

Book Review

***al-Madkhal ila Qawā'id al-Fiqh al-Mālī* (Introduction to Financial Legal Maxims)**

Author: Ali Ahmad Nadvi
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The book¹ under review, written in Arabic under the title *al-Madkhal ila Qawā'id al-Fiqh al-Mālī* (Introduction to Financial Legal Maxims), is intended for postgraduate students and researchers specializing in Islamic finance. Its author, Sheikh Ali Ahmad Nadvi, is a renowned reference in the field. He was awarded King Faisal International Prize (KFIP) in Islamic studies in 2004. He holds a Bachelor of Arts from the Islamic University of al-Madinah al-Munawarah, and subsequently his Master and Ph.D. degrees from Umm al-Qura University in Makkah al-Mukarramah. Having served as an advisor to the Shari'ah Committee of al-Rajhi Bank for fifteen years, besides chairing the legal rules section of the project on the *Ma'lamat al-Qawā'id al-Fiqhīyah* (Encyclopedia of Legal Maxims) led by the International Islamic Fiqh Academy for five years. He joined the Islamic Economics Institute at King Abdulaziz University in 2011. Among his books that have been a resounding success are *al-Qawā'id al-Fiqhīyah* (The Legal Maxims), which is in its fifteenth edition, and *Jamharat al-Qawā'id al-Fiqhīyah fī al-Mu'āmalāt al-Mālīyah* (The Collection of the Legal Maxims in Financial Transactions) published in three volumes.

The book has four sections. The first section includes twelve introductory parts, the second section focuses on five major rules (*qawā'id kubra*) with their contemporary applications, third and fourth sections address respectively the rules relating to prohibited (*mahzūrah*) and permitted (*mashrū'ah*) financial transactions.

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¹ Available: <http://iei.kau.edu.sa/Pages-A-CurriculumPublish.aspx>

The reading of the opening section highlights several key issues that deserve to be mentioned in this succinct statement. The legal maxim is a brief and concise proposal, setting out a legal injunction, a norm of action, and a principle of conduct. According to the discursive context and epistemological reference, it could be synonymous to the following notions: rule, standard, precept, and principle. Hence, the need to distinguish between the legal maxims that include secondary matters (*furū'*) from various areas and the legal rules (*dawābit fiqhīyah*) that include secondary matters within the same domain.

The legal maxims can be drawn from Qur'ānic verses, *ahadīth*, or juristic writings. This brings up the consensual maxims and others that are specific to legal schools or particular authors in the field of Islamic jurisprudence. This variety of interpretations provided untold wealth that generates an open system and leaves great scope for the effort of reflection (*ijtihād*).

A question, that arises here, is: how is this matter useful to students and researchers of Islamic finance? The answer can be summarized as follows:

- (i) It offers the possibility of linking the secondary issues to general principles.
- (ii) It allows the jurist (*faqīh*) to pronounce judgment on new issues (*nawāzil*) based on a solid reference and, thereby, to grasp the process of establishing the decree or decision that results.
- (iii) It prevents the jurist from falling into contradiction. Hence the need to consider the weight of the maxims, their specificities, and the antonymic maxims.
- (iv) It contributes to the shedding of light on the ethical purposes of Islamic law.
- (v) It leads to a better understanding of the meaning of certain principles of Islamic finance as well as the coherence of the subject.

This brings up a multitude of interactions between the legal maxims, the methodology of Islamic law, ethics, and core values they cover or to which they are backed by justice, equity, fairness, respect for private property and rights of others.

The science of legal maxims, notes the author, deals with general injunctions, while the methodology of jurisprudence (*ūsūl al-fiqh*) is about the general evidence, such as the Qur'ān, the *Sunnah*, the consensus ('*ijmā'*) and analogical reasoning (*qiyās*).

The legal maxims are underpinned by individual and collective ethical values proper to inspire sustainable confidence of financial agents in their daily exchanges. The confidence is called, for the past two decades, to the rescue of a growing number of economic analyses as an explanatory factor for the success of some societies². This posture, which focuses on intangible capital, allows us to exceed the reign of quantity that has long prevailed in economic theory.

The five major rules that form the basis of the second section are:

- (i) Actions are but with intentions. Among its typical applications: the need to consider the substance of the contracts and transactions rather than their legal form, legal subterfuges (*hiyāl*) are useless if they are found to be contrary to the spirit of the Sharī‘ah.
- (ii) The custom (*‘ādah*) is a source of law. It consists, therefore, of an unwritten rule of law from the social body and considered mandatory, provided it does not violate explicit text from the Qur‘ān, the *Sunnah*, or the consensus (*‘Ijmā‘*).
- (iii) No nuisance to oneself or others; among its potential applications: the need to repel the nuisance; wherever possible, on condition that it does not result in more nuisances.
- (iv) The difficulty calls a favorable outcome.
- (v) The certainty prevails over doubt.

