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CATEGORISATION OF LEGAL CONTRIVANCES IN ISLAMIC LEGAL LITERATURE: RELEVANCE TO FORMATION OF CONTRACTS AND TRANSACTIONS

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ABSTRACT

Reference to what could be considered as legal contrivances appears in some prophetic traditions, in addition to some verses of the Qur'an. Although some early jurists such as Imam Malik are considered to have held all contrivances impermissible, which approach has also been adopted by Imam Ahmad and his followers of the initial centuries, the majority of jurists have refrained from condemning all applications falling under them in general as unlawful. In dividing legal contrivances into permissible and impermissible varieties, many of the jurists have fundamentally taken the outcome into consideration. It is observed that the difference on the validity or otherwise of legal contivances, especially in the domain of transactions, could be traced to the fundamental difference on the basis of contracts with regard to the wording of a contract and its meaning or intent. It is noted that a section of jurists have also taken into consideration the time a contrivance is employed in certain transactions with regard to rights that may be affected, in determining the acceptability of the contrivance.

Keywords: contrivances, legal, Islamic, contract, transactions

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INTRODUCTION

Legal contrivances are referred to in Islamic legal literature as *hiyal*, the plural of *hilah*, which is the Arabic equivalent for artifice, device, expedient, stratagem, the means of evading a thing, or effecting an object.[1] The usage of the term hiyal to denote legal structures of a particular nature that had some aspect of intricacy or conveyed a sense of dexterity and skill in avoiding violation of the law was not unfamiliar during the early era. In view of the numerous examples cited by the likes of al-Sarakhsi and al-Khassaf it is difficult to deny the fact that the companions and the early mujtahids had resorted to various measures that may amount to contrivances in their personal conduct for avoiding violation of legal precepts, a part of which could be regarded to belong to the category of taʿrid, a relatively 'harmless' variety of hiyal. This article attempts to trace the development of legal contrivances in Islamic legal literature and study the nature of the related categories identified by scholars, while observing their relevance to transactions and contractual expressions.

LEGAL CONTRIVANCES IN EARLY LEGAL TEXTS

Although reference to what could be regarded as legal contrivances finds mention in narrations concerning the companions and the mujtahids of the early Islamic era, none of them are apparently known to have laid down treatises or books devoted to the subject, or even made any collection them. The later authors such as al-Khassaf have cited numerous reports related to prophetic companions and early mujtahids involving hiyal, and has recounted a number of occasions where they had had recourse to what could be categorised under hiyal sharʿiyyah. Compilation of treatises devoted to the subject of hiyal appear to have started towards the latter half of the 2nd Islamic century with the Hanafi jurists being the first to assemble the available hiyal in book form. The Hanafi jurist Muhammad ibn Hasan (died in 189H) himself is considered to have authored a compilation of hiyal, the ascription of which to Muhammad has been questioned by other Hanafi jurists like Abu Sulayman al-Jawzjani, who considers it improbable that Imam Muhammad could have compiled anything with the title of Kitab al-Hiyal, that could be misused by the ignorant. However, the leading Hanafi jurist al-Sarkhasi has upheld in al-Mabsut the verdict of Abu Hafs, who had regarded the compilation to be the work of Muhammad, in addition to reporting it from the latter.[2] According to al-ʿAsqalani, Imam Abu Yusuf too is credited with a work on the subject.[3] The most famous treatise on hiyal could be the work of Abu Bakr Ahmad ibn ʿAmr al-Khassaf, known as Kitab al-Khassaf fi al-Hiyal[4], that is said to incorporate parts of the now extinct work of Muhammad ibn Hasan. Although criticised unsympathetically by opponents of hiyal, a perusal of the work reveals it to be a rich source of legal provisions and reflects the erudition of its author, in addition to portraying the level of development Islamic law had attained in his day, which was meticulously adhered to both in public and private. The book contains ingenious procedures for achieving a variety of justifiable objectives without committing a violation of the Shariʿah, that could be resorted to by parties who find themselves in circumstances unfavourable to them. Many of the procedures discussed in the book appear not to exceed known legal limitations, at least in Hanafi law. The numerous annotations and commentaries on *Kitab al-Khassaf* indicate the level of popularity it enjoyed among scholars. The author of *Kashf al-Zunun* has recorded the commentaries of *al-Khassaf* by leading Hanafi jurists such as Shams al-a'immah al-Halwani, and Shams al-Din al-Sarkhasi. Works bearing the title Kitab al-Hiyal were produced, among others, also by Muhammad ibn Ali al-Nakhaʿi, Abu Hatam al-Qazwini and the Shafiʿi jurist Abu Bakr al-Sayrafi, where hiyal for rebutting claims and other topics were discussed. A less famous work on the subject is *Jannah al-Ahkam wa Junnah al-Hukkam* by Saʿid ibn ʿAli al-Samarqandi, which contains hiyal not mentioned in the work of al-Khassaf.[5] The authoritative compendium of fatawa of the Hanafi school, *al-Fatawa al-alamgiriyyah*, contains a detailed chapter on hiyal, consisting of a wide collection of hiyal relating to a variety of topics, drawn from Hanafi legal works.

