory and legal uncertainty, Bitcoin should be considered Haram. Although, the regulatory and legal ambiguity does hold some weight, however, on such basis, shariah scholars may suggest that Bitcoin and its usage should be avoided. But such uncertainty does not seem to be sufficient proof to harshly declare Bitcoin completely haram.

### 4.5. Scams and Fraud:

Another concern about Bitcoin is the high occurrence of frauds and scams. Many people have become victims of such criminal activities due to the lack of knowledge and adequate understanding of Bitcoin. It can be safely opined that market manipulations, scams, frauds, and various forms of deception are more widespread in Bitcoin. This has also raised a serious shariah concern.

This is a valid argument because scammers exploit human greed for their own benefit. However, this is not unique to Bitcoin only, as we also see frequent frauds in the traditional world. Moreover, it is an external factor which should be tackled separately. Instead of considering Bitcoin as the source of fraud, scammers should be seen as the real culprits. They should be discouraged from criminal activities, rather than banning Bitcoin.

## 5. Conclusion:

Blockchain is a shariah neutral technology that does not intrinsically have any shariah prohibited element. Moreover, bitcoins’ nature as a digital token, its issuance and distribution also do not involve any haram factor. It is true that due to various external factors the overall shariah status of Bitcoin is not clear to many shariah scholars. However, the right approach is to objectively analyze first Bitcoin from Islamic law perspective as a subject matter separated from other external factors and clarify the shariah ruling based on its nature and utility. As for the factors negatively influencing Bitcoin, they should be analyzed separately and the shariah ruling should be given on case-by-case basis. For example, when a company commits fraud with people using Bitcoin, the action of the company should be considered as haram, instead of considering Bitcoin as haram.

# Crypto Phenomenon and Islamic Finance

The inception of Bitcoin has greatly influenced the global financial sphere. It acted as a strong catalyst of disruption in the financial industry. Many innovative projects started creating their crypto or digital tokens, fueling the growth of the whole crypto industry in terms of size and volume. Within a decade only, it has already become a multi-trillion-dollar industry.

Initially, many banks considered it a threat and subsequently tried to fight it. Jamie Dimon, the chief executive of JPMorgan Chase, called Bitcoin "worthless" and considered the whole crypto phenomenon as a pure form of speculation. Banks in several countries discouraged their customers from getting involved in cryptos in various ways.

Similarly, many central banks issued public warnings about the risks involved in the cryptos. Some central banks (for example, the Reserve Bank of India and the State Bank of Pakistan) approached legal courts to seek a complete ban on cryptos and other related activities within their respective countries. While the Indian courts have recently ruled in favor of cryptos, Pakistan's situation is still unclear. Despite such regulatory intimidation, public demand is getting stronger day by day. It is interesting to know that, according to the 2021 Global Crypto Adoption Index, both India and Pakistan ranked second and third, respectively, in the whole world based on the usage of cryptocurrencies – i.e., crypto received, transferred, and P2P exchange trade volume.

Many large banks quickly realized that they could not win the war against cryptos. They also saw the business opportunity that cryptos can offer in the face of high demand. The potential returns in crypto products are way higher than a traditional banking product can offer. So, they jumped on the bandwagon to catch up with the phenomenon. Their plan is simple: make as much profit as possible by offering crypto products to their clients; and lobby with the regulators to keep cryptos in check to ensure that their business interests are always protected. Bank of New York Mellon, State Street, Fidelity Investments, and Northern Trust have all announced plans to offer crypto services to their clients. MasterCard will also offer crypto services to thousands of banks and millions of merchants in its network.

Many central banks are now planning to issue guidelines and regulations about the activities the banks can engage in. For example, they are looking into cryptos activities, including holding such assets on their balance sheets, issuing stable coins, facilitating crypto trading on behalf of customers, among other currently murky areas. Many central banks are keenly looking into issuing their national currency-based cryptos (Central Banks Digital Currency, CBDC). The Bahamas and Nigeria have already launched their CBDCs; almost 100 more countries explore CBDCs at different levels.

However, the primary naiveness of banks gave sufficient time to the crypto startups to grow, and hence, cost the banks tough competition in the space. The crypto startups utilized the time window to make themselves mature. The crypto space has grown from simple blockchain-based tokens to a complex cross-border payment system with credit cards and crypto loans. Furthermore, the decentralized finance (Defi) movement has taken the crypto world to the next level. Many Defi products are becoming a viable alternative financial solution to traditional banking products. The latest trend of non-fungible tokens (NFTs) and metaverse are ready to offer a new experience of digital ownership, marketplaces, and new ways of interacting with various classes of assets to the users. JP Morgan has recently opened its virtual 'Onyx lounge' in the metaverse, becoming the first bank to enter this arena.

While the conventional financial world is rapidly adapting to the new wave of change, Islamic banks and financial institutions find themselves at the crossroad. They are still indecisive about grabbing the opportunity, like their peers in the conventional space, or keeping doing the business as usual. However, this may not remain a choice for them in the future because many macro factors would make it a necessity, such as the crypto impact on customers' priorities and demand, market competition, high cost, and inefficiency of traditional products, to name a few.

The perks of using blockchain and cryptos in the Islamic finance industry are obvious. Blockchain can drastically improve KYC, ID verification, funds traceability, full audit, and other compliance requirements. Smart contracts can perform sequential execution of various transactions, which is an integral feature of Islamic finance products, ensuring reduced shariah risk. Cryptos can offer tokenization of assets, expanding the pool of shariah-compliant investments, which is much more needed to park the excessive liquidity currently held by the Islamic banks. However, cryptos come with their challenges and issues.

The Islamic finance industry's first biggest challenge in adopting cryptos is their Islamic legal (shariah) status. The most crucial question is whether cryptos are halal (permissible) or haram (impermissible) in shariah. Cryptos' technology and economic aspects put forward an unprecedented case to the shariah scholars. Adding more complexity, the negative media coverage, and legal and regulatory concerns about cryptos distracted them from objectively analyzing the phenomenon from the Islamic jurisprudential perspective. Unfortunately, many contemporary fatwas (Islamic verdicts) are a good reflection of this situation, showing a severe misunderstanding of the whole crypto phenomenon and superficial knowledge of those aspects.

However, due to the high demand from the Muslim masses to investigate this matter seriously, some shariah scholars and fatwa issuing authorities have now started looking into it to find the right answers. Recently, the Indonesian national council of shariah scholars (Nahdatul Ulama) issued a fatwa banning all cryptos based on the prevailing "uncertainty," speculation, and potential harm to the society. Interestingly, this fatwa received backlash from various scholars investigating cryptos objectively, and they have foreseen its potential benefits for Islamic financial institutions and banks.

The second biggest challenge is regulations and compliance. The Middle East, Indian sub-continent, Southeast Asia, North Africa, and Central Asia dominate most of the global Muslim population, hence the home of Islamic finance. Most of those countries are either underdeveloped or developing nations. Due to poor regulatory infrastructure, the regulators from those countries worry about various issues relevant to cryptos, like lack of KYC, tax evasion, money laundering, terrorist financing, and absence of control in cross-border transactions, among others. However, the regulators can learn a lot from the developed countries which have successfully allowed and regulated cryptos in their jurisdictions.

The third issue is crypto fraud and scams. Many people have become victims of such criminal activities due to a lack of knowledge and adequate understanding of crypto space. However, this is not unique to cryptos, as we also see frequent frauds in the traditional world. Nevertheless, a focus on education and public awareness can resolve this problem. People should do their due diligence and research before investing or getting involved in any crypto project. They should not participate in any project without sufficient information, whether crypto or non-crypto.

The traditional Islamic finance industry might take a while to evaluate the potential of cryptos. However, the world will not wait. Few startups are already keen on offering Islamic financial products and services through cryptos. MRHB Defi is worth mentioning among those new projects. It has recently raised more than 5 million US dollars. It aims to offer a complete ecosystem comprising Islamic decentralized financial products and services. Soon, others will follow suit, and it seems that it will be an exciting journey ahead.

# Different Types of NFTs and their Shariah Guidelines

To construct some shariah guidelines, NFTs can be divided into five broad categories:

1. Text: it includes news, articles, books, tweets, and other social media posts in the form of text.
2. Media: it can be divided into videos, images, and audio files. Mostly videos consist of some memorable moments, images consist of visual arts in the form of photos, paintings, and memes, while audio files consist of music and speeches.
3. Digital Objects and Items: it includes in-game objects, characters, metaverse features, fashion, and luxury items.
4. Collectibles: this category involves limited edition sports cards, and other collectibles.
5. Miscellaneous: this category comprises domain names, event tickets, NFTs that are redeemable for a real world (off-chain) object, identity that is related certification and licensing.

## 1. Halal Text-Based NFTs

Halal text-based NFTs should be respectful of all people and religions, and should avoid promoting violence, hatred, discrimination, or sins. They should also be ethically correct and accurate.

Here are some examples of halal text-based NFTs:

* Educational materials, such as e-books, online courses, and tutorials on a variety of topics.
* Religious texts and scriptures, such as the Quran, Bible, and Torah.
* Inspirational and motivational quotes and writings.
* Literary works of fiction and poetry that promote positive values and messages.
* Historical documents and manuscripts.
* News articles and blog posts that provide accurate and informative reporting on current events or specific topics.

Here are some examples of text-based NFTs that would not be considered halal:

* Fake news articles and social media posts that spread misinformation or disinformation.
* Hate speech and other content that promotes violence, discrimination, or hatred against any group of people.
* Adult content or content that is sexually suggestive in nature.
* Content that promotes sins such as adultery or alcohol consumption.
* Content that is ethically incorrect or inaccurate.

It is important to note that these are just general guidelines. There may be some cases where a text-based NFT that does not fall neatly into one of these categories could still be considered halal. Ultimately, it is up to the individual Muslim to decide whether a particular NFT is permissible for them to own or trade.

## 2. Media:

Shariah Guidelines for Media NFTs

Media NFTs should:

* Be respectful of all people and religions, avoiding content that is hateful, violent, or discriminatory.
* Avoid promoting sins such as adultery, alcohol consumption, or terrorism.
* Be appropriate for all ages, avoiding erotic content or other material that may be harmful to children.
* Avoid promoting violence, hatred, or discrimination against any group of people.
* Not ridicule or insult other people.

Here are some specific examples of halal media NFTs:

* Educational videos and documentaries on a variety of topics.
* Islamic lectures and sermons from reputable scholars.
* Inspirational and motivational videos and podcasts.
* Family-friendly movies and TV shows.

Here are some examples of media NFTs that would not be considered halal:

* Videos that promote violence, hatred, or discrimination.
* Videos that contain sexually suggestive content.
* Music videos that contain lyrics that are sexually suggestive or promote violence or hatred.
* Videos that ridicule or insult other people.
* Media NFTs that are immoral or unethical from Islamic point of view or promote the same.

## 3. Photos:

Shariah Guidelines for Photo NFTs

Photo NFTs should:

* Be respectful of all people and religions, avoiding content that is hateful, violent, or discriminatory.
* Avoid promoting sins such as nudity, alcohol consumption, or pornography.
* Not depict Deities or Holy Figures.
* Not ridicule or disfigure other people.
* Not violate other Shariah principles of ethics and morality.

Here are some specific examples of halal photo NFTs:

* Family-friendly photos and images.
* Photos and images of nature and scenery.
* Photos and images of art and architecture.
* Photos and images of historical and cultural significance.
* Educational photos and images that teach people about different subjects.

Here are some examples of photo NFTs that would not be considered halal:

* Photos and images that depict nudity, alcohol consumption, or pornography.
* Photos and images that ridicule or disfigure other people.
* Photos and images that promote violence, hatred, or discrimination.
* Photos and images of Deities or Holy Figures.

## 4. Miscellaneous NFTs:

Shariah Guidelines for Miscellaneous NFTs

Fashion NFTs: Fashion NFTs are generally permissible, if they are used in a way that is consistent with Shariah principles. For example, it would not be permissible to use a fashion NFT to create or promote clothing that is revealing or indecent.

