



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Islamic Law of Property

LAB2033

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Introduction

- Ibn Khaldun:
- “The strength of the sovereign (al-mulk) does not become consumed except by implementation of the Shari’ah;
- The Shari’ah cannot be implemented except by a sovereign (al-mulk);
- The sovereign cannot gain strength except through the people (al-rijal);
- The people cannot be sustained except by wealth (al-mal);
- Wealth cannot be acquired except through development (al-‘imarah);
- Development cannot be attained except through justice (al-‘adl);
- Justice is the criterion (al-mizan) by which God will evaluate mankind; and
- The sovereign is charged with the responsibility of actualising justice”

Content

- Definition of al Mal
- Concept of al mal
- Al Mal in al Quran
- Wealth management
- Classification of al mal
- Acquisition of al mal

Al Mal or Property

- Mal or amwal: whatever mankind possess
- The things that can be
 - (i) acquired and
 - (ii) possessed/reserve whether in the form of corporeal (ayn) or usufruct (manfaah).
 - (iii) have some value
 - (iv) the benefit of which is permitted by law

Jumhur

- 1. must have material value - custom
- 2. must have beneficial usage
- 3. must be permitted by the shariah
- Recognised 1. rights (huquq), 2. beneficial usage/usufruct (manfaah) and 3. ayn or asset as al mal.

Hanafis

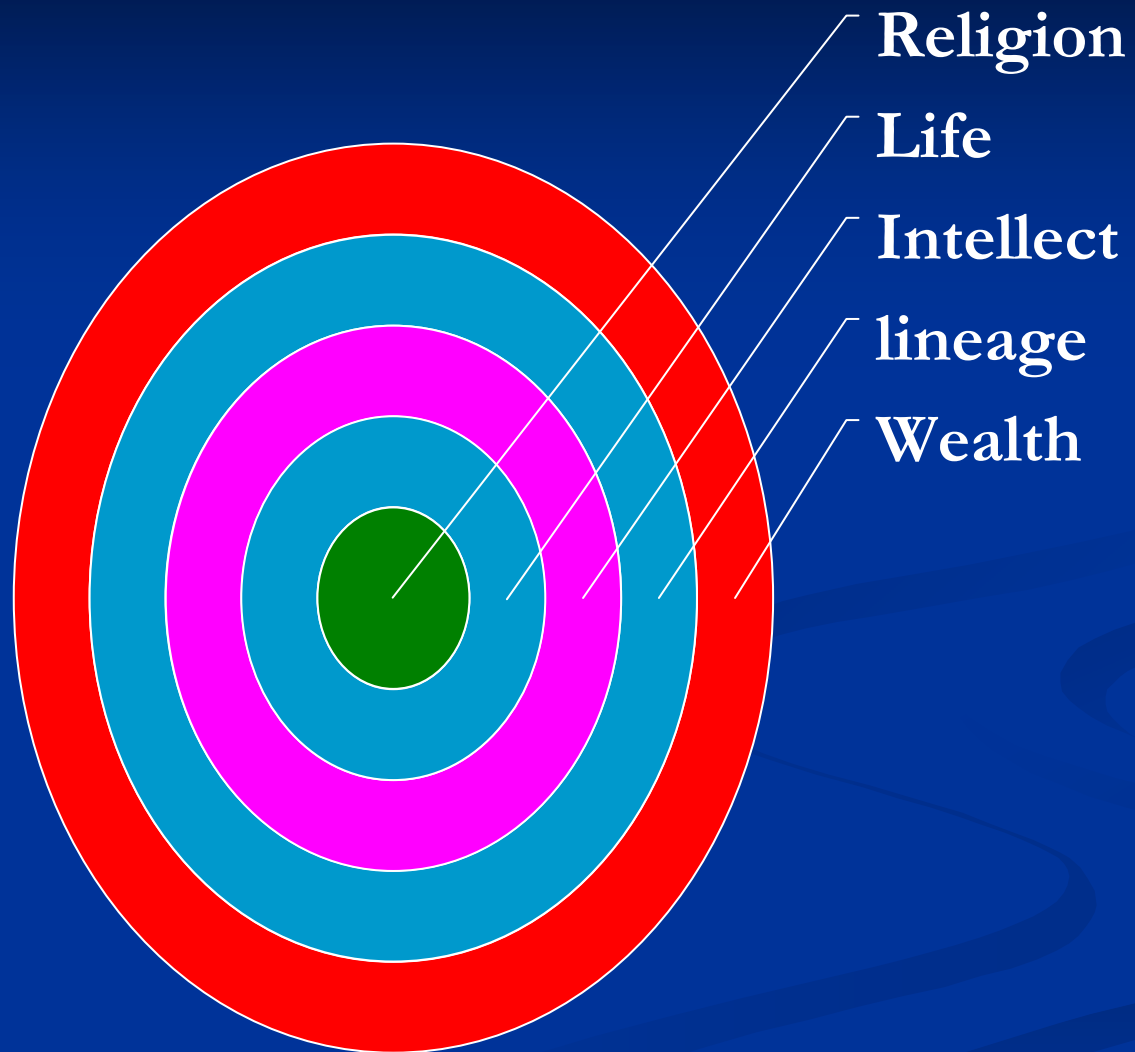
- 1. Sthing that must be customarily and desirable by the people/ must not be harmful to the people
- 2. must have material value and capable to be disposed, spent and kept
- 3. material asset that is existent and can be preserved for future needs wtr in the form of movable or immovable. (Effect: Manfaah?)

