



## CONCEPT, CLASSIFICATION AND MANAGEMENT OF PROPERTY IN ISLAMIC LAW OF INHERITANCE

By

Adewara Tajudeen Zubair\*

&

Yunus O.M\*\*

### Abstract

*Islamic Law provides a comprehensive framework for property ownership and management, balancing individual rights with communal responsibilities. As a result of this therefore, this article examines the classifications of property in Islamic law of inheritance with a view to discovering the lawful and unlawful property which is subject to ownership through inheritance to achieve justice and harmony through this classification. It traces the background implementation of this principles of Islamic Law of inheritance in order to reflect the Islamic vision of a balanced and equitable society on the one hand and the implications of understanding the concept and classification of property in Islamic law which has significant implications for economic development, social justice, community welfare and individual moral responsibility on the other hand. It also examines the possibility of inheriting illegally acquired property in Islamic Law. The paper adopts a content analysis of both primary and secondary sources to justify the concepts, classification and management in Islamic Law of Inheritance. The paper discloses that the knowledge of what is right to be inherited and what is not legally right to be inherited is important in the field of Islamic Law. It concludes by enumerating the significance of knowing the instrumentality and science of Islamic law of inheritance which may be beneficial to all Muslims in order to be just and equitable in distribution of the deceased Estate. It recommends that there should be a framework put in place to determined the inheritable and non inheritable property of the deceased Muslim before its distribution to the legal heirs.*

**Keywords:** Classification, Concept, Inheritance, Islamic Law, Management, Ownership, Property.



## 1.0.0: INTRODUCTION

The Arabic word for inheritance is *Mirāth* which is also defined in Arabic Dictionary as *Irth*, *Wirathah* and *Tarkah*.<sup>1</sup> This word is used in various texts of the *Qur'an*.<sup>2</sup> Allah (SWT) emphasizes that to Him belongs the inheritance of the heaven and the earth.<sup>3</sup> In a similar vein, to show the significance of inheritance, Allah states in the *Qur'an* Chapter 4 verse 11 that:

باسم الله الرحمن الرحيم

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ الْإُنثَىٰ فَإِن كُن نِسَاءً فَرِحَ اثْنَتَيْنِ فَهِن ثَلَاثًا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَهُ آبَاؤُهُ فَلَهُمُ الثَّلَاثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلَهُمُ السُّدُسُ مِّن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ءَابَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا. وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلِكُمُ الرُّبْعُ مِمَّا تَرَكَنَّ مِّن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِن لَّمْ يَكُن لَكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثَّمَنُ مِمَّا تَرَكَنَّ مِّن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دِينٍ وَإِن كَانَ رَجُلٌ يُورِثُ كِلَايَةَ أَوْ امْرَأَةٌ وَهِيَ إِخْوَةٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِّن ذَٰلِكَ فَهَم شُرَكَاءُ فِي الثَّلَاثِ مِّن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ غَيْرِ مُضَارٍ وَصِيَّةٍ مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ .

Allah commands you as regard your children's (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parent, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, all-Wise. Chapter 4:11

In that which your wives leave, your share is a half if they have no child: but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendant nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a

<sup>1</sup>\* Research and Studies Centre, *The Dictionary Al-Qāmus Arabic -Engilsh, English -Arabic Bilingual* (Dar Al-Kotob Al-Ilmiyah Lebanon 2011) 4<sup>th</sup> ed. 404. Lecturer 1, Al-hikmah University, Ilorin Nigeria, [ztadewara@alhikmah.edu.ng](mailto:ztadewara@alhikmah.edu.ng), [adewaralawoffice214@gmail.com](mailto:adewaralawoffice214@gmail.com), +2348035134578, +2348023355866.

\*\*Yunus, O.M, Dept of Islamic Law, LL.M Lecturer 11, Faculty Of Law, University of Abuja, [yunus.murtala@uniabuja.edu.ng](mailto:yunus.murtala@uniabuja.edu.ng) 08034524632

Research and Studies Centre, *The Dictionary Al-Qāmus Arabic -Engilsh, English -Arabic Bilingual* (Dar Al-Kotob Al-Ilmiyah Lebanon 2011) 4<sup>th</sup> ed. 404.

<sup>2</sup> Doi A.I, *Shariah: The Islamic Law* (A.S Noordeen, London 1984), p.271. see also Khan M.M, *Interpretation of the meanings of THE NOBLE QURAN in the English Language* (Darussalam Saudi Arabia 1434) 111. see 'The Noble Qur'an English Translation of the Meaning and Commentary' (King Fard Glorious Qur'an printing complex Medinah Munawarah K.S.A 1434)111. Al-Nissai (4):11-12.

<sup>3</sup> *ibid*.



commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.<sup>4</sup>  
Chapter 4:12

The above verses of the holy Qur'an establish the significance of inheritance in Islamic law and also compel Muslims to abide by Allah's dictates as stated in the Qur'an.

