ABSTRACT

Scholars have founded branches of knowledge derived from the principles established by earlier scholars. Among the richest such disciplines is the rules of jurisprudence. In this regard, and following an in-depth study, the author realized the pressing need for this branch of fiqh in directing and organizing practice and legislation for economic transactions.

The rules of jurisprudence govern the sharia rulings in all aspects of life and, at present, there is a steady increase in the trend towards Islamic economics worldwide, but a limited number of rules of Jurisprudence regulating the Islamic economic sector and a readily noticed scarcity in research and studies necessary to help Islamic economists keep up with the rapid change taking place in in this vital sector.

Hence the importance of the present study, which deals with the deduction of "The Rules of Jurisprudence Governing Economic Transactions". The study collated a large number of these rules derived from the book "Al Shbah wal-Nazhaer" by Jalaluddin Suyuti, and other sources of the rules of Islamic jurisprudence, with the aim of defining the rules regulating economic transactions, in order to maximize their usefulness and establish them into practice in the lives of Muslims, according to Islamic Sharia law, which never ceases to prove day after day, that it is fit for all times and places, no matter how life develops in ways and complexity.

The study divides the jurisprudence rules according to themes they deal with into maxims or overarching rules “e.g. certainty is not removed by doubt” (Al-Yaqin la yazulu bi-al-shakk), the rules dealing with harm and necessity, e.g. “hardship shall bring alleviation” (Al-Mashaqqah tajlibu al-taysir), “customary practice shall have the weight of law”. (Al-' Adah muhakkamah) and derived rules deduced from these maxims.

Chapter II includes general rules that encompass countless forms falling under them, especially the rule that “where halal lawful and haram unlawful mix, the unlawful is deemed to be
dominant constituent of the mix”, “Al Tabi’ Tabi’ The accessory is dependent on the principal”; and the rule of “Al Kharaj Bil Dhaman”, which gives whoever is responsible for the damage or loss of an asset any earning, generated by that asset.

In the Chapter III, the study explores the disputed rules, without generalizing preponderance, owing to the different -------------. The chapter treats such disputed maxims as whether it is the “wording or purport that counts in construing contract”, whether more preponderance shall be given to regarding “property held under mortgage” as a possession to be guaranteed or a loan; whether a transfer a “sale or recovery of dues”; whether a “Ibra’ quittance implies just a waiver of claim or transference of ownership”; whether “reversal of sale iqala is rescission or sale”; “Is any attribute that re-emerges after a lapse of discontinuity comparable one that was never discontinued”; what counts? “the state or the eventuality”

Chapter IV highlights a number of rules that are applied very widely, making knowledge about them a must for the jurist, along with the similarities and differences that dispel the clouds of uncertainty and confusion from numerous types of transactions, including contracts, rescissions, ownership, debt, equivalent price and equivalent rent. All the aforesaid topics have a strong bearing on have numerous economic applications in our contemporary world. This has led the author to conclude the thesis by shedding light on the overall rules governing such transactions, besides the multifarious applications discussed in the foregoing chapters. Chapter V tackles the rules and criteria governing pre-emption, property attachment, guarantee, banking transactions and company operations.

Economic transactions are of indisputable importance in serving the people’s interests that require for flexibility and continued keeping up with developments. For with every passing day, economists around the world come up with a new economic instrument or financial transaction that needs to be tuned to suit Islamic societies and their rapid development as part of the intertwined economies of the world.
The study also responds to the of current economic realities of the Arab and Islamic world in their endeavour to repatriate off-shore Arab funds to finance development projects, thereby reducing the deficit, relieving local debt and reducing the growing unemployment rates.

However, repatriation of Arab capital can only be achieved through the enactment of such legislation as to ensure the development of the banking sector and capitals markets, and improve the investment climate to attract Arab and foreign investments.

Recalling the failures of the past, a result of reliance on the Western interest based legislation, it is high time to look into the appropriate alternative for us, and the introduction of the Islamic rules of jurisprudence to govern of economic transactions, emphasizing also that this is the most successful way to promote economic pluralism, modernize the infrastructure, pursue a policy of transparency, adopt tax exemptions, radically adjust investment environment, expand the movement of trade exchange, promote e-commerce and put into effect many other reforms perceived as pertaining exclusively to Western economies. As a result, our region vast areas of the world continue to suffer from disasters, famines and wars.

This thesis and similar studies will hopefully contribute towards laying down the groundwork for a strong Islamic economic system, providing not only juristic rulings for specific economic applications, but also doctrinal foundations and rules to characterize and govern any transaction developed in the future.