

When *Halal* and *Haram* Meet the *Haram* Prevails?: An Analysis of the Maxim and Its Application in Contemporary Issues

¹Muhammad Naim Omar, ²Mahamad Arifin, ¹Mohammad DeenMohdNapiah,
¹Mohamad Asmadi Abdullah

¹Assistant Professors, Ahmad Ibrahim Kulliyah of Laws, International Islamic University
Malaysia, Malaysia.

²Assoc. Professor, Ahmad Ibrahim Kulliyah of Laws, International Islamic University
Malaysia, Malaysia.

Abstract: The question of *Halal* and *Haram* is most pertinent element to determine the legitimacy of an act. All act of man must be in accordance with what has been prescribed by the Lawgiver. Men are responsible for what they do in this world. Therefore all Muslims are obliged to ensure that their action must be in line with the teaching of the *Shari'ah*. With reference to this, in cases where the ruling is clear about the lawful and unlawful of certain items and practices the problem does not arise. However, issues in which there is a mixture of lawful and unlawful elements, careful consideration must be taken before issuing any legal verdict. Among the guidelines followed is the maxim "When *Halal* and *Haram* meet the *Haram* prevails". The article intends to investigate the extent to which this maxim is applicable.

Key words: *Halal*, *Haram*, Legal maxim, *Fatwa*, *Maqasid al-Shari'ah*.

INTRODUCTION

Halal and *haram* are crucial to the Muslims. They are relevant to them today as they were during the time of the Prophet (s.a.w). Their concern about *halal* and *haram* is very much related to their life in this world as well as in the Hereafter. Prophet Muhammad (s.a.w.) has reminded the Muslims that any flesh growing out of *haram*, the best place for them is hell. *Halal* and *haram* also affect their life in this world, when they could be a determinant factor of their behaviors.

Halal and *haram* are not merely concerning foods but also anything that related to their income and their other acts. Therefore, apart from foods the Qur'an mentions about *halal* on matters pertaining to business transactions and relationship among peoples. On the former the Qur'an says, "Allah has permitted sales and prohibited usury," and on the latter the Qur'an says, "It is prohibited to you (to marry) your mothers, your daughters, your sisters ..." and "Do not kill a soul that is deemed sacred by Allah." "They ask you (O Muhammad) what is made lawful for them. Say: (all) good things are made lawful for you. And those beasts and birds of prey which you have trained as hounds are trained, you teach them that which Allah taught you; so eat of that which they catch for you and mention Allah's name upon it, and observe your duty to Allah. Lo! Allah is swift to take account" (5:4).

The Prophet(s.a.w.) declares that *halal* and *haram* are clearly identified by the Qur'an and Sunnah. Narrated by An-Nu'man bin Bashir: The Prophet said, "Both *halal* and *haram* things are obvious, and in between them are (suspicious) doubtful matters. So who-ever forsakes those doubtful things lest he may commit a sin, will definitely avoid what is clearly *haram*; and who-ever indulges in these (suspicious) doubtful things bravely, is likely to commit what is clearly *haram*. Sins are Allah's *Hima* (i.e. private pasture) and whoever pastures (his sheep) near it, is likely to get in it at any moment." (al-Bukhari,1998).

Definition:

What is *halal* and *haram* in Islam? *Halal* in Arabic is lawful. In Islamic usage, it refers to aspects of life that are religiously acceptable or lawful. It is especially used to refer to meat that has been slaughtered and prepared in accordance with Islamic law. *Halal* may be defined as an act, object or conduct over which the individual has freedom of choice and its exercise does not carry either a reward or a punishment.

The jurists are in agreement that *halal* things are more compared to what are *haram*. The general maxim says that "the basic and original ruling of all things is permissibility or *halal*." This is because to enumerate the lawful things will not be an easy task.

