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## Consideration of *Mithliyy* and *Qīmiyy* in Debt Service under the Islamic Law of Contract

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### Abstract

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In order to satisfactorily discharge a financial obligation, Islamic finance prescribes similar for similar or equal for equal (*mithliyy bi mithliyy*), unless where similar becomes impossible or unobtainable, then the resort is made to worth or value (*qīmah*). However, opinions of the jurists differ as to determination, identification or verification precisely of what is *mithliyy*, which may affect the actualisation of debt settlement and make it ambiguous. In this situation, the substitution of *qīmiyy* for *mithliyy* becomes inevitable. In doing so, fear of falling into *riba* or causing injury to either debtor or creditor arises, particularly where rebatable (*usurious*) items such as gold and silver (*dhahb wa fiḍḍah*), currencies (*nuqūd*), animal (*ḥayawān*) are involved. This paper, therefore, studied scholarly opinions about the identification of "similar items" (*mithliyyāt*) and "valued items" (*muqawwamāt*). It used primary and secondary sources of Sharī'ah. Fiqh manuals, books of *tafsīr*, *ḥadīth* and relevant periodicals and articles were consulted. The study revealed that parties face difficulties in actualising similarity while settling financial obligations. Therefore, the paper suggested the inclusion of a "statement of similar or worth property" while making a financial agreement.

**Keywords:** *Gold and Silver, Debt Service, Similar Item, Valued Item, Financial Obligation.*

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## I. Introduction

It is settled that individuals, corporate as well as government, need funds for business, human, physical and infrastructural developments. There are different ways through which funds could be raised to meet individual and organisational needs and funding requirements. Raising loans is one of the various ways these requirements can be fulfilled. In the terminology of the Islamic framework, *qarḍ* and *dayn* relate to giving or taking loans. However, the word *dayn* has a broader connotation than the word *qarḍ*. *Dayn* occurs in any way which leaves a debt as a liability to another party to be paid later without any profit over the principal amounts. *Dayn* is the result of any contract or credit transaction, while *qarḍ* could be defined as an interest-free loan for needy borrowers extended on a goodwill basis. Therefore, debt servicing in this study covers loan (*qarḍ*), debt (*dayn*), commitment (*iltizām*), obligation (*wājib*) and liability (*dhimmah*).

It is settled in Islamic transaction law that debt ought to be returned without any profit over the principal amount. Islamic banks, for example, can neither pay interest nor charge any return on loans. Doing otherwise would amount to *riba* (unjustifiable interest). However, the similarity in a particular change by appreciation, devaluation or extinction usually affects the lender and the borrower because the liability of the debtor (*dhimmatu al-madīn*) shall remain undischarged until he or she has satisfactorily settled his or her commitment (*iltizām*) or liability (*dayn*) or obligation (*wājib*) in description (*waṣf*) and value (*qīmah*). Consequently, the law prescribes similar for similar (*mithliyy bi mithliyy*), while substitution for worth or value is only considered where actualisation of similarity becomes unattainable. Nevertheless, identifying what a similar item is and what is a valued item becomes contentious among the jurists.

In this paper, the opinions of *fiqh* schools are studied with regard to the settlement of financial obligations, identification of similar items and valued items. Primary and secondary sources of Shari'ah such as *fiqh* manuals, books on *tafsīr*, books on *ḥadīth* and its commentary and other relevant references are consulted. After this introduction, the methodology follows then a literature review in which the paper defines relevant terms in financial obligations such as loan (*qarḍ*), debt (*dayn*), and advance payment (*salaf wa salam*). Section three discussed the prohibition of interest (*tahrīmu ar-riba*) and discharge or repayment of financial obligation (*wafā'u ad-dayn*), respectively. The concept of similar and worth properties (*mithliyy wa qīmiyy*), its legal implication as well as determinate and indeterminate properties were discussed. Section four concluded the paper with a summary, conclusion and recommendations.

