

CONCEPT AND MODES OF ACQUISITION OF NON-VALUABLE PROPERTY IN ISLAMIC LAW OF INHERITANCE

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Abstract

The discussion of non-valuable property in Islamic law cannot be over-emphasised since acquisition of property must be based on lawfulness and unlawfulness of such property. It is on the basis of this, that this paper aimed at assessing the concept and modes of acquisition of non-valuable property in Islamic law with the objectives of identifying the non-valuable property, examining the concept of non-valuable property in Islamic law and appraised the legality of acquisition of non-valuable property by Muslims. The paper adopts the doctrinal method of legal research. The doctrinal method comprises in-depth content analysis of primary and secondary sources of legal information. The primary sources include the Qur'an and Hadith while the secondary sources include textbooks, journals, newspaper reports and internet materials. The paper traces the background implementation of Islamic law principles on the modes of acquisition of non-valuable property and its consequences on the person who acquired it and the society in general. It discloses that non-valuable property is not property in Islamic Law. It concludes that only lawful and valuable property is suitable to be acquired by Muslims in all circumstances. The paper recommends that Muslims should be steadfast in distinguishing between valuable and non-valuable property in Islamic Law as only valuable property in their estate can be inherited by their heirs.

Keywords: acquisition, estate, lawfulness, non-valuable, property

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1.0: Introduction

This paper gives the general overview of modes of acquisition of non-valuable property in Islamic law and in the process of examining this topic properly, recourse is made to the concept of non-valuable property in Islamic Law. The discussion is on all non-inheritable property, which may include embezzled money, ill-gotten wealth, pork, alcohol, etc.

Non-valuable property is also referred to non-inheritable property in Islamic law. It is described by scholars as estate which lacks monetary value such as rights of the dead man to his job, his title, his right to custody of children (*Hadanah*), his right to divorce his wife and his right to become an agent or representative. As these rights are categorised as personal rights, they could not be inherited.¹ Though, Juristic argument on whether these rights are inheritable or not does not suggest that they lack monetary value if the property is acquired legally.

However, jurists do not have consensus of opinion on the estates which are of financial and personal nature such as pre-emptive right (*Shuf'ah*) over a property and the rights to stipulate condition (*Khiyāru as-Shart*) in an Islamic law of contract. The Hanafi jurists are of the opinion that these rights are the expression of opinion of the deceased, therefore, they are just personal to him, thereby non-inheritable.² Notwithstanding, the rights are not illegally acquired, rather they were acquired legally.

However, majority of the jurists are of the opinion that such right is linked with the property of the deceased person and it is counted as part of his estate and hence it is inheritable.³

Moreover, the concept of non-inheritable property in Islamic Law originated from what is forbidden (*Haram*) in its original form, phases and effects.⁴ This concept is important in Islamic law of inheritance. It is sacrosanct to the extent that only the property that passed through the test of permissible (*Halal*) could be a subject of inheritance. Although, not all non-inheritable property are specified in the *Qur'an*

¹ Some aspects of Islamic law of Succession, p. 5.

² *ibid.*

³ *ibid.*

⁴ *Al-Haram* is defined as a matter which the lawgiver prohibits to be done in a penal term and thus stipulates punishment for whoever violates the prohibition in the hereafter, just as the violation may also attract some punishment in this world. Generally, in Islamic law it is trite that whatever is not declared as *haram* is *halal* and it is Allah alone that has power to declare anything as *Haram*, such power is also delegated to the Prophet Muhammad in his lifetime. For more information about the concept of Halal and Haram see Muhammad bn. Salih Al- 'Uthaymin, *Al-Halal wal Haram* (Cairo: *Darul Tawfiqiyah Liturath*, 2010) p.5.

and *Sunnah*, but the jurists through the skills of striving (*Ijtihad*) deduced many more after going through the *Qur'an* and *Sunnah*, to make *fatwa* (Legal opinion) which forms part of Islamic Law of Inheritance.

However, every *Muharram 'āyni* e.g pork is not inheritable, there are some which due to their circumstances may be inheritable or not inheritable and some, due to the external factor may and may not be inherited.

The non-inheritable property also include the illegally acquired ones like embezzled money and ill-gotten wealth. The concept of non-inheritable property in Islamic Law was borrowed by the former President Muhammadu Buhari when he brought to the limelight the executive order No. 6 in Nigeria as to the assets acquired through illegal or suspected sources.⁵

Though, upon implementation of the order, it was discovered that the value of the assets returned to the coffer of government has varied over time with the total amount recovered since 2010 was reported to be just over \$4b U.S Dollars which is a tiny fraction of the estimated stolen fund of over \$3.6 trillion lost to corruption every year.⁶

⁵ President Muhammadu Buhari had on July 5, 2018 issued a presidential executive order which provides for the interim seizure of assets linked to ongoing criminal trials and investigations. It is all about the preservation of assets connected with endemic corruption and other relevant offences. This order had been given judicial backing by the Federal High Court of Abuja in the unreported case of *Ikenga Ugochinyere and Keneth Udeze vs. President Muhammadu Buhari and Attorney General of Federation Abubakar Malami* in Suit N0 FHC/ABJ/CS/740/2018 where the court held that what the president has demonstrated by the executive order in question is his willingness to ensure the prevention of the dissipation of assets and funds connected with the commission of the offence of corruption and other related offences until the determination of any corruption-related matter against the person or firm. She concluded that the president of the Federal Republic of Nigeria has powers under section 5 and 315 of the 1999 constitution of the Federal Republic of Nigeria to issue executive orders on routine administrative matters, to state's policies, especially for the internal operations of state's agencies insofar as it does not step on the toes of legislative and judicial powers under the constitution. For detail information on this issue see the Punch 'Executive order 6: Court backs Buhari on seizure of Looters' assets' 12 October, 2018.

⁶ Onozure D. 'Asset recovery rule offer little benefit' The Punch (Nigeria 11 January 2024), p.25.

Islamic Law, as a religious law, regulates the lives of all Muslims both in this world and in the hereafter. It covers all human endeavours: politically, socially, religiously and economically and addresses human phenomena in regulating man's well-being in the society.⁷ It serves as panacea for human growth in terms of well-being in this world and in the hereafter. However, abject poverty and economic stagnation that bedevil our society today could be traced to the nonchalant attitudes towards Islamic laws which guide among other things, aspects of human behaviours including the acquisition of property. Human beings run after wealth mostly from the forbidden sources such as exploitation, embezzlement and corrupt practices, which cause breakdown of laws and orders as being witnessed in Nigeria today. These evil practices could continue forever if Nigeria continues with these types of wholly unwholesome behaviours. Against this sordid background, this paper argues that the solution to acquired ill-gotten and forbidden material wealth is strict adherence to the rules of Islamic Law which provide ways of honest transactions and wealth possession in any given society and which is suitable to all nations and circumstances.⁸

One of the objective principles of Islamic Law is protection of wealth⁹. Muslims are enjoined to protect their wealth against destruction, since wealth is one of the natural intuitions attached to mankind¹⁰. Despite this fact of attachment to wealth, Muslims should understand that the wealth acquired by a Muslim is not his; he is just a trustee of that property and the real owner of such property is Allah (SWT) and he is just given a right to look after such property in this life and should be ready to account for it on the day of resurrection.¹¹ Just as Islamic Law gives rights to individuals to own property, it gives the same rights to community as well as to the constituted authorities and regulates what to acquire and what is forbidden to be acquired¹². In fact, it defines acceptable manner of wealth acquisition.¹³

⁷ *Fiqh us-Sunnah* p.1.

