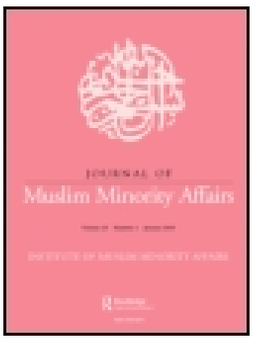

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Ribā-Based Mortgages in *Dār al-Harb*: An Issue of Modernist Application of *Fiqh al-Aqalliyāt* for Muslim Minorities

SHAHRUL HUSSAIN

Abstract

The growing presence of Muslims in the occident living as minorities in majority non-Muslim countries comes with inherent religious challenges. How can occidental Muslims live faithfully in cultures that cause perceivable "hardship" without compromising their religio-legal obligations? Is fiqh al-aqalliyāt *the answer to this problem, if at all there is a problem? As a sample of the so-called "hardship", this paper looks at the issue of occidental Muslims taking out* ribā *(interest or usury) based loans in order to buy a house, to test the theory of whether or not a new legal doctrine is required to facilitate Muslim needs facing exceptional circumstances. Is it a clash between classical and contemporary scholarship or an inevitable pre-modern evolution of Islamic jurisprudence? This article argues that juristic opinions, whether classical or contemporary do not justify any actions, because their opinions are first and foremost non-binding and secondly a result of their endeavor to come to an edict. The paper highlights a misapplication of juristic maxims and opinions, driven by zeal to provide an edict to justify the needs of some. It concludes that no added value is made to Islamic law by heterodox jurisprudence.*

Introduction

> O you, who have believed, fear Allah and give up what remains due to you of interest, if you are true believers. And if you do not, then be informed of a war against you from Allah and His Messenger … [1]

It is the only place in the Qur'an where Allah directly declares "war" against the perpetrators of usury. The Qur'an is clear in its prohibition and stark in its warning about *ribā* (usury). The apparent meaning suggests that this injunction is absolute (*mutlaq*) in terms of time and place, yet there seems to be juristic disagreement regarding the permissibility of dealing in *ribā* under special domicile circumstances. The source of this disagreement can be attributed to a number of issues, one of which is the apocryphal prophetic Tradition transmitted by Makhūl alleging that the Prophet Muhammad said, "There is no *ribā* between a Muslim and a *harbī* in *Dār al-Harb*."[2] Although *ribā* transactions based on territorial differences is a debate documented in the classical books of jurisprudence. It is difficult to determine the extent to which early Muslims applied this in their lives.

During recent years dealing with *ribā* in *Dār al-Harb* has been at the forefront of popular contemporary *fiqhi* discourse (*fiqh al-mu'āsarah*). One of the primary reasons for this is the development of a new legal doctrine known as *fiqh al-aqalliyāt.* During the 1990s, two Azhari scholars, Taha Jabir al-Alwani and Yusuf al-Qardāwi, came up with an innovative idea of providing dispensation to minority Muslims experiencing

difficulties with the law proper (*ʿazīmah*),[3] arguing that a special new legal discipline is needed to address the needs of Muslims living as minorities in majority non-Muslim countries. However, *fiqh al-aqalliyāt* is not without its critics. "A plot to divide Islam" is how Saʿid Ramaḍān al-Būtī, the recently deceased Syrian scholar and a leading opponent, described *fiqh al-aqalliyāt*.[4] *Nota bene*, it would be incorrect to assert that *ribā*-based transactions in current times is a phenomenon solely borne out of the *fiqh al-aqalliyāt* doctrine.

As we shall see, the edict of *ribā*-based transactions was a well-established legal debate during the formative period of Islam, and exploited by other scholars prior to the innovation of *fiqh al-aqalliyāt*. This paper shall employ *fiqh al-aqalliyāt* as a platform to discuss *ribā*-based mortgages because in January 2004 The European Council for Fatawa and Research (ECFR) (resolution 12/5) adopted *fiqh al-aqalliyāt* as an official methodology to issue religious edicts.[5] This was the first major body of *ulema* to do so. This was then followed up by the US-based Rābitah "Ulamā" al-Sharīʿah. Although not all members of the ECFR or Rābitah "Ulamā" al-Sharīʿah agree with this new legal doctrine, it nevertheless helps identify a modern trend in the development of jurisprudence in Islam.

Resurrecting the ancient geo-political division of the world seems to be the most convenient solution for the protagonist of *fiqh al-aqalliyāt* in support of *ribā*-based mortgages. However, it must be noted that it would be an inaccurate description to ascribe support for the archaic international political accolades *Dār al-Islām* and the juxtaposed *Dār al-Harb* as defining all protagonists of *fiqh al-aqalliyāt*. In fact, contemporary opponents of this archaic political designation are quick to dismiss these terminologies as areligious seventh-century Abbasid legalists' invention.[6] From this perspective, we are allegedly referring to a time defined by a cloud of perpetual hostilities between Muslims and non-Muslims, which gave birth to the terms *Dār al-Islām* and *Dār al-Harb*.[7] Therefore, to define the political reality of their time, classical jurists coined the terms *Dār al-Islām* and *Dār al-Harb*. This claim is somewhat fallacious. A careful study of the primary sources of Islamic jurisprudence reveals that the Prophet Muhammad did in fact use the terms *Dār al-Islām* and *Dār al-Harb* to refer to non-Islamic territories. For example, it is recorded by Ibn Saʿd in a rigorously authentic *isnād* (chain of testimony): on the authority of Salamah bin Nufayl al-Ḥaḍramī who narrates from Jubayr bin Nufayr, who narrates from al-Walīd bin ʿAbd a'l Raḥmān al-Jarashī, who narrates from Muḥammad bin Muhājir al-Anṣārī, who narrates from of al-Walīd bin Muslim, that the Messenger of Allah said, "The center of *Dār al-Islām* is in *Shām.*"[8] Wahba al-Zuḥaylī asserts that there are some traditions related from the Prophet Muhammad that he called Mecca ante-migration *Dār al-Harb* and Medina *Dār al-Islām*.[9] Furthermore, documented correspondence also proves that these terms were in use among the early prophetic companions, such as Khālid bin al-Walīd (d. 21 AH/642), and hence disproving any theory of anachronistic anomalies.[10] In this essay, I will firstly examine the suitability of identifying the occident as *Dār al-Ḥarb*, and then investigate the modern-*fiqhi* rationale behind the views of those scholars allowing usury-based mortgages using the *fiqh al-aqalliyāt* paradigm.

Defining *Dār al-Islām* and *Dār al-Harb*

Given that the Prophet Muhammad used the terms *Dār al-Islām* and *Dār al-Harb* to describe Muslim and non-Muslim territories, he did not provide any elucidation of the prerequisites for membership in either. The dearth of any clear political definitions or

qualifications meant that jurists were left with the task of inferring stipulations and conditions for membership to either state. The outcome was predictable, jurists did not agree upon a definition, although the themes were more or less focused on similar principles.

Dār al-Islām

Al-Sarakhsī, from the *Hanafī* School of jurisprudence, defines *Dār al-Islām* as: "A place which is under the authority or ownership of Muslims and the proof of this is that Muslims are safe therein."[11] Al-Kāsānī (d. 587 AH/1191), al-Dasūqī and Ibn Muflih (d. 884 AH/1479), a *Hanafī*, a *Mālikī* and a *Hanbalī* jurist, respectively, emphasize the manifestation of Islamic law (*Sharī'ah*) to be the cause that renders a territory to *Dār al-Islām*.[12] The understanding of the *Shāfi'ī* jurists was somewhat different. Al-Bujayrimī, an expert *Shāfi'ī* jurist, maintains that *Dār al-Islām* is a place wherein Muslims reside, even if there are *dhimmīs* living there, or land that Muslims conquered but maintained such land under non-Muslims, or they resided therein but were later dispelled by non-Muslims.[13]

The classical doctrine of all four schools clearly provides definitions of *Dār al-Islām* but fails to clarify what is meant by the "manifestation of Islamic rule". A plausible reason for this may be that the authors presumed that terms such as *aḥkām al-Islām* or '*shi'ār al-Islām* were easily understood phrases that require no elucidation. However, exploiting this lacuna some contemporary scholars attempted to define "Islamic rule" in simplistic ideals such as prayer or the call to prayer.[14] This means that any place where Muslims are able to observe the daily prayer or make calls to prayer (*adhan*) is considered *Dār al-Islām*. Responding to such claims, Faṭṭānī, a contemporary scholar, lambasts such views, stating:

> It is a known fact that the rules of Islam cannot manifest except when Muslims have authority […]. The authority of non-Muslims is not enough because they do not defend the rules of Islam. Hence, it is for this reason that the rules of Islam cannot manifest except that amount which the [non-Muslim] authority permits. As for criminal law, it is not hidden that the rules of non-Muslims is predominant. Therefore it is not sufficient that some aspects of spiritual-Islamic-law [like prayer] *(al-shi'ā'ir al-ta'abudiyyah)* manifests in a country due to the kindness of the non-Muslim authority for that country to become *Dār al-Islām*.[15]

Inferring from the Qur'an, Fattānī attempts to clarify "Islamic rule" by interjecting his epexegesis of three key components that constitute the qualification of *Dār al-Islām*:[16]

(1) The authority, in terms of leadership and military, belongs to Muslims who worship Allah and uphold the monotheistic dogmas of Islam;
(2) The authority in Allah's religion, in terms of implementing the *Sharī'ah* and its insignias, which are defined as:
    (a) establishing prayer;
    (b) paying and collecting *zakāh*;
    (c) enjoining good and forbidding vice (understood as going for *jihad*, observing the lawful and avoiding the unlawful and the implementation of *Sharī'ah*).
(3) Security for Muslims.[17]

In sum, jurists focused on security and the implementation of *Sharī'ah* in any territory to qualify as *Dār al-Islām*. This is contrary to the *Shāfi'ī* view expressed by al-Bujayrimī. His definition is problematic and lacks political feasibility. According to al-Bujayrimī, the residence of a Muslim in a place renders it *Dār al-Islām*.[18] He further mentions that even if Muslims have been expelled and evicted by non-Muslims from that land, it still remains *Dār al-Islām*. Under this opinion, it would mean that any place where a Muslim camped at and stayed the minimum duration to be considered a resident[19] would render that place *Dār al-Islām*. Although the difference between al-Sarakhsī and al-Bujayrimī is that the former stipulates ownership while the latter simply stipulates residence, their idea nevertheless lacks definition of political tangibility and Islamic objectivity[20] in considering such places as *Dār al-Islām*.