## II. Methodology

The study employed both quantitative and qualitative research designs. The latter method is employed to review the existing literature from all relevant sources such as journals, magazines and textbooks. It used primary and secondary sources of Shari'ah. *Fiqh* manuals, books of *tafsīr*, *ḥadīth* and relevant periodicals and articles were consulted.

### III. Literature Review

#### 3.1. Definition of Term

This section defines relevant terms to financial obligations such as *qarḍ*, *dayn*, *salaf*, *salam*, *bay'umu'ajjal*, *mahrmu'ajjal*, among others. Literally, *qarḍ* is an Arabic word from the source "*qaraḍa ash-shay*", "*yaqriḍuhu*", "*idhaqata'ahu*", meaning "to cut off something", because the creditor cuts off part of his money for the borrower. It is therefore called *qarḍ* because, through this contract, a certain part of the lender's property is cut off and given to a borrower. (al-Qayrawani with al-Abi 1432/2011). *Qarḍ* is also defined as a gratuitous contract in which a lender gives a certain homogeneous (*mithliy*) property to a borrower on the condition that the latter is responsible for returning a similar property (*badalah*) to the lender immediately when due and/or upon demand. Its effect is to unconditionally transfer the ownership of the loaned property to the borrower. In other words, *qarḍ* is: "giving out a similar or quantifiable property to a beneficiary, who shall return its equivalent". He pays the same back at a fixed future date without increment. In fact, *qarḍ* consists of giving ownership of anything having value for the benefit of another by way of virtue. The ownership of the loaned objects is transferred to the borrower, who can use, buy, sell, or donate them as the borrower wishes. (Ministry of Endowment and Islamic Affairs, Kuwait, [1420/2000]).

*Qarḍ* is only applied when one is obliged to return the equivalent of the thing taken and repayment for the same amount taken. Goods of the same kind will be paid back on demand or at the agreed time. *Qarḍ* should not bring any return or addition to the lender because that would be equivalent to taking *riba* (Qurtubīy M. A. 1384 AH/1964). Although a borrower can pay more than the amount borrowed (on his own accord), it must not be stipulated in the contract (ibid). Further, the date of payment of the loan may or may not be included in the *qarḍ* contract as the lender can demand repayment at any time. Also, the loan should not be conditional upon any other contract, such as *bay'u* and vice-versa (ibid). On the authority of the Qur'ān, Chapter 2, Verse 282, it is strongly recommended to write down the loan contract even if it occurs between a father and his son, husband and his wife, etc.

It could therefore be summed up that the difference between *al-qarḍ* and *al-'āriyah* is that, in *al-qarḍ*, similar property (*al-badal*) is returned, while in *al-'āriyah*, the same loaned commodity (*'ayn*) is returned.

The act of giving a loan or lending (*al-iqrāḍ*), is a highly recommended act (*mandūb*). It is a rewarding benevolence, kindness and humanity act. It is a benevolent financing loan that does not promise excess or profit to the lender. Although *al-lqrāḍ* is generally recommended (*mandūb*), it may become mandatory (*wājib*) when the need of the borrower or debtor cannot be settled except through lending, and it does not harm the lender or creditor directly or indirectly. Likewise, *al-lqrāḍ* shall become *muḥarram* when it is for an unlawful purpose.

On the other hand, *dayn* is the result of any contract or credit transaction. Debt arises from borrowing money (*daynu qarḍ*) or from the sale (*daynu bay'u*) (Ministry of Endowment and Islamic Affairs, Kuwait, [1420/2000]). For instance, a creditor sold his property to the debtor for deferred payment for a particular period. This enables the creditor to claim ownership of the debtor's property to the extent of the debtor's indebtedness after the time expires (Ministry of Endowment and Islamic Affairs, Kuwait, [1420/2000]). In addition, debt arises from the deferred bridal gift (*mahr*), considered the most powerful debt, as it is removed from the estate of a deceased Muslim before its distribution (Abozaid, Abdulazeem, 2019). A created debt ought to be paid back without any profit over its principal. If someone forcefully takes possession of the property of another person (*ghaṣb*), the usurper is duty-bound to return a similar item or property he has snatched or seized.