⁸ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.181. see *Qur'an Al-Anaam* (6): 38.

⁹ Khallaf A.W, *Ilmu Usul-al-fiqh* (Darul-Hadith Cairo 2002), 222-233.

¹⁰ Fatihi M, *Ilmul-Nafs al-Jina'I* (Cairo: Al-Nahdah Press, 1969), 22.

¹¹ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.115. see *Qur'an Al-Nisaai* (4):5 and its exegesis in Al-Qurtubi M.A, *Al-Jamiu Ahkam Al-Quraan Tafsir al-Qurtubi* (Dar-al-Kutub-al musniyyah Cairo, Vol.11).

¹² Islamic Legal Doctrine and Interest in Land, p.89.

¹³ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.360. see *Qur'an Al-Nahl* (16):97.

2.0: Concept of Non-Valuable Property in Islamic Law

'Property' is defined as *Al-Mal* in Arabic language, while *Al-Mal* is defined as anything capable of being owned by human beings.¹⁴ In Arabic dictionary¹⁵, it is referred to as money, possessions, estate, assets, capital, fund(s), chattel(s), goods, wealth, fortunes and riches. 'Wealth' is defined as whatever is capable of being owned¹⁶. Ibn Al-Athur defined it as what is capable of being owned, ranging from gold, silver as well as whatever people can own, especially by the Arabs such as camel¹⁷. Ibn. Faris observed as follows: '*Waina maa Yusamma Maalan Lianahu Yamiilu Ilayhi l-Nnaas Bil- Qulub*' 'Asset is being called wealth because people can assert their ownership of it and have a stable mind when they have it'.¹⁸

However, property is classified into two types: the valuable and non-valuable property. The valuable property is of benefit according to Islamic Law while the non-valuable has no value according to the Islamic Law, e.g., alcohol, pig, etc. These from Islamic Law perspective, are not wealth for the Muslims.¹⁹

Similarly, Islamic Law divides assets into three: pure asset, forbidden (*Haram*) asset and a mixture of pure and impure assets. The pure asset is the asset that is regarded as unadulterated in Islamic Law while the impure consists of what is derived from illegal acquisition such as assets acquired through armed robbery, bribery, bank interest (*Riba*) etc.²⁰ Therefore, rightly acquired money mixed with impure wealth (*Haram*) means money which is partly pure and partly impure or which is mixed with impurity. The impure money is of two forms: the forbidden (*Haram*) money. This is special money in which the capital is the stolen money that is mixed with pure money (*Halal*). It is not for the custodian to benefit from it or to spend it in anyway. The custodian of such money is enjoined to return it to the original owner.²¹ The second form is to mix pure money with impure money in a way that the latter cannot change the former and vice-visa, e.g., mixing a shilling or a naira of forbidden (*Haram*) source with about ₦1,000.00 (One Thousand Naira) which is

¹⁴ Hamad N, *Qadayah Fiqhiyah Mua'siratul Fil Mal Wal-Iqtisod* (Dar-al-Qalam Damascus, 2001), 29.

¹⁵ Baalbaki R, *Al-Mawrid: A Modern Arabic-English Dictionary* (16thed, Dar El-Ilm Lilmalayi, 2002), 939.

¹⁶ *Qadayah Fiqhiyah Mua'siratul Fil Mal Wal-Iqtisod*, p.29.

¹⁷ *ibid.*

¹⁸ *Ibid.*

¹⁹ *ibid.* P. 39.

²⁰ Al-Ghazali I.A.H, *Ihyah Ulum Dinn Revival of Religion's Sciences* (Malaysia: Dar Kotob Al-Ilmiyah 2011), 383.

²¹ *ibid.*

pure (*Halal*) or ₦100,000.00 (One Hundred Thousand Naira) with a million naira of impure origin. In this case, the custodian should return to the original owner if he is known because it is still forbidden (*Haram*). In this respect, the proper thing to do is to remove what is legally impure from the pure wealth and give the ill-gotten wealth to the rightful owner of the money and keep the rest which is pure (*Halal*).²²

3.0: Differences Between Inheritable and Non-Inheritable Property in Islamic Law

Haram literally means something forbidden in Islamic Law and there is punishment for those who commit *haram*, while, on the other hand, reward awaits those who refrain from doing it.²³ The forbidden things spread over the holy Qur'an and are tagged non-inheritable while the lawful things are also lawful for consumption and inheritable.

Meanwhile, a property could be unlawful (*Haram*) due to certain attributes it possesses or because of some improprieties in the manner it was acquired. Some property may be unlawful because of certain attributes it has in itself such as wine, swine, etc. It is trite in Islamic law that prohibition can never be attributed to any act except it is confirmed by the *Qur'an* and authentic *Sunnah*, while permission can, as well, not be granted except it is permissible (*Halal*) since it is stated in the *Qur'an* that all things are permitted except if it is specifically forbidden by *Allah*.²⁴ However, there are stages for forbidden things (*Haram*) in Islamic Law. Some forbidden things may pass some stages of technological process and become lawful (*Halal*) for consumption or use, for example one may use codeine syrup for treatment of cough but taking much of it is illicit drug, while some lawful things will at other stages become unlawful (*Haram*).

This usually happens to some types of foods and consumable goods, which we use in everyday context. Unlawful things (*Haram*) are commonly from foods and consumable products and properties we consume, which are unclean. Therefore, a

²² This is the decision of Ibn Qayyim in his Book *Badai'u Alfawaid* (Dar Al-Kotob Al-ilmiah 2011), see *Jami'u Ul-Ulum Wal-Hukmu* and *Majmu'un Fatawah ibn Taymiyyah*, in Al-Ghazali I.A.H, *Ihyah Ul- Ulum –Dinn*, p.432.

²³ This is one of the differences between Islamic Law and other Man-made laws. Islamic Law rewards the obedience to the Law while it punishes the disobedient to such Laws but the man-made laws punish the commission of offence and does not reward obedience to the Law.

²⁴ *ibid.* p.363. see *Qur'an Al-Nahl* (16): 116, see Muhammad Izhar And Mohd Kashim & ors 'Principles Regarding the use of forbidden (*Haram*) Sources in Food processing: A Critical Islamic Analysis' *Canadian Center of Science and Education*, 2015) vol. 11 N0

²²<https://www.researchgate.net/publication/281289528> accessed 20th February, 2019.

