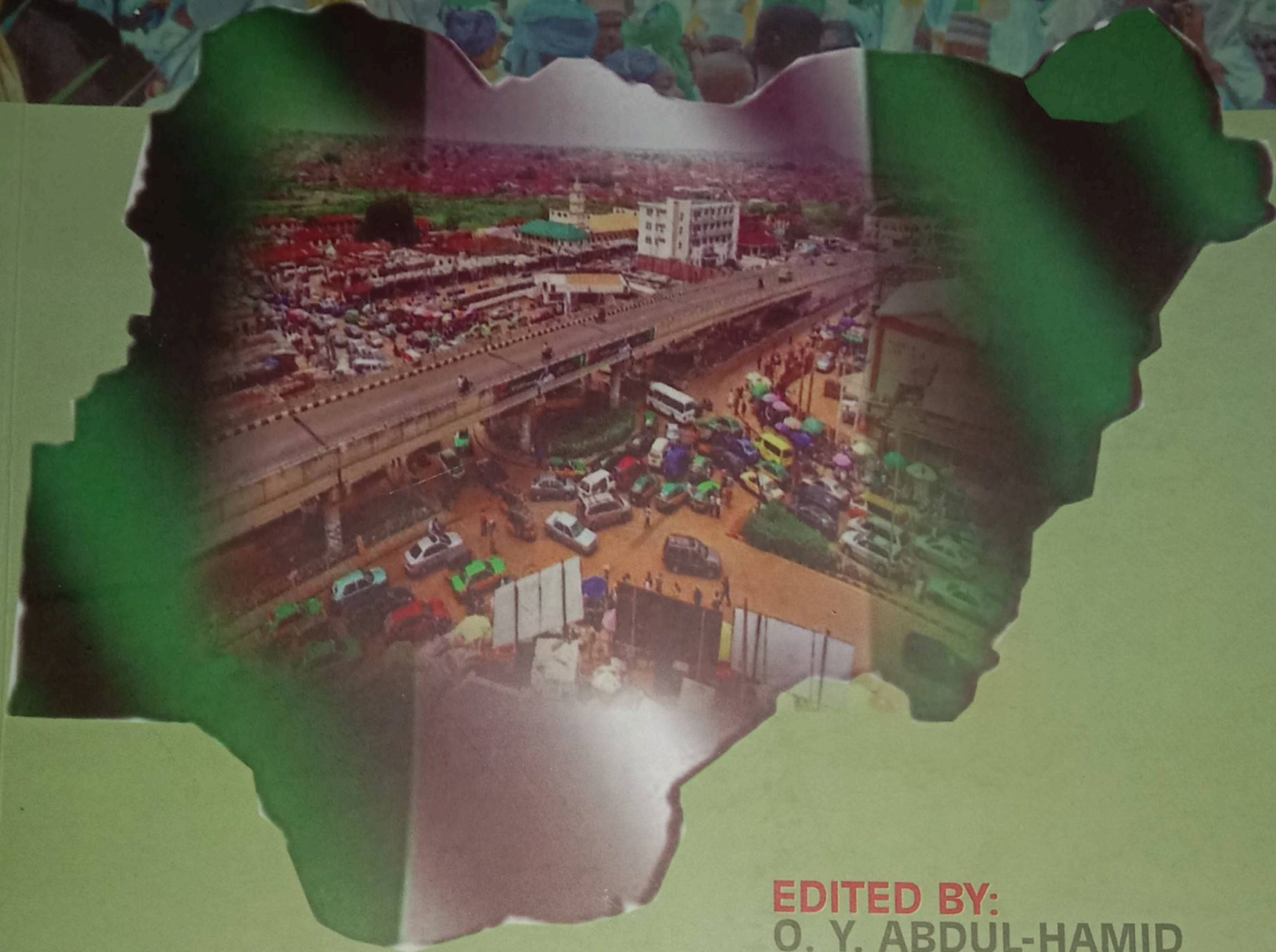


THE PLACE OF ILORIN EMIRATE IN THE DEVELOPMENT OF NIGERIA



EDITED BY:
O. Y. ABDUL-HAMID
M. A. ADEDIMEJI
A.L. AZEEZ
A.I. ABDULKABIR

THE PLACE OF ILORIN EMIRATE IN THE DEVELOPMENT OF NIGERIA

Published by
CENTRE FOR ILORIN STUDIES (CILS)
UNIVERSITY OF ILORIN, ILORIN
©2022 CE/1443 AH

ISBN: 978-978-970-918-2

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or any information storage and retrieval system, without the prior written permission from the editors or publisher.

EDITED BY:
O. Y. ABDUL-HAMID
M. A. ADEDEMIJI
A. I. AZEEZ
A. I. ABDULKARIM

Printed by:
UNILORIN PRESS
University of Ilorin, Ilorin, Nigeria
Email: unilorinpress@gmail.com

THE PLACE OF ILORIN EMIRATE IN THE DEVELOPMENT OF NIGERIA

iv

ALIYU, Afolabi Yahyah is a Senior Lecturer in the Department of Islamic Studies, Kwara State College of Education, Oro, Kwara State, Nigeria.

AUDU, Jamiu Kolawole is a Lecturer in the Department of History and Diplomatic Studies, Tai Solarin University of Education, Ijagun, Ogun State, Nigeria.

AYINDE, Salihu Mosadioluwa is the Head of Product and Market Development, Nigerian Export Promotion Council Export Assistance Office, Ilorin, and President, United Citizens Forum for Social Reformation, an Ilorin-based Non-Governmental Organization (NGO).

BABATUNDE, Abosede O. Ph.D, is a Reader at the Centre for Peace and Strategic Studies, University of Ilorin, Ilorin, Nigeria.

BABATUNDE, Layiwola Isiaka is of the Directorate of Corporate Affairs, University of Ilorin, Nigeria.

IBRAHIM-ERUBU, Lukman is a Ph.D. candidate at Katsina State University, Principal Cultural Officer and Head of Research and Documentation Unit, North West Zonal Office, at the National Institute for Cultural Orientation, Katsina, Nigeria.

IDRIS, Ridwan is a postgraduate student of History and International Relations, Faculty of Arts, University of Ilorin, Ilorin, Nigeria.

IMAM, Abubakar is a Deputy Editor, *Unilorin Bulletin*, and staff member of the Directorate of Corporate Affairs, University of Ilorin, Ilorin, Nigeria.

IMAM, Ibrahim Ph.D. is a Reader in the Department of Public Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria.

IMAM OMOLOSO, Aisha Ph.D. (Mrs.) is a Senior Lecturer in the Department of Mass Communication, University of Ilorin, Nigeria.

IMAM-TAMIM, M. K. Ph.D. is a Senior Lecturer in the Department of Islamic Law, University of Ilorin, Ilorin, Nigeria.

ISHOWO-ISIAKA, Abdullateef is of the African Centre for Peace Research, Empowerment and Documentation (ACPRED), Ilorin, Kwara State, Nigeria.

ISIAKA, Atanda is an Independent Researcher and Private Legal Practitioner based in Ilorin, Kwara State, Nigeria.

ISMAEL, Funsho Yusuph Esq. is a Lecturer in the Department of Private and Property Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria.