Dār al-Harb

There is hardly any dissention regarding the definition of *Dār al-Harb*, although jurists have phrased it in different ways. It largely centers on the absence of Muslim law and the dominance of non-Muslim law in any given country.[21] Muhammad bin Hasan al-Shaybānī (d. 189 AH/805) and Abū Yusuf (d. 182 AH/798) defined *Dār al-Harb* as, "A country in which non-Muslim law is manifest."[22] The opinion of al-Dasūqī[23] and Ibn Muflih[24] concurs with this definition.

Therefore, if *Dār al-Islām* is a country which implements *Sharī'ah* and *Dār al-Harb* does not, then it is quite easy to justify the conclusion that the occident or otherwise is not *Dār al-Islām*, but rather *Dār al-Harb*.

Ribā-Based Mortgages in Dār al-Harb

Contemporary attitudes towards *ribā*-based mortgages in *Dār al-Harb* can be grouped into four major lines of interpretation as follows:

- The **modern pragmatists** who hold the view that *ribā*-based mortgages in *Dār al-Harb* is permissible.
- The **polemists** believe that the *ijtihād* exercised by Abū Hanīfah was valid but inapplicable due to the non-existence of *Dār al-Harb*.
- The **puritans** believe that the *ijthād* exercised by the protagonists of *ribā*-based mortgages was incorrect, condemning it as inaccurate and fallacious *ijtihād*.
- The **liberalists** see no barrier to *ribā*-based transactions, provided one of the contracting parties is non-Muslim.

1. *Modern Pragmatists: The Classical Protagonists of* Ribā*-Based Mortgages*. A completely new *ijtihād* was not needed by the pragmatists to justify *ribā*-based mortgages. Instead, their views are but a quasi-extension of a classical issue molded to adapt to their edict. Primarily attributed to Abū Hanīfah and his student Muhammad bin Hasan al-Shaybānī that a Muslim granted safe passage into *Dār al-Harb* (or *musta'man*) is allowed to deal in interest with citizens of *Dār al-Harb* (*harbīs*),[25] regardless of faith, according to Abū Hanīfah.[26] Muhammad,[27] along with some *Hanbalī* jurists,[28] was of the view that usurious transactions were only permitted between Muslims and non-Muslims. The permissibility of *ribā*-based transactions in *Dār al-Harb* seems to be the popular view among some *Hanbalī* jurists,[29] even to the extent that some narrations[30] identify Ahmad bin Hanbal as holding this view, although this is disputed.[31]

Unlike the *Ḥanafī*s, who maintain that the opinion of Abū Hanīfah and his disciple al-Shaybānī is the optimal and representative view of the School, the *Hanbalīs* disagree on which opinion is the representative view of their School. The *Hanbalī* puritans, such as al-Mardāwī and Ibn Qudāmah, clearly attempt to distance themselves from any association of permitting *ribā*, and categorically stipulate that the position of their School is that usury between Muslims and non-Muslims is strictly forbidden regardless of the territorial differences.[32] Al-Mardāwī dogmatically asserts, "This is the strongest opinion of the School and there is no dispute about it."[33] Majd al-Dīn Ibn Taymiyyah's view challenges this, upholding that transactions involving *ribā* is permissible between a Muslim and a *harbī* provided that neither of them have entered the others' territory with a visa (*amān* or protection under permission to stay).[34] In fact, several books of *Hanbalī* jurisprudence seem to support the view expressed by Majd al-Dīn Ibn Taymiyyah, such as *Al-Mustaw'ab*, *Al-Munawwar*, *Tajrīd al-'Ināyah*, *Idrāk al-Ghāyah* and the treatise (*Risālah*) of Ibn 'Abdūs.[35]

Support for *ribā*-based transactions was primarily based on a prophetic Tradition narrated on the authority of Makhūl from the Prophet Muhammad, "There is no usury between a Muslim and a *harbī* in *Dār al-Harb*."[36] The Tradition is clear in stating that the law prohibiting *ribā* does not apply between a Muslim and a *harbī* in *Dār al-Harb*. Therefore, any transaction involving usury is not prohibited.[37] The puritans' response to this claim focused on the authenticity of this Tradition. However, it seems that some of them focused more on trying to criticize and discredit the authenticity of the Tradition based on their personal methodological approach to *fiqh* thus distracting them from making any strong arguments. For example, al-Subkī asserts that this Tradition is *mursal* and therefore it is weak, hence, no legal proof can be drawn from it.[38] This argument does not hold any weight with the *Hanafīs* because, according to them, a *mursal* Tradition is perfectly acceptable as evidence, provided the chain of narration is correct and authentic.[39] Al-Sarakhsī asserts that "Makḥūl was a jurist and a trustworthy narrator of prophetic Traditions."[40] Perhaps, admittedly to counter the weakness of his own argument, al-Subkī attempts to strengthen his point by presenting another argument, "if we were to accept that this Tradition is authentic we would interpret it as, 'Usury is not permissible (*lā ubāḥu*) for a Muslim and a *ḥarbī* in *Dār al-Ḥarb*'".[41] Here, the opposition can easily reject al-Subkī's epexegesis on *lā ubāḥu* or "not permissible". They point out that, if *ribā* were unequivocally unlawful without discrimination between Muslims and non-Muslims, *ḥarbīs* or non-*ḥarbīs*, then there would be no need for the Prophet to further clarify this point.[42]

Al-Subkī's argument is not watertight, but rather it proves the point of the other jurists, in the sense that the Prophet sought to clarify that the rules of usury do not apply in *Dār al-Ḥarb*, otherwise there is no sense in repeating a known rule in an obscure manner. Ibn Qudāmah's criticism of the Tradition is similar to al-Subkī's criticism.[43] However, Ibn Qudāmah concentrated on the authenticity of the Tradition in terms of its transmission and documentation, remarking, "We do not know of its authenticity due to it not being recorded in any of the authentic books of Traditions."[44] Ibn Qudāmah gives an interesting explanation of this Tradition. He asserts that the negating particle, "lā" (no) of "there is **no** usury …" is not for the negation of the rules of usury, but to establish its prohibition.[45]

Hence, Ibn Qudāmah's interpretation of the Tradition would mean, "No usury can take place between a Muslim and a *ḥarbī* in *Dār al-Ḥarb*."[46] His interpretation, unlike al-Subkī's, is done without an unnecessary epexegesis. To strengthen his view, Ibn Qudāmah cites verses from the Qur'an where the negating particle "lā" is used to

mean prohibition,[47] such as, "There is **no** sex (*rafath*), **no** bad acts and **no** fighting in Hajj."[48] Here the particle *lā* does not mean a negation in terms of there should be no acts of sexual intercourse, corrupt actions or fighting while in the state of pilgrim sanctity (*iḥrām*) but to clarify the prohibition of such actions.[49]

One of the incongruous elements of this debate is that the criticism of the authenticity of this Tradition was not restricted to non-*Hanafī* jurists. Rather, later *Hanafī* jurists also challenged the authenticity of this Tradition. Ibn al-Humām calls this Tradition "strange",[50] a view also maintained by al-Zaylā'ī.[51] Al-'Aynī, in his commentary of *Al-Hidāyah* remarks, "this Tradition is strange and has no 'authentic basis' (*aṣl musnad*)".[52] Despite the fact that these scholars were critical of the Tradition, it is not recorded that they disagreed with the opinion. Rather these very scholars vehemently defended the *Hanafī* opinion. One of the most notable is al-ʿAynī, who, despite considering this Tradition to be of no authentic basis, criticizes al-Shāfiʿī for saying the same.[53] Al-'Aynī responds to al-Shāfiʿī's criticisms that "we do not accept that it was 'not established' because the grandeur of our Imam [Abū Hanīfah] implies that he would not make a view without clear evidence".[54] Al-'Aynī then continues to criticize al-Shāfiʿī for saying that it cannot be used as proof, by pointing out that such a statement is only true for him because *mursal* Traditions are inadmissible as evidence, according to his principles of deducing Islamic law (*uṣūl*) but for us [i.e. the *Hanafīs*] it is a valid proof.[55] Although al-ʿAynī's argument maybe tainted with elements of polemical *taqlīd* extremes, he has a reasonable point in the sense that it would be difficult to conceive that Abū Hanīfah made his opinion regarding an issue that is considered to be a taboo and a grave sin in Islam (*kabā'ir*) without having solid grounds to do so.

