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# TREATMENT OF WEALTH ACQUIRED BY UNLAWFUL MEANS: AN ISLAMIC PERSPECTIVE

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## **Abstract**

*This study examines how Islamic law deals with wealth acquired by unlawful means. The main issue is the manner in which to treat all types of unlawful wealth, whether such wealth should be returned to its original owner or given away to charity, the poor and needy, or whether it should even be destroyed. In cases where the person repents, a further issue arises as to whether he is allowed to claim ownership of such wealth or to take possession of some portion of it. The discussion is divided into three parts: part one focuses on the meaning and types of wealth acquired through unlawful means; part two explains how Islamic law treats such wealth acquired by unlawful means; and part three extrapolates on the issue of ownership of unlawful wealth after repentance. This study adopts a doctrinal analysis of the *Qur'ān* and *Sunnah* on issues relating to acquiring wealth through unlawful means. This is followed by a comparative study of the views of Muslim jurists from four well known schools of law as well as those of contemporary Muslim scholars. In addition, reference will be made to legal opinions (*fatwā*) from selected Muslim countries and renowned contemporary Muslim scholars. It is expected that the study will provide a clear guideline regarding the handling of wealth acquired by unlawful means in Islamic law.*

**Keywords:** Unlawful wealth, Charity, Ownership, Islamic law

## Introduction

The issues of the lawful (*ḥalāl*) and the unlawful (*ḥarām*) are significant subject matters under Islamic law. Basically, the determination of what constitutes as *ḥalāl* and *ḥarām* is a primary concern of Islamic law. The word “*ḥalāl*” means “permissible” where the ‘knot of prohibition is untied and the Law-Giver (Allah (ﷻ)) allows for its consumption or commission’, hence it is “lawful”.<sup>1</sup> Meanwhile, “*ḥarām*” is a matter where the Law-Giver, Allah (ﷻ) absolutely prohibits its commission and a person who violates the prohibition would incur punishment in this world and/ or the hereafter.<sup>2</sup> Such things or acts which are declared as *ḥarām* are considered as unlawful for human consumption or prohibited from commission. The lawful and the unlawful are either related to a thing or to the act and disposition of the subject (*mukallaḥ*). The general principle in Islamic law is that any beneficial thing is permissible based on many verses of the Qur’ān, “He (Allah) it is Who created for you all that is on the earth”,<sup>3</sup> “And He has subjected to you all that is in the heavens and all that is on the earth...”<sup>4</sup> Hence, the general rule is that everything in this world is permissible except what has been prohibited by the Law-Giver (Allah (ﷻ)). The Qur’ān clearly states, “He (Allah) has explained to you in detail what is forbidden to you...”<sup>5</sup> The Prophet’s Sunnah also clarifies this matter:

“Salman al-Farisi reported that when the Prophet (ﷺ) was asked about animal fat, cheese and fur, he replied: The lawful is that which Allah has made lawful in His Book and the unlawful is that which He has forbidden, and that concerning which He is silent, He has permitted as a favour to you.”<sup>6</sup>

<sup>1</sup> Yusof Al- Qardawi, *al-Halāl wa al-Harām fī al-Islām*, 27th Edition (Cairo: Maktabah Wahbah, 2007), 15.

<sup>2</sup> Ibid.

<sup>3</sup> Al-Qur’ān, *Sūrah al-Baqarah* 2: 29.

<sup>4</sup> Al-Qur’ān, *Sūrah al-Jathiyah* 45: 13.

<sup>5</sup> Al-Qur’ān, *Sūrah al-An ‘am* 6: 119.

<sup>6</sup> Al-Tirmidhi, *Sunan al-Tirmidhī*, no 1726.

The above verses of the Qur'ān and the Sunnah clearly indicate that the sole authority in determining what is lawful and unlawful rests in Allah (ﷻ) alone and He is the only Sole Owner of allowance and prohibition of any acts. This has been explained in detail through His Book, the Qur'ān and through His Prophet (ﷺ), the Sunnah. Thus, the issues of what is lawful and unlawful are fundamentally established by these two primary sources of Islamic law. Such determination includes any subject relating to wealth. This study will focus on the issue of wealth that is acquired through unlawful means and how it is treated in Islamic law.

### Wealth Acquired Through Unlawful Means

Wealth is one of the most significant and indispensable means for human existence. The Qur'ān clearly states, “And give not to the foolish your property which Allah has made a means of support for you...”<sup>7</sup> The acquisition of wealth to feed and support oneself and persons under one's responsibility is obligatory. This is asserted by Muhammad al-Shaybani the disciple of Abu Hanifah and the majority of Muslim jurists who opined that acquiring wealth for what is a necessity in life is obligatory.<sup>8</sup> This is also supported by Imam al-Ghazālī where he states that Allah (ﷻ) commands a person to provide maintenance for his wife and children. He would not be able to do so unless he is able to acquire wealth. Thus, what is necessary for the performance of an obligatory duty is deemed mandatory.<sup>9</sup> Al-al-Ghazālī's view is clearly based on the principle of Islamic jurisprudence (*qa'idah uşuliyyah*), “what is indispensable for the obligation to be accomplished is obligatory in itself.”<sup>10</sup> Islam strongly encourages its followers to acquire wealth for their sustenance. The Qur'ān clearly states this in the verse below:

<sup>7</sup> Al- Qur'ān, *Sūrah al-Nisā'*, 4:5.

<sup>8</sup> 'Abd al-Salam Daud al-'Abbadi, *al-Milkiyyah fi al-Sharī'ah al-Islamiyyah Tabi'atuha wa Wazifatuha wa Quyuduha: Dirasah Muqaranah bi al-Qawanin wa al-Nuzum al-Wad'iyyah*, Vol. 2, (Beirut: Mu'assasah al-Risalah, 1421H/2000), 26.

<sup>9</sup> Ibid., 27.

<sup>10</sup> The principle reads “*ma la yatimmu al-wajib illa bihi fahua wajib*”. See al-Burnu, Muhammad Sidqi bin Ahmad bin Muhammad, *al-Wajiz fi Idah Qawa'id al-Fiqh al-Kulliyyah*, 5<sup>th</sup> Edition (Beirut: Mu'assasah al-Risalah, 1422H/2002), 393.

“He it is Who has made the earth subservient to you (i.e. easy for you to walk, to live and to do agriculture on it); so walk in the path thereof and eat of His provision. And to him will be the Resurrection.”<sup>11</sup>

In another verse the Qur’ān says:

“Then when the Friday prayer is ended, you may disperse through the land and seek the Bounty of Allah (by working, etc.) and remember Allah much: that you may be successful.”<sup>12</sup>

Despite this, Islam does not give absolute liberty to its followers to apply whatever means they prefer in acquiring wealth. There are rules and regulations that set out certain limitations for the purpose of acquiring wealth. There are means which are permissible and impermissible. In principle, all lawful work forms are important means of acquiring wealth under the Islamic legal system which is evident in various types of occupation including business and trade, cultivation, manufacturing, fishery, hunting or working with others as employees.<sup>13</sup> There are also instances where a person may own wealth not by his own efforts but is given by others in the form of presents, gifts, bequests or endowments (*waqf*). In fact, some people may qualify to receive a limited amount of wealth through donations and *zakāt*<sup>14</sup> as well as be entitled to wealth through inheritance.<sup>15</sup> These are all considered lawful means of acquiring wealth under Islamic law.

