



RESEARCH ARTICLE

## Benefit Act (The Unjust Enrichment) - "A Jurisprudential Study Compared to the UAE Civil Transactions Law."-

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### ABSTRACT

This study delves into a significant case within the domain of transactions, focusing on the concept of unjust enrichment. The core issue at hand is to elucidate the essence of unjust enrichment, its prerequisites, and fundamental principles. The primary objective of this research is to clarify the concept of unjust enrichment, its correlation with the theory of Commitment in Islamic jurisprudence, and its application within the framework of the UAE Civil Transactions Law. It aims to outline the guidelines and conditions for restitution in cases of mistaken transactions. Additionally, it explores the key principles that underlie the interpretations of Sharia scholars and legal experts on this subject. The UAE Civil Transactions Law addresses the issue of unjust enrichment in Chapter (4), encompassing Articles 318-336 and categorizing it into five branches. The Emirati law generally aligns with Islamic jurisprudence in most of the explored cases, except for disputes related to windfall gains, where there are terminological discrepancies. The Researcher adopted an inductive and analytical comparative methodology to attain the research objectives. The research structure comprises an introduction, four main sections, and a conclusion summarizing the principal findings and recommendations.

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## INTRODUCTION

Praise be to Allah, the Creator of all beings and their shaper, the Reviver of ruins and their spreader, the One who elevates the status of knowledge and its people, as stated in His Noble Book: "*Allah will exalt those who believe among you, and those who have knowledge, to high ranks*"<sup>1</sup> And peace and blessings be upon the most complete and perfect pair, the Messenger of Mercy to the worlds, Muhammad bin Abdullah, the teacher of goodness to humanity, and upon his family and companions.

Indeed, Allah has honored the children of Adam, made all that is in the heavens and the earth subservient to them, and provided them with good things to develop the earth in accordance with His sublime methodology. Allah, the Almighty, says: "*We have honored the children of Adam and carried them on both land and sea. We have provided them with good things and greatly preferred them above much of Our creation*"<sup>2</sup>.

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<sup>1</sup> Surah Al-Isra , Verse 70.

<sup>2</sup> Surah Al-Isra, Verse 70

Financial transactions hold a significant place among the chapters of Islamic jurisprudence. Sharia scholars have given it meticulous attention, delving into its rulings in such detail that those who delve into it are filled with pride and wonder.

Its importance can be understood from the fact that it encompasses everything related to wealth, which is considered the backbone of life and its sustenance, in line with the divine injunction: "*And give not unto the foolish your property which Allah has made a means of support for you*<sup>3</sup>."

Therefore, Islamic law, with its sources being the Quran and the Sunnah, and Islamic jurisprudence, have focused on elucidating what is permissible and impermissible in terms of gains, guided by the prophetic directive: "*A slave of Allah will remain standing on the Day of Judgement till he is questioned about (four things) his life on earth and how he spent it, and about his knowledge and how he utilized it, and his wealth and how he acquired it and in what way did he spend it, and about his body and how he wore it out*<sup>4</sup>"

Our scholars have outlined the legitimate and prohibited reasons in this field, based on the texts of the Quran and Sunnah and the derived evidence, along with the comprehensive legal principles and rules that have been formulated from them.

"Among the prohibited forms of earnings is taking another's wealth without their consent and without a legitimate reason. Allah says: *O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.*<sup>5</sup>' This type of earning is then considered forbidden.

One of the scenarios in which such prohibited earnings occur is what contemporary legal scholars refer to as 'Benefit Act or unjust enrichment'. This refers to one person enriching themselves at the expense of another without a legal or Sharia basis.

While a researcher in Islamic jurisprudence may not commonly encounter such terms when studying financial transactions, this does not imply that our jurists have not addressed this issue in its various forms. Islamic jurisprudence has indeed tackled these issues and provided detailed rulings on them.

These concepts are often discussed in books on legal maxims, analogies, and commentaries on judicial rulings.

### **The problem of the study:**

- The study's problem lies in the following questions:
- What is the concept of unjust enrichment?
- What is its relationship with the theory of Commitment s?
- How does Islamic jurisprudence address issues of unjust enrichment?
- To what extent does UAE transaction law align with Islamic jurisprudence in dealing with these matters?
- What are the regulations governing unjust enrichment?
- What are the principles and guidelines that Islamic jurisprudence and UAE law rely on to judge these issues?

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<sup>3</sup> Surah An-Nisa, Verse 77.

<sup>4</sup> Narrated by At-Tirmidhi in the Book of the Description of the Day of Resurrection, the Virtues, and Abstinence, under the chapter on the Day of Resurrection, as compiled by Ahmad Muhammad Shakir and Muhammad Fuad Abdul Baqi, 4/612. At-Tirmidhi said: "This hadith is considered good and authentic

<sup>5</sup> Surah An-Nisa, verse 83.

### **The Objectives of the Study and Justifications:**

- Shedding light on an important issue in financial transactions from a jurisprudential and legal standpoint
- Explaining the principles and conditions of the legal maxim of unjust enrichment
- Outlining the legal principles used in jurisprudential rulings on this topic
- Comparing key aspects of UAE civil transaction law with Islamic jurisprudence"

### **Previous Studies:**

Most of what has been written in this chapter is from a legal perspective, with few studies addressing this topic from a jurisprudential angle. This study differs from others in that it compares Islamic jurisprudence with UAE law on one hand and focuses on the regulations governing the principle of "unjust enrichment."

### **The Plan of the Research:**

#### **Chapter (1): Concept of Commitment in Jurisprudence and Law and its Relationship to Unjust Enrichment**

First Section: Linguistic and terminological Meaning of Commitment and its Relationship to the Concept of Right.

Second Section: Understanding the concept of "unjust enrichment" and its relationship to the concepts of Commitment and right.

#### **Chapter (2): Study of Selected Issues in Islamic Jurisprudence**

First Section: Expenditure of the mortgagee on the mortgage

Second Section: Expenditure of the custodian on the lost property

Third Section: Wife's expenditure on herself

#### **Chapter (3): Conditions and Restrictions Regarding Reimbursement**

First Section: The payer should have a duty towards the other party

Second Section: The payer should not be acting out of gratuitousness in their actions.

Third Section: The Payer must not intend to donate when fulfilling duties on behalf of others.

Fourth Section: The Commitment must be worldly

#### **Chapter (4): Sharia Principles Underlying the Principle of Unjust Enrichment**

First Section: Principle of justice

Second Section: the principle of "Harm shall be made good."

Conclusion and Recommendations

Study References

## Chapter (1):

### Concept of Commitment in Jurisprudence and Law and its Relationship to Unjust Enrichment

**First Section:** Linguistic and Terminological Meaning of Commitment and its Relationship to the Concept of Right.

Linguistic Definition of Commitment: It conveys the idea of attachment and non-separation. As mentioned in "Lisan al-Arab," "A man is 'luzimat' to something: he adheres to it and does not leave it." It also signifies permanence and necessity. In "Al-Misbah Al-Muneer," it is stated, "Something is 'luzima' – it becomes obligatory and enduring... It is said, 'I obligated him,' meaning I made it firm and lasting. The Commitment of money was incumbent upon him. The Commitment of divorce necessitated its ruling." (Al-Misbah Al-Muneer fi Ghareeb Al-Shareh Al-Kabeer)

#### In the jurisprudential terminology:

Understanding the true meaning of Commitment in fiqh requires delving into the concept of "right," as the concept of Commitment is closely linked to the concept of right.

This research does not aim to elaborate on the discourse on rights, their sources, reasons, and effects, as this would require extensive explanation and has been thoroughly discussed in specialized books like "The Right and the Extent of State Authority to Restrict It" by the late Dr. Mohamed Fathi Al-Dreni, and "Rights, Commitments, and the Impact of Death on Them" by Sheikh Ali Al-Khafif, may Allah have mercy on them, among others.