Muslim should get himself familiar or knowledgeable within the principle of Lawful and Unlawful (*Halal* and *Haram*) things in order not to engage in the unlawful. This principle of getting involved in the act of seeking Knowledge is called in Islamic Law as *Ad-Dabit*, which means to get close to some or to have knowledge of something²⁵ or in other words, the condition for the bearer to meet before involving himself in the materials that are needed by him or useful for him in order not to partake in the illegal and illicit things (*Haram*) whether be it animals, foods or materials to be used for the forbidden things.

This means of livelihood, which are unclean and dirty, are called *Al-Khabis*, which means dirty, unclean and unholy. They constitute negative property hated and disliked in Islamic Law. These impure foods are divided into two (2) categories: the organic foods such as pork, carrion, blood, dead animals, or consumables such as processed foods and drinks, medicine, etc; the other category is property derived or related to sinful acts (*Haram*) such as interest earned on property, stealing, embezzled money; any business based on such money or property is unlawful (*Haram*). These businesses are forbidden and incomes derived from them are also forbidden and not inheritable in Islamic law.²⁶

4.0: Modes of Acquisition of Non-Inheritable Property

4.1: Fraud (*Ihtiyal*)

Fraud, one of the ways of acquiring money illegally, has different definitions due to its dimensional nature. For the purpose of this work, a definition given by Institute of Internal Auditors' International Standard for the Professional Practice of Internal Auditing (Standard) is most accurate to use. It defines fraud as any illegal act characterised by deceit, concealment, or violation of trust. The acts are not dependent upon the threat of violence or physical force. Frauds are perpetrated by parties and organizations to obtain money, property or services to avoid payment or loss of services or to secure personal or business advantage²⁷.

Fraud is dynamic in nature and the only constant thing in fraud is change which allows the perpetrators to always look for new methods of executing the crime without being exposed²⁸. Thus, fighting this menace in any society requires the

²⁵*ibid.* p.18.

²⁶*ibid.*

²⁷ The IIA's 'International Standards for the Professional Practice of Internal Auditing (Standard),' The Institute of Internal Auditors available at <https://na.theiia.org/standards-guidance/public0/0 20 Documents//IPPF-standard.2017 pdf> accessed 23 March 2019.

²⁸Georgious L.V, 'Advancing Theory of Fraud; the S.C.O.R.E. model' *Journal of Financial Crimes* Vol.26 Issue 1 <https://doi.org/10.1108/JFC-12-2017-0128> accessed 15 March 2019.

knowledge of the reasons behind its occurrence and possible solution to either curb or mitigate its practice in any nation, including Nigeria. This is because fighting fraud or any means by which illegal wealth is being acquired is like fighting *Lernean Hydra* which is regarded as a monster with several heads. Whenever someone severs one of its heads, it brings out two fresh heads from the wounds of the one that was severed.²⁹

Similarly, several theorists³⁰ have propounded many theories on the causes, prevention and eradication of fraud. A triangular theory of fraud³¹ was propounded in which an angle is perceived as a non-shareable financial need while the second angle connotes perceived opportunity and the third angle is 'rationalization'. According to Cressey³², the first angle is caused by pressure and once it occurs it is known as non-shareable financial problems which eventually leads a person to commit fraud or other financial crime. In such a case, the trusted person becomes a trust violator.

In addition, the second angle which is referred to as perceived opportunity occurs when the perceived non-shareable funds problem occurs. It automatically leads a person to commit breach of trust because he has the opportunity to do it. Cressey also divides this perceived opportunity into two: general information and the technical skills. Here the general information is the knowledge a person has that make him to understand that his position as a trustee of the property or assets could be compromised and that it had happened to other people before him who did the

²⁹ *ibid.*

³⁰ Thanasak R. 'Beyond the Fraud Diamond' *International Journal of Business Management and Economic Research (IJBMR)* Vol.7 474-476

https://www.ijbmer.com/docs/volumes/vol7_issue/ijbmr_2016_070102pdf , Karen S., Ashley G.K, Anja T. 'C.E.O Wrongdoing: A Review of Pressure, Opportunity, and Rationalization' *Journal of Management* Vol. 44 N0.6

<https://journals.sagepub.com/doi/abs/10.1177/0149206318771177>>, Dorminey J., (2010)

'Beyond the Fraud Triangle' *The CPA Journal*, Vol.8 No. 7

<<https://www.questia.com/magazine/IP3-2088632051/beyond-the-fraud-triangle> accessed 25 March 2019.

³¹ Cressey D.R *Other People's Money: A Study in the Social Psychology of Embezzlement* (Free Press, Glencoe, Illinious 1953) [https://www.scirp.org/\(s\(351jmbntvnsj+1aadkpozje\)\)/](https://www.scirp.org/(s(351jmbntvnsj+1aadkpozje))/) accessed 25 March 2019.

³²*ibid.*

same thing with impunity. The technical skill refers to ability to commit the violation which is likened to the abilities needed for his position.³³

The third angle of the triangle is the rationalisation factor. This factor enables a trust violator to prepare for defence for his crime. It is one of the motivators for a crime because at this point, the perpetrator still sees himself as a trusted person. He therefore must justify his action even before the commission of the crime. This is because the violator sees his action as a non-criminal act. He considers himself justified or non-accountable for such action.

This triangular fraud theory as propounded by Cressey seems to work for many occupational offenders but not in all cases because it has been tested for almost half a century and found by academics not to be fully tenable in fraud prevention. This is because there is a new breed of occupational offenders, coupled with the social change in the world which brings about lack of conscience to eradicate fraud³⁴.

Albrecht³⁵ evaluates relative forces of fraud in the mode of pressure, opportunity and personal integrity. He emphasises the personal integrity as opposed to rationalisation as proposed in Cressey's triangular theory of fraud. He concludes that one can easily know if a situation could result into fraud when pressure, opportunity and integrity are considered at the same time. Someone's commitment to ethical decision-making could be gauged by using his personal integrity. This is done by observing his personal decision and decision-making process.

Furthermore, Wolfe and Hermanson³⁶ transformed Cressey's triangular theory into what they consider as fraud Diamond, in which the developed opportunity theory that the person must not only see the opportunity to defraud at his disposal but must have taken the advantages and work through it several times to achieve its goal. This idea was supported by four motivational factors of frauds,³⁷ which are captured by the acronym MICE, which means Money, Ideology, Coercion and Ego. In explicating these four principles, an individual can justify stealing money by

³³ *ibid.*

³⁴ Georgios L. Vousinas, 'Advancing theory of fraud: the S.C.O.R.E. model', *Journal of Financial Crime*, Vol. 26 Issue: 1, 2019: p.373 <https://doi.org/10.1108/JFC-12-2017-0128>.

³⁵ Albrecht S. 'Deterring Fraud: The Internal Auditor's Perspective, Institute of Internal Auditors Research Foundation', Lake Mary Florida
<https://Journals.sagepub.com/doi/ans/10.1177/0149206318771177>> accessed 25 March 2019.