The Case of 'Abbas bin 'Abd al-Muttalib

The case of the Prophet's paternal uncle, 'Abbās bin 'Abd al-Muṭṭalib, apparently shows the practical application of *ḥadīth*. Captured during the Battle of *Badr*, al-'Abbās converts to Islam and returns to Makkah (which at that time was classified as *Dār al-Ḥarb*), and continues to engage in usurious dealings, even after *ribā* was outlawed.[56] Several years later, Prophet Muhammad proscribed such deals. Jābir bin 'Abdullah narrates that the Prophet admonished the people in his "farewell sermon" (*khuṭbah al-widāʿ*), saying, "All pre-Islamic usury is now abolished. And the first usury I abolish is the usury of al-'Abbās bin 'Abd al-Muṭṭalib, for indeed it is completely abolished."[57] Inferring from this Tradition, al-Ţaḥāwī, in his book *Mashkil al-Āthār*, argues that usury is permissible between Muslims and non-Muslims in *Dār al-Harb*, while it was impermissible between Muslims in *Dār al-Islām*.[58] Al-Jaṣṣāṣ in his commentary of the Qur'an also argues that the "farewell sermon" proves the point that *ribā* transactions in *Dār al-Ḥarb* are permitted and lawful.[59] Al-Turkumānī also remarks that if usury between Muslims and non-Muslims was not lawful in *Dār al-Ḥarb* then the usury of 'Abbās should have been void from the day he became a Muslim.[60] The question is, did al-'Abbās engage in *ribā*-based transactions with the acquiescence of the Prophet Muhammad? It is difficult to say, but the jurists' argument seems to be based more on assertion than concrete facts. For example, al-Sarakhsī says to counter any arguments that the Prophet Muhammad might not have known about 'Abbās's usurious transactions, 'Abbās, after becoming a Muslim returned to Makkah and still took *ribā*. The Prophet was aware of this, yet he did not prohibit it. This therefore means that usurious transactions in *Dār al-Harb* are permissible.[61]

The great *Mālikī* jurist Abū Walīd Ibn Rushd [the grandfather] also supports this argument. He writes regarding this issue:

> This proves the permissibility of *ribā* with a *harbī* in *Dār al-Harb* according to the opinion of Abū Hanīfah for the simple fact that Makkah at that time was *Dār al-Harb* and 'Abbās lived there as a Muslim. The Prophet did not prohibit 'Abbās from *ribā* after becoming a Muslim until Makkah became *Dār al-Islām* after the "conquest of Makkah". Thereafter the Prophet prohibited 'Abbās's usurious dealings. This therefore proves the permissibility of *ribā* in *Dār al-Harb*.[62]

Responding to this claim, al-Subkī argues that the phrase "*ribā* of 'Abbās" may have been referring to the pre-Islamic usury before 'Abbās became a Muslim. Al-Subkī maintains this argument by pointing out that there is no clear evidence that 'Abbās continued to make usury-based transactions after he became a Muslim. Al-Subkī further argues that, even if it has been accepted that he continued to take *ribā* after becoming a Muslim then he did so without knowing of its prohibition.[63] Al-Subkī's argument that the case of 'Abbās is obscure is a poor attempt to distract the topic as it contradicts the apparent. His argument shows that he does not have a strong argument to explain the usurious transactions of 'Abbās without conceding to the view that usury in *Dār al-Harb* is permissible. Rather, the very fact that the Prophet stated that he has abolished the *ribā* of 'Abbās proves that 'Abbās was still transacting in *ribā* as well as the Prophet knowing about it.

The Theory of Rukhsah

Contemporary scholar Muhammad Iyaz Muhammed Nayāz, in his criticism of al-Subkī's argument proposes an interesting theory. He posited that if the argument had been accepted that the *ribā* 'Abbās had earned was both after he became a Muslim and his knowledge of its prohibition then it was earned on grounds of special license (*rukhṣah*). Nayāz believes this due to the fact that the Prophet allowed 'Abbās to pretend to be a polytheist in Makkah and not declare his conversion to Islam. Since 'Abbās was allowed to behave like a polytheist under "special license" then being able to transact in *ribā* is not implausible but less in consequence.[64]

In Nayāz's analysis of the case of 'Abbās, he highlights three aspects of obscurity that lies in that case: first, the type of *ribā* 'Abbās was earning; second, 'Abbās's knowledge of usury prohibition and third, the period in history when *ribā* was outlawed. Nayāz points out that one of the possibilities is that 'Abbās was taking *ribā al-fadl*[65] and not pre-Islamic *ribā* which was usury on a loan.[66] Not all Muslims had prohibited *Ribā al-fadl* whereas the *ribā* on loans was known by all to be prohibited. This is because *ribā al-fadl* was outlawed on the Day of *Khaybar* in the seventh year after *Hijrah*. The argument that not all Muslims knew about the prohibition of *ribā al-fadl* is strengthen by the fact that 'Abdullāh Ibn 'Abbās was of the opinion that there is no *ribā* if the exchange is made hand-to-hand but only if it is delayed (*nasā'ī*).[67] Therefore, 'Abbās not knowing about the prohibition is a likely possibility. The other possibility, Nayāz explains, is that the prohibition of *ribā* was not conclusively established until the following verse had been revealed:

> O you who believe! Fear Allah and forego the interest that is owed to you if you are true believers. And if you do not, then take heed to the war with Allah and His Messenger …[68]

This verse was revealed in Ramadan of the ninth year after *Hijrah*, which was before the "farewell sermon".[69] To strengthen his view, Nayāz argued on the grounds that the Prophet made a pact with the tribe of *Thaqīf* that they would collect the *ribā* that people had owed them but that which they owed people would be canceled. After the conquest of Makkah the Prophet put 'Utāb bin Asīd in charge of Makkah. A dispute between the tribes of *Banū 'Amr bin 'Umayr bin 'Awf* and *Banū al-Mughīrah* took place. During the pre-Islamic era, *Banū 'Amr bin 'Umayr bin 'Awf* would take usury from *Banū al-Mughīrah*. After becoming Muslim, *Banū 'Amr bin 'Umayr bin 'Awf* came to demand their payment of *ribā*, but *Banū al-Mughīrah* refused to comply. They referred their dispute to 'Utāb bin Asīd, who wrote to the Prophet Muhammad regarding the matter. The Prophet wrote to 'Utāb bin Asīd, citing the above-quoted verse from the Qur'an, instructing him to, "tell them of a war with Allah and His Messenger".[70] This Tradition proves two important points: first, usurious transactions were taking place between Muslims and non-Muslim, and second *ribā* was not outlawed conclusively, had it been so, the Prophet would not have made that pact with *Thaqīf*.

The argument that usury was not conclusively outlawed seems to be the strongest argument to explain 'Abbās's actions. Although the case of 'Abbās seems to support the view that *ribā* between Muslims and non-Muslims is permissible in *Dār al-Ḥarb*, it would be difficult not to recognize that there is a degree of obscurity regarding 'Abbās's transactions. However, the jurists' arguments opposing the permissibility of *ribā* in *Dār al-Ḥarb*, lack irrefutable evidence. Rather, almost all of it is speculative and theoretical. The fact remains 'Abbās did indeed make usurious transactions. The only reasonable explanation for this is that Islam initially allowed the transaction of usury between Muslims and non-Muslims, but this was later revoked. The abrogating text would be firstly the afore-cited Qur'anic verse and secondly, the "farewell sermon" in which the Prophet clearly stated that all pre-Islamic *ribā* is void. "Pre-Islamic" *ribā* cannot be taken to mean one type of *ribā* and exclude others, otherwise it would imply that there is a "pre-Islamic" *ribā* and an "Islamic" *ribā*. Rather, all types of *ribā* are forbidden in Islam.

Fiqh al-Aqalliyāt *in Action*

Home ownership has many benefits and may be a necessity for some families. The problem for many Muslims is that very few people can purchase a property independent of loans and, due to the large sums involved, it usually requires the help of financial institutions such as banks. Another problem is the obvious *ribā* involved in this transaction. To circumvent the issue of *ribā*, and to address the hardship of Muslim minorities, *fiqh al-aqalliyāt* was used as a tool to find a solution. From 19 to 22 November 1999 in Detroit, Michigan, USA, the Rābitah "Ulamā" al-Sharī'ah convened their first conference on Islamic jurisprudence. In their discourse and conclusion, some members of the Rābitah "Ulamā" al-Sharī'ah came to the conclusion that *ribā* in *Dār al-Harb* is permissible. Similarly, three weeks earlier, in October 1999, The European Council for Fatāwa and Research, in their fourth annual conference in Dublin, Ireland, came to the same conclusion.[71] The objective of these conferences, it appears, was to find a solution for Muslims living in America and Europe to buy a house on an interest-based mortgage from a bank.[72] The two conferences resulted in a heated debate and rebuttals which were accompanied by emotional frustration by neo-puritan scholars, such as 'Alī Ahmad al-Sālūs,[73] Salāḥ al-Sāwī,[74] Wahbah al-Zuhaylī[75] and others who rejected their conclusion. Salāḥ al-Sāwī, extremely upset and angered with the conclusions of the con-

ferences, wrote a book refuting the claims of each conference. The subject took its toll on Wahbah al-Zuhaylī, who was so upset he exclaimed while crying, "We have a dispute with you on the Day of Judgement."[76]