Therefore, I will limit the discussion to explaining the meaning of "right" as a term and its relationship to "Commitment."

The ancient jurists did not fully grasp the profound meaning of "rights" in its expansive sense; instead, they interpreted it within the confines of its linguistic definitions. Dr. Mohamed Fathi Aldarini asserts: "Upon scrutinizing the usages of the term 'rights' by the jurists, it becomes evident that they did not limit 'rights' to a singular concept but rather applied it to diverse meanings drawn from the linguistic nuances of the term<sup>6</sup>."

Contemporary scholars have delineated several definitions, with one of the most eloquent being that of the esteemed scholar Mustafa Al-Zarqa (may Allah have mercy on him), who defined it as: "***A jurisdiction through which the Sharia establishes authority or imposes a Commitment.***"<sup>7</sup>

Dr. Wahba Al-Zuhayli, reflecting on the aforementioned definition, remarked: "This is a commendable definition as it encompasses various categories of rights, encompassing religious rights such as the Commitments towards Allah concerning acts of worship, civil rights like property ownership, ethical rights like obedience to parents and spouses, communal rights like the state's right to allegiance from its citizens, financial rights such as maintenance, and non-material rights like self-guardianship."<sup>8</sup>

#### Elaboration on the definition:

- "Jurisdiction" pertains to a relationship that encompasses matters of financial nature, such as debt Commitments, or those involving the exercise of personal authority, like guardianship and agency<sup>9</sup>.

<sup>6</sup> Drini, "Al-Haqq and the Extent of the State's Authority in Restricting It," p. 185.

Al-Zarqa, "An Introduction to the Theory of Public Commitment," pp. 19-20.

<sup>7</sup> Al-Zarqa, "An Introduction to the Theory of Public Commitment," p. 19.

<sup>8</sup> Al-Zuhayli, "Islamic Jurisprudence and its Evidence," 4/2839

<sup>9</sup> Al-Zarqa, "An Introduction to the Theory of Public Commitment," pp. 19-20.

This jurisdiction must be tied to a specific individual, akin to the seller's right to receive the price, which is exclusive to them. In cases where no exclusive jurisdiction exists, but rather a general permission such as hunting, gathering firewood, or utilizing public facilities, it does not qualify as a "right" but rather as a general license for the populace<sup>10</sup>.

- "Authority or Commitment," because rights are connected to authority and Commitment. **Authority** can be over:

- a. Things, like the right of ownership that entitles its owner to benefit from assets.
- b. Individuals, like the right of guardianship over oneself and the right of custody of a minor<sup>11</sup>.
- c. **As for Commitment**, it is what a person is required to do, termed by jurists as "responsibility." It includes worship Commitment s, marital rights of a wife over her husband, a parent's rights over their child, debt repayment, a tenant fulfilling their contractual duties, and so forth<sup>12</sup>.

### Categories of Rights:

Rights have numerous divisions, as outlined by legal experts and contemporary jurists, derived from ancient Islamic jurisprudence. Of importance here is the general division into two categories:

- a. Financial rights, concerning wealth such as ownership of assets and benefits, and so on.
- b. Non-financial rights, like a guardian's authority over a minor and other rights such as natural and political rights.

Financial rights are further categorized into personal and real rights.

Personal rights are defined as "any legal relationship between two persons in which one is obligated towards the other to perform an action beneficial to the other, or refrain from acting contrary to their interest<sup>13</sup>

Real rights: "A relationship between a person and a specific material object in itself, where the person has a specialized interest that grants them direct authority over a specific material asset."<sup>14</sup>

Now, let's clarify the meaning of "Commitment." Legal experts define Commitment as: "A legal situation where, as a result, a person is bound to transfer a real right, perform an action, or refrain from an action."<sup>15</sup>

**In Islamic jurisprudence**, Al-Hattab, a scholar of the Maliki school, discussed the concept of Commitment, stating: "The implication of Commitment linguistically is obligating oneself unless necessary. This encompasses sales, leases, marriage, divorce, and all contracts. In the terminology of jurists, it is obligating oneself to something known absolutely or contingent upon something, like a gift. In specific usage, it refers to a more specific Commitment known as 'Commitment,' prevalent in today's societal norms."<sup>16</sup>

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<sup>10</sup> Previous source

<sup>11</sup> Previous source, p. 26

<sup>12</sup> Previous source, p. 20, Al-Khafif, Al-Haqq wa al-Dhimmah, p. 58

<sup>13</sup> Al-Zarka, Al-Nazariyyah al-Aamah li al-Iltizam, p. 26

<sup>14</sup> previous source, page 27.

<sup>15</sup> Al-Sanhouri, Al-Waseet, 1/114.

<sup>16</sup> Al-Hattab, Tahrir al-Kalam fi Masa'il al-Iltizam, p. 68.

Some contemporary scholars define it as: "A person being obligated to act or refrain from acting for the benefit of another."<sup>17</sup>

In other words, it is what a person must fulfill towards another, contrasting with personal rights. Its elements or pillars are four: the obligated party, the party to whom the Commitment is owed, the subject matter of the Commitment, and the act to be performed. In a sales contract, the seller is obligated, the buyer is owed, the item sold is the subject of the Commitment for the seller, and the price is the subject for the buyer. The term Commitment is also referred to as Commitment or duty. Muslim jurists have adopted the modern legal definition of Commitment.

The nature of Commitment in Islamic law is a material relationship either related to the debtor's wealth, like a creditor, or related to their actions, like a lessee. It is not a personal relationship that would allow the creditor to physically compel a wealthy debtor to discharge their debt through physical coercion like imprisonment or distress. Instead, the affluent debtor should look towards easing the burden according to the Quran.

### **The relationship between Commitment and rights**

It is profound and rooted in the essence of Islamic jurisprudence. It is evident from the definitions of Commitment and rights that the former aligns with the concept of personal rights previously elucidated.

As the eminent scholar Mustafa Al-Zarka states, "In the eyes of Islamic law, Commitment is inherently a material relationship either concerning the wealth of the obligated party, as in loans, or their actions, as in employment."<sup>18</sup>

### **Causes and elements of Commitment**

Cause of Commitment: It is the incident that gives rise to the Commitment, encompassing all verbal and physical actions, and the circumstances from which the right arises in accordance with Islamic law. In legal terms, this cause is termed the source of Commitment. For instance, a sales contract involves a verbal transaction, destruction of another's property involves a physical action, refraining from an action to prevent loss of property with the ability to do so is a negative action, and the subject of the Commitment is compensation<sup>19</sup>.

Al-Sanhouri highlighted four sources (causes) of Commitment s<sup>20</sup>:

1. Contracts, 2. Unlawful act, 3. Unjust enrichment (Benefit Acts), 4. The law. Dr. Wahba Al-Zuhayli, in his encyclopedic work on Islamic jurisprudence, mentioned five causes of Commitment s: Sharia, contracts, individual will, Benefit Acts, and harmful acts.<sup>21</sup>

Hence, it becomes apparent that unjust enrichment or Benefit Acts, as some term it, is a legitimate cause of Commitment both in jurisprudence and law.

### **Second Section: The meaning of "Benefit Act" or "Unjust Enrichment":**

#### **Firstly: Explanation of the term "Benefit Act" or "Unjust Enrichment":**

- I do not believe that a knowledgeable reader of the language needs an explanation of the words "act" and "beneficial" for their clear meanings.

<sup>17</sup> Al-Zarka, Al-Madkhal Al-Fiqhi Al-A'am, 1/514.

<sup>18</sup> Al-Zarka, Al-Nazariyyah al-Aamah li al-Iltizam, p. 65

<sup>19</sup> Refer to: The previous source, page 74, Al-Zarka, Al-Madkhal Al-Fiqhi Al-A'am 1/515

<sup>20</sup> Al-Waseet, 1/117.

