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Situating an Informal Funds Transfer System in Islamic Legal Theory: The Origin of Hawala Revisited

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Abstract
Research interest regarding hawala, an informal funds transfer system, has been growing since the outset of the twenty-first century. As for its origin, a number of authors claims that it has an Islamic origin and likens it to either *ḥawāla* or *suftaja*, which are two legal instruments elaborated in Islamic legal texts. This paper challenges that claim, comparing the hawala with *ḥawāla* and *suftaja*. The comparison reveals that the hawala does not have a specific counterpart in Islamic legal theory. On the contrary, its validity, nature, and quality are sensitive to and dependent on some minor details, and it may take the shape of diverging legal instruments from the perspective of Islamic law. Therefore, assuming that the hawala hails from and operates according to Islamic law is erroneous, and new-fashioned studies adopting historical and sociological perspectives are necessary to shed light on unanswered questions about the issue.

Keywords
Hawala, Informal funds transfer system, Islamic law, Debt assignment, *Suftaja*

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Introduction

Literature related to informal funds transfer systems has seen exponential growth since the attacks of September 11. Among them, a particular attention on "hawala" (henceforth referred to as "IFTS" as an acronym for "informal funds transfer system") has been placed.[1] There is no serious dispute over the fact that it precedes present-day banking systems.[2] However, the existing literature is far from unanimous regarding its historical origins. Some argue that it originates from China, where it was utilized under the Tang Dynasty for fund transfer and risk aversion related to the tea trade,[3] whereupon spreading to the rest of the world.[4] Others argue that the IFTS stems from India under the Mughal Empire.[5]

In addition, a myriad of authors asserts that it has been ever-present in Islamic law (*fiqh*) for centuries and suggests an Islamic origin. As for the exact equivalent of the IFTS in Islamic law, two divergent views have been proffered. First, a number

1 This is mostly due to the alleged use of the IFTS by al-Qaeda and other terrorist organizations. For the immediate reactions after 9/11, see Marieke de Goede, "Hawala Discourses and the War on Terrorist Finance," *Environment and Planning D: Society and Space* 21, no. 5 (October 2003): 514–15, https://doi.org/10.1068/d310t; Meenakshi Ganguly, "A Banking System Built for Terrorism," Time, October 5, 2001, http://content.time.com/time/world/article/0,8599,178227,00.html. Nonetheless, although al-Qaeda began using the IFTS to fund terrorist attacks in the 1990s, the monograph of National Commission on Terrorist Attacks Upon the United States on terrorist financing later crystallized that there is no indication that the IFTS was utilized for 9/11. See John Roth, Douglas Greenburg, and Serena Wille, *Monograph on Terrorist Financing: Staff Report to the Commission* (National Commission on Terrorist Attacks Upon the United States, 2004), 25, 139–40. Regardless, it has remained at the center of attention until present. For example, a recent study has demonstrated that the IFTS had been playing a crucial role in "sending money into, out of, and across Syria during its post-2011 civil war." See Gözde Güran, "Brokers of Order: How Money Moves in Wartime Syria" (PhD dissertation, Princeton University, 2020).

2 Adil Anwar Daudi, "The Invisible Bank: Regulating the Hawala System in India, Pakistan and the United Arab Emirates," *Indiana International & Comparative Law Review* 15 (2004): 625; Smriti S. Nakhasi, "Western Unionizing the Hawala: The Privatization of Hawalas and Lender Liability," *Northwestern Journal of International Law & Business* 27 (2006): 476.

3 Joseph Wheatley, "Ancient Banking, Modern Crimes: How Hawala Secretly Transfers the Finances of Criminals and Thwarts Existing Laws," *University of Pennsylvania Journal of International Economic Law* 26, no. 2 (2005): 348; Nakhasi, "Western Unionizing the Hawala," 476–77.

4 Maryam Razavy, "Hawala: An Underground Haven for Terrorists or Social Phenomenon?," *Crime, Law and Social Change* 44, no. 3 (October 2005): 280–81, https://doi.org/10.1007/s10611-006-9019-3; Wheatley, "Ancient Banking, Modern Crimes," 347.

5 N.S. Jamwal, "Hawala-the Invisible Financing System of Terrorism," *Strategic Analysis* 26, no. 2 (April 2002): 182, https://doi.org/10.1080/09700160208450038. For the historical development of the IFTS vis-à-vis India, see Marina Martin, "Hundi/Hawala: The Problem of Definition," *Modern Asian Studies* 43, no. 4 (July 2009): 909–37, https://doi.org/10.1017/S0026749X07003459.

of authors, probably and unsurprisingly because of the similarity of nomenclature between them, have suggested a link between the IFTS (i.e., hawala) and *ḥawāla*, which refers to debt assignment in Islamic law. Whereas some have asserted that the latter is "similar to" and "might be the source of" the former,[6] others have utterly equalized them; in other words, they have claimed that the IFTS and *ḥawāla* have the same principles and structure.[7] Thompson, for instance, maintains that the IFTS was known in the early 7th century. She further argues, "Soon after Mohammed's [sic] death, the Islamic jurists prescribed this concept of delegation of debt, identifying the practice as *al-hawāla* [sic]. While it appears likely that the practice existed well before its codification in Islamic law, it should now be clear from his prophetic sayings that Mohammed [sic] himself was familiar with the technique."[8] Likewise, Schramm, and Taube hold that it was "[k]nown for centuries in the Islamic world."[9] Second, some authors have deemed the IFTS to correspond to *suftaja*, a legal instrument examined in *fiqh* books. El-Gamal believes that the IFTS "is much closer to the *suftaja* procedure."[10] In the same vein, Redín, Calderón, and Ferrero contend, "[F]rom the perspective of today's understanding of the mechanics of *hawala* [sic], the clients that use the system to

6 Abdirashid A. Ismail, "Lawlessness and Economic Governance: The Case of Hawala System in Somalia," *International Journal of Development Issues* 6, no. 2 (May 2007): 170, https://doi.org/10.1108/14468950710843415.

7 Razavy, "Hawala," 279, 283; Edwina A. Thompson, "The Nexus of Drug Trafficking and Hawala in Afghanistan," in *Afghanistan's Drug Industry: Structure, Functioning, Dynamics, and Implications for Counter-Narcotics Policy*, ed. Doris Buddenburg and William A. Byrd (United Nations Office on Drugs and Crime & The World Bank, 2006), 164; Jonathan G. Ercanbrack, "The Law of Islamic Finance in the United Kingdom: Legal Pluralism and Financial Competition" (PhD dissertation, SOAS University of London, 2011), 290; Siti Faridah Abdul Jabbar, "Islamic Financial Institutions: Conduits for Money Laundering?," *Journal of Money Laundering Control* 23, no. 2 (March 25, 2020): 288–91, https://doi.org/10.1108/JMLC-09-2019-0074. For a study seeking to answer to the question of whether the IFTS (which is the equivalent to *ḥawāla* in the opinion of the authors) may be replaced with the use of cryptocurrencies, see Marco Valeri et al., "The Use of Cryptocurrencies for Hawala in the Islamic Finance," *European Journal of Islamic Finance*, no. Second Special Issue for EJIF Workshop (2020): 1–8.

8 Edwina A. Thompson, "An Introduction to the Concept and Origins of Hawala," *Journal of the History of International Law* 10, no. 1 (2008): 95.

9 Matthias Schramm and Markus Taube, "Evolution and Institutional Foundation of the Hawala Financial System," *International Review of Financial Analysis* 12, no. 4 (January 2003): 405, https://doi.org/10.1016/S1057-5219(03)00032-2.

10 Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (New York: Cambridge University Press, 2006), 206.

remit funds operate according to the *suftaja* scheme."[11] Be it *ḥawāla* or *suftaja*, both views emphasize, either explicitly or implicitly, that the IFTS has an Islamic pedigree. On the other hand, the connection of the IFTS with Islamic law has not been studied in depth thus far; therefore, all the assumptions about them have hitherto remained somewhat superficial.

This paper calls into question the connection of the IFTS with Islamic law. In doing so, it also seeks to answer the following questions: Does the IFTS have its origins in, or has it stemmed from, Islamic law? Does it have a nature within Islamic law? Do Islamic legal books elucidate the IFTS? Does the resemblance between the IFTS (hawala) and *ḥawāla* in terms of nomenclature point that they both operate in the same manner, or are they different from one another notwithstanding this resemblance? Can the IFTS be considered *suftaja* owing to its modus operandi? May there be situations in which the IFTS is not allowable under Islamic law? In elaborating these questions, the definition, modus operandi, and use of the IFTS will first be dealt with. Later, *ḥawāla* and *suftaja* will be zeroed in on, with a comparative analysis of the IFTS in reference to them following. Ultimately, a conclusion will be presented based on these analyses. This study can be used to serve not only those who carry out academic research on the origin, spread, utilization, and nature of the IFTS, but also policymakers who seek to comprehend or regulate it and users who avail themselves to it and have thus sustained its functionality.

This study challenges the existing literature and takes issue with the view that the IFTS has an Islamic origin. The comparison reveals that although the IFTS may at times be considered *ḥawāla* or *suftaja* under Islamic law, most of the time it takes the form of other contracts and transactions (e.g., agency, surety, and borrowing) depending on miscellaneous factors which shall be detailed below. Therefore, the IFTS does not have an analogous equivalent in Islamic law, and the claim that it has an Islamic origin is evidently erroneous.

The study will encompass the four Sunni *madhhab*s (plural: *madhāhib*): Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī. Be that as it may, these four *madhhab*s will not be melted in the same pot, nor will a comparative inter-*madhhab* approach be implemented.[12] On the contrary, they will be kept independent from one another, going over each one separately. The reason why all four *madhhab*s will be covered

11 Dulce M. Redín, Reyes Calderón, and Ignacio Ferrero, "Exploring the Ethical Dimension of Hawala," *Journal of Business Ethics* 124, no. 2 (October 2014): 335, https://doi.org/10.1007/s10551-013-1874-0.

12 For this approach, see Necmettin Kizilkaya, "Scholarship and Education in Islamic Law and Economics: The Challenges of Comparative Law (Fiqh al-Muqāran)," *Turkish Journal of Islamic Economics* 7, no. 2 (August 15, 2020): 32–49, https://doi.org/10.26414/A188.

is that the IFTS is a practice prevalent in multifarious locations around the globe, and restricting the study to one *madhhab* only will cause it to fall short of a thorough analysis. Examining Turkey or the Indian subcontinent without Ḥanafī, Saudi Arabia without Ḥanbalī, or North Africa without Mālikī, for instance, would be nothing but perfunctory.

As for the resources, classical *fiqh* books will be the primary source drawn upon for several reasons: (i) they may provide unbiased information since they were penned before the emergence of the IFTS as an academic research area, (ii) they may better reflect the classical Islamic legal thought as they were written before the dawn of modernity which significantly transformed Islamic law, and (iii) the main focus of this study is the historical and legal origin of the IFTS.

It should be underlined that the practical needs may have produced new legal instruments, some of which might even have deviated from the theory at times. The bill of exchange (*poliçe*), for instance, was a prevalent practice in the Ottoman Empire,[13] and some authors have thought of *suftaja* as the bill of exchange.[14] Nevertheless, *suftaja* differs from the bill of exchange, for "[u]nlike European bills of exchange, which involved four parties, *safatij* [the plural of *suftaja*] involved only three parties."[15] As the discussion of the relation between *suftaja* and the bill of exchange extends beyond the limits of this paper, the emphasis will be put on legal theory in terms both of *suftaja* and other legal instruments, and legal practice will thus be ignored.

13 For a recent study on the bill of exchange in the Ottoman Empire, see Ali Şenyurt, *Geç Dönem Osmanlı Maliyesinde Poliçe Kullanımı ve Poliçeci Esnafı* (İstanbul: Doğu Kitabevi, 2018).

14 Şevket Pamuk, *A Monetary History of the Ottoman Empire* (New York: Cambridge University Press, 2003), 84.

15 Jared Rubin, "Bills of Exchange, Interest Bans, and Impersonal Exchange in Islam and Christianity," *Explorations in Economic History* 47, no. 2 (April 2010): 216, https://doi.org/10.1016/j.eeh.2009.06.003. Ashtor has underscored that "the term *suftadja* [sic] does not always indicate the same banking instrument," which must have led some researchers to confusion. See Eliahu Ashtor, "Banking Instruments between the Muslim East and the Christian West," *Journal of European Economic History* 1, no. 3 (1972): 556.