Ticketing NFTs: Ticketing NFTs are only permissible for events that are in line with Shariah guidelines. For example, cinema and musical concert tickets would not be considered halal.

Video Game Items: The permissibility of video game items as NFTs depends on two factors:

1. Whether or not playing the video game itself is permissible in Islam.
2. Whether or not the content of the video game NFT is Shariah compliant.

Some scholars believe that playing video games is permissible, while others believe that it is haram. For those who believe that playing video games is permissible, the permissibility of the NFT will depend on the content of the game. If the game contains any elements that are haram, such as violence, gambling, or pornography, then the NFT would also be considered haram.

Here are some specific examples of miscellaneous NFTs that would be considered halal:

* Fashion NFTs for modest clothing and accessories.
* Ticketing NFTs for events such as Islamic lectures, seminars, and conferences.
* Video game NFTs for games that are free of haram content.

Here are some examples of miscellaneous NFTs that would not be considered halal:

* Fashion NFTs for revealing or indecent clothing.
* Ticketing NFTs for events such as cinemas and musical concerts.
* Video game NFTs for games that contain haram content such as violence, gambling, or pornography.

# MRHB Network Article

## 1.1 Background

Shariah (Islamic law, الشريعة الإسلامية) constitutes a set of divine principles, beliefs, rulings, and ethical norms. Its construct is founded on the instructions received from the Lawgiver, Allah (the Almighty God). Shariah provides guidance to mankind in different spheres of their lives through its prescribed values, ethos, and principles, found in its primary sources i.e., Quran and Sunnah. Shariah treats the matters of individual dealings, businesses, financial transactions, and other mundane activities with almost an equal emphasis as it treats the matters of belief (الإيمان), prayers العبادات)), and morality الأخلاق)). There is a common understanding among the Shariah scholars that Shariah injunctions and prescriptions ‘as a whole’ aim to bring ease and peace by removing hardship from the masses. Al-Zuhaili says:

الأصل أن الشريعة جاءت لجلب المنافع، ودرء المفاسد

(Al-Zuhaili, 2006, v. 1, p. 238)

“The principle is that Shariah has come to bring benefits and ward off evils”.

In the context of blockchain, cryptos, and Defi, the core Shariah principles and values are deduced from those verses of Quran and Prophetic traditions which provide guidance on issues related to property rights, business activities, commercial and transactional contracts, and prohibited elements that involve unfairness, injustice, harm, or dispute among people. Considering the modern Islamic crypto-based or decentralized financial system as a subset of Islamic economics and finance, the same Shariah principles are applicable to the products, services, and practices of this niche and new industry too. Thus, adherence to Shariah principles constitutes an integral pillar of modern Islamic decentralized or crypto-based financial architecture.

## 1.2 Blockchain and Smart Contracts from Shariah Perspective

In the current era, the technology of blockchain and smart contracts, and the phenomenon of crypto assets have attracted the interest of various people. Blockchain as a technology of decentralized ledger and networks promises to bring high security and transparency to financial transactions. While smart contracts and decentralized applications (DApps) aim to provide a sophisticated, digital, and automated way of executing contracts using blockchain. Similarly, the trend to develop a decentralized financial platform widely known as ‘DeFi’, in parallel to a centralized financial infrastructure known as ‘CeFi’ is gradually gaining momentum among its various users.

Since the technology of blockchain and smart contracts has been newly introduced, many people question whether such technology or its usage is permissible from a Shariah perspective. The original Shariah position regarding such technological developments is of permissibility unless their conflict with Shariah rules and principles is established and proven. One of the Islamic legal maxims is stated as:

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

(Al-Zuhaili, 2006, v. 1, p. 190)

“The basic principle with regard to things is permissibility until evidence indicates that it is forbidden”.

Similarly, blockchain and smart contracts as technology are permissible because there is nothing inherently impermissible in them. However, it is the usage of such technology that may be permissible or impermissible. To ensure and authenticate that the usage consisting of various activities and practices is in fact not in contradiction with Shariah values and principles, a critical review of such usage, activities, objectives, and applications should be performed by a qualified and competent team of Shariah scholars. Based upon the outcome of such a review, it can be stated whether a certain application or implementation of blockchain and smart contracts is permissible or not.

## 1.3 The Concept of Maal in Shariah

There is a common misconception among shariah scholars that crypto assets are not considered as wealth or property from the shariah perspective. Due to this fundamental issue, they argue that regardless of any effort, nothing in the crypto space can be considered as halal. Since it is a fundamental issue, it is crucial to remove this misconception before even claiming that a particular project is Shariah-compliant or not.

In the primary and secondary sources of Shariah, generally the term ‘Maal’ (المال, plural; اموال, Amwal) has been frequently used to refer to wealth, property, asset, etc. For example, the Quran says:

اَلۡمَالُ وَالۡبَـنُوۡنَ زِيۡنَةُ الۡحَيٰوةِ الدُّنۡيَا

(Quran, Surah Al-Kahf, 18:46)

“Wealth and children are the adornment of this worldly life”.

From a Shariah perspective, wealth needs to be created by proper utilization of resources in line with the prescription of the primary sources of Shariah and through halal means, mechanisms and modes. The Quran says:

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

(Quran, Surah Ali Imran, 3:29)

“O you who believe, do not devour each other’s property by false means, unless it is trade conducted with your mutual consent.”

The Islamic jurisprudence categorizes wealth (Maal) into Mutaqawwam (مال متقوم) and Ghair Mutaqawwam مال غير متقوم)). Mutaqawwam is a type of property that Shariah allows to benefit from, or in other words, an intrinsically permissible property. While ghair mutaqawwam is a type of property that Shariah does not allow to benefit from; in other words, an asset that has an intrinsic impermissible element is considered ghair mutaqawwam. Such an asset is not even considered wealth/property in Shariah.

This primary categorization of wealth in Shariah excludes assets, objects, and items from the definition of wealth which are intrinsically prohibited in Shariah. Examples of such objects include pork and liquor among others. This initial categorization is indicative of Shariah’s stand that all that has value and is exchangeable in the market is not necessarily deemed as wealth in the sight of Shariah. Thus, at the initial stage, Shariah filters out the assets and valuables which qualify for the merit of being termed as wealth from the ones which do not stand to this test. As per Shariah guidelines, dealing in any valuable asset which is not qualified as Maal in view of Shariah is prohibited for a Muslim.

## 2. Crypto Assets in Shariah

Crypto assets (also referred to as “digital assets”’ or “virtual assets”) are cryptographically secured digital representations of value on a blockchain platform. They can be called crypto for short.

Crypto experts, economists and regulators have categorized crypto assets in various categories on different bases. For example, they have been categorized based on their usage, their consensus algorithms, their underlying technology, their underlying asset or project, their economic rationale, or based on the jurisdictional legislations and regulatory framework. Similarly, crypto assets can be categorized based on their functionalities and underlying structures from a Shariah perspective, so that it is easier to apply Islamic principles and rulings accordingly.

Proper categorization of crypto assets is pertinent to understand their Islamic legal characterization تكييف فقهي)). They can be only evaluated after that from a Shariah perspective and a suitable Shariah ruling can be constructed. One of the Islamic legal maxims is stated as:

الحكم على الشيء فرع عن تصوره

(Ibn Taymiyyah, 1995, v. 14, p. 57)

“The [Shariah] ruling of a thing is based on its [actual] knowledge [perception and understanding].”

It is necessary to have a deep understanding and knowledge of crypto assets, before having a Shariah opinion on them. Therefore, based on their comprehensive understanding, crypto assets can be categorized into various types which are described below.

### 2.1 Cryptocurrencies

The first type of these crypto assets is “cryptocurrencies” or “crypto coins”. They are also termed digital or virtual currencies. They are specifically designed to be used as money or a medium of exchange. In other words, they are peer-to-peer payment coins or tokens. The most famous one is Bitcoin among them.

The concept of money in Islam, was never defined directly in the Quran and Sunnah. And very few scholars have attempted to explain how money should be seen from an Islamic perspective. This may be because Muslims in the past did not witness any sort of complex changes in the forms of money, monetary policy, and money supply. However, many Muslim jurists of the past understood ‘money’ to be anything that can be used as a medium of exchange if it is accepted by custom and social convention.[[3]](#footnote-2) To reinforce the argument that Shariah permits anything other than gold and silver as money, some scholars argue that Umar Bin Khattab (R.A) contemplated using leather from camels as a medium of exchange[[4]](#footnote-3).

ولقد كان عُمَر بْن الخطاب قَالَ: هممت أن أجعل الدراهم من جلود الإبل فقيل له إذا لا بعير فأمسك.

(Al-Biladhuri, 1984, p. 452)

“And Umar bin Al-Khattab said: I wanted to make dirhams out of camel’s skins. So, it was said to him: then there will be no camel, then he held back [from this idea]”.

It is interesting to note that Umar expressed this idea in the first place showing his view that money can have any form. Furthermore, the argument against his view was not that the forms of money are confined to some specific things from a Shariah perspective, as the understanding of some Shariah scholars. His idea was not challenged on the Fiqh basis, rather it was challenged based on the fear that there would be a scarcity of camels. From the incident of Umar Bin Al-Khattab, it can be deduced that money can take any form as long as that form does not intrinsically consist of impermissible or haram elements. For example, leather made of pig skin cannot be used as a form of money.

#### 2.1.1 Stable coins

Stablecoins are a prominent type of cryptocurrencies. A stablecoin’s value is attached to a separate fiat currency. The premise for such coins or tokens is that these tokens minimize volatility as they may be pegged to something that is considered to have a stable value such as a fiat currency (government-backed money, for example US dollars).

Sometimes, stablecoins are backed by cash, cash equivalents, and financial securities, which are reserved by the token issuing company as an off-chain asset. Some good examples of such stablecoins are Tether (USDT), USD Coin (USDC), Binance USD (BUSD), and others. On the contrary, some stablecoins do not use fiat currency reserves or collateral, rather they maintain their value or stabilize the token price through specialized algorithms and smart contracts that manage the supply of tokens in circulation.

From a Shariah perspective, stablecoins should fall under the category of money or payment system. Their issuance mechanism should be shariah compliant. The Shariah rules of currency exchange should also be applicable to such coins.

#### 2.1.2 Gold or Silver-Backed Tokens

Although gold or silver-backed tokens can also be considered commodity-backed tokens, however, since, in Islamic law, gold and silver are treated as money and rules of currency exchange are applied to them, it is more appropriate to put gold or silver-backed tokens under cryptocurrency. Therefore, they should be treated as a form of money and their trading should be governed by the Shariah rules of currency exchange. PAX Gold (PAXG), Tether Gold (XAUT), and CACHE Gold (CGT) are a few examples of such tokens.

#### 2.1.3 Unstable Coins

Cryptocurrencies that are meant for payments or to perform the role of money but are neither backed by fiat currency nor backed by gold or silver, can be called unstable coins or tokens. Bitcoin (BTC), Litecoin (LTC), and XRP (XRP) are a few examples of cryptocurrencies that can be considered unstable coins. Although their prices or values are highly fluctuating due to market conditions, they can still be considered cryptocurrencies due to their nature, objective, and default structure. For the same reason, they are considered money from the Shariah perspective as well.

### 2.2 Utility Tokens

Utility tokens provide the holder with access to particular benefits, discounts, or services on a blockchain platform. In other words, utility tokens derive their value from an underlying usufruct or utility. An example of a utility token is BNB, which acts primarily as a discount token to pay for trading fees on Binance exchange.

Sometimes utility tokens can be used as payment for particular goods or services. For example, Fun Token is accepted for in-game credits, and all fees on the platform must be paid in FUN. In addition, utility tokens may be traded on exchanges or in peer-to-peer transactions in the same way as exchange tokens.

Shariah principles and rulings regarding utility, benefits, or future services are relevant to such tokens. Those principles and rulings should be adhered to for Shariah compliant utility tokens.

