



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Islamic Law of Property

LAB2033

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Content

- **Concept of Ownership**
- **Concept of Property Rights**
- **Theory of Contracts**

Ownership

- The state of containing a thing and the ability to dominate and dispose it.
- An Islamic legal relationship btm a man and prop, which renders the prop specifically attached to him and which gives the owner the right to deal in that prop unless there is a legal impediment to a specific dealing.

Types of Ownership

Based on the extent of Ownership Capacity

Based on Owners

Complete

Partial

Public

Private

National

Complete and Partial Oship

- Complete: completely own its corpus and usufruct/could dispose
- Incomplete:
 - 1. Corpus only:
 - 2. Usufruct only. Rent a car

Private/Public/national

- Private: individual/joint-ownership
- Public: owned by the whole community:
 - Al marafiq al ammah, al hima, waqf khayri
- National: bayt al mal

Methods of Oship Establishment

- 1. Complete: i. taking possession, ii. contracts of oship transfer, iii. Growth of the property iv. Succession
- 2. Incomplete: usufruct transfer eg. Ijarah, inheritance of usufruct

Concept of Property Rights

- right of ownership, acquisition, usage and disposition.
- There is no objection on the individual rights of property
- The right to own property is a part of human nature.
- The nature of this rights and its limits: state's property, common property, individual prop, full oship

Concept of PR

- Islam states that Allah is the sole owner of property and human beings are just a trustee and custodian in whom it implies the recognition to use and manage the properties in accordance with *Shari'ah* rules, as property is given as *amanah* (trust) to individuals.
- There are various verses of *al-Quran* referring to the principle of property rights, for instance: “*Believe in Allah and His Messenger and spend of that whereof He made you trustee*” (*al-Quran*, 57:7)

Concept of PR

- property rights in Islam guarantees individual as well as corporation “the right to own private property and economic resources, to make a profit, to expand jobs, to boost investment and to increase prosperity”

Different level of PR

- 1. Things owned by Allah that humans have no access, eg such planet
- 2. common properties: owned by the entire human race eg ocean
- 3. Common land: owned jointly btm the community at large.
- 4. Individual property: people own with duties and responsibilities.

Limitations of PR (1)

- 1. Legitimate acquisition of property
- Possessing of property as a result of personal effort: Eg salary, hunting, fishing, commercial transaction
- Indirect effort: wife's maintenance, marital gift, inheritance, receive a gift.

Cont...

- Unlawful way of taking properties.
- Eg. Theft, extortion, embezzlement of public fund.
- Misleading a person in contract or ikrah
- Unlawful labor eg prostitution, black magic and criminal activities.

Limitations of PR (2)

- 2. Does not cause harm or problems to other people
- Legal maxim: Private harm could be tolerated if it were necessary to prevent greater harm that would affect a larger number of people or the public at large.
- Hadith: ‘One should not harm himself or others (Muslim)
- Monopolizing people’s basic needs is prohibited.

Limitations of PR (3)

- 3. The person is mentally capable to own property.
- Eg. If insane, put under guardianship.

Compulsory claims on property

- Claims on property are specified with certain obligations:-
 - 1. Family's maintenance
 - 2. zakah or obligatory charity.

Ethics (1)

- 1. It is permissible to keep some reserve funds for emergencies or for possible future needs.
- Hoarding wealth in the sense of keeping it from circulation is forbidden
- Al Tawbah: 34 ‘those who hoard gold and silver and don’t spend it in the path of God, give them the news of their punishment.

Ethics (2)

- 2. Prohibition of excess expenditure along with the condemnation of miserliness.
- AL isra: 29 'make not thy hand tied to thy neck, nor stretch it forth to its utmost reach, so that thou become blameworthy and destitute.
- Al A'raf: 31' eat and drink but waste not by excess for Allah loveth not the wasters.

Ethics (3)

- 3. Obligation not to keep resources available to the community idle.
- Hadith ‘a person who reforms a land has the right to own it. (al bukhari)
- Acknowledge the right of individual while maintaining the interest of public.

Concept of Uqud

- Al shahh and al rabt: fastening and attaching accordingly
- A connection btm an offer and an acceptance in a lawful manner which has its effect on the SM.
- Sanctity of the contract ‘al maidah: 1, O believers! Be true to your obligations.

Uqud or Contract

- *Uqud* or contract technically means as an expression of the matching between a positive proposal made by one of the contractors and the acceptance of the other contractor in a way which has an impact on the subject of the contract.
- The Mejlle defined contract as little contracting parties obligating themselves with regards a given matter and binding themselves together with the same as a result of connecting an offer with an acceptance

Types of Uqud

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graph TD; A[Types of Uqud] --- B[Legality]; A --- C[Purpose]; A --- D[Reciprocity]; A --- E[Validity]; A --- F[Executability];
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Legality

Purpose

Reciprocity

Validity

Execu
tability

Legality

- Aqd al masyru'
- Aqd ghayr al masyru'

Validity

- Aqd sahiih
- Aqd ghairu sahiih

Executability

- Executable : aqd al nafidh
 - ahliyyah
- Suspended: aqd mawquf
 - guardian

Reciprocity

- Aqd al muawadhat: exchange
 - Property+ money= Bay al mutlaq
 - Service (by a person)= ujr
 - Usufruct of property= Ijarah al manfaah
 - Prop+Prop=Bay al muqayadah barter
 - Money+money= currency sale or bay al sarf
- Aqd al tabarruat

Purpose

- *Uqud Tamlikat- Al-Mua'wadhat and Attabaru'a't,*
- *Uqud Isytirak- mudharabah, musyarakah and muzaraa',*
- *Uqud Tawsiqat (Securities)-Kafalah, Rahnu and Hawalah,*
- *Uqud Itlaqat (removal of restrictions)- wakalah and tauliah*
- *Uqud Taqyiydat (restrictions)- taflis, al hajr*
- *Uqud Isqatat (discharges)- ibra', muqasah and*
- *Uqud Hifz- refers to wadiah.*

Contracts classified into unilateral and bilateral contract.

- Unilateral Contract- Gratuitous in nature
- Isqatat (waiver), ibra' (rebate),
- muqasah (off-set of the debt),
- will (wasiyyat),
- endowment (fund) and
- loan (al-Qard).

Bilateral Contract

- Require consent of both parties
- ‘uqud Tamlikat (contract of ownership) or ‘uqud al-Mua’wadhat (exchange), ‘uqud Isytirak (contract of partnership) either mudharabah (passive partnership) or musyarakah (active partnership), ‘uqud Tawsiqat (contract of security) either Kafalah (suretyship) or Rahnū (pledge), ‘uqud Itlaqat (contract pertaining to do a work) either wakalah (agency), or hiwalah (debt transfer), ‘uqud Taqyiydat (contract of restriction) and ‘uqud Hifz (contract of safe custody) or wadiah (safekeeping)

Time of Tabarru'	SM	Contract	Purpose/Rule
Lifetime	Property	Hibah	General
		Hadiyah	Respect or love
		Waqf	Perpetual
		Sadaqah	needy and poor
After Death	Property	Wasiyah	Not exceeding 1/3rd

Thank You

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