Chapter 22:	ILORIN EMIRATE CULTURE AND GAMBLING: RE-APPRAISING THE LEGAL FRAMEWORK Ismael Funsho Y. Esq and Abubakar Shehu Ahmad Tijani 329-334
Chapter 23:	AN EXAMINATION OF THE ISLAMIC LEGAL MAXIM OF 'AL-ADATU MUHAKKAMAH AS IT RELATES TO TRADE CUSTOM OF OWO LAADA AMONG RAM TRADERS IN ILORIN METROPOLIS Imam-Tamim, M. K., Atanda Isiaka and Abdulkareem, Abdulrazzaq 335-357
Chapter 24:	THE INTERPLAY OF POLITICS AND PHYSICAL PLANNING IN AN URBAN ENVIRONMENT: AN OVERVIEW OF ILORIN METROPOLIS Abdulraheem M.O. 358-372
Chapter 25:	REFLECTING ON THE PRACTICE OF DA'WA (ISLAMIC PREACHING) IN THE ILORIN COMMUNITY Ibrahim Imam 373-388

CHAPTER 23

AN EXAMINATION OF THE ISLAMIC LEGAL MAXIM OF 'AL-ADATU MUHAKKAMAH AS IT RELATES TO TRADE CUSTOM OF OWO LAADA AMONG RAM TRADERS IN ILORIN METROPOLIS

IMAM-TAMIM M. K.*, ISIAKA Atanda ** & ABDULKAREEM, Abdulrazzaq***

INTRODUCTION

During epoch and era, there has always been an act or a behaviour that transforms from mere spontaneous practice to habitual occurrence in a given society.¹ Such act or behavior is referred to as custom or customary practice.² This custom mostly develops to the level of legal force that binds the behavioral attitude of its subjects.³ In Islamic jurisprudence, law is primarily derived from the Qur'an and Sunnah according to the consensus of Muslim jurists.⁴ However, there are legal issues that do not have explicit legal provisions.⁵ Islamic legal jurists have postulated different legal mechanisms which are referred to as secondary source of Islamic law to address these implicit legal issues based on the understanding of Qur'an and Sunnah.⁶ One of the mechanism is the legislation based on usage or custom. As such, Islamic law also gives legal force to customs that are appropriate and practicable.⁷ This is what leads to the postulation of Islamic legal maxim of *al-Adatul Muhakkamah*.

* Senior Lecturer, Department of Islamic Law, University of Ilorin, Ilorin – Nigeria. +234 70344 999 44. imamtamim@unilorin.edu.ng.

** LL.B (Unilorin); BL. Independent Researcher, Private Legal Practitioner, Ilorin.

*** Faculty of Law, University of Ilorin, Ilorin, Nigeria.

¹ Khali M. "Al-Urf" in: The Journal of International Islamic Fiqh Academy, Fifth Issue, 1988, pp. 10844-45. See also, Umar A. "al-Urf Bayna al-Nazariyyah Wal-Tathiq", in: The Journal of International Islamic Fiqh Academy, Fifth Issue, 1988, p. 11120

² Nwaigwevs. Okere (2008) All FWLR (Pt.431) 843 at 870

³ Austine C., Bonds of Traditions, Customs, and Habits from the past traditional Authority at <http://atheism.about.com/od/religiousauthority/a/types/3.htm> accessed on 15th, March, 2017.

⁴ Kamali M.H, *Principles of Islamic Jurisprudence*, Third Edition {UK; Islamic Texts Society, 2006}, p. 154.

⁵ Ibid

⁶ Ibid.

⁷ Kamali, M.H, *Shari'h Law: An Introduction*, p. 154.

Custom transcends different fields of endeavour including business transaction.⁸ There are transactional customs that bind the transaction of buyers and sellers whether or not they are communicated, provided there is no express agreement to the contrary.⁹ The case of this transactional custom can be traced to the practice of payment of *Owo Laada* in the Ilorin metropolis which nowadays is more prominent among the ram traders in Ilorin Metropolis. At times, this money is being paid without much ado, while in some other occasions, arguments often ensue before its payment. To those who contend its payment, they usually contend that they are not being informed of such payment. As such, demanding of such payment after the conclusion of sales of ram is exploitative. On the other hand, the proponent of *Owo Laada* usually acclaim that payment of *Owo Laada* is an established transactional custom in the ram market, which must be abided by both buyers and sellers of rams in the market.

In the light of the above, this study examines the trade custom of *Owo Laada* based on the Islamic legal maxim of *al-Adatul Muhakkamah*. This is to examine the legal status and validity of *Owo Laada* under Islamic legal principle and Islamic jurisprudence.

This study deploys qualitative research methodology by mixing both doctrinal and non-doctrinal or empirical research/social legal methods of research.¹⁰ In this study, 32 respondents were selected. The population of the study is traders in all the four major ram markets in Ilorin Metropolis. The researchers selected from each market, 3 ram sellers, 3 ram buyers and 2 collectors of *Owo Laada* who represent the participants for the study. Data are collected through semi-structured interview based on what knowledge of the participants on custom of *Owo laada* payment.¹¹ For proper analysis and discussion, the study adopt Content Data Analysis Method, wherein the verbal behavioral data will be coded and categorized for the purpose of classification and summarization.¹²

⁸Austine C., 'Bond if Traditions, Customs and Habits from the past traditional authority'

⁹Introduction to Business Culture<<https://businessculture.org/business-culture/>> accessed on 20 June 2021

¹⁰ The Journal of the Indian Law Institute Vol. 17 No.4 "Doctrinal and Non-doctrinal Legal Research" <http://www.jstor.org/stable/43953840> accessed on 05 march 2017.

¹¹ Semi-Structured Interview is a qualitative method of inquiry that combines a pre-determined set of open ended questions (questions that prompt discussions) with the opportunity for the interviewer to explore particular themes or responses further. Edwards R. and Holland S., Qualitative interviewing, Bloomsbury Publishing Plc. London, (2013), p. 3.

¹²<http://www.libweb.surrey.ac.uk/library/skills/introduction%20to%20RESEARCH%20and%20managing%20information%20leicester/page-75htm>. Accessed on the 25th of January 2017.

CUSTOM AS A SOURCE OF ISLAMIC LAW

Custom is known as '*urf*' in Arabic language which literally means 'what is known, common or popular'.¹³ There is interchangeability of '*urf*' and '*adah*' by the majority of Islamic legal jurists because they are synonymous. But some scholars have distinguished the two concepts that '*adah*' relates to personal repetition or recurrent practice which can be used with regard to both individuals and group while '*urf*' is the general practice of a large number of people.¹⁴ '*Urf*' means recurring practices that are acceptable to people of a particular society. A custom will not be a basis for legal decision except it is sound and reasonable.¹⁵ Therefore, if any custom has no benefit, it is prejudicial and corruptive, it will not be given cognizance for legal decision. The use of custom as Islamic legal source has been criticized based on its recurring and dynamic nature.¹⁶ Custom has the quality of changing with time and place which will eventually affect the Islamic legal ruling based on the particular custom.¹⁷

LEGAL BASIS FOR CUSTOM AS A SOURCE OF ISLAMIC LAW

The validity of any legal principle in concept and in practice has to be traced to legal sources of Islamic law. There is no explicit text in the Qur'an and Sunnah which inform that '*urf*' is allowed to be used as proof in Islamic law,¹⁸ but there are Islamic legal principles that accredit an approved custom as a valid ground for rulings on *halal* and *haram* status of a particular thing or issue.¹⁹ Besides, there are practices of Holy Prophet and his companions that indicate the permissibility of custom as source of Islamic law. For instance, some of the companions of the prophet used to practice a kind of birth control measure popularly known in that period as *Al-'azl* as narrated in the following hadith:

We used to practice *coitus interruptus* (*azl*) during the life time of Allah's messenger (PBUH) while the Qur'an was being revealed.²⁰

¹³ Kamali M.H., *Principles of Islamic Jurisprudence*, Third Edition {UK; Islamic Texts Society, 2006}, p. 248

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Shafi'i A. B. and Rusni H., 'Application of Urf in Islamic and Conventional Bank' journal of Arts and Humanities (JAH), Vol 2. No 4, May 2013, p. 65

¹⁸ Ibid.