*Salaf* is another form of *dayn* that is similar to *salam*. It is used for a loan of fixed tenure, and in that sense, it is closer to *dayn*. *Salaf* includes loans for short, intermediate and long-term loans, and the price of the commodity is paid in advance while it is delivered at a future date. The amount given as *salaf* cannot be called back before its due date. Therefore, it creates a liability for the seller to supply the commodity in the future.

### 3.2. Prohibition of Interest [*Tahrīmu ar-Riba*]

Technically, *riba* is defined as "an increase in one or two homogeneous equivalents being exchanged without this increase being accompanied by a return" (Ashafa, 2021). It is also seen as the surplus income received by a lender over and above the principal as a reward for writing or parting with the liquid part of his capital for a specific period. Qutb (1999) views *riba* as the exaction of a charge over and above money owed, which is usually paid out of the sweat and blood of the borrower regardless of whether he profits as a result of the loan or not. The prohibition of *riba* is sufficiently discussed in both the Qur'an and the Sunnah of Prophet Muhammad (s.a.w.). For instance, Allah forbids the practice of engaging in *riba* when in the Qur'an, He states that "And their taking of *riba* though indeed they were forbidden from it and they are devouring the property of people falsely..." (Qur'an 4: 161). Apart from this, many other verses, as would be mentioned later, express unequivocal condemnation of *riba*. It is equally explicated in the Sunnah of the Prophet. In a narration, Abdullah ibn Jabir (r.a.) reported that "The Prophet of Allah (s.a.w.) cursed the eater of *riba* and the one who pays it, the secretary or scribe and those give witness to it" (Bukhari M. I. 1422, Muslim ibn Hajaj (nd)). In his comment on this narration, Uthaymeen (2004) posits that anyone who pays *riba* is cursed for aiding his oppressor to oppress him successfully.

Among major settled validity conditions of *qarḍ* in law is that a loan (*qarḍ*) must not contain any predetermined interest or increment, nor shall it contain a condition that can generate *riba* (interest or usury). *Riba* (interest) is an unjustifiable preconditioned extra money that one pays if he has borrowed money (Ibn al-Arabi al-Maliki 1424/2003). The majority of Muslim jurists consider the practices of conventional banks nowadays by giving loans, either bridging loans or soft loans with interest, as actually *riba*. Both consumption and the developmental loan must not contain interest. *Qarḍ* is not for material profit but for moral and religious profit (Qurtubī M. A. 1420/2000).

Islamic law has prohibited usury (*riba*) but allowed interest-free loans (*qarḍun hassan*) to help a person who requires cash. The law equally prohibits exploitation, and it instead recommends helping one another in all ramifications as long as it does not involve any unrighteous act. Provision of cash to a person in need is praiseworthy and recommended (*mandūb*) act for which a Muslim is rewarded by the Lawgiver (See Qur'ān 2: 245, Qur'ān 5: 2, 12, Qur'ān 57: 11, 18, Qur'ān 64: 17 and Qur'ān 73: 20).

Spending on the cause of Allah is called metaphorically “a beautiful loan”. It is excellent in many ways: (1) it shows a beautiful spirit of self-denial; (2) in other loans, there may be a doubt as to the safety of your capital or any return thereon, here you give the Lord of All, in Whose Hands are the keys of want or plenty; giving, you may have manifold blessings, and withholding, you may even lose what you have. If we remember that our goal is Allah, can we turn away from His cause? (Yusuf Ali, 1405).

