

Receipt (Qabd) and the Pre-Legal Architecture of Juristic Disagreement

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Abstract

The classical juristic disagreement (ikhtilāf) over receipt (qabd) in Islamic commercial law has persisted for centuries despite agreement among the four legal schools (madhāhib) on both the observable facts of disputed transactions and the governing rule that requires receipt. This paper locates the level at which the disagreement arises and argues that it is pre-legal: it concerns the epistemological standard that licenses the inference from observable facts to the legal fact that receipt has occurred, a standard each jurist settles before consulting the texts and one that determines what he takes the texts to require. The argument proceeds by doctrinal analysis of the four schools' criteria for receipt and of Ibn al-Qayyim's dissents, read against the modern standards of AAOIFI and the International Islamic Fiqh Academy within a framework drawn from the legal epistemology of Northrop and Stein. The analysis yields three findings. All four schools derive their criteria from custom ('urf) and fix its content in rules stated in advance, while Ibn al-Qayyim admits the same evidence at a different level, reading the practice of the transacting parties' own community in each case. The two commitments produce opposite rulings wherever criterion and practice diverge. The modern standards reproduce the disagreement inside their own texts, stating Ibn al-Qayyim's definition while applying the schools' method. The paper concludes that the disagreement is resolvable on the premise every school concedes: receipt is what a community recognizes as possession for goods of that kind, and instruments outside the standards' enumerated forms are judged by that recognition.

Keywords: qabd; ikhtilāf; 'urf; Ibn al-Qayyim; Islamic commercial law; Islamic finance; legal epistemology

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1. Introduction

An integral condition for the validity of a contract is receipt (qabḍ)¹, that the countervalues are received by each party to the contract. *Sūrat al-Baqara* requires that a pledge taken as security be received: “if you are on a journey and cannot find a scribe, then let there be a pledge received (rihān maqbūḍa)” (Q. 2:283). The ḥadīth literature uses the same root as a transactional condition: “Whoever buys food, let him not sell it until he has received it (ḥattā yaqbiḍahu)” (al-Bukhārī, al-Ṣaḥīḥ, Kitāb al-Buyū‘, bāb bay‘ al-ṭa‘ām qabla an yuqbaḍ; Muslim, al-Ṣaḥīḥ, Kitāb al-Buyū‘). Neither text defines what receipt consists of, and the condition recurs across the law of transactions: currency exchange (ṣarf), forward sale (salam), gift (hiba), loan (qarḍ), and pledge (rahn) all require it (Wizārat al-Awqāf, 2006, vols. 25–26, 33, 42). All jurists (fuqahā’, singular: faqīh) agree on the condition; the juristic disagreement (ikhtilāf) lies in how receipt is actualized.

The sale known as Bay‘ at Ahl al-Madīna, or Bay‘ al-Istijrār, makes the disagreement concrete. A customer goes to the same baker every morning for bread and to the same butcher through the week for meat. No price is agreed at any single purchase. At the end of the month the two sides add up what was taken, and the customer pays market price. Most fuqahā’ held the sale bāṭil (void) because no price was agreed at the moment of each purchase (Ḥanafī: Ibn ‘Abīdīn, 1966, 4:516; Mālikī: Ḥaṭṭāb, 1992, 4:538; Shāfi‘ī: Shīrbīnī, 1994, 2:326; Ḥanbalī: al-Mardāwī, 1955, 4:310), and treated the goods taken under the void sale as still the seller’s, so that the customer held the bread only as a usurper holds what he has seized (Ibn al-Qayyim, 2002, 5:401–402). Ibn al-Qayyim holds the sale ṣaḥīḥ (valid), because it is “the practice of people in every age and region,” an opinion he shares with Ibn Taymiyya and traces to a ruling of Imam Aḥmad (Ibn al-

¹ Qabḍ is rendered throughout as “receipt” rather than “possession” as the lexicon separates the act from the state, where the acceptance of the goods is qabḍ even if not moved (al-Fayyūmī, n.d., 2:487–488; Ibn Manẓūr, 1994, 7:214). The lexical attestation that the act need not be a physical transfer is reflected in the classical dispute over whether the act was completed, not whether the state continues, so “receipt” translates the disputed term. “Possession,” the rendering in AAOIFI’s English title for Standard No. 18, names the state that receipt brings about, and this paper retains it only when citing that standard by title.

Qayyim, 2002, 5:401–402; Ibn Taymiyya, 2004, 29:345; Ibn al-Qayyim, n.d., 4:1365).