In the sunnah of the Prophet (SAW), it was reported from Hadith narrated by Jabir that

The Prophet of Allah and Abu-Bakr came on foot to pay me a visit (during my illness) at Banu Salima's (dwellings). The Prophet found me unconscious, so he asked for water and performed the ablution from it and sprinkled some water over me. I came to my sense and said "O Allah's messenger! What do you order me to do as regards my Wealth?" so there was revealed. "Allah commands you as regard your Children's (inheritance)"<sup>5</sup>

The above Hadith was said to be a reason why the quoted verses of the Qur'an were revealed. Looking at the verses,<sup>6</sup> every one is entitled to his/her portion of inheritance. The verses emphasise the importance of inheritance to the Muslims in particular and to mankind in general.

The Prophet (SAW) was reported to have said in another Hadith when emphasising the importance of knowledge of inheritance that 'Learn the Laws of inheritance and teach them to people; for they are one half of useful knowledge.'<sup>7</sup>

In the above Hadith, the importance of laws of inheritance is emphasised by the Prophet (SAW) as well as in many other traditions. The emphasis on learning and teaching the inheritance was paramount not because it is said to be half of faith but for the fear of not to be forgotten by the *Ummah* (the followers).

In another tradition reported by Uqbah bin 'Amir said, 'learn (the laws of inheritance) before the arrival of those who depend on *Azzan* (supposition), namely, those who base their judgement on mere presumption'<sup>8</sup>.

Similarly, some scholars testified to the importance and unique nature of Islamic law of inheritance. Machaghtan comments that;

No branch of jurisprudence is more important than the law of succession and inheritance; as it constitutes that part of any national system of laws which is the most peculiar and distinct, and which is of most frequent use and extensive application.<sup>9</sup>

<sup>4</sup> Interpretation of the Meaning of the Noble Qur'an in the English Language, pp.116-117. An-Nisāi (4):12.

<sup>5</sup> Muhammad M.K., *Sahih Al-Bukhari* (Darussalam Saudi Arabia 1994), p.836. Hadith 1731.

<sup>6</sup> Interpretation of the Meaning of the Noble Qur'an in the English Language, pp.116-117. An-Nisāi (4):12.

<sup>7</sup> Jung A., *Sunan Darmi, Kitabul Faraid* (Almabsut, Delhi 1987) p.435.

<sup>8</sup> Muhammad, M.K., *Sahih Bukhari* (Darussalam Riyadh Saudi Arabia 1997) Vol.8., p.85.

<sup>9</sup> Machaghtan, W.H., *Principles and precedents of Muhammadan law* (Cambridge University press 2012), p.1.



Moreover, it is important for all Muslims to follow all the commandments of Allah which He revealed to His last Prophet, Muhammad (SAW). By this teaching, the Qur'an guides the activities of human behaviours, right from the cradle to the grave.<sup>10</sup> Everything is regulated in Islamic Law ranging from the birth up to the death and procedure for burial after death is well discussed. It regulates how to acquire property in this life in a proper and rightful way and what the deceased leaves behind with question on which of the deceased relatives are entitled to inherit<sup>11</sup>, what types of property could be inherited<sup>12</sup> and which assets are not inheritable.<sup>13</sup> It regulates the quantum of share of each legal heir,<sup>14</sup> the residual heirs and conditions necessary for Succession.<sup>15</sup> All these mentioned, do have principles regulating them and are expected to be followed by Muslims. Allah SWT emphasises that it is not for a believer, Man or Woman, when Allah and His Messenger have decreed a matter or made rulings concerning certain things that they should have any opinion in their decision contrary to that of Allah and His Messenger (SAW). Whoever does so is said to have gone astray into a plain error.<sup>16</sup> Inheritance Law is sacrosanct among the Muslims because of its great relevance to the administration of deceased's estate in which various shares are stipulated for individuals which Muslims are mandated to follow strictly and the consequence of not following the rules is believed to incur severe punishment in the hereafter.<sup>17</sup> Almaric Rumsey<sup>18</sup> observes that Muslim Law of inheritance is the perfect way of devolution of property ever known to mankind in a civilised world.<sup>19</sup>

### 2.1.0: CONCEPT OF PROPERTY IN ISLAMIC LAW

Property is defined as any category of valuable things which may be movable, immovable, ancestral or self acquired, joint and separate, real and personal including actionable claims and interest which constitute the heritage of a deceased Muslim.<sup>20</sup>

The estate of a Muslim is also defined as;

All types and categories of property left by him or her on death. After payment of funeral expenses, payment of debts, if any, and satisfaction of valid bequests, if any, the remaining property is the net property available for distribution and allocation among heirs (relations entitled

<sup>10</sup> Hussain, A. *The Islamic Law of Succession* (Maktaba Dar-us-Salam, Riyadh 2005) 27.

<sup>11</sup> This refers to the Estates of the deceased persons.

<sup>12</sup> Property which is acquired through the unfair means are not inheritable, this is because it is unclean and unlawful, therefore anybody who makes use of it does himself a great harm. The forbidden items (*Haram*) are also not fit for inheritance see generally Doi A.I., *Shariah: The Islamic Law* (A.S Noordeen 1984) 272.

<sup>13</sup> *ibid.*

<sup>14</sup> Interpretation of the Meaning of the Noble Qur'an in the English Language, p.117 Qur'an An-Nisāi (4):11-12 and 176.

<sup>15</sup> *The Islamic Law of Succession*, p. 272.