### 2.3 Security Tokens

Security tokens provide their holders with particular ownership rights or interests in an underlying business, such as equity of a company, repayment of a specific sum of money, or entitlement to a share in future profits. These can be issued by entities like businesses or governments and serve the same purpose as their incumbent counterparts such as bonds and stocks.

From the Shariah perspective, security tokens can be divided into three main categories:

* **Asset-Backed Tokens:** these tokens are backed by an asset other than gold, silver, and fiat currencies. They can be further divided into: (1) commodity-backed tokens, and (2) real estate backed tokens.
  + Commodity-Backed Tokens: these are crypto assets that are backed by a real movable commodity other than gold and silver. For example, they can derive their value from underlying oil, gas, precious metals, etc. Petro (PTR), or petromoneda, can be a good example of such tokens which are backed by Venezuelan oil and mineral reserves.
  + Real Estate Backed Tokens: represent real ownership of the underlying real estate property or a piece of land. For example, a token could represent a meter square of a shopping mall, a residential house, or a plot. This means if you own the token, you are effectively owning the respective square meter in that particular property. It is also possible, as is the case in investments such as REITs, that the assets will also generate an income such as rents. RealT Token can be considered as an example of such a type of token. From a Shariah perspective, such security tokens are acceptable if their underlying assets and contracts are halal.
* **Equity Tokens:** represent ownership interest in a company. They are like stocks and shares in nature. Owning such tokens will usually make the holder entitled to certain rights such as dividends and voting rights. From a Shariah perspective, they would follow the criteria of a Shariah-compliant stock or share.
* **Investment Tokens:** represent loans that must be repaid with a stipulation for the amount to be returned in full along with an interest amount. From a Shariah perspective, it would **not** be permissible to issue such tokens because they are like conventional bonds. Furthermore, it would not be permissible to sell or purchase any existing loan-based security token. However, if investment tokens are backed by Shariah-compliant securities, like Islamic units of funds, Sukuk, etc. they can be Shariah-compliant if the token itself is also designed in a Shariah-compliant manner.

### 2.4 Governance Token

These tokens tend to give their holder the right to manage and vote on the governance of their respective blockchain platform or project. One well-known example of a governance token is Maker (MKR). This token allows its holders to vote on decisions pertaining to the decentralized finance protocol that the decentralized stablecoin DAI runs on. For example, MKR holders can vote to change the complex economic rules that govern the decentralized lending that allows DAI to keep its price stable.

Governance tokens can only be considered Shariah-compliant depending on whether the underlying project or platform is Shariah-compliant or not. And there are no prohibited elements or features attached to the governance token.

### 2.5 Non-Fungible Tokens

Non-Fungible Tokens (NFTs) are a new form of crypto assets that is gaining a lot of traction lately. These tokens are unique, and they cannot be substituted, subdivided, or interchanged. Due to these features, they can represent real-world objects, like art, music, videos, virtual world items, certain rights, certificates, and real estate property. Like other crypto assets, NFTs can only be considered as Shariah-compliant if their underlying object, project, and their features are free from prohibited elements.

### 2.6 Hybrid Assets

Most of the crypto assets are hybrid assets because they are designed and developed for multi-purposes and to have various features. Moreover, there is no restriction on what form and features a crypto asset can have. Therefore, a utility token, for example, can also be used as a payment token and vice versa. Ethereum (ETH) is a good example of hybrid assets.

# ISRA IFS Book

## 1. DEFINITION OF SHARIAH

Shariah literally means, ‘the road to the watering place’ or ‘the straight path to be followed’. The Quran has used the word Shariah with this meaning in the following verse:

Then We have put you (O Muhammad) on a plain way of (Our) commandment. So, follow you that (Islamic monotheism and its laws), and follow not the desires of those who know not (Quran, 45:18).

Technically, al-Qurtubi defines Shariah as the canon of Islamic law—different commandments of Allah (SWT) to mankind. Some scholars defined this word as the injunctions revealed to the Prophets of Allah (SWT) related to law or belief. In addition to the above definition, some scholars confined Shariah to its linguistic meaning by saying that this word means, ‘following strictly the injunctions of Allah (SWT) or the way of Islam (Deen)’.

A comprehensive definition of the word Shariah can be deduced from the different definitions given above as follows: It is the sum of the Islamic teachings and system, which was revealed to Prophet Muhammad (SAW), recorded in the Quran and deducible from the Prophet’s divinely guided actions, sayings and whatever he tacitly approved. Some scholars view that all the different commandments of Allah (SWT) to mankind are part of Shariah. Each one of these commandments is called ‘Hukum’ (pl. Ahkam). Shariah regulates all human actions. This is why it is more than the term ‘law’ applied in the modern sense as it contains a comprehensive set of dogmas, and legal and ethical doctrines. It is a doctrine of duties and a code of obligations.

The important criteria in determining the acceptability of a particular product from the Shariah point of view depends on its compliance with the rules and regulations of the Shariah. If the product follows all the requirements of the Shariah, it will be deemed acceptable.

## 2. Components of Shariah

The Shariah, which contains all the different commandments of Allah (SWT) to mankind, can be divided into three fields. The first is al-Ahkam al-Itiqadiyyah (the sanctions relating to beliefs and faiths) such as the belief in Allah (SWT), His Prophets and the Day of Judgement. This category is also referred to as Tawhid. The second is al-Ahkam al-akhlaqiyyah (the sanctions relating to morals and ethics) such as the injunction to tell the truth, be sincere, be honest, etc. The last category is al-Ahkam al-Amaliyyah (sanctions relating to the sayings and doings of the individual and his relations with others) which is also called Fiqh. Some scholars confine the Shariah to this category.

Fiqh literally means comprehension or true understanding. The Quran has used this word with the above meaning on several occasions. The verse stated below exemplifies, among others, instances of its use in that respect.

And make loose the knot (the defect) from my tongue, that they understand my speech (Quran, 20:27–8).

Fiqh is the term used to denote the ‘science of Islamic jurisprudence’. It implies the exercise of intelligence in deciding a point of law in the absence of a binding text (Nass) from the Quran or the Sunnah.

Before the advent of Islam and during the early days of Islam, the word Fiqh was used with the above technical meaning. However, the eventual development of the sciences of Islam saw the emergence of its association with the various sciences of Islam. As an example, the word Fiqh al-Hadith is used to express the science of Hadith, which discusses the different subjects and topics related to Hadith such as the study of the chain of Hadith (Sanad) or its text (Matan). Similarly, the word Fiqh al-Quran is used to state the branches of knowledge related to the Quran, and Fiqh al-Lughah for the science of Arabic language. At present, the word Fiqh al-Seerah is also commonly used to describe the branch of knowledge related to the life of the Prophet (SAW). These are general usages of the word Fiqh in the past and present. Nonetheless, the technical usage of the word Fiqh deals with matters related to Islamic law.

Abu Hanifah (d. 150 AH/767 CE), the founder of the Hanafi school of Islamic Law, defined Fiqh as ‘a person’s knowledge of their rights and responsibilities’. This is a general definition of Fiqh as it includes all the knowledge of Islam. However, al-Ghazali (d. 505 AH/1111 CE) has confined the word Fiqh to the science of the rules of law. Al-Amidi (d. 615 AH/1218 CE) has provided a broader definition of Fiqh by saying that, ‘Fiqh is the science of understanding the legal obligations derived from its sources (that is, the Quran, the Sunnah and other sources of Islamic law)’. Most Islamic authorities, however, define it in terms of its four basic sources and it can, therefore, be defined as follows:

Fiqh, or the science of Islamic law, is the knowledge of one’s rights and obligations derived from the Quran, the Sunnah of the Prophet (SAW), the consensus opinions of scholars (Ijma) or analogical reasoning (Qiyas).

One of the important points that should be observed about Fiqh is its flexibility. There are two kinds of Fiqh rulings according to changeable or fixed rulings:

1. The rulings that were deduced from decisive evidence, that is, from the Quran or the Sunnah. These kinds of rulings cannot be changed according to changes in time and place or circumstances. There are only a few rulings of such nature and all the rulings related to Ibadah (rituals) and some people’s matters fall under this category. Examples of such rulings are rulings related to prayer, fasting, punishment for adulterers, distribution of inheritance, prohibition of Riba and Maysir (gambling), punishment of bribery and others. However, the implementation of such rulings can be deferred if the situation does not permit for it to be implemented or if the implementation of such rulings might result in defying the objectives of the Shariah. An example of such a deferment has taken place during the reign of Caliph Umar al-Khattab when he suspended the implementation of the punishment for theft because of the drought season in Madinah. The drought had prompted some people to steal food from others to survive.
2. The rulings that are deduced by the scholars from their understanding and interpretations of the text of the Quran or the Sunnah and from other various sources of Islamic law such as juristic preference (Istihsan), consideration of public interest (Masalih Mursalah), presumption of continuity (Istishab), custom (Urf) and others. Such rulings depend largely on the ability of the jurists to utilize the power of reasoning in deciding certain Fiqh issues. In fact, most of the rulings of Fiqh, particularly the rulings related to people’s dealings and transactions fall under this category and they are flexible and might be changed according to the changes of time, place, and circumstances.

It is important to note that the Quran and the Sunnah, in most cases and issues, provide general principles and guidelines; thus, it is dependent on the jurists to utilize these principles to resolve the issues in Fiqh based on their methods of reasoning and interpretation (Ijtihad).

As for the term Usul al-Fiqh or the principles of Islamic law, it explains the indications and methods by which the rules of Fiqh are deduced from their sources. These indications are found mainly in the Quran and the Sunnah, which are the principal sources of Islamic law. The methodology of Usul al-Fiqh refers to Ijtihad (methods of reasoning) which empowers the usage of the secondary sources that are identified in the following section. Thus, Fiqh as such, is the product of Usul al-Fiqh. The two are separate but interrelated disciplines. The importance of Usul al-Fiqh is irrefutable as it examines the sources of Islamic law to deduce the rules by a qualified person who is equipped with the relevant knowledge to deduce these laws. Ibn Khaldun emphasized the importance of Usul al-Fiqh when he said, ‘(It is) one of the greatest sciences of the Shariah, the most powerful and beneficial sciences for the mujtahid.’

## 3. SOURCES OF ISLAMIC LAW

One of the important constituents in Islamic law is the sources utilized to deduce rulings. The scholars have classified the sources of Islamic law into various categories. One of these classifications is based on the origin of the sources. This classification views the Quran and the Sunnah as the primary sources while other sources based on juristic reasoning (Ijtihad) are called secondary sources. The Quran and the Sunnah are considered as the sources that originate from the text of revelation which is called textual sources or Masadir Nassiyah. Other sources based on the power of reasoning are called non-textual sources or Masadir ghayr Nassiyah or based on Rai. There are some sources about which scholars of Islamic law agree in their utilization as valid sources. These include the Quran and the Sunnah. Some non-textual sources are accepted by most scholars. These include Ijma and Qiyas. The other category is the secondary sources of Islamic law whereby the scholars differ in their utilization as relevant sources, and as a basis in deducing the rulings of Islamic law. Some scholars consider them as sources while others do not. These sources are juristic preference (Istihsan), presumption of continuity (Istishab), custom (Urf), consideration of public interest (Masalih Mursalah), blocking the means which leads to an evil end (Sadd Al Dharai), the practice of the people of Madinah (Amal ahl al-Madinah), the legal opinion of a companion of the Prophet (SAW) (Qawl al-Sahabi), and the legal provisions found in divine scriptures prior to the Quran (Sharai Min Qablina).

Some scholars classify the sources of Shariah into those that are transmitted through divine revelation and those using legal reasoning. Most scholars categorize the sources of Shariah into definitive (Qatii) and probable (Zanni) sources. All in all, it can be concluded that the Quran and the Sunnah are regarded as primary sources of Shariah (Islamic law), transmitted via divine revelation, and unanimously accepted by all Muslim scholars.