Conditions of Interest-Based Loans in Dār al-Harb

It has to be noted here that the two conferences did not permit dealing in interest haphazardly, but as a last resort when no other alternative is available.[77] The trepidation that any *fatwa* regarding the permissibility of usury could be easily misinterpreted and abused by laymen resulted in the members of the two conferences to stipulate certain conditions that must be fulfilled for a person to qualify taking a dispensation from this edict. The members of the Rābitah "Ulamā" al-Sharīʿah stipulated two conditions:

(1) That the Muslim must be living outside of *Dār al-Islām*.
(2) That the problem is facing most of the residents [in that country which is] out of *Dār al-Islām*.[78]

The European Council for Fatāwa and Research is also of the opinion that, for this issue to be practical, a Muslim must be living outside of *Dār al-Islām*. Further to this a person must be in such a financial situation that he either does not have a house already and he does not have enough money to buy it with cash.[79] However, the members of the Rābitah "Ulamā" al-Sharīʿah and The European Council for Fatāwa and Research both hasten to add that this *fatwa* is valid only if no alternative is available. The Rābitah "Ulamā" al-Sharīʿah were concerned with the difficulty of renting a house big enough to accommodate a family.[80] Therefore, if a person is able to rent a big enough house he may not take dispensation from this *fatwa*.[81] The European Council for Fatāwa and Research further adds that the mortgage cannot be for a second home as an investment.[82] Since the main aim of the two organizations was to find a solution to a problem facing Muslim minorities living in non-Muslim countries, they did not accept that *ribā* is lawful in Islam, but intended that when the need is there, a dispensation can be taken from their *fatwa*.

Justifying Interest-Based Loans in Dār al-Harb

The justification for this opinion lies in two arguments. The first is the juristic maxim "al-ḍarūrāt tubīḥu al-maḥẓurāt" or "dire exigencies permit prohibited articles".[83] The first principle is accepted universally; if a Muslim is in dire exigencies then he is allowed to commit an unlawful act to survive. For example, a Muslim is stranded in a place where he does not have any water or lawful liquid to drink except wine. He reaches such a stage whereby if he does not drink wine he will perish. During such cases of dire necessity related to life and death, a Muslim may commit an unlawful act which would be totally unlawful for him to do in normal circumstances.[84] One of the branches of this juristic maxim is another "principle" "al-ḥājah tanzil manzilah al-ḍarūrah" or "need is the same status as dire exigency".[85] It is the latter of the two principles upon which the members of the Rābitah "Ulamā" al-Sharīʿah and The European Council for Fatāwa and Research based their *fatwa*.[86] The crux of the argument for members of both organizations was that a person is in "need" of shelter. This "need" is one of the necessities of life and without it a person will fall into "hardship", and the Qur'an has declared that Allah wishes to remove hardship and wants only ease.[87] Therefore, the argument follows that since housing is a necessity of life without which there can

be little doubt of life being extremely difficult and it is not possible through lawful means for a Muslim to purchase a house either by cash or interest free loans, one may resort to an interest-based bank loan.[88]

The second justification used was the so-called *Hanafī* position of allowing usurious transactions in *Dār al-Ḥarb*. However, the Rābitah "Ulamā" al-Sharī'ah in America did not make a claim to use the *Hanafī* position to support their views.[89] The European Council for Fatāwa and Research on the other hand decided to justify their position by pointing out that the *Hanafīs* and other jurists allow *ribā* outside *Dār al-Islām*.[90] The European Council for Fatāwa and Research were very careful not to directly call Europe and America *Dār al-Harb*. Instead, they claimed that the *Hanafīs* considered anything not *Dār al-Islām* as *Dār al-Harb*. This, by The European Council for Fatāwa and Research, was a very diplomatic way of evading the prickly topic of considering western countries as *Dār al-Harb* but being happy to apply the rules of *Dār al-Harb*. Moreover, what the Council fell short on realizing is the fact that the *Hanafīs* allowed *taking ribā* from *harbīs* but not *giving* it, as explained clearly by Ibn al-Humām in the *Fatḥ al-Qadīr*.[91] The ECFR claims that Muhammad al-Shaybānī and later "*Hanafī* jurists" considered it absolute provided the Muslim benefits from it financially. I have not found any evidence in the books of *Hanafī* jurisprudence to support their claim, nor have the Council provided any reference to back their statement.

Critiques of the Fatwa *Justifying Interest-Based Loans in* Dār al-Harb

Al-Sāwī spearheading the rebuttal proceeds with a relentless criticism of their misapplication of juristic maxims. He focuses on their key argument and accordingly explains the difference between "need" (*ḥājah*) and "dire exigency" (*ḍarūrah*) and how "need" cannot be applied in the same light as "dire exigency". Al-Sāwī highlights that the concept of "need" is something that does not violates the *Sharī'ah* but merely contradicts other "juristic maxims" or *qiyās*. "Dire exigency" on the other hand violates the *Sharī'ah* outright.[92] In order to strengthen his opinion al-Sāwī gives the example of a *salam* transaction *ijārah*,[93] *ja'ālah*,[94] *ḥawālah*[95] and the like which although paradoxical to the Islamic principles of transactions have been allowed on the basis of "peoples' need".[96] "Dire exigency" on the other hand, permits the consumption of wine, pork and the like in a life and death situation although it violates the *Sharī'ah*. Al-Sāwī's point is that usurious transactions cannot be permissible in non-Muslim countries based on the juristic maxim, "al-ḥājah tanzil manzilah al-ḍarūrah" (or "need is the same status as dire exigency") because usury violates the *Sharī'ah* therefore usury can only be allowed if there is "dire exigency" (*ḍarūrah*) but not in a case of mere "need" (*ḥājah*).

Another argument that the Council used is that buying a house in non-Muslim countries will make the financial position of a Muslim stronger not weaker.[97] They argue that Islam wants to strengthen Muslims and not weaken them, increase their wealth not decrease, benefit them, not harm.[98] This statement holds weight, but, what the members of The European Council for Fatāwa and Research failed to realize is, Islam wants to help Muslims achieve this through lawful means and not unlawful ones. If the argument is understood as the Council put it (i.e. that it can be achieved through unlawful means), then why is the Council restricting it on only usurious transactions? The concept could be thrown open and Muslims should be free to trade in anything that will increase their wealth. Another view similar to this was that of the mufti of *Darul-Uloom Deoband* in India, where he passed a *fatwa* that India was *Dār al-Ḥarb* and as such Muslims are permitted to take usury.[99] The mufti, who followed the *Ḥanafī* School,

did not restrict the transactions only to mortgages but also to personal loans.[100] However, Muḥammad Ḥāmid criticized the mufti for his *fatwa*.[101] Among his criticisms was that the mufti had contradicted the *Ḥanafī* School, since they allowed only taking interest and not giving it.[102]

2. *The Polemists:* Dār al-Harb *Defunct*. The polemists' main quagmire is in their strict belief of *taqlīd*, or the adherence to a particular *madhhab* for the lay-person. In other words, the opinion of Abū Hanīfah is valid because it represents the dominant opinion of the School, and consequently, a follower of *Hanafī* jurisprudence is at liberty to take this opinion. However, they do not agree that the opinion of Abū Hanīfah is now applicable due to the non-existence of *Dār al-Ḥarb*.[103] This trend is mainly supported by Muḥammad Ḥāmid, Nūh Keller, Nūḥ 'Alī Salmān,[104] and al-Zuḥaylī.[105] Al-Zuḥaylī remarks,

> The existence of *Dār al-Islām* and *Dār al-Ḥarb* in contemporary times is rare or extremely limited. This is because Islamic countries have joined the United Nations covenant that stipulates relationship between nations is peace and not war. Therefore non-Muslim countries are *Dār al-'Ahd* …[106]

Taqlīd theorists have perhaps overlooked the fact that juristic opinions are a result of their utmost endeavor to come to a correct verdict.[107] In no way can their views be regarded sacred. Whether Abū Hanīfah or any other scholar expresses an opinion does not mean Muslims can follow it although it apparently contradicts evidences from the Qur'ān and *Sunnah*. The Islamic principle is clear, only the statement of Allah and His Messenger are the ultimate and unquestionable proof for Muslims. The classical books of jurisprudence are testimonies that jurists of different backgrounds had various opinions regarding all kinds of issues. Some of their opinions may seem to be extremely strange, such as dealing with questions of the validity of marrying mermaids. Therefore simply because a highly regarded jurist held a peculiar opinion does not legitimize following it. Rather the principle that should guide Muslims in *taqlīd* was articulated by al-Shāfi'ī and Ibn Taymiyyah, "We do not follow the slip-ups of the scholars (*lā nattabi'u zallāt al-'ulamā'*)."[108]

3. *The Classical Puritans and Contemporary Neo-Puritans*. A drive towards establishing an ethical standard transcending hermeneutical-epexegesis to an assumed pure and unadulterated law concordant with the spirit of Islamic law is the foundation of this view. Spurred on by an idealistic dedication to the unmediated efficacy of the spiritual message of the Qur'an resulted in a radical rejection of all considerations of *ribā* transactions in *Dār al-Ḥarb*. The contemporary neo-puritans (mentioned throughout this paper), align themselves with the classical puritans, such as Abū Yūsuf, Mālik, al-Shāfi'ī, Ibn Qudāmah and others.[109] According to them, all types of usury is impermissible, regardless of whether the contractors are in *Dār al-Ḥarb* or in *Dār al-Islām*. Faithful to puritan ideology, the evidence for this is simple and straight-forward. They base their arguments primarily on the Qur'anic *ayah* (Chapter 2: 278–279) banning usury.[110]