In contrast, Islam prohibits the acquisition of wealth through means that violate the rights of and causes harm to others or result in

<sup>11</sup> Al-Qur’ān, *Sūrah al-Mulk* 67:15.

<sup>12</sup> Al-Qur’ān, *Sūrah al-Jum’ah* 62:10.

<sup>13</sup> Hamad al-Abd al-Rahman al-Junaydal, *Nazariah al-Tamalluk fi al-Islam*, 2<sup>nd</sup> Edition (Beirut: Mu’assasah al-Risalah, 1403H/1983), 24-42; ‘Abd al-Salam Dawud al-‘Abbadi, *al-Milkiyyah fi al-Sharī’ah al-Islamiyyah Tabi’atuha wa Wazifatuha wa Quyuduha: Dirasah Muqanah bi al-Qawanin wa al-Nuzum al-Wadi’yyah*, Vol. 2, (Beirut: Mu’assasah al-Risalah, 1421H/2000), 25-40; Ghazan Muhammad al-Shaykh, *Ikhtilal al-Halal bi al-Haram fi Ta’amulat al-Masarif al-Islamiyyah* (Damascus: Dar al-Qalam, 1435H/2014), 47-49.

<sup>14</sup> Al-Junaydal, 26; al-‘Abbadi, Vol. 2, 35; Muhammad al-Shaykh, 48-49.

<sup>15</sup> Al-Junaydal, 24; al-‘Abbadi, Vol. 2, 35; Muhammad al-Shaykh, 48.

an injustice to the society. Such prohibited acts include stealing, robbing, usurpation, embezzlement, criminal breach of trust, cheating, bribery, gambling, taking interest (*ribā*), prostitution, soothsaying, trading in prohibited items such as wine, swine, blood etc. and trading of human beings.<sup>16</sup> The Qur'ān clearly states:

“And eat up not one another’s property for vanities nor give bribery to the rulers that you may knowingly eat up a part of the property of others sinfully.”<sup>17</sup>

The word ‘eat’ in this verse is not only confined to mere consumption as highlighted by many commentators but it means all types of disposition<sup>18</sup> which includes taking or occupying.<sup>19</sup> The term ‘eat’ is aptly used because the main purpose of wealth is for consumption.<sup>20</sup> Meanwhile, the term ‘for vanities’ denotes ways which are not permitted by Allah the Almighty<sup>21</sup> or unlawful means such as looting, usurpation, gambling, sale of wine, bribery and breach of trust.<sup>22</sup> The verse emphasises that it is impermissible to acquire wealth through unlawful means. Al-Qurtubi,<sup>23</sup> the learned Maliki scholar of Cordova asserts that this verse shows that we should not eat up the property of others through unjust means which include gambling, cheating, usurpation, the denial of other person’s rights and not getting the consent of its owner. This verse also prohibits acquiring wealth through ways prohibited by the *Sharī‘ah*

<sup>16</sup> Al-Junaydal, 52-68. ; al-‘Abbadi, vol. 2, 42-60. ; Muhammad al-Shaykh, 49-68.

<sup>17</sup> Al-Qur’ān, *Sūrah Al-Baqarah* 2: 188.

<sup>18</sup> Fakhr al-Din Muhammad bin Umar bin al-Husayn bin al-Hasan bin Ali al-Tamimi al-Bakri al-Razi, *Mafātih al-Ghayb (al-Tafsir al-Kabir)*, vol. 5 (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1421H/2000), 101; al-Shaykh Ismail Haqqi al-Burusawi, *Tafsir Ruh al-Bayan*, Vol. 1, (Beirut: Dar Ihya’ al-Turath al-‘Arabi, 1421H/2000), 375.

<sup>19</sup> Shihab al-Din al-Sayyid Mahmud al-Alusi, *Ruh al-Ma’ani fi Tafsir al-Qur’an al-‘Azim*, Vol. 2, (Cairo: Dar al-Hadith, 1426H/2005), 641.

<sup>20</sup> Al-Razi, Vol. 5, 10; al-Burusawi, vol. 1, 375.

<sup>21</sup> Abi Ja’far Muhammad bin Jarir al-Tabari, *Jami’ al-Bayan fi Ta’wil Aye al-Qur’ān*, Vol. 2 (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1420H/1999), 189.

<sup>22</sup> Sulayman bin ‘Umar al-‘Ujayli al-Jamal, *al-Futuhāt al-Ilāhiyyah bi Tawdih Tafsir al-Jalalayn li al-Daqa’iq al-Khafīyyah*, 2<sup>nd</sup> Edition, vol. 1 (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1427H/2006), 227.

<sup>23</sup> Died in 671H/1273.

even though consent is given by its owner. Hence vocations such as prostitution, soothsaying, sale of alcohol and pork etc. are among the prohibited methods of acquiring wealth.<sup>24</sup> Acquisition of wealth by means not permitted by Allah (ﷻ) is therefore prohibited even though there is consent between the parties.

Based on the above discussion, the wealth acquired by unlawful means can be classified into two main categories: firstly, unlawful wealth acquired without the owner's consent such as stealing, usurpation and criminal breach of trust; secondly, unlawful wealth acquired with the consent of the parties but is clearly prohibited in the Qur'ān and Sunnah such as through usurpation, prostitution, gambling and so on.<sup>25</sup>

### Islamic Perspective on Acquiring Wealth by Unlawful Means

The earlier discourse clearly shows that Islam does not allow its followers to acquire wealth through unlawful means and a Muslim is prohibited from violating this basic principle. Many jurists are of the opinion that if a person breaks the rules and regulations or violates the boundaries set by Allah (ﷻ), that person must repent. Ibn Rushd<sup>26</sup> and Ibn Muflih<sup>27</sup> of the respective Maliki and Hanbali schools assert that it is obligatory on a person who acquires wealth by unlawful means to repent for what he or she has done.<sup>28</sup> This view is shared by many Muslim jurists like Imam al-Qurtubi of the Maliki school;<sup>29</sup> al-Ghazālī<sup>30</sup> and al-Nawawī<sup>31</sup> of the Shafi'i school;<sup>32</sup> and

<sup>24</sup> Al-Qurtubi, Abi Abdullah Muhammad bin Ahmad al-Ansari, *al-Jami' li Ahkam al-Qur'an*, Vol. 2, (Beirut: Dar Ihya' al-Turrath al-Arabi, 1416H/1995), 338.