<sup>21</sup> Al-Zuhayli, Al-Fiqh al-Islami wa Adillatuh, 4/2855.

As for the term "enrichment," it is derived from "thara." It is mentioned in "Lisan al-Arab": "Wealth: the abundance of people and possessions... and richness: the abundance of wealth."<sup>22</sup>

From this, the term "enrichment" is derived from "athara." As mentioned in "Al-Misbah al-Muneer," "and athara 'ithra': to become rich and independent<sup>23</sup>," the intended meaning here is the acquisition of wealth and benefit.

- The reason: linguistically, "what is used to reach others" like a rope<sup>24</sup>.

And by the jurists, it means "what, when present, necessitates existence and when absent, necessitates non-existence for itself."<sup>25</sup>

The meaning related to our discussion is linguistic, not terminological.

**Regarding the compound term, I mean "Benefit Act or Unjust Enrichment," this is what is meant by the explanation.**

The ancient jurists did not know the term "Benefit Act or Unjust Enrichment," but we have found explanations about it in modern references, such as:

It is mentioned in the juristic encyclopaedia "*That whoever pays off another's debt or provides a benefit Act becomes needy, and the recipient becomes enriched without a legal reason.*"<sup>26</sup>

It is known in the lexicon of the jurists as: "*An individual's enrichment as a result of another's need without a legal justification.*"<sup>27</sup>

It is evident from the lexicon's definition - which is more precise - that Unjust Enrichment or) a Benefit Act) is one person's enrichment at the expense of another without a legal basis.

"The Benefit Act, in its essence, involves enriching one person at the expense of another<sup>28</sup>. This enrichment may be intentional or unintentional, or even occur without any action on their part. Typically, this enrichment results from one person's actions leading to another's enrichment without a legal or religious justification.

It is important to mention the reasons for legitimate ownership in Islamic jurisprudence, as they are directly relevant to our topic. These reasons, as outlined by the respected scholar Sheikh Mustafa al-Zarqa (may Allah have mercy on him), are as follows<sup>29</sup>:

1. **Acquiring permissible things**, such as hunting on land or sea, mining, and others.
2. **Contracts**, including those involving the transfer of ownership, such as sales.
3. **Inheritance**, encompassing inheritance, wills, and guarantees.
4. **Descendants from what is owned.**

Essentially, any benefit or wealth not acquired through one of these legitimate means is not considered lawful wealth.

<sup>22</sup> Ibn Manzur - "Lisan al-Arab" - Volume 14, page 110

<sup>23</sup> Al-Fayoumi - "Al-Misbah al-Munir" - Volume 1, page 81

<sup>24</sup> Al-Fayruzabadi - "Al-Qamus al-Muhit" - page 96

<sup>25</sup> Ibn al-Najjar - "Sharh al-Kawkab al-Munir" - Volume 1, page 445

<sup>26</sup> Kuwaiti Ministry of Awqaf - "Al-Mawsu'ah al-Fiqhiyyah" - Volume 6, page 148

<sup>27</sup> Qal'aji and Qunaybi - "Mu'jam Lughat al-Fuqaha" - page 42

<sup>28</sup> This also applies to legal entities.

<sup>29</sup> Refer to: "The General Jurisprudential Introduction", page 335 and beyond.

In legal terms, Egyptian civil law defines unjust enrichment as 'every person who has been enriched without a legal reason at the expense of another person is obliged, within the limits of the enrichment, to compensate that person for the losses incurred.'<sup>30</sup>

While the UAE Civil Transactions Law does not provide a specific definition of unjust enrichment, Articles No. (318) and subsequent provisions elaborate on similar concepts as found in Egyptian civil law.

### **Secondly: The Relationship between Commitment in Islamic Jurisprudence and Unjust Enrichment**

After explaining the meanings of both "Commitment " and "Benefit Act (unjust enrichment)" where unjust enrichment, the relationship between them becomes apparent. This relationship signifies that the Benefit Act (unjust enrichment) is one of the reasons for Commitment both in religious and legal contexts.

This implies that the one who is enriched at the expense of another is obligated, in certain circumstances, to compensate the one who has been enriched at their expense because their enrichment was not legally justified. This study aims to examine the regulations governing this subject by reviewing a number of jurisprudential issues falling under the term "Benefit Act" or what is known as "unjust enrichment".

Hence, it was necessary to investigate the circumstances under which a person acquires money or benefit through unjust enrichment, which are numerous in Islamic jurisprudence.

#### **Causes of Benefit Acts in law<sup>31</sup>:**

The UAE Civil Transactions Law mentions in the fourth chapter titled "Benefit Acts" branches thereof, which are essentially forms or causes of Benefit Acts or unjust enrichment, such as:

1. Enrichment through ignorance or mistake, referred to by the UAE law as "undue receipt"<sup>32</sup>. An example of this is in Article No. (320) which states: "If someone pays something thinking it is due from them, then it becomes clear that it is not due, they are entitled to reclaim it from the recipient if it is still available, or its equivalent if it is not." This is when the payer's mistaken belief results in unjust enrichment of the recipient, thus the law compels the recipient to return it.

Islamic jurisprudence has a similar concept, as stated in "Al-Ashbah Wal-Nazair": "If someone thought they had a debt and then it became clear that they did not owe it, they should reclaim what they paid."<sup>33</sup>

2. Enrichment through "benefit"<sup>34</sup>: The law defines "benefit" as: "A person undertaking an immediate action on behalf of another without being obligated to do so."<sup>35</sup>

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<sup>30</sup> Article 179.

<sup>31</sup> The jurists did not explicitly mention reasons for unjust enrichment; rather, these are scattered issues in various categories. Therefore, I deemed it appropriate to follow legal classifications and mention corresponding Islamic jurisprudence.

Ibn Nujaym, Al-Ashbah wal-Naza'ir, p. 135

<sup>32</sup> Explanatory Memorandum of the UAE Civil Transactions Law, p. 329

<sup>33</sup> Ibn Nujaym, Al-Ashbah wal-Naza'ir, p. 135

<sup>34</sup> Explanatory Memorandum of the UAE Civil Transactions Law, p. 335

<sup>35</sup> Egyptian Civil Law, Article 188



"Benefit" in this legal sense is a term not commonly used in Islamic jurisprudence. Islamic jurists define "benefit" as: "Someone acting on behalf of another without legal permission,"<sup>36</sup> where legal permission means being a guardian, an heir, or an agent in a contract.<sup>37</sup>

It is evident that the fundamental difference between the legal perspective on unjust enrichment and the Islamic jurisprudential view of it can be summarized as follows: In Islamic jurisprudence, the essence of unjust enrichment lies in the absence of legal permission, rather than the necessity of urgent circumstances prompting the action - as suggested by those who argue for the validity of enrichment through surplus.<sup>38</sup>

While the UAE Civil Transactions Law omits a specific definition of unjust enrichment, Article No. (325) stipulates that performing a Benefit Act for another without explicit instruction, but with judicial authorization, necessity, or customary Commitment, deems the performer as a surrogate, subject to ensuing regulations.

Contrary to the law's inclusion of "surplus enrichment" as a form of unjust enrichment, Islamic jurisprudence and UAE law often associate instances of unjust enrichment with urgency or compelling necessity, regardless of judicial consent, reflecting variations in legal interpretations.

It is noteworthy that jurists did not consider "unjust enrichment" as a contributing factor to unjust enrichment, unlike the legal framework, highlighting the divergent definitions of this principle in jurisprudence and law.