The basis for the sources of Islamic law, which were based on the text and the exercise of opinion in deducing rulings originate from the famous Hadith of Muaz:

The Prophet (SAW) was reported to have sent Muaz Ibn Jabal, as a governor to Yemen and appointed him as a judge. Before sending him, the Prophet (SAW) asked him, ‘According to what, will you judge if a problem is brought to you?’ He replied, ‘According to the scriptures of Allah (Quran).’ ‘And if you did not find anything in it?’ He replied, ‘According to the Sunnah (tradition) of the Messenger of Allah (SWT).’ ‘And if you did not find anything in it?’ the Prophet (SAW) asked him. ‘Then I shall strive to interpret with the exertion of my reason,’ Muaz replied. And thereupon the Prophet (SAW) said, ‘Praise be to Allah who has favored the messenger of His Messenger with what His Messenger is willing to approve of’ (Abu Dawud, Hadith no. 3592).

This Hadith gives expression to what must have taken place during the time of the Prophet (SAW). It explains the Islamic perception of the methods of deriving legal solutions. It demonstrates that in this process, independent judgement, within certain limits is not only permissible but even praiseworthy. This Hadith indicates the approval of the Prophet (SAW) for using personal opinion if it is not against the injunctions of the Quran and the Sunnah. In addition, the Hadith shows the priority in the utilization of the sources of Islamic law. The first reference must be the Quran, followed by the Sunnah, and subsequently, the sources based on opinion and views can be utilized. It is important to note that all the sources of Islamic law, whether textual or non-textual, take their legal origin from the Quran and the Sunnah.

### 3.1. The Quran

The Quran is the primary source of Shariah upon which all other sources founded their authority. Literally, the word Quran is derived from the Arabic root word, Qaraa which means to read or to recite. The Quran is a verbal noun; hence, it means the act of reading or recitation. Technically, the Quran has been defined as the speech of Allah (SWT), sent upon the last Prophet Muhammad (SAW), in its precise wording and meaning, transmitted to us by numerous narrators (Tawatur), both verbally and in writing. It is inimitable and unique in its style. To sustain these special attributes, it is protected by God from any corruption. Based on this definition, the Quran is characterized by the following features:

1. It is the speech of Allah (SWT).
2. It is revealed to Prophet Muhammad (SAW) in its Arabic wordings and meanings.
3. It is transmitted to Prophet Muhammad (SAW) by way of numerous narrators (Tawatur).
4. It is inimitable (Ijaz) by human beings, individually or collectively.

#### 3.1.1. The Legal Injunctions of the Quran (Ayat al-Ahkam)

It is undeniable that the Quran is the main source of Islamic law which provides both detailed and general principles to govern all human activities. It is for this reason that the legal injunctions in the Quran are binding upon which all jurists refer to in deducing the Shariah rulings (Ahkam). The legal injunctions of the Quran are the fundamental sources of the Shariah. They are contained in the legal verses of the Quran, considered the code of conduct for Muslims in all spheres of their life. These verses provide the criteria to distinguish true from false, good from bad and Halal (lawful) from the haram (unlawful) in every aspect of life. The Quran does not provide detailed rulings for all issues; only selected issues are elaborated in detail. The Quran establishes general principles which can be utilized as guidance to resolve new issues.

### 3.2. The Sunnah

The second source of Shariah is the Sunnah. All scholars agree that the Sunnah is the second textual source after the Quran. The word Sunnah literally means clear path or beaten track. It also refers to normative practice or an established course of conduct or behavior passed on from generation to generation. Technically, the Sunnah refers to all that is narrated from the Prophet (SAW), including his actions, sayings, and tacit approvals.

Based on this definition, the Sunnah can be classified into three types, namely, sunnah Qawliyyah, sunnah Filiyyah and sunnah Taqririyyah. Sunnah Qawliyyah is the Prophet’s wordings or saying to explain specific Shariah ruling (Hukum) or to establish the Shariah law. For example, the Prophet’s saying which reads: ‘The nature of act is determined based on its underlying intentions’. Sunnah Filiyyah, which is defined as the act of the Prophet (SAW), provides legal contents such as five-time prayers, fasting during the month of Ramadan, performing hajj, and paying zakat. The last type of Sunnah is sunnah Taqririyyah which is defined as the silence of the Prophet (SAW) for certain acts by companions. His silence is regarded as his tacit approval.

The authority of the Sunnah is deduced from the Quran through several injunctions which command the believers to follow the instructions and injunctions from the Prophet (SAW). The Quran says:

1. And whatever the Messenger gives you, take (observe) it and whatever he forbids you, abstain from it (Quran, 59:7).
2. Obey Allah and obey the Messenger and those who oversee affairs among you. Should you happen to dispute over some matters, then refer it to Allah and to the Messenger (Quran, 4:59).

#### 3.2.1. Functions of the Sunnah in Relation to the Quran

The Sunnah as the second primary source of Islamic law further complements the Quran in three ways. Firstly, the Sunnah supports the rulings already stated in the Quran. For example, the Quran reads regarding the sanctity of ownership of properties:

And do not eat up your property among yourselves by false means (Quran, 2:188).

The Sunnah that comes to support the text carries the same meaning: ‘The property of a Muslim is prohibited for another Muslim except by his consent’ (Ahmad, Hadith no. 20172).

Secondly, the Sunnah explains and further elaborates the meanings of the Quran. It provides explanation to the exact meaning of the Quranic text or gives tafsir to the Quran. For example, the text in the Quran which mentions the obligation to pray is stated in brief. No detailed explanations were provided as to how many times to pray and how to conduct the prayer. In the case of zakat, the Quran does not mention the types of properties on which zakat should be paid, and when and to whom, it should be paid.

Thirdly, the Sunnah acts as an independent source of Islamic law. This means that the Prophet (SAW) initiated the rules where the Quran was silent on certain matters. An example of that is the prohibition for men to wear silk and gold. Although scholars agree that the Sunnah can act as an independent source of Islamic law, it is always within the general Maqasid of the Quran.

### 3.3. Ijma

The third source of Islamic law is Ijma. Unlike the Quran and the Sunnah, Ijma does not directly partake in divine revelation. As a principle and evidence of the Islamic law, Ijma is rational evidence and a binding proof. Literally, Ijma means, ‘to determine and to agree upon something’.

Technically, Ijma is defined by al-Amidi as the unanimous agreement of the mujtahid of the Muslim community of any period following the demise of Prophet Muhammad (SAW) on any matter. This definition includes the agreement on all matters pertaining to Islam whether they are in relation to belief, moral or legal matters.

#### 3.3.1. The Authority of Ijma

Muslim jurists have justified the utilization of Ijma on the authority of the Quran, the Sunnah and reason. However, it should be noted that they have overall maintained the view that the textual evidence in support of Ijma does not amount to conclusive and decisive proof, but rather an indication of the utilization of Ijma.

#### 3.3.2. Requirements of Ijma

Scholars have set a standard for the process of Ijma by placing certain requirements for Ijma to be valid. These requirements are:

1. The availability of several qualified scholars at the time the issue is encountered.
2. All scholars, regardless of their locality, must reach a consensus on a juridical opinion at the time an issue arises.
3. The agreement of the scholars must be an opinion expressed either in verbal or writing.

#### 3.3.3. The Possibility of Exercising Ijma

Most scholars agree that Ijma occurred during the time of the companions, particularly during the period of the Rightly Guided Caliphs (Khulafa al-Rashidoon). During their time, most scholars among the companions were residing in Madinah, therefore making it easy for them to meet and discuss any issues that may arise from within the Muslim community. Abu Bakr and Umar were reported to have gathered the companions to reach an agreement on issues pertaining to Islam.

They also disallowed scholars among the companions to migrate and reside outside Madinah, as they needed to discuss with the scholars on matters pertaining to Islam. After the period of the Companions, with the expansion of the Islamic Empire, several scholars chose to settle in other areas such as Kufa in Iraq and Syria. This became an obstacle for them to get together and reach a consensus on issues in the Islamic law. Individual Ijtihad flourished during this time and many scholars established their own methodology of deducing the rulings of Fiqh which resulted in the formation of different schools of Islamic law (madhhab). The tendency to uphold Ijma had gradually weakened and according to some scholars, Ijma in its exact meaning was not exercised after the Rightly Guided Caliphs’ period.

As for the move to revive and reform Ijma, at present, there are no serious attempts to reintroduce Ijma in its actual sense. However, the different platforms which exist at present, such as the IFA-OIC and the different councils of Fatwa, study the possibility of introducing an authoritative body which can be recognized to represent the Muslim ummah. By virtue of that, such authority could issue legal Fatwa which could be considered binding upon the Muslim ummah.

### 3.4. Qiyas

The fourth principal source of Islamic law is Qiyas (analogical reasoning). Literally, Qiyas means, ‘measuring or ascertaining the length, weight or quality of something’. Technically, it is defined as the extension of a Shariah ruling from the original case or Asal, to a new case, because the latter has the same effective cause (Illah) as the former. The original case is ruled by the text either from the Quran or the Sunnah and qiyas aims to extend the same ruling to the new case based on the shared Illah. Being an extension of the existing law, Qiyas discovers and develops the existing law but does not create a new law. In fact, it widens the application of law contained in the text.

#### 3.4.1 The Pillars of Qiyas

The following four pillars (Arkan) needs to be observed in exercising Qiyas:

1. The original case (Asal): A case in which its ruling is given in the text (the Quran or the Sunnah) and analogy seeks to extend it to a new case.
2. The new case (Fara): A case in which a ruling is needed. Qiyas is the extension of the same ruling which is applied in the original case.
3. The effective cause (Illah): Although it is an attribute of the original case, it is found to be commonly shared between the original case and the new case.
4. The rule (Hukum): The rule governing the original case is to be extended to the new case.

### 3.5. Istihsan

The word Istihsan literally means, ‘to approve or to deem something preferable, to consider something as good’. Technically, Istihsan is a legal principle which authorizes departure from an established precedent in favor of a different ruling for a reason stronger than the one which is obtained in that precedent.

Thus, the essence of Istihsan is to formulate a decision which sets aside an established analogical reasoning for a reason justifying such a departure and seeks to uphold a higher value in the Shariah. For example, according to the analogy (Qiyas), Salam contract is outlawed since it involves a sale of non-existence. Analogy requires that for the validity of a contract the asset should be in existence at the time of execution of contract. However, the Prophet (SAW) made an exemption in the case of Salam due to the need of people.

The principle of Istihsan was approved by Hanafi, Maliki and Hanbali scholars but disapproved by Shafei scholars as it is regarded as being too independent from the Quran, the Sunnah and Ijma.

### 3.6. Istishab

Istishab literally means, ‘companionship’. Technically, Istishab indicates the facts, or rules of law and reason, whose existence or non-existence had been proven in the past are presumed to remain so for the absence of evidence that establishes any change. There are three principles derived from the concept of Istishab. First, the original ruling for everything is permissibility. Second, the original ruling is that a person is free from any liability. Third, certainty is not overruled by doubt.

### 3.7. Maslahah Mursalah

Maslahah literally means, ‘benefit or interest’. When it is narrowed to Maslahah Mursalah, it indicates unregulated public interest in the sense of not being regulated by the Lawmaker as no textual authority can be found on its validity or otherwise. Al-Ghazali defined Maslahah as the consideration which secures a benefit or prevents harm, but at the same time, remains harmonious with the aims and objectives of the Shariah. These objectives consist of protecting the five essential values, namely, religion, life, intellect, lineage, and property. According to him, any measure which secures these values falls within the scope of Maslahah and anything which contravenes them is Mafsadah (evil), and preventing the latter is also Maslahah.

#### 3.7.1. Conditions for the Validity of Maslahah

The jurists have set certain conditions that must be met by the prescribed Maslahah for it to be valid. The following conditions are designed to ensure that Maslahah does not become an instrument of arbitrary desire or individual bias in legislation:

1. Maslahah must be genuine (real), as opposed to imaginary Maslahah (Maslahah wahmiyyah), which is not proper ground for legislation. There must be a sensible probability that the benefits of legislating a rule in the pursuance of Maslahah outweigh the harms that might accrue from it. An example of an imaginary Maslahah, according to some scholars, is to abolish the husband’s right of divorce by vesting it entirely in a court of law.
2. Maslahah must be general (widespread), which means it prevents harm or secures benefit to the people as a whole and not to a particular person or group of persons. This indicates that legislating a rule on the grounds of Maslahah must consider a benefit to the largest possible number of people. This is because the whole concept of Maslahah is meant to secure the welfare of the people at large.
3. Maslahah must not conflict with a principle or value which is upheld by the Quran, the Sunnah or Ijma.