Mal in al Quran

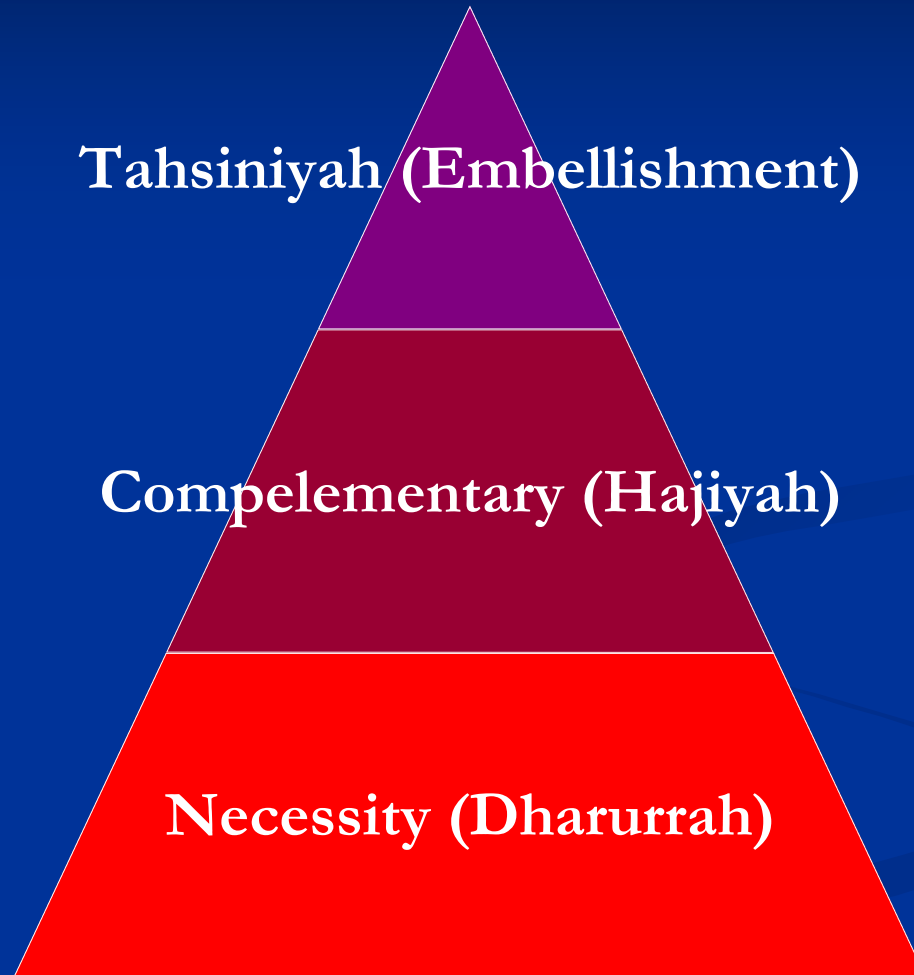
- In al quran term al mal: more than 90 verses.
- Seeking the munificence of Allah: al rum: 46 al fathir: 12 al jumah:10.
- Warnings from Allah that mal could be a kind of allurement Al hadid: 205: 20
- Trial and test: al anfal: 28 al taghabun: 15 at takasur: 1-8.
- Veritable enemy: al taghabun

- Allah says “ *And do not eat up your property among yourselves for vanities nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of other’s people (Al-Quran, 2: 188).*
- *Al Qur’an (2: 29): “It is He who hath created for you all things that are on earth, then he turned to the heaven and made them into saving firmaments and all of things he hath perfect knowledge”;*
- *Al Qur’an (4: 5): “ To those weak of understanding make not over your property which Allah hath made a means of support for you but feed and clothe them therewith and speak to them words and kindness of justice”.*

Maqasid Shariah



Pyramid of Needs



Fundamental Principles

- Two dimensional utility
- Allah is the absolute ownership
- Sources-Quran and Sunnah, Qiyas and Ijma'
- Vicegerent and Trusteeship
- Islam esteems wealth and wealthy
- Social Mutual Solidarity- Brotherhood
- The Prohibition of usury
- Ummatic(broad) ownership of natural resources