There are a plethora of traditions of the Prophet (s.a.w.) that corroborate Qur'ānic injunctions regarding giving assistance to fellow human beings in times of distress, agony and need. The Messenger of Allah (s.a.w.) has also called *qarḍun hassan* a gift. The gratuitous nature of the loan contract is established by *aḥādīth*, which has promised rewards to the lender. Ibn Mas'ud (r.a.) reported that the Apostle of Allah (s.a.w.) said (interpretation): “A Muslim shall never lend another Muslim twice, except surely, one shall be considered a charity for him” (Ibn Mājah, M. Y. (nd), Albani 1405/1985) graded the *ḥadīth sahih* in *Irwa'il-Ghalil fi Taakhrij Aḥādīth Manaris-Sabiil*. The authentication was corroborated by Albāniy M.N, (5th edition) in *Sahīhu Targhībwat-Tarhīb, Sahihul-Jami'u As-Saghir*, al-Maktabatul-Islami, (nd).

Also, Anas ibn Malik (r.a.) said: the Messenger of Allah (s.a.w.) said (interpretation): “In the night journey, I saw on the gate of heaven written, ‘reward for *ṣadaqah* is ten times and reward for *qarḍ* is eighteen times.’ So, I asked the angel, how is it possible? The angel replied: ‘Because a beggar who asked had already had something, but a borrower did not ask for the loan unless he was in need’” (Ibn Mājah, nd.). Albani authenticated the *ḥadīth* in his *Sahihut-Tarqhib wat-Tarhib*, Riyadh, 5th edition (nd).

In another *ḥadīth* reported by Abu Hurayrah (r.a.), the Prophet (s.a.w.) said (interpretation): “Whoever relieves a believer from difficulty in this world, Allah will relieve him from his difficulty, and Allah (s.w.t.) will facilitate him in this world and the hereafter. And whoever relieves a needy Allah will relieve him here in the hereafter. Whoever covers a Muslim, Allah will cover him here in the hereafter. Allah will not cease to support a servant as long as the servant supports his fellow brother” (Muslim ibn Hajaj (nd)).

Scholars, therefore, view that lending is regarded preferable to *ṣadaqah* (charity), the reason being that only needy person borrows. An individual borrows a certain amount of money from a creditor and undertakes to return the same amount to him at a future date, while the creditor does not charge interest on the principal because those who charge *riba* are compared in Qur'ān to those controlled by the devil's influence (Qur'ān 2: 275). Hence, since Islamic banks, organisations, as well as individuals, can neither pay interest nor

charge any return on loans, then how, at least, can they secure the original value of their money?

Among possible options is encouraging the borrower to pay more than the amount borrowed, but it must not be stipulated in the contract. This is known as good payback "*ḥusnul-qadā*" in a *ḥadīth* reported by Abdullahi ibn 'Amri bn al-Āṣ (r.a.) (Abu Dāud Sulaiman S. (nd), Ad-Daruqutuni (1424/2004). Albani M. N., (1405/1985) authenticated the *ḥadīth* in *Irwaul-Ghalili fi Takhriji Aḥadīth Manaris-Sabil*. It should be noted that the actual forbidden interest is unjustifiable preconditioned interest. However, if the beneficiary has comfortably, pleasantly and delightfully decided to offer an excess either in cash, kind, moral or any other forms without prior condition from the creditor, either expressly or impliedly, it is not only allowed but also encouraged (Ibnal-Arabi al-Maliki (1424/2003). This is regarded as good payback from him on the authority of *ḥadīth*. Abu Hurayrah (r.a.) said: that the Messenger of Allah (s.a.w.) therein said: "The best among you is one who pays back the best" (Bukhāri M. I. 1422, and Muslim ibn Hajaj (nd). Similarly, Abu Raf'i (r.a.) reported that the Messenger of Allah (s.a.w.) said: "Give that to him for the best of the people is the best in paying back the debt" (Muslim ibn Hajaj (nd). It is, therefore, established from the tradition that pays better than the debt when it is not pre-stipulated but willingly by the debtor as an expression of profound gratitude to the creditor is allowed and commended.