Both sides agree about the rules: a sale needs an agreed price, and goods do not become the buyer's until he takes receipt. The disagreement concerns what establishes that the rule's conditions have been met. The majority hold that receipt is established by criteria fixed in advance; Ibn al-Qayyim holds that it is established by whatever the parties' own community treats as receipt for goods of that kind. The majority view receipt as a type of act, whose instances are known by matching observable circumstances to a predetermined criterion; Ibn al-Qayyim views it as a social fact, constituted differently for different goods in different communities. That prior commitment is settled before the texts are consulted, and it determines what the faqīh takes the texts to require.

This paper seeks to locate the level at which the ikhtilāf over receipt arises and to show that it is pre-legal, settled before the legal texts are consulted and governing how those texts are read. Methodologically, the paper adopts a doctrinal approach, reading the four schools' criteria for receipt and Ibn al-Qayyim's dissents against the modern standards of AAOIFI and the International Islamic Fiqh Academy, within a framework drawn from the legal epistemology of Northrop and Stein.

The significance of the study follows from the reach of the condition. An ikhtilāf about how to establish receipt affects every contract in which receipt is required, classical and modern, and the standards that govern contemporary practice ground receipt in custom ('urf) while fixing its content in enumerated forms, carrying the disagreement forward rather than resolving it. Section 2 sets out the epistemological framework. Sections 3 through 5 examine how the four schools and Ibn al-Qayyim determine that receipt has occurred. Section 6 argues that the disagreement between them is pre-legal, Section 7 traces its reproduction in the modern standards, and Section 8 concludes.

2. The Epistemological Framework

A pre-legal disagreement, as used here, is one that concerns the epistemological standard by which a faqīh determines that the rule's conditions have been met; it does not concern the content of the rule; it is

settled before the texts are consulted because that standard determines what the faqīh takes the texts to require. F.S.C. Northrop, examining the epistemological foundations of legal judgment, argued that legal interpreters bring a prior theory of what legal words refer to before they apply any text, and that interpreters who bring different theories find different meanings in the same words (Northrop, 1963, pp. 732, 744–46). Where the prior theories differ, the same text yields different readings, and the difference is not resolvable by re-reading the text. The Lawgiver used the word “receipt” without defining it, and the faqīh’s prior theory of what that word refers to fills the gap before the text is applied.

Two levels of analysis are at stake, based on the types of evidence presented. Stein distinguishes first-order evidence, which bears on the facts of a case, from second-order evidence, which bears on the reliability of the first-order evidence and the findings drawn from it (Stein, 2018, p. 55). The distinction is borrowed for its descriptive precision, not for the normative argument in which it first appears.

The first-order evidence here consists of the observable facts of the case, shared by fuqahā’ who agree that receipt is required. The second-order question is the standard that licenses the inferential step from those facts to the legal fact that receipt has occurred: what establishes that receipt has taken place, over and above what receipt requires. This distinction between what a rule requires and what establishes that the requirement has been met is the relevant analytical distinction; a disagreement located at this second level cannot be resolved by examining more cases, because each side evaluates every new case through the lens of the epistemological commitment it already holds. The commitment itself needs stating with precision, because it shows at three depths that this paper treats as one. At bottom it is an answer to what kind of thing possession is: a type of act, whose instances share fixed observable marks, or a social fact, constituted by what a particular community recognizes as possession for goods of a particular kind. That answer generates a standard of proof: a type of act is established by matching the observable circumstances to the criterion that defines the type, while a social fact is established by the recognition of the community in which the transaction occurs. The standard of proof in turn settles reference: the faqīh who holds the first reads qabḍ in the texts as

naming the criterion, and the faqīh who holds the second reads it as naming the practice. The paper's use of "epistemological" covers all three depths, following Northrop, for whom epistemology includes the ways words obtain their meanings (Northrop, 1963, p. 732). For brevity, the first commitment is called receipt by criterion and the second receipt by recognition. The argument of the paper is that receipt by criterion fails on the premise all four madhāhib concede, so that recognition is what the shared premise yields; the modern standards, which state the recognitional definition while applying the criterial method, display the cost of leaving the question unasked.

3. Custom in the Four Schools

An obvious description of the disagreement would be that Ibn al-Qayyim relies on 'urf while the legal schools (madhāhib) rely on fixed legal criteria. That description is mistaken, as all four schools rely on 'urf as well. The Ḥanafīs define receipt as takhliya, removing whatever prevents the recipient from disposing of the goods, and Kāsānī adds that this is meant "in 'urf and usage, in the true sense" ('urfan wa- 'ādatan ḥaqīqatan) (Kāsānī, 1910, 5:148). The Shāfi'īs still rest their criterion on 'urf at the decisive point: what counts as receipt is referred to 'urf and varies with the kind of property (Majallat Majma' al-Fiqh al-Islāmī, 1990, 6:425), and Shirbīnī explains that the Lawgiver used the word "receipt" without defining it, so the meaning must be taken from 'urf (Shirbīnī, 1994, 2:72; AAOIFI, 2015c, App. B). The Mālikīs refer the manner of receiving unmeasured goods to 'urf directly (Kharashī, 1899, 5:158; al-Dardīr, n.d., 3:145). The Ḥanbalīs follow the Shāfi'ī reasoning (Ibn Qudāma, 1997, 6:187). Ibn Taymiyya states the premise at its most explicit, placing receipt (qabḍ) among the terms whose definition reverts to the 'urf of the people (Ibn Taymiyya, 2004, 19:230–237; Muwāfi, 2011, p. 36). On the plain question of whether 'urf determines what receipt is, the madhāhib and Ibn al-Qayyim agree.

