Financial Rights
In The Islamic Perspective

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The term haq maliy comprises of two words, haq and mal. Haq, or right in its literal sense also brings the meaning of justice, truth, presence, as well as being the opposite of batil. Islam, presence, as well as being the opposite of batil.

The technical meaning of haq is of two. They are as the following:
1. It refers to the authority (sultah) and legal capacity (maknah al-mashru’ah), or it is the compulsory/obligatory demand for someone to another person. For example, it is the right of the maghsub minh to be given back his property, if it still exists, and to take the value or what is similar if the property no longer exist. The buyer also has the right to return something bought if there are defects.
2. It refers to the authority (sultah) and legal capacity (maknah al-mashru’ah), or it is the compulsory/obligatory demand for someone to another person. For example, it is the right of the maghsub minh to be given back his property, if it still exists, and to take the value or what is similar if the property no longer exist. The buyer also has the right to return something bought if there are defects.

Huquq maliyyah and its types
Al-huquq al-maliyyah is a wider scope is divided into two, al-huquq al-maliyyah al-thabitah li Allah, which is the financial rights which are fixed as our source of the right, as stipulated in the Holy Quran or Sunnah. It is Allah that determines His rights and the rights of His servants (‘Ilm).

In the Islamic Perspective

The rights of individuals are very much important in societal living, as it is with these rights that an individual man has the authority or capacity to carry out actions within the jurisdiction already specified to him by Shariah. It is within this specific boundary of rights that a man is confined to what is rightfully to be appropriate in action, which in the meantime will not cause him to harm another individual. This means that once he transgresses his specified rights, he is therefore subject to the law by any means necessary. Financial rights, among others are another right that is important to an individual, partner, neighbour as well as to others where the situations deemed suitable. It is the rights on assets which are of financial value as acknowledged by the Shariah.

DEFINITION OF HAQ MALIY (FINANCIAL RIGHT)

The financial rights among man (al-huquq al-maliyyah li al-insan) in the Shariah perspective is further divided into three types. They are:
- Al-huquq al-shakhsiyyah (Individual rights)
- Al-huquq al-anvisiyah (Tangible/Corporeal property rights)
- Al-huquq al-ma’naviyah (Intangible/Incorporeal property rights)

Al-Huquq al-Shakhsiyyah
Al-huquq al-shakhsiyyah refers to claims or demands to an individual towards another person which are acknowledged by Sharia. According to AAOIFI Shariah standard, huquq al-shakhsiyyah are rights which involves responsibilities, where the obligations are established upon a particular person, for example debts which are within the responsibilities of the debtor. These individual rights sometimes refer to the rights which uphold the necessary actions for the benefit of sahib al-haq (the owner of the right). For example, the rights of the seller and buyer among each other. The seller has the right to collect his payment from the buyer, whereas the buyer has the right for the delivery of his bought goods from the seller. Each of these are the rights of upholding the actions. Sometimes the individual rights involve hindering a particular action to deny the benefits. For example, the right of the depositor on the deposit (wadi’) as the wadi’ is not to be used or benefited from. It is the trust given to the trustee to keep the deposit, and thus it is not to be used in any way.

Al-Huquq al’Ainiyyah
Al-huquq al’Ainiyyah or the rights of tangible assets rights are rights which are established directly without the involvement of other individuals. AAOIFI defines al-huquq al’Ainiyyah as, “The rights where the subject matter are tangible assets which enables the sahib al-haq (owner of rights) direct authority over the asset, without the interference of others, whether the

The technical meaning of mal on the other hand, is “the ownership of something whether it is an asset or a usufruct.” Technically, the Hanafis define property as any good that individuals naturally like, and that which can be saved for some time. The majority of scholars, with the exception of the Hanafis, define property as anything that has a value and to which it may accordingly be sold, and for which a transgressor must compensate the owner to the exclusion of items discarded by all people.

Thus, al-huquq al-maliyyah are the rights on assets with financial values. Example of such rights are haq al-dayan (debt rights) and haq al-tamalik (ownership rights). According to AAOIFI’s Shariah Standard, huquq maliyyah is defined as the specialization (ikhtisas) of a person’s authority or responsibility (either naturally or by acknowledgement) as determined by Sharia, and it is settled by compensation.

Huquq ghayr maliyyah, on the other hand, are rights not related to assets with financial values, such as haq al-hadanah (child custody right) and haq al-walayi (right to be a walaya).

For Islamic Finance to move forward, we have to review how we practise Islamic Finance.

Islamic economic ethics which, to me, is built on fairness, risk sharing, and an investment orientation.

We recognise how the Islamic financial system of the past had for several centuries.
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huq'a ainiyyah are genuine original (al-huquq al-ainiyyah al-asliyyah) or dependant (al-huquq al-ainiyyah al-tab'iyyah).