### 3.3. Discharge or Repayment of Debt or Obligation [*Wafā'u ad-Dayn aw al-Wājib*]

When the contract of loan or debt is processed by parties, three thoughts arise. First, the creditor aims at making a profit from his or her money by adding certain interest. Second, the creditor collects back the same amount or value lent to the debtor. The third thought is where the creditor disagrees with the debtor as to whether a particular property is similar to the subject matter of the obligation. The first scenario was considered a usurious contract in Islamic law because Islamic law recommends that all financial transactions must be asset-backed. In other words, making money or profit out of money, i.e., currency (*naqd*), is not acceptable in the Islamic Law of Transaction. The creditor or Islamic bank cannot make money with money because, under Sharī'ah, money is only a means of sustenance (*qiyamu al-ḥayāt*) and medium of exchange (*qiyamu al-mutlafāt*), as well as a way of defining the value of something, but it has no value in itself. Therefore, money is not allowed to generate more money by being put in a bank or lent to someone else. It was, therefore, unequivocally condemned on the ground that money itself is not a commodity (Qurtubīy M. A. 1384AH/1964). A second scenario is a compliant form of loan, which is termed "*qarḍ ḥasan*," i.e., an interest-free loan. The third scenario arises where the creditor is ready to help the borrower but wishes not to be affected as a result of change or extinction of a similar item in the market or sudden or recurrent depreciation of the real value of the subject matter. This discussion concerns itself with the third circumstance since the first is clearly a prohibited contract (*ḥarām bayyin*), the second is apparently a permitted and recommended contract (*ḥalāl bayyin*), the third case constitutes an ambiguity case (*amrun mutashābih*). Hence, it formulates a research question thus: "Would stipulating substitution of "equivalent value" for "similar item" of debt be valid according to Islamic law?" The paper hence analyses the concept of *mithliyy* and *qīmiyy* as regards the settlement of financial

obligations such as loan (*qard*) and debt (*dayn*) from the Sharī'ah perspective.

*Dayn* can be either monetary or a commodity, i.e., food or metal. When the debt is due for payment at the expiration of the deadline time, the debtor (*al-muqtarid*) is liable to pay back the loan, debt or obligation similar property for similar property (*al-mithfi al-mithliyyāt*), and value or worth for quantifiable property (*al-qīmah fil-mutaqawwimāt*) (Qurtubīy M. A.1384AH/1964). See also Ministry of Endowment and Islamic Affairs, Kuwait, (1420/2000).

Property is generally classified into movable and non-movable properties (*amwālun manqūlatun waghyaru manqulatin aw thābitah*). Movable property is further classified into similar items (*mithliyyāt*) and valued items (*muqawwamāt*) (Al-Khirashiy (n.d.)). It is settled in law that the discharge of debt, obligation, liability and other financial promise must be similar for similar (*mithliyy bi mithliyy*) (Al-Khirashiy (n.d.)) and mithliyy is either debt (*duyun*) or personal property (*'urūd*) (Ministry of Endowment and Islamic Affairs, Kuwait, op. cit.)

The debtor (*madīn*) is liable to return *badal* (substitute) of the loaned property, not the property itself. The substitute may be similar property (*mithliyy*) if the loaned property is mithliyy, or value/worth (*qīmah*) if the loaned property is *qīmiyy* or *muqawwam* (Committee of Scholars and Jurists nd., and Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000). Al-mithliyy is any property that can be determined through weight (*wazn*), measurement (*kayl*), distance (*dhar'u*), or counting (*'adad*). An example of mithliyy is *ṣā'ul-burr bi ṣā'il-burr*; i.e., "a measure of wheat for a measure of wheat", or 10kg of rice for 10kg of rice. An example of *qīmiyy* is ten *darāhim* for ten *darāhim*. (Committee of Scholars and Jurists (nd.) and Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000).