Since every madhhab grants that 'urf determines the meaning of receipt, and Ibn al-Qayyim grants the same, the disagreement must lie in how each side uses 'urf.

The madhāhib use ‘urf at the level of the type. A faqīh studies how a kind of goods is ordinarily received, draws a general criterion (ḍābiṭ)² from that practice, and writes that into the law: takhliya for the Ḥanafīs, physical handover for the Shāfi‘īs, the graded acts of ḥiyāza (settled holding) for the Mālikīs. The individual case is then adjudicated against the ḍābiṭ; the practice of the transacting parties is not consulted in it. ‘Urf supplies the ḍābiṭ’s content once, and then it falls away. Ibn al-Qayyim uses ‘urf differently. For him, ‘urf is consulted in every case, in the practice of the very community whose transaction is in question, and not only once when the ḍābiṭ was first framed. The rest of the disagreement follows from this difference.

4. The Legal Schools: Receipt by Criterion

Receipt is an act the buyer performs after the contract is made. The law attaches its effects to that act: ownership, the binding force of the contract, its ṣiḥḥa (validity), and the lender’s security (Wizārat al-Awqāf, 2006, 32:259). The Ḥanafīs define receipt as takhliya: the buyer is placed in a position to dispose of the goods with nothing standing in his way (Kāsānī, 1910, 6:123). He need not handle the goods; it is enough that he could dispose of them without obstacle. For real property, distance is an obstacle, and Ibn ‘Abīdīn explains that a house counts as near enough if it is in the same town (Ibn ‘Abīdīn, 1966, 4:561). Physical custody is the Shāfi‘ī standard. The goods must pass into the buyer’s hand, onto his premises, or into some place under his direct control (Nawawī, 1925, 9:276; Nawawī, 1991, 4:446; Shīrbīnī, 1994, 2:73). It is the most physical of the four criteria. The Ḥanbalīs follow the Shāfi‘ī physical ḍābiṭ for movable property (Ibn Qudāma, 1997, 6:187; al-Buhūtī, 2000, 7:503), though the madhhab transmits a second narration on which all things are received by takhliya once the object is identified (al-Mardāwī, 1955, 4:469). The most detailed metric is presented by the Mālikīs. Receipt extends to ḥiyāza,

² Ḍābiṭ is rendered “criterion” throughout. The qawā’id literature renders it “controller” and defines it against the qā’ida: a qā’ida gathers cases from many chapters of the law, a ḍābiṭ from one chapter only (Ibn Nujaym, 1999, p. 137; Kamali, 1988). The definition accords with the observation in Section 6 that rules of this kind are category-bound.

settled holding shown by use, control, or possession the community recognizes, and the madhhab ranks the acts that establish it (Ḥaṭṭāb, 1992, 6:222).

The four criteria differ in content and in reach, but they share a form. Each is stated before any case arises and can be checked against a case by observation. The madhāhib expect their criteria to handle every case, old or new, by extending the categories they already have. This form expresses the first commitment, receipt by criterion: the legal fact of receipt is established by matching observable circumstances against a *ḍābiṭ* fixed in advance, and whether the parties themselves understood the transfer to constitute receipt has no bearing on that determination.

5. Ibn al-Qayyim: Receipt by Recognition

Ibn al-Qayyim starts from a rule of interpretation: contracts and actions are judged by their real substance and purpose, not by the outward form of the words and acts that make them up (Ibn al-Qayyim, 2002, 4:499). When the Shari‘a uses a word for a transaction, that word refers to the real thing people do, not to its outward form. Receipt is measured against the nature of the thing received: “the receipt of each thing is according to what it is” (Ibn al-Qayyim, 2002, 4:184).