The third section devoted to prohibited financial transactions addresses a number of legal maxims:

- (i) Misappropriation of others’ property is amounting to an unlawful gain under Islamic law.
- (ii) Any transaction tainted with usury (*ribā*) is illegal whether carried out at a minimal or substantial rate.

² Peyrefitte, A., (1995). *La société de confiance. Essai sur les origines et la nature du développement*, Odile Jacob, Paris.

- (iii) The gain is not allowed as long as it is not guaranteed. For example, you cannot sell what you do not own³.
- (iv) The excessive ambiguity in contracts (*gharar fāhish*) cancels the transaction.
- (v) The excessive ignorance (*jahālah fāhishah*) cancels the contract.
- (vi) Two conflicting contracts cannot be combined in a single agreement.

The last section on the permitted financial transactions addresses a number of legal maxims as followings:

- (i) The rule in terms of transactions is the permission.
- (ii) The approval of the contractors.
- (iii) The respect of contractual obligations.
- (iv) The correction of those, which seem unfavorable whenever possible.

This shows that the philosophy of Islamic contract law is fundamentally based on the values of justice, equity and fairness. Hence, the principle of Profit and Loss Sharing (PLS) often presented as the specific trait of Islamic finance. The question has not yet been finally determined in the light of some recent publications from leading researchers⁴.

Among the advantages of the book that are worth mentioning include the followings:

- It is written in a clear and pedagogical way that reflects a mastery of the subject and of Arabic language.
- It refers to original sources that are full of untapped treasures to this date. For example, in his book *al-Tabayīn*, Amīr Kātib al-Atqānī (1286-1357) stipulates the protection of assets against the risk (*khatar*) of any kind.
- It clearly distinguishes the major legal maxims from the secondary ones.
- Most maxims are illustrated by contemporary examples. This is not easy for the common specialists in Islamic finance.

³ This maxim drew attention of the British-American economist Willem Buiter, a professor at the London School of Economics, and led him to write a paper on the subject: Should you be able to sell what you do not own?, *Blogs.ft.com*, March 16, 2009.

⁴ Siddiqi, M. N., 2014. Life and Reflections on Islamic Economics, In *Global Islamic Finance Report GIFR*, Edbiz Consulting, London, pp. 197-207.

- It brings a breath of fresh air to the Islamic finance education that is gradually bogged down in a bipolar discourse based on the principles and purposes. This leads to a better understanding of the scope of certain historical documents, calling for example to the creation of a bank in accordance with the Islamic legal maxims that often go unnoticed⁵.

As regards to the recommendations, it would be useful to add a section in the introductory section addressing the linkage between the legal maxims and *Maqāsid al-Sharī'ah* (objectives of the Islamic law), which is not obvious for the non-specialist and can lead to confusion.

Moreover, it would be convenient to translate the book into English and French that students and researchers may benefit from it as a complement to the work of Muhammad Tahir Mansoori *Sharī'ah Maxims Modern Applications in Islamic Finance*⁶, and that of Mohamad Akram Laldin *Islamic Legal Maxims and their Application in Islamic Finance*⁷. Any additional publications would be appreciated by sharing different views aiming at further quality of education in this specialized knowledge domain, particularly by those who master the theoretical and practical knowledge.

⁵ Abū al-Yaqdhān, I., (1928). *Hājat al-Jazā'ir ila Masrif Ahlī* (The need to create a bank for the natives in Algeria), *Wādī Mizāb*, 28 juin, p. 2.

⁶ Mansoori, M. T., (2012). *Sharī'ah Maxims Modern Applications in Islamic Finance*, Islamabad: Sharī'ah Academy, International Islamic University; see also: Abdul Azim Islahi. Book Review of Muhammad Tahir Mansoori (2013). *Sharī'ah Maxims: Modern Applications in Islamic Finance*, *Islamic Economic Studies*, Vol. 21, No.2, November, pp. 111-118, and Ali Nadvi (2014). Book Review of Muhammad Tahir Mansoori. *Sharī'ah Maxims: Modern Applications in Islamic Finance*, *Journal of King Abdulaziz University: Islamic Economics*, Vol. 27 No. 1, pp. 143-147.

⁷ Laldin, M. L., (2013). *Islamic Legal Maxims and their Application in Islamic Finance*, International Sharī'ah Research Academy for Islamic Finance, Kuala Lumpur.

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