Haram means anything that is unlawful or unallowable, forbidden, interdicted, illegal or banned and they are regarded as *najis* (unclean) in Islamic thinking. *Haram* is always associated with what is bad and harmful such as behavior, speech, dress, conduct, manner and Islamic dietary law. *Haram* is a widely-used synopsis to define all that is "forbidden" or "illicit" by God. This can be an act of sin or evil or consumption or benefit from

Corresponding Author: Muhammad Naim Omar, Assistant Professors, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, Malaysia.
E-mail: mhdnaim@iium.edu.my

flesh or otherwise of certain animals, or those animals that are not forbidden deemed not to have been Islamic slaughtered in accordance to God's prescribed teaching. *Haram* has also been described as all that which the Lawgiver has prohibited in definitive terms, and its perpetrator is liable to a punishment in this world or in the Hereafter. *Haram* is thus an act, or conduct that is forbidden by evidence in the Qur'an or the *Sunnah*.

The Qur'an provides the primary proof in respect of *haram*, as the text itself declares, "He (Allah) has explained to you in detail what is forbidden to you." (6: 119) Therefore, we find in the Qur'an, (5:3) ten items which, are prohibited as: "Forbidden to you (for food) are: *Al-Maytatah*(the dead animals - cattle-beast not slaughtered), blood, the flesh of swine, and the meat of that which has been slaughtered as a sacrifice for others than Allah, or has been slaughtered for idols, etc., or on which Allah's name has not been mentioned while slaughtering, and that which has been killed by strangling, or by a violent blow, or by a headlong fall, or by the goring of horns - and that which has been (partly) eaten by a wild animal - unless you are able to slaughter it (before its death) and that which is sacrificed (slaughtered) on *nusub*(stone altars). (Forbidden) also is to use arrows seeking luck or decision, (all) that is *Fisq*(disobedience of Allah and sin). This day, those who disbelieved have given up all hope of your religion, so fear them not, but fear Me. This day, I have perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion. But as for him who is forced by severe hunger, with no inclination to sin (such can eat these above-mentioned meats), then surely, Allah is Oft-Forgiving, Most Merciful."

When *halal* and *haram* items are clearly prescribed by the Qur'an and the *Sunnah*, the Muslims are bound to adhere to it. The Muslims have no option on such matters except when the Qur'an and *Sunnah* provide exceptions in certain unpredictable circumstances, such as when a person facing hardship that they cannot bear.

The problem arises when the issue in question is in grey areas known as *al-shubuhah* or doubtful matter. Such a matter calls for fresh inquiry and *ijtihad* to determine its status from the Islamic perspective. This is especially in relation to foods as well as transactions, when technological advancement has introduced a lot of products, which are not in their pristine origins, and are not in the clear lists of the Qur'an or the *Sunnah*.

The jurists have identified the methodology of determining their status in the form of legal maxims, which are based on their overall readings of the sources of the *Shari'ah*. One of these maxims is "*idhaijtama'a al-halal wa al-haram ghuliba al-haram*." (when *halal* and *haram* meet the *haram* prevails) Apart from the employment of the maxim, the jurists have summarized that the underlying grounds of *haram* are; harmful, intoxication, impurity and wrongful acquisition of property.

When Halal and Haram meet the Haram Prevails:

In deducing a legal rule the above maxim is often quoted by jurists. It is not the intention of this article to argue in favor or against counting legal maxims in general and this maxim in particular as a source of Islamic law. Rather the maxim can act as a guiding principle in the absence of sources of law be they the *Quran*, *Hadith*, *Ijma'* as well as *Qiyas*.

What are Legal Maxims?

At the outset before going further on the concept of the above maxim it would be better to know what legal maxim is all about. This is to avoid misunderstanding between this branch of knowledge and other related sciences such as *usul al-fiqh*. Legal maxims are theoretical abstraction in the form of usually of short epithetic statement that are expressive, often in a few words of the goal and objective of the *Shari'ah* (Kamali,2006). A maxim is defined as a general principle applicable to most of its particulars in order to identify their legal rules arising there from (Burnu,1997). For instance the maxim " matters are judged by intention" is applicable to all branches of *fiqh* be they, *ibadat*, *muamalat*, *jinayat* and so on so forth. However, there are some instances where this maxim cannot be applied as in the case of a person killing his father in order to inherit his wealth. Here if the maxim were to apply it would create unfairness and remove the spirit of the *Shari'ah*. This is the reason why exception is given here. It should be noted that unlike *usul al-fiqh* which is concerned with sources of law legal maxims are based on *fiqh* itself and represent rules and principles that are derived from the reading of the detailed rules of *fiqh* on various themes (Kamali,2006). In other words, the existence of *fiqh* depends on its *usul*; whereas, jurists need the rules of *fiqh* which are resembling to formulate a maxim.