## **Chapter (2): Selected Jurisprudential issues**

The instances of unjust enrichment are plentiful in Islamic jurisprudence, such as spending on Mortgagor, picking up lost items, providing for slaves, wives, relatives, and animals when the obligated spender fails to do so, and spending by one partner on common assets in the absence or refusal of the other. Examples also include building on lower-level property without permission from the owner or the ruler's permission due to necessity, joint wall construction, paying Zakat to those not entitled, and more<sup>39</sup>.

Here, we will present issues that jurists have categorized under unjust enrichment, even if they did not explicitly label them as such. The essence is more important than the terminology used by scholars.

I have selected three issues to provide insight into the methodologies of Islamic jurisprudence.

### **First Section: Expenditure of the Mortgagee on the Mortgage**

Definition of Mortgage and its Legitimacy

The concept of Mortgage is closely related to loan agreements or deferred sales.

Linguistically, a Mortgage signifies continuity and confinement.<sup>40</sup>

Terminological, it refers to "binding a property with a debt"<sup>41</sup>

Or "the property that is bound by a debt to be fulfilled from its value if the debtor fails to pay."<sup>42</sup>

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<sup>36</sup> Fiqh Dictionary, p. 287

<sup>37</sup> Al-Jurjani, Al-Ta'rifat , p. 167

<sup>38</sup> The majority of jurists,

<sup>39</sup> Refer to: "Al-Mawsu'ah Al-Fiqhiyah Al-Kuwaitiyah, 6/148."

<sup>40</sup> Refer to: "Al-Mu'jam Al-Wasit, 1/378."

<sup>41</sup> Al-Nasafi, "Talabat Al-Talaba, p. 146."

<sup>42</sup> Ibn Qudamah, Al-Mughni, 6/443.

### Mortgage is sanctioned by the Quran, Sunnah, and consensus.

Quranically: "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging)"<sup>43</sup>

From the Sunnah, Aisha, may Allah be pleased with her, narrated that the Prophet Muhammad, peace be upon him, bought food from a Jew and pledged his shield.<sup>44</sup>

Mortgage serves as a means of documentation and authentication, ensuring the repayment of debts, as highlighted by Allah concerning writing, witnessing, and pledging in the Quran.

### **Secondly: Maintenance of the Mortgage<sup>45</sup>**

-The majority of scholars agree that the one who Mortgage is responsible for the upkeep of the Mortgage, including providing food, clothing, shelter, protection, storage, and similar necessities.<sup>46</sup>

(The maintenance of the Mortgage) includes expenses such as feeding animals, clothing oneself, providing fodder for livestock, paying for tree irrigation, drying fruits, watering gardens, and similar expenses. These responsibilities fall on the Mortgage by consensus of scholars.<sup>47</sup>

This is in accordance with the saying of the Prophet Muhammad, peace be upon him: "The one who Mortgage should not close the pledge from the one who pledged it. The Mortgage should pay the fine and benefit from it."<sup>48</sup>

- The Hanafi school distinguishes between two situations by stating: If the expenses are required for the benefit of the Mortgage itself or its subsidiary items like animal feed, shepherd's wage, or orchard irrigation, then the responsibility falls on the Mortgage. However, if the expenses are needed for safeguarding the Mortgage like sheltering livestock or hiring guards, then the responsibility falls on the **Mortgagee** because the **Mortgage** is in their custody.<sup>49</sup>

### **Thirdly: Spending by the Mortgagee on the Mortgage**

The default rule, as previously mentioned, is that the Mortgage is responsible for spending on the Mortgage since they own it. If the Mortgage falls short or if the Mortgagee is compelled to spend to safeguard the Mortgage—whether it's an animal, trees, or anything requiring maintenance—should the Mortgage be reimbursed for their expenditure, considering that the Mortgage has benefited or enriched themselves at the expense of the Mortgagee without a legal reason?

First Opinion: the Maliki School believes that the Mortgagee can spend on the Mortgage for its preservation even without the Mortgage's permission and can seek reimbursement from the Mortgage.<sup>50</sup>

**Second Opinion:** The Shafi'i school holds that the ruler can compel the Mortgage to spend. If the Mortgage cannot do so, the ruler may provide from the Mortgage's funds. If the Mortgage lacks

<sup>43</sup> Surah Al-Baqarah, Verse 283.

<sup>44</sup> Sahih Al-Bukhari, Book of Sales (Al-Buyu'), Chapter on Buying Necessities Personally, 2/738.

<sup>45</sup> This refers to: "All that is spent on the pledge to preserve it."

<sup>46</sup> Refer to: Ibn Qudamah, Al-Mughni, 6/517. Al-Ramli, Nihayat Al-Muhtaj, 4/279.

<sup>47</sup> Al-Ramli, Nihayat Al-Muhtaj, 4/279. And refer to: Al-Dasuqi, Hashiyat Al-Dasuqi 'ala Al-Sharh Al-Kabir, 3/251.

<sup>48</sup> Refer to: Sunan Abi Dawood, Book of Sales, Chapter on Pledges, 5/386. The hadith is from the transmissions of Sa'id ibn Al-Musayyab and authenticated by Sheikh Al-Arnaut in his verification of the book "Al-Ihsan fi Taqrib Sahih Ibn Hibban," 13/258-259

<sup>49</sup> Refer to: Ibn 'Abidin, Hashiyat Radd al-Muhtar, 6/68.

<sup>50</sup> Refer to: Al-Dardir, Al-Sharh Al-Saghir, 3/334..

funds, they can borrow on his behalf. Spending by the Mortgagee with the ruler's permission is permissible. If permission is not obtained, there is no reimbursement.<sup>51</sup>

**Third Opinion:** The Hanbali School asserts that the Mortgagee cannot spend on the Mortgagor without the Mortgagor's permission. If they are unable to do so, they can spend and seek reimbursement from the Mortgagor<sup>52</sup>.

I did not find a statement from the Hanafi School on this issue.

## **Second Section: Spending on Lost Property by the Finder**

**First:** Defining the lost property and explaining its types

Lost property is: "Lost wealth that someone else picks up."<sup>53</sup>

Lost property has different types in terms of spending on it:

- Some types require expenditure to preserve them, such as animals.
- Some require expenditure to transport them to the place of Finder.
- Some types do not require any expenditure at all, such as coins and jewelry.

Of these types, let us take animals as an example that require expenditure.

## **Second: The opinions of jurists on returning the lost property with expenditure**

Jurists have differed in their opinions on whether the finder can reclaim the expenses incurred on the found animal.

**The first opinion**, held by the Hanafi<sup>54</sup> and Shafi'i<sup>55</sup> schools, states that the finder has the right to be reimbursed for the expenses spent on the animal if authorized by the judge.

In Al-Majma' al-Damanat, it is stated that if the lost property can be leased out, it should be leased out by the order of the judge, and the expenses should be covered from the lease amount. If the finder spends on it without the judge's permission, they are considered a voluntary giver and cannot reclaim the costs from the owner. If the expenditure is made with the judge's permission, it becomes a debt owed by the owner.<sup>56</sup>

As-Shirbini stated, "If one intends to identify the lost property with the animal, they must bear the expenses of the animal throughout the identification period."<sup>57</sup>

**Second Opinion:** This is the opinion of the Maliki<sup>58</sup> and Hanbali<sup>59</sup> schools that the finder can reclaim the expenses spent on the animal, even if the ruler did not authorize the expenditure.

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<sup>51</sup> Refer to: Al-Ansari, Asna al-Matalib, 2/169.

<sup>52</sup> Refer to: Ibn Qudamah, Al-Mughni, 521. Al-Hajawi, Zad al-Mustaqni', p. 116. Al-Buhuti, Sharh Minhat al-Dirayah, 2/120.

<sup>53</sup> Ibn Qudamah, Al-Mughni, 8/290.

Ash-Shirbini, Mughni al-Muhtaj, 3/548.

<sup>54</sup> Refer to: Al-Baghdadi, Majma' al-Damanat, p. 210.