³⁶ Wolfe, D.T, Hermanson, D.R. 'The Fraud Diamond: Considering the Four Elements of Fraud' (*C.P.A Journal* 2004) Vol. 74(12): pp.38-42.

³⁷ Kranacher, M.J, Riley, R. and Wells, J.T. *Forensic Accounting and Fraud Examination* (Hoboken: John Wiley and Sons Publishers, 2010), p.65.

indulging in fraudulent activities to achieve his perceived goal, which is consistent with his belief (Ideology) while coercion happens when a person is forced to join in the fraudulent activity depending on his willingness. The unwilling coerced person usually tends to be a whistle blower. The Ego is the social motives that push people into fraud in order to maintain their status in the society.

4.2: Embezzlement (*Al-Ikhtilass*)

Embezzled money is referred to as *Al-Ikhtilass*³⁸ in Arabic language. It is referred to as *Mal-Al-Haram* (forbidden wealth) in Islamic Law because the money is not from a lawful source (*Halal*)³⁹. Some examples of these types of money could be traced to the attitudes of Nigerians to acquisition of wealth when the public officials are in the habit of embezzling funds and looting public treasury⁴⁰. This is common to both Muslims and non-Muslims alike. An Accountant General was arraigned in court for defrauding his state government of the sum of N1.56 billion⁴¹, while the external reserves are being depleted on a daily basis⁴².

Moreover, embezzlement is one of the ways in which people acquired wealth illegally. It is referred to as *Ghulool* which means a process of taking money from the public treasury by means of deceit. This is condemned in Islamic law⁴³ and the status of such money derived from that process is not legal for inheritance and could not be called a property or asset of the embezzler. Consequently, since heirs can

³⁸ *Al-Mawrid: A Modern Arabic-English Dictionary* p.56.

³⁹ *Qadoyah Fiqhiyah Ma'sirat Fil Mal Wal-Iqtisad* p.49.

⁴⁰ The privatisation of State-owned enterprises in Nigeria was a rip-off and a scheme to deprive Nigerians of their commonwealth. The programme lacked transparency in the process of divestiture of state –owned enterprises to private individuals and organization. The catalogue of improprieties in the scheme is contained in Bello, S.A. *Contentious Issues in Nigeria's Privatization Programme* (Ibadan: College Press, Lead City University, 2013), pp. 62-69.

⁴¹ Francis J. 'EFCC arraigns Taraba Accountant-General for 1.5bn fraud,' *New Telegraph* (Nigeria 10 July 2014)10 see also Adewole D. 'Constable Supplies Cult Group Guns, Ammunition,' *New Telegraph* (Nigeria 10 July 2014), p.10.

⁴² Aminu, A. 'Nigeria's External Reserves rise to \$38.018bn' *New Telegraph* (Nigeria 10 July 2014) 3, some of these funds have been traced to the former National Security Adviser to the former president Goodluck Ebele Jonathan who have been under trial for embezzling the sum of \$2.3bn.

⁴³ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.87. see *Qur'an Al-Imrān* (3):161.

only inherit what belongs to their deceased person, it is impossible to inherit embezzled money as decided by the court in the case of *Matti Tella & Lawal Maiyele v. Umaru Kwarago*.⁴⁴ Therefore, if the property or the money happened to be inherited by his heirs and relatives, the said money must be refunded to the original owners if known⁴⁵ and to the state treasury if the owner is not known.

Furthermore, illegally acquired assets is mainly through embezzlement of funds, proceeds of *Haram* assets such as brewery, piggery, game of chance such as BET Niger, *Baba-Ijebu*, lottery, bank interest (usury) and the proceeds of crime such as robbery, rituals, and ill-gotten wealth from embezzlement, usurpation of property, siphoning of projects fund, kick-back and so on. All these are fueled by 'selfishness, greed and ostentatious lifestyle, pressure from the larger society, fear of poverty, lack of adequate social welfare system, extreme ethnicity and UN-patriotism,...'⁴⁶

4.3: Ill-Gotten Wealth (*Al-Mal -Ul-Haram*)

Ill-gotten wealth is described as property acquired through unfair means.⁴⁷ This is unclean wealth procured through illegal means. The legal effects of the ill-gotten wealth are that it is Haram and its illegality is confirmed by a Hadith where the Prophet (SAW) gave the example of a person who engaged in acquisition of ill-gotten wealth to a man who engaged in a tedious long journey and was stranded on his way and started shouting oh Lord! O my Preserver, praying to God to ease his way while his means of sustenance were from improper or impure sources. How can his prayers and supplications be answered in such a case? Definitely, Allah is going to turn down his request.⁴⁸ That is exactly the fate of somebody who acquires ill-gotten wealth. His prayers and supplications will not be answered, even if he uses that wealth in the way of Allah; it would be turned down upon him.⁴⁹

In addition, another example of ill-gotten wealth could be linked to one using his debt to liquidate the others,⁵⁰ It is also forbidden for one to sell a product or goods at a price to be paid later and thereby subsequently buys it back from the owner at a lower price or to pay at the earlier date fixed for the payment, either by cash or higher price later than what is already fixed by the parties in the agreement. All

⁴⁴[2006] 3 SLR (pt. III) 203.

⁴⁵ Samah Al-Agha 'Money Laundering from Islamic Perspective' (*Journal of Money Laundering Control*, Emerald Group Publication 2007) Vol. 10 N0 4.

⁴⁶ Muhammad I.T. 'Fight Against Corruption in Nigeria: Sharia Point of View', *Anatomy of Corruption in Nigeria, Issues, Challenges & Solutions* (Biographer Nig Ltd. 2016) 149.

⁴⁷ *Shari'ah: The Islamic Law*, p.373.

⁴⁸ An-Nawawi Collection Fourty Hadith No.10

⁴⁹ Saḥīḥ Bukhāri, Kitabu Al-Hawaala Hadith No.495

⁵⁰ *ibid.* See also Revival of Religion's Sciences *Ihya' Ulum Ad-Din*, p.111.

these transactions are regarded in Islamic Law as ill-gotten wealth.⁵¹ It also extends to undisclosed commodities or under the cover of darkness in which the quality of such goods could not be ascertained at the time of transaction. The example of this is “no testing electronics”⁵² such as television and radio sets and other home appliances which are common among Nigerians. It is also unlawful and forms part of ill-gotten wealth for someone to outbid for a bid which his fellow Muslim brothers had bidden for at the beginning of the offer or after the acceptance of such offer.