The Importance of Legal Maxims:

Legal maxims have played a significant role in bringing together the resembling branches of *fiqh* which are found scattered in voluminous *fiqh* literature and putting them in one maxim on the basis of having the same criteria. As an example, we can find in the chapter of purity in *fiqh* literature that if a person washing his hand and the rest of *wudu'* part with the intention to cool himself this act is not considered as a valid *wudu'*. The same is true with regard to a person entering the mosque for the purpose of taking rest in that this act cannot be deemed as *iktikaf*. The jurists when analyzing all these examples and the likes have come to conclusion that these acts can be categorized under one maxim, i.e. *al umur bi maqasidiha* (matters are judged according to their intention). Furthermore with a good understanding in this subject will help a jurist reach objectives of the

Shar'iah and its secret as it will show a clear picture of such objectives For instance, from the maxim *al dararyuzal* it is observed that removal hardship is one of the goals of Islamic law(Azzam,2005).

Looking at the branches of *fiqh* which in nature are huge, there is no specific limitation as to the number of maxims. Some of the maxims are agreed upon while others are disputed. However the jurists are agreed on five maxims to be the major ones namely:

- i-Matters are determined according to intention;
- ii-Hardship begets facility;
- iii-Harm should not be inflicted or reciprocated;
- iv-What is certain cannot be removed by doubt; and
- v-Custom is arbitrary.

When Halal and Haram meet the Haram Prevails

This maxim has its root from a *hadith* whereby the Prophet (s.a.w.) was reported as saying “ when *halal* and *haram* meets the *haram* prevails”. Even though the authenticity of this *hadith* is disputed, its meaning as suggested by Subuki is sound and valid. Furthermore the maxim can also be relied on another *hadith* " leave what is doubtful and take what is not". The maxim shows that *haram* and *halal* shall not mix together, otherwise it will render an act to be *haram*. This is because it is better to neglect what is permissible in order to avoid what is unlawful and not *vice versa*(Azzam, 2005). It should be emphasized that the meeting of the things may occur either physically or constructively. While it is easier to understand why when *haram* and *halal* meet physically, the *haram* prevail, as in the case of chicken curry cooked together with pork, it needs some thought with regard to things mixed constructively such as in the case of income gained through a mixed source of *haram* and *halal*. In Islamic jurisprudence *haram* can be either *li zatihi* (in itself) such as pork or *lighayrihi*(external factors). A common example of this latter is in the case of money which in its physical existence cannot be classified as *haram* or *halal*. However the means the money is gained will determine its lawfulness.

Examples of Legal Rules Falling within this Maxim:

i- If a person wants to marry a woman from a small village, knowing that one of his sisters whom he has never known is among the villagers, then he is not allowed to marry any one of them for the fear that he might commit an unlawful marriage

ii- If a person, who has more than one wife, pronounces a divorce by saying " one of you is divorced", then he is prohibited from sexual intercourse with any of them as all of them are divorced unless he specifies. This is because each of his wives can be *haram* and *halal* for him. Thus the maxim applies.

Exceptions:

As mentioned earlier among the features of legal maxims is the exclusion of certain rulings from general rules. With regard to this maxim there are some exceptions such as touching a *mushaf* without *wudu'* containing its translation. Here *halal* and *haram* mix in the sense that it is lawful to touch the translation of the Quran but at the same time it is not lawful to touch the original text alone. When these two mix, the *halal* prevails and thus the maxim does not apply. Another example is about dealing with those whose most of their properties are gained through *haram*.It is allowed to do transaction with them although it would be better to avoid it.

The Application of the Maxim in Food and Drink:

The original rule for food and drink is everything is permissible unless there is evidence showing to the contrary. This is based on the Qur`anic verse (2:29) “It is He who created all that is in the earth for you”. This means that all things in the universe including foods and drinks are created by Allah (s.w.t) for mankind. Since they are merely created for the mankind, it is impossible that they are prohibited because such prohibition generally defeats the purpose of their creation.