¹⁹ Kamali M. H., *Principles of Islamic Jurisprudence*, p. 371

²⁰ Muhammad I., *al-Jami ' al-Sahih*, Third Edition, (Beirut: Dar Ibn Kathir, 1987), hadith

This report signifies that the prophet approved of the custom (*azl*). But if it was wrong Allah would have sent down a command through His messenger prohibiting this practice in Islam. At times, Islamic law allows the continuity of a custom with legal adjustment. The instance of this is illustrated in the treatment of slave before the advent of Islam and Islamic law. At that time, slaves were maltreated and abuse. Hence, Islamic law legislates on the cordial dealing with slaves without altering the whole custom of slavery. This is evident in the tradition of the Prophet as follows:

It is essential to feed the slave, clothe him (properly) and not burden him with work which is beyond his power.²¹

From the above, custom that is not contrary to Islamic legal purpose can be a basis for the legal decision. Customs that do not violate the principles of Islamic law is valid and authoritative; the court of law must observe and uphold such customs.²² This is rightly so because asking people to go against their custom which neither constitutes neither oppression nor corruption is a form of hardship on them which is against the aim and objectives of *Shari'ah*.

ISLAMIC LEGAL MAXIMS ON THE VALIDITY OF CUSTOM AS SOURCE OF LAW

The study of Islamic legal sources has prompted Islamic legal jurists to propound phrasal frameworks and principles for the proper understanding and application of basic Islamic legal proof.²³ These phrasal frameworks and principles are referred to as *Qawa'id-l-fiqhiyyah* (Islamic legal maxims).²⁴ *Qawa'id-l-fiqhiyyah* consists mainly of statements of principles derived from the detailed reading of the rules of *fiqh* on various themes. The actual construction of words that made up the maxims is usually taken from the Qur'an and the *Hadith* of the Prophet.²⁵ It is a cogent aspect of Islamic jurisprudence that simplifies the juristic task of categorizing cases according to related general principles, playing a remarkable role in the construction of Islamic legal thought as a whole etc. They reflect settled principles of law to which jurists turn when confronted with new legal cases. *Qawa'id-l-fiqhiyyah* comprises of Islamic law principles and legal values that aid Islamic legal jurists to have considered knowledge of *maqasid al-Shar'iyyah* (the intentions and goal of Islamic law).²⁶

²¹ *Ibid* hadith 64

²² Kamali M. H., *Principles of Islamic Jurisprudence*, p. 249

²³ Abu zahra M., *Al-Uqubah Fil-Fiqh al-Islami*, Cairo, Dar al Fikr al Arabi, p. 32.

²⁴ *Ibid*.

²⁵ *Ibid*

²⁶ Kamali M.H., *Principles of Islamic Jurisprudence*, Third Edition {UK; Islamic Texts Society, 2006}, p.259.

There are five universal Islamic legal maxims with other subsidiary legal maxims that are derived from these five legal maxims.²⁷ They are the following;

1. *Al-umuru bi-maqasidiha* (Acts are judged by the intention behind them).
2. *Al-dararuyuzal* (Harm must be eliminated).
3. *Al-yaqinu la yazulubil-shakk* (Certainty is not overruled by doubt).
4. *Al-mashaqqatutajlibu al-taysir* (Hardship begets facility).
5. *Al-adatumuhakkamah* (Custom can be the basis of judgment).

Scholars have found that the scope of application of these five is broad enough to apply to several chapters of *fiqh*. It is said that the whole *fiqh* is based on them, and the essence of the *Shari'ah* as a whole is grasped among them.²⁸ As much as any of the above Islamic legal maxim can be applied to business transactions based on circumstance and situations, this is mainly focused on *Al-umuru bi-maqasidiha* and *Al-adatul muhakkamah* as they relate to validity of business transactions and dealings particularly the custom of *Owo Laada*.

• *Al-umuru bi-maqasidiha*

This *qa'idah* concerns *niyyah* (intention), which is a fundamental concept of Islam and Islamic law.²⁹ It influences the performance of all acts and duties as it is a fundamental component of every legal action under *shari'ah*.³⁰ This *qa'idah* implies that any action, whether it is done physically or verbally, should be judged in the light of the intentions of the doer. This means that the effect to be given to any particular action or transaction must be in accordance with the intention underlying such an action or transaction.³¹

The origins and history of this *Qa'idah* is traceable to many traditions of the Prophet (PBUH), among which is the famous first *hadith*, al-Bukhari's collection which reads:

Deeds (their correctness and rewards) depends upon intentions, and every person gets but what he has intended. So, whoever emigrated for Allah and His Messenger, his emigration is for Allah and His Messenger, and whoever emigrated for worldly benefits or for a woman to marry, his emigration is for what he emigrated for.³²

²⁷Kamali, M.H, *Shari'h Law: An Introduction*, p. 144.

²⁸Kamali, M.H, *Shari'h Law: An Introduction*, p. 144.

²⁹Schacht, J. *An Introduction to Islamic Law*, {Oxford University Press, 1964}, p. 116.

³⁰Abu Hamid al-Ghazali, *Ihya'Ulum ad-Din*, (Samarang-Indonesia: KiryataFutra, nd), VI 4, p.362.

³¹Al-Zarqa, M.*al-Madkhal al-Fiqhi al-Am*, First Edition {Damascus, Dar- al-Qalam}, p. 80.

³²Al-Bukhari, M. I, *al-Jami al-Musnad al-Sahih*, VI, 1, Hadith 30. {Beirut, Dar IbnKathir, 1987}.

Niyyah plays dual roles, moral and legal.³³ The moral role is the actor's inner motive for his actions based on which he may or may not gain acceptance of Allah for his actions. The legal role of intention is the motive of the doer to discharge an Islamic obligation. These results in discharging the actor from the duty, if he does the action with awareness and vice versa.³⁴ It is to be noted that the heart is the place of the *niyyah*, the central organ of attention. So we may see that it is not required for *niyyah* to be declared audibly.³⁵ Accordingly, a matter is accepted only if it is performed with proper intention and not on the basis of its appearance.³⁶

In another major part of *Fiqh* known as *Fiqhal-Muhamalah* (law of transactions), a degree of consideration of intention (*niyyah*) as an essential component of a transaction varies.³⁷ In the formation of contracts of *bayh* (sales), *hijarah* (rent), or *nikkah* (marriage), *niyyah* is of a high consideration. The legal ruling of *nikkah* for example differs according to the *niyyah* of a person who intends to marry. If his *niyyah* is to abstain from committing sins, *nikkah* is then obligatory.³⁸ It can also be *makrooh* or *haram* on the basis of *niyyah*.

However, *niyyah* in contracts is essentially established based on parties' agreements. The key element of which is a verbal or written offer and a verbal or written acceptance of the offer. In sales contract, extraneous *niyyah* of the parties does not matter if the offer and acceptance are explicit enough to indicate the intention to sell the nature of which demands giving money in exchange for something.³⁹ So when the seller says: for example, "I sell this car to you" and the buyer replies saying: "I buy it", their speech make their contract binding. But, in case of expression like, I consider this car yours, here, *niyyah* is required to know whether he intended a sale or not for the contract to be binding.⁴⁰ Also, intention invalidates a contract in cases of selling things for illegal purpose. For example, selling grapes to a wine maker, selling a knife or gun for someone who intends to use it to commit a crime.⁴¹

³³ Wensinsick, A. J., *Niyya, Encyclopaedia of Islam*,
<http://brillonline.nl/entries/encyclopaedia-of-islam-2/niyya-SIM_5935>.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Kamali, M.H., *Shari'ah Law: An Introduction*, p. 167.

³⁸ *Ibid.*

³⁹ Mahmasani, S., *Transaction in the Shari'ah*, Chapter VII, *Law in the Middle East*, Vol. I, No. 23, Washington D. C., the Middle East Institute, 1995.

⁴⁰ *Ibid.*

⁴¹ Al-Suyuti, J. *al-Ashbahwal-Naza'ir*, pp. 94-96.