In *fiqh*, issues of *mithliyy* and *qīmiyy* arise in many cases like marriage (*nikāḥ*) as regards bridal gift (*mahr*), forcefully taking possession of the property of another (*ghaṣb*), entitlement (*istiḥqāq*), right of preemption (*shuf'ah*), rent or lease (*ijarāh*) (Al-Khirashiynd). In the contract of *tawliyah* sale (which is release or sale at cost price, where the cost of production was considered without any addition or profit) the jurists stipulated that consideration must be mithliyy either measurable (*maqīlāt*) or weighted (*mawzū'at*) or approximated countable (*ma'dūdāt*) (Committee of Scholars and Jurists nd, and Ministry of Endowment and Islamic Affairs, Kuwait (1420/2000), likewise the salam contract (advance payment). In tortuous liability, the jurists stipulated that the usurper is liable to return the real property if it exists. Otherwise, similar must be returned, and value where similar becomes inevitable (Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000). The majority of the jurists stipulated that capital of partnership (*sharikah*) must be similar property, not articles of trade (*'urūd*). However, the Shafi'i jurists allow articles of trade to form the capital of the partnership. This is also an opinion in the Hanafi and Maliki Schools (Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000).

### 3.4. Concept of Similar and Worth Property [*Mithliyy wa Qīmiyy*]

*Al-mithliyy* is characterised by the fact that its particular is not intended. Rather it is similar, while *qīmiyy* is intended in *qīmiyy* (Al-Khirashiy, nd., Ministry of Endowment and Islamic

Affairs, Kuwait, 1420/2000). *Al-Qīmiyy* is characterised by any object or item that is prone to change in nature or value or both. Examples are animals of different categories or different families like horses, camels, cows or sheep or goats. Also, is landed property, estate, house, and handicrafts like jewelry, utensils and other domestic items that are characterised by variation in its kind, description, composition, and each type possesses a feature that makes it distinct in nature and value from other (Ibid).

*Al-Mālu al-Mithliyy* (similar or homogeneous property) is such property that has the same partner in the market without obvious disparity in its components or in its units. An article or object is said to belong to the class of similar or family if the like of it can be had in the market without there being an obvious difference between the two as people are apt to take into account their dealings (Al-Khirashiy nd., Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000). Similar properties (*mālun mithliyun*) are four in category:

1. *makīlāt*; i.e., measurable items, things which are sold ordinarily by measurement of capacities like wheat and barley etc.;
2. *mawzū'āt*, i.e., weighed items, things that are ordinarily sold by measurement of weight, like gold, silver, cotton, iron etc.;
3. *'adadiyyāht*, i.e., numerical items with close volume, these are things which are sold by count, like fruits, walnut, eggs etc.;
4. *madhrū'āt*, i.e., measurable items by meter with close size, these are things which are sold by estimation via linear measurements, like a yard of clothes, woods etc. (Az-Zuhayli Wahbah (nd), and Bambale Y. Y. (2007)).

By implication, a similar property could be ordinarily sold by weight, measure, capacity or counting, such as gold, silver, grain, oil, wheat, barley, clothe and the likes. All articles or things that are of the same nature as *makīlat*, *mawzū'at*, *adadiyyat* and *madhrū'at* are comprehensively known as "*muqaddarāt*", while gold and silver are called "*nuqūd*," i.e., money. There are other articles in the category of movables known as "*urūd*," i.e., goods, such as articles of furniture or animals (Committee of Scholars and Jurists (nd.) and Bambale Y. Y., 2007).

Secondly, *mālun qīmiyun* (quantifiable property) is the one that has no similar, or it has similar with clear dissimilarity (Committee of Scholars and Jurists, (nd.) and Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000). Things or articles such as land, houses, animals, furniture, clothes and the likes which are not available in the market or available but with obvious difference among them as people would take into account in fixing the price.