The ruling is also based on the *hadith*:

“The *halal* is clear and the *haram* is clear. Between the two there are doubtful matters concerning which people do not know whether they are *halal* or *haram*. One who avoids them in order to safeguard his religion and his honour is safe, while if someone engages in a part of them he may be doing something *haram*, like one who grazes his animals near the *hima* (the grounds reserved for animals belonging to the King which are out of bounds for others’ animals); it is thus quite likely that some of his animals will stray into it. Truly, every king has a *hima*, and the *hima* of Allah (s.w.t.) is what He has prohibited”(Al-Bukhari,1998).

In general, anything, which is good is allowed in Islam. This is on the basis of the Qur`anic verse(2:168) when Allah (s.w.t.) addressed all human beings saying: “O mankind! Eat of what is permissible and good on earth, and not follow the footsteps of Satan; truly he is an open adversary to you.”

Allah (s.w.t) also says(4:88): “And eat of the lawful (*halal*) and good things that Allah (s.w.t.) has given you...”. It is therefore a religious responsibility of a Muslim to consume foods and drinks which are *halal* and good. It is a religious instruction as it is stated in the Qur’an and *Hadith*.

According to al-Qaradawi(1995), as far as *halal* and *haram* is concerned, in Islam, the sphere of prohibited things is very small, while that of permissible things is extremely vast. This is because Allah (s.w.t.) creates all the things, gives man control over them, counts them as His favor upon him, and subsequently inform him that their use is prohibited. He further explained that there is only a small number of sound and explicit texts concerning prohibitions, while whatever is not mentioned in a text as being lawful or prohibited falls under the general principle of the permissibility of things and within the domain of Allah’s favour.

With regard to food and drinks, the general principle is that anything which is good and healthy is *halal*. Al-Qaradawi (1995) lays down a number of prohibited foods mentioned in the Qur’an and *Sunnah*. Dead animals such as the strangled, the beaten, the fallen, the gored and that which has been partly eaten by wild beast, flowing blood, pork, that which is dedicated to anyone other than Allah (s.w.t) and intoxicants, drugs and harmful things. Another requirement is that the animals, with the exception to the marine animals and locusts, must be slaughtered in accordance with the *Shari’ah* rulings, otherwise they become unlawful for consumption.

However, there are foods and drinks which its permissibility and prohibition is not clear. This is called as “*mushtabihat*” or the doubtful as mentioned in the above *hadith*. The reason of the uncertain ruling of the foods and rinks is due to the presence of the non-*halal* substance such as emulsifier, gelatin, malt, alcohol (Jakim, 2000).

According to the European Council for Fatwa and Research(<http://www.ecfr.org/>), the emulsifiers originated from animals, are *halal* because they do not remain the same during the process of manufacturing. They are transformed radically from its original form to a new clean and pure through a process called “chemical transformation.” The transformation also affects the legal ruling on such ingredients. Therefore, if the original form was unclean or *haram*, the chemical transformation changed it to another ingredient, which requires a new ruling. Therefore, any foods or drinks that contain any of these ingredients remain *halal* and permissible for the Muslim’s consumption. This method is known as *al-istihalah*(transformation) according to the Hanafis. However, the Shafiis do not consider it valid if the transformation is through man’s intervention(Al-Zuhayli, 1989).

However, the fatwa of the Malaysian National Fatwa Committee(http://www.halal.gov.my/content_view.php?IDarticle=77 ,1990) and the Fatwa of the State Mufti of Brunei (2007) over the similar issue are different. All products originated from non-*halal* meat or non-slaughtered animals are *haram*. This *fatwa* is based on the opinion of the Shafi’i School of law, which does not consider that the chemical transformation is valid because of man’s intervention. Whereas, the *fatwa* of the European Council for Fatwa and Research is based on the opinion of the school of Hanafi, which validates any type of transformation, with or without man’s intervention.

With regard to drinks which contain an amount of alcohol, the European Council for Fatwa and Research issued a fatwa that as long as the drink does not cause intoxication if consumed in large quantities then it is deemed *halal*. This is based on the hadith narrated by Abu Dawood and al-Tirmizi: “If a drink causes intoxication when consumed in large quantities, then consuming small quantities thereof is deemed *haram*”. The fatwa does not state the quantity of alcohol that is allowed but only puts the condition that it should not intoxicate when consumed. This is in line with the *hadith* that states that water, which reaches the amount of 2 *qullah*, does not become impure with the mixture of impure objects provided that its taste or color or smell is not affected.

