

The Four Introductory Theories of

FIQH

MUAMALAT



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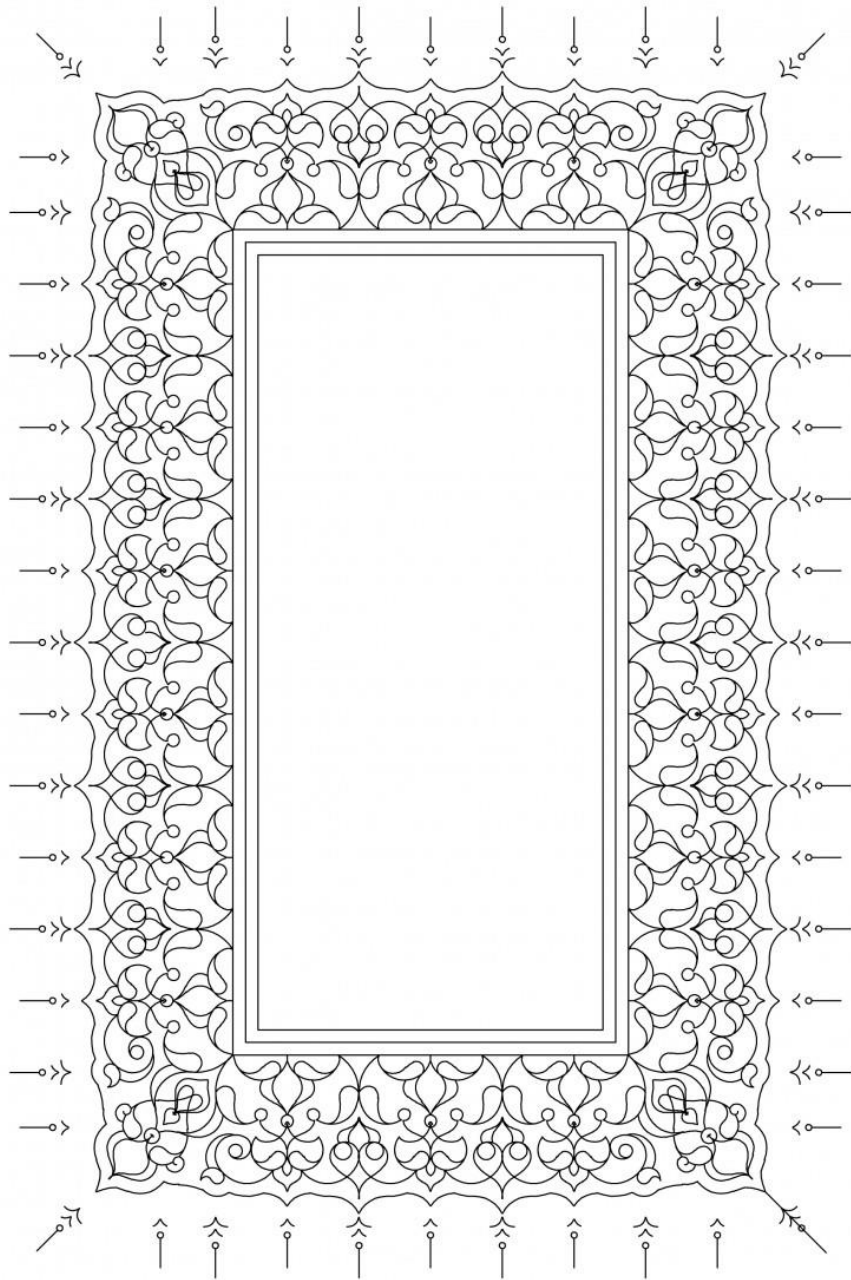


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Faculty of Economics and Muamalat
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OF FIQH MUAMALAT**

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BY:

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Allah ﷻ said (al-Nisā':29):

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ
تِجَارَةً عَنْ تَرَاضٍ مِّنكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

Meaning: "O ye who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will: nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful."

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FOREWORD

In the name of Allah, the Most Gracious, and the Most Merciful. Praise be to Allah ﷻ. Peace be upon the Prophet Muhammad, his family and companions, May Allah bless them with honour and graces,

“Muamalat” is a very familiar word nowadays. The Faculty of Economics and Muamalat (FEM) at the Islamic Science University of Malaysia (USIM) has established its name on this very word from the beginning of its foundation. Indeed, FEM aims to be the leader and reference in the education and research of Muamalat and Islamic finance at the national and international level through best teaching and learning approaches, researches, publications, consultations and etc.

Thus, the birth of this book and its similars by the academicians from FEM is another milestone in the Faculty’s efforts to position itself as a preferred centre of learning in this area of knowledge. Therefore, it always gives me a great pleasure to cordially welcome the publication of this book. It could be used as the textbook for the foundation of *Fiqh Muamalat* subject and I would like to congratulate the authors who have worked hard to produce this beneficial reference.