### 3.8. Sadd al-Dharai

Sadd literally means ‘blocking’ and the word Dharai signifies the means of obtaining a certain end. Sadd al-Dharai thus indicates blocking the means to an expected end which is likely to materialize if such a means is not blocked. The means that is to be blocked in this context is the means to evil, that is, the means to something not good. This principle is attributed mainly to Imam Malik and Ahmad Ibn Hanbal. Sadd al-Dharai is not applicable to prohibited activities; rather it is for acts which are originally lawful but leading to unlawful ends.

An example of Sadd al-Dharai is the non-granting of credit cards for those whose creditworthiness is very low as granting it would eventually lead to the accumulation of debt and will normally harm a person in one way or another. Thus, it can be considered forbidden if the harmful effect is certain. The ruling will differ from one individual to another.

### 3.9. Urf

Urf literally means, ‘to know’. It can be defined in technical terms as what people collectively recognize and practice regarding words and actions to either be done or avoided.

#### 3.9.1. Conditions of a Valid Urf

Muslim scholars have laid down the conditions that must be fulfilled in a customary practice to consider it as a valid Urf. Besides being reasonable and acceptable to people with wise reason and sound behavior, Urf must fulfil certain requirements to be authoritative. These are:

1. Urf must represent a common and recurrent phenomenon. This means that the Urf must be frequently practiced by people in their daily lives. The practice of a few individuals or a limited number of people within a large community will not be authoritative. In addition, the practices, which are commonly mentioned in the books of Fiqh, but not practiced by the people, cannot form the basis of a legal decision. An example is that if a sale is concluded in a city where two or three currencies are commonly accepted and the contract in question does not specify the currency that will be used, the one that is the more dominant and common will be deemed applicable.
2. Urf must also be dominant in the sense that it is observed in all or most of the cases to which it can apply. If it is observed in some cases but not in others, it is not authoritative. Similarly, if there are two different customary practices on the same matter, the one which is dominant will be upheld. In the event of an incident where a customary practice is performed by some people and not by others, and the amount of both are equal, it cannot form the basis of judicial decisions.
3. The custom must be in existence at the time the transaction is concluded. This means that for Urf to be considered as a basis for judicial decisions, the practice must be prevalent at the time the transaction is concluded and not an extinct customary practice. This condition is particularly relevant to the interpretation of documents or sayings, which are to be understood in the light of the custom that prevailed at the time they were written or uttered. In this respect, if the customary meaning changes after the transaction has been concluded, and if a problem arises concerning the interpretations and implications of the transaction, it must be referred to the customary meaning related to the time the transaction was concluded, and not the eventual customary meaning that occurred later. As an example: if a person says that he intends to make a bequest (Wasiyah) of part of his property to an Alim (scholar), and the customary meaning of this word at that time refers to those who are experts in religious matter, part of his inheritance must be given to those who are experts in religious matters, albeit, the same word might be used, customarily, for people who are expert in any field, and not necessarily to the experts in religious matters. Similarly, in Urf Filii, the customary practice considered is the practice that exists when the transaction was concluded. An example is that the determination of the date of a transaction is considered according to the practice of the place, whether the Hijri (Islamic calendar) date or the Christian calendar is used.
4. The custom must not contravene the clear stipulation of an agreement. A custom can only be applied if there is no contractual agreement made in a particular transaction. This is because a custom is only the equivalent of an implied condition. It will not be valid if it is contrary to an explicit condition. The general rule is that contractual agreements prevail over customs. Should a conflict arise among them, it will normally be determined in favor of the former. An example is that the costs of a formal registration in the sale of real property are customarily payable by the purchaser. But if a clause of the contract specifically requires the vendor to bear these costs, then the custom would be of no avail, and the purchaser would not be required to pay these costs.
5. The custom must not conflict with the Quran or the Sunnah (Nass). The conflict of custom to the Nass may be absolute or partial. In cases of absolute conflict, the custom will have no effect because texts override customs. Examples of such conflicts are the practices of usury (Riba). Although it is widely practiced, it has no legal validity, because the presence of usury contradicts with the explicit text. However, if the conflict between the custom and the text is not absolute, where custom opposes only certain aspects of the text, then the custom is allowed to act as a limiting factor on the text.

## 4. MAQASID AL-SHARIAH

The idea or doctrine of Maqasid al-Shariah, or higher objectives of the Islamic law, has gradually captured the attention of increasing numbers of modern Muslim scholars for solving contemporary issues. This idea provides a guide and framework for the process of Ijtihad to solve issues conforming to human interests while complying with the will of the Lawmaker. Ibn Ashur defined Maqasid as ‘the deeper meanings and inner aspects of wisdom (Hikmah) considered by the Lawgiver in all or most of the areas and circumstances of legislation’. He also explained the importance of the knowledge of Maqasid al-Shariah for mujtahid not only in understanding and interpreting the texts of Shariah, but also to find solutions to the new problems facing Muslims, and about which those texts are silent.

The main objective of the Shariah is to govern human lives and to protect the interests and benefits (Maslahah) of the people. Maslahah in the Islamic context and perspective means what is good and beneficial in the eye of the Shariah. Al-Ghazali said:

The objective of the Shariah is to promote the well-being of all mankind, which lies in safeguarding their faith (Deen), their human self (Nafas), their intellect (Aqal), their posterity (Nasal) and their wealth (Mal). Whatever ensures the safeguard of these five serves public interest and is desirable.

According to him, the higher objectives of the Islamic law consist of two types:

1. Religious or spiritual objective pertaining to the hereafter This purpose, which revolves around the preservation and promotion of religious faith, is the utmost and ultimate purpose of the Shariah. In its aggressive or positive aspect, the interest of religion is secured by facilitating ritual worship of God, and establishing the pillars of Islam, such as fasting, prayers, pilgrimage, and paying Zakat. In its defensive or negative aspect, it entails defending religion, as it prevents the established pillars of Islam from being undermined or destroyed.
2. Worldly objectives pertaining to mundane affairs of this world This includes the worldly interests and encompasses four major objectives. In accordance with their importance and order of priority, these objectives consist of the preservation and promotion of human life (Nafas), intellect (Aqal), progeny and offspring (Nasal), and property (Mal). It is interesting to note that wealth is part of the aspects that the Shariah seeks to protect. From the aforementioned hierarchy of worldly objectives, wealth was placed at the bottom of the human needs structure. This, however, does not in any way show that Islam does not put much weight on worldly material gains in the form of properties. It only presents the Islamic world view on wealth as a means or method instead of the ultimate objective. In Islam, property is viewed as an Amanah from Allah (SWT) to attain the ultimate objective, that is, to obtain Allah’s pleasure.

## 5. LEGAL MAXIMS PERTINENT TO ISLAMIC FINANCE

Mustafa al-Zarqa, one of the most prominent contemporary scholars, defined legal maxims as the general Fiqh principles which are presented in a simple format, consisting of the general rules of the Shariah in a particular field related to it. The function of legal maxims is to facilitate the understanding of how problems and principles could be used to deduce the various rules of Fiqh.

Some legal maxims are formulated based on certain direct evidence from the Quran or the Sunnah. For example, the Hadith:

الْبَيِّنَةُ عَلَى مَنِ ادَّعَى وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

The burden of proof is on him who claims, and the oath is on him who denies (al-Darqutni, Hadith no. 3190).

الخَرَاجُ بِالضَّمَانِ

[The right to] profit [from something] goes with responsibility [for it] (Ibn Majah, Hadith no. 2243).

Some legal maxims are constructed upon the Shariah principles of pure justice, upon which the interests of human beings are originated. These principles were established as good laws even before the Islamic era. They are eternal and universal principles of justice which do not differ from one society to another, and these principles are generally confirmed by the Shariah.

The jurists in Islamic legal history acknowledged the importance of legal maxims in their writings and discussed them under the title: the similitude and the like. As early as the era of the companions of the Prophet (SAW), these maxims had been observed in their Ijtihad. Caliph Umar, upon sending Abu Musa al-Ashari as his governor, commanded: know the semblances and the similitude, and collate matters to their likes (in giving judgement).

The jurists throughout history have developed various Islamic legal maxims to solve many issues. Some of the maxims are wide enough to cover almost all issues by their general applications, whereas some others are applicable in certain fields and issues only. Legal maxims which provide for the general rules of Fiqh indeed have a big role in modern Islamic banking and finance. Modern issues in Islamic finance which have no precedent in the classical texts arise from time to time, and these issues need to be addressed according to Islamic rulings. Thus, the solution is found in the application of the legal maxims that works as the general principles and the parameters of modern Islamic banking and finance practices.

Generally, five major legal maxims are considered as unanimously accepted maxims that cover most issues of Fiqh. They are briefly explained in the following sections.

### 5.1. Matters are Determined According to Intentions

This maxim originated from a famous Hadith whereby the Prophet (SAW) was reported to have said:

Actions are judged by intentions and every person is judged according to his intention (al-Bukhari, Hadith no. 54).

This maxim suggests that an act or words of a person must be interpreted according to his intention in uttering the words or doing the act. Words and actions serve only as a manifestation of the intention. According to this maxim, only human acts that originate and stem from the doer’s intention are considered. Thus, actions not arising from the doer’s intention are not regarded.

Accordingly, all human acts, once done, must be valued in accordance with the intention. In other words, the effect to be given to any particular transaction must be in accordance with the intent underlying such a transaction.

The intention of the parties in a contract or transaction is essential in determining its legal effect. An example of the application of this maxim in modern Islamic banking is the imposition of penalty. Penalty (Tawid) is the compensation paid by the defaulting customers who intentionally or negligently refused to pay their obligations towards the bank. Thus, imposition of penalties is allowed based on preventing intentional defaults by customers.

### 5.2. Hardship Begets Facility

This maxim is one of the most important legal maxims which constitute the basis of legal concession. This legal maxim signifies that the implementation of an obligation or prohibition which causes undue hardship will provide options to get rid of the difficulty. Thus, in times of urgency, laxity is shown. It becomes necessary to lighten people’s burden, and to ignore general rules in certain exceptional circumstances if their applications were to result in an injury and hardship. Another similar maxim, ‘Necessity renders prohibited things permissible’ carries the same meaning. An example of the application of this legal maxim is in the case of committing some prohibited acts due to compelling needs. For instance, the essential conditions for Zakat to be obligatory include the possession of full Nisab (minimum amount of wealth stipulated by the Shariah) and the passage of a lunar year after the Nisab has been reached. According to the Hanafi School, it is only necessary to consider the amount of wealth possessed after the passage of a year to determine if payment is necessary; that is, the obligation is unaffected by the fluctuations above and below the Nisab during the year, if some wealth remains throughout. The reasoning for this view is that keeping track of the fluctuations entails hardship.

This legal maxim is found to be of important relevance in modern Islamic finance. An example is the permission to deal with conventional banks for the Muslim minority living in non-Muslim countries. In this case, they might be allowed to temporarily use conventional banking due to the compelling need whereby no Islamic financial facilities are available for products like residential financing. Another example is in compulsory insurance protection whereby no Takaful product is available to protect against risk. If Muslims are not allowed to take the insurance, they may be subjected to certain hardships. To avoid the hardships, they may be allowed to take insurance to cover that particular risk temporarily.

However, it must be emphasized that, although the facility is granted in situations of hardship, it is not absolute. Such facilities must be limited to a certain extent to keep the original rule. Thus, the permissibility granted due to hardship is limited by another maxim, that is: ‘Necessity is estimated by the extent thereof.’ Therefore, if permissibility is granted in cases of hardship, it must be granted up to the extent required for meeting that hardship. If a person is allowed to deal with conventional banking products due to necessity, the permission ceases with the availability of Islamic banking products. In addition to that, it is also required that the facility is applied in the case of real hardship, not anticipated, or imagined. Scholars also require that the facility does not infringe the fundamental principles of the Shariah such as protecting people’s rights, establishing justice, fulfilling trusts, etc.