<sup>25</sup> See Badruddin Hj Ibrahim & Azizah Mohd, "Ownership of Unlawful Wealth from Islamic Legal Perspective", *World Applied Science Journal* 35, no 8, (2017): 1514.

<sup>26</sup> Maliki jurist of the sixth century Hijrah who died in 520H/1126.

<sup>27</sup> Hanbali jurist of the eighth century Hijrah who died in 762H/1362.

<sup>28</sup> Ibn Rushd, Abi al-Walid Muhammad bin Muhammad bin Ahmad, *Fatawa Ibn Rushd*, Vol. 1, (Beirut: Dar al-Gharb al-Islami, 1407H/1987), 632. ; Ibn Muflih, Sham al-Din Abi 'Abdullah Muhammad, *al-Furu'*, Vol. 2, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1418H/1997), 507.

<sup>29</sup> Al-Qurtubi, vol. 3, 366-367.

<sup>30</sup> Shafi'i jurist of the sixth century Hijrah who died in 505H/1112.

<sup>31</sup> Shafi'i jurist of the seventh century Hijrah who died in 676H/1278.

Ibn Taymiyyah<sup>33</sup> and Ibn Qayyim<sup>34</sup> of the Hanbali school.<sup>35</sup> It is also supported by contemporary Muslim scholars like al-Qardawi,<sup>36</sup> Muhammad al-Baz,<sup>37</sup> al-Zaybari<sup>38</sup> and Muhammad al-Kibbi.<sup>39</sup>

This is also the position of the *fatwā* institution of Muslim countries such as Jordan,<sup>40</sup> Kuwait,<sup>41</sup> Saudi Arabia<sup>42</sup> and Dubai United Arab Emirates<sup>43</sup> which is, persons who have committed acts prohibited by Allah and violated the limits that have been set by Islamic law must repent for their acts. The Qur'ān clearly states:

“O you who believe! Be afraid of Allah and give up what remains (due to you) from usury (*ribā*) - from now onward - if you are believers. If you do not do it, then take a notice of war from Allah and His Messenger but if you repent, you shall have your capital sum. Deal not unjustly (by asking more than your capital sums), and

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<sup>32</sup> Abi Hamid Muhammad bin Muhammad al-Ghazali, *Ihya' Ulum al-Din*, vol. 2 (Cairo: Dar al-Hadith, 1412H/1992), 199; al-Nawawi, *al-Majmu' Sharh al-Muhadhdhab*, vol. 10 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1428H/2007), 381.

<sup>33</sup> Hanbali jurist of the eighth century hijrah who died in 728H/1328.

<sup>34</sup> Hanbali jurist of the eighth century hijrah who died 751H/1350.

<sup>35</sup> Taqiy al-Din Ahmad Ibn Taymiyyah, *Majmu'ah al-Fatawa*, vol. 29, (Cairo: Dar al-Hadith, 1427H/2006), 171-172; Ibn Qayyim al-Jawziyyah, *Zada al-Ma'ad fi Khayr al-'Ibad*, 4<sup>th</sup> Edition, vol. 5 (Kuwait: Jam'iyah Ihya' al-Turath al-Islami, 1432H/2011), 671.

<sup>36</sup> Yusuf al-Qardawi, *Fatawa Mu'asirah*, 9<sup>th</sup> Edition, vol. 1 (Kuwait: Dar al-Qalam, 1422H/2001), 727-728.

<sup>37</sup> 'Abbas Ahmad Muhammad al-Baz, *Ahkam al-Mal al-Haram*, 2<sup>nd</sup> Edition (Amman: Dar al-Nafa'is, 1424H/2004), 338.

<sup>38</sup> Al-Zaybari, 'Amir Sa'id, *Ajwibah 'an As'ilatika fi al-Mu'amalat al-Maliyyah*, (Beirut: Dar Ibn Hazm, 1420H/1999), 24.

<sup>39</sup> Sa'd al-Din Muhammad al-Kibbi, *al-Mu'amalat al-Maliyyah al-Mu'asirah fi Daw' al-Islam* (Beirut: al-Maktab al-Islami, 1423H/2002), 287.

<sup>40</sup> Fatwa no 2/3/1956, dated 3<sup>rd</sup> October 2011.

<sup>41</sup> See *al-Durar al-Bahiyyah min al-Fatawa al-Kuwaitiyyah*, vol. 5, (Kuwait: Idarah al-Ifta' Wazarat al-Awqaf wa al-Shu'un al-Islamiyyah, 1436/2015), 257.

<sup>42</sup> Abu al-Fida' Ahmad Badruddin, *et al*, *al-Kuhlasah al-Qayyimah fi Fatawa al-Lajnah al-Da'imah*, vol. 2, (Cairo: al-Maktabah al-Islamiyyah, 1433/2011), 821.

<sup>43</sup> *Al-Fatawa al-Shar'iyah*, 2<sup>nd</sup> Edition, vol. 4, (Dubai: Idarah al-Ifta', Da'rah al-Shu'un al-Islamiyyah wa al-'Amal al-Khayri, 1432H/2011), 429-430.

you shall not be dealt unjustly (by receiving less than your capital sums).<sup>44</sup>

Nevertheless, it is not enough to repent as the issue remains the status of wealth acquired through unlawful means. In this respect, the person who has accumulated wealth through unlawful means has to remove and relinquish it from his possession.<sup>45</sup> Ibn Qayyim notes that the relinquishment of wealth through donation is the perfect form of repentance.<sup>46</sup> In addition, al-Qardawi asserts that mere announcement of repentance is insufficient unless the wealth is returned to its original owner,<sup>47</sup> in fact al-Qardawi clearly shows that there is no tolerance on this aspect. To ensure that one's repentance is valid it must be accompanied by the relinquishment of wealth that had been obtained through unlawful means. The repentance would have no meaning and is of no consequence without removing the unlawful wealth from one's possession.

In cases where the amount or portion of the wealth gained through unlawful means is known, the task would be easy. For example, if the whole wealth of a person is obtained through unlawful means then he or she has no choice but to remove the whole wealth.<sup>48</sup> The problem would be in situations where there is a mix between wealth acquired through lawful and unlawful means. In such a situation, an exact determination needs to be made as to what is and what is not lawful and subsequently the unlawful portion must be removed from the whole property where the remaining property would then be lawful.<sup>49</sup> This is based on the principle "Whoever mixes his lawful wealth with unlawful one, remove the unlawful amount and the rest is lawful for him".<sup>50</sup> It is important to note that the unlawful portion will not affect the lawful portion to become tainted. This is

<sup>44</sup> Al-Qur'ān, *Sūrah al-Baqarah* 2: 278-279.

<sup>45</sup> Ibn Rushd, vol. 1, 632. ; al-Ghazali, vol. 2, 208. ; Ibn Muflih, vol. 2, 507.