<sup>55</sup> Refer to: Ash-Shirbini, Mughni al-Muhtaj, 3/548.

<sup>56</sup> Al-Baghdadi, Majma' al-Damanat, p. 210.

<sup>57</sup> Ash-Shirbini, Mughni al-Muhtaj, 3/548.

<sup>58</sup> Refer to: Malik ibn Anas, Al-Mudawwanah, 4/457.

<sup>59</sup> Refer to: Al-Bahuti, Sharh Minhat al-Iradat, 2/380.

It is mentioned in Al-Mudawwanah: "I said: If the owner comes and has spent on these animals, should he be responsible for their expenses? Malik said: Yes, the owner should reimburse what was spent on them and should not take them until he reimburses the expenses."<sup>60</sup>

And in the explanation of Minhath al-Iradat: "or he keeps it and spends on it, the finder is obliged from his own money to preserve it for its owner. If he neglects it without spending on it, it will perish due to his negligence. The finder has the right to return it to its owner if he finds him after spending on it, as he spent on it to preserve it, so it becomes part of the owner's wealth like provisions for drying grapes and dates."<sup>61</sup>

### Third Section: The wife's expenditure on herself

It is well known that the husband is obligated to provide for his wife, and there is no disagreement among scholars on this matter. If the husband is absent and does not send maintenance or refuses to provide it, is it permissible for the wife to spend from her own money and demand reimbursement, or to borrow from others and demand it from the husband?

Scholars have differed on this matter with various opinions:

**First Opinion:** The majority of jurists from the Maliki<sup>62</sup>, Shafi'i<sup>63</sup>, and Hanbali<sup>64</sup> schools state that the expenses a wife incurs on herself from her own money or borrowed funds are considered a debt on the husband as soon as the expenditure becomes obligatory on him and he refuses to pay.

This debt can only be discharged through payment or waiver, similar to other debts, whether ruled upon by a judge, agreed upon, or not.

They base their argument on the following:

1. It is narrated that Umar ibn al-Khattab wrote to the leaders of the garrisons regarding those who were absent from their wives in Medina, instructing them to either return to their wives or send money for their expenses. Those who stayed away were told to send the expenses for what they left behind.<sup>65</sup>
2. Because it is a right that is obligatory even in hardship and adversity, it does not expire with the passage of time, similar to rent and debts.<sup>66</sup>

Ibn al-Mundhir stated: "This is expenditure mandated by the Quran, Sunnah, and consensus, and what is mandated by these arguments does not disappear except by similar means."<sup>67</sup>

**Second Opinion:** The Hanafis believe that if a wife spends on herself from her own money or from others' money without a judicial ruling on the expenditure or agreement with her husband on the amount, the expenditure is not considered a debt on the husband at all. However, if the period for which she sought judgment for her expenditure is less than a month, the judge may rule in her favor due to the difficulty of preventing her.<sup>68</sup>

<sup>60</sup> Malik ibn Anas, Al-Mudawwanah, 4/457.

<sup>61</sup> Al-Bahuti, Sharh Minhath al-Iradat, 2/380.

<sup>62</sup> Refer to: Malik ibn Anas, Al-Muwatta 2/182, Ibn Rushd, Al-Bayan wal-Tahsil 5/358

<sup>63</sup> Refer to: Ash-Shirbini, Mughni al-Muhtaj, 5/176

<sup>64</sup> Refer to: Zad al-Mustaqni', p. 203

<sup>65</sup> Refer to: Ibn Qudamah, Al-Mughni, 367

<sup>66</sup> Refer to: Previous reference. Ash-Shirbini, Mughni al-Muhtaj, 5/176

<sup>67</sup> Refer to: Ibn al-Mundhir, Al-Ishraf 'ala Madhahib al-Ulama', 5/160

<sup>68</sup> Refer to: Al-Kasani, Bada'i al-Sana'i', 4/28

Ibn Abidin stated: "Know that they said: The woman has the right to claim back expenses spent on herself from the husband after the judge's decree, whether she spent from her own money or borrowed it with or without the judge's order, but the benefit of the order to borrow is that it doesn't cease with the death of either of them."<sup>69</sup>

### **Chapter (3): Conditions and Restrictions Regarding Reimbursement (Return of Expenditure by the Payer)**

After examining the jurisprudential issues mentioned by scholars regarding unjust enrichment, we can derive a number of conditions and restrictions related to the return of expenditure by a Payer on behalf of another.

We can summarize the conditions related to the guarantor returning what they have spent as follows:

#### **First Section: The payer should have a duty towards the other party.**

This is based on the principle: "Whoever fulfills an Commitment on behalf of another should be repaid, even if done without their permission."<sup>70</sup>

Looking at the studied jurisprudential examples, it becomes clear that the owner is the one obligated to bear the expenses.

The collateral owner, according to scholars' consensus, is responsible for spending on their property for its sustainability and preservation. Similarly, a husband is obliged to provide for his wife. Although there are differences among jurists regarding the reason for the Commitment of expenditure, whether it is due to ownership for enjoyment or confinement, the possessor is the one obligated to bear the expenses for its preservation.

This is the first requirement, that what is paid on behalf of another should be originally obligatory on them, allowing the payer to seek reimbursement for what they have paid. If it is not obligatory on the other party, and someone else pays on their behalf, there is no legal basis for demanding reimbursement for those expenses.

If a Fiancée spends on herself with the intention of being reimbursed by her Fiancé, she is not entitled to it, as the one responsible for her expenses according to religious law is her guardian, not the Fiancé.

#### **Second Section: The payer should not be acting out of gratuitousness in their actions.**

This condition is stipulated in jurisprudence, not in law, as Islamic jurists do not consider gratuitousness as one of the prohibited causes of enrichment, unlike the legal definition. In Islamic jurisprudence, a person who acts on behalf of another and enriches them is not considered gratuitous because they do so out of necessity or need, with the permission of a judge or with witnesses—there is disagreement among jurists regarding permission and witnessing—but this is not deemed gratuitous in their view.

However, in legal terms, this individual in such cases is considered gratuitous.

Ibn al-Qayyim stated in elucidating those who are not entitled to reimbursement for what they have paid on behalf of others: "If someone fulfills a duty on behalf of another, whether it's a debt or expenses for a relative or spouse, they are either gratuitous and are deserving of missing out on what they spent on others, or they are acting benevolently, with their situation left to Allah's discretion rather than the recipient's, and they do not deserve to demand repayment."

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<sup>69</sup> Hashiya Radd al-Muhtar, 3/591

<sup>70</sup> Refer to: Al-Rajaji, Manahij al-Tahsil, 2/348, Ibn Taymiyyah, Majmu' al-Fatawa, 30/348, Ibn al-Qayyim, I'lam al-Muwaqqi'in, 3/90.

If they are not acting gratuitously, then jurisprudence requires that they fall within the following conditions:

1. The payer must be compelled (usually indicating urgent necessity) to make the payment on behalf of the recipient, such as the finder need for someone to cover expenses for an orphan to protect them from harm, or the need for a debtor to cover expenses on a mortgage to prevent it from being lost due to debt, or the need for a wife to spend on herself and her children.

While jurists generally agree on the permissibility of such expenditures, they differ on whether obtaining permission from a ruler or judge is necessary for the payer to seek reimbursement from the recipient. They also differ on the requirement of witnesses in cases where it is impossible to reach the ruler or judge.

Some scholars believe that those who do not seek permission from the ruler or judge or provide witnesses when access is not possible are considered as making a donation and cannot seek reimbursement, even if they have enriched someone else, to prevent interference in people's affairs without due cause. Others do not require adherence to this rule and emphasize the general principle that "if someone fulfills a duty on behalf of another, they are entitled to reimbursement, even without their permission."<sup>71</sup>

2. To act as a deputy for someone in performance or to be authorized by them, such as being responsible for spending on their family or wealth, allows for reimbursement from the principal as the performer is considered a representative of the principal. Therefore, they can seek reimbursement.