Similarly, selling of foetus in animals or in the womb or semen of animals in order to produce a young animal alike or its off-spring are all forbidden and any money received from such transactions amount to ill-gotten wealth.⁵³ The same rule applies to the selling of fish in the river or pools or any domestic animal at large where it has not been captured as well as exchange of ripe dates with dried ones. The wisdom behind this is that there cannot be equality in the exchange which, consequently allows cheating of one party by the other contracting party.⁵⁴

Thus, for property to be legal for inheritance, it should be free from cheating and other breaches of conditions which are fundamental to the contract and important to the parties in transactions⁵⁵. The most important condition is that the transaction

⁵¹ This is in relation to a Hadith of the Prophet where he forbids Muslim from benefiting from what is banned in Islam. When he was reported to have said that ‘anyone who keeps the grapes from harvesting day until he sold it to the people who then make wine, indeed, he has put himself in a conscious hell’ which means that Muslims are forbidden from receiving any prohibited assets as inheritance while buying, selling and making use of such things are also forbidden. See also Salong B.J, ‘The Implication of Religion Conversion toward Muslim Inheritance under Malaysian Law’ *Information Journal of Liberal Art and Social Science*, 2014, <<http://www.ijlass.org>> accessed 15 March 2019.

⁵² “No testing” is a second hands electronic popularly called ‘Tokunbo’ which is imported from the United State America and Europe, it is sold to Nigerians without testing, some may be lucky enough to secure a good bargain for their money but majority of it turned out to be at loss. (Damaged goods). Though, electronics per se are not haram property but the act of selling same made it fell within the forbidden because of its involvement with uncertainty (*Gharrar*).

⁵³ Salong B. J, The Implication of Religion Conversion toward Muslim Inheritance under Malaysian Law p. 126.

⁵⁴*ibid.*

⁵⁵ Revival of Religion’s Sciences *Ihya’ Ulum Ad-Din*, p.109.

should be lawful according to Islamic Law. The transaction items should not be dogs,⁵⁶ pigs, ashes, dung, ivory and dead animals. Ill-gotten wealth is equal to poison in Islamic law, which kills its owner.⁵⁷ Some other forbidden things for inheritance are idols, breweries, wine and masks. Hanafi School of Law jurists are of the opinion that a man can transact or earn his livelihood from impure things if such things are not meant to be consumed. Example of this impurity is manure created from animals which is being used on the farm.⁵⁸ Some other aspects of impure items which are not good for consumption but could be used for other purposes are tanned skins of a dead animal such as camel cows, sheep, etc.⁵⁹ All these items may be sources of income to a deceased Muslim and it is legally inheritable by his heirs. The researcher adopts this opinion of Hanafi school of law as being liberal on condition that the sales of impurity as manure does not constitute harm to either the seller or to the society.

Also, Muslims are permitted to keep dogs for the purposes of hunting but with the condition that sales of it is forbidden if the seller adopts the sale as profession and any proceed thereof is an ill-gotten wealth. Likewise, Muslims can own musical instruments or recording studios. Proceeds of sorcery are other sources of ill-gotten wealth. Sorcery is a major sin in Islam and the penalty is death sentence because sorcery is likened to disbelief.⁶⁰

4.4: Usurped Property (*Al-Māl Al-Maghsūb*)

The meaning of usurped property in Arabic is *Al-mālu Al-Maghsūb*, it is otherwise known as a hijacked property. Scholars are of the view that the reason for hijacking or usurping property stems from lack of trust (*Al-Amanah*). This evil is attested in all kinds of activities of some people in Nigeria today. It takes many forms: it may exist in the petro-chemical industry where the manager adjusts the litre of premium spirit known as petrol in order to extort the innocent buyer for his own advantage. This practice is done in other to usurp money from people illegally. This menace goes further to some other institutions, companies, ministries, department and agencies in Nigeria. Some institution of government are allegedly corrupt to the

⁵⁶ *ibid.* It is also reported in Hadith (*Sahih Bukhari*) unanimously narrated on the authority of Ibn. Umar in which the prophet said ‘He who keeps a dog, unless is used for hunting or guarding cattle and sheep as much reward as two daily Qirats will be reduced from his deeds’. *Sahih Bukhari Kitab Al-Buyu’ Hadith 1048.*

⁵⁷ Revival of Religion’s Sciences *Ihya’ Ulum Ad-Din*, p.110.

⁵⁸ Keffi S.U.D, *Some Aspect of Islamic Law of Succession* (Kano: Rukhsa Publications, 1990), p.6.

⁵⁹ *ibid.*

⁶⁰ Dhahabi I.S, *Major Sins*, <http://www.islambasics.com> accessed on 02 December 2018.

extent that kickbacks in the award of contracts to companies is becoming the norm.⁶¹

One of the rules guiding the Islamic Law of transaction is that the subject matter must be a permissible object which entails that the object should be valuable, useful and beneficial for Muslims and can also be capable of being possessed (*Mal-Mamluk*).⁶² This property extends to intellectual property,⁶³ which was first developed in history and which dated back to ancient Greece, which set up a legal system to protect individual intellectual work, such as expression of interest, ideas, inventions etc.⁶⁴ This idea of intellectual property is not alien to Islam. Property (*Mal*) is defined to be anything that could be owned by a man,⁶⁵ it is also defined as anything that is loved by the mind and stored for its usefulness whenever it is required.⁶⁶ Imam As-Shatibi of the Maliki school of law defines property as something which is exclusively owned by a person and which its unauthorised use by a third party is forbidden except with the permission or leave of the owner.⁶⁷ To Ibn Al-Arabi, property is something which could be enjoyed by its owner legally, conventionally and customarily without any disturbance from any quarters.⁶⁸ Similarly, Abdulwahab *Al-Baghdadiy* equates property with anything that is considered as a means of exchange for consideration with legal effects.⁶⁹

⁶¹ Mashood A, James O, 'Fresh Trouble for Babachir Lawal' The Sun (Nigeria 3 November 2017) <http://www.sunnewsonline.com> accessed 21 July 2019.

⁶² Dasuki A.W. *Islamic Financial System: Principles and Operations* (International Shari'ah Research Academy for Islamic Finance ISRA Malaysia 2011) 197.

⁶³ Muhammad A.Y, Shettimah M, Hassan A.S, 'Basis of Intellectual Property Protection in Islam and its Legal Effects' (*International Journal of Humanities and Social Science*, 2016) Vol.6, p.1.

⁶⁴ Moore, Adam and Himmeken (2018) 'Intellectual Property', *The Stanford Encyclopedia of Philosophy* <https://plato.stanford.edu/archives/win2018/entries/intellectual-property> accessed 16 June 2019.

⁶⁵ Kuwaiti Ministry of Endowment and Religious Affairs 'Al-Mausuah Al-Fiqhiyyah' (*Dar Al-Safwah* 1997) p.31.

⁶⁶ Ibn. Abidin M.A, (N.D) *Hashiyat Radd Al-Mukhtar 'Ala Al-Durr Al-Mukhtar, Bulaq*, p.3.

⁶⁷ As-Shatibi I.M.M 'Al-Muwafaqat fil Usul Al-Shari'ah' (Dar Ibn-Affan 1997) Vol.2, p.10.

⁶⁸ Ibn Al-Arabi A.M.A' *Ahkam Al-Qur'an* (Dar-Al-Fikr Beirut N.D) 607.

⁶⁹ Al-baghdady A.A 'Al-Ishraf Ala Nikat Masail Al-Khilaf' (Dar Ibn Hazm 1999) vol. 2 p.271.