<sup>16</sup> Interpretation of the Meaning of the Noble Qur'an in the English Language, p. 552. Al-Ahzab (33):36.

<sup>17</sup> *ibid.* An-Nisāi' (4):13-14.

<sup>18</sup> Rumsey A. A., *Chart of Family Inheritance according to orthodox Mohammedan Law with an Explanatory treatise* (William Amer Law Publishers London 1880) 220.

<sup>19</sup> *ibid.*

<sup>20</sup> Muhammad, M.K., *Islamic Law of Inheritance a New Approach* (Nusrat Ali Nasri for Kitab Bhavan New Delhi India 2005), p.29.



to inherit). This net property is the inheritable property which devolves or descends on the heirs according to law.<sup>21</sup>

In addition, property in Islamic law is anything that is valuable, but for the purpose of the discussion in this research, property may be referred to as Estate of the deceased person. Estate literally means *tarkah* in Arabic which means what someone left behind. Technically, from the majority schools of Maliki, Hambali and Shaf'ii, it is anything that the deceased left as property and certain rights which generally comprises physical things which is either movable or non-movable property. It may also include a kind of rights like easement rights in dissolvent or drink and beyond that. It may also be utilities like right of utilizing the income, loans and debts and personal rights like pre-emptive rights on land and preference rights like choice and right to prescribe a condition.

Similarly, Property also consists of what may be assigned to someone in vintage that was dispensed after his death and his emolument that connected with him after his demise and also the blood money (*Diyyah*) collected for his murder, standing on the most correct opinion from the Shafi'i school of law by adding his possession prior to his death.<sup>22</sup>

However, Hanafi school of law described the estate as property and monetary rights that the deceased possessed or owned. It comprises the physical possessions in property and movables property and rights and debts from others. He stated that personal right that does not include money but attached to money includes the fixed rights that is not monetary in nature but anything related to money like right to drink, right to movement, right to passage and mortgage, are all legitimate estate of the deceased which are subjects of inheritance.

Furthermore, Hanafi school of law also include the option of designation, like choice of law and choice of appointment and the choice of elapse and choice of pre-emption of the required description, which does not comprise the personal choice like choice of condition and choice of visibility. e.g dwelling place, because they are rights attached to the deceased; not his property as the estate of the deceased.<sup>23</sup>

Generally, property in Islamic law is something that is pure, lawful and beneficial to man, which does not cause harm either to his body or mind. It is recorded in the prophetic tradition as reported by Muslim on the authority of Iyad bin Himar that the Prophet (SAW) was cited to have said that Allah (swt) says:

Every type of wealth I have endowed my servants is allowed for them.....,(until) I have created my servants *Hanafa* (pure in upright) but

<sup>21</sup> *ibid.*

<sup>22</sup> Wahabah Z, Al-fiqh ul-islamy wa adilatuhu ashamil liadilatil Shariiyah Wal-Arai Al-Madhhabiyah wa-ahamul- Nadhiriyatil fihiyat Wa-taqeeqil ahadith Al-Nabawiyyah (Darul fikr, Damascus 2012), p.268.

<sup>23</sup> *ibid.*



the devil come to them astray from their (true) religion and prohibited them from what I allowed for them<sup>24</sup>

Explaining this above *Hadith Qudsi* Allah (SWT) commands His servant to acquire only what is lawful, while lawful thing is that which is beneficial to his mind as well as his body which indicates that anything that is harmful to the health or dangerous to the body could not be described as wealth in Islamic law. Hence, some items like cigarettes, dead animals, blood, pork and all animals killed for idols are regarded as unlawful for consumption in Islamic law.<sup>25</sup>

The wisdom from prohibition of these items is that dead animal may have been killed by a strange illness which could affect the consumer of such dead animal while the one killed on idols took the same process without slaughtering and more importantly it is being hypnotised by devil thereby making the consumer lose belief and go astray from the way of *Allah* (SWT).<sup>26</sup>

However, there are different opinions on the egg or milk of a dead animal whether its consumption is lawful. The *Shafi'i* school of law are of the opinion that it is unlawful for consumption and at the same time could not be regarded as property. This is because the milk and the egg are part of the dead animal.<sup>27</sup> Maliki schools of law opined that such milk and egg of the dead animal are pure and lawful by itself but became unlawful because of the circumstances it is when it was found and the location it was found are all necessary things to take into consideration in determining the lawfulness of such things.<sup>28</sup> The school further argued that the cheese made from the milk of a dead animal is lawful, this position was supported by the majority of the schools and jurist especially Ibn Rushd who emphasised that since the milk or egg is a minute part of the dead animal, it is lawful. He based his argument on the fact that a minute part of unlawful things mixed with a lot of liquid which is lawful could not turn the lawful things to unlawful. He cited a tradition of the Prophet (SAW) by Ibn Majah who reported that Salman said according to the Prophet (SAW): 'The Law allowed is what Allah has allowed in the book and the prohibited is what Allah has prohibited in His book. What He has not mentioned is a part of what he has pardoned'<sup>29</sup>

Commenting on the above tradition, it is implied that those unlawful things are those specifically mentioned by Allah (SWT) in the text of the Qura'n and expressly listed

<sup>24</sup>Muhammad, M.K., *Sahih Bukhari* (Darussalam Riyadh Saudi Arabia 1997), Book 60, Vol.6. No.1 see also Shaykh Salfuur-Rahman Al-Mubarakpuri 'Tafsir Ibn Kathir Abridge' (Darul Salam Riyad 2003) Vol.1 465

<sup>25</sup> Tobacco Control Laws 'Federal Ministry of Health wars that Smokers are liable to die young' <https://www.tobaccocontrolaws.org/legislation/country/nigeria/pl-health-warnings>. Centres for Disease Control and Prevention available at [https://www.cdc.gov/tobacco/data\\_statistic/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](https://www.cdc.gov/tobacco/data_statistic/fact_sheets/health_effects/effects_cig_smoking/index.htm) accessed on 03 April, 2021.

