Islamic Theory of Conflict of Commercial Law: A Proposition

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Available at: https://works.bepress.com/anowar_zahid/1/
ABSTRACT

The parties to an international commercial/financial contract may choose a single law or a combination of law like English law and Islamic law to settle their dispute that may arise therefrom. At the same time, they may choose a forum (law court or arbitration tribunal) belonging to an Islamic jurisdiction. Such a choice of law and forum deserve a theoretical enquiry from Islamic perspective since it gives rise two important issues. First, if the choice is a single secular law and it conflicts with Shari’ah law in full or in part, then how the forum will reconcile the conflicts. It has to handle again the same issue where the choice is a combined one. Second, if the applicable law is solely Shari’ah, then the forum has to decide which school’s (madhhab) fiqh (jurisprudence) will apply. This paper is a purely theoretical attempt to answer these two questions regardless of what is in practice in different Muslim jurisdictions, which may be addressed in a separate paper.

Key words: Commercial/Financial Contract, Choice of Law, Choice of Forum, Conflict of Law/Madhhab

1. Introduction

"Choice of Law" and "Choice of Forum" are important clauses of an international commercial/financial contract, both Islamic and traditional. For an Islamic contract, the obvious choice of law would be Shari’ah law given the Islamic nature of the transaction or product involved therein. Another reason for this choice is the transnational character of Shari’ah, which automatically binds the Muslim-parties across the border. A non-Muslim party may be bound by consent. To quote Professor Sanson “the Shari’ah will apply automatically to international trade contracts between Muslim parties, and can apply where one party is
Muslim if the other party agrees.”

Parties may, however, choose Shari’ah law alone or combine it with a traditional law like English law or an international legislation like the United Nations Convention on International Sale of Goods 1980. Such a choice is required to interpret the contractual terms and conditions and to determine the responsibilities of the parties in the event of any dispute. Side by side of the applicable law, the parties need to agree upon a forum (law court or arbitration tribunal), which will apply the law and settle the dispute, if any. The forum may be located in a Muslim jurisdiction or non-Muslim jurisdiction. In deciding such a case, the Muslim country forum may face two important issues. First, if the parties select a traditional law alone or combine it with Shari’ah to govern the contract, the forum will have to make an adjustment between them. In other words, it has to deal with the conflict of law and Shari’ah issues. These matters would be addressed in this paper. Conflict of law Issues that arise for a non-Muslim forum to handle in case of combined choice of law and Shari’ah have been reflected upon at another place and, therefore, kept out of the scope of this present endeavor. Second, if the parties have chosen Shari’ah alone as the applicable law, there is a

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2 For example, in National Group for Communications & Computers v. Lucent Technologies International, F.Supp. 2d 290 (2004), the parties (Saudi Arabia and American company, and Lucent Technologies) agreed that Saudi law would be the applicable law. ”Saudi law”, in this context, connotes as Islamic Shari’ah as it is defined by Article 48 of the “Basic Regulation of the Kingdom of Saudi Arabia (1992)” as ‘the rules of the Islamic shari’ah in agreement with the indications in the Book [the Qur’an] and the Sunna and the regulations issued by the ruler that do not contradict the Book or the Sunna.” The American court, in this case, applied Shari’ah law to settle the dispute.

3 Parties to an international sale contract may choose the UN Convention on International Sale of Goods (CISG) 1980 alone as the applicable law. Still the domestic law of the forum State may be relevant to apply to those matters that are not covered by the CISG, such as transfer of title, under Article 7(2). See in this regard, Hossam A. El-Saghir, 'The Interpretation of the CISG in the Arab World in Janssen / Meyer, eds., CISG Methodology, Sellier: Munich (2008) available at http://www.cisg.law.pace.edu/cisg/biblio/el-saghir.html (March 24, 2014).

possibility of conflict of madhabs.\textsuperscript{5} The forum may be in a dilemma with respect to the applicable madhab. Sections 2 and 3 of this paper will discuss how the forum should handle the conflict of law and Shari’ah, and inter-madhah conflicts respectively. Section 4 will summarize the paper and make the final remarks.