IFTS (Informal Funds Transfer System)

Definition

The IFTS simply refers to a payment system which operates outside of the legal framework and the traditional financial structures.[16] It has its own jargon; for instance, its operators are referred to as "*hawaladar*."[17] In addition, divergent types of information, such as the sum transferred, are at times expressed through varying keywords.[18] The keyword is even sometimes picked directly from the Qur'an, the holy book of the Islamic faith.[19]

Modus Operandi

The modus operandi of the IFTS is not very complicated. To illustrate it briefly and simply, suppose that a person (A) wants to send money to another (B) who lives in a different country. (A) then seeks a *hawaladar* (X). When found, the terms and conditions of the transaction are to be agreed upon between (A) and the *hawaladar* (X) before the sum that will be transferred is handed over to (X). Then, (X) comes into contact with his counterpart (Y) who operates in the country in which (B) lives and issues a payment order. Later, the *hawaladar* (Y) somehow reaches (B) and delivers the sum transferred as claimed by the order. During the course of the transfer, the expenses or a commission is cut from the transferred money. A code is used for verification prior to the payment; to boost the security, (B) may be

16 Wheatley, "Ancient Banking, Modern Crimes," 348; Francesco Cascini, "Il Fenomeno Del Proselitismo in Carcere Con Riferimento Ai Detenuti Stranieri Di Culto Islamico," in *La Radicalizzazione Del Terrorismo Islamico* (Ministero della Giustizia Istituto Superiore di Studi Penitenziari, 2012), 32; Mballo Thiam, "De La Religion à La Banque : Contribution à l'étude d'un Droit Bancaire Islamique En France" (PhD dissertation, Université de Toulon, 2013), 4. For a critic of this definition, see Shima Keene, "Hawala and Related Informal Value Transfer Systems–an Assessment in the Context of Organized Crime and Terrorist Finance: Is There Cause for Concern?," *Security Journal*, no. 20 (2007): 185–87.

17 Samuel Munzele Maimbo, *The Money Exchange Dealers of Kabul: A Study of the Hawala System in Afghanistan* (Washington: The World Bank, 2003), 1; Jérome Lasserre-Capdeville, "La Finance Islamique : Une Finance Douteuse?," in *Les Cahiers de La Finance Islamique Numéro 2* (Strasbourg, 2010), 20; Genesis J. Martis, *A Guidance to Understand Hawala and to Establish the Nexus with Terrorist Financing* (Advancing Financial Crime Professionals Worldwide, 2018), 13; Saeed Al-Hamiz, "Hawala: A U.A.E. Perspective," in *Regulatory Frameworks for Hawala and Other Remittance Systems* (International Conference on Hawala, Washington, D.C: International Monetary Fund, 2005), 31.

18 Jamwal, "Hawala," 182, 191.

19 Razavy, "Hawala," 279.

asked by (Y) to submit a code previously provided.[20] This simple structure might occasionally change; for instance, the IFTS operations may include a fifth player, a "mother company," which organizes and supervises the entire process of transfer in a country such as Somalia.[21]

As might be expected, the account consisting of mutual debts between the *hawaladars* (X) and (Y) will need to be settled over time. The settlement is, in practice, made through divergent means such as transferring funds electronically or physically, drawing a cheque by (X) on behalf of (Y), or by carrying out another IFTS in which (X) renders the payment upon the request of (Y).[22] The business in which the *hawaladars* are – either ostensibly or genuinely – engaged (e.g., travel agency, ice-cream shop, grocery store) makes a perfect disguise to elude legal procedures and investigations.[23]

At this point, one may ask what guarantees that the *hawaladar*s will make the payment and will not "pocket the money." As a matter of fact, the system is built first and foremost on confidence, which makes it trustworthy enough.[24] To be more precise, there are essentially two central elements which build up the trust. Firstly, most *hawaladar*s hail from a relatively small social group whose members interrelate with each other through various ties, such as family or ethnicity.[25] Secondly, the

20 Razavy, 279; Ismail, "Lawlessness and Economic Governance," 171–72; Keene, "Hawala and Related Informal Value Transfer Systems," 188; Charles B. Bowers, "Hawala, Money Laundering, and Terrorism Finance: Mirco-Lending as an End to Illicit Remittance," *Denver Journal of International Law and Policy* 37, no. 3 (2008): 379–80; Emily C. Schaeffer, "Remittances and Reputations in Hawala Money-Transfer Systems: Self-Enforcing Exchange on an International Scale.," *Journal of Private Enterprise* 24, no. 1 (2008): 99; Hasan Aykın, *Aklama ve Terörün Finansmanı Ile Mücadelenin Küresel Boyutu* (Ankara: Maliye Bakanlığı Strateji Geliştirme Başkanlığı Yayınları, 2010), 197. For an analogy between the IFTS and Ripple, see Lindsay Martin, "Ripple Effects: How In Re Ripple Labs Inc. Litigation Could Signal The Beginning of the End of the Payment Platform," *Duke Law & Technology Review* 19, no. 1 (2021): 4.

21 Ismail, "Lawlessness and Economic Governance," 172.

22 Aykın, *Aklama ve Terörün Finansmanı Ile Mücadelenin Küresel Boyutu*, 197; Martis, *A Guidance to Understand Hawala*, 17. For more detailed information, see *The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing* (Paris: FATF, 2013), 23.

23 Martis, *A Guidance to Understand Hawala*, 14.

24 Nikos Passas, "Hawala and Other Informal Value Transfer Systems: How to Regulate Them?," *Risk Management*, no. 5 (2003): 51–52; Eva Ladanyi and István Kobolka, "The Hawala System," *Interdisciplinary Management Research* 10 (2014): 418.

25 Bala Shanmugam, "Hawala and Money Laundering: A Malaysian Perspective," *Journal of Money Laundering Control* 8, no. 1 (January 2005): 38, https://doi.org/10.1108/13685200510621181; Martis, *A Guidance to Understand Hawala*.

trust element plays a key role in keeping the IFTS in operation – that is to say, what enables the *hawaladar* to operate in cooperation with other *hawaladar*s is the confidence and respect they enjoy. Therefore, should a *hawaladar* trick a client or colleague in any way whatsoever, this will naturally engender a loss of credibility and may go so far as an "economic suicide" and "excommunication" of that *hawaladar*.[26] Undoubtedly, the *hawaladar* shall end up being imminently cast out of the community and will be no longer able to operate any IFTS transaction.[27]

Use

Countries Where IFTS Is Used

The IFTS is used in a myriad of countries all over the world. Among these countries are China,[28] Afghanistan,[29] Kazakhstan,[30] India, Pakistan, Kashmir, the United Arab Emirates,[31] Egypt,[32] Somalia,[33] Niger, and Chad.[34] Howbeit, propounding that its use is unique to Asia and Africa will definitely be short of truism. Hardly surprising in a globalizing world, it also plays out in North America

26 Razavy, "Hawala," 286.

27 Shanmugam, "Hawala and Money Laundering," 40; Schaeffer, "Remittances and Reputations in Hawala Money," 107–8.

28 Shanmugam, "Hawala and Money Laundering," 39.

29 Maimbo, *The Money Exchange Dealers of Kabul*, 3; Thompson, "The Nexus of Drug Trafficking and Hawala in Afghanistan," 155; Bakhyt Moldatjaevich Nurgaliyev et al., "The Informal Funds Transfer System 'Hawala' as a Segment of the Shadow Economy: Social Impact Assessment and Framework for Combating," *American Journal of Applied Sciences* 12, no. 12 (December 1, 2015): 935, https://doi.org/10.3844/ajassp.2015.931.937.

30 Nurgaliyev et al., "The Informal Funds Transfer System," 933.

31 Jamwal, "Hawala," 188; David C. Faith, "The Hawala System," *Global Security Studies* 2, no. 1 (2011): 25.

32 Antoine Le Scolan, "La Juridicisation des Systèmes Informels de Transfert de Fonds (Hawâla) en Égypte" (M.A. dissertation, Aix-Marseille Université, Faculté des arts, lettres, langues et sciences humaines, 2018), 29.

33 Razavy, "Hawala," 289–90; Ismail, "Lawlessness and Economic Governance"; Redín, Calderón, and Ferrero, "Exploring the Ethical Dimension of Hawala," 329; Christopher Reynolds, "L'hawala, un système bancaire parallèle florissant," La Presse, August 4, 2019, https://www.lapresse.ca/affaires/economie/2019-08-04/l-hawala-un-systeme-bancaire-parallele-florissant; Mohamed A. Elmi and Ojelanki Ngwenyama, "Examining the Use of Electronic Money and Technology by the Diaspora in International Remittance System: A Case of Somali Remittances from Canada," *The Electronic Journal of Information Systems in Developing Countries* 86, no. 5 (September 2020): 4, https://doi.org/10.1002/isd2.12138.

34 Martis, *A Guidance to Understand Hawala*, 19.

and Europe,[35] among which the United States,[36] Canada,[37] the United Kingdom,[38] Switzerland,[39] and the Netherlands[40] may be mentioned as examples.

For a more detailed framing, Turkey will be cited as an example. Predictably, Turkey is also among the countries involved in the IFTS network.[41] For instance, a funds transfer between Turkey and Germany through the IFTS has been disclosed.[42] Similarly, the Turkish media reported that the IFTS was used by the organization led by Fethullah Gülen, which attempted a coup in Turkey in 2016. It was mentioned in the news that money was brought into Turkey from abroad in a piecemeal manner as of 2017. According to the news, the money was initially sent to exchange offices in the Grand Bazaar (*Kapalıçarşı*) in Istanbul and handed out therefrom to other offices and jewelry stores in a multitude of cities.[43] The altogether sum of transmitted funds adds up to a total of $13,744,197, €2,135,634, and ₺12,628,530.[44]

35 Razavy, "Hawala," 288.

36 Rachana Pathak, "The Obstacles to Regulating the Hawala: A Cultural Norm or a Terrorist Hotbed?," *Fordham International Law Journal* 27, no. 6 (2003): 2046–50; Wheatley, "Ancient Banking, Modern Crimes," 353; Faith, "The Hawala System," 25.

37 Shanmugam, "Hawala and Money Laundering," 39; Reynolds, "L'hawala, un système bancaire parallèle florissant"; Elmi and Ngwenyama, "Examining the Use of Electronic Money and Technology," 12.

38 Thompson, "The Nexus of Drug Trafficking and Hawala in Afghanistan," 166.

39 Fabian Maximilian Johannes Teichmann, "Financing Terrorism through Hawala Banking in Switzerland," *Journal of Financial Crime* 25, no. 2 (May 8, 2018): 287–93, https://doi.org/10.1108/JFC-06-2017-0056.

40 Martis, *A Guidance to Understand Hawala*, 22.

41 Nurgaliyev et al., "The Informal Funds Transfer System," 932.

42 Anne-Diandra Louarn, Dana Alboz, and Charlotte Boitiaux, "La hawala, système parallèle et opaque de transfert d'argent utilisé par les migrants," *InfoMigrants*, April 12, 2018, sec. Grand angle, https://www.infomigrants.net/fr/post/8616/la-hawala-systeme-parallele-et-opaque-de-transfert-d-argent-utilise-par-les-migrants; Kate Martyr and Ben Knight, "German Police Raid Suspected Hawala Banking Ring," Deutsche Welle, November 19, 2019, https://www.dw.com/en/german-police-raid-suspected-hawala-banking-ring/a-51307901.

43 "FETÖ'nün para transfer sistemi Hawala nasıl çalışıyor?," Finans Gündem, November 21, 2019, https://www.finansgundem.com/haber/fetonun-para-transfer-sistemi-hawala-nasil-calisiyor/1451888.

44 "FETÖ'nün para trafiğine ağır darbe! Hawala sistemi deşifre oldu," A Haber, November 19, 2019, https://www.ahaber.com.tr/gundem/2019/11/19/fetonun-para-transferine-agir-darbe-hawala-sistemi-desifre-oldu; Sertaç Bulur, "Hawala Sistemini Kırabilmek İçin Çok Iyi Takip Gerekir," Anadolu Ajansı, November 21, 2019, https://www.aa.com.tr/tr/turkiye/hawala-sistemini-kirabilmek-icin-cok-iyi-takip-gerekir/1652262; "İlk Kez Bu Yöntemi Kullanmışlar: Hawala Sistemi...," Vatan, November 22, 2019, http://www.gazetevatan.com/ilk-kez-bu-yontemi-kullanmislar-hawala-sistemi--1286446-gundem/.

This amount is of paramount significance as it sheds light on the enormity of funds transferred through the IFTS.