<sup>26</sup>Interpretation of the Meaning of the Noble Qur'an in the English Language, p.196. Qur'an Al-An'am (6):121.

<sup>27</sup> Al-Qardawi Y, *The Lawful and the Prohibited in Islam* (Al-Falah Foundation for Translation, Publication and Distribution ND) 40.

<sup>28</sup> *ibid.*

<sup>29</sup>Ibn Majah, *Kitābu Al- Aṭī'mah*, Bābu -l-Akli Aj-Jubni Wa As-Samni Hadith 3367



while anything that is not among the unlawful is automatically lawful by the standard of lawfulness. Therefore anything that is not included in the list of unlawful or lawful is being pardoned and there would be no ruling on its lawfulness or otherwise.

However, dissecting the things that are not expressly mentioned as lawful or unlawful, their status is being determined by their nature as to the benefit or danger to mankind. In addition, property in Islamic law could also be defined as any lawful things that can be possessed. Hence possession is one of the major characteristics of property in Islamic law. Therefore, anything that could not be possessed could not be referred to as property, meanwhile, fish in the river or birds on the sky and untamed animal in the bush could not be referred to as property and the use of its usufructs is prohibited by *Shari'ah*.<sup>30</sup>

According to Ibn Kathir, explaining the position of property in this life posited that the desire for wealth by man may be attributable to 3 (three) things, it could be for arrogance; for domination of the poor or weak; or for spending in the way of Allah. The way of Allah may include leaving wealth for the unborn children and giving out poor rate (*Zakaat*) for the needy.<sup>31</sup>

Moreover, another reason for acquisition of property is emphasised by Qur'an in chapter 2 thus;

زين للناس حب الشهوات من النساء والبنين والقنا طير المقتطرة من الذهب والفضة والخيل المسومة والانعام  
والحرث ذلك متاع الحياة الدنيا والله عنده حسن المثاب

Beautified for men is the love of things they covet; women, children, much of gold and silver (wealth), branded beautiful horses, cattle and well-tilled land. This is the pleasure of the present world's life; but Allah has the excellent return (paradise with flowing rivers) with Him.<sup>32</sup>

The above verse places emphasis on the benefit of money to mankind for their pleasure and well-being in this life while Allah (SWT) also rules the importance of the hereafter which is more important and valuable than the pleasure of this life which is limited compared to the everlasting life in paradise.

The acquisition of property in Islamic Law and jurisprudence entails the rules guiding the financial transaction and other economic activities of Muslims which must comply with *shari'ah* as it would be discussed in this paper. Islamic jurisprudence (*Fiqh*) derives its sources from the *Qur'an* and *Sunnah* in which the lawful and unlawful things are well explained. These principles apply to the acquisition of property in Islamic law which leads us to the discussion on status of each property acquired by a Muslim. Since the objective of any legislation in Islamic law is for the protection of all of the five things, i.e., the religion (*Ad-Dinn*), Life (*An-Nafs*), Genealogy (*An-Nasl*) Intellect (*Al-*

<sup>30</sup>Zubair A. *Islamic Legal Doctrine and Interests in Land* (Al-Madinah Heritage Lagos 1996), 1.

<sup>31</sup>Tafsir Ibn Kathir Abridged vol. 2 125.

<sup>32</sup>Interpretation of the Meaning of the Noble Qur'an in the English Language, p. 79. Qur'an Al-Imran (3):14.



*Aql*) and properties (*Al-Mal*). These are the basics which the *Shari'ah* seeks to protect and which form the basis for *Shari'ah* objectives (*Maqasidu al- Shari'ah*).

This concept of acquisition of property and the knowledge of differentiating legal from illegal property which determine its status was extensively discussed in Islamic jurisprudence. These property include money, lands, taxes, labours, production, distribution and consumption of goods and services in a lawful way according to the Islamic law of inheritance and to bring it under the Islamic pattern, thought and behavioural norms of the Islamic society.