### 5.3. Harm is to be Eliminated.

This maxim means injurious or harmful acts must be avoided and prevented in all cases. The maxim is derived from a Hadith. The first part of the Hadith: ‘no harm should be inflicted’ means that it is not permissible to cause or inflict injury or harm to another person without a valid reason. The latter part of the Hadith: ‘no harm should be borne’ means it is also not permissible to cause injury in return for an injury without a proper legal channel. Injury or harm cannot be removed by another similar harm. If a rich person refused to pay Zakat for example, one should not rob the person to take his right from him.

This maxim is also cited as one of the bases for the imposition of penalty or compensation for late payment as allowed by the BNM as well as the SC Malaysia. Based on this principle, the debtor’s act of delaying payment which could harm the creditor must be avoided by having a compensation clause. Another example of this maxim is that BNM raised the income requirements for acquiring credit cards considering data that showed an increasing rate of customer defaults on personal financing. The motive for the restriction was to prevent people from harming themselves by taking on more debt than they could afford to repay.

### 5.4. Certainty is Not to be Overruled by Doubt

This legal maxim is pertinent in solving cases of doubt. The principle states that a rule or situation which has been settled by certainty could not be removed by mere doubt. A settled rule is presumed to exist, until it is changed by certain evidence to prove otherwise. Mere doubt could never change a rule which has been established by certain evidence.

Another maxim closely related to this maxim states that: ‘The origin of all things is permissibility’. It means all things or creatures in this world are permissible for consumption or use by humans unless Allah says otherwise. The Quran states in Surah al-Baqarah, verse 29: ‘And he has created for you every creation on earth’. In a Hadith, the Prophet (SAW) said, ‘What is permitted by Allah in the Quran is Halal, and what is prohibited is Haram, what is left unmentioned is permitted so accept the leave given by Allah, verily Allah does not forget anything’ (al-Bukhari, Hadith no. 2051). This evidence supports that issues not specifically addressed by the Quran must be referred to the original rule of permissibility.

This principle is of crucial importance with particular reference to the development of modern Islamic banking and finance. This is because it widens the scope of creativity and paves the way for the innovation of different financial tools and instruments for financial transactions without necessarily seeking specific authority for their permissibility. An example of the application of this maxim in the context of Islamic banking and finance is that if a customer has received financing from an Islamic bank, and then claimed that he has settled his obligation or that the bank has waived it, but the bank denied his claim. In this case, based on this maxim, the Shariah recognizes the bank’s claim because it is known with certainty that the customer has been indebted to the bank, and that certainty cannot be overruled by a mere claim.

### 5.5. Custom is Authoritative

This legal maxim rules that customary practices of society in terms of their words and actions are acknowledged and recognized by the Shariah in the absence of textual injunctions, provided they have fulfilled the following requirements:

1. The custom must not violate a divine text of the Quran and the Sunnah or any Shariah principles.
2. The custom must be consistently applied and prevailing in society.
3. The custom must have been in effect at the time the activity or transaction was carried out.
4. The custom does not contravene a contractual condition agreed to by the contracting parties. If they have agreed to the contrary, then the custom is not recognized.

The maxim is formulated based on several pieces of evidence from the Sunnah. Among them is the following Hadith reported by Aishah:

Hind, the mother of Muawiyah, said to the Prophet (SAW), ‘Abu Sufyan (Hind’s husband) is a tight-fisted man. Is there anything wrong if I take money from him secretly?’ The Prophet (SAW) said, ‘Take for yourself and your children to suffice your needs according to what customary’ (al-Bukhari, Hadith no. 4945).

In another Hadith, Ibn Masoud narrated that:

What the Muslims determine to be good is good with Allah (SWT) (Ahmad, Hadith no. 3418).

A good example of a customary practice which is deemed valid by the scholars is the acceptance of the definition used in FX spot trading for cross-border transactions. Even though the FX spot trading should be concluded within the contractual session (majlis al-Aqad) on the same day, the delay of two business days (t+2) has now been recognized due to the prevalent market practice to facilitate the transfer of funds from one country to another.

## 6. VARIATION OF OPINION (IKHTILĀF) AMONG SCHOLARS

The differences of opinion among the jurists take place in all stages of the development of Islamic jurisprudence. The nature of textual evidence either from the Quran or the Sunnah allows room for differences of opinion. There are two broad categories of textual evidence. Firstly, those texts which are detailed in nature, providing for specified provisions with detailed information. The domain for this type of texts are issues which are not open for changes and development, and are not subject to human interpretations, for example, transcendental matters such as hell and paradise descriptions, some aspects in marriage such as women within the prohibited degree of marriage and provisions for each heir in inheritance. For such issues, the Quran provides detailed and fixed laws because they are not open for changes at different times and places. Therefore, standardization is favorable in those issues.

The second type of texts are those which provide room for divergence. The texts within this type only provide general guidelines governing the issues which are subject to changes and developments according to different times and places as well as human experiences. Detailed and fixed laws are thus not favorable in these issues as they will cause rigidity and restrain development of the laws in the fields which are supposed to be dynamic and ever-changing.

Islamic commercial and finance law is one of the best examples of this type of textual sources. Thus, it is natural that Muslims across the eras and jurisdictions have differences of opinion in economic transaction laws, even from the early stage of Islamic laws development in the hands of the early jurists. Regarding modern Islamic banking and finance, the difference across jurisdictions as well as among individual jurists is an acceptable fact. This is because modern Islamic finance emerged amidst the complicated conventional system, striving to provide alternatives for Muslims.

The Prophet (SAW) said in support of Ijtihad and divergence of opinion:

If a judge or jurist made a correct decision through Ijtihad he shall be doubly rewarded, but if he errs, he shall be rewarded once only (al-Bukhari, Hadith no. 6805).

This Hadith is not only an encouragement for the jurists to exercise Ijtihad, but also implies the acceptability of the results of Ijtihad if exercised within the Shariah parameters and with a high level of professional integrity and diligence. It follows that the different or even conflicting outcomes of Ijtihad by various jurists will be considered as equally true and applicable.

The next section will discuss the main reasons for the divergence of opinion among the jurists. Basically, there are four main reasons for conflicting rulings among the jurists. As far as modern Islamic banking and finance is concerned, these reasons contributed to differences of opinion among modern jurists in their rulings on several issues in Islamic finance.

### 6.1. Variation in Understanding the Meaning of a Word in the Texts

The difference in interpreting the meaning of a word in a text lead to a difference of opinion among jurists. Sometimes the words in the text, either from the Quran or the Sunnah, have more than one literal meaning. While some of the jurists might prefer certain meanings, others adopt the meanings besides those conceived by the former. This has given rise to differences in rulings. An example which is relevant to Islamic finance is the meaning of the word gold and silver in a Hadith relating to Riba reported by Ubadah Ibn al-Samit that the Prophet (SAW) said:

Gold-for-gold, silver-for-silver, wheat-for-wheat, barley-for-barley, dates-for-dates, and salt-for-salt, like-for-like, equal-for-equal and hand-to-hand, if the commodities differ, then you may sell as you wish provided that the exchange is hand-to-hand (Muslim, Hadith no. 2970).

The scholars have different opinions whether gold and silver here mean real commodities or currencies as these two metals had been used as currency during the time of the Prophet (SAW).

### 6.2. Differences Over the Narrations of the Sunnah

The decision over the narrations of the Sunnah also constitutes one of the main reasons which leads to the differences of opinion among the jurists. During the era of the great Imams, Sunnah was not yet properly compiled. This manifested in the existence of different sources. Moreover, scholars have different criteria in accepting certain Hadith as authentic or otherwise. In the field of the application of Hadith, there also exist variations in interpretations.

To illustrate the above, the example of the different rulings on Bay al-Inah could be cited. Bay al-Inah refers to a trading whereby the seller sells his assets to the buyer on a deferred payment basis. The seller immediately buys back the same asset from the buyer at a price lower than his selling price, which is paid on the spot. Most jurists rejected the validity of Bay al-Inah and considered it as a back door to Riba or using sale contracts which in the end results in Riba. This is based on some Hadith whereby the Prophet (SAW) condemned those practicing this type of trading. For example, Abdullah Ibn Umar reported that the Prophet (SAW) said:

When men become frugal with money (gold and silver) and trade based on Inah and (when they) follow the tails of the cows, and leave jihad in the path of Allah, Allah will send down a trial that he would not remove until they revert to their religion (al-Bayhaqi, Hadith no. 10447).

On the other hand, the Shafei and Zahiri scholars approved the legality of Bay al-Inah based on completion of all requirements of sales, irrespective of the intentions of the parties. The Hadith upon which most scholars based their repugnant ruling regarding Inah was considered a weak Hadith for this group of jurists.

### 6.3. Conflict in the Application of Principles

Some jurists had adopted certain general principles (Usul) which were rejected by other jurists. This conflict in admissibility of principles has led to the difference in legal rulings (Furu). For example, Imam Abu Hanifah admitted the principle of Istihsan as one of his sources of Fiqh. Contrarily, other Imams such as Imam al-Shafei rejected the principle, because for him it is too independent of the Quran, the Sunnah and Ijma. This gives rise to different results in their Ijtihad. On the other hand, Imam Malik regarded the practice of the people of Madinah as a source of Fiqh. This was not accepted by other Imams.

With reference to the field of Islamic finance, the case of Tawarruq can also be cited to illustrate how the difference in the application of principle might lead to a divergence of opinions. In this case, most jurists approved the application of Tawarruq based on the principle of need (Hajah) of people and public benefit (Maslahah). On the other hand, Ibn Taymiyyah and Ibn Qayyim declare that Tawarruq is impermissible on the ground of blocking the means (Sadd al-Dharai) to commit Riba.

### 6.4. Divergence in the Method of Qiyas

Generally, Qiyas was accepted as a secondary source of rulings by all jurists. Nevertheless, they differed in their approach in applying this principle, particularly in determining the raison d’être (effective cause) of the rulings. An example to show the differences in determining the effective cause is in the case of the prohibition of sale of a few food items in excess or delay as cited in the Hadith regarding Riba mentioned earlier. The jurists held different opinions in determining the effective cause for the food items mentioned in the Hadith as follows:

1. According to Imam al-Shafei, the effective cause is because they are food, meaning to say all kinds of food are included in the prohibition.
2. According to Imam Malik, the effective cause is because they are food which could be stored for a long time, therefore perishable food is excluded.
3. According to Imam Abu Hanifah, the effective cause is because they are food which are sold by weight, excluding other types of food, or those which are not weighed.

These differences of effective cause inevitably led to differences of opinion among these jurists as to what are the types of food which are affected in the prohibition of sale in excess or delay.

It should be emphasized here that the divergence of juristic opinions is restricted to the details or peripheral issues. As to the basic principles such as prohibition of Riba and Gharar, permissibility of income generated from trading and PLS investments, and the like are not the subject of differences of opinion. Differences, however, are bound to happen in the detailed application of the general rulings like permissibility of Inah sales, Tawarruq and the like. Apart from the above jurisprudential differences among the jurists, different perceptions of the principles, and their extension and implementation in different factual situations also contributed to the divergence of opinions. Thus, the existing legal and regulatory realities of a particular country for example, as well as local socio-economic environments play an important role in the divergence of opinion in the fast-growing Islamic finance industry.