Meanwhile, there is a number of subsidiary *qawa'id* derived from this *qa'idah*, which widens its scope of application⁴². Some of these subsidiary maxims are illustrated as follows:

- a. ***Manistaajala shayan qablaa wanihi uqiba bi-hirmanihi*** (he who hastens a benefit before its due time is punished by being deprived thereof).⁴³ A son or a beneficiary, who kills his father or his test at or with intent to hasten benefit of inheritance or endowment, will be deprived of such benefit in addition to stipulated punishment for murder.⁴⁴
- b. ***La thawaba illah bi-niyyah*** (no after life rewards for the deeds without examining the intention behind them). This *qa'idah* is indicating that unless deeds are done with *ikhlas* (sincerity), no afterlife rewards are to be gained.⁴⁵ This is in line with what Allah SWT says in the Qur'an: And they were not commanded not, but that they should worship Allah, and worship none but Him Alone (abstaining from ascribing partners to Him), and perform As-Salat (Iqamat-as-Salat) and give Zakat: and that is the right religion.⁴⁶
- c. ***Al-ibratu fil-'uqudi lil-maqasidi wal-ma'ani la lil-alfazi wal-mabani*** (in contracts, effect is given to intention and meaning and not words and forms).⁴⁷ It means that literal terms of contract are considered alongside the intention behind them. This *qa'idah* is used also to differentiate between various types of contracts. For example, the contract for the use of a thing is called '*aqd ijarah* (contract of hire) if remuneration is stipulated in consideration of such a use, and it is a contract of loan, if no such remuneration is stipulated.⁴⁸ So, if two persons conclude a contract ostensibly of a loan but in consideration for which a specific rental is provided for, the contract would be regarded as a contract of hire as its real meaning indicates, and not a contract of loan as the wording of the contract would suggest.⁴⁹
- d. ***All yaqinlayazulu bi-l-shakk*** (Certainty is not overruled by doubt): Essentially, this *qa'idah* means whatever is established with certainty cannot be disproven by doubt. For example, if a person knew with certainty that he had made *wudu* (ablution) but later he doubted the

⁴²Ibid. p365.

⁴³ Al-Giryani S., *Mudawwanat al-Fiqh al-Maliki wa Adillatuh*, First Edition, Beirut: Mu'assasat ar-Rayyan, 2002. pp. 521-524.

⁴⁴ As- Sadlan, S. *al-Qawa'id al-Fiqhiyyahal-Kubra*, pp. 63-66.

⁴⁵Ibid, p. 68.

⁴⁶Muhammed .M.P., *The Glorious Quran*, Chapter 98 {Suratul Bayyinnah} Verse 5.

⁴⁷ As-Sadlan S, *al-Qawa'id al-Fiqhiyyahal-Kubra*, pp. 68-69.

⁴⁸Muhmasani, S. *Falsafat at-Tashri 'Fil-Islam*, Leiden, Brill, Netherlands, 1961, p.161.

⁴⁹Ibid.

continuity of his *wudu*, certainty would prevail over the doubt and, subsequently, his *wudu* is still intact⁵⁰. The opposite situation is also true. So, if one was sure he did not make *wudu*, yet later he thought he did, he must consider himself in a state of being without *wudu*.⁵¹ Al-Nawawi said expressing the idea of the *qa'idah*:

Things are legally assumed to remain as they are unless and until is established with certainty that they are otherwise; and that extraneous doubts are of no consequence.⁵²

It is also enunciated in the Quran,

Most of them follow not but conjecture. Certainly, conjecture can by no means take the place of truth.⁵³

The Prophet (PBUH) says:

If any of you was in doubt about his prayer and he did not know how much he had prayed, three or four rak'at, he should cast aside his doubt, and base his prayer on what he is sure of (i.e. three rak'at).⁵⁴

This *Qa'idah* under study has been supplemented by a number of other subsidiary maxims, such as:

Al-aslu baqa'u ma kana ala ma kan (the basic rule is that a thing shall remain as it was originally), *Al aslu fil ashyah al-Ibahah* (the norm in regard to things is that of permissibility), *Al-aslubaraatu al-dhimmah* (freedom of liability is a fundamental principle). *Al-aslu idafatu al-hadithi li-aqrabi awqatih* (the fundamental principle is that any new event shall be regarded as happening at the time nearest to the present).

⁵⁰*Ibid.*

⁵¹Al-Suyuti.J. *al-Ashbahwal-Naza'ir*, p.51.

⁵² Al-Nawawi Y. *SharhSahih Muslim*, (Second Edition, Beirut: Dar Ilha at-Taruth, 1972), vol, 4, p. 49.

⁵³Muhammed .M.P., *The Glorious Quran*, SuratYunus verse 36.

⁵⁴Shubayr M. , *al-Qawa'id al-Kulliyahwa al-Dawabit al-Fiqhiyyah*, (Second Edition, Amman: Dar al-Nafa'is), p.133.

AL-ADATU MUHAKKAMAH (CUSTOM CAN BE THE BASIS OF JUDGEMENT)

This is another basic universal *qa'idah* that has bearing on the topic of discussion. This *qa'idah* means that practice or custom of people can have force of law.⁵⁵ The maxim affirms the significant position of custom in Islam and Islamic law.⁵⁶ This maxim is traced to a number of *Qur'anic* verses and prophetic traditions as the basis for sanctioning *urf*. In Surah al-Maidah, the Qur'an with reference to the types of expiations accepted when an oath is violated says:

Allah will not punish you for what is unintentional in your oath, but He will punish you for your deliberate oaths; for its expiation feed ten poor persons on scale of the average of that with which you feed your own families or clothe them or manumit a slave...⁵⁷

This verse enjoins that ten poor persons should be fed based on customary or practical manner of how one feeds his family. It approves custom as a basis for judgment or decision in the case of oath expiation. On the basis of this application, *urf* or *adah* is usually used to determine the legal rule on a particular issue of fiqh. This *qa'idah* operates within the legal theory in multiple respects, among them are the following.⁵⁸

- a. On many occasions, *urf* or *adah* is the essential criterion of interpreting the *nusus* from the Qur'an or the *Sunnah*. It can qualify the *mutlaq* (unrestricted) *nass* which is not interpreted either in law or linguistically. A good example here is the maintenance awarded to the divorce women whilst in her *iddah* (waiting period).⁵⁹ For example, commentators of the Qur'an have referred to custom in determining the precise amount of maintenance that a husband must provide for his wife. This is the subject of *Sura al-Talaq* (65:7) which provides that "Let those who possess means pay according to their means."⁶⁰ In this *ayah*, the Qur'an does not specify the exact amount of maintenance, which is to be determined by reference to custom. Similarly, in regard to the maintenance of children, the Qur'an only specifies that, this is the duty of the father, but leaves the quantum of maintenance to be determined by reference to custom (*bi'l-ma'ruf*), Allah says in *Surah al-Baqarah*, verse 233

⁵⁵ Kamali, *a Shari'h Perspective on AIDS*, p. 77.

⁵⁶ *Ibid.*

⁵⁷ Muhammed .M.P., *The Glorious Quran* Suratul al-Maida, Verse 89.

⁵⁸ Shubayr, *M.al-Qawa'id al-Kulliyyahwa al-Dawabit al-Fiqhiyyah*, p.244.

⁵⁹ *Ibid.*

⁶⁰ Muhammed .M.P., *The Glorious Quran* Suratul al-Talaq Qur'an 65 Verse 7.

that '...the father of the child shall bear the cost of the mother's food and clothing on reasonable basis (custom)'.