For the advocates of the impermissibility of usury in *Dār al-Harb*, this verse (Qur'an 2: 278–279) is clear in its absolute prohibition of usury regardless of the domicile differences. This is because the Qur'anic decree prohibiting usury is absolute without restriction, exclusion or exception from people to people, place to place or nation to nation.[111] Moreover, they insist that there are no authentic Traditions that clearly and conclusively

establish the permissibility of dealing in interest in *Dār al-Harb*.[112] When a Muslim *musta'man* enters *Dār al-Harb*, he is bound to honor their life and their property by the virtue of his visa (*amān*).[113] Therefore, a Muslim is not allowed to take the property of *harbīs* unjustly. Usury is a form of exploitation, oppression and usurping another person's wealth wrongfully. Thus, such contracts are unlawful.[114] In al-Awzā'ī's refutation of the permissibility of usury in *Dār al-Harb*, he writes,

> How is it lawful for a Muslim to devour usury in a nation where Allah has made unlawful for him their blood and wealth? Muslims during the Prophetic time transacted with non-Muslims and they did not consider it lawful [to take *ribā*].[115]

This is because prohibited articles do not become lawful in *Dār al-Harb* like all other prohibited actions, such as fornication, drinking alcohol, eating pork and the like for the simple reason that a Muslim is subject to the laws wherever he resides.[116]

4. *The Liberalists*. A view largely shared by *Shi'a* scholars and a very small minority of *Sunnis*, disregarded territorial differences and instead focused purely on religion. The Imamiyyah scholar, al-'Āmilī, remarks in his book *Al-Rawḍah al-Bahiyyah* regarding *ribā* transactions between Muslims and non-Muslims, "There is no difference between a *harbī* and a *musta'man* or whether they are in *Dār al-Harb* or *Dār al-Islām*."[117] Al-Tusī also writes, "There is no *ribā* between a Muslim and a *harbī* …"[118] Al-Zarakshī from the Hanbalī jurists writes in his treatise *Al-Tabsirah* to the same effect.[119] Hence, according to this group of scholars, the only condition for the permissibility of trading in usury is that one party must be a *harbī*. The evidence they use to justify their position is an alleged Tradition where the Prophet is related to have said, "There is no *ribā* between us and the *harbīs*. Indeed we take from them one thousand *dirhams* for one *dirham*; we take this but do not give it."[120] Fattānī criticizes this argument, pointing out that the Tradition cited is unclear and unknown regarding its authenticity.[121] He continues his criticisms, positing that the application of this Tradition would imply specifying (*takhsīs*) Qur'anic texts that are general (*'āmm*) with unknown evidence.[122] Consequently, such an application of jurisprudential principles (*uṣūl*) is improper.

Banking in Dār al-Ḥarb

The extension of this type of liberal thought led some jurists to believe that Muslims may put their money in banks in non-Muslim countries and take *ribā*. This can be either if the Muslim is living in *Dār al-Ḥarb* or that the Muslim lives in *Dār al-Islām* but leaves his money in Western banks which would be concordant with the opinion of al-Zarakshī and the Imāmiyyah scholar, al-Tūsī. The latter opinion seems to still hold valid; rather it is agreed upon unanimously among the Imāmiyyah *Shi'a* sect according to the scholar Muhammad Bāqir al-Sadr.[123] There is a small minority of Sunni scholars, such as Manāzir Ahsan al-Kilānī, who still support Abū Ḥanīfah's opinion and maintains that taking usury from banks is permissible.[124] Al-Zuhaylī criticizes this opinion, saying:

> The fatwa for Abū Ḥanīfah is not entirely wrong. The blood and property of *harbīs* are useless regardless if the contract was concluded by a valid or invalid contract. However, this fatwa cannot be applied to validate *ribā* for Muslim minorities in non-Muslim countries. This is because the objective of Abū Hanīfah was to cause weakness to *harbīs* in all possible avenues. As for what Muslims are

> involved in at present times in non-Muslim countries which is either depositing money or investment and taking *ribā* in return is unlawful. This is because it is not "taking the wealth of *harbīs*" but rather it strengthens them in way of financing their projects. This therefore does not weaken them but strengthens them which is opposite to what Abū Hanīfah intended.[125]

If the objective of allowing *ribā*-based contracts between Muslims and *harbīs* was to weaken them financially, the evidence suggests that contemporary banking does not allow this. Banks lend money to finance different types of projects regardless of whether they are ethical or not, and in return make manifold profits compared to what it pays out to its depositors or investors. However, it seems that the vast majority of contemporary scholars—even those who allow *ribā*-based mortgages—do not hold the view that Muslims living in the West are allowed to do this. In fact, contemporary scholars are divided on the issue whether or not it is permissible to deposit money in such banks in the first place. ʻĪsā ʻAbdu has taken a very hard-lined position, saying that putting money in non-Muslim banks is unlawful and sinful.[126] Other scholars, like al-Zuhaylī[127] and al-Qardāwī[128] are of the opinion that Muslims may deposit their money in banks but must not use the *ribā*. Al-Zuhaylī and al-Qardāwī are also of the opinion that it is not permissible to reject taking interest from these banks.[129] They argue that refusing to take *ribā* will only strengthen usurious institutions which would be tantamount to aiding in vice.[130] While al-Zuhaylī takes the opinion that such an act is not "permissible",[131] al-Qarḍāwī takes a more strict view that it is "unlawful (*ḥarām*) with certainty".[132] The two scholars maintain that since a Muslim cannot use the money, they should bestow it unto charitable causes such as building roads, schools, hospitals, mosques and the like.[133]

Tailoring the ʿazīmah

Change in attitudes towards jurisprudence influenced by social milieu is not a phenomenon particular to modern times. What is perhaps new is the innovated legal doctrine designed with a mono-purpose remit of providing dispensation to Muslim minorities facing hardship with *ʿazīmah* laws.[134] In previous cases where the *ʿazīmah* proved to be difficult or caused hardship, juristic maxims provided leeway. But the purpose of leeway was dispensation and not an independent body of proper laws tailored to specific areas and communities. The term *Dār al-Harb* is far from reflecting its literal meaning as an abode of war. Rather, contrary to its literal meaning, the definition of a state that fails to implement Islamic law pervades a non-offensive neutral term signifying in geo-political jargon the non-existence of bilateral political recognition. This is significant in Islamic law, because without bilateral political recognition the property of *harbīs* lacks *ʿiṣmah* (protection). This means that the objective (*maqṣad*) of why *ribā* is outlawed in Islam, that is, its grossly exploitative nature does not apply to the property of *harbīs* in *Dār al-Harb*.

Although a theory accepted in principle by all jurists, for the puritans it does not mean that *ribā*-based transactions are lawful. This is because it is not the *maqsad* (objective) *per se* that Islam has outlawed, but rather the entire institution of *ribā* is adverse with Islamic principles, the *maqsad* happens to be the *ratio legis* (*ʻillah* or effective cause) for its prohibition. This does not mean that if the *maqsad* is absent the rule does not apply. Dire exigency is a legitimate excuse to permit *ribā*. But this is a subjective and arbitrary issue, which is based on the merits of individual cases, and it cannot be the *ʿazīmah*. The concept, in Islam, of a body of law that will sit beside *ʿazīmah* as a co-*ʿazīmah* with the

view to attempt to "facilitate the link between Islamic law and the conditions of a group confined to special conditions that is permitted to do what others are not permitted",[135] requires revision. It is clear that the ECFR and Rābitah "Ulamā" al-Sharī'ah were more driven to display the practical use of *fiqh al-aqalliyāt*. As a result of this, the primary aim became to justify *ribā*-based mortgages and the methodology was to find evidence to support it. On the balance of argument, it is unclear exactly what the *fiqh al-aqalliyāt* paradigm can provide that normal juristic methodology and juristic maxims cannot.

Conclusion

The concept of *ribā* is neither an easy nor a clear-cut issue. There are different types of transactions that, *prima facie*, are usurious yet subject to debate and scholarly dissention rather than consensus.[136] The issue of *ribā* transactions between Muslims and non-Muslims is also not as straight-forward as it may seem. The evidence cited by Abū Ḥanīfah to support his view was not based on one Tradition, but rather a string of proofs that strengthened each other and, when put together, produced a relatively strong argument. However, one of the strange aspects of their argument is the dubious Tradition they cite, knowing full well the doubtful nature of its authenticity, and that it contradicts their *usūl*. That is to say, according to *Hanafī usūl*, if the Tradition is a singular chain narrated Tradition (*ahād*) then it cannot be used if it contradicts clear Qur'anic precepts.[137] It seems that some elements of classical scholarship were not only the ones culpable of precarious views, but also some elements of contemporary scholarship followed in the same footsteps.

Obsessed with a zeal to provide relief from hardship for Muslim minorities, some scholars were led to focus on the result of the edict and not the methodology or evidence. As a consequence, their views either showed a misapplication of juristic maxims or a culture of cutting and pasting views of the classical jurists to cater for the justification of the *fatwa*. Although it is clear that the classical view does not support the justification of *ribā*-based mortgages, it was nevertheless used. The concept of *Dār al-Harb* becomes a convenient model to validate *ribā*-based mortgages in the West. Are these views there to simply provide cognitive comfort to the conscience into thinking that *ribā* is not sinful? It is a question well worth asking.