At the outset, it should be noted that this paper is approaching the issue purely from Islamic theoretical perspective with an aim to enlighten both Muslim and non-Muslim readers, in general, about what Shari’ah actually stands for in respect of legal conflict issues. In particular, it may guide the forums that have the mandate to enforce Shari’ah law, such as Saudi Arabia. This is intended so because in the present world, all Muslim jurisdictions are not entirely Islamic. In other words, the law courts or arbitration tribunals do not have the authority to apply Shari’ah in a matter where the parties have chosen a traditional law. Malaysia may be an example in this respect. Here, the federal courts are secular courts entrusted with the settlement of disputes under civil law (secular law). Shari’ah matters are relegated to the states (provinces) to legislate upon and to appoint Shari’ah courts for the adjudication of disputes. At the federal level, only the High Court has a division that is empowered to settle Islamic finance disputes. But the judges are not experts in Islamic law. They are assisted by the Shari’ah Advisory Council, a body of the central bank, Bank Negara. The High Court judges handle the civil law aspect of the issues, if any, that are involved in an Islamic finance dispute. Given this status, the High Court (Islamic Finance Division) may not be able to disregard the application of a traditional law chosen by the parties even if that law is contradictory with Shari’ah.

\textsuperscript{5} For the definition of “madhab”, see the discussion under Section 3 below.
2. Conflict of Law and Shari'ah

"Law", in this context, refers to traditional law, both domestic and international. Parties to a contract may subject their contract to a traditional law or to Shari'ah law. The forum should respect the parties' choice or, in other words, their contact. The Qur'an imposes an obligation on its adherents to keep up their agreement. The forum that determines their dispute should respect their choice so that the agreement is honored. But the question is how far the forum should assist the parties in this respect. Should it not interfere if the chosen law conflicts with the Shari'ah law or Islamic State's policy? An example would be useful in this connection. Say, the parties to an international sale contract agree that except for payment for the goods, the contract shall be governed by Shari'ah law. And the payment will be made through collection method, i.e. by bill of exchange, which will be governed by English law of bill of exchange. The seller, after shipping goods, sends a time bill (of exchange) allowing the buyer, as per agreement, 90 days to pay the bill and then to collect the document of title (bill of lading). Because the buyer has been granted time to make the payment, the seller in the bill of exchange has charged interest at the rate of 2% of the total sale price. This (charging interest) is allowed under English law chosen by the party. The buyer fails to honor the bill after the maturity date. The seller, as per the contract, brings the matter to a court of an Islamic jurisdiction, such Saudi Arabia. Since interest (riba) is haram (prohibited) in Islam and as such is against the Shari'ah principle, should not the forum disallow the application of English law? Yes, the court should do so and thereby maintain the primacy of Shari'ah law. Accordingly, the court, in this case,

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6 Qur'AN, 5:1.
will apply the English law of bill of exchange and may direct the buyer to pay the bill amount minus the interest charged.

The principle that the Muslim forum should follow in this respect is that a rule/principle of any law is acceptable unless it conflicts with Shari’ah. This is based on the Islamic jurisprudence principle of "permissibility" (ibahah), which posits that everything is permissible (halal) unless prohibited.⁷ Thus, for example, concession contract that grants a degree of exclusivity in mining business within a particular geographical area was something foreign to Islamic fiqh literature. His Majesty Ibn Sa’ud, the King of Saudi Arabia, recognized, in 1933, this contract in the oil industry in the capacity of the theocratic head of the State, when Saudi Arabia entered into such a contract with the Arabian American Oil Company (ARAMCO). Article 1 of the Concession Agreement reads thus-

The Government hereby grants to the Company the terms and conditions hereinafter mentioned, and with respect to the area defined below, the exclusive right, for a period of sixty years from the effective date hereof to explore, prospect, drill for, extract, treat, manufacture, transport, deal with, carry away and export Petroleum asphalt, naphtha natural greases, ozokerite and other hydrocarbons and the derivatives of all such products. It is understood, however, that such right does not

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⁷ See Imran Ahsan Khan Nyazee, ISLAMIC JURISPRUDENCE, (The other Press, Kuala Lumpur, 2003), 34. In relation to Islamic perspective of corporate personality, the author has discussed this principle elsewhere. See Anowar Zahid, Corporate Personality from Islamic Perspective, 27 ARAB LAW QUARTERLY, 125-150 (2013).
include the exclusive right to sell crude or refined products within the area described below or within Saudi Arabia.8

Thus, “[t]his broad principle (principle of ibaha) gives ample scope to different communities to frame laws for themselves in order to meet new and changed situations.”9

In this respect, a question may arise as to how an adjudicating forum may determine the friendliness of a law with Shari’ah law. It may adopt a three-hierarchy test. It will check if the particular law or legal rule contradicts any of the followings in the order of priority:

(1) any rules/principles of the Qur'an and Hadith (hereinafter “Basic Code”10), or
(2) any rules/principles derived from the Basic Code by analogical deduction (qiyas), or
(3) any rules/principles based on the objectives of Shari’ah (maqasid al-Shari’ah).