This rule of interpretation matches an epistemological premise that Ibn Taymiyya states directly. Ibn Taymiyya held that universals do not exist in extramental reality; only concrete, individual particulars exist. Universals are mental constructs that the mind forms to group similar particulars, not things the world itself contains (Ibn Taymiyya, 2005, pp. 82, 344). A *ḍābiṭ* for “receipt” that fixes its content in advance and applies it universally is, on this account, an epistemic error: it treats a mental grouping as if it were an extramental reality. The only receipt that exists in the real world is the particular transfer of a particular good between particular parties in a particular community; that is what the faqīh must read, and no advance *ḍābiṭ* captures it. The legal maxim that contracts are judged by substance and purpose rather than outward form (*al-‘ibra fil-‘uqūd lil-maqāsid wal-ma‘ānī lā lil-alfāz wal-mabānī*) is the legal expression of the same premise. Ibn al-Qayyim’s method is what that

premise yields when applied to legal facts: the only receipt available to be read is the particular transfer.

The sale of Bay‘at Ahl al-Madīna described in the introduction tests this rule most sharply. On the report Ibn al-Qayyim gives, the fuqahā’ who forbid the sale find both the price and the receipt wanting: the price was not known when the contract was made, so the sale is *bāṭil*, and a receipt under a *bāṭil* sale is corrupt (Ibn al-Qayyim, 2002, 5:401–402). Ibn al-Qayyim holds it permissible beyond doubt as previously stated, and applies the market price to the sale. The exact figure is unknown at the time of each taking, but the uncertainty resolves to knowledge: the market rate by which both parties transact. He compares it to the fair dower a wife receives when none was named, adding that “the practice of the community establishes this [as valid]” (Ibn al-Qayyim, 2002, 5:401–402; Ibn al-Qayyim, n.d., 4:1365).

The rule applies against the *ḍābiṭ* as readily as it applies for it. In one direction it denies that receipt has occurred even though the formal *ḍābiṭ* is met. Kāsānī had held that handing over a fruit tree accomplishes the *takhlīya* of the fruit on it (Kāsānī, 1910, 5:248); Ibn al-Qayyim answers that fruit is received only as it ripens, so fruit destroyed before the customary time of receipt was destroyed before it was received (Ibn al-Qayyim, 2002, 4:184; Ibn al-Qayyim, 1996, 6:529). In the other direction his rule finds receipt where the dominant *ḍābiṭ* is not met: merely clearing the way to a specified animal is receipt enough, a position transmitted from Aḥmad that Ibn al-Qayyim grounds not in the narration’s authority but in how goods of that kind are received in practice (Ibn al-Qayyim, 2007, 2:490–509). Receipt then is determined by what the relevant community treats as reception for goods of that kind.

He traces the rule to the Prophet’s own practice. The Prophet sent ‘Urwa al-Bāriqī with one dinar to buy a sheep; ‘Urwa bought two, sold one on the Prophet’s behalf, and the Prophet approved. Ibn al-Qayyim draws on the narration not only for what it shows about authorization but for what it shows about receipt: the Prophet “sold and delivered and took possession with no verbal authorization, relying on customary authorization” (Ibn al-Qayyim, 2002, 4:317). Delivery and possession were accomplished the way

the community accomplishes them, without any formal specification of how the transfer was to occur.

This is the second commitment, receipt by recognition: receipt, as a legal fact, can only be read from the particular practice of the relevant community in the specific case, and no advance *qābiṭ*, however carefully its content was taken from *ʿurf*, can substitute for that reading.

One clarification is necessary. What Ibn al-Qayyim is saying is not that a *rukḥṣa* (dispensation) is granted for forgoing receipt in transactions like Bayʿat Ahl al-Madīna. A faqīh grants a *rukḥṣa* when he accepts that a rule forbids a transaction but allows it anyway, for reasons of *ḍarūra* (necessity) or *maṣlaḥa* (public benefit). Ibn al-Qayyim does something else. He does not accept that the rule forbids the baker's sale; he argues that the rule is satisfied, because the price is known and the goods have been received. He still holds that a buyer may not resell goods before receiving them, and disagrees only about when receipt has taken place (Ibn al-Qayyim, 2002, 5:401–402; Ibn al-Qayyim, 2007, 2:490–509).

6. The Disagreement Is Pre-Legal

The textual evidence might be expected to decide between the two accounts. A ḥadīth governing *ṣarf*, the exchange of gold and silver, requires that the exchange take place “hand to hand” (*yadan bi-yad*). This is precisely the kind of textual instruction that should settle the question: it speaks directly to how the transfer is to occur, and both sides accept its authority. All *madhāhib* read “hand to hand” as indicating that currency exchange must be manual and simultaneous, and any departure from that form renders the contract defective (Wizārat al-Awqāf, 2006, 26:349; Kāsānī, 1910, 5:215; Shīrīnī, 1994, 2:24). The Shāfiʿīs extend the requirement of physical delivery and acceptance beyond currency (al-Baghawī, 1997, 3:341; al-Shīrāzī, 1995, 2:29). Ibn al-Qayyim's interpretive rule, that receipt of each thing is according to what it is (Ibn al-Qayyim, 2002, 4:184), reads the same phrase as requiring that receipt really be completed, of which physical handover is the paradigm form in the context of *ṣarf*, but not necessarily in all contexts. The phrase leaves open whether ‘hand to hand’ names a universal physical criterion or describes what real receipt looks like in the paradigm case; the first is the reading receipt by

criterion requires, the second the reading receipt by recognition requires. Both readings are lexically available, and the epistemological commitment a faqīh carries into the text, rather than the words themselves, determines which reading he finds (Northrop, 1963, pp. 744–45). The choice becomes visible in the texts. It is not settled by them.

