

Sharī‘ah Maxims: Modern Applications in Islamic Finance (Muhammad Tahir Mansoori)

Reviewed by: Ali Ahmed Nadvi

The subject of “Maxims of Islamic jurisprudence” is a central, informative and important subject, and occupies a prominent position in the whole body of Sharī‘ah. This book has been compiled to serve as a textbook for the students of M.Sc. in Islamic banking and finance programs. To achieve this goal, the author chose the maxims relevant to the commercial law. He has discussed them intensely and systematically. I anticipate that a work like this will play an effective role in promoting genuine practice of financial transactions. This type of book also fulfils educational requirements of scholars of Islamic jurisprudence.

The book consists of a preface and thirteen chapters as listed below:

1. Introduction to Sharī‘ah Maxims.
2. Intention and Motivating Cause of Contract.
3. Concept of Elimination of Detriment.
4. Rules of Relaxation in Islamic Law.
5. Status and Authority of Custom in Islamic Law.
6. Certainty versus Doubt and Presumption of Continuity.
7. Legal Status of Contractual Stipulation.
8. Status of Promise in Islamic Law.
9. Maxim on Disposition of Other’s Property.
10. Liability (*damān*) versus Trust (*amānah*).
11. Sharī‘ah Maxim on *Gharar*.
12. Sharī‘ah Maxim on *Ribā*.
13. Maxims on Sale and Agency

Moreover, there is an Annexure of the maxims of Al-Majallah⁽¹⁾ at the end of the book.

(1) Short name for “*Al-Majallah al-Aḥkam al-Adaliyyah*”. *Al-Majallah* is a codification of Ḥanafī commercial law. It was authored in the second half of the 19th Century by a council of major Ḥanafī *fuqahā’* headed by Allama Jawdat Basha. It was the law code for the Ottoman *Khilāfah* (Caliphate) for over 70 years.

The chapters can be divided into two parts. The first part relates to those chapters in which the author concentrates on the five major maxims in the area of financial transactions, with explanation and examples, while in the second part the author has picked out some prevailing contracts relating to important contemporary subjects and discussed them in a scholarly manner. It is an appealing combination with optimum interaction between pure theory and contemporary issues and encourages doing more research in this sphere. The author has based his work on sound ground of reliable sources and has referred to contemporary eminent books to illustrate the current issues related to maxims.

Without reducing the importance and vale of the book, I have a few observations as follows:

1. The titles and topics of the contents are appreciable and classified in a proper sequence, although, in my view it would have been better to use a similar style for the titles throughout, i.e., expressing the main subject of the maxims. For example:
 - i. The maxim concerning '*gharar*' may be expressed as 'excessive *gharar* makes a contract unlawful'.
 - ii. The author has merged some important maxims with some others (as they have been considered sub-maxims by some writers). In my view, they should be mentioned separately as they require proper attention of the readers. For example, the maxim: "Repelling evil supersedes securing benefits" (p.99), has been combined with the rules for "Redressing Harm" (p.84), I my opinion it deserves more importance and hence ought to be discussed separately.
 - iii. A similar case is that of the famous maxim: "Everything is permissible unless forbidden". (p.140). In addition, its sub-maxim, implying that the "Original rule about transactions is permissibility except with evidence" (p.142), which explains that every agreement is basically lawful and each condition should be regarded as allowed as long as it does not contradict any text or a basic principle of Shari'ah. Certainly it is not appropriate to discuss both maxims, as a subordinate to the maxim of "Certainty is not dispelled by Doubt" (p.137), but must be supported with modern applications, taking in account that other contradictions have been avoided.

- iv. In Chapter 9, “Maxims on Disposition of Others’ Property” the author has explained a number of maxims relating to the subject of the title, and has inserted among them the maxim which means: “Authority in respect of peoples’ affairs should be exercised for their welfare only” (p.172). In my opinion, it will be better to focus on this point separately without uniting it with other maxims.
2. A Few applications are controversial. Therefore, they need more attention and explanations. For example, mention of ‘*bay’ al-wafā*’- the sale with a right of redemption - has been discussed as viewed by Ḥanafī jurists only. The opinion of other famous jurists about it has not been mentioned. It is important to note here that Shāfi’ī jurists also discussed it by the name of ‘*bay’ al-’uhdā*’, and approved it as a prior stand-alone agreement before a final contract. Such a transaction was in practice in some countries. (see Ibn Hajar Haithami: *Fatāwa Kubrā* V. 2, p.158, 229-230).
3. The author has repeated some applications, like the case of ‘*bay’ al-wafā*’, which has been mentioned in different places.
4. The author has discussed some important maxims relating to the ‘Principle of Justice’ in chapter 10, such as ‘Entitlement of profit depends upon liability of loss’ (p.181). However, he overlooked mentioning another important maxim relating to justice that elucidates: “Transactions are basically designed on the Principle of Justice”. There is a great significance of maxims relating to justice as its violation may even lead to the invalidating a contract. Hence, it would be preferable if this oversight is corrected in the next edition.