- b. 'Urf can itself be a valid independent basis for many *ahkam*, which have no explicit ruling from the Qur'an or the *Sunnah*. According to Ashawkani, *mudarabah* was legitimized based on *urf*, and the Companions unanimously practiced it accordingly.⁶¹ The *Shari'ah* has, in principle, accredited approved custom as a valid ground in the determination of its rules relating to *halal* and *haram*.⁶²

Several other subsidiary maxims are being derived from the maxim of *al-adatu muhakkamah*.⁶³ Subsidiary *qawa'id* are principles derived from more general principles of Islamic law (*Qawa'id al-fiqhiyyah al-qubrah*) for the purpose of extending the application of the general *qawa'id* to certain or particular fields of Islamic jurisprudence as well as serving as an exception, a condition or a provision within another *qa'idah*.⁶⁴ Some of these subsidiary maxims are:

1. ***Istimal al-nasi hujatun yajibu al—'amalu biha*** (The usage of people is a proof that must be followed).⁶⁵ The word *istimal* in this maxim is synonymous with *adah* and the maxim is said to contemplate linguistic usage that concern the meaning of words.⁶⁶ Thus, in line with this subsidiary maxim, when interpretation of a particular word or phrase is in issue, preference is given to linguistic usage.⁶⁷ Whenever words which have acquired different meanings in customary usage occur in contracts, oaths and commercial transactions, their customary meaning will prevail.⁶⁸ For example, when a person takes an oath that he will never 'set his foot' on so-and-so's house, what is meant by this expression in the customary meaning is not entering the house. In this sense, the person would have broken the oath if he enters the house while never 'setting foot', such as by entering the house while mounted something, such as camel or horse. But if he technically sets his foot in the house without entering it, he will not be liable to expiation (*kaffarah*) for breaking his oath.⁶⁹

⁶¹ Al-Shawkanni, M., *Nayl al-Awtar*, {Cairo: Matba'at Mustafa al Halabi}, 5, p. 365.

⁶² Muhammed .M.P., *The Glorious Quran* Chapter 2 verse 233.

⁶³ *Ibid.*

⁶⁴ As-Sadlan S., *al-Qawa'id al-Fiqhiyyah al-Kubra* p. 223.

⁶⁵ *Majallat al-Majma' al-Fiqhi al-Islami* (The Journal of the Islamic Fiqh Council), Vol.7. No.3, 1992.

⁶⁶ Kamali M.H. *Shariah Law: An Introduction*. p.150.

⁶⁷ *Ibid.*

⁶⁸ Kamali M.H., *Principles of Islamic Jurisprudence*, Third Edition {UK; Islamic Texts Society, 2006}, p.254.

⁶⁹ *Ibid*

2. **Al-mahruf 'urfan kal-mashru'sharta** (What is determined by custom is tantamount to a contractual stipulation).⁷⁰ When a term of contract does not cover a matter, transitional custom of such dealing will be applied. For instance, when someone rents a house, it is expected that he would use it according to what is customary, even if the detailed manner of its use is not regulated by the contract.⁷¹
3. **Al-kharaj bi doman (profit follows responsibility)**:⁷² This maxim implies that whoever bears the liability will take the benefit thereof.⁷³ Thus, the yield of trees or produce of animals belong to those who are responsible for their upkeep. For instance, suppose A who bought a machine decided to return it to the seller when he found it to be defective. Suppose also that the machine has yielded profit while in the hand of A, does A have to return the profit he made through the use of the machine to the seller? Applying this legal maxim, the answer is that A may keep the profit as the machine was his responsibility during the interval and he would have been responsible for his destruction and loss before he returns it back to the seller.⁷⁴
4. **Al-ma'rufu bayna al-tujjari kal-mashrut baynahum** (a matter recognized by custom among traders is regarded as that which is stipulated by agreement). For instance, if a trader sold a commodity to a buyer without any agreement as to the time and manner of payment but it was customary for the trader to obtain the price by monthly installment then such contract of sales should be interpreted according to that particular custom. Thus, it is treated as *Al-Bay Salam* (deferred trading).
5. **What is proven by custom is like that which is proven by a shar'i proof.**⁷⁵ This legal maxim provides that custom is enforceable and constitutes a basis of judicial decisions provided such custom is an established one. Thus Muslim jurists, in their majority, have generally accepted 'urf as a valid criterion for judgment of interpreting the Qur'an. For instance, the commentators of the Qur'an have referred to 'urf in determining the precise amount of maintenance that a husband must provide for his wife. This is the subject of *sura al-Talaq* (65:7) which provides that 'Let those who possess means pay according to their means.'⁷⁶ In this *ayah*, the Qur'an does not specify the exact

⁷⁰ *Majallat al-Majma' al-Fiqhi al-Islami* (The Journal of the Islamic Fiqh Council), Vol.7, No.3, 1992.

⁷¹ Kamali M.H. *Shariah Law: An Introduction*. p.150.

⁷² *Majallat al-Majma' al-Fiqhi al-Islami* (The Journal of the Islamic Fiqh Council), Vol.7, No.3, 1992.

⁷³ Kamali M.H. *Shariah Law: An Introduction*. p.151.

⁷⁴ Al-Hariri I. *al-Qawaid al-Fiqhiyyah al-Kulliyah*, Amman, Dar'Amman, 1998. p. 214

⁷⁵ *Majallat al-Majma' al-Fiqhi al-Islami* (The Journal of the Islamic Fiqh Council), Vol.7, No.3, 1992.

⁷⁶ Muhammed .M.P., *The Glorious Quran Chapter 65 verse 7*.

amount of maintenance, which is to be determined by reference to custom. Similarly, in regard to the maintenance of children, the Qur'an only specifies that this is the duty of the father, but leaves the quantum of maintenance to be determined by reference to custom (*bi'l-ma'ruf*)⁷⁷

CLASSIFICATION OF CUSTOM IN ISLAMIC LAW

Muslim scholars have divided '*adah* (custom) into various classes using different parameters among which are: (1) soundness or defect (2) usage (3) scope. The first classification is based on whether the custom in question corresponds or contradicts the aims and provisions of the sacred text and any other proof of Islamic law.⁷⁸ A custom that does not contradict the dictate and purpose of Islamic law, such custom is classified as sound or valid custom.⁷⁹ But a custom that contradict dictate and purpose of Islamic law is classified as invalid or defective custom. Custom is also classified according to usage which has to do with how custom is being demonstrated in a particular society. This can be based on verbal usage ('urf qawli). This consists of the general agreement of the people on the usage and meaning of words deployed for purposes other than their literal meanings. As a result of such agreement, the customary meaning tends to become dominant and the original or literal meaning is reduced to the status of an exception.⁸⁰ The technical usage of terms such as solar, zakat, hajj are typical cases of custom of verbal usage.⁸¹ This instance, custom can either be (a) verbal (*qawli*) or (b) actual (*fi'li*).

Whenever words of this nature, that is, words which have acquired a different meaning in customary usage, occur in contracts, oaths and commercial transactions, their customary meaning will prevail. For example, when a person takes an oath that he will never 'set foot' at so-and-so's house, what is meant by this expression is the customary meaning of actual entering of the house.⁸² In this sense, the person will have broken the oath if he enters the house while mounting a horse. But if he only passes through the road along that house without entering it, he will not be liable to expiation (*kaffarah*) for breaking his oath. For this would not amount to what is customarily meant by 'setting foot in the house.

⁷⁷ *Ibid* Chapter 2 verse 232.

⁷⁸ Abdul Ghani H., 'Condition for a Valid Custom in Islamic Law and Common Law', *International Journal of Business and Social Sciences*, Vol. 3., No 4, February 2012, p. 307.

⁷⁹ *Ibid*

⁸⁰ Shafi A. B & Rusni H., *Application of Urf in Islamic And Conventional Bank Journal of Arts and Humanities* Vol. 2, No 4, 2003. p. 66

⁸¹ For instance, Salah as in Qur'an 9 Verse 103, Zakah/ Sadaqoh as in Qur'an 9 Verse 60 and Hajj as in Qur'an 3 Verse 97.

⁸² Kamali, M. H., *Principles of Islamic Jurisprudence*, p. 254.