Fiqh Muamalat discipline is at the core of Islamic finance education and industry. The right understanding of *Shariah* and *Fiqh Muamalat* is very crucial for the right application of the knowledge. This book offers the understanding of *Fiqh Muamalat* from the very beginning. It is very excellent for the beginners to have a strong foundation in this discipline. I look forward to see more remarkable writings being brought into existence from the collaborations of efforts between the academicians of FEM and I strongly believe that such teamwork would offer more great contributions and benefits to the *ummah*.

Finally, I pray to Allah ﷻ to make this book a success and I believe that this book would be of great use to all students, academicians and the public who are interested in the area of *Fiqh Muamalat* and Islamic finance.

Thank you and Wassalamu’alaikum.
Best Regards,
DR. ASMADDY HARIS, Dean of FEM [2011-2014], USIM.

PREFACE

In the name of Allah, the Most Gracious, and the Most Merciful. Praise be to Allah ﷻ, Peace be upon the Prophet Muhammad, his family and companions, May Allah bless them with honour and graces,

The interest on *Fiqh Muamalat* subject by has been growing nowadays with the successful implementation and growth of the Islamic financial industry. The core of Islamic finance lies on the understanding and application of *Fiqh Muamalat* subject. However, without proper teaching and learning methods and frameworks, a person may need many years to really grasp the concepts of *Fiqh Muamalat* with the differences of Islamic jurists' views discussed in the discipline.

Therefore, this book is designed to be the introductory part of *Fiqh Muamalat* by discussing the most basic concepts that should be learned before the discussion of *Mu'āmalāt* contracts starts. Thus, it covers:

- The definition of Fiqh Muamalat and its position in Islam
- The theory of legal capacity
- The theory of property
- The theory of ownership and
- The theory of contract.

There is an Arabic saying that states: "There is a door for every single thing" and the proper way to enter a house is through its door. The four theories that are covered in the discussion of this book are considered as the first door to *Fiqh Muamalat* study. These four theories shall enlighten the reader on the required legal capacity that must be occupied by the contracting parties, the nature of property from Islamic perspective, the relationship between a property and its owner as well as the framework of Shariah-compliant contract.

The authors sincerely hope that this book would benefit the readers, students as well as academicians in learning *Fiqh Muamalat* in a more proper way. The authors also pray that all the efforts that have been spent by everyone to make this book a success are accepted by Allah ﷻ as good deeds on " *the day whereon neither wealth nor sons will avail, but only he (will prosper) that brings to Allah a sound heart*", (Al-Shu'arā':88-89).

AUTHORS

ACKNOWLEDGEMENTS

In the name of Allah, the Most Gracious and Most Merciful. Peace be upon the Prophet Muhammad, his family and companions. May Allah bless them with honour and graces.

First and foremost, we thank Allah ﷻ who enabled us with *tawfiq* to complete the writing and publication of this book.

Secondly, we would like to express our gratitude to our Islamic jurists (*fuqahā'*) and scholars (*ulamā'*) who have spent their lives in protecting, distributing and developing the Shariah knowledge and the virtues of the Prophet ﷺ to the mankind. May Allah bless them and reward them with His blessing, forgiveness and paradise.

We would like to acknowledge Prof. Dr. ʿUthmān Shubayr and Prof. Dr. Wahbah al-Zuḥaylī as our inspiring scholars for this very book. Both of them have written various books on the subject of *Usūl al-Fiqh*, *Fiqh* and *Fiqh Muamalat* which form the main references of this book. May Allah protect and bless both of them.

Then, we would like to thank all the relevant parties and individuals who have directly or indirectly contributed to the completion of this book especially Dr. Asmaddy Haris, Dean of the Faculty of Economics and Muamalat (USIM), our academic colleagues at FEM for their continuous supports and valuable advices as well as Abang Mat for his guidance and kind cooperation with us. Without their support and commitment, this book would not have materialized.

Finally, our deepest gratitude goes to our beloved families, for their understanding that inspired us along the way of this academic endeavour.

Authors

DEDICATION



To my parents: Hj Jalil Omar and Hapisah Ismail, my beloved wife: Suraiya Osman, my loving son: Abdurrahman al-Munib and my lovely daughters: Maryam al-Safiyyah, Sara al-Ameena, Ibtisam al-Nafeesa, Muhammad al-Habib and my family members.

Abdullaah Jalil



To my parents: Hj Mohd Ramli Seman and Hajah Normah Said, my beloved wife: Roslizawati Mohd Ramly.

Asharaf Mohd Ramli



To my parents: Hj Shahwan Mansor and Hajah Siti Hayati Abas, my in laws: Hajah Jamilah Abdullah and the late Haji Othman Ganyah, my beloved husband: Md Fauzi Othman, my children: Amni Faatihah, Arham Mardhiyyah, Asmaa' al-Syaafiyyah and 'Ammar al-Syaafi, and all my family members, mentors and friends who continuously support my academic route.