### **2.2.0: CLASSIFICATION OF PROPERTY IN ISLAMIC LAW**

For the purpose of classification of property in Islamic law, recourse has to be made to what property is in Islamic law. In ordinary terms, property could be referred to as Estate, Possession, Assets, Capital, Fund(s), Chattels, Goods, Wealth, Fortunes and Riches. Technically, for the purpose of this research, it means assets which is left by the deceased person and which may be distributed to the deceased legal heirs.<sup>33</sup>

Property is also defined from another angle for the purpose of Islamic law of inheritance as estate or inheritable property which is left to the heirs which may include money or rights which may be financial rights, irrespective of whether they are incumbent or not.<sup>34</sup>

Zubair,<sup>35</sup> on what to be referred to as property in Islamic Law, posits that anything that is referred to as property must satisfy some conditions which is possession, and anything that lacks such condition could not be regarded as property. He cites the book written by Ibn Abidin<sup>36</sup> that defines property as something inclined to, by human being and which could be hoarded until the need arises. In the similar vein, Madkur<sup>37</sup> is of the opinion that property is what is beneficial to human beings. Except human beings themselves, this definition stand because a slave is considered as *Malun hukmy* (subject of law) as well as human being with special consideration and as property of his owner even though he is a human being. Also, something that is beneficial for a person may be forbidden by *Shari'ah*. He compares these definitions above as stated and preferred the fact that anything that could be called a property must be capable of being acquired and that its usufruct must be possible in a normal way. He summarises his position by deducing some rules of law on property to include what can be physically or not physically possessed but acquired and utilised by man. He concluded that anything that is declared to be forbidden by *Shari'ah* (*haram*) cannot be regarded as property whether physically possessed or not. He buttresses his point by analysing the opinion of various Islamic schools of thought on the usufruct of property. He cites the position of Hanafi schools as regard the usufruct of the property, while the majority of the schools of thought are of the view that usufruct of property is actually a property. They based their

<sup>33</sup> Uthman, D.K., *Some Aspects of Islamic Law of Succession* (Rukhsa Publication, Kano 1990), p.4.

<sup>34</sup> Wahbah, Z., *Al-fiqh ul-Islamy wa adilatuhu* (Dar-ul-fikr Damascus 2012), vol.8 p.247.

<sup>35</sup> Zubair A. 'Concept of Inheritance under the *Shari'ah*' in Zubair(ed), *Discourse on Islamic Law of Inheritance and waqf* (Department of Islamic Law Publications, Kano 1998), 1.

<sup>36</sup> Ibn Abidin '*Radd al-muhtar sharh al- Darr al- mukhtar*' (Uthmaniyyah Press, Cairo 1325 A.H), p.12.

<sup>37</sup> Madkur, M. S. '*Tarikh al-Tashri'i al-Islami wa-masadiruh* (Cairo (ND)), 26.



argument on the fact that contract is always on usufructs and contract do not change the nature of the property it only confirms its characteristic.

Furthermore, the issue of right is also debated here when Zubair cites the opinion of Hanafi jurist to be of the same as earlier discussed by refusing a right to be considered a property. However, majority of Maliki, Shafi'i and Hanbali schools of Law attached some condition for a right to be considered a property, the first condition is that the right should not be a religious based rights and the second condition is that such right must be attached with corpus or usufruct or commercial to be regarded as property.

Pertinently, the meanings of property as presented by the learned professor and backed up by juristic opinion are of great relevance to this work since something to be acquired either legally or illegally must be something recognised as a property under Islamic law. This argument is relevant to our discussion of property in chapter two of this work.

Al-Ghazali<sup>38</sup> gives explanatory notes on the ways of earning a living, he quotes several *Qur'anic* verses<sup>39</sup> which emphasise the facts that human beings are given freedom to utilise their lives for earning good living. He compares the world as an acts of farming to get produce in this world for the hereafter and the abode of reward and punishment for the good and bad work respectively. He classifies the people in this world into three (3); the first one is 'the one that is occupied by his living from his place of return', the second one is 'the one who is occupied by his place of return' and the third one 'is one who is engaged in his living just to get provision thereof for his place of return, thus he is of the temperate. He cites many prophetic traditions which are of immense benefits to this research work. He cites a narration by Tabarani that one day the Messenger of Allah (SAW) was sitting with his companion when they saw a man of fortitude and strength having come out early in the morning to work, thereupon people were condemning him for waking up early to accumulate wealth instead of him to utilize his strength and good health in the cause of Allah. On hearing their conversation, the Messenger of Allah (SAW) admonished them against condemning that man and commented that if he is working to spend on himself and his family and to make himself sufficient with his effort and free of want of the people, his work will be in Allah's cause.<sup>40</sup>

The above tradition emphasises the intention behind all endeavour of mankind, rather than making unnecessary effort in order to increase one's wealth by all means or unjustifiably. The author goes further to explain various branches of contract and the importance of Muslims having an in-depth knowledge of it before practicing or engaging in it. He enumerates various types of contracts in Islamic law as Six which are trade, usury, payment in advance, rental, partnership and loan. According to him, the world is an enemy of Allah Almighty: with its deception, those who strayed have strayed, and with its cunning, those who slipped have slipped. To love it is the greatest mistake and sin, and to hate it is the best act of worship. There is no hope of salvation but to abandon and desert the world entirely. But to abandon it is a result of either its remoteness from it, and this is called asceticism; each has several degrees to attain

<sup>38</sup> Al-Ghazali, A.H 'Revival of Religion's Sciences *Ihya' Ulum Ad-Din*' (Dar Al-Kitab Al-Ilmiyah Lebanon 2011).

<sup>39</sup> Interpretation of the Meaning of the Noble Qur'an in the English Language, pp.776, 53,731 and 763. *Al-Baqarah* (2):198, *Al-A'raf* (7):10, *Al-Jumah* (62):10 and *Al-Muzammil* (73):20 and Qur'an *Al-Nabai* (78):11.