The jurists identify the following as examples of similar items (*mithliyyāt*), water (*māu'*), books (*kutub*), currencies (*nuqūd*), grains (*ḥubūb*), fruits (*thimār*), flour or meal (*daqīq*), clothes (*thiyāb*), cotton (*qutn*), flax or linen (*kuttaā*), iron (*ḥadīd*), lead or heavy metal (*raṣās*), medicine (*adwiyah*), coconut or walnut (*jawz*), egg (*bayḍ*) (Al-Khirashiy nd., Az-Zuhayli Wahbah (nd). Examples of valued or worth property (*muqawwamāt*) include landed property (*'aqqār*). (Al-Khirashiy, nd.).



It should be noted that similar properties can change to quantifiable and verse versa. Examples are where similar is exhausted in the market; where two similar unidentifiable items of different kinds are mixed, like wheat and barley, etc., where the nature of similar worth of property changes before the obligation is due for settlement, a dispute usually arises. Also, it is noteworthy that *al-mālu al-mutaqawwam* is more general because it covers both *mithliyy* and *qīmiyy*.

### 3.5. Legal Benefit of this Classification

Among the legal benefits of this classification is that *mālun mithliyyun* can become a liability and debt. In other words, someone can borrow *mālun mithliyyun*, and it can be exchanged and used as a price for other property, unlike *māluun qīmiyyun*. *Riba* does not occur in *māluun qīmiyyun*, unlike *mithliyyun*. In other words, equality is not a condition in exchanging *qīmiyy* for *qīmiyy*, unlike *mithliyy* for *mithliyy* (Az-Zuhayli Wahbah (nd)).

### 3.6. 'Ayn [Determinate or Specific Property] and Dayn [Indeterminate or Non-Specific]

The principal distinguishing factor under this rubric is whether when a man is indebted (in property) to another either through *i'ārah* (borrowed it from him) or *ghaṣb* (taken by force), must he recover it in specie or not? If he is, then is it called '*ayn* (specific or determinate), and if he is not, is it called *dayn* (non-specific or indeterminate)?

It should be noted that *mithliyy* (articles of a class of similar property) cannot, as a rule, be recovered specifically and are thus regarded as *dayn* or indeterminate property. Hence, gold and silver in the shape of coins or otherwise, grain, oil and the likes are *dayn* or indeterminate properties. For instance, if X lent Y the sum of N10,000 of N1,000 denomination, X is not entitled to request Y for the identical N1,000 denomination lent by him. But similar in value should be made determinate by specification, as in the case of 10 bags of wheat being sold, the wheat would then become determinate and capable of specific recovery (Bambale Y. Y. 2007).

Identification of *mithliyy* and *qīmiyy* is necessary for the determination of indemnity or liability for destruction. If someone damages "*mālun mutaqqawwaman*" he is obligated to pay back the similar item if it is similar (*mithliyy*) or its value if it is non-quantifiable (*ghayru mithliyy*) (Al-Qayrawani in al-Abiy (1432/2011), Al-'Uthaimin, M. S. (1433 AH).

The Maliki jurists' consideration of animal as a *mithliyy* property is correct (Al-Qayrawani in al-Abiy (1432/2011), Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000), on the authority of ḥadīth which reported that the Messenger of Allah (s.a.w.) paid back *khiyāran rubā'īyan* "better camels above the age of six", for *bakran* "a young camel less than six years". (Muslim ibn Hajaj (nd)).

Also, when a lad brought food to the Prophet (s.a.w.) when he was with one of his wives, the hosting wife hit the hand of the lad so that the dish broke and the food was destroyed. The Prophet (s.a.w.) held that: "*Ta'āmun bi ta'āmi wainā'un bi inā'in*"; i.e., "meal for meal and bawl for bawl" (at-Tirmidhiy Abū'Isa, (1395/1975). Imam at-Tirmidhiy said: it is good and

sound ḥadīth (ḥasanun sahihun). Albani M. N. has also authenticated the ḥadīth in *Ghayatul-Maram fi Takhriji Aḥadīthl-Halāli wal-Harāmi* (1405).