The above three-hierarchy may be elaborated in the following.

(1) Basic Code

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10 L. Ali Khan and Hisham Ramadan have coined this term, “Basic Code”, to denote the Qur'an and Sunnah as the only sources of Islamic law. They do not accept the classification of the sources as "principal" (i.e., the Qur'an and Sunnah) and "additional" (such as Ijma' and Qiyas). According to them, all the sources other than the Qur'an and Sunnah are the methods of deriving and developing law from them; they cannot constitute sources of Islamic law by themselves. This argument is tenable in the sense that in Islam, the only Lawgiver is Allah and His Prophet, Muhammad (Peace be upon him). So, the words of Allah (the Qur'an) and the sayings and practices of the Prophet (Sunnah) should be treated as the only sources of Shari'ah. And the so called additional or subsidiary (i.e., Ijma' and Qiyas) sources are juristic attempts to make law out of these divine sources and, therefore, do not qualify as sources. Rather, they may be called the Islamic legal methods. As argued by Khan and Ramadan, the Basic Code is the supreme law in Islam. The rules derived/developed from the Code by legal methods are Islamic positive law (fiqh). The former (the Basic Code) is immutable and the latter (positive law) may change over time. The latter is subordinate to the former and must, therefore, be friendly with it. L. Ali Khan and Hisham M. Ramadan, CONTEMPORARY IJTIHAD: LIMITS AND CONTROVERSIES, (Edinburgh University Press, Edinburgh, 2011), 3-6.
The Qur'an and Sunnah constitute the Basic Code of Shari'ah. There are two types of rules in the Code- explicit rules (qat'i) and speculative rules (zanni). The former are clear and unambiguous provisions of law admitting of no debate among the jurists. These rules are binding on the followers of Islamic Shari'ah. For example, riba (usuries) is univocally prohibited by the Basic Code. “Riba” is defined as 'the premium that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity.” The Qur'anic prohibition of riba is clear from this verse- “Allah has permitted trade and forbidden usury.” The prohibition has also been declared in the following Hadith (Tradition) of the Prophet, “Avoid the seven noxious things. It was said (by the hearers): What are they, Messenger of Allah? He (the Holy Prophet) replied: Associating anything with Allah, magic, killing of one whom God has declared inviolate without a just cause, consuming the property of an orphan, and consuming of usury, turning back when the army advances, and slandering chaste women who are believers, but unwary.” Riba is so prohibited because it creates economic injustice in society. In the words of Imam Abu Bakr Muhammad al-Razi,

While the earning of profit is uncertain, the payment of interest is predetermined and certain. The profit may or may not be realised. Hence there can be no doubt that the payment of something definite in return for something uncertain inflicts a wrong (haram).

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14 Cited in Al-Omar and Abdel-Haq, supra note 11, 9. This point has been a subject of debate among the Shari’ah scholars. Some think that the real reason (‘illah) of prohibition of riba is injustice (zulm) while others hold the view
If a matter involving *riba*, permissible under a traditional law chosen by contracting parties is brought to a forum of a Muslim jurisdiction, the forum must not apply the chosen law and decide the case according to *Shari’ah* law.

(2) Derived Rules

If the Basic Code does not apply to a given case, the forum should look into whether governing law conflicts with rules derived by analogical deduction (*qiyas*) from the Code. In this process, the Basic Code's rule (*hukm*) related to a particular matter called old case (*asl*) is extended to the case in hand (called new case-*far’*) because the reason (*‘illah*) behind rule is the same. For example, the Prophet has forbidden making a proposal for marriage or sale of property to a party while the latter has proposal under consideration. The reason behind this rule is not to cause harm to others. The Prophet did not specifically mention this prohibition with respect to a service transaction. But the original rule may be extended to this because the reason behind the rule is same in both cases.\(^{15}\) Now, if there is a service contract like turnkey contract made in breach of this prohibition, that will stand void under this derived rule.