Where the choice becomes visible is in the operative question each side puts to a case. The madhāhib, holding receipt by criterion, check for the observable marks of the ḍābiṭ; Ibn al-Qayyim, holding receipt by recognition, asks whether the community treats the transfer as receipt. In most cases the two answers coincide. As stated earlier, they come apart in Bay‘at Ahl al-Madīna, where the formal price is absent but the market price is plain, and in the blighted fruit, where the formal transfer is complete but customary receipt has not begun. The divergence is structural rather than incidental to particular cases. Wherever the ḍābiṭ and the community’s practice point in opposite directions, the two accounts will produce opposite rulings, and neither side has a criterion the other accepts for resolving it.

This distinguishes the disagreement between the madhāhib and Ibn al-Qayyim from that among themselves. When the four madhāhib dispute which ḍābiṭ governs which kind of goods, or how near a house must be, or whether receipt of a key is sufficient, or if title without movement transfers ownership and liability, they argue inside a shared commitment: all hold receipt by criterion and dispute only the criterion’s content. Between the madhāhib and Ibn al-Qayyim no such criterion exists. Each side reads every new case through its own commitment and returns a result that confirms the commitment rather than tests it. The disagreement is irresolvable by case examination, and more cases make this clearer rather than otherwise.

One explanation for this irresolvability might therefore seem to require no prior commitment: the fixed ḍābiṭ framework produces certainty and predictability in commercial transactions, Ibn al-Qayyim’s case-by-case reading does not, and the disagreement might therefore be traced to a normative choice about what the law should prioritize. The certainty is real, but it is a consequence of the epistemological commitment, not its expression. As the fuqahā’ argue the question, it is whether the goods have in fact been received. That is a factual question about what licenses an inferential step. The choice of ḍābiṭ carries a distributional consequence,

namely who bears the cost of a mistake when the *ḍābiṭ* and the community's practice diverge, but that consequence is not what the choice expresses. Pointing to the consequence explains what is at stake in the disagreement, but it does not explain what the disagreement is.

Qabḍ derives from a root meaning to grasp and seize, and the physical reading might therefore seem to require no prior commitment: it is simply what the word says. But to say that etymology determines legal content is already to have answered the pre-legal question. It adopts a prior theory that words refer to their root meanings and that this meaning fixes the legal term. It answers the prior question rather than escaping it, presented as though no choice had been made. The *madhāhib* cannot consistently hold this position. All four have already departed from the etymological-physical reading and disagree among themselves about how far to depart. The argument from etymology, if it succeeded, would invalidate their own positions as thoroughly as it invalidates Ibn al-Qayyim's.

The deeper problem is that etymology is not the word's commercial meaning. The proof is the divergence of the *madhāhib* themselves. If *qabḍ* designated a specific set of physical acts, the four *madhāhib* would have converged on them. They did not: each departed from the physical sense of the root in a different direction, and none can be derived from the others by any consistent application of the etymological argument. This means the word did not carry a fixed physical referent that the sources made available to any reader who approached them without prior commitment. What it carried was a functional designation of possession whose content required determination, and what determined it was 'urf. Ibn al-Qayyim's reading follows from this directly: if *qabḍ* has always referred to what a community recognizes as possession for goods of that kind, then asking what the community treats as receipt is not a departure from the word's meaning but the only way to read it honestly.

Northrop's analysis and Stein's distinction together predict three features of any disagreement of this kind. A commitment that precedes every reading of every text in which the concept appears extends to every case governed by that concept simultaneously. A disagreement located at the second-order level cannot be resolved by accumulating first-order

evidence. And if the commitment precedes every case and determines how it is read, the rulings follow without supplementary reasoning once the commitment is fixed. The receipt case confirms all three.

Taken together, the three features establish that qabḍ cannot be a specific act. First, a specific act is category-bound: it applies where the act is possible and requires separate treatment where it is not, which is why every madhhab abandons physical handover for real property and accepts takhliya in its place. Yet each side's prior answer to what kind of thing possession is governs every contract in which qabḍ is required, simultaneously and without the boundaries that a rule specifying particular acts would produce.