3. Another condition is when it is commonly accepted for someone to spend on behalf of others without explicit permission in specific situations, making them implicitly authorized, like when companions spend on a deceased person's preparation, burial, and collection of their funds during a journey. Ibn Abidin, may Allah have mercy on him, mentioned that the heir or executor has the right to seek reimbursement for the cost of the burial shroud from the deceased's estate.<sup>72</sup>

If it is permissible for the heir to seek reimbursement for the cost of the shroud and preparations, then it is even more appropriate for others to do so as well.

**Third Section:** The Payer must not intend to donate when fulfilling duties on behalf of others.

This is because intention is fundamental in actions, and enrichment can imply donation and reimbursement, hence the necessity of knowing the Payer's intent.

The jurists have explicitly and sometimes implicitly stipulated this condition. For instance, in the extreme case of intentions, it is stated: "(And for him), meaning the finder, to seek reimbursement from the owner if he finds him by what he spent on him (intentionally), meaning the right to seek reimbursement is established."

Ibn Taymiyyah stated that according to the prominent views of Malik and Ahmad ibn Hanbal, if one performs a duty on behalf of another without intending to donate, they have the right to seek reimbursement<sup>73</sup>.

Al-Qarafi also noted that according to Malik's doctrine, if one performs an action or provides a benefit to another by their own or someone else's directive, and they are not a donor, they can seek reimbursement.

<sup>71</sup> Refer to: Al-Babarti, Al-'Inayah Sharh al-Hidayah

<sup>72</sup> Ibn Taymiyyah, Majmu' al-Fatawa, 4/348

<sup>73</sup> Al-Qarafi, Al-Furuq, 3/219

These texts clearly require that the performer's intent, when acting on behalf of others, should be reimbursement for expenses incurred, not donation. While some scholars may not explicitly mention this, it can be inferred from their statements, as the general principle is that a donor cannot claim compensation, similar to cases of gifts and bequests.

"And this is what is understood from the texts of Articles 333-335 of the UAE Civil Transactions Law."

#### **Fourth Section: The Commitment must be worldly,**

Meaning it does not require intention, such as settling debts for others, spending on collateral, and other previously mentioned actions. As for acts of worship - which are lacking in intention - they can be categorized regarding the permissibility of performing them on behalf of others into the following divisions:

1. Purely financial acts of worship, like Zakat and voluntary charity, can be given on behalf of a wealthy person with their permission, whether from their own wealth or from someone they have authorized. However, intention is necessary from the person on whom the Commitment falls because intention is fundamental in worship. If they give it with permission, it is as if they have given it themselves.<sup>74</sup>
2. Purely physical acts of worship, such as prayer and fasting, do not validate substitution for the living according to the consensus of scholars.<sup>75</sup>
3. Integrated worship - combining physical and financial aspects - such as Hajj: It is permissible by the majority, except for the Maliki School, to perform it on behalf of others in cases of incapacity or necessity due to textual evidence. Among these is what is narrated from Abdullah ibn Abbas, may Allah be pleased with them both, that he said: "Al-Fadl was riding behind the Messenger of Allah, peace be upon him, when a woman from the tribe of Khath'am came. Al-Fadl began to look at her and she at him. The Prophet turned Fadl's face to the other side. The woman said, 'Messenger of Allah, the Commitment of Allah on His slaves to perform Hajj has become due on my elderly father who cannot endure the journey. Should I perform Hajj on his behalf?' He said, 'Yes.'"<sup>76</sup>

The matter that may have a bearing on the issue of enrichment is when a performance is non-monetary, such as Zakat and Hajj. As for what is physical, like fasting on behalf of others - according to those who validate it - its value cannot be returned because it cannot be quantified due to being a physical worship act. Moreover, those who deem this permissible stipulate that it must be on behalf of the deceased, not the living.

If someone pays Zakat on behalf of another with their permission using the payer's money, this does not enrich the one on whom Zakat is obligatory because the norm is for the payer's transaction to be discretionary rather than acting as an agent or deputy with explicit or implicit consent. Furthermore, the payment was not necessary to save something valuable or vital from destruction; hence, the sin of delay falls on the one obligated to pay Zakat on their wealth. It cannot be argued that it was done to ensure the right of the poor from being lost since this is not their duty but that of the ruler, as Allah says, " *Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them*

<sup>74</sup> Al-Kasani, "Bada'i al-Sana'i", 2/212. Al-Qarafi, "Al-Furuq", 2/205. Ibn Qudamah, "Al-Mughni", 5/27.

<sup>75</sup> Previous sources. And Al-Ramli, "Nihayat al-Muhtaj", 5/22

<sup>76</sup> Surat At-Tawbah, verse 103, and the hadith was narrated by Al-Bukhari, Book of Hajj, Chapter on the Commitment of Hajj and its Virtue, 2/551, Al-Baghdadi's investigation, 5th edition, Dar Ibn Kathir and Al-Yamamah.

increase."<sup>77</sup> Regarding the statement of Abu Bakr (may Allah be pleased with him) in the context of those who withheld Zakat: "*I will fight those who differentiate between prayer and Zakat.*"<sup>78</sup>

Regarding the matter of Hajj, it can be said the same as with Zakat if it was done with permission from the one obligated to perform Hajj and if they were incapable. However, can someone who performs the obligatory Hajj on behalf of a deceased person reclaim what they spent on the Hajj?

The default is that Hajj is done on behalf of others with the permission of the incapable. If the person for whom the Hajj is intended has passed away, the Shafi'i and Hanbali schools argue that if someone dies leaving behind an Commitment to perform Hajj, it is obligatory to fulfill it from all of their estate, whether they instructed it or not.<sup>79</sup>

Therefore, those who perform Hajj on their behalf, even without seeking permission from the heirs, are akin to debt; indeed, the debt owed to Allah takes precedence over all else. This applies unless the Hajj was performed voluntarily on behalf of the deceased<sup>80</sup>.

## **Chapter (4): Chapter (4): Sharia Principles Underlying the Principle of Unjust Enrichment**

### **First Section: Principle of Justice**

Islamic law is based on general principles and rules that distinguish it from other laws and regulations. One of the most important of these principles is the principle of justice, which forms the foundation of Islamic rulings, especially in jurisprudence.

The divine origin of Islamic law gives it a sense of inclusivity and flexibility to adapt to the variations of time and place.

The principle of justice is central to Islamic teachings and is highlighted in both the Quran and Hadiths.

In the Quran, numerous verses emphasize the importance of justice and urge adherence to it. For example:

- "*Allah commands justice, kindness, and giving to relatives while forbidding indecency, evil, and oppression. He advises you so that you may remember.*" (Surah An-Nahl, 16:90)

- "*O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; it is nearer to righteousness.*" (Surah Al-Ma'idah, 5:8)

- "*Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.*" (Surah An-Nisa, 4:58)

There are many such verses in the Quran that underscore the importance of justice. Likewise, in the Hadiths, there are numerous narrations that stress the significance of justice. For instance:

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<sup>77</sup> Refer to: Al-Kasani, *Bada'i' Al-Sanai'*, 2/212. Al-Hattāb, *Mawahib Al-Jalīl*, 2/543. Nihayat Al-Muhtāj, 5/22. Ibn Qudamah, *Al-Mughni*, 5/27. The hadith was narrated by Al-Bukhārī, *Book of Hajj*, Chapter on the Commitment of Hajj and its Virtue, 2/551.

<sup>78</sup> Narrated by Al-Bukhārī, *Book of Blood Money*, Chapter on Killing One Who Refuses to Accept the Obligatory Payments, 6/2538

<sup>79</sup> Refer to: Al-Nawawi, *Minhaaj Al-Talibin*, p. 83. Qalyubi and Umaira, footnote, 2/115. Ibn Qudamah, *Al-Mughni*, 5/36

Refer to: Qalyubi and Umaira, footnote, 2/115.