The above *fatwa* is similar to the *fatwa* issued by the Malaysian National Fatwa Committee which put the condition that it should not intoxicate without stating clearly the quantity allowed. However, the *fatwa* of the State Mufti of Brunei(2007) is different because it takes into account the level of alcohol in drinks i.e. the percentage of alcohol considered to have reached the level of *khamris* 2 – 8% (as found in beer). However, all the *fatwas* consider that intoxication would be the determining factor in prohibiting a product. They only differ in terms of the quantity of the alcohol which could cause intoxication.

There are some products which are labeled with *haram’s* names such as Beer or Malaysian Bah Ku Teh (pork’s element). According to the European Council for Fatwa and Research, the ultimate decision is not tied to names, but to the essence of matters. Therefore, any drinks that do not intoxicate are *halal* even though they are given a despised name which is usually used in reference to alcoholic drinks. However, in Malaysia, the Bah Ku Teh food which is named after the pork, even though its essence is totally different and absolutely good and *halal*, is considered *haram* because of the bad image shown by the name.

Clothing and Gold and Silver Utensils:

Based on the general principle of permissibility of everything, any types of clothing and adornment are *halal*. According to al-Qaradawi(1995), from the Islamic point of view, clothing has two purposes; to cover the body and to beautify the appearances. However, there are two things that are prohibited for men and not for

woman that is gold ornament and clothing made of silk. The wisdom behind the prohibition is that Allah (s.w.t.) has made the physique of the man different from that of the woman, and it does not befit a man to wear clothes made of fine material or to adorn his body costly ornaments.

Islam also prohibits the use of gold and silver utensils in the Muslim house. The Prophet (s.a.w.) said: "Whoever eats or drinks from gold or silver utensils is indeed filling his stomach with the fire of hell." This prohibition applies to men and women alike and it is for the purpose of getting rid the house of excessively luxurious items. According to al-San`ani(2005), the *hadith* shows the prohibition of eating and drinking using pure gold or silver container, or whether it is a mixture of silver.

However, on the issue of painting using gold and silver, al-San`ani (2005) said that it *washaram* if the gold and silver could be detached from each other, whereas if detachment failed, it was therefore permissible. With respect to silver, according to the Hanafis wearing silk is forgiven if it is too little. The little amount is measured as equal to four fingers(Al-Zuhayli,1989). Al-Suyuti (2007) views that the maxim "when the *halal* and the *haram* meet, the *haram* prevails" does not apply as far as utensils, clothing and wearing silk are concerned. Therefore, if a product contains the mixture of the *halal* and the *haram*, and through weighing it could identify that the *haram* is less than or equal with the *haram*, the product is therefore *halal*. This supported with the *hadith* reported from `Anas bin Malik (r.a.) that a container belonged to the Prophet (s.a.w.) had broken, so it was repaired using silvers to join together the broken part. According to al-San`ani(2005), there is no disagreement among the scholars over the permissibility of using silver in such a case.

The Application of the Maxim in Business and Transactions:

Undoubtedly, avoiding unlawful (*haram*) earnings is a key to being blessed and getting satisfied with what one has, while *haram* earnings are a source of harm and evil in this life and in the Hereafter. In addition, any human flesh that grows from *haram* sources deserves to be thrown into Hell and that the person will remain standing on the day of judgment until he is asked about four things among which is his wealth from what he earned it and in what he spent it. The evildoers are all cursed and kept away from the blessings of Allah (s.w.t.).

Thus, to look for purely permissible and lawful (*halal*) businesses and jobs is highly demanded and required. However, in our daily life there are types of businesses that engaged in running a mix of permissible (*halal*) and prohibited (*haram*) activities, examples of which include banking operations, hotels, companies, cinema, airlines, tourism, supermarkets and so far and so forth.