In Shafii school of Law, the idea of property (*Mal*) is anything that is usable to its owner and is enjoyed by him and which damages entails liability no matter how minute the value and also includes anything that could not be thrown away.⁷⁰

In Hambali School, property (*Mal*) is defined as something which is legal to acquire and enjoyed. Looking at various definitions above from various schools of Islamic Law, it is important to note that there are two common factors in the definitions which are legality of enjoyment and value. However, all the schools of Islamic Law with exception of Hanafi school agree unanimously that property in Islamic law is classified into two categories, Tangible (*Ayn*) or Usufructs (*Munf'a*).⁷¹ The tangibles are the property which could be touched or having physical appearance such as house, animals and land. These physical properties can also be categorised into equitable (*Mithli*) and valuables (*Qimiy*). In this case, an equitable property is the property which has the same equal in exchange and could be measured or counted as in gold, silver, and money. In the case of usurpation of any of the property, the same or its equals should be returned to the owner, while in the case of the valuables which have no equals in the market, such as efforts in skills or initiatives by a man,⁷² if such property is usurped by any person, restoration of the value of such property is justified due to necessity and difficulties in getting its similitude.⁷³ However, Hanafi school of law differs in the classification of property. It classified property into a legally usable property (*Mal-Mutaqawwam*) and legally unusable property (*Mal-Ghayr Mutaqawwam*).⁷⁴ In this categorisation, if the property which is legally usable is usurped, the usurper is liable while if the legally unusable property is usurped, the usurper has no liability. This is because Hanafi schools of law did no correlation between pecuniary nature of property and usability of such

⁷⁰ Az-Zarkashi B.M.B 'Al-Manthur Fi Al-Qawaid Al-Fiqhiyyah' (Dar Al-Kutub, Bairut 2001) 222.

⁷¹ Az-Zarqa, A.M 'Al-Madkhal Ila Nazariyyat al-Iltizam al-Aamah, (Dar- al- Qalam Damascus 1999) 215-220.

⁷² These skills and initiatives could include sewing of cloths in fashion industries, inventories by men and also includes livestock which its equals cannot be achieved.

⁷³ 'Qadayah 'Fiqhiyah Mua'siratul Fil Mal Wal-Iqtisod' p. 222.

⁷⁴ The legally usable property are such which are legally usable in normal human affairs while the legally unusable in Islamic law is as such as pork, alcohol and other forbidden items which are not legally usable for Muslims but non-Muslims can use it because it is not prohibited in their own religion, therefore it is legal for them. See generally Zubair A.Q, 'Al-Qawa'id Al-Asasiyatul Al-Shar'iyat Al-Muta'alaqat Bimusolih l-Ardy' Islamic Legal Doctrine and Interests in Land' (Al-Madinah Heritage Publications Lagos 1996), 1-7.

property.⁷⁵ The Maliki school of law agrees with Hanafi schools that a person that damaged or usurped a non-Muslim's (*Dhimi*) property is liable in Islamic law but he refuses to follow the effects of classification of property into usable property (*Mutaqawwam*) and unusable property (*Ghayr Mutaqawwam*).⁷⁶

Furthermore, it is trite in Islamic Law that a property acquired by means of fraud, usurpation, force or by the authority in control, no matter how long the usurper possessed the land or the property in question, he cannot have a legal right to the said property and cannot therefore be a subject of inheritance in whatever form. Therefore, In the case of *Gumel vs. Natambu*⁷⁷, The Court of Appeal allowing the appeal ordered the re-trial of the case held inter alia that;

Where the person in long possession acquired the property as a result of fraud, usurpation, force, or through the advantage of authority in his control, or because he has support of person or persons in authority, such a long possession shall not help him, no matter how long it may be.⁷⁸

This principle applies to a person who bought a property which was taken dishonestly from someone else.⁷⁹

Usurpation of property is also defined as acquisition by means of force of other person's property without legal or equitable rights to take them.⁸⁰ It is stated in the Qur'an that one should not consume another person's wealth unjustly.⁸¹ Forceful usurpation of property that belongs to another person is forbidden. Such property include blood, honour, real property, movable and immovable.⁸² The property so usurped are not inheritable. It is unanimously agreed among the scholars of Islamic Law that the usurped property should be returned to the owner, and if it is damaged, the equivalent value of the property should be returned.⁸³ It is further agreed that the

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ [2014] 2SQLR (PT.III)357.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ Al-Fawzan S.A. *Summary of Islamic Jurisprudence Al-Mulakhas Al-Fiqhi* (Riyadh: Al-Maiman Publishing House 2005), p.232.

⁸¹ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.49. see *Qur'an Al-Baqarah* (2): 188.

⁸² Imam Abu al-Husayn Muslim bin al-Hujjaj Sahih Muslim (d.261 H) *Hafiz Abu Tahir Zubair Ali Za'I*, 1st ed. (Darussalam Global Leader on Islamic Books Riyadh 2007), p.32.

⁸³ Hamad N, *Qodoyah Fiqhiyah Muasiratufil Mal wallqtsodiyah* p.49.

profit of the usurped property should be returned because the profit is connected with the property in question.⁸⁴

Similarly, if the usurped property is a piece or parcel of land, on which house had been erected or upon which the fruits or trees had been planted, the rules guiding the status is that the building should be removed while the fruits and vegetation thereon should be removed and the bare land be returned to the original owner and damages paid for depriving him of the use of the land.⁸⁵ The damages should be in respect of the period of the unauthorised use of the land, the full value of the land as at the time of usurpation should be paid, even if the value of the land has reduced. If the usurped object is mixed with the original which could be easily identified, such as wheat and barley or rice and beans, the usurped object had to be separated and returned to the owner. But in a situation where the usurped objects are not identifiable such as rice with rice and beans with beans, it has to be paid back in measure and weight.⁸⁶ If the usurped property is inferior and is mixed with superior that made it undistinguishable, it should be sold and the equivalent values should be given to the rightful owner. However, the usurper should compensate the owner. If the value decreased after the mixture; the usurper should compensate the owner for the decrease in value.⁸⁷

Similarly, in a situation where the owner of the usurped property is not known, it should be returned to the state or given out for charity purpose and the rightful owner would have the reward from the Almighty Allah while the usurper is free from any further sanction of the liability of usurpation. It is noteworthy that usurpation of property is not restricted to taking it by force, it also includes seizing it, or technically taking another's property through the means of oath and unjust litigation.⁸⁸ However, amongst the objects whose damages could not result to compensation for the owners are musical instruments, crosses, wine containers, books on misguidance, superstition, dissoluteness and profligacy.⁸⁹ Whoever finds a

⁸⁴ Jasni bin Sulong, 'The implication of Religion Conversion towards Muslim Inheritance under Malaysian Law', (*International Journal of Liberal Arts and Social Science*, 2014) Vol. 2 (9), p.123.

⁸⁵ *A Summary of Islamic Jurisprudence Al-Mulakhas Fiqhi*, p.165.