Referring to the definition of AAOIFI aforementioned, it further divides the rights of tangible assets into two categories. The definition of each are as the following:

Al-huquq al-ainiyyah al-asliyyah: These are rights which exist independently as the rights do not require the rights of others to followingly be present. An example of al-huquq al-ainiyyah al-asliyyah is the right of total ownership (haq al-milikyyah al-tammah) where there is direct legal authority for the owner over his ownership. This means that the owner has the right to protect his rights over what he owns and is able to fully benefit legally from his property without the interference of others. Haq al-milikyyah al-tammah is further divided into two, which are haq milikyyah al-ayn (right of total ownership of asset) and haq milikyyah al-manfa'ah (right of total ownership of benefit). The rights to dispose both these rights are absolute except those against the Shariah. This means that the rights can either be disposed by complete transfer with consideration (‘iwad) or without consideration, or it can be transferred in terms of its benefit only. The rights of total ownership of benefit further includes those that are able to be benefited from the usufruct (by itself or by others) as well as those which are bounded with conditions set up by the owner, and also the guarantee of the asset benefitted from, in cases of negligence, risks and breach of the stipulated conditions. Examples of rights under huq'a al-ainiyyah al-asliyyah are huq'a al-irshad (easement rights) and haq al-syafa'ah (pre-emption rights), where the disposal of the pre-emption right is limited to partners or neighbours only.

Al-huquq al-ainiyyah al-tab'iyyah: These are asset rights in which the assets are not meant entities on their own, as the rights are present to ensure the completion of the individual rights. An example of this, is the pledge rights (haq al-rahin).

4) Trade license & Franchising (al-rukhsah al-tijariyyah). Trade license is issued when an entrepreneur applies through the license form. A license will be issued exclusively in the name of the licensee and the license is not transferable. The license is not to be used for other purposes, except for the nature of profession, trade or calling as it was issued. It is able to be disposed with money or without money, unless clearly stated by the law. Franchising of a particular business is often done by a different entity other than the initial owner of a particular business, i.e. company, brand and others. A right to franchise is also of considerable financial value. For example, Pizza Hut is a company business which originated in the United States, and was later franchised by many worldwide including in Malaysia.

5) Ownership of ideas and intellect (al-ma'likyyah al-zhiyinah and al-fikriyyah). Mark Zuckerbergs well-known idea which has won internet users worldwide, Facebook is an example of a huq'a al-ma’nawiyyah in terms of ideas, as he came out with the idea with four of his friends in their dorm rooms in Harvard.

6) Artistry (al-fanniyyah). For example, the famous painting of Mona Lisa by Leonardo Da Vinci is net to be imitated professionally in any form. This also includes protecting the rights of songwriters as well as artists in their artworks.

7) Inventions (al-sina‘iyyah). For example, the late Steve Job’s remarkable invention of the Iphone and its other generational devices belongs to Apple. This is further evident when Apple files lawsuits repetitively against Samsung for imitating their products.

8) Copyright (Huquq al-ibtikar). This includes the copyright of books which protect the rights of authors from illegal distribution or copying of the book contents. Any form of copyright infringement is not allowed and is liable for legal actions.

This means that all the types listed above are considered financial rights by the Shariah, they have financial values therefore legal actions are imposed if anyone transgresses each of the rights mentioned in any form. It is possible to dispose the rights of intangible assets (al-huquq al-ma’nawiyyah) along as it adheres to the Shariah rules. It is also transferable with consideration, (‘iwad, in the event that the rights are sold and then bought), if the transfer does not involve any form of shahr, deception or fraud.

**“the financial rights which refers to something which are intangible and give the owner specialties (ikhtisas) when they are resulted.”**
Disposal of rights
It is possible to dispose the financial rights which have been mentioned. The owner of the right has complete authority to dispose his financial rights as long as he is preserving the principles and the Shariah law when disposing his rights. This involves:
• No form of abuse in using his right.
• It is necessary to uphold the interest of the public first if it conflicts with the usage of ownership rights (Haq al-milkiyyah).

A contemporary example of the disposal of financial rights is the right of preference in the underwriting when the capital of the company is increased. Therefore it is the preference right of every partner in the underwriting when the increase of company’s capital is decided, over those who are not partners. The underwriting is in accordance to the portions invested by the partners in the capital of the company before the increase is decided. The right of preference is also able to be waived to another without any substitute (‘Iwad), as long as it is does not transgress the laws or the general regulations of companies.

CONCLUSION
With all the financial rights mentioned, they clearly show how the rights of individuals specifically is being protected by Shariah, so that no harm is caused in any way.

It is concluded that each of the financial rights mentioned is able to be disposed of, whether by means of ‘Iwad (consideration is exchanged for the rights, meaning when the rights are sold and then bought) or not, as long as the disposals are according to the Shariah rules and that there is no law of the land that prohibits the exchange from taking place. This is of course with the special exception of pre-emption rights, where it is stringent to avoid unnecessary harm if it is disposed to other than the neighbours or partners. In the event that a particular right is transgressed, consideration/ compensation (‘Iwad) is imposed to the transgressor to the owner of the right harmed.