(3) *Maqasid al-Shari’ah*:\(^{16}\)

Where there is a case in which the applicable law does not have its counterpart in the Basic Code or derived rules, the forum should examine if it goes against the objectives of *Shari’ah* that charging extra over and above the principal amount is the reason of the prohibition regardless of any visible injustice. For detailed discussion of the prohibition of *riba* in general and this point in particular, see The Supreme Court of Pakistan, THE TEXT OF THE HISTORICAL JUDGEMENT ON RIBA (INTEREST) AS WRITTEN BY MUHAMMAD TAQI USMANI, (The Other Press, Kuala Lumpur, 2001).

\(^{15}\) See, for the principle of *qiays*, Mohammad Hashim Kamali, PRINCIPLES OF ISLAMIC JURISPRUDENCE, (The Islamic Texts Society, Cambridge, 2003), 264-279.

\(^{16}\) For a brief discussion the concept of *Maqasid al-Shari’ah*,
(Maqasid al-Shari‘ah), which are to bring about benefit to and to prevent harm from the mukallaf, i.e. human beings with respect to five main values, namely religion, life, family, intellect and material wealth.17 By ensuring benefits and removing harms, Shari‘ah intends to fulfill its aim of having mercy on human beings: "O mankind! There has come to you a direction (Shari‘ah) from your Lord, a healing for the (diseases) in your hearts, and for those who believe, a guidance and a Mercy."18 And Allah commissioned Prophet Muhammad (Peace be upon him) as the last Prophet to practically achieve this objective in capacity of a Prophet, a head of the State and a judge: "We sent you (O Prophet Muhammad) not, but as a mercy for all creatures.19 So, a judge who is called upon to settle a dispute according to a traditional law chosen by the parties should decline to do if that law is not in favor of the establishment and protection of any of the five values mentioned above. For example, typically governed by the Uniform Customs and Practices for Documentary Credits (UCP 600) sponsored by the International Chamber of Commerce (ICC), letter of credit is the most popular method of payment in international trade transactions. In this method of payment, the buyer applies to a bank in his country (called issuing bank) to open a credit account for the seller and instructs the latter to make payment to the seller upon presentation of certain documents specified by him, such as, most importantly the bill of lading. The issuing bank contacts its correspondent bank (called the advising bank) in the seller's country and requests it to advise the seller of the availability of credit upon handing in those documents required by the buyer. Requested by

19 QUR’AN, 21:107, supra note 12, 330.
the buyer, the advising bank may add a confirmation to its advice that it undertakes to pay the seller. After shipping the goods, the seller may present the required documents to the bank and receive the payment. The issuing bank or the confirming bank, as the case may be, is obligated to pay the seller regardless of the condition or quality of the goods. In other words, the letter of credit transaction is independent of the sale contract. As happened in Discount Records v Barclays Bank, the seller may supply the buyer with rubbish as part of the goods, which is a breach of the contract. Apart from this, sometimes the seller may provide fake documents and get the money. The UCP 600 does not contain any effective anti-fraud provision. It overprotects the seller at the expense of the buyer's loss. This is an unjust enrichment and as such contradicts an important maqasid of Shari'ah, namely the preservation and protection of material wealth as the Qur'an says, “And do not eat up your property among yourselves for vanities, nor use it as bait for judges, with intent that you may eat up wrongfully and knowingly a little (other) people’s property.” Thus, so far the chosen law is friendly with Shari'ah, Islamic forum should give effect to it. In this case, the Islamic forum should examine the UCP600 and determine their compliance with Shari'ah principles.

Under UCP600 rules, the bank acts as agent of the buyer and carries out his instructions. As it provides for the bank to pay the seller upon presentment of the required documents and the bank does so, the latter is from liability unless it is negligent, in which case it incurs liability under UCP. This appears not to contradict Shari'ah principles and should, therefore, be enforced. If, however, the seller is fraudulent and the bank could not detect the fraud despite reasonable case, the latter should not held liable under UCP. Rather, the seller is liable and is

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21 QUR’AN, 2:188, supra note 12, 45-46.
amenable to be sued. The seller is also liable where he has supplied wrong goods. Similar is the position of Islamic law, which does not hold the agent (here the bank) absolutely liable

3. Conflicts of Madhabs

“A madhab is a distinct school of law that develops its own legal methodology to interpret the Basic Code. Each madhab also offers a comprehensive code of substantive rules dealing with worship (ibadat) and worldly transactions (muamalaat).”22 There are four main (Sunni) Schools of Islamic jurisprudence- Hanafi School, Maliki School, Shafi-i School and Hanbali School- named after their founders. Imam Abu Hanifa (actual name was Nu’man bin Thabit) was born in 80 A.H. and based in Iraq (Kufa). Imam Malik bin Anas was born in 95 A.H. and developed his school in Madinah. Imam Muhammad bin Idris Al-Shafi-i, born in 150 A.H. in Gaza, began his juristic career in Iraq and later moved to Egypt. He was a student of Imam Malik and Hanafi jurist, Imam Muhammad Al-Shaibani. Imam Ahmad bin Hanbal was born in 164 A.H. in Iraq and established his school there. He was a student of Imam Al-Shafi-i.23