⁸⁶ *ibid.* p.167.

⁸⁷ *ibid.*

⁸⁸ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.49. see *Qur'an Al-Baqarah* (2):188.

⁸⁹ Summary of Islamic Jurisprudence Al-Mulakhas Fiqhi p.175.

lost property and convert same to his own personal use without justification is regarded as an usurper according to Islamic Law.⁹⁰

4.5: Licensing of Gambling and Betting (*Al-Azlām*)

It is obvious that Islamic law forbids gambling in all its ramifications. There are no precise definitions of gambling in either the holy Qur'an or in the prophetic traditions (Hadith) or (Sunnah).⁹¹ However, scholars of all generations have made frantic efforts at formulating what is meant by "gambling" by observing what is obtainable in their environment based on their understanding of various verses of the Qur'an and Hadith (Sunnah) as influenced by social and cultural realities of their time.⁹² This theory has been a task for scholars of both the past and the contemporary societies to strive hard and come with genuine definition of what "gambling" is in relation to contemporary business world and contemporary business activities that could be said to involve elements of gambling.

In Nigeria, the government has licensed gambling and betting house and thereby encouraging people to go and involve in the game. In fact, there are special amount budgeted for the purpose of betting which involved Public Office holders and others.

Obviously, there are three verses of Qur'an⁹³ which prohibit gambling. In all these verses, the word *Maysir*, meaning gambling, was used and there was no mention of *Qimar* which literally means betting. But Yusuf Ali,⁹⁴ commenting on the wisdom behind the prohibition of gambling in Islamic law, observed that gambling literally means a means of getting something too easily, getting a profit without working for it; hence, gambling is prohibited by Islamic Law. The form of gambling that is most familiar to the Arabs in the period of ignorance (*Jahiliyah*) was gambling by marked arrows. The arrows were marked and served the same purpose as the modern-day lottery ticket. Something like carcass of a slaughtered animal was divided into unequal parts. The marked arrows were drawn from a bag. Some were

⁹⁰ It is reported that anyone who found a lost item must make public announcement for a year and make a description of the containers and the contents of such items and should make sure that he is trustworthy enough to pick the items without misappropriating it.

⁹¹Atikullah A, 'Islamic Law on Gambling and some Modern Business Practices', *International Journal of Academic Research in Business and Social Sciences* 2017 vol. 7, N0 11, p.738.

⁹²*ibid.*

⁹³Interpretation of the Meaning of the Noble Qur'an in the English Language, p.57 and 170. see *Qur'an Al-Baqarah* (2):219, *Al-Maidah* (5):90-91.

⁹⁴ Abdullahi Y.A, *The Meanings of the Holy Qur'an* (Kutub KhanaIshayat-ul-Islam 1994), p.88.

blank and those who drew them got nothing. Others indicated prizes on the arrow which were big or small. Whether you got a big prize or a small prize, or nothing depended on sheer luck. Objection to winning could be based on fraudulent practice. The principle on which the objection is based is that even if there is no fraud, you gain what you have not earned, or lose on a mere chance. Dice and wagering are held to be within the definition of gambling. In addition to this, it is observed by Al-Razi⁹⁵ that the consequence of gambling and betting is hostility amongst the participants. Gambling could also affect the economic growth of a country, it hinders one from remembering his God and causes loss of property, which consequently snowball into poverty that causes destruction of social-economic fabric of the society. In Nigeria, the game known as “9ja Bet” and other forms of gambling have eaten deep into the fabric of Nigerian youths and have caused chaos among the Nigerian youths and indeed in the Nigerian economy due to the fact that about 70% of the Nigerian population are youths.⁹⁶ “9ja Bet” contributes to the inability of youths in Nigeria to be productive and this has resulted in abject poverty among Nigerians. Notably, all government efforts to diversify the Nigerian economy from dependence on mono cultural economy dominated by crude-oil to agriculture has been frustrated by the youths who prefer making easy money from gambling to farming or any other business.⁹⁷ The wisdom behind the prohibition of lottery and all kinds of games of chance in Islam stems from many social vices such as addiction and loss of resources that gambling causes.⁹⁸

Gambling is also referred to as ‘*Al-qimar*’ in Arabic language. Technically, it is defined ‘as any game that allows the winner to take the bet items from the one(s) who lost’⁹⁹. Some scholars equate it with an act of taking risk¹⁰⁰. Therefore, considering the various definitions of gambling, it could be concluded that the main reason for gambling is the prize to be won or gained from the losers who participated or bet in the game.

⁹⁵ Ar-Rāziy F.M, *Al-Tafsir al-Kabir aw Mafatih al-Ghaib* (Dar-al-fikr 1981) p.11.

⁹⁶ Buhari M. (2019) ‘Town Hall Meeting at State House Abuja Nigerian Television Authority NTA programme 1st February, 2019.

⁹⁷ *ibid.*

⁹⁸ Ahmed H, ‘Gambling-Free lottery a new Islamic lending ticket’, (*Journal of Islamic accounting and Business Research* 2014), p.4.

⁹⁹ Qal’aji M.R, Hamid S.Q, *Mujam Lughah al-Fuqaha* (Beirut: Dar-al-Nafais, 1988), 3rd ed. p.369.

¹⁰⁰ Ashraf Bin. Muh’dHashim ‘The Concept of Competition and Award in Islam’

<http://mr.maybaml2u.com.my/iwovresources/Islamic-my/> accessed on 04 February 2019.

However, there are no distinction in betting whether the amount is large or small. The general rule is that anything that involves gaining extra wealth without working or losing property by chance is called gambling and it is prohibited in Islam.¹⁰¹ The rules guiding lawful competitions that grant awards in Islamic law are subject to certain conditions which include:

- a. The game should be according to the principles of Islamic Law guiding such game.
- b. It should be a game that would be of benefit for the Muslims and strengthen the relationship between members of the community.
- c. It should not be a game that could make Muslims lag in their religious obligations.
- d. It should not be a game that has no specific positive contribution to the affairs of the Muslim state.¹⁰²

4.6: Interest (*Ar-Ribā*)

Ribā literally means ‘increase, addition, expansion or growth’ in money and wealth.¹⁰³ However, not all increase, addition or growth in money or wealth amount to *Ribā* (Interest). It depends on how the growth is achieved.¹⁰⁴ Interest (*Ribā*) in Islamic finance is defined as an interest paid to the depositors and the interest taken from the entrepreneur for the use of the fund loaned to him.¹⁰⁵ Interest is further defined as ‘an amount or fee payable for loaning money to the borrower. Interest is usually expressed in a percentage’ of the amount loaned.¹⁰⁶ The prohibition of interest (*Ribā*) has been in focus before the advent of Islam. Pluto¹⁰⁷ and

¹⁰¹ Interpretation of the Meaning of the Noble Qur’an in the English Language, p.170.

Qur’an Al-Maidah (5):90-91.

¹⁰² Ashraf B.M.H, ‘The Concept of Competition and Awards in Islam’, p.18.