<sup>80</sup> Refer to: Qalyubi and Umaira, footnote, 2/115.



- From Salim bin Yasar that the Messenger of Allah, peace be upon him, used to send Abdullah bin Rawaha to Khaybar. He would negotiate between him and the Jews of Khaybar. They gathered jewelry from the jewelry of their women and said, "This is for you, but be lenient with us and overlook some of the shares." Abdullah bin Rawaha said, "O Jews, by Allah, you are among the most disliked people to me, and that is not because I am unable to be harsh with you. As for the bribe you have offered, it is unlawful, and we do not consume it." They said, "By this, the heavens and the earth are upheld."<sup>81</sup> Reported by Malik in Al-Muwatta, 4/1016, authenticated by Al-Azami, Zayed Foundation.

- From Urwah, from Aisha, may Allah be pleased with her, that the Quraysh were greatly troubled by the matter of the woman from Makhzum tribe who had stolen. They said, "Who will speak to the Messenger of Allah, peace be upon him, about her?" They said, "Who dares to do so except Usamah bin Zaid, the beloved of the Messenger of Allah, peace be upon him?" Usamah spoke to him, and the Messenger of Allah, peace be upon him, said, "Do you intercede in one of the legal punishments prescribed by Allah?" Then he stood up and addressed the people, saying, "The people before you were destroyed because when a noble person committed theft, they left him, but when a weak person committed theft, they applied the legal punishment to him. By Allah, *if Fatimah, the daughter of Muhammad, had stolen, I would have cut off her hand.*"<sup>82</sup> Narrated by Bukhari in the Book of Prophetic Traditions, 4/175, and by Muslim in the Book of Expeditions, 5/114, Turkish edition.

- Aisha, May Allah be pleased with her, said: "The Messenger of Allah, peace be upon him, used to draw lots among his wives when he intended to travel. The one whose lot was drawn would accompany him, and he would divide his time among his wives, except that Sawdah bint Zam'ah gifted her day and night to Aisha, the wife of the Prophet, seeking thereby the pleasure of the Messenger of Allah, peace be upon him."

Narrated by Bukhari with the same wording in the Book of Gifts and their Excellence, Chapter: A Woman Gifting Herself to Someone Other Than Her Husband, 3/159, and by Muslim in the Book of Repentance, Chapter on the Hadith of False Accusation, 8/112, Turkish edition.

From this perspective, the juristic interpretations of the scholars, in all their diversity and differences, are rooted in the principle of seeking justice.

This can be clearly seen in the aforementioned rulings regarding the return of the excess amount to the one who made the deposit, based on the conditions and criteria we have mentioned.

Through these criteria and conditions, the fairness of Islamic law is evident in the scholars' interpretations aimed at preventing injustice towards the spender, ensuring their rights, on one hand, and preventing manipulation by attempting to return what was donated or spent inappropriately, on the other hand.

### **Second Section: the principle of "Harm shall be made good."**

This principle, along with its derived rules, is among the most important foundations on which Islamic jurisprudence and its interpretations are built.

'The meaning of this principle is that harm must be removed because the texts in the juristic literature indicate its necessity. Therefore, after harm occurs, it must be eliminated. This is one of the rules regarding harm: it is prohibited for harm to occur, and it is obligatory to eliminate it after it happens'.<sup>83</sup>

The origin of this principle is derived from the statement of the Prophet, peace be upon him:

<sup>81</sup> narrated by Malik in Al-Muwatta, 4/ 1016

<sup>82</sup> Narrated by Al-Bukhari, Book of Hadiths of the Prophets, 4/175, and Muslim, Book of Military Expeditions, 5/114

<sup>83</sup> Al-Zuhayli, "Al-Qawa'id al-Fiqhiyyah wa Tatabbu'atuha 'ala al-Madhahib al-Arba'ah," 1/210.

"No harm shall be done, nor harm done in return."<sup>84</sup>

Al-Hisni highlighted the importance of this principle by stating: "Know that many chapters of jurisprudence are built upon this principle, and the issues stemming from it are countless."<sup>85</sup>

Scholars have mentioned numerous applications of this principle, some of which we have discussed in previous sections.

Sheikh Ahmad al-Zarqa, in an application of the principle of harm must be eliminated, said: "If the mortgager refuses to spend on the pledged property, he is not obliged to spend, because a person is not compelled to spend on his own property. However, since the right of the mortgaged person is linked to her property and the retention of the pledged property is not possible without spending on it to keep it intact, the ruler permits the mortgager to spend on it so that what he spends becomes a debt on the mortgager."<sup>86</sup>

The UAE law supports what Islamic jurisprudence has mentioned. In the explanatory memorandum of the UAE Civil Transactions Law, it states: "Perhaps the application of the concept of 'harm' upon which liability in Islamic law is based fills a gap in Egyptian law, where liability is based on fault: the provisions of the theory of unjust enrichment at the expense of others, and one of its conditions is the occurrence of 'lack,' which undoubtedly leads to harm."<sup>87</sup>

## CONCLUSION

After this brief overview of the issue of "Benefit Act" or "Unjust Enrichment" we conclude by stating the most important research findings, as follows:

The general concept of unjust enrichment is the enrichment of a person as a result of the deficiency of another without there being a legal reason for this enrichment.

Unjust Enrichment has a direct relationship with the theory of Commitment and the concept of rights.

Although the term "Benefit Act" or "Unjust Enrichment" is a relatively new legal term, its examples in Islamic jurisprudence are numerous.

Jurists did not rely on specific texts in studying the branches of this issue, but rather on general principles, leading to a diversity of interpretations.

The key principles adopted by jurists to build their interpretations on this issue are justice and the removal of harm.

The UAE Civil Transactions Law addressed cases of "Benefit Act" in Chapter Four, Articles 318-336, and this law largely aligns with Islamic jurisprudence in the majority of the researched cases, except for matters related to "immorality," where there is terminological disagreement.

## RECOMMENDATIONS:

The issues of Unjust Enrichment in jurisprudence are numerous and complex, requiring comprehensive legal and jurisprudential dissertations to consolidate the scattered aspects of the topic into one coherent volume.

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<sup>84</sup> Narrated by Malik in *Al-Muwatta*, trans. Bashshar 'Awad and Mahmud Muhammad Khalil, 2/467. Also narrated by Ibn Majah, trans. 'Abd al-Baqi, *Kitab al-Ahkam*, Chapter: "Whoever Constructs Something That Harms His Neighbor," 2/784.

<sup>85</sup> Al-Hisni, "Al-Qawa'id," 1/334.