<sup>46</sup> Ibn Qayyim, vol. 5, 671.

<sup>47</sup> Al-Qardawi, *Fatawa Mu'asirah*, vol. 1, 728.

<sup>48</sup> Al-Ghazali, vol. 2, 199.

<sup>49</sup> Al-Ghazali, vol. 2, 199. ; Ibn Taymiyyah, *Majmu' al-Fatawa*, vol. 29, 154.

<sup>50</sup> 'Atiyyah Ramadan, 'Atiyyah 'Abdullah, *Mawsu'ah al-Qawa'id al-Fiqhiyyah al-Munazamah li al-Mu'amalat al-Maliyyah al-Islamiyyah wa Dawruha fi Tawjih al-Nuzum al-Mu'asirah*, (Alexandria: Dar al-Iman, 2007), 278.

based on the principle “the unlawful does not make the lawful become unlawful”.<sup>51</sup> Consequently al-Suyuti of the Shafi’i jurists contends that the public’s perception of mixing both lawful and unlawful wealth that will make the whole wealth become unlawful is invalid and has no basis.<sup>52</sup>

Nonetheless, if the amount or portion of unlawful wealth is unknown Muslim jurists are divided in their opinion regarding the method of removing the unlawful portion. According to Imam al-Ghazālī, each person has to exercise personal judgment based on certainty or strong probability<sup>53</sup> whereas Ibn Taymiyyah says the wealth has to be divided into two portions and one of the portions has to be removed.<sup>54</sup>

In this case, the view of al-Ghazālī is preferable. The matter is left to the person to exercise his own judgment. The rationale is clear because no burden should be imposed on a person beyond his capability as it defeats the purpose of Islamic law. This is based on the Quranic verse which states:

“Allah burdens not on a person beyond his scope. He gets reward for that (good) which he has earned, and he is punished for that (evil) which he has earned.”<sup>55</sup>

### **Treatment of Unlawful Wealth**

To recapitulate, the two types of unlawful wealth that may be acquired are those with or without the consent of the owner and through various unlawful means. All types of unlawful wealth must be removed from one’s possession. The question then arises on how to treat these types of unlawful wealth that is: whether they are treated similarly or differently; whether they have to be destroyed or be given to charity, the needy and the poor; or whether they must be returned to their original owner. Furthermore how are different

<sup>51</sup> Muhammad Umar Sama’i, *Nazariat al-Ihtiyat al-Fiqhi: Dirasah Ta’siliyyah Tatbiqiyyah*, (Beirut: Dar Ibn Hazm, 1428H/2007), 345.

<sup>52</sup> Jalal al-Din ‘Abd al-Rahman bin Abi Bakr al-Suyuti, *al-Ashbah wa al-Nazar fi Qawa'id wa Furu' Fiqh al-Shafi'iyyah*, (Cairo: Dar al-Bayan al-‘Arabi, n.d.), 210.

<sup>53</sup> al-Ghazālī, vol. 2, 199.

<sup>54</sup> Ibn Taymiyyah, vol. 29, 171.

<sup>55</sup> Al-Qur’ān, *Sūrah al-Baqarah* 2: 286.

situations dealt with for example, if the original owner is still alive, has passed away or cannot be found?

The discussion below focuses on four main issues which involve the treatment of unlawful wealth acquired without consent of the owner in the case where the owner is still alive or has passed away; treatment of unlawful wealth acquired with consent by means of usury (*ribā*); treatment of unlawful wealth acquired with consent by means other than usury (*ribā*); and treatment of unlawful wealth where the original owner cannot be found.

### **Treatment of Unlawful Wealth Acquired without Consent from the Owner**

Muslim jurists of the four well known schools, Hanafi, Maliki, Shafi'i and Hanbali are in agreement that where wealth is acquired without the consent from the owner in cases of usurpation, stealing and criminal breach of trust, the person who had acquired such wealth must return it to the original owner if he is known and still living, and if the owner has died then the wealth is given to his legal heir.<sup>56</sup> This is the same position of contemporary Muslim scholars<sup>57</sup> such as Al-Baz who asserts that it is a uniform principle regarding the treatment of unlawful wealth that is taken without the owner's consent in cases where the owner is known. This principle applies regardless of the means of acquiring the wealth, be it through theft, usurpation, robbing or looting.<sup>58</sup> The Muslim jurists base their view on the authority of the Sunnah that states:

“It is reported from the Messenger of Allah (peace be upon him) that: it is liable on the hand (person) with respect to something that has taken till he returns it.”<sup>59</sup>

<sup>56</sup> Ibn 'Abidin, Muhammad Amin bin 'Umar bin 'Abd al-'Aziz, *Radd al-Muhtar ala' al-Durr al-Mukhtar*, vol. 9, (Beirut: Dar Ihya' al-Turath al-'Arabi, 1419H/1998), 470. ; Ibn Rushd, vol. 1, 632. ; Al-Ghazali, vol. 2, 203. ; Ibn Muflih, vol. 2, 507.; Ibn Taymiyyah, vol. 29, 178.

<sup>57</sup> Al-Zaybari, 245. ; al-Baz, p.339. Aswaykar, Abdul Majid Qasim *Ghasl al-Amwal fi Daw'i Ahkam Al-Shari'ah al-Islamiah, Dirasah Muqaranah*, (Libya: Jamiah Sirat, 2009), 302.

<sup>58</sup> Al-Bāz, 339.

<sup>59</sup> Abu Daud, *Sunan Abi Daud*, no 3558. ; al-Tirmidhi, *Sunan al-Tirmidhi*, no 1266.

“It is reported that the Messenger of Allah said: none of you should take the staff of his brother in amusement or in earnest. Whoever takes the staff of his brother, he has to return it to him.”<sup>60</sup>

In Islam the ownership of property is sacred and a Muslim cannot own the property of another Muslim by “occupying” it.<sup>61</sup> The Qur’ān clearly states:

“O ye who believe! Eat not up your property among yourself in vanities; but let there be among you trade by mutual consent.”<sup>62</sup>

This is supported by the authority of the Sunnah which says:

“On the authority of Abu Hurayrah, the Messenger of Allah (ﷺ) said: ...The whole of Muslim for another Muslim is inviolable: his blood, his property and his honour.”<sup>63</sup>

“The Messenger of Allah (ﷺ) in his farewell address said: Verily your blood, your property are as sacred and inviolable as the sacredness of this day of yours, in this month of yours, in this town of yours...”<sup>64</sup>

Hence, by virtue of these authorities any wealth obtained through unlawful means without the owner’s consent must be returned accordingly to the rightful owner.

### **Treatment of Unlawful Wealth Acquired with Consent by Means of Usury (*Ribā*)**

Muslim jurists agree that wealth taken by means of usury has to be returned to its owner in cases where the owner is known and alive. If the owner has passed away, it has to be given to the legal heirs.<sup>65</sup>

<sup>60</sup> Al-Tirmidhi, *Sunan al-Tirmidhi*, no 2160.