Legal and Illegal Use

Notwithstanding its aptitude to be utilized for unlawful purposes, it should not be assumed that every time the IFTS is used, there is illegal activity taking place. On the contrary, the IFTS is susceptible to serve legitimate goals as well.[45] As a matter of fact, it has been argued that most IFTS transfers are licit transactions.[46]

To differentiate the purpose, a distinction has been made between the two types: illegitimate uses are referred to as "black hawala", with "white hawala" serving as the opposite.[47]

Among the users of the IFTS are non-governmental organizations, chiefly those who aim at providing humanitarian aid;[48] expatriates or migrants sending money to their countries of origin, where their family or relatives generally live;[49] users seeking to achieve personal and commercial purposes, such as educational[50] and personal expenses (e.g., travel, healthcare);[51] drug dealers;[52] gold smugglers

45 Ibrahim-Zeyyad Cekici, "Douter de La Finance Islamique : Le Cas Du Financement Du Terrorisme," in *Les Cahiers de La Finance Islamique Numéro 2* (Strasbourg, 2010), 24; Martis, *A Guidance to Understand Hawala*, 13.

46 Wheatley, "Ancient Banking, Modern Crimes," 356; Faith, "The Hawala System," 29; Martis, *A Guidance to Understand Hawala*, 13.

47 Daudi, "The Invisible Bank," 629; Shanmugam, "Hawala and Money Laundering," 42.

48 Thompson, "An Introduction to the Concept and Origins of Hawala," 83–84.

49 Jamwal, "Hawala," 182, 188; Robert Looney, "Hawala: The Terrorist's Informal Financial Mechanism," *Middle East Policy* 10, no. 1 (2003): 164; Daudi, "The Invisible Bank," 630; Shanmugam, "Hawala and Money Laundering," 38–39; Schaeffer, "Remittances and Reputations in Hawala Money," 101; Lasserre-Capdeville, "La Finance Islamique," 20; Ercanbrack, "The Law of Islamic Finance in the United Kingdom," 255; Redín, Calderón, and Ferrero, "Exploring the Ethical Dimension of Hawala," 329; Le Scolan, "La Juridicisation Des Systèmes," 30.

50 Divya Sharma, "Historical Traces of Hundi, Sociocultural Understanding, and Criminal Abuses of Hawala," *International Criminal Justice Review* 16, no. 2 (September 2006): 114, https://doi.org/10.1177/1057567706291737.

51 Daudi, "The Invisible Bank," 630–31.

52 Jamwal, "Hawala," 182.

between South Asia and the Gulf states;[53] money launderers[54] who take advantage of the robust anonymity which the IFTS provides;[55] and terrorist groups[56] such as al-Qaeda,[57] Islamic State of Iraq and the Levant (ISIL),[58] Boko Haram,[59] and Kurdistan Worker's Party (PKK)[60].

There is a plethora of grounds for people to exert the IFTS. To mention a few: The IFTS is generally much cheaper than its alternatives, which is made possible mainly through the eschewal of some costs which traditional banking systems are unable to eliminate.[61] The unequivocal quickness of IFTS transactions is another reason for its preferability.[62] The anonymity offered by the IFTS plays a major role

53 Daudi, "The Invisible Bank," 631.

54 Jamwal, "Hawala," 188; Maimbo, *The Money Exchange Dealers of Kabul*, 8; Muhammad Subtain Raza, M. Fayyaz, and H. Ijaz, "The Hawala System in Pakistan: A Catalyst for Money Laundering & Terrorist Financing," *Forensic Research & Criminology International Journal* 5, no. 4 (2017): 1.

55 Maimbo, *The Money Exchange Dealers of Kabul*, 9; Daudi, "The Invisible Bank," 632; Nakhasi, "Western Unionizing the Hawala," 479–80; Redín, Calderón, and Ferrero, "Exploring the Ethical Dimension of Hawala," 329.

56 Maimbo, *The Money Exchange Dealers of Kabul*, 8; Aykın, *Aklama ve Terörün Finansmanı Ile Mücadelenin Küresel Boyutu*, 196; Faith, "The Hawala System," 23; Lasserre-Capdeville, "La Finance Islamique," 20; Raza, Fayyaz, and Ijaz, "The Hawala System in Pakistan," 1; Martis, *A Guidance to Understand Hawala*, 19; Chibueze E. Onyeke, "Crypto-Currency and the Nigerian Economy: Problems and Prospects," *IAA Journal of Social Sciences* 6, no. 1 (2020): 155.

57 Martis, *A Guidance to Understand Hawala*, 8–9.

58 Lorenzo Bonucci, *Le Vulnerabilità Del Sistema Finanziario Come Minacce Alla Sicurezza Nazionale: Studio Sulle Tipologie Di Finanziamento al Terrorismo e Analisi Del Sistema Money Transfer* (CSSII, 2017), 6.

59 Martis, *A Guidance to Understand Hawala*, 19.

60 Faith, "The Hawala System," 26–27.

61 Jamwal, "Hawala," 183; Daudi, "The Invisible Bank," 627; Razavy, "Hawala," 280; Wheatley, "Ancient Banking, Modern Crimes," 347, 354; Nakhasi, "Western Unionizing the Hawala," 483; Bowers, "Hawala, Money Laundering, and Terrorism Finance," 417; Schaeffer, "Remittances and Reputations in Hawala Money," 101; Maryam Razavy and Kevin D. Haggerty, "Hawala under Scrutiny: Documentation, Surveillance and Trust," *International Political Sociology* 3, no. 2 (2009): 144; Syed Umar Farooq, Ghayur Ahmad, and Syed Hassan Jamil, "A Profile Analysis of the Customers of Islamic Banking in Peshawar, Pukhtunkhwa," *International Journal of Business and Management* 5, no. 11 (2010): 111; Aykın, *Aklama ve Terörün Finansmanı Ile Mücadelenin Küresel Boyutu*, 196; Redín, Calderón, and Ferrero, "Exploring the Ethical Dimension of Hawala," 329; Nurgaliyev et al., "The Informal Funds Transfer System," 932.

62 Jamwal, "Hawala," 183; Daudi, "The Invisible Bank," 627; Shanmugam, "Hawala and Money Laundering," 38; Wheatley, "Ancient Banking, Modern Crimes," 347.

for some users,[63] for it provides an opportunity to hide the origin of the money[64] as well as the identity of parties involved, which indubitably renders the IFTS fit-to-purpose for those who seek illegitimate gains.[65] For small towns and villages in developing countries, the absence of a banking system has a vital role in the spread of the IFTS transactions.[66] In addition, formal banking systems require some documents (e.g., identity) which a large number of people are unable to submit.[67] In addition, the IFTS is outstandingly adaptable to unforeseen and unfavorable conditions (e.g., war).[68] The IFTS transactions may also be overly accommodating for those seeking tax evasion.[69] It should be noted, however, that these reasons are by no means exhaustive.

Ḥawāla

In Islamic Law

The topic of *ḥawāla* in Islamic law now deserves to be expounded on. *Ḥawāla* simply refers to the assignment of debt in Islamic law. In books of *fiqh*, it is generally dealt with as a separate chapter along with other transactions. In principle, the disposition of a debt in exchange for another is not permitted under Islamic law;

63 Jamwal, "Hawala," 182; Shanmugam, "Hawala and Money Laundering," 38; Wheatley, "Ancient Banking, Modern Crimes," 347; Nakhasi, "Western Unionizing the Hawala," 483; Bowers, "Hawala, Money Laundering, and Terrorism Finance," 417, 419; Henk van de Bunt, "A Case Study on the Misuse of Hawala Banking," *International Journal of Social Economics* 35, no. 9 (August 2008): 692, https://doi.org/10.1108/03068290810896316.

64 Maimbo, *The Money Exchange Dealers of Kabul*, 8.

65 Jamwal, "Hawala," 190; Wheatley, "Ancient Banking, Modern Crimes," 356.

66 Maimbo, *The Money Exchange Dealers of Kabul*, 1; Shanmugam, "Hawala and Money Laundering," 38; Bowers, "Hawala, Money Laundering, and Terrorism Finance," 417; Razavy and Haggerty, "Hawala under Scrutiny," 144; Aykın, *Aklama ve Terörün Finansmanı Ile Mücadelenin Küresel Boyutu*, 196; Nurgaliyev et al., "The Informal Funds Transfer System," 932; Malit Jr, Al Awad, and Naufal, "More than a Criminal Tool," 71.

67 Wheatley, "Ancient Banking, Modern Crimes," 355–56; Razavy, "Hawala," 287; Schaeffer, "Remittances and Reputations in Hawala Money," 101; Razavy and Haggerty, "Hawala under Scrutiny," 144; Malit Jr, Al Awad, and Naufal, "More than a Criminal Tool," 81.

68 Jamwal, "Hawala," 190–91; Daudi, "The Invisible Bank," 628–29; Thomas Viles, "Hawala, Hysteria and Hegemony," *Journal of Money Laundering Control* 11, no. 1 (January 4, 2008): 28, https://doi.org/10.1108/13685200810844479; Redín, Calderón, and Ferrero, "Exploring the Ethical Dimension of Hawala," 329.

69 Jamwal, "Hawala," 183, 190; Bowers, "Hawala, Money Laundering, and Terrorism Finance," 385.

nonetheless, *ḥawāla* has been allowed as an exception to this prohibition out of necessity and ease for people.[70]

Expectedly, three parties are involved in a typical *ḥawāla* contract: the assignor (*muḥīl*), the creditor (*muḥālun lah* or f*muḥtāl*), and the new debtor, also referred to as assignee (*muḥālun ʿalayh* or *muḥtālun ʿalayh*).

Ḥanafī Madhhab

As a legal term, Ḥanafīs describe *ḥawāla* as a contract which provides the transfer of a debt from one's assets to another individual.[71] It appears that Ḥanafīs regard it as an independent legal instrument, unrelated to other types of contracts.

Whose consent is required for conclusion of the contract is a controversial issue. Evidently, no question arises when it is concluded trilaterally.[72] Per contra, the answer changes if the consent of one of the three parties is lacking, with three different possibilities having to be handled in this regard separately. Firstly, when the assignor concludes the contract with the creditor without the consent of the assignee, it is unhesitatingly invalid according to Ḥanafīs,[73] but they are not unanimous about whether the subsequent consent of the assignee validates the contract or not. Whilst Abu Hanifa (d. 150/767) and his disciple Muhammad al-Shaybani (d. 189/805) argued that it does not, his other disciple Abu Yusuf (d. 182/798) held the opposite view. This divergence of view lies in the fact that they reckon with the presence of the assignee in contractual sessions (*majlis al-ʿaqd*)

70 Vehbe Zuhaylî, *İslâm Fıkhı Ansiklopedisi*, trans. Beşir Eryaysoy, vol. 6 (İstanbul: Risale Yayınevi, 1994), 290. It should be noted that although modern bank remittances may resemble *ḥawāla* under Islamic law at first glance, they are more likely to be an agency (*wakāla*). Therefore, bank remittances remain outside the scope of this study. For bank remittances, see Abdülaziz Bayındır, *Ticaret ve Faiz* (İstanbul: Süleymaniye Vakfı Yayınları, 2007), 265.

71 ʾAbū al-Barakāt ʿAbd ʾAllāh al-Nasafī, *Kanz al-Daqāiq*, ed. Sāʾid Bakdāsh (Dār al-Bashāʾir al-ʾIslamiyya, 1432), 458; ʾIbrāhīm b. Muhammad al-Ḥalabī, *Multaka al-ʾAbḥur*, ed. Khalīl ʿImrān al-Manṣūr (Beirut: Dār al-Kutub al-ʿIlmiyya, 1419), 204; Majd al-Dīn ʾAbū al-Faḍl ʿAbd Allah al-Mawṣilī, *al-ʾIkhtiyār li-Taʿlīl al-Mukhtār*, vol. 3 (Cairo: Maṭbaʿat al-Ḥalabī, 1356), 3; Hocaeminefendizade Ali Haydar Efendi, *Dürerü'l-Hükkâm Şerhü Mecelleti'l-Ahkâm*, vol. 3–4 (İstanbul: Şirket-i Mürettebiye Matbaası, 1321), 262.

72 ʾAbū al-Ḥasan Burḥan al-Dīn ʿAlī al-Marghīnānī, *Bidāyat al-Mubtadī* (Cairo: Maktaba wa-Maṭbaʿat Mohammad ʿAlī Ṣubḥ, n.d.), 148; al-Ḥalabī, *Multaka*, 204–5; ʾAbū al-Ḥasan ʿAlī al-Sughdī, *al-Nutaf fī al-Fatāwā*, ed. Ṣalāḥ al-Dīn al-Nāhī, 2nd ed., vol. 2 (Amman: Dār al-Furqān, 1404), 755.