Also, custom is also classified according to practical or actual usage ('urf amali). This consists of commonly recurrent practices which are accepted by the people. An example of actual 'urf is the give-and-take sale, (*bay' al-ta'ati*), which is normally concluded without utterances of offer and acceptance.⁸³

Classification of custom is also based on scope. This classification has to do with areas of which a particular custom covers. Thus, custom may be a general one or a specific one. General custom (*al-'urf al-'amm*) is one which is prevalent everywhere and on which the people agree regardless of the passage of time.⁸⁴ A typical example of this is *bay al-ta'ati* to which reference has already been made. Similarly, the customary practice of charging a fixed price for entry to public baths is another example of general 'urf, which is anomalous to the strict requirements of sale (as it entails consuming an unknown quantity of water) but the people have accepted it and it is therefore valid. While a special custom (*al-'Urf al-khass*) is a custom which is prevalent in a particular locality, profession or trade. By its very nature, it is not a requirement of this type of custom that it should be accepted by people everywhere. According to the preferred view of the Hanafi school, special 'urf does not qualify the general provisions of the *nass*, although some Hanafi jurists have held otherwise.⁸⁵ Consequently, this type of custom is entirely ignored when it is found to be in conflict with the *nass*. Thus, the inference that could be drawn from the above is that the rule of the Islamic law pertaining to the authority of 'urf only contemplate the provisions of general 'urf.

CONDITIONS FOR VALIDITY OF CUSTOM UNDER ISLAMIC LAW

Custom and usage in Islamic law and other legal systems are assigned great significance.⁸⁶ However, no source of law in the world dictates that every custom must have the force of law. Thus, under Islamic law, for validity and acceptability of custom as a source of law, some rules, regulations and conditions have been laid down.⁸⁷ Some of these conditions are:

- (1) **Custom must represent a common and recurrent phenomenon-** The practice of a few individuals or of a limited number of people within a large

⁸³ For instance a person who enters a bus of a known route has customarily enters into a contract with the bus driver, who in turn agrees by driving the bus along the route.

⁸⁴ Abdul Ghani H., 'Condition for a Valid Custom in Islamic Law and Common Law', International Journal of Business and Social Sciences, Vol. 3., No 4, February 2012, p. 308.

⁸⁵ Shafi A. B & Rusni H., Application of Urf in Islamic And Conventional Bank Journal of Arts and Humanities Vol. 2, No 4, 2003. p. 66

⁸⁶ Abdul Ghani H., 'Condition for a Valid Custom in Islamic Law and Common Law', International Journal of Business and Social Sciences, Vol. 3., No 4, February 2012, p. 312.

⁸⁷ Ibid

community will not be authoritative, nor would a usage of this nature be upheld as the basis of a judicial decision in *Shari'ah* courts. The substance of this condition is incorporated in the *Majallah al-Ahkam al-'Adliyyah* where it is provided that 'effect is only given to custom which is of regular occurrence.⁸⁸ For example, when a person buys a house or a car, the question as to what is to be included in either of these transactions is largely determined by custom, if this is not otherwise specified in the terms of the agreement.⁸⁹ More specifically, one would need to refer to the common practice among estate agents or car dealers respectively. But if no custom could be established as such, or there are disparate practices of various sorts, no custom could be said to exist and no judicial order may be based on it.⁹⁰

Custom, in order to be upheld, must not only be consistent but also dominant in the sense that it is observed in all or most of the cases to which it applies. If it is observed only in some cases but not in others, it is not authoritative. Similarly, if there are two distinct customary practices on one and the same matter, the one which is dominant is to be upheld. If, for example, a sale is concluded in a city where two or three currencies are commonly accepted and the contract in question does not specify any, the one which is the more or most dominant and common will be deemed to apply.⁹¹

(2) Custom must also be in existence at the time a transaction is concluded-

In contracts and commercial transactions, effect is given only to customs which are prevalent at the time the transaction is concluded, and not to customs of subsequent origin.⁹² This condition is particularly relevant to the interpretation of documents, which are to be understood in the light of the custom that prevailed at the time they were written. Consequently, a rule of custom which is prevalent at the time the interpretation is attempted will not be relevant if it only became prevalent after the document was concluded.⁹³ For it is generally assumed that documents which are not self-evident and require clarification can only convey concepts that were common at the time they were written.

(3) Custom must not contravene the clear stipulation of an agreement- The general rule is that contractual agreements prevail over custom, and

⁸⁸Kamali, M. H., *Principles of Islamic Jurisprudence*, p. 25

⁸⁹ International Journal of Business and Social Science, Center for Promoting Ideas, USA, Volume 3 No. 4 {Special Issue – February, 2012}. pp. 313-314.

⁹⁰*Ibid.*

⁹¹Kamali, M. H., *Principles of Islamic Jurisprudence*, p. 25

⁹²*Ibid*

⁹³*Ibid*

recourse to custom is only valid in the absence of an agreement.⁹⁴ Since contractual agreements are stronger than custom, should there arise a conflict between them it will normally be determined in favour, of the former.⁹⁵ If for example the prevailing custom in regard to the provision of dower (*mahr*) in marriage requires the payment of one-half at the time of the conclusion of the contract and the remainder at a later date, but the contract clearly stipulates the prompt payment of the whole of the dower, the rule of custom would be of no account in the face of this stipulation.⁹⁶ For custom is only to be invoked when no clear text can be found to determine the terms of a particular dispute; and whenever a clear text is in existence, recourse to custom will be out of the question. To give another example: the costs of formal registration in the sale of real property are customarily payable by the purchaser. But if there is a stipulation in the contract that specifically requires the vendor to bear those costs, then the custom will be of no account and the purchaser will not be required to pay the costs of registration.⁹⁷

- (4) **Lastly, custom must not violate the *nass*, that is, the definitive principle of Islamic law-** The opposition of custom to *nass* may either be absolute or partial. If it is the former, there is no doubt that custom must be set aside. Examples of such conflicts are encountered in the Bedouin practice of disinheriting the female heirs, or the practice of usury (*riba*) and wine-drinking. The fact that these are widely practiced is of no consequence, as in each case, there is a prohibitory *nass*, or a command which always takes priority, and no concession or allowance is made for the practice in question. But if the conflict between custom and text is not absolute in that, the custom opposes only certain aspects of the text, then custom is allowed to act as a limiting factor on the text. The contract of *istisna'*, that is, the order for the manufacture of goods at an agreed price, may serve as an example here. According to a Hadith, 'the Prophet prohibited the sale of non-existing objects but he permitted *salam* (i.e., advance sale in which the price is determined but delivery postponed)'.⁹⁸

This Hadith is general in that it applies to all varieties of sale in which the object of sale is not present at the time of contract. *Salam* was exceptionally permitted as it was deemed to be of benefit to the people. The general prohibition

⁹⁴ *Ibid*

⁹⁵ Shafi A. B & Rusni H., Application of Urf in Islamic And Conventional Bank Journal of Arts and Humanities Vol. 2, No 4, 2003. p. 66

⁹⁶ *Ibid*

⁹⁷ *Ibid*

⁹⁸ Muhammad I., *al-Jami ' al-Sahih*, Third Edition, (Beirut: Dar Ibn Kathir, 1987), hadith 44

in this Hadith would equally apply to *istisna'* as in this case, the object of sale is non-existent at the time of contract. But since *istisna'* was commonly practiced among people of all ages, the *fuqaha* have validated it on grounds of general custom. The conflict between *istisna'* and the ruling of the Hadith is not absolute, because the Hadith has explicitly validated *salam*. If realization of benefit to the people was the main ground of the concession that has been granted in respect of *salam*, then *istisna'* presents a similar case. Consequently, the custom concerning *istisna'* is allowed to operate as a limiting factor on the textual ruling of the Hadith in that, the Hadith is qualified by the custom concerning *istisna'*.

Another example where a general text is qualified by custom is when a person is appointed to act as agent (*wakil*) for another in respect of concluding a particular contract such as sale or marriage. The agent's power to conclude the contract, although not limited by the terms of his appointment, is nevertheless qualified by the prevalent custom.⁹⁹ In the matter of sale, for example, the expected price which represents the fair market price would be upheld, and the currency of the locality would be accepted in exchange.