Second, case-by-case work on a genuine specific act eventually defines its edges and forces convergence. A concept that never converges, however many cases accumulate, was not a specific act to begin with. Centuries of case-work produced four incompatible criteria and no convergence: a transfer that constitutes receipt under Ḥanafī takhliya (removal of impediments) may fail the Shāfi'ī requirement of physical custody, and an act that establishes Mālikī ḥiyāza (settled holding) through farming or gift-disposal may satisfy neither. The four madhāhib, working from the same sources and the same concept, converged on no set of acts and produced criteria that yield different rulings on identical facts.

Lastly, a specific act requires the particular facts of each case to be worked through before a ruling is reached. The automatic generation of rulings from the prior commitment shows that what was being fixed was a theory of what kind of thing possession is, not a description of physical behavior. Qabḍ refers to what a community recognizes as possession for goods of that kind. The three features identify a pre-legal disagreement and show why it was inevitable: jurists who disagree about what kind of thing possession is will disagree about every case in which possession is required, and no accumulation of cases can settle a question that precedes them all.

Until the prior question is addressed, every attempt to resolve the disagreement through case examination will reproduce the pattern the literature has already produced. The question the fuqahā' have been arguing, whether receipt has occurred, cannot be answered without first

settling what kind of thing possession is. The classical literature did not ask that question directly, and the modern standards have not asked it either. This paper has asked it, and the answer follows from the premise every madhhab concedes: receipt is what a community recognizes as possession for goods of that kind. The deadlock persisted for centuries because the argument was conducted at the level of cases, where it cannot be won; conducted at the level of the commitment, it ends.

7. The Same Disagreement in Modern Finance

The same choice now faces anyone deciding whether a modern instrument satisfies the requirement of receipt. The contemporary standards do not escape this choice; they reproduce it inside their own texts. An electronic transfer of money treated as a *ṣarf* raises the question directly. AAOIFI treats crediting a sum to the recipient's account as constructive receipt that completes the exchange (AAOIFI, 2015a, §2/6/5(a)). The International Islamic Fiqh Academy reached the same result for account deposits and bank drafts (IIFA, 1990). The account credit is brought under *takhliya* by analogy, and the *madhāhib*'s framework takes the case in.

Ṣukūk raise the question on a larger scale. Lease-based certificates are built on a sale of the underlying asset to the certificate holders (AAOIFI, 2015b, §5/2/4). The standard treats documents of title as constructive receipt of what they represent (AAOIFI, 2015c, §3/5). Under receipt by criterion, the certificate completes the transfer if it matches one of the recognized forms. Under receipt by recognition, it completes the transfer if the market and the holders treat it as doing so. The two answers agree when an arrangement both matches a recognized form and is treated by the market as transfer, and they differ when these two pull apart.

A transfer carried out by code on a blockchain matches no classical *ḍābiṭ* cleanly, because the criteria were written for physical and near-physical transfers. The *madhāhib*'s framework can reach it only by extending a category by analogy. Receipt by recognition gives a direct answer: if the parties and the market treat the coded transfer as receipt of an asset of that kind, it is receipt.

The modern standards have written the classical pattern into their own text, and in doing so have reproduced its internal tension. AAOIFI's

standard on possession defines receipt as taking a thing in the way ‘urf requires, and its supporting note quotes Ibn Taymiyya to the same effect: when neither the language nor the Sharī‘a defines a term, one turns to the ‘urf of the people (AAOIFI, 2015c, §§2, 3/1, App. B; Ibn Taymiyya, 2004, 29:16; Shirbīnī, 1994, 2:72). This is receipt by recognition stated as the standard's foundation. The standard then lists approved forms: registration of property, documents of title, account credits, bank drafts, and cheques (AAOIFI, 2015c, §§3/4-3/5, 5/1-5/3). The list is the madhāhib's method, receipt by criterion; the definition that precedes it is Ibn al-Qayyim's, receipt by recognition. The standard thus contains both commitments, and no provision in it mediates between them. The standard's definition asks what the community treats as receipt; its application stops asking and fixes a list. The Fiqh Academy's working papers for its 1990 session follow the same pattern (IIFA, 1990; Majallat Majma‘ al-Fiqh al-Islāmī, 1990). Both bodies ground the concept in ‘urf and then fix its content in an enumerated list, the same movement from case-level reading to advance criterion that produced the classical criteria.

When a new instrument appears that the list does not cover, the tension the list had suppressed resurfaces. The practitioner must decide whether the instrument constitutes receipt, and that decision requires answering the prior question the standards adopted without resolving: receipt by criterion, matching a recognized form, or receipt by recognition, asking what the relevant market treats as transfer. The classical disagreement not settled in the formative period is reproduced in the modern standards, presenting itself in every new instrument the standards did not anticipate. One inference remains, and the standards' own texts license it. A standard that defines receipt as taking a thing in the way ‘urf requires has adopted receipt by recognition as its ground; its enumerated forms can then only be read as a record of what markets recognized as transfer at the time of drafting, and a record does not close the category it records. On the standard's own definition, an instrument the list does not cover is assessed by asking what the relevant market treats as transfer for assets of that kind, and the practitioner who instead demands a match to a listed form is applying the method the standard's definition has already set aside.