73 ʾAbū al-Ḥasan Burhān al-Dīn ʿAlī al-Marghīnānī, *al-Hidāya fī Sharḥi Bidāyat al-Mubtadī*, ed. Ṭalāl Yūsuf, vol. 3 (Beirut: Dār al-ʾIḥyāʾ al-Turāth al-ʿArabī, n.d.), 99; ʾAbū al-Ḥusayn ʾAḥmad al-Qudūrī, *al-Tajrīd*, ed. Muhammad ʾAḥmad Sirāj and ʿAlī Jumʿa Muhammad, vol. 6 (Cairo: Dār al-ʾIslām, 1427), 2981.

differently; the former considers it to be a condition for conclusion (*ʾinʿiqād*) of the contract, and the latter a condition for enforcement (*nafādh*) of it.[74] Secondly, Ḥanafī jurists take the view that the consent of the creditor is a *sine qua non* for the formation of a contract, because as people differ in wealth, the creditor can by no means be compelled to accept such a substitution.[75] In regard with the subsequent consent of the creditor, the same discussion mentioned above for the assignee holds true.[76] Thirdly, the jurists are in disagreement over the consent of the assignor. Some of them suggest that it is indispensable,[77] while others, who constitute the majority, argue it is not.[78]

Fiqh books also spell out the conditions the parties are required to satisfy in order to carry out a *ḥawāla* transaction in terms of legal capacity. Be that as it may, I will not dwell on those conditions since they are not germane to our discussion.[79]

As to the object of the *ḥawāla* contract (*muḥālun bih*), it must imperatively be a *dayn*; therefore, an *ʿayn* may not be the object.[80] Simply put, "*dayn*" can be defined as an abstract article in one's assets whereas "*ʿayn*" stands for a tangible and concrete one.[81] Being a *dayn* is not enough, though, as it must be a *ṣaḥīḥ* debt as well.[82] It must be noted that although the term "*ṣaḥīḥ*" may be literally translated as "valid," it carries a specific meaning here. A *dayn* is *ṣaḥīḥ* in this context if the assignor may have it

74 ʿAlāʾ al-Dīn ʾAbū Bakr al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 2nd ed., vol. 6 (Dār al-Kutub al-ʿIlmiyya, 1406), 16.

75 Muhammad b. Ferāmurz Molla Khusraw, *Durar al-Ḥukkām Sharḥu Ghurar al-ʾAḥkām*, vol. 2 (Dār ʾIḥyāʾ al-Kutub al-ʿArabīyya, n.d.), 308; Muhammad ʾAmīn b. ʿUmar b. ʿAbd al-ʿAziz ʾIbn ʿĀbidīn, *Radd al-Muḥtār ʿalā al-Durr al-Mukhtār*, 2nd ed., vol. 5 (Beirut: Dār al-Fikr, 1412), 341; ʾAkmal al-Dīn Muhammad b. Muhammad al-Bābartī, *al-ʿInāya Sharḥ al-Hidāyā*, vol. 7 (Dār al-Fikr, n.d.), 239.

76 Shahāb al-Dīn al-Shalabī, *Tabyīn al-Haqāiq Sharḥ al-Kanz al-Daqāiq wa-Ḥāshiyat al-Shalabī*, vol. 4 (Bulaq: al-Maṭbaʿat al-Kubrā al-ʾAmīriyya, 1313), 171.

77 ʾAbū al-Ḥusayn ʾAhmad al-Qudūrī, *Mukhtaṣar*, ed. Kāmil Muhammad Muhammad ʿUwayḍa (Dār al-Kutub al-ʿIlmiyya, 1418), 120.

78 al-Nasafī, *Kanz al-Daqāiq*, 458; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 5:328.

79 For detailed information on this topic, see al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 1406, 6:16; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 5:341.

80 al-Marghīnānī, *al-Hidāya*, 3:99.

81 Nabil Saleh, "Definition and Formation of Contract Under Islamic and Arab Laws," *Arab Law Quarterly* 5, no. 2 (1990): 103, https://doi.org/10.1163/157302590X00026; Hasan Hacak, "İslam Hukukunun Klasik Kaynaklarında Hak Kavramının Analizi" (PhD dissertation, Marmara University Social Sciences Institute, 2000), 187.

82 Ali Haydar Efendi, *Dürerü'l-Hükkâm*, 3–4:299.

cleared through either payment or release only.[83] Articles 687 and 688 of *Majallat al-ʾAhkām al-ʿAdliyya* elucidate that any debt for which a contract of surety (*kafāla*) may legally be concluded is susceptible to be transferred through *ḥawāla*.[84] On top of that, the object is also required to be known (*maʿlūm*) as the contract shall be invalid otherwise.[85] In sum, there are three conditions to fulfill for the object of any *ḥawāla* transaction in Ḥanafī legal theory: being *dayn*, *ṣaḥīḥ*, and known (*maʿlūm*).

Unlike the other *madhhab*s, Ḥanafīs break down *ḥawāla* into two different categories: *muqayyad* and *muṭlaq*. In the former, the assignee is indebted to the assignor and possessor of either a claim (*dayn*), a bailment (*wadīʿa*), or to an unlawfully dispossessed article (*maghṣūb*) which belongs to the assignor. Once the obligation is performed by the assignee, the right of the assignor over the belonging ceases to exist. In the latter, however, the assignee's debt is not specified in any aspect; anything the assignee selects may be given for payment, and no specific article constitutes the object of the transaction.[86] In plain words, a *ḥawāla* contract can be established no matter if the assignee is indebted to the assignor or not, as *muṭlaq* makes it possible even if the assignee is not. On the other hand, Ḥanafīs stipulate that the assignor must be indebted to the creditor; otherwise, the contract will be an agency (*wakāla*) rather than *ḥawāla*.[87]

Once the contract is drawn up, the debt changes hands; the assignee becomes liable, and the assignor wholly discharged.[88] Ḥanafī jurist Zufar b. al-Hudhayl (d. 158/775), however, is of the view that liability of assignor does not end upon the formation of the contract, for he perceives this contract as a kind of guarantee.[89] Yet, his view has not been admitted, and *ḥawāla* has dominantly been considered a mere transfer which discharges the liability of the assignor entirely.[90]

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83 ʿAlī b. Muhammad al-Sayyid al-Sharīf al-Jurjānī, *Muʿjam al-Taʿrīfāt*, ed. Muhammad Ṣiddīq al-Minshāwī (Cairo: Dār al-Faḍīla, n.d.), 93.

84 Ali Himmet Berki, *Açıklamalı Mecelle (Mecelle-i Ahkâm-ı Adliyye)* (İstanbul: Hikmet Yayınları, 1982), 130; for more information about *ṣaḥīḥ*, see al-Jurjānī, *Muʿjam al-Taʿrīfāt*, 93.

85 ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 5:343.

86 Molla Khusraw, *Durar*, 2:309; al-Shalabī, *Tabyīn al-Haqāiq*, 1313, 4:173–74.

87 ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 5:342; Ali Haydar Efendi, *Dürerü'l-Hükkâm*, 3–4:268; Zuhaylî, *İslâm Fıkhı Ansiklopedisi*, 6:294.

88 Abū Bakr ʿAlāʾ al-Dīn al-Samarqandī, *Tuhfat al-Fuqahāʾ*, vol. 3 (Beirut: Dār al-Kutub al-ʿIlmiyya, 1414), 247; Muhammad b. ʾAḥmad al-Sarakhsī, *al-Mabsūṭ*, vol. 20 (Beirut: Dār al-Maʿrifa, 1414), 46.

89 al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 1406, 6:17; al-Shalabī, *Tabyīn al-Haqāiq*, 1313, 4:171; ʿAbd al-Ghanī b. Ṭālib al-Maydānī, *al-Lubāb fī Sharḥ al-Kitāb*, ed. Muhammad Muḥy al-Dīn ʿAbd al-Ḥamid, vol. 2 (Beirut: al-Maktabat al-ʿIlmiyya, n.d.), 160.

90 al-Marghīnānī, *al-Hidāya*, 3:99; al-Mawṣilī, *al-ʾIkhtiyār*, 1356, 3:4.

The contract may be carried out through different ways such as performance, donation, release, and the merger of rights.[91] What is unique to *ḥawāla* is the notion of *tawā* which signifies the situations in which the liability for the debt returns from the assignee to the assignor.[92] There is no consensus in the Ḥanafī *madhhab* about in which cases *tawā* occurs. Abu Hanifa canvasses that it takes place in two cases. The first is when the assignee denies the transfer of the debt, and there is no proof to offer against this denial. The second case is the death of the assignee while bankrupt. Although the situations in which *tawā* happen are confined to these two according to Abu Hanifa, his disciples Abu Yusuf and Muhammad al-Shaybani go further and argue that there is a third possibility as well. They suggest that *tawā* ensues by the time the assignee is adjudged bankrupt by the court.[93] It must be emphasized that neither Abu Hanifa nor Abu Yusuf and Muhammad al-Shaybani gives any leeway for another case in which *tawā* arises, so both views are asserted to be exhaustive.

The obligation performed by the assignee gives birth to a right to recourse to the assignor. For the assignee to have such a right, some conditions must be met. First, the assignee's debt must be cleared either by payment or other means. Second, the *ḥawāla* contract must be formed upon the request of the assignor. Third, the assignee must not be indebted to the assignor. The assignee would forfeit the right to recourse should one of these requirements be lacking.[94]

Mālikī Madhhab

Mālikī jurists perceive *ḥawāla* as a kind of sale contract (*bayʿ*).[95] Remarkably, Mālikī jurist al-Qarafi (d. 684/1285) contends that it has its roots in the Qurʾan (5:2 and 22:77),[96] from which the other *madhhab*s do not give any reference.

91 al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 1406, 6:19.

92 al-Sarakhsī, *al-Mabsūṭ*, 1414, 20:46; ʾAkmal al-Dīn Muhammad b. Muhammad al-Bābartī, *al-ʿInāya Sharḥ al-Hidāyā*, vol. 8 (Dār al-Fikr, n.d.), 429.

93 al-Marghīnānī, *Bidāyat al-Mubtadī*, 149; al-Mawṣilī, *al-ʾIkhtiyār*, 1356, 3:4; al-Sughdī, *al-Nutaf fī al-Fatāwā*, 2:754.

94 al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 1406, 6:19.

95 ʾAbū al-Walīd Muhammad b. ʿAḥmad ʾIbn Rushd, *al-Bayān wa-l-Taḥṣīl wa-l-Sharḥ wa-l-Tawjīh wa-l-Taʿlīl fī Masāʾil al-Mustakhraja*, ed. Muhammad Ḥajjī, 2nd ed., vol. 7 (Beirut: Dār al-Gharb al-ʾIslāmī, 1408), 220.

96 ʾAbū al-ʿAbbās Shahāb al-Dīn ʿAḥmad b. ʾIdrīs al-Qarāfī, *al-Dhakhīra*, ed. Muhammad Bū Khubza, vol. 9 (Beirut: Dār al-Gharb al-ʾIslāmī, 1994), 241.

Mālikīs hold the view that *ḥawāla* has four *rukn*s:[97] the assignor, the creditor, the assignee, and the object of the contract.[98] On the question of consent, only that of the first two (i.e., the assignor and the creditor) are deemed necessary.[99] The consent of the assignee, on the other hand, is not sought for validity of the contract except for two circumstances: (i) that the assignee does not owe any debt to the assignor and (ii) that there is an enmity between the creditor and the assignee incurred prior to the *ḥawāla* transaction.[100]

Unlike Ḥanafīs, Mālikīs explicitly elaborate that the assignee is required to be indebted to the assignor in order for the contract to be valid. If this is not the case, however, the contract does not become invalid, but it can no longer be called *ḥawāla,* but another type of contract denominated *ḥamāla*.[101] As a matter of fact, what Mālikīs call *ḥamāla* is no different than the contract of surety (*kafāla*). In the chapters pertaining to the surety, Mālikī *fiqh* books clarify that the terms "*ḥamāla*" and "*kafāla*" bear the same meaning, as both stand for the surety and may be used interchangeably.[102]

As for the conditions for validity of the contract, Mālikīs focalize on the object of the contract. They lay down four main principles:

a. The debt owed to the creditor by the assignor must be due. Otherwise, namely if it is not due yet, the contract means the sale of a debt in exchange for another, which would lead to interest (*ribā*).

b. The object of the contract must not be arising from a *salam* contract, nor must it be an edible material. Either of these possibilities renders the contract null and void, for they are tantamount to disposition of a debt prior to taking delivery (*qabḍ*) of it.[103]

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97 *Rukn* can simply be defined as an element without which the contract may not stand. See H. Yunus Apaydın, *İslam Hukuk Usulü*, 3rd ed. (Kayseri: Kimlik Yayınları, 2017), 158; Tevhit Ayengin, "Rükün," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (İstanbul, 2008), 286–87.