<sup>61</sup> Al-‘Abbadi, vol. 2, 62.

<sup>62</sup> Al-Qur’ān, *Sūrah al-Nisa*’, 4: 29.

<sup>63</sup> Muslim, *Sahih Muslim*, no 2564.

<sup>64</sup> Al-Bukhari, *Sahih al-Bukhari*, no 1739.; Muslim, *Sahih Muslim*, no 1218.

<sup>65</sup> Ibn ‘Abidin, vol. 9, 470.; Ibn Rushd, vol. 1, 632-633; Al-Ghazali, vol. 2, 203. ;

The wealth has to be returned to the rightful owner because it was acquired unjustly and unfairly.

The above-mentioned view is held by classical Muslim jurists who conformed to the situation prevalent during their time. The issue that arises here is whether such opinion is applicable in the modern day setting. For example, in the practice of issuing interest on deposits by current financial institutions which did not exist in the past, the question is whether the interest awarded by conventional banks on money deposited in the bank either in a savings account or a fixed deposit account has to be returned. In this case, can the bank be considered as the ‘original owner’?

Many contemporary Muslim scholars such as Abu Zahrah, Mustafa al-Zarqa’, Wahbah al-Zuhayli and Yusof al-Qardawi are of the view that interest from conventional banks need not be returned to the bank but instead should be channeled to the poor, the needy or for public interest such as the construction or maintaining of roads, bridges or any other amenity that could benefit the society.<sup>66</sup> They believe that a customer is not allowed to leave the portion of interest with the bank because it may strengthen and support the bank in its unlawful activities.<sup>67</sup> Abu Zahrah emphasises that the bank is not the original owner of such wealth. The real owners are those who are behind the establishment and management of the bank who might not be possible to identify as there is also the possibility that some of them have passed away. The wealth must therefore be channeled to charity.<sup>68</sup>

The *fatwā* institutions of many countries including Malaysia,<sup>69</sup>

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Ibn Taymiyyah, vol. 29, 171.

<sup>66</sup> Muhammad ‘Uthman Shubayr, *Fatawa al-Shaykh Muhammad Abu Zahrah*, 2<sup>nd</sup> Edition (Damascus: Dar al-Qalam, 1431H/2010), 788; And see Majid Ahmad Makki, *Fatawa Mustafa al-Zarqa’*, 4<sup>th</sup> Edition (Damascus: Dar al-Qalam, 1431H/2010), 586; Wahbah al-Zuhayli, *Fatawa Mu’asirah*, (Damascus: Dar al-Fikr, 1431H/2010), 124-125; Yusof al-Qardawi, *Fatawa Mu’asirah*, 9<sup>th</sup> Edition, vol. 2 (Kuwait: Dar al-Qalam, 1422H/2001), 409-410.

<sup>67</sup> Ibid.

<sup>68</sup> See Shubayr, *Fatawa al-Shaykh Muhammad Abu Zahrah*, 788.

<sup>69</sup> The 3<sup>rd</sup> Discourse of Fatwa Committee of National Fatwa Council for Islamic Religious Affairs Malaysia held on 21<sup>st</sup> -22<sup>nd</sup> January 1971..; and The Discourse no 87 of The Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia held on 23rd-25th June 2009.

Kuwait,<sup>70</sup> Jordan,<sup>71</sup> United Arab Emirates<sup>72</sup> and Saudi Arabia<sup>73</sup> have adopted this position. Nevertheless, the Permanent Committee of Scientific Research and the Ifta' of Saudi Arabia, the Department of Ifta' Islamic Research of Kuwait and the Ifta' Division of the Department of Islamic Affairs and Charitable Work of Dubai, United Arab Emirates contend that such wealth cannot be used for building mosques and the printing of al-Qur'ān.<sup>74</sup> It is submitted that this position is sound and acceptable since the banking institution is considered as an intermediary in accepting deposits and providing loans. It is not the real owner in the actual sense so the wealth from usury has to be channeled to charity by giving to the poor, the needy and for public interest. It is not permissible to leave such amount with or return it to the bank as the bank is not the original owner of such wealth.

### **Treatment of Unlawful Wealth Acquired with Consent by Means other than Usury (*Ribā*)**

The wealth acquired with the owner's consent other than by usury (*ribā*) may be obtained through various other unlawful means as discussed above. This includes the wealth acquired from prostitution, soothsaying, trading of prohibited items like wine, drugs and swine, gambling and bribery.

The majority of Muslim jurists from Hanafi, Maliki, Shafi'i and a few Hanbali do not distinguish the manner of treatment of all types of unlawful wealth, whether it is acquired with or without consent and whether it is acquired by means of usury, prostitution, trading of

<sup>70</sup> See *al-Durar al-Bahiyyah min al-Fatawa al-Kuwaitiyyah*, Vol. 5, (Kuwait: Idarah al-Ifta', Wazarat al-Awqaf wa al-Shu'un al-Islamiyyah, 1436/2015), 287-295.

<sup>71</sup> Fatwa no 2/3/1956, dated 3<sup>rd</sup> October 2011.

<sup>72</sup> *Al-Fatawa al-Shar'iyyah*, vol. 17, (Dubai: Idarah al-Ifta', Da'irah al-Shu'un al-Islamiyyah wa al-'Amal al-Khayri, 1433H/2012), 236.

<sup>73</sup> *Fatawa al-Lajnah al-Da'imah li al-Buhuth al-'Ilmiyyah wa al-Ifta'*, vol. 13, (Riyadh: Ri'asah Idarah al-Buhuth al-'Ilmiyyah wa al-Ifta', -Kingdom of Saudi Araia, 4<sup>th</sup> Edition, 1424H/2003), 429-431.

<sup>74</sup> *Al-Durar al-Bahiyyah min al-Fatawa al-Kuwaitiyyah*, vol. 5, 295.; *Al-Fatawa al-Shar'iyyah, Idarah al-Ifta', Da'irah al-Shu'un al-Islamiyyah wa al-'Amal al-Khayri*, Dubai, vol. 3, p. 290.; *Fatawa al-Lajnah al-Da'imah li al-Buhuth al-'Ilmiyyah wa al-Ifta'*, vol. 13, 431.

prohibited items and so forth. With regard to the wealth that is acquired by unlawful means other than usury, they are also of the view that the wealth must be returned to the owner.<sup>75</sup> Following this, if a prostitute wishes to stop prostitution and repent, she must return all the payments that she received from her ‘clients’. This would seem rather impractical as there is a huge possibility that it would be dangerous for her to do so. Therefore, in situations where the wealth cannot be returned to the owner it can be donated to a good cause.

