

A photograph of a library with rows of bookshelves filled with books. Several pendant lights hang from the ceiling, casting a warm glow. The text is overlaid on the upper portion of the image.

Five Major Shari'ah Legal Maxims (Al-Qawaid Al-Kubra)

Zahidi Ahmad

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"The five maxims were matters of consensus among all schools [of Muslim jurisprudence]."
(Umar Faruq 'Abd-Allah, Islam and the Cultural Imperative, note 12)

The legal maxims of Islamic jurisprudence (*al-Qawa'id al-Fiqhiyah*) which are treated by many scholars as the *maqasid* literature, are statements of principle that are derived from the detailed reading of the rules of *fiqh* (Islamic jurisprudence) on various themes. These detailed expositions enabled the jurists, at a later stage of development, to reduce them into abstract statement of principles (Abu Umar Faruq Ahmad et al., 2010)^[1]. The legal maxims are designed to facilitate a better understanding of the shari'ah and their development in a general sense is parallel with that of the *fiqh* itself.

1. Acts or matters are judged by the intention behind them (*Al-Umur bi-maqasidiha*)

This is a comprehensive maxim that has implications that the scholars have discussed in various areas, among them is commercial transactions. This maxim means every practise, verbal or physical action, brings different impact and judgment from shari'ah view relied on human agent's intention and objective (Abu Umar Faruq Ahmad et al., 2010)^[2]. This legal maxim captures many cases which deal with the intention and form of substance. It can be explained such, the liability of a person who finds somebody's good lying on the way and picks it up will be contingent upon the intention with which he has picked it up. If he intends to hand it over to the owner and has made it known to others he will be treated as a trustee and will not be required to indemnify the owner in case the property is destroyed while in his possession. But if he has kept it as the owner he would be treated as a usurper, *ghasib*, and will be required to indemnify the owner in case the property is destroyed (Ahcene Lahsasna, 2013)^[3].

"There is evidence for this principle in the Prophet's statement: "Actions are but by intention, and a man will have only what he intended." This hadith is of paramount importance. Indeed, some scholars have claimed that it has implications for at least seventy different branches of knowledge. Others have said about this hadith that it comprises a third of all knowledge."

One of its sub legal maxim, so called, 'contracts are to be understood in relation to their intention and substance, not by the words and phrases with the example, in case the bank declares their policy of financing customers on non-interest bases, it would be necessary to do so not merely continue the same practice and seeking to rationalise it in Islamic terms by changing the relevant nomenclature such as calling it 'buy back' or 'mark-up' (Abu Umar Faruq Ahmad et al., 2010)^[4].

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2. Certainty is not overruled by doubt (*Al-Yaqin la yazulu bi-al-shakk*)

This legal maxim means doubt may not reject certainty judgment because it is established by clear evidence and prove, and it is not acceptable if it can be overruled by uncertainty or the proof which the strength is lower than the latter in order to eliminate harmful and difficulty (Muhammad Ridhwan Ab. Aziz, 2013)^[5]. The application of this maxim in financial transaction or its contract can be viewed through this example, a partner has no right to assume a minimum rate of profit earned by this business partner and claim his share in that profit as different from the amount stated to have been actually earned by the partner. The sub-rule provides that in case the working partner declares a certain amount of profit no more will be presumed unless the contrary is proved to be a fact (Abu Umar Faruq Ahmad et al., 2010)^[6]. The principle reads '*la darara wa la dirar*' which means harm may neither be inflicted nor be reciprocated) guides to the establishment of third general maxim.

3. Harm shall be removed (*Al-Dararu yuzal*)

Islamic Law completely forbids that which causes harm. That which is harmful must be completely avoided whenever possible. When it is not possible, then the lesser of two evils should be perpetrated to avoid the greater. That which brings harm on a smaller scale is to be preferred to that which visits general harm to society. Likewise, the avoidance of harm takes priority over the attainment of some benefit.

Evidence for this principle can be found in the Prophet's statement: "There must be neither harm nor the imposition of harm." [Sunan al-Daraqutnî (3/77), al-Mustadrak (2/57), and Sunan al-Bayhaqî (6/69)]"

The purpose of Islamic divine guidance is to promote human well-being, and one of the means to that purpose is harmful elimination. This maxim provides a guideline to regulate the entire financial system in such a way that prohibits harm imposition and discourages retaliation (Abu Umar Faruq Ahmad et al., 2010)^[7]. Other applications with regard this maxim in fulfilling shari'ah objectives, it is not allowed to sell defected items to others because they cannot be used and caused harm and damage to them after payment is being made (Ahcene Lahsasna, 2013)^[8]. The evidences that support the concept of harm elimination or difficulty mitigation is a definitive point in Islam (Al-Shatibi, 2003)^[9]. The concept relates to the next maxim.