<https://www.maybank2u.com.my/iwov-resources/islamic-my/document/my/en/islamic/scoe/knowledge-centre/research-paper/Competition_from_Islamic_View.pdf> accessed 23 March 2019.

¹⁰³ Sherin K, & Shanthly R, ‘Shariah and Law in Relation to Islamic Banking and Finance’, *Banking & Finance law Review*, 2014, p.29.

¹⁰⁴ *ibid.*

¹⁰⁵ Muhammad T.U, ‘The Text of the Historic Judgement on Interest supreme court of Pakistan <<http://tyo.ca/islambank.community/index.php>> accessed 13 February 2019.

¹⁰⁶ *ibid.*

¹⁰⁷ Pluto was one of the Greek great philosopher and he commented on interest thus: In marrying and giving in marriage, no one shall give or receive any dowry at all; and no one shall deposit money with another whom he does not trust as a friend nor shall be lend money

Aristotle,¹⁰⁸ the Greek great philosophers, in their code of laws prohibited anything amounting to interest in any form, and interest is totally forbidden in Islamic Law. The Quran and Sunnah prohibit *Ribah* and leave no room for any contrary opinion. In contrast, certain scholars are of the opinion that usury (*Ribā*) is not the same as interest. But the majority of Islamic scholars condemn this position and conclude that interest as well as usury are all prohibited in Islam. They state that;

Any increase or interest on a debt which has matured, in return for an extension of the maturity date, in case the borrower is unable to pay an increase (on interest) on the loan at the inception of its agreement are both forms of usury which is prohibited under *Shariah*.¹⁰⁹

There are several other illegal ways of generating wealth in the business world, but interest (*Ribā*) is the most strongly condemned and denounced by the Holy Quran. The Qur'an states that:

Those who devour usury will not stand except as stands one whom the Evil one by his touch hath driven to madness. That is because they say: "Trade is like usury", but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire; they will abide therein (forever).¹¹⁰

upon interest; and the borrower should be under no obligation to repay either capital or interest.

¹⁰⁸ Aristotle also on interest observed that there are two sorts of wealth-getting: one is a part of household management, the other is retail trade; the former necessary and honourable, while that which consists in exchange is justly censured, for it is unnatural and a mode by which men gain from one another. The most hated sort, and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange but no to increase at interest. And this term interest, which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent, wherefore of a mode of getting wealth, this is most unnatural.

¹⁰⁹ Organization of Islamic Conference 'Resolution and Recommendation of the Council of the Islamic Fiqh Academy' <<http://www.islambankbd.com/page/oicres.htm>> accessed 05 February 2019.

¹¹⁰ Interpretation of the Meaning of the Noble Qur'an in the English Language, p.72. *Al-Baqarah* (2): 275 see also Qutb. S, In the *Shade of the Quranic Studies in Islamic Economics* (Leicester: The Islamic Foundation, 1999), p.355.

It is observed in the other vein that the wisdom behind prohibition of interest is that a person getting interest on his money without changing anything or making any effort is nothing else but an act of exploitation.¹¹¹ Therefore, consuming interest (*Ribā*) is one of the greatest sins in Islamic Law. It is prohibited to the extent that Allah warns the perpetrator to prepare for war against Allah and His Prophet.¹¹² This injunction of the Qur'an explains the abhorrence of this practice in the sight of Allah. It is obvious that the consequences of receiving or giving interest on loan could be bankruptcy, recession, economic stagnation and meltdown, inability to repay the loans, high rate of unemployment, collapse of industries and institutions.¹¹³ Interest taking has its devastating effects on many countries of the world today where countries are struggling to pay off never-ending interest on loans and has turned many societies including Nigeria into a poverty-ridden society where substantial part of the nation's wealth is concentrated on servicing interest on national debt.¹¹⁴ This of course signifies the war threatened by Allah. The destruction of paying or receiving interest could do to wealth acquired from interest (*Ribā*) is to destroy the blessing in the wealth no matter how great the wealth.¹¹⁵ Consequently, wealth whose sources were from interest (*Ribā*) earned could not be a subject of inheritance in Islamic Law.

Therefore, it is common among the Public Office holder to deposit some officer's salary in his care into a fixed deposit account in order to yield interest at the detriment of the owner of the money. This act is purely *ribā* and its forbidden and prohibited in Islamic Law.

Moreover, vast majority among the contemporary *Shari'ah* scholars agreed on the facts that modern commercial interest on loan and debt and other forms of illegalities and illegally acquired property fall under the purview of *Riba* (interest) which is under the prohibition of the Qur'an and Sunnah.¹¹⁶ This transaction of lending by interest is forbidden in Islamic law because lending and loaning is not itself forbidden but the idea of automatic increase in the money or goods is unlawful (*haram*). However, if someone lends a debased coin to another person and expects

¹¹¹ Hussain S. 'Humanomics: The International Journal of Systems and Ethics' *Islamic Law Journal Review of African Political Economy* 2000, pp.241-253.

¹¹² Interpretation of the Meaning of the Noble Qur'an in the English Language, p. 73. *Al-Baqarah* (2):278-279.

¹¹³ AlMunajjid M.S. *Muharramat Forbidden Matters some people take Lightly* 'Al-Muharramat Istihanabiha An-Nas' (Riyadh: International Islamic Publishing House, 2004), p.69.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ Muhammad A, *Understanding Islamic Finance*, (John Wiley & sons Ltd, 2007),185.

an un-debased coin in return, that amounts to illegality and therefore cannot be a subject of inheritance. The status of this kind of transaction is the same as making a contract of sale involving another loan on contract as a condition for the contract of another and to bind the other contract; this is not permitted and also it is illegal in Islamic law of inheritance.¹¹⁷

Moreover, there are many types of illegal property in Islam, these include money realised from money laundering, theft, robbery (*Hirabah*) embezzlement (*Al-Ikhtilāss*), black market (*Ihtikar*), bribery (*Rishwah*), interest (*Ribah*) prostitution (*Zina*) and gambling (*Qimar*) or (*Maysir*).

5.0: Conclusion

This paper has presented the concept and modes of acquisition of non-inheritable property in Islamic law. It explored the definitions of illegally acquired assets which are forbidden (*Haram*) in Islamic Law. Embezzled money, ill-gotten wealth, usurped property and other forbidden sources of wealth which are not inheritable. It further discussed whether or not there are stages at which forbidden (*Haram*) property could change, just because its name changed or whether *Haram* could be *Hallal* if it passes through some processes which are capable of changing its characteristics such as its colour, taste and nature, as agreed to by certain Islamic schools of law. Islamic Law classifies the status of proceeds from forbidden (*Haram*) property as non-inheritable. Such forbidden (*Haram*) property include proceeds from interest on loan (*Ribah*) and lottery such as ‘9ja Bets’ in Nigeria. They are regarded as proceeds of *Haram* and are non-inheritable under Islamic Law.

¹¹⁷ *ibid.*