Support of legal contrivances appears in some prophetic traditions (ahadith) for supporting hiyal, in addition to some verses of the Qur'an. In a hadith recorded by Abu Dawud from Abu Umamah (Rad.) the Holy Prophet (Sal.) is reported to have commanded in the case of a bedridden invalid who committed fornication that he be beaten once with a palm frond made of a hundred strands.[6] Al-Shafiʿi and Hanafi jurists have understood from this hadith and the Qur'anic verse in connection with Ayyub (Sal.) that one could avoid breaking a similar oath in certain instances by following this

[1] *The Encyclopaedia of Islam*, Leidon, E J Brill, vol. 3, p. 510.
[2] Abu Bakr al-Sarkhasi, *al-Mabsut*, Beirut, Dar al-Maʿrifah, 1406H, vol. 30, p. 209.
[3] Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, vol. 12, p. 326.
[4] Abu Bakr Ahmad ibn ʿAmr al-Khassaf, *Kitab al-Khassaf fi al-Hiyal*, Cairo, (publisher unknown), 1314H.
[5] Mustafa ibn ʿAbd Allah al-Rumi, *Kashf al-Zunun ʿan Asami al-Kutub wa al-Funun*, vol. 1, p. 606.
[6] Abu Dawud al-Sijistani, Hadith No. 4472, *al-Sunan*, Beirut, Dar al-Fikr, vol. 4, p. 161.

procedure, while Imam Malik considers it necessary that beating should involve pain.[7] The famous hadith narrated by Abu Hurayrah and Abu Saʿid al-Khudri (Rad.) where the Holy Prophet (Sal.) had disapproved the exchange of different types of dates and directed that one type of dates be sold against dirhams and then other dates be purchased against dirhams too is cited in support.[8] It is noted here that the two transactions prescribed are in themselves not the objective of the contractors, but have only been required for the purpose of avoiding interest.

ʿUmar (Rad.) is reported to have remarked that oblique speech saves one from uttering falsehood.[9] While falsehood is prohibited and is not condoned, one may resort to indirect speech, thereby saving himself from uttering what is not true. This could be through making the proposition imprecise by qualifying it with 'perhaps' etc., or intending a possible meaning other than what is readily understood by the addressee. Falsehood has been permitted for making peace between people through uttering what is good.[10] This has been interpreted to mean oblique speech, avoiding outright falsehood that is impermissible. Oblique speech making indirect reference is recognised in the Shariʿah on the basis of the Qur'anic verse that allows such reference to a widowed woman in her ʿIddah, indicating one's interest in her. (Q, 2: 235) After citing the verses and traditions that lend support to the legality of hiyal, Al-Sarkhasi observes that various types of hiyal have been instructed in these and other narrations, which are numerous.[11]