98 al-Qarāfī, *al-Dhakhīra*, 1994, 9:243–44.

99 Khalīl b. ʾIsḥāq al-Jundī, *Mukhtaṣar*, ed. ʿAḥmad Jād (Cairo: Dār al-Ḥadīth, 1426), 175.

100 ʾAbū ʿAbd Allah Muhammad b. ʿAbd Allah al-Kharashī, *Sharḥu Mukhtaṣar Khalīl*, vol. 6 (Beirut: Dār al-Fikr li-l-Ṭibāʿa, n.d.), 16–17.

101 ʾIbn Saʿīd al-Tanūḫī Saḥnūn, *al-Mudawwana*, vol. 4 (Dār al-Kutub al-ʿIlmiyya, 1415), 127; ʾAbū Muhammad ʿAbd Allah b. ʿAbd al-Rahmān al-Qayrawānī, *Matn Al-Risāla* (Dār al-Fikr, n.d.), 136.

102 ʾAbū al-Walīd Muhammad b. ʿAḥmad ʾIbn Rushd al-Ḥafīd, *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid*, vol. 4 (Cairo: Dār al-Ḥadīth, 1425), 79; al-Qarāfī, *al-Dhakhīra*, 1994, 9:189.

103 al-Qarāfī, *al-Dhakhīra*, 1994, 9:244–45.

c. The object of the contract must have a binding effect (*lāzim*).[104] This requirement may be thought of as the approximate equivalent to the term "*ṣaḥīḥ*" employed by Ḥanafīs.

d. The two debts, viz. the one which the assignor owes to the creditor and that which the assignee to the assignor, must be equal in terms of value (*qadr*) and quality (*ṣifa*).[105] If they are not equal, the contract will become the sale of a debt in exchange for another again, and the special dispensation (*rukhṣa*) given for *ḥawāla* will be no longer valid.[106]

Apparently, although Mālikīs do not directly convey that two separate debts are required to be in existence, such a requirement can be inferred without great effort from what they have formulated in their books. In a similar vein, that the assignee must be indebted indicates that Mālikīs draw no distinction between *muqayyad* and *muṭlaq*, as the latter is out of scope in their legal theory on *ḥawāla*.

Upon the formation of the contract, the claim that the creditor is able to lodge against the assignor changes hands; henceforth, the creditor may bring the claim only against the assignee.[107] The circumstances in which *tawā* occurs according to Ḥanafīs are not acknowledged by Mālikī jurists. The one and only exception to this is the deception of the creditor while concluding the agreement by concealing the bankruptcy (*iflās*) of the assignee. In this case, the right of the creditor to have a recourse to the assignor is reserved provided that the former is not aware of the bankruptcy during the formation of the contract.[108]

Shāfiʿī Madhhab

Shāfiʿīs' perception of *ḥawāla* is somewhat different from that of Ḥanafīs and Mālikīs. In fact, Shāfiʿīs are not only in disagreement with these two, but also amongst themselves. Whereas some of them put forward that *ḥawāla* is a contract based on attachment and aid (*ʾirfāq wa-maʿūna*), others, including al-Shafiʿi (d.

104 al-Kharashī, *Sharḥu Mukhtaṣar Khalīl*, n.d., 6:17.

105 al-Jundī, *Mukhtaṣar*, 175.

106 ʾIbn Rushd al-Ḥafīd, *Bidāyat al-Mujtahid*, 4:84.

107 al-Jundī, *Mukhtaṣar*, 175.

108 ʾAbū Muhammad ʿAbd Allah b. ʿAbd al-Rahmān al-Qayrawānī, *al-Nawādir wa-l-Ziyādāt ʿalā mā fī al-Mudawwana min Ghayrihā min al-ʾUmmahāt*, ed. Muhammad ʿAbd al-ʿAzīz al-Dabbāgh, vol. 10 (Beirut: Dār al-Gharb al-ʾIslāmī, 1999), 156; Saḥnūn, *al-Mudawwana*, 4:126; al-Qayrawānī, *Al-Risāla*, 136.

204/820) himself, claim that it is the sale of a debt in exchange for another.[109] These two debts mentioned by the latter view are (i) that which the assignor owes to the creditor and (ii) that which the assignee owes to the assignor.[110]

It is significant that these two debts are considered of utmost importance in Shāfiʿī legal theory. Shāfiʿīs opine that the contract is not valid (*ṣaḥīḥ*) unless the assignor is indebted to the creditor;[111] this debt is considered one of the *rukn*s of *ḥawāla*.[112] Shāfiʿī *fiqh* books also stress the necessity for the existence of a debt owed by the assignee to the assignor.[113] On this point, Shāfiʿīs appear to be in line with Mālikīs and at odds with Ḥanafīs. Although the contract stands still in case there is no such a debt, it is legally not *ḥawāla,* but another type of contract called *ḍamān*.[114] What Shāfiʿīs mean by the term "*ḍamān*" is not different from what Mālikīs mean by "*ḥamāla*"; indeed, the term "*ḍamān*" refers to "*kafāla*", and these two terms are interchangeable.[115] As the debt of the assignee to the assignor is a requisite for a *ḥawāla* contract to be formed, the Shāfiʿī *madhhab* does not make such a distinction as *muqayyad* and *muṭlaq*.

Regarding the consent of the parties, there is no doubt among Shāfiʿīs that the consent of the assignor and the creditor is required. Whether the consent of the assignee is needed or not, nevertheless, is disputed, and both views are held.[116]

The approach Shāfiʿīs adopt in scrutinizing the object of the *ḥawāla* contract greatly resembles that of the Ḥanafīs. As a matter of fact, Shāfiʿīs require the object to be a *dayn* and known (*maʿlūm*).[117] Nonetheless, Shāfiʿī legal books do not employ the term "*ṣaḥīḥ*" in the sense Ḥanafīs do; instead, they emphasize that

109 ʾAbū al-Ḥasan ʿAlī b. Muhammad b. Muhammad al-Māwardī, *al-Ḥāwī al-Kabīr*, ed. ʿAlī Muhammad Muʿawwaḍ and ʿĀdil ʾAḥmad ʿAbd al-Mawjūd, vol. 6 (Beirut: Dār al-Kutub al-ʿIlmiyya, 1419), 420.

110 Shams al-Dīn Muhammad b. ʾAḥmad al-Khaṭīb al-Shirbīnī, *Mughni al-Muhtāj ilā Ma'rifati Ma'ānī al-ʾAlfāẓ al-Minhāj*, vol. 3 (Dār al-Kutub al-ʿIlmiyya, 1415), 189–90.

111 Ömer Nasuhi Bilmen, *Hukukı İslâmiyye ve Istılahatı Fıkhiyye Kamusu*, vol. 6 (İstanbul: Bilmen Yayınevi, n.d.), 293.

112 al-Shirbīnī, *Mughni al-Muhtāj*, 3:190.

113 ʾAbū ʾIshāq ʾIbrāhīm b. 'Alī b. Yūsuf al-Shīrāzī, *al-Tanbīh fī al-Fiqh al-Shāfiʿī* (ʿĀlam al-Kutub, n.d.), 105.

114 al-Māwardī, *al-Ḥāwī*, 6:419–20; al-Shirbīnī, *Mughni al-Muhtāj*, 3:190.

115 al-Māwardī, *al-Ḥāwī*, 6:430; al-Shirbīnī, *Mughni al-Muhtāj*, 3:198.

116 al-Māwardī, *al-Ḥāwī*, 6:417–18; al-Shirbīnī, *Mughni al-Muhtāj*, 3:190; ʾAbū ʾIshāq ʾIbrāhīm b. 'Alī b. Yūsuf al-Shīrāzi, *al-Muhadhdhab fī Fiqhi al-ʿImām al-Shāfiʿī*, vol. 2 (Dār al-Kutub al-ʿIlmiyya, n.d.), 144.

117 al-Shīrāzi, *al-Muhadhdhab*, 2:143.

the debt must be *mustaqarr*; that is to say, the debt must be firmly established and unlikely to cease to exist. To illustrate, the following debts may not be the object of a *ḥawāla* transaction as they are not *mustaqarr*: *badal al-kitāba* (coartación) and the debt (*dayn*) arising from a *salam* contract.[118] Albeit formulated disparately, Ḥanafīs' "*ṣaḥīḥ*" and Shāfiʿīs' "*mustaqarr*" appear to fill the same gap. In addition, according to Shāfiʿīs, the debt must also be of commercial value (*mutaqawwim*) such as clothes, and binding (*lāzim*).[119] Notwithstanding the difference of opinion on whether the object needs to be fungible (*mithlī*) or not, it is commonly held that the two debts, namely the one which the assignor owes to the creditor and the one which the assignee owes to the assignor as mentioned above, must necessarily be equal in various respects such as maturity,[120] and most importantly, the value (*qadr*).[121]

Once the contract is concluded, the assignor is no longer liable for the obligation and is replaced by the assignee, as this latter becomes liable.[122] In contradistinction to Ḥanafīs and Mālikīs, however, Shāfiʿīs, quite radically, leave no room for *tawā* at all. In other words, the debt never returns to the assignor under any circumstances whatsoever once successfully transferred to the assignee.[123] The assignee's death, bankruptcy or insolvency make no difference in this regard.[124]

Ḥanbalī Madhhab

Besides the agreed-upon definition of *ḥawāla* as "the transfer of a right from one's assets to another," Ḥanbalī jurists assert, like Shāfiʿīs, that it is a contract based on attachment (*ʾirfāq*). They take issue with those who aver that it is a kind of sale (*bayʿ*), for it, Ḥanbalīs argue, would add up to be a sale of a debt in exchange for another, which is clearly not permissible under Islamic law.[125]

118 al-Shīrāzī, *al-Tanbīh*, 105.

119 al-Shirbīnī, *Mughni al-Muhtāj*, 3:190–91.

120 al-Shīrāzi, *al-Muhadhdhab*, 2:143.

121 al-Shirbīnī, *Mughni al-Muhtāj*, 3:192; ʾAbū Ḥamīd Muhammad b. Muhammad al-Ghazālī, *al-Wasiṭ fi al-Madhhab*, ed. ʾAḥmad Muhammad ʾIbrāhīm and Muhammad Muhammad Tāmir, vol. 3 (Cairo: Dār al-Salām, 1417), 222.

122 al-Shirbīnī, *Mughni al-Muhtāj*, 3:193; ʾIsmāʿīl b. Yaḥyā b. ʾIsmāʿīl al-Muzanī, *Mukhtaṣar*, vol. 8 (Beirut: Dār al-Maʿrifa, 1410), 205; ʾAbū ʾAbdillāh Muhammad b. ʾIdrīs b. al-ʿAbbās al-Shāfiʿī, *al-ʾUmm*, vol. 7 (Beirut: Dār al-Maʿrifa, 1410), 124.

123 al-Shīrāzī, *al-Tanbīh*, 105; al-Shāfiʿī, *al-ʾUmm*, 7:124.

124 al-Māwardī, *al-Ḥāwī*, 6:420–21; al-Shirbīnī, *Mughni al-Muhtāj*, 3:193; al-Muzanī, *Mukhtaṣar*, 8:205.

125 ʾAbū Muhammad ʿAbd Allah b. ʾAḥmad b. Muhammad al-Maqdisī Muwaffaq al-Dīn ʾIbn Qudāma, *al-Mughnī*, vol. 4 (Maktabat al-Qāhira, 1388), 390.

The chapters of Ḥanbalī *fiqh* books appertaining to the theory of *ḥawāla* throw light on the conditions whose absence would render the transaction invalid. These conditions of validity may be encapsulated as follows:

a. The debt owed by the assignee to the assignor must be *mustaqarr*. Ḥanbalīs' explanation on this point is quite simple: the reason behind this requirement is that if a debt is not *mustaqarr*, it is within the realm of possibility that the debt ceases to exist. The kernel of *ḥawāla* transactions, however, is that the obligation of the assignor is deemed extinguished for good once the transaction is concluded by the parties, and a debt which is not *mustaqarr* is unable to provide an opportunity as such. That Ḥanbalīs' and Shāfiʿīs employ the same term, namely *mustaqarr*, is notable.

b. The debt which the assignor owes to the creditor and that which the assignee owes to the assignor must be uniform. Unlike Shāfiʿīs, this uniformity (*tamāthul*) is sought by Ḥanbalīs in three respects. First, both debts must be same in kind (*jins*); for instance, if one of the two debts is stipulated to be paid in gold, the other must be in gold as well. Second, both debts must be same in quality (*ṣifa*). To illustrate, the transaction ends up being invalid if the currency in which one of the two debts is set down to be paid is different from that of the other debt in value. Third, a homogeneity is necessitated in terms of maturity (*ḥulūl wa-taʿjīl*). Thus, the transaction will be invalid in case one of the debts is due and the other is not. On the other hand, even though both debts are due, their maturity must be identical. To put it another way, the transaction will be invalid again if the first debt will be due in one month and the other in two months.