NOTES

1. Qur'an, 2:278–279.
2. Muhammad bin Idrīs Al-Shāfi'ī, *Al-Umm (The Mother)*, ed. Mahmud Matraji, Beirut: Dār al-Kutub al-'Ilmiyyah, 1993, Vol. 8, p. 589; 'Abdullāh bin Yūsuf, Zaylā'ī, *Nasb al-Rāyah li-Ahādīth al-Hidāyah (Erecting the Flag for the Hadith of al-Hidayah)*, Beirut: Dār Ihyā' al-Turāth al-'Arabī, 1987, Vol. 4, p. 44; Abū Bakr Muḥammad bin Ahmad bin Abī Sahl, Al-Sarakhsī, *Usūl al-Sarakhsī (The Principles of al-Sarakhsi)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1993, Vol. 14, p. 69; Maḥmūd bin Ahmad bin Mūsā bin Aḥmad bin al-Husayn Al-'Aynī, *Al-Bināyah Sharḥ al-Hidāyah (The Edifice Commentary on the Hidayah)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 2000, Vol. 8, p. 299.
3. The unmodified and original legal rule in its original rigor, due to the absence of mitigating factors.
4. www.bouti.com/ulamaa/bouti/bouti_monthly15.htm, June 2001, vide Masud, "Islamic Law and Muslim Minorities", *The International Institute for the Study of Islam in the Modern World (ISIM)* quoted via: Tauseef Ahmad Parray, "The Legal Methodology of *Fiqh al-Aqalliyat* and Its Critics: An Analytical Study", *Journal of Muslim Minority Affairs*, Vol. 32, No. 1, published online 15 May 2012, p. 100.
5. Parray, "The Legal Methodology of *Fiqh al-Aqalliyat* and Its Critics", *op. cit.*, p. 100.

6. Farhad Malekian, *The Concept of Islamic International Criminal Law*, London: Graham & Trotman, 1994, p. 7, fn 29; Mohammad Talaat Al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach*, The Hague: Martinus Nijhoff, 1994, pp. 183–184; Faysal Mawlawī, *Al-Ussus al-Shar'iyyah lil-'Ilāqāt Bayn al-Muslimīn wa Ghayr al-Muslimīn (The Legal Foundation for the Relationship Between Muslims and Non-Muslims)*, Beirut: Al-Nadwah Al-'Ālamiyyah lil-Shabāb al-Islāmī Maktabah Uruba, n.d., p. 99.
7. Kamāl al-Dīn Muhammad bin 'Abd al-Wāḥīd Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr (Commentary on the Victory of the All-Powerful)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1995, Vol. 5, p. 424; Abū 'Umar Yūsuf bin 'Abdullāh bin Muhammad Ibn 'Abd al-Barr, *Al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī (The Sufficient in the Jurisprudence of the People of Medina)*, Beirut: Dār al-Kutub al-'Ilmiyyah, n.d., p. 205; Abū Muhammad 'Abdullāh bin Ahmad bin Muhammad Ibn Qudāmah, *Al-Mughnī (The Enricher)*, Beirut: Dār al-Kutub al-'Ilmiyyah, n.d., Vol. 10, p. 385; Abū Zakariyyā Maḥyī al-Dīn bin Sharf al-Nawawī, *Al-Majmū' Sharh al-Muhadhdhab (The Compendium Commentary of the Rarefaction)*, Beirut: Dār al-Fikr, 2000, Vol. 21, p. 40.
8. The area today known as Syria, Jordon and Lebanon. Muhammad Ibn Sa'd, *Al-Ṭabqāt al Kubrā (The Grand Stratum)*, Beirut: Dār Al-Kutub Al-'Ilmiyyah, 1997, Vol. 7, pp. 427–428; 'Abdullāh bin Yūsūf al-Juday', *Taqsīm al-Ma'mūrah fi al-Fiqh al-Islām wa Atharuhū fi al-Wāqi' (The Division of the World in Islamic Jurisprudence and Its Practical Effects)*, Beirut: Mua'ssah al-Rayyān, 2008, pp. 18–19.
9. Wahba al-Zuhaylī, *Āthār al-Harb fi al-Fiqh al-Islāmī Dirāsah Muqāranah (The Effects of Warfare in Islamic Jurisprudence: A Comparative Study)*, Damascus: Dār al-Fikr, 1998, p. 170. See also Abū 'Abdullāh Muhammad bin Abī Bakr Ibn Qayyim, *Aḥkām Ahl al-Dhimmah (Laws Pertaining to Non-Muslims Subjects of an Islamic State)*, Beirut: Dār al-Kutub al-'Ilmiyyah, ed. Taha 'Abd al-Raū'f Sa'd, 2002, Vol. 1, pp. 266–269.
10. *Ibid*.
11. Al-Sarakhsī, *Al-Mabsūṭ*, *op. cit.*, Vol. 10, p. 23.
12. 'Alā' al-Dīn Abū Bakr bin Mas'ūd bin Ahmad Al-Kasānī, *Badā'i' al-Sanā'i' fi Tartīb al-Sharā'* (*The Unprecedented Analytical Arrangement to the Law*), Beirut: Dār al-Kutub al-'Ilmiyyah, 1997, Vol. 9, p. 515; Shams al-Din Muhammad Al-Dasūqī, *Hāshiyah Al-Dasūqī 'alā al-Sharh al-Kabīr (Footnotes of al-Dasuqi on the Commentary of the Kabir)* place of publication unknown, Dār Ihya' al-Kutub al-Arabiyyah, n.d., Vol. 2, p. 188; Muḥammad Ibn Mufliḥ, *Al-Ādāb al-Shar'iyyah (Legal Etiquettes)*, Beirut: Mu'assasah al-Risālah, 1996, Vol. 1, pp. 211–212.
13. Sulaymān bin Muhammad bin 'Umar Al-Bujayrimī, *Sharh al-Bujayrimī 'Alā al-Khatīb (Al-Bujayrimi's Commentary on al-Khatīb)*, Beirut: Dār al-Ma'rifah, 1978, Vol. 4, pp. 331–332.
14. Nuh Ha Mim Keller, *Reliance of the Traveller*, Evanston, IL: Sunna Books, 1994, p. 947; Muḥammad Sa'īd Ramaḍān Al-Būṭī, *Qadāyā Fiqhiyyah Mu'āsarah (Contemporary Legal Issues)*, Damascus: Maktabah al-Fārābī, 1994, p. 182.
15. Ismā'īl Lutfī Fattānī, *Ikhtilāf al-Dārayn wa Atharuhū fi Ahkām al-Munākahāt wa al-Mu'āmalāt (The Difference of Abode and Its Effects on the Rules of Marriage and Transactions)*, Cairo: Dār al-Salām, 1998, p. 33.
16. From these verses are, "Those when given authority on earth establish the prayer, render the *zakāh* and enjoin what is good and forbid what is bad …" (Qur'an, 22:41);

    > Allah has promised to make those of you who believe and do righteous deeds leaders on earth as He has made those before them, and will establish their faith which He has chosen for them and change their fear into security. They will worship Me and not associate any one with Me. (Qur'an, 24:55)

17. Fattānī, *Ikhtilāf al-Dārayn*, *op. cit.*, pp. 29–90.
18. 'Abdullāh bin Ibrāhīm bin 'Ali Al-Tarīqī, *Al-Isti'anah bi Ghayr al-Muslimīn fi Fiqh al-Islāmī (The Rules of Seeking the Assistance of Non-Muslims in Islamic Jurisprudence)*, Riyadh: Mua'ssasah al-Risālah, 1993, p. 172.
19. This would be according to the *Shāfi'ī* School, which stipulates that four complete days, excluding the day of arrival and departure, is the minimum duration of residency. See Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 4, p. 298.
20. Which are security and the implementation of *Sharī'ah*.
21. Al-Tarīqī, *Al-Isti'anah, op. cit.*, pp. 172–173; Muhammad Abū Zahrah, *Al-'Ilāqāt al-Dawliyyah fi al-Islām (International Relationships in Islam)*, Cairo: Dār al-Fikr al-'Arabī, 1995, pp. 56–57; 'Abd al-Karīm, Zaydān, *Ahkām al-Dhimmiyyīn wa al-Musta'manīn fi Dār al-Islām (Rules Regarding Non-Muslim Subjects and Visitors in Muslim Territories)*, Beirut: Mu'assasah al-Risālah, 1988, pp. 17–18;

'Uthmān Juma'ah Damīriyyah, *Manhaj al-Islām fī al-Harb wa al-Salām (The Approach of War and Peace in Islam)*, Kuwait: Maktab Dār al-Arkām, 1982, p. 57; Al-Zuhaylī, *Āthār al-Harb*, *op. cit.*, pp. 176–177; Ibn Qayyim, *Ahkām Ahl al-Dhimmah*, *op. cit.*, Vol. 1, p. 268.