Concept of al Mal

- 1. Wealth can be both a source of ni'mah (beneficial) and niqmah (detrimental)
- 2. Whatever wealth man does possess, it is a gift from Allah
- 3. since the wealth is endowment from Allah, the man's attainment are not necessarily as an outcome of his effort or ability
- 4. wealth is not a measurement of Allah's approval
- 5. the excessive love of wealth could drive man off the right path

Wealth Management

- Accumulation of wealth is encouraged
- Poverty is undesirable
- Must take lawful source of income al baqarah: 168.
- Man is not the absolute owner
- Concept of charity and purification of wealth

Usufruct is Mal?

- Shafie and Maliki: Manfaah is mal
- Hanafi: Manfaah is not mal
- Contemporary scholars: if manfaah is related to property it can be considered as mal.

Legal consequence from the views

- 1. the transaction of manfaah at the time of maradh al mawt
 - Hanafi: allowed
 - Shafie and maliki: Prohibited
- 2. Inheritance
 - Hanafi: can not be inherited
 - Shafie and Maliki: can be subject of inheritance

Classification of mal

- 1. Valuable (mutaqawwim) and no value
- Sthing that men can derive advantage from it
- Non halal things are not valuable.
- Legal consequence
- Contract shall only be valid if the SM is a valuable property according to Syarak

2. Movable and Immovable

- Immovable (aqar): land and buildings
- Moveable (manqul): may be removed.
- Legal Consequence:
- Right of pre-emptions apply to immovable prop.
- Waqf is only valid for immovable property (Jumhur)
- Abu Yusuf and Abu Hanifah allow tasarruf on immovable prop prior to payment and delivery.
- Jumhur not allow.
- Right of neighbors are related to immovable prop only.

3. Similar and Dissimilar

- Fungible (al mithli): belong to the class of similars eg. Article are sold by weight or capacity such as gold and silver, wheat and flour
- Non-fungible (al qimi): belongs to the class of dissimilar. Can be measured only through its value Eg land, animals, furniture, cloths.
- Legal consequence:
- Al mithli: liable to compensate the actual item and weight
- Al Qimi: only value or the price

4. Usability

- Consumable (istihlaki): can only be used once or the usage will result to the disappearance of the item. Eg food.
- Inconsumable: can be used many times. eg Furniture.
- Legal consequence:
- Consumable: acceptable in a loan contract.
- Inconsumable: ijarah

5. Medium of exchange

- Money (nuqud): currencies, gold silver, paper accepted by urf
- Goods (al urud): any other than money.
- Legal consequence:-
- Jumhur: in mudharabah only nuqud as capital.

6. Potential growth of zakah

- Growing property: mal to seek more growth and increase as a result of investment. Eg. cattle
- Non-growing property: personal usage
- Legal:
- Growing prop: zakatable

7. Observability

- Zahir or apparent: could be known by the public and could not be hidden eg livestock
- Hidden or batin: able to be put out of sight. Eg money.
- Legal:
- jumhur: mal zahir, zakat to govt. hanbalis: could distribute himself

Acquisition of Mal

- 1. By contract
- 2. By acquisition
- 3. Pre-emption
- 4. Inheritance

1. Contract

- 1. Sale: exchange of property by means of specific forms
- Al baqarah: 275, 282.
- 2. Hibah (Gift): donation of a thing from which the donees derive a benefit.
- To give the ownership of the property to another without compensation
- Al Nisa: 4 “and give the women their dower as a free gift....”

Differences of Hibah/Sadaqah/ and Hadiyyah

- Hibah: to give the ownership of the property without compensation
- Sadaqah: a gratuitous transfer of prop made with the intention of obtaining recompense in the hereafter
- Hadiyya: property brought or sent as a gift to someone.

2. Wasiyyah

- Effected after the death of the testator.
- Wasiyah: to entrust, to order, to direct and to connect
- To transfer the oship of whether the corpus or usufruct postponed until death of the testator for gratuity
- It is optional succession.
- Al maidah: 109.
- Prophet has forbidden Saad ABi Waqqas from bequeathing more than one-third of his estate.

3. Ihya al Mawat

- Cultivation of virgin land
- Lands which are not the prop of anyone.

4. shuf'ah

- Pre-emption-to doubling or attaching or subjoining or connecting or mediating
- Right of compulsorily acquiring oship from the owner partner in turn of the new partner with compensation which the latter has paid.
- Legal right which rise at the time of sale to al shafi' al sharik (partner) or al shafi' al ajar (neighbor).
- Hadith: whoever has a co-share in a house or palmgrove should not sell it till he has the permission of his co-sharer, who if he is willing to take it may empty it, but if he does not like he should leave it.