<sup>86</sup> Al-Zarqa, Ahmad, "Sharh al-Qawa'id al-Fiqhiyyah," p. 195. See also: Haydar, 'Ali, "Durar al-Hukkam," 2/139

<sup>87</sup> p. 326

## STUDY REFERENCES

- Al-Bannani, Mohammed bin Hassan, "Al-Fath al-Rabbani fi Ma Dhal 'Anhu al-Zarqani", printed with Zarqani's explanation on Khalil's abridgment, (1st ed., Beirut - Lebanon, Dar Al-Kutub Al-Ilmiyah, 1422 AH - 2002 AD).
- Al-Bahuti, Mansur bin Idris, "Kashf al-Qina' 'An Matn al-Iqna'", revised and annotated by Hilal Muslih and Mustafa Hilal, (Riyadh, Maktabat Al-Nasr Al-Haditha, Riyadh, 1968).
- Ibn Taymiyyah, Ahmed bin Abdul Halim, "Majmu' al-Fatawa", verified by Abdul Rahman bin Mohammed bin Qasim, (Al-Madinah Al-Munawwarah, Kingdom of Saudi Arabia, King Fahd Complex for the Printing of the Holy Quran, 1416 AH / 1995 AD).
- Al-Jurjani, Ali bin Mohammed bin Ali, "Al-Ta'rifat", (Dar Al-Kutub Al-Ilmiyah, Beirut - Lebanon, 1983).
- Al-Haskafi, Mohammed bin Ali, "Al-Durr al-Mukhtar", verified and organized by Abdul Moneim Khalil Ibrahim (printed with Ibn Abidin's marginal notes titled: Radd al-Muhtar, 1st ed., Dar Al-Kutub Al-Ilmiyah, 2002).
- Al-Juwayni, Abdul Malik bin Abdullah, "Nihayat al-Matlab fi Dirayat al-Madhhab", edited by Abdul Azim Mahmoud Al-Dayyib, (1st ed., Dar Al-Minhaj, 2007).
- Al-Hattab, Mohammed bin Mohammed, "Muwahib al-Jalil fi Sharh Mukhtasar Khalil", (3rd ed., Dar Al-Fikr, 1992).
- Al-Halhasha, Abdul Rahman Ahmed, "Al-Wajeez fi Sharh al-Qanun al-Madani al-Urduni", "Sales Contract", (1st ed., Jordan, Dar Wael for Publishing and Distribution), 1971.
- Al-Dardir, Ahmed bin Mohammed, "Aqrab al-Masalik", printed with Sawi's marginal notes on Al-Sharh Al-Saghir, (Dar Al-Ma'arif).
- Al-Dardir, Ahmed bin Mohammed, "Al-Sharh Al-Saghir", printed with Sawi's marginal notes on Aqrab al-Masalik, (Dar Al-Ma'arif).
- Al-Dasuqi, Mohammed bin Ahmed, "Hashiyat Al-Dasuqi 'ala Al-Sharh Al-Kabir", (Dar Al-Fikr).
- Ibn Rajab, Abdul Rahman bin Ahmed, "Al-Qawa'id", (Egypt, Maktabat Al-Khanji, 1431 AH).
- Ibn Rushd, Mohammed bin Ahmed, "Bidayat Al-Mujtahid wa Nihayat Al-Muqtasid", Cairo, Dar Al-Hadith, 2004.
- Al-Rasai, Mohammed bin Qasim, "Sharh Hudud Ibn 'Arfa", (1st ed., Al-Maktabah Al-Ilmiyah, 1350 AH).
- Al-Ramli, Mohammed bin Abi Al-Abbas, "Nihayat Al-Muhtaj", (final ed., Dar Al-Fikr, Beirut, 1404 AH / 1984 AD).
- Al-Zuhayli, Wahbah bin Mustafa, "Al-Fiqh Al-Islami wa Adillatuh", (4th ed., Syria - Damascus, Dar Al-Fikr).
- Al-Zarqa, Mustafa Ahmed, "Al-Madkhal Al-Fiqhi Al-Am", (2nd ed., Dar Al-Qalam, Damascus, 2004).
- Al-Zarqa, Mustafa Ahmed, "Aqd Al-Bay'", (2nd ed., Damascus, Dar Al-Qalam, 2012).
- Al-Sanhuri, Abdul Razzaq Ahmed, "Al-Wasit fi Sharh Al-Qanun Al-Madani", (Dar Ihya' Al-Turath Al-Arabi).
- Al-Shafi'i, Mohammed bin Idris, "Al-Umm", (Dar Al-Ma'arif, Beirut, 1990).
- Al-Shirbini, Mohammed bin Ahmed Al-Khatib, "Mughni Al-Muhtaj ila Ma'rifat Ma'ani Alfaadh Al-Minhaj", (1st ed., Dar Al-Kutub Al-Ilmiyah, 1994).
- Al-Sharwani, Abdul Hameed Al-Daghistani, "Hashiyat Al-Sharwani on Tuhfat Al-Muhtaj" (Egypt, Al-Maktaba Al-Tijariyya Al-Kubra, 1357 AH).
- Ibn Abidin, Muhammad Amin ibn Umar, "Radd Al-Muhtar 'ala al-Durr al-Mukhtar" (2nd ed., Egypt, Mustafa Al-Babi Al-Halabi and Sons Publishing House, 1966).
- Al-Ghazali, Muhammad ibn Muhammad, "Al-Wasit fi al-Madhhab" (1st ed., Cairo, Dar Al-Salam, 1417 AH).
- Ibn Faris, Ahmed ibn Faris, "Mu'jam Maqayis Al-Lugha". Edited by: Abdul Salam Muhammad Haroun (Dar Al-Fikr, 1979).
- Al-Fayoumi, Ahmed ibn Muhammad, "Al-Misbah Al-Muneer fi Ghareeb Al-Sharh Al-Kabeer" (Al-Maktaba Al-Ilmiyya - Beirut).

- Ibn Qudamah, Abdullah ibn Ahmed, "Al-Mughni". Edited by: Abdullah ibn Abdul Mohsen Al-Turki, Abdul Fattah Muhammad Al-Halou (3rd ed., Riyadh, Saudi Arabia, Dar Al-Ilm Al-Kutub Publishing and Distribution).
- Department of Studies and Research, "UAE Civil Transactions Law" (Dubai Judicial Institute, 2017).
- Al-Kasani, Abu Bakr ibn Masoud, "Bada'i Al-Sana'i fi Tartib Al-Shara'i" (2nd ed., Dar Al-Ilm Al-Ilmiyya, Beirut, Lebanon).
- Arabic Language Academy, "Dictionary of Law" (Cairo, General Authority for Amiri Press Affairs, 1999).
- Muhammad Qadri Pasha, "Murshid Al-Hirran" (2nd ed., Amiria Press in Bulaq).
- Ibn Manzur, Ibn Manzur, Muhammad ibn Makram, "Lisan Al-Arab" (3rd ed., Beirut, Dar Sader, 1414 AH).
- Al-Mawsili, Abdullah ibn Mahmud ibn Mawdud, "Al-Ikhtiyar li Ta'leel Al-Mukhtar" (Halabi Printing Press, 1937).
- Al-Nasafi, Omar ibn Muhammad, "Talabat Al-Talabat" (Al-Amira Printing Press, Matba'at Al-Muthanna in Baghdad, 1311 AH).
- Al-Nawawi, Muhyiddin Yahya ibn Sharaf, "Riyadat Al-Talibin wa 'Umdat Al-Muftin" (3rd ed., Beirut-Damascus-Amman, Islamic Office, 1412 AH / 1991).
- Ibn al-Humam, Muhammad ibn Abdul Wahid, "Fath Al-Qadeer" (1st ed., Egypt, Mustafa Al-Babi Library and Printing House, 1970).
- Al-Haytami, Ahmed ibn Muhammad, "Tuhfat Al-Muhtaj fi Sharh Al-Minhaj" (Al-Kubra Commercial Library in Egypt owned by Mustafa Muhammad, 1983).
- Kuwaiti Ministry of Awqaf, "Encyclopedia of Jurisprudence" (from 1404 to 1427 AH, Ministry of Awqaf and Islamic Affairs, Kuwait).
- Ministry of Justice, "Explanatory Memorandum to the UAE Civil Transactions Law" (Knowledge Management Department, Legal Library, 2010).
- Jam, F. A., Akhtar, S., Haq, I. U., Ahmad-U-Rehman, M., & Hijazi, S. T. (2010). Impact of leader behavior on employee job stress: evidence from Pakistan. *European Journal of Economics, Finance and Administrative Sciences*, (21), 172-179.
- Romi, I. M. (2024). Digital Skills Measures for Digitalization-An Aggregative Analysis. *Pakistan Journal of Life and Social Sciences (PJLSS)*, 22(1), 960-971.