8. Conclusion

The disagreement over receipt shows that a dispute in classical commercial law can come from a commitment that lies before the law. The two sides agree about what happened in Bay‘at Ahl al-Madīna and about the rules that govern it. They disagree about what shows that the rules are met: a fixed *ḍābiṭ* the *fuqahā* draw from ‘urf and then check by observation, or the practice of the parties’ own community. That commitment is settled before the texts are consulted, and it decides what the *fuqahā* take the texts to require.

Three features mark a disagreement of this kind as pre-legal and distinguish it from an ordinary one. It extends to every case governed by the relevant concept simultaneously, because the commitment precedes every reading of every text in which the concept appears. It resists resolution by case examination, because the parties do not share a criterion for what a settling case would look like, and each side reads every new case through its own commitment. And once the commitment is fixed, the rulings follow without supplementary reasoning: *qabḍ* is either established by matching observable circumstances to a *ḍābiṭ*, receipt by criterion, or read from what the relevant community treats as possession for goods of that kind, receipt by recognition. These are not two ways of applying the same rule. They are two prior answers to a question the rule does not ask, namely what kind of thing possession is.

To that question the paper gives an answer rather than a taxonomy. Every *madhhab* concedes that ‘urf fixes what receipt is; four criteria refined over centuries from the same sources yield different rulings on identical facts; the concession and the divergence together show that no fixed criterion was there to be found, and that what the word carried was a designation of possession whose content only community recognition supplies. A *ḍābiṭ* fixes the content that ‘urf once supplied, and it answers to the practice of the community that framed it, and to no other; when practice moves and the *ḍābiṭ* stands, the deference the *madhāhib* profess has already been withdrawn. Receipt by recognition is what their own premise yields when followed through.

The modern standards have confirmed rather than resolved this pre-legal disagreement. AAOIFI and the Fiqh Academy ground their definitions of receipt in ‘urf and fix its content in enumerated lists of approved forms, Ibn al-Qayyim’s language in the definition and the madhāhib’s method in the application, with nothing in either text mediating between them. The standards therefore leave the prior choice open, and every new instrument that falls outside the approved lists puts it to the practitioner again. The standards themselves have already answered it. Their definitions ground receipt in what ‘urf recognizes, so the enumerated forms are examples rather than boundaries, and an unlisted instrument is judged by whether the relevant market treats the transfer as receipt for assets of that kind.

The classical literature contains other disagreements that share the features identified here: centuries of refinement, no convergence, and a disagreement that case-work consistently fails to resolve. The disagreement over the operative cause of ribā, over where the line falls between a bāṭil contract and a merely defective one, and over how far the law should block the means to a forbidden end are candidates on this basis. Whether the commitment generating each of them is also pre-legal in the sense established here is a question the framework developed in this paper is now positioned to answer. What the receipt case has established is not only an account of qabḍ but a method for locating where, in the classical literature, the disagreement that matters lies before the law begins.

References

- AAOIFI. (2015a).** Sharī‘a standard no. 1: Trading in currencies. Accounting and Auditing Organization for Islamic Financial Institutions.
- AAOIFI. (2015b).** Sharī‘a standard no. 17: Investment ṣukūk. Accounting and Auditing Organization for Islamic Financial Institutions.
- AAOIFI. (2015c).** Sharī‘a standard no. 18: Possession (qabḍ). Accounting and Auditing Organization for Islamic Financial Institutions.