<sup>40</sup> Şahih Al-Muslim Kitabul Az-Zakāt Hadith No. 994



happiness and a portion of helping one obtain felicity and success. The book proves a resourceful material in this study.

Meanwhile, there are various classes of property as far as Islamic law is concerned. There are:

- (a) valuable and non-valuable property,
- (b) movable and non-movable property as well as
- (c) fungible and non-fungible property.

Different rules apply to each property according to their classifications while these classifications could be explained in details in this paper.

### **2.2.1: VALUABLE PROPERTY (*AL-MUTAQAWAM*)**

This is a kind of property in Islamic law which is lawful, but before a property could attain this level, it must possess two qualities which are:

- (i) it should be a possessed property i.e somebody must have the possession of the same since any property not possessed by anybody could not be subject of contract in Islamic Law. The prophet (SAW) was reported to have warn the Muslims against indulging in forward transactions which means selling goods before obtaining their possession.<sup>41</sup>
- (ii) Its usufruct must be beneficial and attainable in a normal way. These conditions above make the property to be valuable because it is given sanctity and protection in *Shari'ah*.<sup>42</sup>

The valuable property according to the Maliki School of Law may consist of financial rights irrespective of whether they are incumbent or not. It may also consist of liabilities of the deceased person attached with such rights which could be described as gross estate left by the deceased person. It may also be of a thing which is in possession of the deceased before his death or may not be in his possession such as right in the legacy of another person which has not been distributed before his death.<sup>43</sup>

### **2.2.2: NON-VALUABLE PROPERTY (*GHAYRUL MUTAQAWAM*)**

According to Wahbah,<sup>44</sup> non- valuable property may be divided into two categories, the first one is something that cannot be possessed and which is not under the possession of anybody such as fish in the river, birds on the sky and mineral resources buried under ground. The second category of non-valuable property are alcoholic substance and pork, etc. These are not valuable for the Muslims. It is not permissible for Muslims to benefit from it except where there is necessity (*Aḍ-Ḍarūrah*). In such situation, it is permissible for the Muslim to taste or eat such foods or drink such substance to prevent

<sup>41</sup> Ṣaḥīḥ Muslim , Kitab Al-Buyū' invalidity of a transaction by throwing a stone, Hadith 3614.

<sup>42</sup> *ibid* p. 121. Qur'an Al- Nisaa (4):29.

<sup>43</sup> Some Aspects of Islamic Law of Succession, p.4.

<sup>44</sup> *Fiqh Ul-Islamy wa adilatuhu* (Dar- ul -Fikr Damascus, 2012), p.53 vol.9.



him from death related hunger or thirsty where there is no other option than to eat or drink it with the condition that he takes the size that would allow him to survive at that given time.

But for the non-Muslim, Hanafi school of Islamic law posited that the pork and alcohol are not prohibited for non-Muslim, they based their opinion on the fact that it has been said that the Muslim should leave them with their religion.

However, the majority of Jurist differed from the position of Hanafi School of law on the fact that there are no differences between Muslim and non-Muslim as regards the issue of forbidden property. This is because a non-Muslim living in an Islamic state is a *Thimmih* who is subjected to the rules and regulation of the Islamic State. Therefore, they benefit from what the Muslims are benefiting from, while they are also bound by what bound the Muslim.<sup>45</sup>

Similarly, non-valuable property are such which do not satisfy the two conditions mentioned in respect of the valuable property. Though at times, a property might satisfy one or all the conditions, but still may be classified as non-valuable if it is mentioned specifically by the *Qur'an* or *sunah* to be unlawful. In such circumstance, the property would not be classified as property in Islamic law. The example of these property is carrion, blood, etc. as mentioned in the *Qur'an* thus;

انما حرم عليكم الميتة والدم ولحم الخنزير وما اهل به لغير الله فمن اضطر غير باغ ولا عاد فلا اثم عليه ان الله  
غفور رحيم

Forbidden to you are dead animal, blood, the flesh of swine, and that which hath been invoked the name other than Allah, that which hath been killed by strangling, or by a violent blow; or by a headlong fall; or by being gored to death; that which hath been partly eaten by a wild animal, unless ye are able to slaughter it (in due form) that which is sacrificed on stone (altars) (forbidden) also is the division (of meat) by raffling with arrows: that is implicit...

<sup>46</sup>

Interpreting the above verse, Ibn Khathir reported Al-Hakim in a narration where Aisha (R.A) told the companion of the Prophet (SAW) that the verse was the list to be revealed to the Prophet (SAW). This means that all what is lawful and unlawful here is by no means lawful and unlawful as stated. Though on the issue whether a non-Muslim living in an Islamic territory is bound by this law, there are divergent views among the jurists. The Hanafi and Maliki schools of law are of the opinion that the above verse is not applicable to a non-Muslim. They relied on the verse that said to you belong your

<sup>45</sup> *ibid.*

<sup>46</sup> Interpretation of the Meaning of the Noble Qur'an in the English Language, p. 45 *Qur'an Al-Baqarah* (2): 173.



religion and to me my religion.<sup>47</sup> On the other hand, Shafii and Hambali schools of law are of the opinion that everybody is bound by the law whether Muslim or not.