All four schools of Islamic law have their own distinct features.24 First, the first school in point of time, namely the Hanafi School, regards the Qur’an as the principal source of Shari’ah. It does not accept normally a Hadith narrated by one/two persons called ahad Hadith). The reason behind is that one/two narrators may be fallible and, therefore, the authenticity of their hadith is not above question. If such a Hadith departs from the Qur’an, Hanafi School takes

22 Khan and Ramadan, supra note 10, 47.
23 For a brief sketch of the lives of the leading mams, see Abdur Rahman I. Doi, SHARI’AH: THE ISLAMIC LAW, (Ta Ha Publishers, London, 1984), 88-111.
24 For an account of the madhabs, see Abu Ameenah Bilal Philips, THE EVOLUTION OF FIQH, (Islamic Book Service, New Delhi, 2003), 63-90.
the Qur'anic verdict and disregards the Hadith. For example, one ahad Hadith says that no marriage (of women) is valid without the guardian’s consent. Hanafi School does not accept this Hadith as it contradicts the Qur’an that allows business transactions by women as well as by men- "O you (men and women) who believe! When you deal with each other, in transactions...." It argues that both business and marriage contracts are civil contracts. As women can make business contracts, they should have the same privilege with respect to marriage contract. Apart from this, there are instances of marriages without guardian during the time of the Prophet and his Companions. Accordingly, under Hanafi School marriage without the guardian's consent is valid. On the other hand, Shafi-i School accept ahad Hadith, even though it apparently contradicts the Qur’an. It treats Sunnah as the explanation and extension of the Qur’an. As such, this school allows marriage without the guardian’s consent.

Maliki School, in general, accords special importance to the practices of Madinah people in sphere of lawmaking. Accordingly, it accepts those ahad Ahadith that are practiced in Madinah because Madinah people who saw the prophet and practiced his Sunnah. So, their practices deserve merits. On the other hand, Imam Ahmad bin Hanbal accepted all Ahadith, weak or strong.

Because Imam Abu Hanifa was extremely cautious about the authenticity of Hadith, he did not accept weak Hadith (Sunnah narrated by people of weak memory and low level of piety). He used and his school does use Qiyas extensively to make new laws (fiqh) out of the basic code.

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26 QUR’AN, 2:282, supra note 12, 59-60.
27 See Kamali, supra note 15 , 101-102.
28 For a debate within the Hanafi School, see Burhanuddin Marghinani, THE HIDAYA: COMMENTARY ON ISLAMIC LAW, (Darul Ishaat, Karachi, 2005), vol 1, 65.
29 See Kamali, supra note 15, 96-100.
(the Qur’an and the Sunnah). On the contrary, other schools, especially Shafi-i and Hanbali Schools, make restrictive use of Qiyas. In interpreting the legal texts (the Qur’an and Sunnah), these two and Maliki School take a conservative approach, whereas Hanafis adopt a liberal approach. An ample example is the relevance of customs in the lawmaking process. Hanafi School takes custom as a formal source subject to the fulfillment of certain conditions, most importantly that a custom must not conflict with Shari’ah or the spirit of Shari’ah. Maliki School, as said above, attaches special importance to Madinah practices and customs. Other two Schools initially did not accept custom as a source of Islamic law. Of course, both Imam Al-Shafi-i and Imam Ahmad bin Hanbal acceded to the importance of people’s practices at the later parts of their lives. However, over time custom has occupied a formal source status, in a varying degree though, in all Schools of Islamic jurisprudence. In particular, the Hanafi School has crowned it with a very distinguished status.30

However, despite their differences, the four madhabs are not antagonistic to each other. Rather, they respect each other. They differ with respect to the methodologies of lawmaking. The end product of their efforts, namely the detailed rules of Islamic law (fiqh) are, in many respects, similar, despite some differences in other respects. They are like four branches of the tree of Shari’ah with same root. As such, the schools respect and recognize each other. One author puts this fact in the following words:

The interrelations between the four Sunni law schools have been studied mostly at the doctrinal level. The doctrinal differences are

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30 For the evolution of custom as a source of Islamic law and a comparative overview of the perspectives the various schools, see Anowar Zahid and Rohimi Shapiee, Customs as a Source of Siyar and International Law: A Comparison of the Qualifying Criteria, 8(1) INTERNATIONAL JOURNAL OF CIVIL SOCIETY LAW 36, 40-45 (2010). Also see Anowar Zahid and Rohimi Shapiee, Considering Custom in the Making of Siyar (Islamic International Law), 3(1) JOURNAL OF EAST ASIA AND INTERNATIONAL LAW, 123-135 (2010).
generally depicted as minor variations, emanating from different
local traditions or different methodological preferences.\textsuperscript{31}

Despite the minor doctrinal differences, the schools were historically and politically
interrelated and well-coordinated through the "amicable cooperation and reciprocal esteem"
between and among the muftis of various schools.\textsuperscript{32}

Now, as to the question which \textit{madhab} the court or arbitration tribunal will follow to decide
the cases, Hamidullah holds the view that “where the \textit{Qadis} (judges) are bound to act according
to the State school of law, no matter to which school they personally belong, there will be no
difficulty.”\textsuperscript{33} This means that the dispute will be settled by the State \textit{madhab} irrespective of
the fact that the parties belong to some other \textit{madhab(s)}. If, however, the State tolerates the
differences of \textit{madhab} and allows individuals to seek remedies according to their own
\textit{madhabs}, that will give rise to real conflict of law issues.\textsuperscript{34} There may be a need of four sets
of Sunni school courts or tribunals established to adjudicate according to their respective rules
as was done during Sultan Salahuddin’s time in Egypt.\textsuperscript{35} This number will increase to five if
Shi’a school is accommodated. Such a four/five \textit{madhabi} forums in one judicial system may
be difficult and expensive to run. To overcome this difficulty with respect to international
commercial law matters, the following measures may be put forward for the consideration of
Islamic jurists and governments:

\begin{itemize}
\item \textsuperscript{31} Ido Shahar, \textit{Legal Pluralism and the Study of Shari a Courts}. 15 (1) ISLAMIC LAW AND SOCIETY 112, 131
(2008). Unlike Khan and Ramadan, supra note 10, this author, like many others, calls \textit{Ijma’} and \textit{Qiyas} as primary
sources of Islamic law after the Qur’an and Sunnah.
\item \textsuperscript{32} Haim Gerber, \textit{Islamic Law and Culture} cited in Shahar, \textit{ibid.}, 135.
\item \textsuperscript{33} Muhammad Hamidullah, MUSLIM CONDUCT OF STATE, (Sh Muhammad Ashraf, Lahore, 977), 324.
\item \textsuperscript{34} \textit{Ibid.}
\item \textsuperscript{35} \textit{Ibid.}
\end{itemize}
a. If the parties to a contract belong to the same school, they may choose a country that follows their *madhab*.

b. If they belong to different *madhabs*, they may mutually subject their contract to a particular *madhab*. They should choose a forum that applies the *madhab* agreed upon. If, however, they submit the matter to a court or tribunal that follows a different *madhab* than that is agreed upon by the parties, the chosen forum should decide according to the chosen *madhab*. This aligns with long standing practice of the *Ummah* as confirmed by Ibn Hajar al-Haytami as follows:

> The practice of approaching a judge adhering to a different school for the purpose of obtaining a more advantageous decision than the original school can offer has long been practiced and is legitimated by consensus.^{36}


c. If the parties have not been able to agree upon the choice of *madhab*, the chosen forum should decide the case according to the *madhab* that will be close to the facts of the case. Ibn Hajar al-Haytami’s view is relevant in this context. According to him, a *mufti* may issue a legal opinion according to any of the four *madhabs* as all four *madhabs* are commonly accepted by the jurists.^{37}

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^{37} Cited in Wiederhold, *ibid.*, 255.
4. Conclusion:

In Islamic jurisdictions, as far as the international conflict of law issue is concerned, *Shari’ah* should be applicable singly or in combination with any traditional law. The forum may accommodate traditional law(s) to the extent of its/their conformity with *Shari'ah* principles. It may also successfully handle the conflicts of *madhabs* through steps proposed above. Thus, it may be finally concluded that *Shari’ah* is flexible, adaptable and receptive by nature and can survive in the pluralistic legal order of the world with particular reference to Islamic commercial and financial markets.