It can be distinctly deduced from this requirement, namely the uniformity, that the existence of two separate debts is perceived as *sine qua non* in Ḥanbalī legal theory. Ḥanbalī jurists, indeed, appear to have developed the theory of *ḥawāla* based on the assumption that the transaction involves two discrete debts. Therefore, the absence of one of two debts reshapes the nature of the contract. The consequence of such absences shall be detailed below.

c. Both debts must be known (*maʿlūm*), for *ḥawāla*, as a transfer, entails the delivery, and being unknown impedes it.

d. The consent of the assignor is unquestionably needed. [126]

126 Manṣūr b. Yūnus b. Ṣalāh al-Dīn al-Buhūtī, *Kashshāf al-Qināʿ an Matn al-ʾIqnāʿ*, vol. 3 (Dār al-Kutub al-ʿIlmiyya, n.d.), 383–86; Muwaffaq al-Dīn ʾIbn Qudāma, *al-Mughnī*, 4:390–93; Shams al-Dīn Muhammad b. ʾAbd Allah al-Zarkashī, *Sharḥ al-Zarkashī*, vol. 4 (Dār al-ʿUbaykān, 1413), 111–12.

Although Ḥanbalīs highlight that the assignor's content is necessary, the flip side is that the consent of neither the assignee nor the creditor is sought. The consent of the former is not required at all, and there is no possibility whatsoever to object to the transaction. The consent of the latter is not needed either, provided that the assignee is able (*malīʾ*) to pay the debt. If the assignee is able, the creditor has no choice but to accept the transaction and, in case of objection, will be unhesitatingly compelled to submit.[127] Nevertheless, it has to be born in mind that the contract may be concluded as long as the creditor does not express disapproval even if the assignee is unable to pay.

Once the contract of *ḥawāla* is formed in accordance with the requirements elaborated above, the assignor is permanently discharged from all liability in respect of the transferred debt.[128] Here appears the question of *tawā*. Ḥanbalīs, albeit less than Shāfiʿīs, display a reluctance towards *tawā*. As the discharge of the assignor is permanent, the liability for the debt, in principle, does not return to the assignor. Similar to Mālikīs, Ḥanbalīs recognize only one exception to this rule. The sole exception in Ḥanbalī legal theory comes into being when the creditor surmises that the assignee is able (*malīʾ*) to pay the debt whilst the assignee is not on the condition that the creditor has not expressed approval of the transaction. Aside from this exception, the creditor may not ask the assignor for the payment.[129]

It has been pointed out above that the presence of two separate debts is a requisite in Ḥanbalī law. As a result, the non-existence of one of the two debts or both changes the nature of the contract in its entirety. In explaining these changes, the terms "assignor," "creditor," and "assignee" will be used as if there is a *ḥawāla* transaction in its proper sense – while there is clearly not – in order to preclude risk of confusion. The three possibilities in this regard can be listed as follows:

a. If the assignor is indebted to the creditor, yet the assignee is not owing any sum to the assignor, the contract is not *ḥawāla* but borrowing (*ʾiqtirāḍ*). This is because *ḥawāla* unequivocally involves trade-off (*muʿāwaḍa*), yet no such trade-off is in question in this case. As the assignee clears the debt for which the assignor is liable, the former gains the right to recourse to the latter.

b. If the assignee is indebted to the assignor, yet the assignor is not owing any sum to the creditor, the contract is not *ḥawāla* but agency (*wakāla*). This is

127 ʿAlāʾ al-Dīn ʾAbū al-Ḥasan ʿAlī b. Sulaymān al-Mardāwī, *al-ʾInṣāf fī Maʿrifat al-Rājiḥ min al-Khilāf*, 2nd ed., vol. 5 (Dār ʾIḥyāʾ al-Turāth al-ʿArabī, n.d.), 227; Muwaffaq al-Dīn ʾIbn Qudāma, *al-Mughnī*, 4:394; al-Buhūtī, *Kashshāf al-Qināʿ*, 3:386; al-Zarkashī, *Sharḥ*, 4:113–14.

128 Muwaffaq al-Dīn ʾIbn Qudāma, *al-Mughnī*, 4:390; al-Zarkashī, *Sharḥ*, 4:110.

129 al-Mardāwī, *al-ʾInṣāf*, 5:228; al-Buhūtī, *Kashshāf al-Qināʿ*, 3:383.

because *ḥawāla* unequivocally involves transfer of a right, yet no such transfer is in question in this case.[130]

c. If the assignee is not indebted to the assignor, nor is the assignor owing any sum to the creditor, the contract is not *ḥawāla* but agency (*wakāla*) in this case as well.[131]

It is apparent that, similar to Mālikīs and Shāfiʿīs, Ḥanbalīs have formulated their theory on the presumption that there are two separate debts in question and do not embrace the distinction drawn by Ḥanafīs between *muqayyad* and *muṭlaq*, as the latter is not recognized as *ḥawāla* in Ḥanbalī legal theory.

Analysis

Having expatiated the theory of *ḥawāla* in Islamic law, now it is time for a thorough analysis of this concept with the IFTS. As done above, each *madhhab* will be handled separately, hence examining the conditions set out by them one-by-one. The terms "assignor," "assignee," and "creditor" will be used to express the parties of *ḥawāla*, while "sender," "*hawaladar*," and "recipient" will express the parties of the IFTS. It must be stressed that although there are two different *hawaladar*s in an IFTS transaction – between whom various legal relationships (e.g., agency) may be present – the term "*hawaladar*" will be used to refer to both. As such, no distinction will be made between the two *hawaladar*s since such a distinction bears no immediate consequence which might affect the assessment carried out below.

Ḥanafī Madhhab

The consent of the assignor and the assignee is deemed necessary by Ḥanafīs. Since no IFTS transaction may take place without the consent of the sender and the *hawaladar*, it is beyond dispute that this condition is met. With regard to the distinction between *muqayyad* and *muṭlaq*, the IFTS transactions obviously have the character of the former, as the debt of the *hawaladar* is restricted to the sum received from the sender. As for the object of the *ḥawāla* contract, all the requirements imposed by Ḥanafīs are complied with: the debt is a *dayn*, for it is a pecuniary obligation; the object is known (*maʿlūm*) as the parties are not in ignorance of the exact amount of the debt; and most importantly, the debt making up the object is *ṣaḥīḥ*. As elucidated before, the term "*ṣaḥīḥ*" refers here to any debt which may not be cleared except through payment or release, and thus, the object of *ḥawāla* contracts fits this definition.

130 Muwaffaq al-Dīn ʾIbn Qudāma, *al-Mughnī*, 4:392.

131 al-Mardāwī, *al-ʾInsāf*, 5:225.

Although the conditions mentioned above are fulfilled, the other conditions are a bit problematic. The consent of the creditor, for instance, is considered a must in Ḥanafī legal theory. Howbeit, it is not realistic to assume the existence of the recipient's consent. The contract might have been concluded while the recipient was totally ignorant of it. Additionally, the recipient could have been completely informed about the transaction and could have even expressed approval of it, but it is unlikely that this approval was expressed prior to the conclusion of transaction. In these cases, it is evident that the consent of the recipient is lacking. Be that as it may, the following question may be raised: If the recipient does not express disapproval or is ignorant of the contract until the agent of the *hawaladar* shows up and offers the payment, may the former's receiving of remittance be construed as subsequent consent? It is the opinion of the author that the answer to this question must be in the affirmative. If the answer is affirmative, the next question which arises here is whether such a subsequent approval from the recipient validates the contract or not. The answer to this question is contingent on which view is adhered to pertaining to the effect of subsequent consent. If the view of Abu Yusuf is to be held, the answer will be positive. However, if that of Abu Hanifa and Muhammad al-Shaybani is taken, there is no chance of validating the transaction because it is of no legal effect *ab initio*. In sum, an IFTS transaction concluded without the consent of the recipient may be valid only if: (i) the recipient is not ignorant or has not expressed disapproval of the contract until the moment of payment, (ii) the recipient consents to receive it, (iii) the opinion of Abu Yusuf is held, and (iv) all the other conditions are observed. These arduous requirements are noteworthy as they reveal how difficult it is for such an IFTS transaction to be qualified as *ḥawāla* under the Ḥanafī law.

Another issue at stake with respect to Ḥanafī law is the debt owed by the assignor to the creditor, without which the contract will be an agency (*wakāla*) rather than *ḥawāla*. Even though the recipient may at times have a claim against the sender in practice, this is not necessarily the case in every situation. Imagine expatriates sending money to their family with the sole aim of financially supporting them through the IFTS. In this example, the contract is literally the agency, the sender is the principal, and the *hawaladar* is the agent; hence, a plethora of IFTS transactions remains out of the scope of *ḥawāla* contracts and becomes the agency.

Mālikī Madhhab

Since Mālikīs do not solicit the consent of the assignee for the validity of *ḥawāla*, the consent of the *hawaladar*, which practically always exists, makes no difference in this regard.

As to the consent of the assignor, which Mālikīs deem necessary, no question arises because no IFTS transaction may be envisaged without the consent of the sender. Regarding the object of the contract which must be a binding (*lāzim*) obligation but must neither arise from a *salam* contract or nor be an edible substance, the IFTS does not have any intrinsic feature or characteristic rendering itself more likely or unlikely to be subject to such probabilities than the other.

Another condition set out by Mālikī law in respect of the object is that the debt owed to the creditor by the assignor must be due. When one assumes that the assignor owes a debt to the creditor, this condition may appear to not pose an enormous problem, yet the problem is the presence of such a debt, i.e., the debt of the assignor towards the creditor, which shall be discussed below.

Like Ḥanafīs, Mālikīs consider the consent of the creditor vital for conclusion of *ḥawāla*. The analysis carried out vis-à-vis Ḥanafīs above on the inexistence of it holds true for Mālikīs as well. What differs here, however, is that Mālikī *fiqh* books, as far as the author has observed, remain silent on legal effect of the subsequent consent. In other words, these books do not make precise its ramification, hence the incertitude. In drawing an inference, one must be mindful of the fact that the creditor is one of the *rukn*s of *ḥawāla* in Mālikī legal theory. Plainly, an answer to this question has not been determined, neither from the opinion of the author nor from the sources which Mālikīs use – yet having no answer whatsoever in these books definitely renders the question more than contentious.

Besides, Mālikīs stipulate the existence of two separate debts, which raises a couple of controversial issues. First, the assignee is required to be indebted to the assignor in Mālikī legal theory; otherwise, the transaction will not be *ḥawāla* but *ḥamāla* which is tantamount to the surety (*kafāla*) as indicated above. In the vast majority of cases, one might easily and understandably argue that it is not reasonable to think of a debt owed by the *hawaladar* to the sender beforehand. The determinant at this point is the payment the sender makes to the *hawaladar*. A distinction should be made here between two situations, the first one being the payment made prior to the conclusion of the IFTS transaction, and the second being the payment made simultaneously with or subsequently to it. The former might be interpreted as a loan (*qarḍ*) under Islamic law, and thus the *hawaladar* would owe a debt to the sender, hence satisfying the requirement laid down by Mālikīs. The latter, which appears more likely to come about, manifestly does not meet this requirement as the *hawaladar* is not indebted; therefore, we can deduce that the contract will, in most instances, be a surety rather than *ḥawāla*. Second, the assignor must necessarily be indebted to the creditor. To demonstrate, we

may recall the example given above: expatriates sending money to their family. Indubitably, Mālikī jurists are of the opinion that this is not *ḥawāla* proper, yet they do not crystallize what it is in fact. The author opines that it may be considered an agency, like with the Ḥanafīs. Remarkably, Ömer Nasuhi Bilmen, a prominent jurist of the twentieth century well known for his renowned book on Islamic law *Hukukı İslâmiyye ve Istılahatı Fıkhiyye Kamusu*, is of the same view; he asserts that a contract as such is nothing but an agency in terms of Mālikī legal theory.[132]

Another thorny problem is the equality of two debts in value (*qadr*) and quality (*ṣifa*). Because as the *hawaladar* charges a commission most of the time, it is possible that the sum paid to the *hawaladar* and that paid to the recipient would differ, which renders *ḥawāla* invalid in Mālikī legal theory.