If we solely refer to the maxim "When *Halal* and *Haram* meet the *Haram* Prevails", then it should be ruled as forbidden (*haram*)", then any businesses or jobs that are accompanied by an unlawful act become unlawful as it can be considered as helping in committing sins. In this regard, Allah(s.w.t) says (5:2): ".Help you one another in virtue, righteousness and piety, but not help one another in sin and transgression. And fear Allah. Verily, Allah is severe in punishment."

It becomes more crucial and indeed our utmost concern with the involvement of Muslims in such activities. Realising that Islam is flexible (*murunah*) religion that always considers the interest (*maslahah*) of the peoples, one might consider whether there is any exemptions to the general rule of the above maxim. Other might wonder whether there is any possibility that the lawful (*halal*) will prevail when such a case occurred.

The jurists have different opinions in dealing with this issue, whereby majority of them permitted and allowed a company with mixture activities between *halal* and *haram* to be operated. While others are of the opinion that it is prohibited. The following arguments of both opinions might be a good guidance to Muslims and provide solution for those who directly involved in the business.

Based on the above maxim alone, Abu Hanifah and Muhammad as well as some jurists of the Hanafis argued that mixture activities involving *halal* and *haram* were prohibited. Their analogy was based on the view that Muslims are not allowed to collaborate with non-Muslims even though through *sharikah mufawadah*. To them, there is a difference between Islamic and non-Islamic activities whereby what was permissible according to non-Muslims such as liquor and pork was prohibited for Muslims.

On the contrary, the Shafi'i jurists(Al-Ramli,1992) and some from Hanafis, Malikis(Al-Hattab,1995) and Hanbalis(Al-Buhuti,2000) permitted mixed companies, although it is not encouraged. Despite acknowledging the validity and suitability of the maxim –which was based on the *Hadith* of the Prophet (s.a.w.) for certain cases, it may not be suitable in other mixture activities. In addition, many scholars argued and debated on the status of the *Hadith* classifying it under *da'if* of unknown origin and reported by someone of weak status. Thus, this *Hadith* has been classified as *munqati'*, i.e. *Hadith* of a broken reporting sequence or unconnected chain of narrators.

The majority of the Islamic jurists also supported their argument by the opposing maxim which means: "That which is forbidden does not render prohibition of what is permissible". They continue to argue based on *maslahah*(interest) of the people. It is further strengthened by arguments pertaining to the existence of the '*umum al- balwa*, '*urf*, *maqasid al- shari'ah* and the recognized rights of non-Muslims. In this case, the following maxim should be applied. The maxim read: "Where there is good and bad, then it needs to be looked (consider various circumstances)...". It can be understood from this maxim that if such an action is taken hoping

that the chances for achieving good is brighter and the disadvantage can be overcome and averted, then such action should continue. However, if it is difficult to overcome the bad and the good cannot be obtained, then to avoid the bad or the evil is preferred. Under the scenario of *'umum al- balwa* whereby an unfavorable widespread situation affected most of the people and is difficult to avoid, the jurist excused the mixture of small prohibited matters in transactions in order to facilitate the daily activities.

The majority of the jurist also permitted mixed funding on the condition that the ratio of permissible funds is more. On that note, Izzuddin bin 'Abd al Salam (1999) was quoted to have said:

"If the permissible money is more, that is one Dirham of prohibited money is mixed with one thousand of permissible money, then the transaction is allowed".

Al- Kasani(2005) was also reported to have said:

"Everything will be tainted by what is prohibited, but if the larger part is *halal*, then the trade is allowed".

In addition, IbnTaimiyyah (1991)was of the view that transaction funded by permissible and prohibited funding is allowable when he was quoted to have said:

"Should the permissible be more, then the business transaction will not be judged as prohibited, and should one's wealth be found to have a mixture of the permissible and prohibited, then the permissible element will not be prohibited; on the contrary, the owner is allowed to take according to the permitted ratio."

It should be noted that the *Shari'ah* Advisory Council of Securities Commission (SAC)(2006) has deliberated the issue back in August 1996. In1997, the SAC decided on a benchmark for the image factor of a company which is also applicable to other similar and coincide activities. This effort should be appreciated by the people in general and by the industry players in particular. This resolution may serve as reference and guideline toward better understanding the *Shari'ah* concept applied in certain product or activity.