Meanwhile, the lawful things are the only valuable things regarded as property in Islamic law and which can by virtue of its being valuable can be inherited while the unlawful things are not inheritable by virtue of their being unlawful property in Islamic law.

Similarly, Al-munajjid<sup>48</sup> posits that the prohibition is what Allah has set out for mankind not to violate, quoting the Prophet (SAW) when he said:

‘Whatever Allah has permitted in His Book is allowed, and whatever He has prohibited is forbidden; whatever He has remained silent about is a concession of Allah for Allah is never forgetful’<sup>49</sup>. The provision of this tradition could be traced to some argument by some individual that why must Islamic law prohibit this and that and make life difficult for them. Some of them went as far as saying religion is supposed to make life easy and not hard but the truth is that this category of people failed to appreciate the fact that lawful and unlawful are expressly stated in the Qur’an and Sunnah<sup>50</sup> and the reasons for the prohibition is always available in Islamic jurisprudence for those who are ready to know. Emphasising this point, Allah says *ويحل لهم الطيبات ويحرم عليهم الخبائث ويضع عنهم اصرهم والاغلال التي كانت عليهم .....*

He allows them as lawful all good and lawful as regards things, deeds, beliefs, persons, foods, etc and prohibits them as unlawful all evil and unlawful as regards things, deeds, beliefs, persons, foods etc.<sup>51</sup>

Commenting on the above verse, Al-Munajjid states that the lawful are good and pure things while the unlawful are the evil and unclean things. The power and right to declare anything lawful or unlawful reside only with Allah (SWT) and no one has that right to declare anything lawful or unlawful. In another comment, Tafsir Ibn Khathir<sup>52</sup> gives the meaning of the verse as:

He makes the *Bahirah, Saibah, Wasilah* and *Ham* etc. lawful. They were prohibition that they invented which were only hand for themselves. He also forbids them from evil things such as the flesh of the pig, Riba, and foods that were treated as lawful although Allah the exalted had forbidden them....<sup>53</sup>

<sup>47</sup>ibid 818. *Qur’an Al-kafirun* (109):6.

<sup>48</sup>Al-Munajjid M.S *Muharamat Forbidden Matters Some People Take Lightly* (International Islamic Publishing House, Riyadh 2004), 1.

<sup>49</sup> Ibn Majah, *Kitābu Al- Aṭī’mah, Bābu -l-Akli Aj-Jubni Wa As-Samni Hadith 3367*

<sup>50</sup>Abdul M.O.A *The Prophet of Islam: His Life, Sayings and Deeds* (Islamic Publications Bureau Lagos 1971), 76.

<sup>51</sup> Khan M.M., *Interpretation of the meaning of the Noble Qur’an in the English Language*, p.228. *Al-A’raf* (7): 157

<sup>52</sup>Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, vol. 1 (Beirūt: Dār al-Andalus, 1966), 372

<sup>53</sup>*ibid.*



However, the commentary from the learned jurist is one of the replies to those who think that Islam prohibits them from doing many things they think constitute their human rights for the enjoyment of this life but the above verse is an indication that there are many things which the unbelievers prohibit for themselves and which are made lawful in Islamic law.

Furthermore, other classification of property in Islamic law are movables and immovables. These classifications are based on the law applicable to each of the property as its classifications. The movable property as it is called is a property that could be moved from one place to another without affecting its quality, quantity and status. These items include but not limited to automobiles, mercantile and goods, silver and gold. These items are regarded as movable items by Maliki school of law while Hanafi, Shafii and Hambali school of law are of the opinion that movable property include trees, buildings and bridges which when moved could change its status to other form like planks, wood, building wreckage and building materials. In this regard, Maliki school of law believes that whatever is attached to the land belongs to the land and therefore does not consider those items as movable property if they were sold together. On the other hand, according to the Maliki school, the immovable property is that property that is not movable which includes trees, buildings and other items attached to the land.

Property in Islamic law is further divided into fungible and non-fungibles. Fungible property is the property that has its similarity in the market and which could be measured against the other items such as a bag of rice as against a bag of beans, while a non-fungible property is a property that has no measure available in the market such as land. This classification is based on the Islamic law principle on the availability of such items as at the time of transaction.

A practical example could be seen in a case where someone consumes a property of another person and after a protracted litigation, he was ordered to give back the property to the original and legal owner. In such a case at the time when he consumes the property, its value was high while the value had drastically gone down at the time of returning it. The question now is how could he pay back? The Islamic law would now look at the type of property whether it is fungible or non-fungible. If the property is fungible, it is allowed to pay back with a similar item notwithstanding the value of the current value of the item but if it is non-fungible property, its value at the time of seizure should be returned.<sup>54</sup>

### **2.2.3: PERMISSIBLE AND FORBIDDEN PROPERTY IN ISLAMIC LAW**

The contention whether a property is permissible in Islamic law or not could be attributed to its lawfulness in Islamic law as discussed above in the classification of property mentioned earlier, the permissible property is what is recognised as property according to the Islamic law and which can be possessed as well as have value.

<sup>54</sup>Islamic Legal Doctrine and Interests in Land p.33.