Shāfiʿī Madhhab

The consent of the assignor is regarded necessary by all Shāfiʿīs whilst that of the assignee is deemed necessary by some of them. Nonetheless, this does not raise any problems because it is almost impossible to envision an IFTS transaction in the absence of a sender and *hawaladar*.

Concerning the object of the contract, most conditions imposed by Shāfiʿī jurists seem to be observed: the object is a *dayn* as it is a pecuniary obligation, which also entails that it is fungible (*mithlī*), and it is known (*maʿlūm*) by the parties as they are not ignorant of it. It is also *mustaqarr* because there is no reason for the debt to cease to exist, and there is nothing special making it more or less likely to be of commercial value (*mutaqawwim*) and binding (*lāzim*) than the other.

When it comes to the consent of the creditor, on the other hand, the drawbacks articulated above equally hold true with regard to Shāfiʿī legal theory and cannot be overcome. Briefly put, Shāfiʿī books, as far as has been observed, remain silent, as Mālikī books do, about the legal effect that the subsequent approval from the creditor will produce. Hence, it is sufficient to refer to what was contended regarding the Mālikīs above.

Another common ground between Shāfiʿīs and Mālikīs is that they both require the assignee to owe a debt to the assignor. As this matter has been extensively dwelled on above, the same analysis will not be repeated here. Suffice here to note that the contract will be *ḍamān*, the nomenclature utilized by Shāfiʿīs to express surety (*kafāla*), should such a debt do not exist. Regarding the debt the assignor owes to the creditor, Shāfiʿī legal books palpably delineate that it is one of the *rukn*s of *ḥawāla*, and the contract may not be valid (*ṣaḥīḥ*) in its absence.

132 Bilmen, *Kamus*, 6:292.

Another troublesome issue in the Shāfiʿī legal theory is the equality of two debts in maturity and value (*qadr*). Assuming there are two different debts as Shāfiʿīs stipulate, that the *hawaladar* asks the sender for a certain amount of time for the delivery of money will unquestionably be a stumbling block in the validity of the transaction. In addition, the equality in value represents a graver threat to it, for the equilibrium between the two debts will be upset when the *hawaladar* charges a commission, even a very small fee, invalidating the transaction.

Ḥanbalī Madhhab

Ḥanbalīs perceive the consent of the assignor necessary and that of the assignee unnecessary. However, examining them is redundant since both the sender and the *hawaladar* are *sine qua non* for the conclusion of any IFTS contract in practice. Apropos of the object of the contract, the object of the IFTS meets the Ḥanbalīs' criteria of being *mustaqarr* and known (*maʿlūm*), yet these points will not be expatiated on again, as they have already been mentioned above.

What is aspired to be accentuated here is that Ḥanbalī jurists, alike Mālikīs and Shāfiʿīs, underscore that there must be two separate debts: that owed to the assignor by the assignee and that owed to the creditor by the assignor. It was expounded above that the payment made by the sender to the *hawaladar* may be construed as a loan (*qarḍ*) if carried out before the IFTS transaction; ergo, the contract remains valid. Nevertheless, if the payment takes place synchronously with or following the transaction, it will no longer be possible to claim that the *hawaladar* is indebted. In this case, the transaction will be not *ḥawāla* but borrowing (*ʾiqtirāḍ*) according to Ḥanbalīs provided that the sender owes a debt to the recipient. If the sender does not owe a debt to the recipient either, the contract is agency (*wakāla*) no matter whether the *hawaladar* is indebted to the sender or not.

Even if there exist two different debts, then the question of uniformity (*tamāthul*) poses itself. Accordingly, for instance, when the *hawaladar* asks for a certain amount of time, regardless of how short or long it is, for the delivery – which must be the case on every occasion in practice – the transaction will end up being invalid in toto.

Suftaja

Having explored the possible characters that the IFTS may take on in relation to *ḥawāla*, it is time to turn to *suftaja* which is another legal instrument similar to,

but distinct from, *ḥawāla*.[133] Researchers consider *suftaja to be* an "instrument of credit"[134] which provides the assets with financial liquidity[135] and eliminates the risk of transport.[136]

Books of *fiqh* do not generally contain specific chapters dedicated to *suftaja* independently. The rules and explanations pertaining to *suftaja* appear in different chapters (e.g., *ḥawāla*, *qarḍ*, *ṣarf*). Here, again, each *madhhab* will be treated separately, with an analysis following after the theories formulated by Muslim jurists have been spelled out.

In Islamic Law

Ḥanafī Madhhab

Ḥanafīs define *suftaja* as a loan made to a borrower so that it is paid off in another town either by the borrower or someone else entrusted with the payment.[137] In doing so, the loan remains secure from prospective dangers which might occur during the journey.[138] Ḥanafī jurists emphasize that the amount given to the borrower is

133 Joseph Schacht, *An Introduction to Islamic Law* (New York: Oxford University Press, 1982), 149; Albert Dietrich, "Hawala," in *The Encyclopaedia of Islam: Second Edition*, ed. Bernard Lewis et al. (Leiden: Brill, 1986), 283; Cengiz Kallek, "Süftece," in *DİA* (İstanbul, 2010), 20; Faruk Emrah Oruç, "İslâm Hukukunda Deyn" (M.A. dissertation, Selçuk University, 2011), 48; Monzer Kahf, *Islamic Finance Contracts*, 2nd ed. (CreateSpace Independent Publishing Platform, 2015), 280. On *suftaja*, also see Halil Sahillioğlu, "Bursa Kadı Sicillerinde İç ve Dış Ödemeler Aracı Olarak 'Kitâbü'l-Kadı' ve 'Süftece'ler," in *Türkiye İktisat Tarihi Semineri: Metinler/Tartışmalar* (Ankara: Mars Matbaası, 1975), 130–36.

134 Abraham L. Udovitch, "Reflections on the Institutions of Credits and Banking in the Medieval Islamic near East," *Studia Islamica*, no. 41 (1975): 10; Nicholas Dylan Ray, "The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations," *Arab Law Quarterly* 12, no. 1 (1997): 60.

135 Kallek, "Süftece," 20.

136 Walter Fischel, "The Origin of Banking in Mediaeval Islam: A Contribution to the Economic History of the Jews of Baghdad in the Tenth Century," *The Journal of the Royal Asiatic Society of Great Britain and Ireland*, no. 3 (1933): 574; Maya Shatzmiller, "The Role of Money in the Economic Growth of the Early Islamic Period (650–1000)," *American Journal of Comparative Law* 3, no. 4 (2005): 296; Rubin, "Bills of Exchange, Interest Bans, and Impersonal Exchange in Islam and Christianity," 214.

137 Molla Khusraw, *Durar*, 2:310; Kamāl al-Dīn Muhammad ʾIbn al-Humām, *Fatḥ al-Qadīr*, vol. 7 (Dār al-Fikr, n.d.), 250; al-Bābartī, *al-ʿInāya*, n.d., 7:250; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 5:350.

138 al-Marghīnānī, *Bidāyat al-Mubtadī*, 149; Majd al-Dīn ʾAbū al-Faḍl ʿAbd Allah al-Mawṣilī, *al-ʾIkhtiyār li-Taʿlīl al-Mukhtār*, vol. 2 (Cairo: Maṭbaʿat al-Ḥalabī, 1356), 33; al-Maydānī, *al-Lubāb*, 2:162.

not a bailment (*wadīʿa*) but a loan (*qarḍ*),[139] and the security provided by *suftaja* is considered a benefit for the lender. Ḥanafī legal books read: "The prophet has forbidden the loan involving benefit as it entails interest (*ribā*), and *suftaja* is a loan which involves a benefit for the lender; ergo, *suftaja* falls under the scope of this prohibition."[140] Nonetheless, this prohibition merely applies to the instances where the benefit is stipulated beforehand. Therefore, transactions to which such a condition is attached are deemed impermissible.[141] As a consequence, the litmus test is whether the loan is made on the condition that the borrower, as drawer, draws a *suftaja* on behalf of the lender. If the answer is negative, *suftaja* is legally valid should it be drawn later. If the answer is positive, however, then *suftaja* is reprehensible (*makrūh*),[142] and the loan is invalid.[143]

Mālikī Madhhab

The Mālikī definition of *suftaja* is roughly the same as that of Ḥanafīs.[144] There are two divergent narrations reported from Malik b. Anas (d. 179/795) on its validity, one in favor and the other in opposition, yet the well-established (*mashhūr*) opinion of the *maddhab* is the latter.[145] Therefore, *suftaja* is deemed impermissible under Mālikī law.[146] Be that as it may, Mālikī jurists assert that if the likelihood of damage and highway robbery during the journey is very strong, then *suftaja*

139 al-Bābartī, *al-ʾInāya*, n.d., 7:250; ʾIbn ʿĀbidīn, *Radd al-Muḥtār*, 5:350.

140 al-Mawṣilī, *al-ʾIkhtiyār*, 1356, 2:33.

141 ʿAlāʾ al-Dīn ʾAbū Bakr al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, 2nd ed., vol. 7 (Dār al-Kutub al-ʿIlmiyya, 1406), 395; Burhān al-Dīn Maḥmūd al-Bukhārī, *al-Muḥīṭ al-Burhānī fī al-Fiqh al-Nuʿmānī*, ed. ʿAbd al-Karīm Sāmī al-Jundī, vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyya, 1424), 128; Shahāb al-Dīn al-Shalabī, *Tabyīn al-Haqāiq Sharḥ al-Kanz al-Daqāiq wa-Ḥāshiyat al-Shalabī*, vol. 6 (Bulaq: al-Maṭbaʿat al-Kubrā al-ʾAmīriyya, 1313), 29.

142 ʾAbū ʿAbd Allah Muhammad b. al-Ḥasan al-Shaybānī, *al-ʿAṣl*, ed. Mehmet Boynukalın, vol. 3 (Beirut: Dār ʾIbn Ḥazm, 1433), 26; Muhammad b. ʾAḥmad al-Sarakhsī, *al-Mabsūṭ*, vol. 14 (Beirut: Dār al-Maʿrifa, 1414), 37; al-Bukhārī, *al-Muḥīṭ al-Burhānī*, 7:128.

143 ʾIbn al-Humām, *Fatḥ Al-Qadīr*, 7:250.

144 ʾAbū al-ʿAbbās Shahāb al-Dīn ʿAḥmad b. ʾIdrīs al-Qarāfī, *al-Dhakhīra*, ed. Muhammad Bū Khubza, vol. 5 (Beirut: Dār al-Gharb al-ʾIslāmī, 1994), 293; ʾAbū ʿAbd Allah Muhammad b. ʿAbd Allah al-Kharashī, *Sharḥu Mukhtaṣar Khalīl*, vol. 5 (Beirut: Dār al-Fikr li-l-Ṭibāʿa, n.d.), 231; Shams al-Dīn ʾAbū ʿAbd Allah Muhammad b. Muhammad al-Ruʿaynī al-Ḥaṭṭāb, *Mawāhib al-Jalīl fī Sharḥi Mukhtaṣari Khalīl*, 3rd ed., vol. 4 (Dār al-Fikr, 1412), 547–48.

145 ʾAbū ʿUmar Yūsuf b. ʿAbd Allah b. Muhammad b. ʿAbd al-Barr al-Namarī, *al-Kāfī fī Fiqhi ʾAhl al-Madīna*, ed. Muhammad al-Mūrītānī, vol. 2 (Riyadh: Maktabat al-Riyāḍ al-Ḥadītha, 1400), 728–29.

146 Shams al-Dīn ʾAbū ʿAbd Allah Muhammad b. Muhammad al-Ruʿaynī al-Ḥaṭṭāb, *Mawāhib al-Jalīl fī Sharḥi Mukhtaṣari Khalīl*, 3rd ed., vol. 5 (Dār al-Fikr, 1412), 357.

becomes permissible due to the necessity (*ḍarūratan*) of protecting the asset.[147] For the permissibility, all roads must be fraught with danger. If there is an alternative road which does not incur such a risk, the necessity does not arise, and *suftaja* thus remains impermissible.[148]

Shāfiʿī Madhhab

The Shāfiʿī perception of *suftaja* is not very disparate from that of Ḥanafīs. Shāfiʿī jurists, too, elucidate that the loan is not valid should the lender stipulate the drawing of *suftaja* before the loan is made.[149] In the absence of such a stipulation, accordingly, the transaction is deemed valid. In the latter case, *suftaja* is legally binding (*lāzim*) provided that the following conditions are satisfied:[150] (i) *suftaja* acknowledges debt of the drawer, (ii) it acknowledges claim of the payee, (iii) it is drawn by the drawer, and (iv) the drawer drew it with an intent to conclude a *ḥawāla* transaction.