Syahidawati Shahwan

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Abdullaah Jalil is a senior lecturer at the Faculty of Economics and Muamalat, USIM. He obtained his MBA, with major in Islamic Banking and Finance (IBF), from IIUM and was awarded the Best Student Award of MBA (Islamic Banking and Finance) in August 2004. He completed his Bachelor's Degree in Shariah (Fiqh and Islamic Studies) (Hons) within three years time from Yarmouk University, Jordan with "First Class" or "*Mumtaz*" achievement. He has taught several subjects, inter alia, Qawaid Fiqh Muamalat, Halal and Haram in Islam, Application of Fiqh Muamalat, Management of Islamic Banking and Takaful Institutions, Fiqh Muamalat II and Fiqh Muamalat III. His areas of research interest are Islamic financial product development, Fiqh Muamalat application, Islamic banking and finance, Waqf and Shariah audit. Currently, he is pursuing PhD in Islamic Finance at the International Centre for Education in Islamic Finance (INCEIF). He is also a member of Shariah Committee at Bank Rakyat, PruBSN Takaful and Koperasi Kakitangan USIM.

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APPENDIX

Appendix I: Transliterations Table

A. Table 1: Consonants

'	ء
b	ب
t	ت
th	ث
j	ج
ḥ	ح
kh	خ
d	د
dh	ذ
r	ر

z	ز
s	س
sh	ش
ṣ	ص
ḍ	ض
ṭ	ط
ẓ	ظ
‘	ع
gh	غ
f	ف

q	ق
k	ك
l	ل
m	م
n	ن
h	هـ
h	ة
w	و
y	ي

B. Table 2: Vocalisation Signs (Representing Arabic Vowels)

Ā,ā	ـَـ
-----	-----

Ī,ī	ـِـ
-----	-----

Ū,ū	ـُـ
-----	-----

i. Short vowels illustrated with consonant “d” / “د”

da	دَ
----	----

di	دِ
----	----

du	دُ
----	----

ii. Long vowels illustrated with consonant “d” / “د”

dā	دَا
----	-----

dī	دِي
----	-----

dū	دُو
----	-----

C. Table 3: Diphthongs

aw	اَو
----	-----

ay	اَي
----	-----

ū	وُ
---	----

ī	يِ
---	----

Examples:

ḥawl	حَوْلٌ
------	--------

dayn	دَيْنٌ
------	--------

‘ulū	عُلُوٌّ
------	---------

mithlī	مِثْلِيٌّ
--------	-----------

D. Words Containing Shaddah (ّ)

i. *Shaddah* involving consonants other than و and ي : Double the letter

Examples:

murakkab	مُرَكَّبٌ
----------	-----------

ḥaqq	حَقٌّ
------	-------

ii. *Shaddah* involving consonants و and ي :

a. Double the letter when the *shaddah* is in the middle.

Examples:

mufawwaḍah	مُفَوَّضَةٌ
------------	-------------

ahliyyah	أَهْلِيَّةٌ
----------	-------------

b. If the letter is in the end:

- i. Double the letter if the letter before the *shaddah* is assigned *fathah* (َ / ِ / ً).

Examples:

jaww	جَوَّ	tayy	طَيَّ
------	-------	------	-------

- ii. Represent (و) as “ū” and (ي) as “ī” when the letter before each is assigned dammah *dammah* (ُ) and *kasrah* (ِ) respectively.

Examples:

matlū	مَتْلُوْ	nabī	نَبِيْ
-------	----------	------	--------

E. Words Containing the Prefix “ال”

The prefix “ال” is always transliterated “a/” regardless of whether it is *shamsiyyah* or *qamariyyah* and a hyphen is used after “a/” to indicate that it is a prefix.

Examples:

al-khayr	الْخَيْرِ	al-sharr	الشَّرِّ
----------	-----------	----------	----------

E. Words Containing Hamzah “ء”

Hamzah “ء” in the initial position, whether it is preceded by the prefix “ال” or not, is not represented in transliteration but how it is vocalized is indicated. This rule applies to both *hamzat al-qatʿ* and *hamzat al-wasl*.

Examples:

al-insān	الْإِنْسَانَ	idrāk	إِدْرَاكَ
al-umm	الْأُمَّةَ		

F. Words Containing *Ta' Marbutah* “ة”

Ta' Marbutah “ة” at the end of nouns is transliterated “h”.

Examples:

madrasah	مَدْرَسَةٌ
----------	------------

al- ḥasanah	الْحَسَنَةُ
----------------	-------------

Notwithstanding the above rule, *Ta' Marbutah* "ة" is transliterated "t" when it is present in the first word of a construct pair (*idafah*).