Therefore, all the characteristics of property in Islamic law are present in it as well as condition for a property is fulfilled, while the forbidden property is unlawful property as expressly stated by Qur'an as unlawful.

Furthermore, the concepts of lawful and unlawful spread throughout the *Qur'an* and tradition of the Prophet, analogical deduction, consensus of the jurists and also cut across the secondary sources of Islamic law which include other sources where the jurists canvass several arguments on the lawfulness and unlawfulness of commodities which are not expressly discussed in the *Qur'an*.

#### **2.2.4: PUBLIC PROPERTY (AL-MAL AL-AAM)**

**This is a property owned by the Community or the State such as mineral resources from the land which serves as another way of earning a legal living in Islamic Law through excavating of mineral resources from a barren land. This occurs where a land is not owned by any person; the excavator thereby becomes the owner of such land if he happens to be the first person to do anything on the land.**

However, mineral resources found on a privately owned land belongs to the owner of such land. This is the view of majority of the jurists except Hambali school of law that believes that any liquid treasure on the land such as oil, gas and water belongs to the community as opposed to individual ownership.<sup>55</sup> Therefore, the general rule in Islamic law is that if the land on which mineral resources is found belong to nobody, the asset and the land belongs to the community. But Maliki School of Law is of the opinion that as far as mineral wealth is concerned, whether it is found in a private owned land or on the land that does not belong to anybody, it belongs to the state and the government can only assign the land to the excavator/ fabricator by licensing on tenure basis and such assignee can only be a beneficial owner for the time being and cannot alienate the land by inheritance or by any other means known to law.

Moreover, some jurists are of the opinion that gold, silver and other natural endowments as oil and gas belong exclusively to the state and no individual can lay claim whether the treasure is found on his land or barren land not owned by any person. Another principle of Islamic law is that a founder of a treasure on another person's land could not claim ownership of the treasure unless if the owner of the said land is not found. But if he is found, the finder is not the owner. The owner takes the treasure and 1/5 (One fifth) of the treasure should be given to the State treasury. But in another opinion, the finder assumes the ownership of the treasure in all cases.<sup>56</sup>

#### **2.2.5: PRIVATE PROPERTY (AL-MAL AL-KHASS)**

This is the property owned by individuals which include personal assets , businesses and other means of getting lawful assets, this includes Purchase and

<sup>55</sup>*ibid.* p. 272.

<sup>56</sup>Abu Yusuf Y.B.I, '*Kitab Kharaj*' (Al-Matbaha- Al-Salafi Cairo 1396A.H), 240.



sale of legitimate items which is permitted in the Islamic law and it is also referred to as trade. The term trade is defined as ‘the act or process of buying, selling, or exchanging commodities, at either wholesale or retail.’<sup>57</sup> Trade generally is regulated by Allah (SWT) in the Qur’an when He says..... واحل الله البيع وحرم الربوا..... Whereas Allah has permitted trading and forbidden Riba (usury).<sup>58</sup> In the tradition of the Prophet (SAW) it was reported that the Prophet engaged in buying and selling and was reported to have said in one of the traditions that;

The two contracting parties have an option as long as they have not separated, so if they are honest and clear the sale will be blessed, but if they lie and conceal, barakah will be taken away from their sale.<sup>59</sup>

However, for a trade to be legal in Islamic law, there are 5 (five) conditions attached. There should be a seller who must be the legal owner of the thing he is selling or having the owner’s consent to sell on his behalf, the second condition is the availability of the buyer who spends his money and effort to get what he wants and acquires the ownership of the goods. The third condition is availability of goods, that is the subject matter of trade which must be valuable property in Islamic law which has been discussed in section 2.2.1 above. The fourth condition is meeting of minds between the seller and the buyer which begins with offer and acceptance. Here there must be meeting of minds of both parties. The fifth condition is the parties must consent to the business. This condition is supported by the saying of the Prophet (SAW) reported by Ibn Majah: ‘Trade is mutual consent of the parties’.<sup>60</sup>

### 3.0.0: CONCLUSION:

The paper discusses the concept and classification of property in Islamic law. It covers meaning of property, classifications of property, division of property to permissible and forbidden property in Islamic law and how property could be acquired under the Islamic law. The paper further discusses legal ways of acquiring property in Islamic law. The paper further elaborates on valuables and non-valuable property in Islamic Law. While pure property may be acquired the forbidden property could not be acquired.

<sup>57</sup> Mohammad R. ‘Riba in Islam Fiqh of Contemporary Issue’ available at <https://t.co?CB36AIOMyR> accessed 06 February, 2022.

<sup>58</sup> Interpretation of the Meaning of the Noble Qur’an in the English Language, p.72. *Qur’an Al-Baqarah* (2):275.

<sup>59</sup> Muhammad, M.K., *Sahih Bukhari* (Darussalam Riyadh Saudi Arabia 1997) Vol.3. Book 34 Hadith 294., p.471. see Abu Bakr J, ‘Minhaj ul- Muslim’ (Dar ul- Ulum Bairut ND), 341.

<sup>60</sup> Sunan Ibn Majah, *Kitābu At-Tijārāt, Bābu Bay’u Al-Khiyār* Hadith No. 2185