Ḥanbalī Madhhab

Ḥanbalīs are in agreement with the others on the impermissibility of *suftaja* when the lender stipulates the drawing of it before the loan.[151] On the other hand, there are two divergent reports, one in favor and one against, coming from Ahmad b. Hanbal (d. 241/855) on *suftaja* without such a stipulation.[152] The reports in favor of it underline the intention of doing a favor which vindicates the drawing of *suftaja*.[153]

147 ʾAbū ʿAbd Allah Muhammad b. Yūsuf al-Mawwāq, *al-Tāj wa-l-ʾIklīl li-Mukhtaṣari Khalīl*, vol. 6 (Dār al-Kutub al-ʿIlmiyya, 1416), 532.

148 al-Kharashī, *Sharḥu Mukhtaṣar Khalīl*, n.d., 5:231–32.

149 ʾAbū al-Ḥusayn Yaḥyā b. ʾAbī al-Khayr al-ʿImrānī, *al-Bayān fī Madhhab al-ʾImām al-Shāfiʿī*, ed. Qāsim Muhammad al-Nūrī, vol. 5 (Jidda: Dār al-Minhāj, 1421), 462; ʿAbd al-Malik b. ʿAbd Allah b. Yūsuf al-Juwaynī, *Nihāyat al-Maṭlab fī Dirāyat al-Madhhab*, ed. ʿAbd al-ʿAẓīm Maḥmūd al-Dīb, vol. 5 (Dār al-Minhāj, 1428), 452; al-Shīrāzī, *Al-Tanbīh*, 99.

150 ʾAbū al-Maḥāsin ʿAbd al-Wāḥid b. ʾIsmāʿīl al-Rūyānī, *Baḥr al-Madhhab*, ed. Ṭāriq Fatḥī al-Sayyīd, vol. 5 (Dār al-Kutub al-ʿIlmiyya, 2009), 504–5; ʿAḥmad b. Muhammad b. ʿAlī ʾIbn al-Rifʿa, *Kifāyat al-Nabīh fī Sharḥ al-Tanbīh*, ed. Majdī Muhammad Surūr, vol. 10 (Dār al-Kutub al-ʿIlmiyya, 2009), 308; al-Māwardī, *al-Ḥāwī*, 6:467–68.

151 Shams al-Dīn ʾAbd al-Rahmān b. Muhammad b. ʾAḥmad ʾAbū al-Faraj ʾIbn Qudāma, *al-Sharḥ al-Kabīr*, ed. Muhammad Rashīd Riḍā, vol. 4 (Dār al-Kutub al-ʿArabī, n.d.), 360.

152 ʾAbū Muhammad ʿAbd Allah b. ʾAḥmad b. Muhammad al-Maqdisī Muwaffaq al-Dīn ʾIbn Qudāma, *al-Qāfī fī Fiqh al-ʾImām ʾAḥmad*, vol. 2 (Dār al-Kutub al-ʿIlmiyya, 1414), 72.

153 Khālid al-Rabbāṭ and Sayyid ʿIzzat ʿIyd, *al-Jāmiʿ li-ʿUlūm al-ʾImām ʾAḥmad*, vol. 9 (al-Fayyūm: Dār al-Falāḥ li-l-Baḥth al-ʿIlmī wa-Taḥqīq al-Turāth, 1430), 316; ʾAbū Dāwud Sulaymān b. al-ʾAshʿath al-Sijistānī, *Masāʾil al-ʾImām ʾAḥmad bin Ḥanbal*, ed. Ṭāriq b. ʿIwaḍ Allah b. Muhammad ʾAbū Muʿādh (Maktabat ʿIbn Taymiyya, 1420), 262.

A Ḥanbalī jurist whose opinion runs counter to that of others is Muwaffaq al-Din Ibn Qudama (d. 620/1223). Having transmitted the two reports from Ahmad b. Hanbal, he invokes a number of names, including ʿAli b. Abi Talib (d. 40/661), Ibrahim al-Nakhaʿi (d. 96/714), and Ibn Sirin (d. 110/729), who all reportedly approved of the practice of *suftaja*, Ibn Qudama propounds that the correct (*al-ṣaḥīḥ*) is its permissibility, for it benefits both parties and harms neither, and Islamic law seeks to not outlaw acts that involve no harm and feature benefits, but to legalize them. On top of that, there is no prohibitive evidence in either the Qurʾan or sunna that challenge its legality. Therefore, the attitude of Islamic law towards *suftaja*, according to him, is not prohibition but neutrality (*ʾibāḥa*).[154] Another Ḥanbalī jurist, Ibn Taymiyya (d. 728/1328), follows suit and employs the same reasoning.[155]

Analysis

Before delving into prospective challenges that considering the IFTS as *suftaja* may pose, the initial question is whether the IFTS may be considered *suftaja* or not. In this regard, primarily, a couple of issues which are common to all *madhhab*s will be addressed.

First, while treating *suftaja*, *fiqh* books tend to picture it as a written document, with historical records indicating that the practice has generally conformed to the theory. Udovitch observes that *suftaja*, in the past, "always (…) occurred in the form of a *written* (emphasis added) obligation."[156] If *suftaja* necessarily calls for a written document, the sender in the IFTS will need to send it to the recipient. At this point, one may rightfully ask what the difference between sending *suftaja*, as a negotiable instrument, and sending money directly is. In short, the author does not discern a sharp difference between them and thinks that both are subject to approximately same degrees of danger.

A second and more controversial issue is that the roles which parties play in *suftaja* are not analogous to that in the IFTS. In *suftaja*, there are mainly three parties: the drawer, the drawee, and the payee. The role of drawer is undoubtedly played by the *hawaladar*, that of drawee by the counterpart of the latter, referred to above as (Y), and that of payee by the sender in the IFTS. When taking a closer look at these roles, the absence of one of the actors will be strikingly noticed: the

154 Muwaffaq al-Dīn ʾIbn Qudāma, *al-Mughnī*, 4:240–41.

155 Taqī al-Dīn ʾAbū al-ʿAbbās ʾAḥmad b. ʿAbd al-Ḥalīm ʾIbn Taymiyya, *Majmūʿ al-Fatāwā*, ed. ʿAbd al-Raḥman b. Muhammad ʾIbn Qāsim, vol. 29 (Medina: Majmaʿ al-Malik Fahd li-Ṭibāʿat al-Muṣḥaf al-Sharīf, 1416), 455–56.

156 Udovitch, "Reflections on the Institutions of Credits and Banking in the Medieval Islamic near East," 10.

recipient in the IFTS, a key element of the transaction, has no role in *suftaja*. It is doubtlessly clear that the recipient may by no means be considered the drawer or the drawee. As for the payee, *fiqh* books seem to assume that the loan will be paid to the lender and not to someone else. To put it differently, when the IFTS is considered as *suftaja*, it follows that the second *hawaladar* (Y) in an IFTS transaction makes the payment to the sender. Then, how can one insert the recipient into this relationship? Reckoning the recipient as the agent of the sender does not solve the puzzle, though, because the recipients accept the payment on their own behalf; if the recipient acts on behalf of the sender, the money that the former receives from the second *hawaladar* (Y) would appertain not to the former but to the latter, which is diametrically opposite to what the IFTS has been earmarked for. One may come up with the following question: If the payee in *suftaja* is the sender in the IFTS, why not to transfer the claim from the sender to the recipient so that the latter becomes the payee? Although this question may appear to make sense at first glance, the outcome of this question is nothing but "ouroboros," for it takes us back to the point where we have stood above: May an IFTS transaction be considered *ḥawāla* from the perspective of Islamic law? If the sender wants to transfer the claim to the recipient, this may be possible only through debt assignment, namely *ḥawāla*, and all the discussions above will be conducted again from scratch. It should be noted, however, that the sender and the recipient may be considered a party should the latter be the agent of the former, and the transaction may be considered *suftaja* proper in this case, as the recipient is involved in the transaction. Needless to say, the likelihood of occurrence of such a possibility is open to question.

Moreover, the problem is exacerbated when taking it into account from the standpoint of every single *maddhab*. Ḥanafīs, for instance, make clear that *suftaja* is impermissible should its drawing be stipulated beforehand. Such a stipulation, however, is the quintessence of the IFTS transactions because the *hawaladar* receives the money from the sender on the condition that the money is sent to the recipient. Nearly always, the *hawaladar* is someone who is actively engaged in the IFTS transactions and accepts the money for the purpose of conducting such a transaction. Hence, if the transaction is considered *suftaja*, the promise of sending the money to the recipient by the *hawaladar* amounts to the condition which Ḥanafīs proscribe in exact terms, and the transaction becomes invalid from the perspective of Ḥanafī law.

As for Mālikīs, the well-established opinion in their legal theory is the impermissibility, which impedes considering any IFTS transaction *suftaja*. Furthermore, the only exception made by Mālikīs – a strong likelihood of damage and highway robbery – is unlikely to apply to many parts of the globe where, at the

very least, financial institutions offering services for money operate. In regards to Shāfiʿī legal theory, the matter of stipulating in advance, which invalidates *suftaja*, persists. In addition, the claim belongs to the recipient in the IFTS, but Shāfiʿī jurists assert that a *suftaja* document must acknowledge that the claim belongs to the borrower, which is the sender in the IFTS; otherwise, one out of four conditions for the bindingness of *suftaja* remains unfulfilled. Likewise, Ḥanbalīs are in line with Ḥanafīs and Shāfiʿīs concerning the legal effect that the proviso of drawing *suftaja* produces into the bargain, with the exception of the dissenting jurists, Ibn Qudama and Ibn Taymiyya. Yet, even their theory leaves the question of exclusion of the recipient from the legal relationship established by *suftaja* unanswered.

On the aforementioned grounds, the author avers that the IFTS may not be considered analogous to *suftaja* by any means; furthermore, even if one considers it *suftaja* at first sight, some inherent qualities of the IFTS may render it legally inadmissible as *suftaja* in the strict sense under Islamic law. Therefore, an IFTS transaction may be construed as *suftaja* only very rarely.

Conclusion

The literature on the IFTS is not unanimous on its historical origin, with one of the existing views asserting that it has its origins in Islamic law. This study, revisiting the origin of the IFTS in light of Islamic legal theory, has sought to challenge and rebut that view. The study, based mainly on the classical sources of the Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī *maddhab*s, has revealed that although at times the IFTS might fulfill requirements for being a valid *ḥawāla* under Islamic law, most of the time it does not observe them. As a result, the IFTS may not be considered the exact equivalent to *ḥawāla*, for the former is not in line with the theory that jurists laid down in Islamic legal books for the latter but rather is in contradistinction with it on different grounds. The answer to the question of whether the IFTS is analogous to *ḥawāla* in every single case, thus, is overtly negative.

Regarding its link with *suftaja*, on the other hand, the situation is much simpler: if the recipient acts as an agent for the sender, the IFTS may be considered *suftaja*. On the other hand, if the recipient is not an agent for the sender, the IFTS may not be deemed *suftaja*, for it lacks even the basic structure of *suftaja* elaborated in Islamic legal books. In both cases, however, the modus operandi of the transaction involves a multiplicity of shortcomings rendering it impermissible under Islamic law, such as the stipulation of drawing a *suftaja* which is made prior to giving the loan. Moreover, even though some Ḥanbalī jurists, such as Ibn Qudama and Ibn Taymiyya, regard it as permissible, it must be highlighted that what they deem

permissible is downright different from an ordinary IFTS transaction. Consequently, there is no room for viewing the IFTS as *suftaja* from an Islamic legal standpoint, unless the recipient is the agent of the sender, which must be constituting only a small percentage of the total number of transactions in practical life.

This answer prompts the following question: If the IFTS is analogous to neither *ḥawāla* nor *suftaja* under Islamic law, then what is it? The answer to this question is highly sensitive and exceedingly contingent because even minor and relatively trivial details remould it. Relying on these details, the stances of the *maddhab*s vary: in addition to *ḥawāla* or *suftaja*, it might be agency or of no legal effect according to Ḥanafīs; agency, surety, invalid, or of contentious nature according to Mālikīs; surety or invalid according to Shāfiʿīs; and agency, borrowing or invalid according to Ḥanbalīs. In short, the answer to this question is excessively depending on circumstances. What is certain, though, is that the IFTS is not by any means tantamount to any specific transaction or contract under Islamic law. It therefore seems inaccurate to assume that the IFTS has an Islamic pedigree. Hence, the existing assumptions involving Islamic law seem dubious and misleading, and they do not account for its origin, spread, utilization, and nature. Ergo, new studies adopting historical and sociological approaches and centring upon other aspects of the IFTS will play a pivotal role in solving the enigma.

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