In the above two quoted ḥadīth, the Messenger of Allah (s.a.w.) considered animal (*ḥayawān*), meal and bawl as similar properties (*mālun mithliyy*). It, therefore, follows that animals can be loaned or borrowed. Repayment of animals would also be in a similar form. Also, it is inferred that “handicraft” (*ṣinā'at*) does not remove a property from being a similar property as it was opined by the Hambalis and Malikis in minor handicraft (Al-Khirashiynd., Committee of Scholars, nd. and Jurists nd., Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000, and Az-Zuhayli Wahbah (nd). Based on this summation, if someone destroyed an animal or a dish, he or she is liable to pay back a similar, not the worth. Generally, it was established that *al-qīmah* is considered only when *al-milth* is unattainable. In other words, *al-mithliyy* is considered primary. According to the law, *al-qīmah* is only considered when *al-mithliyy* is unattainable. A legal maxim says: “*Idha ta'āraḍa al-aṣlu rūji'a ila al-badal*”; i.e., “When the original becomes impossible, substitute is considered” (Al-'Uthaimin, M. S. 1433). The impossibility of the original may occur due to many factors such as (al-Qayrawani in al-Abiy, Al-Khirashiynd):

1. *al-'adam*; i.e., exhaustion or depletion or extinction of the commodity, where its availability stops existing in the market;
2. *al-ghalā'u al-fāḥish*; i.e., extreme rise in prices or high cost of living. For example, where the borrowed property was worth N100, and the price changes to N1,000, this is an extreme rise in price which causes harm to the borrower and/or lender;
3. Another factor that is considered as causing *mithliyy* impossible is *al-bu'd ash-shāq*; i.e., extreme remoteness of the similar property. Where the similar is available at an extremely far distance. For example, the loan contract was concluded in Ilorin, while a similar loaned property is only available in Saudi Arabia (Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000).

The above conditions and the like are considered factors that make payment of similar property impossible or difficult. When the similarities are unattainable, the worth becomes mandatory. The considered period is the day the similarity becomes impossible (Ministry of Endowment and Islamic Affairs, Kuwait, 1420/2000). For example, Adamu borrowed an Arabian humped camel worth one million nairas from Kawu at Keffi, Nigeria, at the beginning of Ramadan, 1442 (2021). The Arabian humped camel stops existing in the Nigerian market in the middle of the same Ramadan, at the rate of one million, one hundred thousand. However, the Arabian humped camel is available in Saudi Arabia, but the approximate cost of production stands at three million nairas. Here, all the factors are present. The borrower is therefore liable to pay back the value worth (*qīmah*), which is one million, one hundred thousand, the price of an Arabian humped camel at the time of impossibility (*al-i'wāz*).

## IV. Conclusion and Recommendation

This paper studied opinions of *fiqh* schools as regards the settlement of financial obligations, identification of similar items and valued items.

Relevant terms to financial obligations such as loan (*qard*), debt (*dayn*), *salaf*, *salam*, *bay'u mu'ajjal*, *mahr mu'ajjal*, among others, were defined. Prohibition of interest (*tahrimu ar-riba*) and discharge or repayment of financial obligation (*wafa'u ad-dayn*) were discussed, respectively. The debtor is obliged to settle his obligation to the satisfaction of the creditor, who is ready to help the debtor but wishes not to be affected as a result of change or extinction of a similar item in the market or sudden or recurrent depreciation of the real value of the subject matter. The paper, therefore, analysed the concept of *mithliyy* and *qimiy* as regard settlement of financial obligations from the Shari'ah perspective. It was revealed that similar properties could change to quantifiable and verse versa. Examples are where similar is exhausted in the market; where two similar unidentifiable items of different kinds are mixed; like wheat and barley etc. Where the nature of similar worth of property changes before the obligation is due for settlement, a dispute usually arises. The paper, therefore, suggested the inclusion of a "statement of similar" or "worth property" or "equivalent value" for a "similar item" while making a financial agreement. Thus, this paper will contribute to the existing knowledge.

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