Overall this is an excellent work that deserves admiration. The following aspects are particularly appreciable:

1. In my view, this book is an innovative and unique work in English. The author has done a wonderful job to present a comprehensive and valuable study on selected maxims of Islamic jurisprudence in the field of financial transactions succinctly.
2. The author has translated the original verses of the maxims in a clear style, articulating them in more than one manner.

3. It is remarkable that the author has focused on the diversified contemporary issues such as ‘*tawarruq*’, ‘*murābahah*’ uniformly and judiciously. He has observed the real formulation of newly designed transactions very deeply.
4. The author has presented various modern applications and examples of the maxims in the area of Islamic finance by deriving them from authentic *fatāwá* along with giving his own analytical opinion while discussing the issues, e.g., those related to the enforceability of a promise. In this context it is worth quoting the way he gives preference to International Islamic Fiqh Academy’s resolution towards some required conditions in fulfilling the promise linked to a financial transaction: “In our view, the reason for Academy’s emphasis on unilateral promise, and its non-recognition of the concept of bilateral promises, is that bilateral promises amount to a contract, and it cannot be made on a non-existent subject matter. In addition; in such agreements both obligations are deferred, which is not permissible” (pp. 165-166).

Apart from these general features, I would like to highlight some notable ideas, characteristics, objectives and attributes of the book that emerge from its foreword and some chapters:

1. At the beginning of the preface, the author has mentioned the significance of the maxims and their vital role in *ijtihād*.
2. In the first chapter, he has clarified the efficacy of maxims in formulation of jurisprudence. The author has presented a concise and judicious introduction, explaining necessary definitions referring to reliable sources.
3. In the second chapter the author has highlighted the role of intentional and motivating causes in the framework and fabrics of the contracts, and elucidated the perspective of jurists, concentrating upon a distinctive maxim: “In contracts, effect is given to the objectives and meanings, not to the words and phrases” (p. 18). While discussing modern applications, he has pointed out some defects and drawbacks that have arisen in this context. He has also clarified that the buy-back practice has been a subject matter of serious criticism (p. 25).

4. In chapter 7, the author has discussed the legal status of conditional stipulation expressing different opinions of eminent jurists, drawing attention to the fact that Ḥanbalī law was more liberal and flexible, as it allowed all conditional dealings except those that are contradictory to Sharī'ah rules. (pp.157-159). It is a praise-worthy attitude to overcome different obstacles in the implementation of novel contracts.
5. The author has also cited the status of promises in Islamic jurisprudence. He has started the subject by mentioning a maxim: "Promises that entail Guarantee are Binding" (p.161), and then focused upon the main issue stating that there is a unanimous opinion that the promises should be abided by a Muslim, although the jurists have different opinions about a promise that occurs in the middle of financial transactions. He tried his best to draw attention towards the impact of promises on the contracts positively or negatively.

In fact, there is no room in this review, to discuss each chapter and illuminate its main features. These examples are sufficient to show that this book is an inspiring and distinguished work about maxims relating to financial transactions. In conclusion, I would like to observe that the author is a qualified scholar capable of enriching this subject more and extend its scope to other areas.

Ali Ahmed Nadvi is currently a faculty member at the Islamic Economics Institute, King Abdelaziz University, Jeddah. Previously he has worked as Senior Advisor to Al-Rajhi Bank's Sharī'ah Advisory Board, Senior *Fiqh* Expert on '*Qawaid al-Fiqhiyya*' (Sharī'ah Maxims) project at the International Fiqh Academy, Jeddah. He got his Master's and Ph.D. degrees in Sharī'ah from Ummul-Qura University; Mekkah, Saudi Arabia. He has published more than six books and five articles in refereed journals. The high quality of his research got him the prestigious King Faisal Award in 1424H. He has participated in scores of Seminars and Conferences and delivered lectures/papers. His fields of research include; *fiqh*, Islamic economics and finance, and general Sharī'ah related topics.

E-Mail: nadwi777@hotmail.com