CONTRIVANCES IN DIFFERENT CONTEXTS

The term hiyal had become inseparably attached to and come to be used in connection with several different fields. A field that was known by the name of hiyal was the art of military tactics. Subterfuges and stratagems of war had evolved into a cultivated science, which were collectively referred to as hiyal. There have been a fair number of expert treatises and manuals on this science, under the name of *kutub al-hiyal*, of which a handful are still in existence. ʿAli ibn Abi Bakr al-Harawi's (died 611/1215) *al-Tadhkirah al-Harawiyyah fi al-Hiyal al-Harbiyyah* is considered to have been a popular work on the subject.[12] Apart from these, tricks related to hypnotism (*hiyal al-ruhaniyyah*) and the pre-Islamic arts of deception for achieving vocal and motive animation of religious statues, as well as sleights of hand played by conjurers and forgers too have been known by the name of hiyal.[13] The science of mechanics referred to as hiyal in Arabic, achieved great advancement during the period of third and seventh Islamic centuries. Operation of ingenious mechanical devices for a variety of purposes, using variations of the cog wheel as the basic component for converting linear and circular movements, with automatic and precise motion for remote operation, was highly developed. Popular works authored during the period on the subject are *Hiyal Bani Musa* of the sons of Musa ibn Shakir who lived in the third Islamic century where detailed diagrams of complex devices with explanations are provided (translated into English by Donald Hill in 1979), and *Kitab al-Jami' bayn al-ʿilm wa al-ʿAmal fi Sanaʿah al-Hiyal* of Badiʿ al-Zaman al-Razzaz al-Jazari of the 6th century.[14] The authour of Kashf al-Zunun has enumerated a number of works dedicated to this science, in addition to compilations where a chapter or more has been assigned to this topic.[15]

Hilah as indicated in the context of hiyal sharʿiyyah (legal contrivances) is related to some other terms that have a bearing on its meaning in one way or the other, some of which are as follows; (i) tadbir, that means organizing or mending an affair so that its outcome becomes constructive; the terms tadbir and hilah both share in the sense of transference from one state to another; however, while tadbir is specifically used where the designed outcome is positive, hilah is used even where the outcome happens to be negative; (ii) tawriyah and taʿrid, which indicates using a linguistic term in a sense

[7] Abu ʿAbd Allah al-Qurtubi, *Tafsir al-Qurtubi*, Cairo, Dar al-Shaʿb, 1372H, vol. 15, p. 214.
[8] Abu Bakr al-Bayhaqi, Hadith No. 10323, *al-Sunan al-Kubra*, Makkah, Maktabah Dar al-Baz, 1994, vol. 5, p. 291.
[9] Abu Bakr al-Sarkhasi, *al-Mabsut*, vol. 30, p. 211.
[10] Muslim ibn Hajjaj al-Qushayri, *Sahih Muslim*, Hadith No. 2605, Beirut, Dar Ihya al-Turath al-Arabi, vol. 4, p. 2011.
[11] Abu Bakr al-Sarkhasi, *al-Mabsut*, vol. 30, p. 210.
[12] J Schacht, *Encyclopaedia of Islam*, Leidon, E J Brill, vol. 3, p. 511. The details of some of the major works on the field extant today that have been reviewed by orientalists could be found here, including *Kitab al-Hiyal fi al-Hurub wa Fath al-Mada'in wa Hifz al-Duruub*, a work of the 6th century AH.
[13] *Al-Mawsuʿah al-Islamiyyah*,Cairo, Wazarah al-Awqaf, under '*hiyal'*.
[14] *Al-Mawsuʿah al-Islamiyyah*,Cairo, Wazarah al-Awqaf, under '*hiyal'*. See Dr Fatimah Mahjub, *Al-Mawsuʿah al-Zahabiyyah li'l-ʿUlum al-Islamiyyah*, Cairo, Dar al-Ghad al-Arabi, vol. 15, pp. 140 – 150 for a discussion with sample illustrations.
[15] Mustafa b. Abdullah al-Rumi, *Kashf al-Zunun ʿan Asami al-Kutub wa al-Funun*, Beirut, Dar al-Kutub al-Ilmiyyah, 1992, passim.

other than its overt and commonly understood meaning; (iii) dhariʿah, which denotes a medium or tool adopted to access a thing; closing of avenues which are in themselves permissible for fear of their being misused for attaining unlawful objectives is referred to as sadd al-dhariʿah.[16]