TRADE CUSTOM OF OWO LAADA IN ILORIN METROPOLIS

Owo Laada literally means Customary Fee. The term is used in the market (particularly in ram market) to mean commission, usually a token, demanded from the buyer and which he (the buyer) pays to the collector of the fee called "*Baale*" or "*Mai gida*" before the ram which he had already bought could be handed over to him.¹⁰⁰ *Owo Laada*, apart from being a source of income to the collectors, it also serves as security to the buyers who may prefer to take delivery of his ram later, as the *Mai gida* sees it as a duty to watch over the ram until it is claimed by the owner.¹⁰¹ Thus, it is the belief of some of the traders (mostly buyers) in the ram market that *Owo Laada* is only payable when the collector of it, actually participated in the bargaining process.¹⁰² Another role which *Maigida* performs in the Ram market is to take care of the rams on behalf of the owner, so as to make the rams attractive to the prospective buyers. All the aforesaid duties of *Maigida* make him to be recognized as a strong and important figure to be reckoned with in the ram market.

⁹⁹ Shafi A. B & Rusni H., Application of Urf in Islamic And Conventional Bank Journal of Arts and Humanities Vol. 2, No 4, 2003. p. 63

¹⁰⁰ An Oral Account Obtained from Baba Baale who is an *Owo Laada* Collector (*Baale*) at Oke-Ose Ram and Cow Market Ilorin

¹⁰¹ An Oral Account Obtained from Mallam Abdullateef Aboki who is a Ram Seller at Ipata Ram Market

¹⁰² An Oral Account Obtained from Ram Buyers at Oke-Ose Market (Specifically from Abdul-afeez Abu Hanifa and Hamza A)

Historically, the emergence of the trade custom of collection/payment of *owo laada* could be traced to 19th century when Ilorin Emirate was established.¹⁰³ Although traditional markets existed in Ilorin long before the establishment of Ilorin Emirate to cater for its scanty population then, the establishment of Ilorin Emirate and enthronement of Abd al- Salam as the first Emir of Ilorin brought about an influx of settlers from all direction to Ilorin.¹⁰⁴ This led to establishment of some traditional markets and subsequent tremendous growth in the economic activities of Ilorin Emirate.¹⁰⁵

As the volume of trade continues to grow, so the markets in Ilorin grew with it.¹⁰⁶ This naturally encourage a good number of migrants to Ilorin. For instance, *Gambari*,¹⁰⁷ the area named after the Hausa settlers, became a major settlement and centre of commercial activities. Thus, Hausa traders from the North of River Niger first stopped in the area (*Gambari*) before embarking on any business deal. While stopping at *Gambari*, each of the traders had an indigenous host called *Mai gida* (the host).¹⁰⁸ The appointment of *Mai gida* became necessary as the Hausa traders had no relations in Ilorin and for safety they needed to be in care of an indigene for the safety of their lives and properties.¹⁰⁹ It was the responsibility of the *Mai gida* to help in marketing the goods of his guest to prospective customers.¹¹⁰ For his role, he (*Mai gida*) was entitled to another percentage of commission from the buyer's end.¹¹¹ This arrangement was the same with Yoruba on the part of the Yoruba; they referred to their local host as

¹⁰³Omoiya Y. S. The location of Economic Potentials in Nigeria: An Exploit of Ilorin in the 20th Century (International Journal of Humanities and Social Science Invention, Vol. 2. Issues 1 January 2013 ISSN 2319-7714), p.35.42

¹⁰⁴*Ibid*

¹⁰⁵Sa'ad H. "The Dynamic of Political in a Multicultural Society: The Case Study of Ilorin during 19th and 20th Centuries" (PhD Thesis, Department of History, Faculty of Arts, Ahmadu Bello University, Zaria 2015) p. 160

¹⁰⁶*Ibid*

¹⁰⁷Gambari, is an area in Ilorin which was originally occupied by the Hausa people or settler from the Northern part of Nigeria.

¹⁰⁸Sa'ad H. "The Dynamic of Political in a Multicultural Society: The Case Study of Ilorin during 19th and 20th Centuries" (PhD Thesis, Department of History, Faculty of Arts, Ahmadu Bello University, Zaria 2015) p. 160

¹⁰⁹Ann O. H., The Economic History of Ilorin in The Nineteeth and Twentieth Centuries: The rise and fall of a middlemen society. Thesis submitted for the award of Degree of Doctor of Phylosophy, Centre of West African Studies, University of Birmingham, Nov., 1983, pp. 37-41.

¹¹⁰*Ibid*.

¹¹¹*Ibid*.

the 'Baale' who performed the same role as "*Mai gida*". The double commission due to the *Mai gida* and *Baale* in the business transactions between traders from the northern Nigeria and those from various parts of Yoruba land turned the *Mai gida* and *Baale* to become professional commission agents in business transactions in Ilorin. This custom actually encourages more Hausa and Yoruba migrants into Ilorin to partake in the *Mai gida* or *Baale* business, as it was then called. The *Mai gida* or *Baale* business could be said to be the basis for the trade custom of *owo laada* as being practiced in ram and cow markets nowadays. This is because the two practices (*Mai gida* or *Baale* business and custom of *Owo Laada*) seem or appear to be the same in almost all ramifications except with little variations in today's practice.

From this historical antecedent, the factors that confer on the 'Baale or *Mai gida* to be entitle to the commission are premised on three points which are: Welfare service, security of goods and commercial intermediary. Firstly, '*Mai gida* or *Baale*' were expected to provide welfare service to the traders in term of accommodation, feeding among other without collecting any charges from the traders. Likewise, it was also expected that the goods (rams) of the traders should be secured by the '*Mai gida* or *Baale*'. In the same vein, these *mai gidas* and *baales* ensured that there was smooth commercial transaction between the buyers and sellers as intermediaries. These are forms of service that normally attract remuneration. Therefore, they were paid the commission for their contribution to the success of the business.

THE CUSTOM OF OWOLAADA AMONG RAM TRADERS

What is today known as payment of *owo laada* among the ram traders in Ilorin Metropolis could be traced to this *Mai gida/Baale* form of middlemen business which Ilorin people profited from in the 19th century. However, the current trend in custom of *OwoLaada* among the ram sellers in Ilorin metropolis nowadays differs from what the practice was in the olden days. Probably, this is due to the increase in the social economic development of Ilorin or passage of time.

Firstly, ram sellers used to be strangers (either from Yoruba land or from the North) who came to Ilorin for business purpose. They did not have any relations in Ilorin and hence they needed indigenous hosts who would assist in taking care of them as guest in terms of accommodation, food and general welfare. But nowadays, majority of ram sellers, are indigenes of Ilorin. They have family and relations residing in Ilorin, so that the idea of appointing indigenous host to care for them ceased to be necessary. The implication of this is that hosting of a guest (seller) which was the main basis upon which the claiming of commission by

Maigida rested could not be recognised anymore. This may not be unconnected to the reason that some buyers give little or no regard to them.

Secondly, the olden day practice regards the commission being paid to the *Mai gida / Baale* is that he receives double commission from a single transaction. This is no more the usual practice as the collector of *OwoLaada* now collects his due from the buyers only.

Lastly, the custom of collection of *Owo Laada* used to be known in almost all markets in Ilorin. But nowadays, the trade custom of *Owo Laada* is popular only in ram/cow markets in Ilorin.

APPLICATION OF ISLAMIC LEGAL MAXIMS TO CUSTOM OF OWO LAADA

In order to examine the relevance and acceptability of the custom of *Owo Laada* in the light of the Islamic legal maxims, a case study was carried out in Ilorin ram markets. To get useful information for the study, interviews were conducted in the ram markets. Although 32 participants were initially selected as population of study, 20 participants were eventually interviewed. This decision became necessary when it was discovered that nothing new was added to the information already collected. Out of the 20 participants interviewed, 15 (75% of the population of study), constituting the majority were of the view that the custom of *Owo laada* is a well-known practice in Ilorin ram markets and that nothing is wrong with how the custom is being practiced in the market. They gave reason that, apart from the fact that the custom had been in existence since time immemorial, all the regular traders in the ram markets are familiar with it. One of the participants in this category went further to add that Allah Has made a clear distinction between what is permissible (halal) and what is forbidden (haram) and therefore concluded that in Islam, trade is permitted in as much as it does not contain usury (ribah) or uncertainty (gharar) in it.