22. Al-Ţarīqī, *Al-Isti'ānah*, *op. cit.*, p. 173.
23. Al-Dasūqī, *Hāshiyah*, *op. cit.*, Vol. 2, p. 188.
24. Ibn Mufliḥ, *Al-Ādāb*, *op. cit.*, pp. 211–212.
25. Al-Sarakhsī, *Al-Mabsūt*, *op .cit.*, Vol. 14, p. 69; Muhammad bin Hasan Al-Shaybānī, *Sharh Kitāb al-Siyar al-Kabīr (Commentary on the Book of Major Expeditions)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1997, Vol. 4, p. 233; Al-Kasānī, *Al-Badā'i'*, *op. cit.*, Vol. 7, p. 80; Fakhr al-Dīn 'Uthmān bin 'Ali Al-Zaylā'ī, *Tabyīn al-Haqā'iq Sharh Kanz al-Daqā'iq (Elucidation of the Truths Commentary of the Treasure of The Fastidious)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 2000, Vol. 4, p. 472; 'Abd al-Rahmān bin Muhammad bin Sulaymān al-Kalūbī Shaykhay Zādah, *Majma' al-Anhār fī Sharh Multaqā al-Abhar (Unity of Rivers on the Commentary of Meeting of Seas)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1998, Vol. 3, pp. 127–128; Muhammad Amīn Ibn 'Ābidīn, *Hāshiyah Ibn 'Ābidīn 'ala Radd al-Muhtār 'ala al-Durr al-Mukhtār Sharh Tanwīr al-Absār (The Footnotes of Ibn Abidin on the Refutation of the Baffled on Chosen Pearls Commentary on the Enlightenment of the Sight)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1994, Vol. 7, pp. 422–423; Zayn al-Dīn bin Ibrāhīm bin Muhammad Ibn Nujaym, *Al-Bahr al-Rā'iq Sharh Kanz al-Daqā'iq* (*The Clear Sea Commentary on the Treasure of Precision*), Beirut: Dār al-Kutub al-'Ilmiyyah, 1997, Vol. 6, p. 226; Ibn al-Humām, *Fath al-Qadīr*, *op. cit.*, Vol. 7, p. 39; Al-'Aynī, *Al-Bināyah*, *op. cit.*, Vol. 8, p. 299.
26. Al-Sarakhsī, *Al-Mabsūt*, *op .cit.*, Vol. 14, p. 71; Al-Kasānī, *Al-Badā'i'*, *op. cit.*, Vol. 7, p. 80.
27. *Ibid*.
28. 'Alā' al-Dīn Abū al-Ĥasan 'Ali bin Sulaymān Al-Mardāwī, *Al-Insāf fī Ma'rifah al-Rājih min al-Khilāf 'alā Madhhab al-Imām Ahmad bin Hanbal (The Fairness in Knowing the Strongest Opinion in the School of Imam Ahmad)*, Beirut: Dār Ihyā' al-Turāth al-'Arabī and Mu'assasah al-Tārīkh al-'Arabī, n.d., Vol. 5, pp. 52–53; Abd al-Salām bin 'Abdullah bin al-Khiđr Majd al-Dīn Ibn Taymiyyah, *Al-Muharrar fī al-Fiqh 'ala Madhhab al-Imām Ahmad bin Hanbal (The Redacted in the Jurisprudence of Imam Ahmad)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1999, Vol. 1, p. 464; Ibn Muflih, *Al-Mubdi'*, *op. cit.*, Vol. 4, pp. 153–154.
29. Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, pp. 52–53; Majd al-Dīn Ibn Taymiyyah, *Al-Muharrar*, *op. cit.*, Vol. 1, pp. 464–465; Ibn Muflih, *Al-Mubdi'*, *op. cit.*, Vol. 4, pp. 153–154; Ibn Muflih, *Al-Furū'*, *op. cit.*, Vol. 4, p. 110.
30. Like al-Maymūnī.
31. Al-Mardāwī, '*Al-Insāf*, *op. cit.*, Vol. 5, pp. 52–53; Majd al-Dīn Ibn Taymiyyah, *Al-Muharrar*, *op. cit.*, Vol. 1, pp. 464–465; Ibn Muflih, *Al-Mubdi'*, *op. cit.*, Vol. 4, pp. 153–154; Ibn Muflih, *Al-Furū'*, *op. cit.*, Vol. 4, p. 110.
32. Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, p. 52. See also Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, p. 162.
33. Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, p. 52.
34. Majd al-Dīn Ibn Taymiyyah, *Al-Muharrar*, *op. cit.*, Vol. 1, pp. 464–465.
35. Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, p. 52.
36. Al-Shāfi'ī, *Al-Umm*, *op. cit.*, Vol. 8, p. 589; Al-Zaylā'ī, *Nasb al-Rāyah*, *op. cit.*, Vol. 4, p. 44; Al-Sarakhsī, *Al-Mabsūt*, *op. cit.*, Vol. 14, p. 69; Al-'Aynī, *Al-Bināyah*, *op. cit.*, Vol. 8, p. 299.
37. Ibn al-Humām, *Fath al-Qadīr*, *op. cit.*, Vol. 7, p. 39.
38. Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 9, p. 376.
39. Al-'Aynī, *Al-Bināyah*, *op. cit.*, Vol. 8, p. 299.
40. Al-Sarakhsī, *Al-Mabsūt*, *op. cit.*, Vol. 14, p. 69.
41. Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 9, p. 376.
42. Al-Sarakhsī, *Al-Mabsūt*, *op. cit.*, Vol. 14, p. 69.
43. Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, p. 163.
44. *Ibid*.
45. *Ibid*.
46. *Ibid*.
47. *Ibid*.
48. Qur'an 2:197.
49. Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, p. 163.
50. Ibn al-Humām, *Fath al-Qadīr*, *op. cit.*, Vol. 7, p. 37.
51. Al-Zaylā'ī, *Naşb al-Rāyah*, *op. cit.*, Vol. 4, p. 44.
52. Al-'Aynī, *Al-Bināyah*, *op. cit.*, Vol. 8, p. 299.

53. *Ibid.*, Al-Shāfi'ī, *Al-Umm*, *op. cit.*, Vol. 8, p. 589.
54. Al-'Aynī, *Al-Bināyah*, *op. cit.*, Vol. 8, p. 299.
55. *Ibid.*
56. Al-Sarakhsī, *Al-Mabsūt*, *op. cit.*, Vol. 14, p. 70; Al-Shaybānī, *Al-Siyar al-Kabīr*, *op. cit.*, Vol. 4, p. 234.
57. Abū al-Hasayn Muslim bin al-Hajjāj bin Muslim al-Nīsāpūrī, *Sahih Muslim* (in the *Mawsū'ah al-Hadīth al-Sharīf*), Riyad; Dār al-Sālām, 1999, p. 880, *Hadīth* No. 2950, Abū Dāwūd Sulaymān bin al-Ash'ath bin Isĥāq al-Sijistānī, *Sunan Abī Dāwūd* (in the *Mawsū'ah al-Ĥadīth al-Sharīf*), Riyad: Dār al-Sālām, 1999, p. 1363, *Hadīth* No. 1905.
58. Abū Ja'far Ahmad bin Muhammad bin Salamah al-Tahāwī, *Mashkil al-Āthār*, India: Majlis Dā'irah al-Ma'ārif al-Nižāmiyyah, 1914, Vol. 4, p. 244.
59. Abū Bakr Ahmad bin 'Ali al-Rāzī al-Jassās, *Kitāb Ahkām al-Qur'ān (The Rules of the Qur'an)*, Cairo: Dār al-Fikr Al-'Arabī, 1997, Vol. 1, p. 471.
60. Abū Bakr Aĥmad bin Ĥusayn bin 'Ali Al-Bayhaqī, *Al-Sunan al-Kubrā*, Lahore: Irdāra Ta'līfāt Isrāfiyyah, n.d., Vol. 9, pp. 106–107, see footnote.
61. Al-Sarakhsī, *Al-Mabsūţ*, *op. cit.*, Vol. 14, p. 70.
62. Abū Walīd Muhammad bin Ahmad bin Muhammad Ibn Rushd, *Al-Muqaddimāt al-Mumahidāt Li-Bayān Mā Iqtadathū Rusūm al-Mudawwanah Min al-Ahkām al-Shar'iyyāt Wa al-Tahsilāt al-Muhkamāt Li-Ummahāt Masāi'lihā al-Mushkilāt* (*A Smooth Introduction to the Explanation of the Implications of the Mudawwanah Regarding Legal Rulings and Clear Indisputable Positions Related to the Major Controversial Issues*) Beirut: Dār al-Kutub al-'Ilmiyyah, 2002, pp. 344–345.
63. Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 11, p. 140.
64. Muhammad Iyāz Muhammad Nayāz, *Al-Ahkām al-Muta'allaq bi Ikhtilāf al-Dārayn (Rules Related to a Difference of Abode)* (PhD thesis, University of Al-Azhar), p. 465.
65. *Ribā al-fadl* is a usurious contract that involves the exchange of commodities of the same type, but the loaner will repay more than the amount he borrowed.
66. Such as a person borrowing 100 *dirhams* with the agreement that he will pay back 130 *dirhams* in installments.
67. Nayāz, *Al-Ahkām al-Muta'allaq bi Ikhtilāf al-Dārayn*, *op. cit.*, p. 465.
68. Qur'an 2: 278–279.
69. Nayāz, *Al-Ahkām al-Mutallaq bi Ikhtilāf al-Dārayn*, *op. cit.*, p. 466.
70. Abū Ja'far Muhammad bin Jarīr al-Ţabarī, *Ĵāmi' al-Bayān 'an Ta'wīl Āī al-Qur'ān (A Compendium of Clarification about the Interpretation of the Veres of the Qur'an)*, Cairo: Musţafā al-Bābī al-Halabī & Sons, 1999, Vol. 3, p. 107; Al-Sarakhsī, *Al-Mabsūţ*, *op. cit.*, Vol. 14, p. 72.
71. Salāh al-Sāwī, *Waqafāt Hādiyah ma' Fatwā Ibāhah al-Qurūđ al-Ribawiyyah li-Tamwīl Shirā' al-Masākin fī al-Mujtama'āt al-Gharbiyyah (A Calm Response to the Fatwa Permitting Usurious Loans to Finance House Purchase in Western Societies)*, Ann Arbor, MI: Islamic Assembly of North America, 2000, p. 9, 'Ali Ahmad al-Sālūs, *Fiqh al-Bay' wa al-Istīthāq wa al-Tatbīq al-Mu'āsir*, Beirut: Maktabah Dār al-Qur'ān, 2006, p. 956.
72. *Ibid.*
73. Al-Sālūs, *Fiqh al-Bay'*, *op. cit.*, pp. 954–955.
74. Al-Sāwī, *Fatwā Ibāhah*, *op. cit.*, p. 9; Al-Sālūs, *Fiqh al-Bay'*, *op. cit.*, p. 956.
75. Al-Zuhaylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, pp. 55–56.
76. Al-Sālūs, *Fiqh al-Bay'*, *op. cit.*, p. 960.
77. Al-Sāwī, *Fatwā Ibāhah*, *op. cit.*, pp. 94–95, 107–108.
78. *Ibid.*, pp. 94–95.
79. *Ibid.*, pp. 107–108.
80. *Ibid.*, pp. 95–96.
81. *Ibid.*
82. *Ibid.*, p. 108.
83. Zayn al-Dīn bin Ibrāhīm bin Muhammad Ibn Nujaym, *Al-Ashbāh wa al-Nāzāi'r 'alā Madhhab Abī Hanīfah al-Nu'mān (Miscellaneous and Multiple Issues in the School of Abu Hanifa)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1999, p. 73.
84. *Ibid.*
85. *Ibid*, p. 78, Jalāl ad-Dīn 'Abdur Rahmān bin Abū Bakr al-Suyūtī, *Al-Ashbāh wa al-Nazā'ir fī Qawā'id wa farū' Fiqh al-Shāfi'iyyah (Miscellaneous and Multiple Issues in the Fundamental and Sub-Fundamentals of the Shafi'i School)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 1998, Vol. 1, p. 190.
86. Al-Sāwī, *Fatwā Ibāhah*, *op. cit.*, pp. 94–96, 107–111.
87. Qur'an, 2:185, 5:6.