- al-Baghawī, A. M. (1997).** al-Tahdhīb fī fiqh al-Imām al-Shāfi'ī ('Ā. A. 'Abd al-Mawjūd & 'A. M. Mu'awwaḍ, Eds., 1st ed.). Dār al-Kutub al-'Ilmiyya.
- al-Buhūtī, M. Y. (2000).** Kashshāf al-qinā' 'an matn al-iqnā'. Wizārat al-'Adl fī al-Mamlaka al-'Arabiyya al-Sa'ūdiyya.
- al-Dardīr, A. A. (n.d.).** al-Sharḥ al-kabīr 'alā mukhtasar Khalīl. Dār al-Fikr.
- al-Fayyūmī, A. M. (n.d.).** al-Miṣbāḥ al-munīr fī gharīb al-sharḥ al-kabīr. al-Maktaba al-'Ilmiyya.
- al-Mardāwī, A. S. (1955).** al-Inṣāf fī ma'rifat al-rājiḥ min al-khilāf (1st ed., M. H. al-Fiqī, Ed.). Maṭba'at al-Sunna al-Muḥammadiyya.
- al-Shīrāzī, A. I. (1995).** al-Muḥadhdhab fī fiqh al-Imām al-Shāfi'ī. Dār al-Kutub al-'Ilmiyya.
- Ḥaṭṭāb, M. (1992).** Mawāhib al-jalīl li-sharḥ mukhtasar Khalīl (3rd ed.). Dār al-Fikr.
- Ibn 'Abīdīn, M. A. (1966).** Radd al-muḥtār 'alā al-durr al-mukhtār (2nd ed.). Muṣṭafā al-Bābī al-Ḥalabī.
- Ibn Manzūr, M. (1994).** Lisān al-'arab (3rd ed.). Dār Ṣādir.
- Ibn Nujaym, Z. (1999).** al-Ashbāḥ wa-l-naẓā'ir. Dār al-Kutub al-'Ilmiyya.
- Ibn al-Qayyim al-Jawziyya, M. I. A. B. (2002).** I'lām al-muwaqqi' 'in 'an rabb al-'ālamīn (Mashhūr b. Ḥasan Āl Salmān ed.), Dār Ibn al-Jawzī, 1st ed. 1423 AH.
- Ibn al-Qayyim al-Jawziyya, M. I. A. B. (1996).** Zād al-ma'ād fī hady khayr al-'ibād (Sh. al-Arnā'ūt & 'A. Q. al-Arnā'ūt, Eds., 2nd rev. ed.). Mu'assasat al-Risāla.
- Ibn al-Qayyim al-Jawziyya, M. I. A. B. (2007).** Tahdhīb al-sunan (I. G. Marḥabā, Ed., 1st ed.). Maktabat al-Ma'ārif.
- Ibn al-Qayyim al-Jawziyya, M. I. A. B. (n.d.).** Badā'i' al-fawā'id. Dār al-Kitāb al-'Arabī.
- Ibn Qudāma, A. A. (1997).** al-Mughnī ('A. A. al-Turkī & 'A. F. al-Ḥalw, Eds., 3rd ed.). Dār 'Alam al-Kutub.

- Ibn Taymiyya, A. A. (2004).** Majmū‘ al-fatāwā (‘A. R. ibn Qāsim, Comp.). Muḥamma‘ al-Malik Fahd.
- Ibn Taymiyya, A. A. (2005).** al-Radd ‘alā al-mantiqiyyīn. Dār al-Ma‘rifa.
- International Islamic Fiqh Academy (IIFA). (1990).** Resolution no. 53 (4/6) on Qabḍ: Forms (esp. the latest) and their Rulings [Sixth session]. IIFA.
- Kamali, M. H. (1988).** Qawā‘id al-fiqh: The legal maxims of Islamic law. Association of Muslim Lawyers.
- Kāsānī, A. B. M. (1910).** Badā‘i‘ al-ṣanā‘i‘ fī tartīb al-sharā‘i‘ (1st ed.). Maṭba‘at al-Jamāliyya.
- Kharashī, M. (1899).** Sharḥ mukhtasar Khalīl (2nd ed.). al-Maṭba‘a al-Amīriyya bi-Bulāq.
- Majallat Majma‘ al-Fiqh al-Islāmī. (1990).** Proceedings of the sixth session. Organization of Islamic Cooperation.
- Muwāfi, ‘A. M. (2011).** Taysīr al-fiqh al-jāmi‘ li-l-ikhtiyārāt al-fiqhiyya li-Ibn Taymiyya. Dār Ibn al-Jawzī.
- Nawawī, Y. I. S. (1925).** al-Majmū‘ sharḥ al-muḥadhdhab. Idārat al-Ṭibā‘a al-Munīriyya.
- Nawawī, Y. I. S. (1991).** Rawḍat al-ṭālibīn wa-‘umdat al-muftīn (Z. al-Shāwīsh, Ed., 3rd ed.). al-Maktab al-Islāmī.
- Northrop, F. S. C. (1963).** The epistemology of legal judgments. Northwestern University Law Review, 58, 732–749.
- Shirbīnī, M. A. (1994).** Muḥnī al-muḥtāj ilā ma‘rifat ma‘ānī alfāẓ al-minhāj (‘A. M. Mu‘awwaḍ & ‘A. A. ‘Abd al-Mawjūd, Eds., 1st ed.). Dār al-Kutub al-‘Ilmiyya.
- Stein, A. (2018).** Law and the epistemology of disagreements. Washington University Law Review, 96(1), 51–88.
- Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, Kuwait. (2006).** al-Mawsū‘a al-fiqhiyya al-kuwaytiyya (2nd ed.). Dār al-Salāsīl.