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4. Hardship or difficulty begets facility (*Al-Mashaqqah tajlibu al-taysir*)

This principle embodies the fact that Islamic Law is built upon achieving ease and not upon imposing hardships. Whenever difficulties present themselves, the Law makes provisions to facilitate matters. The condition for such measures to be taken is that the difficulties are real and not imagined.

Allah says: "Allah intends for you ease and does not intend for you hardship." [*Sûrah al-Baqarah* : 185]

The Prophet (peace be upon him) said: "You have been sent forth to make things easy, not to impose difficulties." [*Sahîh al-Bukhârî*]

This maxim applied in daily human life whichever in general practices or in specific and limited activities. In universal view, Islam allows benevolent loan , asset borrowing and property leasing in order to fulfil the needs of community that consists of needy and inadequate materially people where provide them utilization of other's property in a form of cash money or tangible and intangible asset (Al-Nadawi, 1999)^[10]. This precisely fulfils the necessity of members in society and assures their well-being despite in circumstance of deficiency.

5. Customary practice is a judgement in determining law (*Al-'Adah muhakamah*)

Among the special characteristics of maqasid al-shari'ah is universality, not only in the different places, but also in distinct times and periods. Hence, Islamic law approves some of the customary practices that have been practised for years or generations with few modification by eliminating deviant elements upon Islamic view that make it more suitable with high aspect of morality and ethicality as in Islamic divine guidance, that demanded by truly happiness and harmonic life for mankind in changeable environment and surrounding (Al-Nadawi, 1999)^[11].

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Common daily practices and transactions that also known among them, provided, it doesn't contravene with any shari'ah evidence and principle, and scholars not unanimous in opposing and objecting the custom, can be considered acceptable in shari'ah jurisprudence and taken as shari'ah parameter in case of inexistence other parameter derived from shari'ah sources (Athiyah Adlan, 2007)^[12]. For instance, tenant should pay the rental payment in early of the month where this custom have been practised since many years moreover it acceptable although they realize it makes them to pay for unutilized usufruct yet whether it in the form of monthly payment or yearly (Muhammad Sodqi Al-Burno, 2003)^[13]. The objective of taking custom as a mechanism in ruling process, in general , is to bring fairness – accepted through their understanding between parties involve in contract for them to agree with mutual consent on the system utilized in that particular transaction (Muhammad Bakr Ismail, 1997)

1. Abu Umar Faruq Ahmad , Noor Muhammad Osmani, A.K.M Shahed, Mohd Fazlul Karim. 2010. "Shari'ah Maxims and Their Implication on Modern Financial Transaction". Journal of Islamic Economics ,Banking and Finance. Islamic Bank Training and Research Academy. Volume 6 No. 3. [↑](#)
2. [↑](#)
3. Ahcene Lahsasna . 2013 . Maqasid Al-Shari'ah in Islamic Finance . Kuala Lumpur: Institute of Banking and Finance Malaysia [↑](#)
4. Abu Umar Faruq Ahmad , Noor Muhammad Osmani, A.K.M Shahed, Mohd Fazlul Karim. 2010. "Shari'ah Maxims and Their Implication on Modern Financial Transaction". Journal of Islamic Economics ,Banking and Finance. Islamic Bank Training and Research Academy. Volume 6 No. 3. [↑](#)
5. Muhammad Ridhwan Ab. Aziz. 2013. Islamic Banking and Finance in Malaysia: System, Issues and Challenges. Nilai: USIM Publisher. [↑](#)
6. ... [↑](#)
7. ... [↑](#)
8. Ahcene Lahsasna . 2013 . Maqasid Al-Shari'ah in Islamic Finance . Kuala Lumpur: Institute of Banking and Finance Malaysia . [↑](#)
9. Al-Shatibi , Ibrahim bin Musa . 2003. Al-Muwafaqat . Cairo: Al-Maktabah Al-Taufiqiyah [↑](#)

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10. Al-Nadawi, Ali Ahmad. 1999. *Mausu'ah Al-Qawa'id wa Al-Dowabit Al-Fiqhiyah Al-Hakimah li Al-Mu'amalat Al-Maliyah fi Al-Fiqh Al-Islami*. Damascus : Dar 'Alam Al-Ma'rifah.



11. ... [↑](#)

12. Athiyah 'Adlan 'Athiyah Ramadhan. 2007. *Mausu'ah Al-Qawa'id Al-Fiqhiyah Al-Munazzamah li Al-Mu'amalat Al-Maliyah Al-Islamiyah wa Dauruha fi Taujih Al-Nuzum Al-Mu'asirah*. Alexandria : Dar al-Iman. [↑](#)

13. ... [↑](#)

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