88. Al-Sāwī, *Fatwā Ibāhah*, *op. cit.*, p. 95.
89. *Ibid.*, p. 42.
90. *Ibid.*, pp. 109–110.
91. Ibn al-Humām, *Fath al-Qadīr*, *op. cit.*, Vol. 7, p. 39.
92. *Ibid.*, p. 45.
93. Rent, hire or employment.
94. *Ja'alah* is a contract in which the entitlement to wage depends on the completion of the task.
95. *Hawalah* is a transfer of debt from one person's responsibility to another's.
96. Al-Suyūtī, *Al-Ashbāh*, *op. cit.*, Vol. 1, p. 190.
97. Al-Ṣāwī, *Fatwā Ibāhah*, *op. cit.*, p. 110.
98. *Ibid.*
99. Keller, *Reliance of the Traveller*, *op. cit.*, pp. 943–947.
100. *Ibid.*
101. *Ibid.*
102. *Ibid.*
103. Keller, *Reliance of the Traveller*, *op. cit.*, pp. 943–947; Al-Zuhaylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, pp. 55–56, 255.
104. Keller, *Reliance of the Traveller*, *op. cit.*, pp. 943–947.
105. Al-Zuhaylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, p. 254.
106. *Ibid*, p. 255.
107. Al-Bukhārī, *Sahih al-Bukhārī*, *op. cit.*, p. 611, *Hadīth* No. 7352: Muslim, *Sahih Muslim*, *op. cit.*, p. 982, *Hadīth* No. 4487.
108. Al-Sālūs, *Fiqh al-Bay'*, *op. cit.*, p. 958.
109. Sahnūn, *Al-Mudawwanah*, *op. cit.*, Vol. 3, pp. 294–295; Al-Majājī, *Ahkām 'Aqd al-Bay'*, *op. cit.*, pp. 167–168; Al-Shāfi'ī, *Al-Umm*, *op. cit.*, Vol. 8, p. 589; Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 9, p. 375; Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, p. 162; Ibn Muflih, *Al-Mubdi'*, *op. cit.*, Vol. 4, pp. 153–154; Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, pp. 52–53; Ibn Mufliĥ, *Al-Furū'*, *op. cit.*, Vol. 4, p. 110; Al-Tarīqī, *Al-Isti'ānah*, *op. cit.*, pp. 179–180; Fattānī, *Ikhtilāf al-Dārayn*, *op. cit.*, pp. 392–394; Al-Kasānī, *Al-Badā'i'*, *op. cit.*, Vol. 7, p. 80; Shaykhay Zādah, *Majma' al-Anhār*, *op. cit.*, Vol. 3, pp. 127–128; Al-Zaylā'ī, *Tabyīn al-Haqā'iq*, *op. cit.*, Vol. 4, p. 472; Ibn 'Ābidīn, *Hāshiyah*, *op. cit.*, Vol. 7, pp. 422–423; Ibn Nujaym, *Al-Bahr al-Rā'iq*, *op. cit.*, Vol. 6, p. 226; Ibn al-Humām, *Fath al-Qadīr*, *op. cit.*, Vol. 7, p. 39; Al-'Aynī, *Al-Bināyah*, *op. cit.*, Vol. 8, p. 299.
110. "O you who believe! Fear Allah and forego the interest that is owed to you if you are true believers. And if you do not then take heed to the war with Allah and His Messenger ….", Qur'an 2: 278–279.
111. Fattānī, *Ikhtilāf al-Dārayn*, *op. cit.*, p. 383; Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 9, p. 375; Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, pp. 162–163.
112. Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, pp. 162–163.
113. *Ibid.*
114. Al-Shāfi'ī, *Al-Umm*, *op. cit.*, Vol. 8, p. 589; Nayāz, *Al-Ahkām al-Mutallaq bi Ikhtilāf al-Dārayn*, *op. cit.*, p. 460; Ibn Qudāmah, *Al-Mughnī*, *op. cit.*, Vol. 4, pp. 162–163.
115. Al-Shāfi'ī, *Al-Umm*, *op. cit.*, Vol. 8, p. 589.
116. Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 9, p. 376.
117. Al-'Āmilī, *Al-Rawdah al-Bahiyyah*, Vol. 1, p. 320; Al-Tūsī, *Al-Nihāyah*, p. 376 (quoted via: Nayāz, *Al-Ahkām al-Mutallaq bi Ikhtilāf al-Dārayn*, *op. cit.*, p. 456).
118. Al-Tūsī, *Al-Nihāyah*, p. 376 (quoted via: Fattānī, *Ikhtilāf al-Dārayn*, *op. cit.*, p. 381).
119. Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, pp. 52–53; Majd al-Dīn Ibn Taymiyyah, *Al-Muharrar*, *op. cit.*, Vol. 1, pp. 464–465: Ibn Muflih, *Al-Mubdi'*, *op. cit.*, Vol. 4, pp. 153–154.
120. *Kitāb al-Istibsār fimā ikhtalafa min al-Akhbār li al-Ţusī*, Vol. 3, pp. 70–71 (quoted via: Fattānī, *Ikhtilāf al-Dārayn*, *op. cit.*, p. 381).
121. Fattānī, *Ikhtilāf al-Dārayn*, *op. cit.*, p. 382.
122. *Ibid.*
123. Fadl Ilāhī, *Al-Tadbīr al-Wāqqiyah min al-Ribā*, Riyadh: Maktabah al-Mu'iyyadah, 1991, p. 75/footnote 1.
124. *Ibid.*
125. Al-Zuhāylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, pp. 254–255.
126. Faḍl Ilāhī, *Al-Tadābīr*, *op. cit.*, p. 78.
127. Al-Zuhāylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, p. 55.

128. Yūsuf al-Qardāwī, *Fatāwā Mu'āsarah (Contemporary Fatwas)*, Kuwait: Dār al-Qalam, 2000, Vol. 2, pp. 450–451.
129. Al-Zuhāylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, p. 55; Al-Qarḍāwī, *Fatawā Mu'āsarah*, *op. cit.*, Vol. 2, pp. 450–451.
130. *Ibid*.
131. Al-Zuhāylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, p. 55.
132. Al-Qardāwī, *Fatawā Mu'āsarah*, *op. cit.*, Vol. 2, p. 451.
133. Al-Zuhāylī, *Al-Mu'āmalāt al-Māliyyah*, *op. cit.*, p. 55; Al-Qardāwī, *Fatawā Mu'āsarah*, *op. cit.*, Vol. 2, pp. 450–451.
134. These are strict or unmodified laws which remain in their original rigor due to the absence of mitigating factors.
135. Parray, "The Legal Methodology of *Fiqh al-Aqalliyat* and Its Critics: An Analytical Study", *op. cit.*, p. 104.
136. Such as *ribā* between the master and the slave, and a husband and wife. See Ibn al-Humām, *Fath al-Qadīr*, *op. cit.*, Vol. 7, p. 38: Al-Mardāwī, *Al-Insāf*, *op. cit.*, Vol. 5, p. 53; Al-Nawawī, *Al-Majmū'*, *op. cit.*, Vol. 9, p. 375.
137. Ahmad bin Muhammad bin Ishāq al-Shāshī, *Usūl al-Shāshī (The Principles of al-Shashi)*, Beirut: Dār al-Kutub al-'Ilmiyyah, 2007, pp. 14–26.