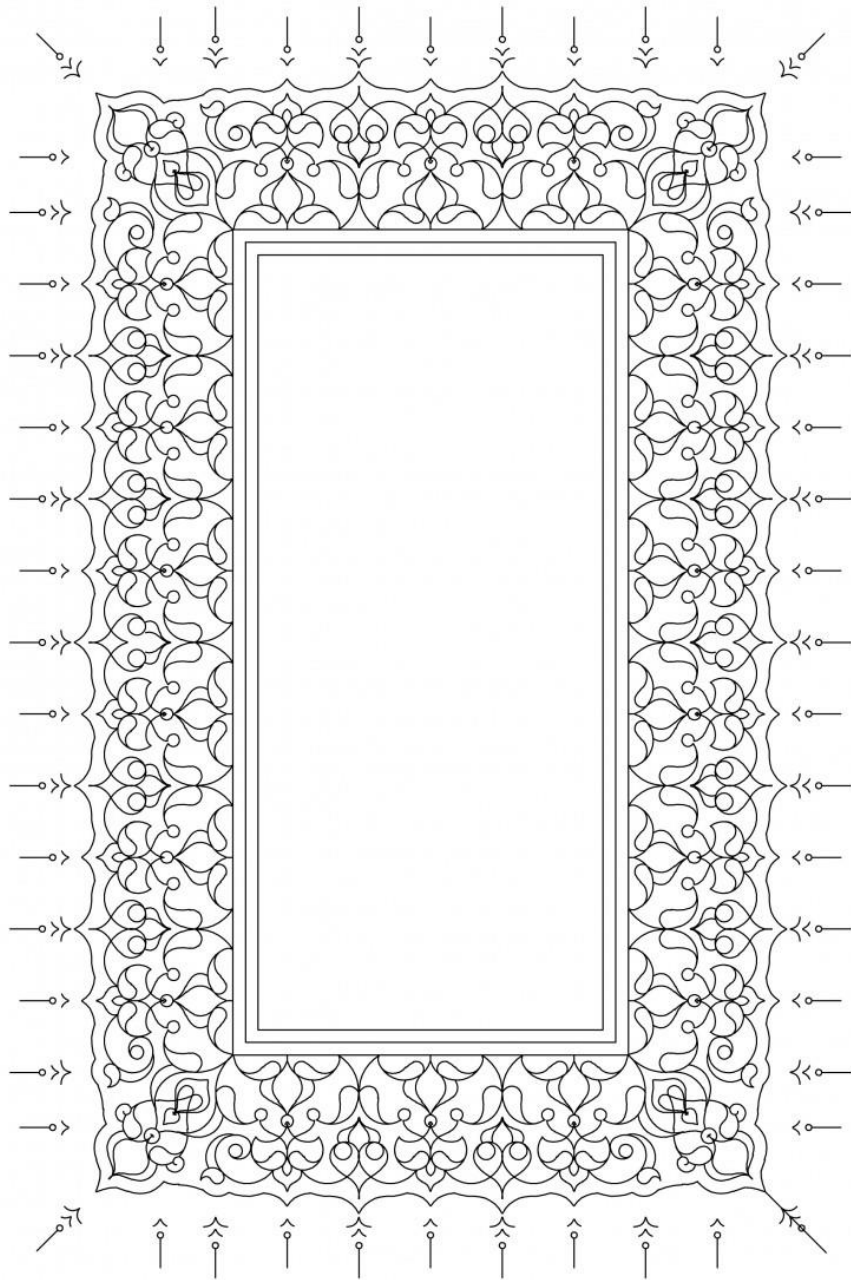
Examples:

Kulliyat Iqtisād	al- كُلِّيَّةُ الاِقْتِصَادِ	Majallat al-Islām	مَجَلَّةُ الإِسْلَامِ
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Ta' Marbutah "ة" is transliterated as "h" if it is present in a word with the prefix "ال" or it is present in the end of a construct pair.

Examples:

al-maktabah al- ahliyyah	المَكْتَبَةُ الأَهْلِيَّةُ	dar wahbah	دَارُ وَهْبَةَ
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The Four Introductory Theories of Fiqh Muamalat

This book is designed to be the introductory part of Fiqh Muamalat by discussing the most basic concepts that should be learned before the discussion of Muamalat contracts starts. The discussion begins with the explanation of the Fiqh Muamalat terms, its position in the Shariah and the Shariah doctrines related to the Muamalat matters. Then, it discusses the four introductory theories of Fiqh Muamalat in details. The four theories are: (i) the theory of legal capacity, (ii) the theory of property, (iii) the theory of ownership and (iv) the theory of contract. These four theories shall enlighten the reader on the required legal capacity that must be occupied by the contracting parties, the nature of property from Islamic perspective, the relationship between a property and its owner as well as the framework of Shariah-compliant contract.



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