According to Ibn Taymiyyah and Ibn Qayyim of the Hanbali school however, the wealth acquired by means of prostitution, soothsaying and trading of prohibited items should not be returned back to the ‘original owner’ because it may facilitate such person in continuing the wrongful activities and to further commit the wrongful act. They have enjoyed doing what they paid for and if such payments are returned to them, they will be allowed to increase their unlawful activities.<sup>76</sup> In this respect Ibn Qayyim asserts:

“This is what the *Sharī‘ah* would safeguard from being in favour of it. It is not permissible to state such view. It consists of a combination of transgression, monstrosity and breach of faith. This is a most atrocious act, that a person has consummated with a prostitute and what he has given to her, is returned back to him... The fact that to do so is atrocious is firmly established in the instinct of the wise men. Such position is not from the *Sharī‘ah*.”<sup>77</sup>

Thus the second view is preferable that is, the unlawful wealth which was acquired by means of prostitution, soothsaying and trading of prohibited items cannot be returned to its owner. The reason is that it will encourage and promote sins and wrongdoings in society. Hence, the promotion of sin is prohibited based on the authority of the Qur’ān that states:

“Help you one another in (virtue, righteousness and

<sup>75</sup> Ibn Abidin, vol. 9, 470. ; Ibn Rushd, vol. 1, 632-634 ; al-Nawawi, vol. 10, 381. ; Ibn Muflih, vol. 2, 507.

<sup>76</sup> Ibn Taymiyyah, *Majmu’ al-Fatawa*, vol. 29, 172. ; Ibn Qayyim, vol. 5, 670-671.

<sup>77</sup> Ibn Qayyim, vol. 5, 671.

piety); but do not help one another in sin and transgression”<sup>78</sup>

For wealth acquired by means of bribery, some Hanbali jurists have opined that wealth obtained in this way must also be given back to the ‘original owner’ i.e. the person who gave the bribe if he is known.<sup>79</sup> This is also the position of the Hanafi, Maliki and Shafi’i jurists since they do not differentiate the manner of treatment of all types of unlawful wealth. By comparison, according to some other Hanbali jurists the wealth acquired by means of bribery should be given to the authorities and not to its original owner,<sup>80</sup> and such wealth given to the authorities is to be channeled for public benefit.

This latter view from the Hanbali jurists is preferable and is based on the Sunnah:

“Narrated by Abu Humaid As-Sa’idi: Allah's Messenger (ﷺ) appointed a man called Ibn Al-Lutabiyya to collect the *zakāt* from Bani Sulaim's tribe. When he returned, the Prophet (ﷺ) called him to account. He said (to the Prophet, 'This is your money, and this has been given to me as a gift.' On that, Allah's Messenger (ﷺ) said, "Why didn't you stay in your father's and mother's house to see whether you will be given gifts or not if you are telling the truth?" Then the Prophet (ﷺ) addressed us, and after praising and glorifying Allah, he said: "Amma Ba'du", I employ a man from among you to manage some affair of what Allah has put under my custody, and then he comes to me and says, 'This is your money and this has been given to me as a gift. Why didn't he stay in his father's and mother's home to see whether he will be given gifts or not? By Allah, not anyone of you who takes a thing unlawfully but he will meet Allah on the Day of Resurrection, carrying that thing. I do not want

<sup>78</sup> Al- Qur’ān, *Sūrah al-Maidah* 5:2.

<sup>79</sup> Al-Mardawi, Ala’ al-Din Abi al-Hasan ‘Ali bin Sulayman bin Ahmad, *al-Insaf fi Ma’rifat al-Rajih min al-Khilaf*, ‘ala Madhhab al-Imam Ahmad bin Hanbal, vol. 11, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1418H/1997), 201.

<sup>80</sup> Ibid.

to see any of you carrying a grunting camel or a mooing cow or a bleating sheep when meeting Allah." Then the Prophet (ﷺ) raised both his hands till the whiteness of his armpits became visible, and he said, "O Allah! Haven't I conveyed (Your Message)?"...<sup>81</sup>

The above Sunnah clearly shows that the Prophet did not ask Ibn al-Lutbiyyah to return the wealth to its owner. Thus, there is no other way except to channel such wealth for the benefit of the Muslim community.

With regard to wealth acquired by means of gambling, it is understood from the majority of Muslim jurists that similarly such wealth also has to be returned back to its owners. However, based on available evidence it should be channeled to charity.

“When (the following) was revealed: ‘*Alif Lam Min.* The Roman has been defeated. In the nearest land (Syria, Iraq, Jordan and Palestine) and they, after their defeat, will be victorious’<sup>82</sup> the idolaters refuted it and they said to the Companions: Did you see, what your companion said? He claims that the Rome will be victorious. So Abu Bakr made a bet with the idolaters. When Allah has established the truth, Abu Bakr came with what he has won from the betting. The Prophet says: ‘this is ill-gotten property.’ Abu Bakr then gave it for charity and the believers were happy with the help of Allah.”<sup>83</sup>

The Sunnah clearly indicates that the wealth from gambling has to be channeled to charity and not returned to its owners.

### **Treatment of Unlawful Wealth where the Original Owner Could Not Be Found**

In cases where the owner cannot be found or is unknown, the Muslim jurists have differing opinions regarding the treatment of wealth

<sup>81</sup> Al-Bukhari, *Sahih al-Bukhari*, 2559. ; Muslim, *Sahih Muslim*, no 1463.

<sup>82</sup> Al- Qur’ān, *Sūrah al-Rūm* 30: 1-3.

<sup>83</sup> *Sunan al-Tirmidhi*, no. 3192-3194; al-Hakim, *al-Mustadrak*, no 3540.

obtained through unlawful means. According to the majority of Muslim jurists from the four schools, the wealth is not to be destroyed but to be given as charity for the benefit of the public or for the poor and needy.<sup>84</sup> This applies to wealth that is acquired without the consent of the owner, or with consent by means of usury, or with consent by means other than usury. Ibn Qayyim of the Hanbali school stated that the wealth can be used for the debt payment of the owner in cases where it is not possible to return it to him and the person who obtained the unlawful wealth is aware of the debt.<sup>85</sup> This is a reasonable and acceptable view since it is considered as a method of returning the property to its original owner.

On the other hand, another jurist al-Fudayl bin I'yad<sup>86</sup> holds an opposing view where he says that unlawful wealth cannot be given for charity and has to be discarded. It is reported by Fudayl that there were two *dirhams* in his possession and when he knew that they were unlawful he threw them away and said, 'I would not be pleased with another person what I would not be pleased with myself.'<sup>87</sup>

Therefore, it is more favourable to accept the view of the majority of Muslim jurists since the wealth is physically not unlawful. It is only unlawful because of the manner of its acquisition. Although it should not be used for personal benefit due to its unlawfulness, it should not be wasted when it could be utilised for public benefit. The destruction of such wealth is considered wasteful which is clearly prohibited in Islam.