The discussion is not complete without mentioning the guiding benchmarks resolved by SAC and also their basis for establishing the benchmark. No doubt, it is indeed necessary to establish specific benchmarks to determine the status of a mixed activity. In addition, it is also important to ensure that prohibited elements are minimal and related to those excused by the *Shari'ah*. It is worth mentioning that the benchmark was never drawn up by classical jurists, but it is merely the work of contemporary jurists who have the opportunity to think and initiate such a benchmark.

In making it into reality, the SAC has taken into consideration the precaution measure (*ihtiyat*) as well as additional elements like *maslahah*, *'umum al- balwa*, *'urf* and others. A few *fatwa* from qualified scholars was not neglected by the SAC in the due process of forming such benchmark.

It is important to highlight that in Islamic Jurisprudence as previously mentioned, the discussion on the prohibited and unlawful (*haram*) matters were extended to the nature of that prohibited elements. The jurists divided the nature of prohibited materials into two groups:

- i. Prohibited in itself (*haram li zatihi*) such as pork, liquor etc.
- ii. Prohibited because of external factors (*haram li ghayrihi*) such as sale that incurred the element of *riba* (interest) or consisting of *shartfasid* (voidable condition).

So, in deciding the ruling of any particular cases related to mixed activities, careful consideration must be given to above nature of prohibition. Relying on the above mentioned maxim alone is inappropriate. For example, the mixing of animals slaughtered by Muslims and non- Muslims is totally prohibited. Thus, this *fatwa* is in compliance with the maxim "When *Halal* and *Haram* meet the *Haram* Prevails", then it should be ruled as forbidden (*haram*)", because it is prohibited in its own essence. On the contrary, an exception to the general understanding of the maxim can be applied in the case concerning the mixture of silk with common thread. As already known, silk cloth is prohibited to be worn by men as clearly mentioned in the *Hadith* of the Prophet (s.a.w.) In relation to this, the jurists ruled that it can be worn by men if the ratio of silk thread mixed with the common thread does not exceed 50% of the drawn up benchmark. Practically, such a benchmark is also applicable in other activities which were prohibited not because of the original nature (*dhat*) but because of other external reasons.

Another benchmark set was based on the Prophet Muhammad's (s.a.w) condition of one-third (33.33%) is a very generous limit. This was clearly mentioned in *Hadith* Saad bin AbiWaqas who wanted to leave his property as alms. Judging from the Prophet's word, one third (33.33%) is enough, the jurist inclined to used it as a guideline for the basis of formulating a benchmark(Securities Commission, 2006).

Other criteria adopted as basis for establishing benchmark is the theory *ghabnfahish* which is not allowed in Islam. On the contrary, if the *ghabn* is lesser (*ghabnyasir*) then it is permissible. According to majority of jurists, the buyer has the right to terminate the sale and purchase contract if it is accompanied by the element of *ghabnfahish* (excessive manipulation). Thus the jurists draw up a benchmark by differentiating these two types of *ghabn*. The Hanafithen ruled that the upper limits for *ghabnfahish* is as follows: i. 5% for ordinary goods ii. 10% for animals used for riding, iii. 20% for fix assets. Other activities can also adopt an analogy based on these benchmarks.

Based on the above discussion, it can be said that engagement and involvement of Muslims in a mixed activities between *halal* and *haram* is permissible. Although the discussion is more focused on the status of

companies that involved in both permissible and prohibited elements, an analogy can be made to participation of Muslims in similar industries and activities. However beside that permissibility, they are encouraged to look for a purely *halal* (lawful and permissible) activity and to consider a lawful earning.

Conclusion:

Islam lays great emphasis on the permissibility or impermissibility of food, transactions and other acts because they are deemed essential in the determining their position in front of the Creator. They are also closely related to their fellow human beings in this world. Misappropriation of someone else's property is prohibited (*haram*) and the consumption of such property or anything entails from them is also considered as prohibited, even though they are originally lawful.

On the issue of mixture between lawful and unlawful foods and business transactions the jurists have based their view on related legal maxims. Even though some jurists do not consider legal maxims among the sources of the *Shari'ah* they are useful in discovering the rules of the *Shari'ah* especially on the above matters.

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