### 6.5. ROLE OF IJTIHAD AND MUJTAHID IN ISLAMIC BANKING AND FINANCE

Ijtihad literally means expending maximum effort in the performance of an act. Technically, it is the intellectual endeavor of a qualified jurist to derive or formulate a rule of law on a matter which is not explicitly found in the Quran or the Sunnah. Thus, Ijtihad entails the effort made by qualified scholars to derive rulings, by using the principles of interpretation of law known as Usul al-Fiqh. In some complex issues which require examination and investigation from various aspects, Ijtihad might need to be performed collectively. In these cases, Ijtihad is exercised collectively by a group of qualified mujtahids. Modern issues such as Islamic finance might need collective rather than individual Ijtihad. The methods of Ijtihad by reference to the functions of the mujtahid are classified as follows:

1. Ijtihad to discover the laws directly from the text whether it is explicitly or impliedly mentioned by the text. This involves direct interpretations by the mujtahid on the specific meaning of the available texts.
2. Ijtihad to extend the law to new cases that might be like cases mentioned in the texts by way of Qiyas. Here, the function of the mujtahid in this method is to apply Qiyas by looking at the effective cause or underlying rationale of both cases and to determine whether Qiyas is applicable.
3. Ijtihad to extend the law to new cases which are not covered by the previous two methods by extending the general principles of law or Maqasid al-Shariah as laid down by the texts. In this case, there is neither direct text available on the issue nor similarity in terms of effective cause with decided issues to enable Qiyas. Thus, the function of the mujtahid is perhaps most complex and challenging in this type of issue as it requires understanding of the issue, related general principles, and Maqasid al-Shariah. Many issues of modern Islamic finance fall within this type of issue; hence, necessitate the exercise of collective Ijtihad.

## 7. FUNDAMENTAL PROHIBITIONS IN ISLAMIC FINANCE

### 7.1. Prohibition of Riba

Riba literally means excess, expansion, increase, addition, or growth. Technically, Riba is defined as an excess over and above the principal of loan without any countervalue. Riba is also defined as an unlawful gain derived from the quantitative inequality of the countervalues in any transaction purporting to affect the exchange of two or more species which belong to the same genus and are governed by the same effective cause. Deferred completion of exchange of such species may also amount to Riba whether the deferment is accompanied by an increase in any one of the exchanged countervalues.

Hence, Riba is not restricted to increases in loan transactions due to the deferment of time of payment, as it might also occur in any unjustified excess above and beyond the capital, whether in loans (between creditor and debtor) or in trade (with similar commodities).

Jurists classified Riba into two categories according to the transactions that give rise to Riba, namely:

1. Riba in loan contract (Riba al-Duyun)
2. Riba in exchange contracts (Riba al-Buyu)

Riba al-Duyun refers to an increment charged on debt principal in consideration of the repayment period. It is also known as interest due to a loan (Riba al-Qard) or penalty due to late payment (Riba al-Jahiliya). The Prophet (SAW) was reported to have said that any added benefit for the lender that is contractually derived from a loan transaction is Riba (Ibn Abi Shaybah, 1980:436; cf. al-Shawkani, 1993, 5:276).

Riba al-Jahiliya was the predominant form of Riba in the pre-Islamic Arabian society. An increase would only arise in the event the debtor was unable to repay the debt on the due date. In return for an extension of the payment period, the creditor would charge an increment on top of the principal (which could arise from either a loan or a deferred sale). This was the form of Riba that the Arabs thought of in connection with the prohibition in Surah al-Baqarah, which reads: They say, ‘Trade is similar to Riba,’ while Allah has permitted trade and prohibited Riba (Quran, 2:275).

When Islam began prohibiting Riba in stages, non-Muslim traders contended with the ruling by claiming that the excess imposed on the debtor due to the extension of the repayment period is like the markup price concluded in a deferred-payment sale. This argument is rejected as the two scenarios are different in nature. The excess in a Riba-based transaction is based on nothing other than the deferment. On the other hand, the excess (profit) in a deferred sale is gained from a transaction based on the real economic activity of buying and selling an existing asset.

Excess upon debt has no corresponding countervalue but time, which is not wealth, and the increase is thus detached from real economic activity. The absence of countervalue means that the creditor enjoys the return on the principal amount unjustifiably as he takes no liability for loss. Furthermore, Islam does not treat money as a commodity as the two have different natures. Also, money cannot create itself.

Although the Quran prohibits Riba al-Duyun that arises from debt transactions and permits a trade-based alternative model in general, the Prophet (SAW) mentioned that Riba may also occur in exchange contract (Riba al-Buyu). This can be seen in many Prophetic traditions that prohibit excess and deferment in a transaction that involves an exchange of two Ribawi commodities. The main Hadith with reference to this is the one which was reported by Ubadah Ibn al-Samit where the Prophet (SAW) said:

Gold-for-gold, silver-for-silver, wheat-for-wheat, barley-for-barley, dates-for-dates, and salt-for-salt, like-for-like, equal-for-equal and hand-to-hand, if the commodities differ, then you may sell as you wish provided that the exchange is hand-to-hand (Muslim, Hadith no. 2970).

This Hadith indicates that an exchange contract involving six items enumerated in the Hadith should observe the following criteria:

1. It must be affected on the spot basis.
2. It is done at par or in equal unit of measurement if the exchanged countervalues are of the same genus and denomination.

Riba al-Buyu occurs from an exchange contract in which a commodity is exchanged for the same commodity from the above Ribawi commodities in an unequal amount and/or delay of the delivery of one of the commodities. It refers to Riba which results from non-compliance to the two conditions stipulated in the Hadith mentioned above in transactions involving the six items enumerated.

It should also be noted that the rule of Riba differs with the different items exchanged, whether they are of the same or different category. Although the jurists held different opinions on the effective cause or the underlying rationale for the six Ribawi items mentioned in the Hadith, they had classified them into two categories:

1. Medium of exchange (currency) represented by gold and silver and extended to any items used as currency.
2. Food stuff represented by wheat, barley, dates, and salt, but extended to other types of commodities according to different effective causes by different schools of law.

If the exchange involves the same genus, such as gold for gold, Malaysian ringgit for Malaysian ringgit, or wheat for wheat, both rules of equality and spot delivery must be applied. However, if the items are of different genus, but within the same category as the exchange of gold for silver, Malaysian ringgit for US dollar, or wheat for dates, only the rule of spot delivery is applicable. If they are from different categories such as gold and dates, both rules are not applicable; hence, the transactions can be of different amounts/quantities and either the object or payment can be deferred as agreed between the willing seller and the willing buyer.

A delay in delivery in an exchange of Ribawi items involving different genus, but within the same category (such as gold for silver) will trigger Riba al-Nasa (Riba due to deferment). This is true even when the amounts exchanged are the same. The party receiving immediate delivery can benefit from it immediately while the party receiving delivery later is prevented from the benefit throughout the waiting period. This creates an imbalance between the two parties and violates the minimum standard of justice in an exchange transaction. Meanwhile, the exchange of Ribawi item with the same item in unequal amounts will trigger Riba al-Fadal (Riba due to excess). For example, an exchange of 20 ounces of gold for 22 ounces of gold.

### 7.2. Prohibition of Gharar

Gharar is another important element which could render a transaction void. Literally, the word ‘Gharar’ implies risk, uncertainty, and hazard. Technically, Ibn Qayyim described Gharar as a sale in which the vendor is not able to hand over the subject matter to the buyer, regardless of if the subject matter is in existence or not. Meanwhile, al-Sarakhsi defined Gharar in a more general term, which refers to any bargain whereby the result of it is hidden.

Unlike the prohibition of Riba, no verse from the Quran could be found directly or explicitly prohibiting Gharar. However, the Quran clearly prohibits all forms of business transactions which cause injustice or oppression to any of the parties, particularly the party with a weaker economic and bargaining position. For example, in Surah al-Nisa, verse 29, the Quran reads:

O you who believe! Eat not your property among yourselves unjustly by falsehood and deception, except it be a trade amongst you, by mutual consent.

The jurists agree that the word Batil (unjustly) in the above verse includes all categories of illegal and defective elements in commercial contracts, including that of Gharar as it could result in taking the property of others without a justified basis.

On the other hand, prohibition of Gharar has been made conclusive in various Hadith of the Prophet (SAW). The companions related that the Prophet (SAW) has forbidden Gharar in trading. Abu Hurairah narrated that the Prophet (SAW) prohibited all sales on Gharar. In another Hadith by Abu Hurairah, it was reported that two types of transactions were prohibited by the Prophet (SAW), namely, al-Mulamasah and al-Munabadhah. Al Mulamasah is a pre-Islamic form of sale which would become binding when the buyer touched the object of sale. The second prohibited sale, that is al-Munabadhah, is a pre-Islamic form of sale concluded by each party throwing his garment to the other without any inspection. In both cases, the sales are prohibited due to Gharar. Based on the above evidence, the jurists unanimously agreed that Gharar is prohibited and the existence of Gharar may render a contract null and void.

However, some jurists such as the Maliki Scholars tolerated the existence of Gharar in Tabarruat (charitable) contracts such as Hiba. Their view is premised on the grounds that the feature of uncertainty in a charitable contract would not harm the other party. In contrast, the element of uncertainty in an exchange contract is likely to harm at least one of the parties as the intent of each party is to maximize its own benefit from the exchange.

The prohibition of Gharar is founded on the rule of justice and fair dealings. This is because the occurrence of Gharar in any transaction may result in oppression or injustice, and the loss of property to one or even both of the parties. It may also infringe upon the rule of mutual consent if a party’s consent to the transaction is due to its inadequate knowledge or access to material information. The outcome of the transaction is not clear to the parties due to the lack of information; thus, exposing them to unnecessary risk in business transactions. The main reason for the prohibition of Gharar, consequent to the above, is to avoid future disputes. If the parties involved are not fully aware and clear about any material information about the contracts, they might be engaged in unexpected financial responsibility and commitment. This, of course, could lead to disputes among the parties as to the correct and intended consequences of the contracts entered. It should be noted, however, that only major Gharar, or Gharar Fahish, which relates to important and material information to the contract, would render the contract void. Minor Gharar (Gharar Yaseer) or unavoidable Gharar, would not affect the validity of the contract, due to the nature of the subject matter and the unlikely potential of causing considerable damage to one of the parties.

Based on the above discussion, a few main types of Gharar can be observed with reference to modern financial transactions such as:

1. Gharar due to the non-existence of the subject matter or not having control over the subject matter. This is known in the conventional modern term as settlement risk or counterparty risk where the seller, for example, is not able to hand over the subject matter to the buyer. Ibn Abbas reported the Prophet (SAW) to have said: He who buys food grain should not sell it until he has taken possession of it (al-Bukhari, Hadith no. 2136).
2. Gharar due to inadequacy or inaccuracy of information. This type of Gharar might arise due to the non-disclosure of material information on the subject matter. This comprises the characteristics of the exchanged countervalue, its species, quantities, date of future delivery, etc. The reason for the prohibition of this type of Gharar is the possibility of deceit or fraud that exists in such a contract due to the deliberate concealment of valued or relevant information by any of the parties to the contract. The Prophet (SAW) had prohibited the act of concealing information to deceive any party. He had once passed by a man who was selling grains and asked him, ‘How are you selling it?’ The man then informed him. The Prophet (SAW) then put his hand in the heap of the grain and found it was wet inside. At this point the Prophet (SAW) said: He who deceives other people is not one of us (Ahmad, Hadith no. 5113).
3. Gharar due to the undue complexity of the contract such as combining two sales in one, two or more interdependent contracts. An example of two sales in one is when a person says to another, ‘I sell to you this item at MYR100 in cash today and MYR110 to be paid within a year.’ The buyer then said, ‘I accept’ without specifying at which price he buys the item. This is why the jurists required that hybrid contract instruments like al-Ijarah Thumma al-Bay or parallel Istisna must be independent of each other.

It should be noted here that unlike Riba, Gharar is a phenomenal issue which is open to changes based on different circumstances. What constitutes Gharar in a particular place or time might not be Gharar in other circumstances due to the development of technology for example.

### 7.3. Prohibition of Gambling

In Arabic and Islamic terminology, gambling is often referred to by two words: Qimar and Maysir. Qimar is, however, more widely used to refer to the prohibited gambling because Maysir was a form of gambling practiced in the ancient pagan era, and it is difficult to accurately understand its details. Abu Ubaid said about Maysir:

I have never found our Muslim scholars discussing it in detail (al-Qasim Ibn Salaam, 1384 AH, 3:469).