"Al-Sha'bi narrated, the clerk of al-Mughirah bin Shu'bah narrated, Mu'awiyah wrote to al-Mughirah bin Shu'bah: write to me something which you have from the Prophet (ﷺ). So al-Mughirah wrote, I heard the Prophet (ﷺ) saying: Allah hates for you three things:

<sup>84</sup> Al-Turi, *Takmilah al-Bahr al-Ra'iq*, vol. 8, p. 369; al-Sawi, *Bulghat al-Salik li Aqrab al-Masaliq*, vol. 3, p. 231; al-Nawawi, *al-Majmu' Sharh al-Muhadhdhab*, vol. 10, 381; Ibn Taymiyyah, *Majmu'ah al-Fatawa*, vol. 29, 178.

<sup>85</sup> Ibn Qayyim, *Zada al-Ma'ad fi Khayr al-'Ibad*, vol. 5, 670.

<sup>86</sup> He was a Hanafi jurist of 2<sup>nd</sup> century Hijrah and died in 187H/803. See Yahya Murad, *Mu'jam Tarajim 'Alam al-Fuqaha'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1425H/2004), 262.

<sup>87</sup> See al-Ghazali, *Ihya' 'Ulum al-Din*, vol. 2, 204.

vain talk (useless talk) or that you talk too much about others; wasting of wealth; and asking too many questions.”<sup>88</sup>

Aside from that, destroying such wealth is tantamount to a person committing the sin twice: first, when he acquired the wealth; and second, when he destroyed it. In this regard, al-Kibbi asserts:

“This is similar to a person who had committed adultery. When his co-adulterer gives birth to a baby as a result of such wrongful act, he kills the baby in order to get rid of it. Thus, he has committed a wrongful act twice. Firstly, when he committed adultery and secondly when he kills an innocent baby who has no connection with such wrongful act and who has no sin and no fault.”<sup>89</sup>

### **Ownership of Unlawful Wealth After Repentance**

The above discussion shows that wealth has to be channeled to charity with respect to wealth that is acquired unlawfully, with or without consent and in cases where the owner is unknown or cannot be found. The next issue here is whether a person is allowed to possess a portion of the wealth or claim ownership of the unlawful property after repentance. The Muslim jurists of the four schools all agree in the case of a poor person that he is allowed to take from such wealth only the amount that is necessary for him.<sup>90</sup> However in the case of a person who is well-off, relying on the majority view of Muslim jurists, it is understood that he is not allowed to take any part of the unlawful wealth which must be returned to its original owner or channeled to charity.<sup>91</sup>

Despite this, Ibn Taymiyyah maintains that a person is allowed

<sup>88</sup> Al-Bukhari, *Sahih al-Bukhari*, no 1477.

<sup>89</sup> Al-Kibbi, 282-283.

<sup>90</sup> ‘Abdullah bin Mahmud Ibn al-Maudud al-Mawsali, *al-Ikhtiyar li Ta’lil al-Mukhtar*, vol. 3, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1419H/1998), 70; al-Sawi, al-Shaykh Ahmad, *Bulghat al-Salik li-Agrab al-Masalik*, vol. 3, (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1415H/1995), 231; al-Nawawi, vol. 10, 381 ; Ibn Qayyim, vol. 5, 671.

<sup>91</sup> Ibid.

to own such wealth after repentance. This is particularly so in respect of unlawful wealth obtained from usury, prostitution, soothsaying and trading of wine. Ibn Taymiyyah asserts that such persons deserve it more than any other person especially in cases where a person is poor. It will encourage him to support himself and to repent from committing the wrongful act. In cases where the person is well-off this will encourage and facilitate the person who acquired wealth by unlawful means to repent.<sup>92</sup> Ibn Taymiyyah's argument is based on the following verses of the Qur'ān:

"...So whoever receives admonition from his Lord and stops dealing with usury (*ribā*) shall not be punished for the past; his case is for Allah (to judge)."<sup>93</sup>

"O you who believe! Be afraid of Allah and give up what remains (due to you) from usury (*riba*) (from now onward), if you are really believers. And if you do not do it, then take a notice of war from Allah and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums)."<sup>94</sup>

With regard to the first verse, Ibn Taimiyyah argues that the verse is generally applicable to Muslims as well as non-Muslims<sup>95</sup> and those who do not know of the prohibition, since the warning from Allah (ﷻ) is more significant to those who have knowledge of the prohibition rather than those who are ignorant of it.<sup>96</sup> Allah forgives those who repent; thus for wrongful acts of the past, the law does not act retrospectively as indicated by the two verses.<sup>97</sup> He further argues that the verses command those who are involved in usury to

<sup>92</sup> Taqiy al-Din Ahmad bin 'Abd al-Halim bin 'Abd al-Salam Ibn Taymiyyah, *Tafsir Ayat Ashkilat*, vol. 2, (Riyadh: Dar al-Sami'i, 1427H/2006), 593-596.

<sup>93</sup> Al-Qur'ān, *Sūrah al-Baqarah* 2: 275.

<sup>94</sup> Al-Qur'ān, *Sūrah al-Baqarah* 2: 278-279.

<sup>95</sup> Ibn Taymiyyah, *Tafsir Ayat Ashkilat*, vol. 2, 586 & 588.

<sup>96</sup> Ibid., 596.

<sup>97</sup> Ibid., 588.

stop continuing with the practice but do not command them to return what they had taken.<sup>98</sup>

In addition, he argues that it is not a heinous act to take such wealth. Since the wealth that has been taken has come from the ownership of its owner, the wealth in itself is not physically prohibited. Instead it is prohibited because it is obtained through the use of wrongful and prohibited means.<sup>99</sup>

The preferable view is the one by the majority of Muslim jurists that unlawful wealth cannot be owned after repentance since the prohibition of unlawful wealth is established by clear texts of the Qur'ān and Sunnah.

A verse from the Qur'ān states:

“O ye who believe! Eat not up your property among yourself in vanities; but let there be among you trade by mutual consent.”<sup>100</sup>

The Sunnah says:

“From Abi Mas'ud 'Uqbah ibn Amru, he said: The Messenger of Allah (swt) forbade taking the price of dog, money earned by prostitution and the earning of soothsayer.”<sup>101</sup>

“Abu Hurayrah reported the Messenger of Allah (swt) as saying: Allah forbade wine and the price paid for it, and forbade dead meat and the price paid for it and forbade swine and the price paid for it.”<sup>102</sup>

“The Messenger of Allah (swt) says...: when Allah declared eating of a thing forbidden for a people, He declares its price also forbidden for them.”<sup>103</sup>

The above verses of the Qur'ān and the texts of the Sunnah

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<sup>98</sup> Ibid., 586 & 588.

<sup>99</sup> Ibid., 595.

<sup>100</sup> Al-Qur'ān, *Sūrah al-Nisā'* 4: 29.

<sup>101</sup> Al-Bukhari, *Sahih al-Bukhari*, no. 2237; Muslim, *Sahih Muslim*, no. 1576.