ACCEPTANCE OF LEGAL CONTRIVANCES/DEVICES

Apart from those hiyal that were accepted as lawful by the general body of jurists, there were hiyal that were of a complex nature involving multiple transactions where jurists differed regarding their permissibility. Although some jurists such as Imam Ahmad and Imam Malik appear to have maintained that all hiyal are unlawful, a perusal of their schools reveal applications that could be included under hiyal which were generally regarded as permissible. Based on the principles upheld by different juristic allegiances concerning the main issues affecting hiyal such as the debates over text and intent and closing of avenues, the approach of jurists to the complex hiyal varied; while some regarded them as permissible, others included them in the ambit of unlawful means. The abundance of legal knowledge in the centuries that followed and the profusion of pseudo experts devoid of insight in the objectives of Shariʿah, or rather, were not overly concerned about them, appear to have resulted in the invention of certain hiyal that could result in a negation of the objectives of Shariʿah, which were roundly criticised by the acknowledged jurists and were condemned as impermissible.

DIVISION OF LEGAL CONTRIVANCES BASED ON LEGALITY

Although Imam Malik and some early jurists are considered to have held all hiyal impermissible, which approach has also been adopted by Imam Ahmad and his followers, especially of the initial centuries, the majority of jurists have refrained from condemning all applications falling under hiyal in general as unlawful, possibly also due to the fact that attempting a precise demarcation separating hiyal from normal application of law could prove challenging. Thus, the majority of juristic trends are inclined to categorise hiyal into permissible and impermissible types. In this regard, it could be noted that in spite of his forceful objection to hiyal, the approach adopted by Al-Bukhari in the chapter he devotes for denouncing hiyal in his Sahih implies that he does not advocate the renunciation of all hiyal, rather, acknowledges the legality of some of them.[17] Al-Sarkhasi considers the operation of hiyal permissible in the rulings derived (mukharraj) from the original verdicts of an Imam. He states that the overwhelming majority of scholars concur on this, except for some whom he refers to as lacking insight in the Qur'an and the Sunnah.[18]

In dividing hiyal into permissible and impermissible varieties, many of the jurists have fundamentally taken the outcome of into consideration. The theoretical principle in this regard, stated briefly, is that if the device in question repels some injustice or wrong, it is approved, while if it results in the lapse of a right, it is disapproved.[19] The verdict of the Hanafi jurists on the issue, the chief proponents of hiyal, is summarised by al-Sarkhasi as follows: hiyal that provide relief from prohibitions or helps one attain what is lawful are desirable. What is reprehensible is adoption of means to abolish a person's right, to make a prohibition obscure, or to create doubts in a right.[20] The same ruling is reiterated in *al-Fatawa al- alamgiriyyah*.

It appears that hiyal thus included in the permissible category could be further divided into two types, based on their relationship with the natural objective as laid down by the lawgiver. In the first of the two, the means adopted leads to its legally intended objective, nevertheless, in a way that is not immediately perceivable. It is noted that if the means serve the purpose of achieving the legally intended objective as laid by the lawgiver in an obvious manner, it is not linguistically referred to as hiyal. Examples of such means are spelled-out contracts such as sale, guarantee, lease, salam and Sharʿi options, that realise their legally intended objective in an unconcealed manner, and are not generally included in hiyal. Second of the two types of permissible hiyal is where the means employed for achieving a certain objective is legally intended to realise a different objective, nevertheless, the two objectives do not happen to be contradictory. Due to the congruity existing between the two objectives, this type of hilah too could be considered permissible, as it could

[16] *Al-Mawsuʿah al-Fiqhiyyah*, vol. 18, p. 329.
[17] Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, vol. 12, p. 327.
[18] Abu Bakr al-Sarkhasi, *al-Mabsut*, vol. 30, p. 209.
[19] Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, vol. 12, p. 328.
[20] Al-Shaykh Nizam (et al.), *al-Fatawa al-alamgiriyyah*, Kuetta, Maktabah Majidiyyah, vol. 6, p. 390, Abu Bakr al-Sarkhasi, *al-Mabsut*, vol. 30, p. 210.

not be regarded to result in defeating either objective. An example for this type is oblique speech. If the objectives are inter-contradictory, the means in this instance would be termed an unlawful hilah.