Literally, Qimar means betting on something and winning it. According to Ibn Manzoor, the word Qimar is closely associated with the word Khidaa, which means ‘to deceive’. Technically, Qimar refers to an act of betting one’s assets to acquire another person’s assets, either through competition, conditional games, or other means. Al-Zaylei briefly defined Qimar as ‘something which provides equal probability to two parties to bear the loss’ (al-Zaylei, 1313 AH, 6:228). Al-Mawardi of the Shafei school defined Qimar as ‘a situation which must yield one of two results for the person who enters it, to emerge as a winner if he takes or as a loser if he gives’ (al-Mawardi, 1419 AH, 15:192). Meanwhile, Ibn Qudamah of the Hanbali school defines Qimar as ‘[a situation in which] each party must either enjoy gain or bear loss’ (Ibn Qudamah, 1388 AH, 9:468).

From the above definitions, it is clearly understood that gambling is not confined to games, even though there are some scholars who do confine the objective of gambling to games; for example, al-Jurjani defines it as ‘gradually taking the counterparty’s [property] in a game’ (al-Jurjani, 1403 AH:179). However, most jurists view the scope of gambling in a much broader perspective. Every action or word which involves wagering of property to be given to the winner is categorized as gambling. This is in line with the parameter established by Ibn Sirin regarding Maysir, saying, ‘Everything which involves a wager is gambling (Maysir)’ (al-Tabari, 1420 AH, 4:323).

Based on the various definitions provided by jurists, it is concluded that gambling assumes the following key characteristics:

1. It takes place between two or more parties.
2. Each participating party bets his property.
3. Each participating party has an equal probability of gain or loss.
4. The winning party’s gain corresponds exactly with the losing party’s loss.

The Quran explicitly condemned and prohibited gambling in Surah al-Maidah:

O believers, wine, and gambling (Maysir), idols and divination by arrows are but abominations devised by Satan; avoid them so that you may prosper. Indeed, Satan seeks to stir up enmity and hatred among you by means of wine and gambling and to keep you away from remembrance of Allah (SWT) and from your prayers (Quran, 5:90-1).

This Quranic verse also explained the reason for the prohibition of gambling as it invokes enmity in society and distracts believers from worshipping Allah (SWT).

## 8. MUTUALITY OF RISK-TAKING

As noted above, Gharar and Maysir were prohibited due to the element of chance or risk. However, it is very important to differentiate the types and nature of risks as not every risk-taking is prohibited. The Quran permitted the sale and prohibited Riba mainly due to fairness in risk and return. As a sale assumes risk-taking, for example market risk, the seller deserves the profit from the sale. On the other hand, Riba is prohibited because it involves profiting without taking or sharing in the related risk.

In relation to the above, risks can be divided into three types, which carry different rulings from the Shariah point of view in terms of permissibility or otherwise:

1. Entrepreneurial risk or risk which might occur as part of the normal course of business in every economic activity. The willingness to take this kind of risk is not prohibited, rather encouraged to enhance the economic activities in society and to fulfil its needs. It is an unavoidable risk due to the nature of the business and not like the avoidable risks in Gharar transactions.
2. Risks due to the possibility of the occurrence of natural disasters and calamities. People seek to protect themselves from the effect of these calamities by taking insurance. Protection against this type of risk by way of cooperative insurance is allowed in Islam if there is no prohibited element involved.
3. Unnecessary risks which are not part of everyday life but arise from games of chance created by people. It is unnecessary in the sense that it does not add any economic value to society such as the case of entrepreneurial risk. Moreover, people will not be exposed to such risk if they choose not to participate in these games unlike the former. This is the prohibited risk-taking that underlines the prohibition of gambling or Maysir.

The first type of risk is associated with the risk in the natural course of business. It is an established principle in the Islamic commercial law that risk commensurate with the return. The basis of this principle was established directly in the Hadith ‘الخراج بالضمان’ which means that the right to the return is justifiable by assuming the risk of loss. For example, in the contract of Mudarabah, the capital provider has the right to profit as he is also bearing the risk of loss in the business venture. Likewise, the entrepreneur also has the right to profit as he is bearing the potential loss of his effort.

## 9. ELEMENTS OF SHARIAH CONTRACTS

A valid Shariah contract is built upon three essential elements, namely, (a) the form of the contract, (b) the subject matter of the contract, and (c) the contracting parties. These essential elements are to be met completely to qualify a contract to be assigned with its prescribed legal effects such as the transfer of ownership and conferment of the right to option.

Normally, in the context of crypto assets, blockchain, and Defi, the conditions of the form of the contract and contracting parties are met. However, the most important aspect is the subject matter of the contract.

### 9.1. Subject Matter of the Contract

The subject matter of the contract refers to the contracted object upon which the legal rulings and effects of the contract are manifested. The subject matter may take the form of corporeal property (or valuable asset) such as the subject matter of a sale contract, which comprises the object and price, a pledged object in a pledge contract or a usufruct in a lease contract. The usufruct in a lease contract may originate from the leased property or from the rendering of services. The subject matter can also be something of a non-financial exchange such as a spouse in a marriage contract, based on the opinion of some Hanafi scholars. However, it is worthy to note that not everything is legally or customarily eligible to be contracted as the subject matter since the Shariah has laid down some essential conditions of the subject matter that need to be fulfilled. They can be summarized as follows:

1. Existence of the subject matter at the time of the conclusion of the contract  
   The contract should not be affected on a non-existent object or on something whose existence in the future is impossible such as the undertaking of a contract on rendering medical services to a dead person or washing a damaged car.
2. Precise determination of the subject matter  
   The subject matter must be precisely determined and clearly known to the contracting parties to the extent that a later dispute can be avoided. Any form of major lack of information (Jahalah) and uncertainty in the subject matter will render the contract void. Civil law also subscribes to this injunction as it provides that an agreement which is uncertain or incapable of being made certain is void. For example, Ali agrees to sell a car to Ahmad without specifying the type of car. This agreement is considered void on the grounds of uncertainty. According to the Shariah, the precise determination of the subject matter can take place in its actuality through gestures or hint if it is in existence. It can also take place through viewing at the time of the contract, or prior to it within the duration in which it is not possible for the subject matter to change or through a description that prevents from major lack of information by way of giving a clear description of its type and quantity. Jurists unanimously agree that this essential condition is only required in financial contracts of exchange such as contracts of sale and lease. However, they hold different views on the application of this condition to other than financial contracts of exchange. The Shafei and the Hanbali jurists opine that this condition applies to financial contracts of exchange such as sale contracts, non-financial contracts of exchange such as marriage contracts and gratuitous contracts (including a gift (Hiba), bequest (Wasiyah) and trust (waqf)). The Hanafi jurists on the other hand stipulate that it is only applicable in financial and non-financial contracts, and not applicable in gratuitous contracts such as surety (Kafalah) and bequest because Jahalah in such a contract will not lead to a later dispute. The Maliki jurists seem to be more lenient as they are of the opinion that this condition applies only to financial contracts of exchange and does not apply to non-financial contracts of exchange and gratuitous contracts. On this premise, they opine that the contract of benevolence (Tabarru) is considered valid even if it is associated with major lack of information. This is because the objective of this contract is built upon benevolence (Ihsan) which will not result in any dispute.
3. Certainty of delivery of the subject matter

It is unanimously agreed among the scholars that the delivery of the subject matter must be certain at the time of the conclusion of the contract. Therefore, the contract is not validly concluded if the contracting parties are not capable of delivering the subject matter even if the subject matter exists at the time the contract is concluded and is legally owned by the seller. Jurists also agree that this condition must be fulfilled in financial contracts of exchange as well as in gratuitous contracts. However, Imam Malik opines that it does not apply to gratuitous contracts. Hence, it is not valid to undertake any financial contracts on an

undeliverable subject matter such as the sale of runaway camels, the sale of birds in the air, and the sale of fish in the sea.

1. Permissibility of the subject matter

Jurists unanimously agree that the subject matter must fulfil the Shariah rulings, which in turn, entails that it should be objects of intrinsic value, have considerable value for Muslims, have some use, be legitimately beneficial, and can be possessed. This is because certain property may have no economic value for Muslims, but may carry some commercial benefits for non-Muslims, such as pork and wine. Thus, various kinds of services, performances of an act, commodities, tangible and intangible assets such as intellectual property rights are also included and can be transacted in a financial contract.  
As the subject matter should also be an item that can be possessed, the sale of what has been made accessible to the general public, the sale of unacquired things such as the fish in the river, and the sale of public-owned properties such as public hospitals and buildings are not valid as these are not owned by any particular individual.

The subject matter must also be an item that can be assigned the legal rulings of the contract. For example, one of the legal rulings of a deferred sale is that the deferred price should be of fungible property such as currency which is free from Gharar. It cannot be of a non-fungible property such as a shirt or a house because this property may change over time, and it could lead to intolerable uncertainty. Hence, it can be said that a non-fungible property is rendered inappropriate to be the price of a deferred sale contract.

1. Antonopoulos, A. M. (2015). Mastering Bitcoin. Sebastopol, CA: O’Reilly Media. [↑](#footnote-ref-0)
2. Franco, P. (2015). *Understanding bitcoin*. Chichester, UK: John Wiley & Sons Ltd. [↑](#footnote-ref-1)
3. وَلَوْ أَنَّ النَّاسَ أَجَازُوا بَيْنَهُمْ الْجُلُودَ حَتَّى تَكُونَ لَهَا سِكَّةٌ وَعَيْنٌ لَكَرِهْتُهَا أَنْ تُبَاعَ بِالذَّهَبِ وَالْوَرِقِ نَظِرَةً (المدونة ج 3 ص 5)

   كُلَّ شَيْءٍ يَجُوزُ بَيْعُهُ فَهُوَ ثَمَنٌ صَحِيحٌ لِكُلِّ شَيْءٍ يَجُوزُ بَيْعُهُ، بِإِجْمَاعِكُمْ مَعَ النَّاسِ عَلَى ذَلِكَ، وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَكُمْ الِاقْتِصَارُ بِالتَّثْمِينِ عَلَى الذَّهَبِ، وَالْفِضَّةِ، وَلَا نَصَّ فِي ذَلِكَ، وَلَا قَوْلَ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ؟ وَهَذَا خَطَأٌ فِي غَايَةِ الْفُحْشِ، (المحلى ج7 ص 415)

   وَأَمَّا الدِّرْهَمُ وَالدِّينَارُ فَمَا يُعْرَفُ لَهُ حَدٌّ طَبْعِيٌّ وَلَا شَرْعِيٌّ، بَلْ مَرْجِعُهُ إلَى الْعَادَةِ وَالِاصْطِلَاحِ؛ وَذَلِكَ لِأَنَّهُ فِي الْأَصْلِ لَا يَتَعَلَّقُ الْمَقْصُودُ بِهِ؛ بَلْ الْغَرَضُ أَنْ يَكُونَ مِعْيَارًا لِمَا يَتَعَامَلُونَ بِهِ وَالدَّرَاهِمُ وَالدَّنَانِيرُ لَا تُقْصَدُ لِنَفْسِهَا، بَلْ هِيَ وَسِيلَةٌ إلَى التَّعَامُلِ (مجموع الفتاوى 19/252) [↑](#footnote-ref-2)
4. حَدَّثَنَا عَمْرو الناقد، قَالَ: حَدَّثَنَا إسماعيل بْن إِبْرَاهِيم، قَالَ: حَدَّثَنَا يونس بْن عُبَيْد عَنِ الْحَسَن، قَالَ كان الناس وهم أهل كفر قَدْ عرفوا موضع هَذَا الدرهم منَ الناس فجودوه وأخلصوه، فلما صار إليكم غششتموه وأفسدتموه. ولقد كان عُمَر بْن الخطاب قَالَ: هممت أن أجعل الدراهم من جلود الإبل فقيل له إذا لا بعير فأمسك. (فتوح البلدان 452) [↑](#footnote-ref-3)