<sup>102</sup> Abu Daud, *Sunan Abi Daud*, no. 3485.

<sup>103</sup> Abu Daud, *Sunan Abi Daud*, no 3488.

clearly indicate the prohibition of unlawful wealth. The prohibition would have no meaning if the person who repents is still allowed to own such unlawful wealth which could also be an inducement for the person to repeat the same wrongful act in the future and does little to illustrate remorse for committing such an act.

In addition, Salih al-Mansur asserts that the view of Ibn Taymiyyah would have been quite strong had there not been the Hadith reported from ‘A‘ishah (رضي الله عنها):

“...Qasim bin Muhammad said, A‘ishah (رضي الله عنها) informed that Allah’s Messenger (ﷺ) said: He who did any act for which there is no sanction from our behalf is to be rejected.”<sup>104</sup>

This Hadith is generally applicable in the case of worship and transaction. It is obligatory to reject and invalidate any matter in worship and transaction that is contrary to the *Sharī‘ah*.<sup>105</sup> The acquisition of wealth by unlawful means is contrary to the *Sharī‘ah* and therefore, it should be recognised as such and it is mandatory to reject it.

The view of Muslim jurists from the four well-known schools and Ibn Taymiyyah’s in the case of a poor person who is allowed to take what is necessary from such unlawful wealth should be accepted. This is based on the legal principles of “necessities render prohibited things permissible”<sup>106</sup> and “necessity is determined by the extent thereof”.<sup>107</sup> In addition, it is in line with the objective (*maqāṣid*) of the *Sharī‘ah* in the protection of life from harm and damage.<sup>108</sup>

## Conclusion

<sup>104</sup> Muslim, *Ṣaḥīḥ Muslim*, no 3243.

<sup>105</sup> ‘Abd al-Majid Salih al-Mansur, *Aḥkām al-Maqbūd bi ‘Aqd Fasid wa Taṭbiqatuhu*, (Riyadh: Dar Kunuz Ishshibilia, 1434H/2013), 227-228.

<sup>106</sup> al-Shaykh Ahmad bin Shyakh Muhammad al-Zarqa’, *Sharḥ al-Qawā‘id al-Fiḥhiyyah*, 8th Edition (Damascus: Dar al-Qalam, 1430H/2009), 185.

<sup>107</sup> *Ibid.*, 187.

<sup>108</sup> Samih ‘Abd al-Wahab Al-Jundi, *Aḥammiyyat al-Maqāṣid fi al-Sharī‘ah al-Islamiyyah*, (Beirut: Mu’assasah al-Risalah, 1434H/2013), 201-212.

The discussion clearly shows that a person who acquires wealth by unlawful means must repent and must eliminate the unlawful wealth from his or her possession. Failure to eliminate it would lead to the repentance being nullified. Meanwhile, the treatment of unlawful wealth depends on the type of acquisition and whether it was with or without the consent of the original owners. This results in the different manner of treating the wealth tainted with unlawful means. Unlawful wealth that was acquired without the owner's consent has to be returned to its original owner if the owner is known and still alive. In cases where the owner has passed away, the wealth must be given to the legal heirs. In cases where the owner cannot be found or is unknown, such property must be returned by channeling it to charity or for public benefit. As regards unlawful wealth that is acquired with consent between parties by means of usury, it has to be returned to the person who has paid for such interest since such wealth has been taken unjustly. This is in line with the principle of justice. However, this is not applicable in certain situations especially in the modern concept of awarding interest for bank deposits. Since the bank is not the real owner, it is merely an intermediary between depositors and borrowers and thus the wealth has to be channeled for charity. Furthermore, wealth that is acquired by means of prostitution, soothsaying and trading of prohibited items must be channeled for charity and shall not be returned to its original owner. This is because it would encourage the payers to continue with their wrongful acts and activities as they have enjoyed prohibited usufruct and goods and they will get back what they had paid for. This is also applicable to the wealth that has been taken by means of bribery and gambling. Unlawful wealth cannot be owned by a person after repentance; however it is allowed for the poor to take what is necessary from it since the prohibition of unlawful wealth is established in the Qur'ān and Sunnah and has to be disbursed proportionately. The discussion clearly shows that Islam strongly opposes and refuses to recognise wealth that comes from unlawful sources. The only way to eliminate dependence on this type of wealth is to return it to its original owner or to channel such wealth to charity. It should not be destroyed as that would be a waste of resources. Such wealth in itself is not unlawful; what is unlawful is

the way in which it was obtained. There is therefore much sense in utilising such wealth not for personal benefit but for the benefit of the public.

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## TRANSLITERATION TABLE

### CONSONANTS

Ar=Arabic, Pr=Persian, OT=Ottoman Turkish, Ur=Urdu

Ar	Pr	OT	UR	Ar	Pr	OT	UR	Ar	Pr	OT	UR
ء	‘	‘	‘	ز	z	z	z	گ	—	g	g
ب	b	b	b	ژ	—	—	ɾ	ل	l	l	l
پ	—	p	p	ژ	—	zh	j	م	m	m	m
ت	t	t	t	س	s	s	s	ن	n	n	n
ث	—	—	ṭ	ش	sh	sh	ʃ	ه	h	h	h <sup>1</sup>
ث	th	th	th	ص	ṣ	ṣ	ʃ	و	w	v/u	v
ج	j	j	c	ض	ḍ	ḍ	ḍ	ی	y	y	y
چ	—	ch	çh	ط	ṭ	ṭ	ṭ	ة	-ah	—	-a <sup>2</sup>
ح	ḥ	ḥ	ḥ	ظ	ẓ	ẓ	ẓ	ال	al <sup>3</sup>	—	—
خ	kh	kh	kh	ع	‘	‘	‘	<sup>1</sup> – when not final <sup>2</sup> – at in construct state <sup>3</sup> – (article) al - or l-			
د	d	d	d	غ	gh	gh	ğ				
ڈ	—	—	—	ف	f	f	f				
ذ	dh	dh	dh	ق	q	q	k				
ر	r	r	r	ك	k	k/g	k/ñ	k			

### VOWELS

		Arabic and Persian	Urdu	Ottoman Turkish
Long	ا	ā	ā	ā
	آ	Ā	Ā	—
	و	ū	ū	ū
	ي	ī	ī	ī
Doubled	ي	iiy (final form ī)	iy (final form ī)	iiy (final form ī)
	و	uww (final form ū)	uv	uvv
	و	uvv (for Persian)	—	—
Diphthongs	و	au or aw	au	ev
	ی	ai or ay	ay	ey
Short	ا	a	a	a or e
	ا	u	u	u or ū
	ا	i	i	o or ō
	ا	—	—	ī

### URDU ASPIRATED SOUNDS

For aspirated sounds not used in Arabic, Persian, and Turkish add h after the letter and underline both the letters e.g. چھ jh گھ gh

For Ottoman Turkish, modern Turkish orthography may be used.

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