However, the remaining 5 participants (25% of the population of study), which constitute the minority held a contrary view. Although they subscribed to the fact that the trade custom of *Owo Laadan* is a well-known custom in ram markets. They however showed their dissatisfaction with manner at which the custom is being practiced nowadays. One of the current trends which these participants dislike is the nonchalant attitude of the collectors. They explained that nowadays, collector of *Owo Laada* usually stand at a corner watching the buyers and sellers to conclude the contract and thereafter show up for collection of the due. This practice according to them is one of the sharp practices incorporated in the custom of *Owo Laada* against traditional practice of the custom that the collectors are expected to partake in the bargaining process before they can be entitled to *Owo Laada*. Besides, they used to make secret profit

in their dealings against the intention of the actual seller. This happens when the collectors of *Owo Laada* assists the owner or seller in selling his ram with price higher than that given by the seller without disclosing this to the owner or the seller.

And finally, they were of the view that asking the buyer to pay additional money aside from the purchased price already agreed between the sellers and buyers amount to exploitation and this and other above sharp practices are against the spirit of the objectives of Shari'ah

From the foregoing, the payment of *Owo Laada* is a specific custom among the ram traders in Ilorin Metropolis. Though, the practice used to be applied to several market but its application is only felt nowadays in ram markets. Also, it is a custom of actual practice that deals with ways or manners of doing things. To know the classification of the custom as to its soundness or otherwise, it is necessary to consider the conditions for the validity of custom. From the study of the participants' responses, it is agreed among them that the custom of *Owo Laada* is commonly known among the ram traders. This means that the custom is a common and recurrent phenomenon. It is also observed from the responses that it is an existing custom among the ram traders up to the moment of this study. Although the interviews have not revealed any case of prior express agreement that excludes the payment of *Owo laada* in the ram dealing, but where there is express agreement between the traders that *Owo Laada* will not be paid, it is believed that the payment will not be forced. The examination of the custom does not reveal any violation of Islamic law principles save for the current injected practices. This is because the custom is being done in manner that a person, who has rendered service, requests payment for the service he has rendered. Such payment is approved by the Hadith of the Prophet (SAW) thus:

Abdullah ibn Umar reported: The Messenger of Allah, peace and blessings be upon him, said, **"Pay the worker his wages before his sweat has dried."**¹¹²

Another important point is that the persons that render *Mai gida/Baale* service will be feeding and sustaining themselves from their handiwork. This is what Prophet (SAW) prescribed in his saying.

Anas ibn Malik reported: A man from the Ansar came to the Prophet, peace and blessings be upon him, and begged from him. The Prophet said, "Have you nothing in your house?" The man said, "Yes, a piece of cloth, a part of which we wear and a part of which we spread on the ground, and a wooden bowl from which

¹¹²Sunan Ibn Mājah 2443

we drink water." The Prophet said, "Bring them to me." The man brought these articles to him and the Prophet took them in his hands and he said, "Who will buy these?" Someone said, "I will buy them for one coin." The Prophet said twice or thrice, "Who will offer more than one coin?" Someone said, "I will buy them for two coins." He sold them for two coins and the Prophet said, "Buy food with one of them and give it to your family. Buy an axe and bring it to me." The man brought it to him. The Prophet fixed a handle on it with his own hands and he said, "Go gather firewood and sell it, and do not let me see you for a fortnight." The man went away and gathered firewood and sold it. When he had earned ten coins, he came and bought a garment and food. The Prophet said, "This is better for you than for begging to come as a blemish on your face on the Day of Resurrection. Begging is only appropriate for three people: one in grinding poverty, one in serious debt, and one who must pay a difficult compensation."¹¹³

In another hadith,

Abu Huraira reported: The Prophet, peace and blessings be upon him, said, "The recitation of scripture was made easy for David. He would order that his mount be saddled, and he would finish his recitation before they were saddled. **He would never eat but from the work of his own hands.**"¹¹⁴

What will be lingering in the mind of legal person is that there is no offer that orders the service of the person. Historically, one of the intentional reasons for appointing the *Maigida* or *Baale* was to ensure free flow of commercial transaction. According to Islamic legal maxim of *Al-umuru bi-maqasidiha*, particularly the subsidiary legal maxim of *al-ibratu fil-'uqudi lil-maqasidi wal-ma'ani la lil-alfazi wal-mabani*. in any commercial dealing where the similar service is rendered in that society or market, it will be presumed that either the person has been customarily appointed or the traders has impliedly accepted the person's offer to act as *Mai gida* or *Baale*. This is because that is the historical intention behind the initial practice.

On basis of the above, it will be save to hold that the custom of payment of Owo Laada is valid and sound. Therefore, the payment is *halal*. But, it will be necessary to state that any person that will claim the payment must truly render the service of *Mai gida* or *Baale*. The practice of standing by to watch the

¹¹³Sunan Abu Dawud, Book 3, Number 1637

¹¹⁴Ṣaḥīḥ al-Bukhārī 3235

transaction without any meaningful contributions or making secret profit is against the Islamic law principles. Such case has involved az-zulm (injustice). Az-zulm is a forbidden act that Almighty Allah and His Apostle (SAW) have warned the Ummah against it. Almighty Allah says in the Quran that 'Deal not unjustly, and ye shall not be dealt with unjustly.'¹¹⁵ It was reported in a hadith that;

Prophet (SAW) was passing by a pile of food in the market. He put his hand inside it and felt dampness, although the surface was dry. He said; 'O owner of the food, what is this?' The man said, 'it was damaged by rain, O Messenger of Allah' He (SAW) said why did you not put the rain damaged food on top so that people could see it! Whoever cheats us is not of us.¹¹⁶

In any dealing that involves az-zulm, such transaction is defective and void based on the above authorities. Likewise, the application of *Owo Laada* or the practices itself will be defective if it involves az-zulm. But in any other cases, where the custom is practice and devoid of az-zulm, the dealing and the custom of *Owo Laada* will be valid. As such, it will be considered as a basis of Islamic legal decision or judgment in line with the Islamic legal maxim of *al-Adatul Muhakkamah*.

CONCLUSION

The custom of *Owo Laada* is an age long practice among the traders in Ilorin Metropolis, this practice metamorphosed from the appointment of *Mai gida/Baale* for the smooth running of commercial transactions between the traders. Over times, the practice is more noticeable among the traders of rams in Ilorin Metropolis with certain modifications to the initial practice. The payment of *Owo Laada* is now being seen as commission for an intermediary who has contributed to the success of the dealing. However, the current trend of the custom allows unjust dealing like secret profit and exploitation the buyer.

Islamic law gives room for the legislation to be based on custom in the light of its legal maxim of *al-Adatul Muhakkamah*. But Islamic law will not sanction any custom on a pretext of injustice. As much as custom of *Owo Laada* does not originally contradict Islamic legal principles, any unjust act alongside the practice will not only affect the validity of the custom as basis for law making, it will also affect the whole of the dealing.

It could be drawn from the foregoing, that the trade custom of collection of *owo laada* as being practiced in ram markets apart from being of historical antiquity is common and popular among traders in ram market within Ilorin.

¹¹⁵Suratul Baqarah v. 279

¹¹⁶Saheeh Bukhari

Therefore, the claim of a party that he is not being informed about the payment of owo laada is baseless. Whenever there is a person that acts as *Mia gida/Baale* in ram dealing, it is customarily believed that such person will be entitled to owo laada. This is premised on Islamic legal maxim of *Al-umuru bi-maqasidiha*, particularly the subsidiary legal maxim of *al-ibratu fil-'uqudi lil-maqasidi wal-ma'ani la lil-alfazi wal-mabani*. This is because the intention on appointment of the *Mai gida/Baale* is to aid commercial transaction which consequently entitles *Mai gida/Baale* to owo laada. As such, any person that also carries out similar task should be entitled to the payment. On this basis, the custom therefore becomes an implied term of ram trade custom in the ram markets in Ilorin Metropolis.