It would be relevant here to consider the principles elaborated by the famous Islamic scholar al-Shatibi on legal contrivances. These are summed up as hereunder: First, al-Shatibi maintains that adopting hiyal is in conflict with the objective of the lawgiver. One who resorts to employing hiyal has aimed at achieving what defeats the objective of the lawgiver, which results in his action becoming void. It is required that the objective of a mukallaf be in conformity with the objective of the lawgiver. If it the mukallaf aims at achieving what is at variance with the lawgiver's objective, his action is considered inconsistent with the Shariʿah. An action inconsistent with the Shariʿah is void. Al-Shatibi has elaborated on the assertion that an action becomes void when it is not in consonance with the objective of the lawgiver, as the realisation of these objectives is intended.[21]

Second, following a line of argument close to the first, he also contends that adopting hiyal also contradicts the Sharʿi principles of taking the end result into consideration and that of cause and effect (sabab). Al-Shatibi explains that having recourse to an act that is apparently in conformity with the Shariʿah for abolishing a Sharʿi ruling or transforming it ostensibly into another, when the end result is taken into consideration, is in reality injurious to Sharʿi principles. A factor that is recognised as a cause in Shariʿah, when it is found, legally dictates that its specified effect be realised and none other; when and effect other than the one laid down is intended to be achieved that is at variance with the objective of the lawgiver, it becomes void.[22]

Third, al-Shatibi claims that adoption of hiyal necessitates absence of intention in the contract employed as the hilah. Willingness (*rida*) which is the foundation of the contract being hidden an unverifiable, the lawgiver has equated the text of the contract to it and has considered the text to be representative of consent. According to al-Shatibi, when the contractor intends other than the meaning of the contract, he could no longer be considered to intend the realisation of the contract legally, as the effect of contracts depends on authorisation of the lawgiver, and not on the intention of the contractor.[23]

THE CONTROVERSIAL CATEGORY

In differentiating between the lawful and unlawful hiyal as generally agreed based on the characteristics delineated above, there remain certain varieties of hiyal where jurists have differed with regard to their inclusion in the permissible category, and whether an executer of such hiyal could be committing a sin even of the contract is legally held to be valid and effective. This group of hiyal principally concern those legal mechanisms where lawful means are employed for achieving primarily unlawful ends. The validity of such hiyal, which mostly consist of multiple contracts executed one after the other based on a prior understanding or otherwise, has been a centre of a lively debate among Islamic jurists from the early periods. In *Fath al-Bari*, the Shafiʿi jurist and eminent traditionist Ibn Hajar Al-ʿAsqalani has highlighted this category, after summing up four varieties of hiyal that comprise employing permissible means for different ends. He has not discussed impermissible means, possibly indicating that there is no substantial difference on the unlawfulness of employing them. In his classification, in the first category, a permissible avenue is employed for violating a right or perpetrating a wrong. Al-Asqalani pronounces this category of hiyal to be prohibited, evidently expressing his judgment on the issue, although he has later taken up this type and has outlined the difference of scholars on it. The second category pertains to employing a permissible means for securing a right or repelling a wrong, which he pronounces as either compulsory or recommended. The last two categories involve using a permissible means for evading what is detestable (makruh), which could be either recommended or permissible, or for avoiding what is desirable, which is reprehensible.

Out of these four types, all of which, as evident, pertain to employment of avenues lawful in themselves, jurists are at variance about the first, where a permissible avenue is employed for attaining an unlawful end such as negation of a right or securing a wrong. It appears that the use of the term hiyal has been generally taken to mean this type specifically by most of those who condemn them as well as those who lack awareness of the subject, while as shown earlier, there happens to be a large area where there is near unanimity about their acceptability, despite of the term hiyal being applicable to them.

[21] Al-Shatibi, *al-Muwafaqat fi Usul al-Shariʿah*, vol. 2, p. 231.
[22] Al-Shatibi, *al-Muwafaqat fi Usul al-Shariʿah*, vol. 2, pp. 201, 278.
[23] Al-Shatibi, *al-Muwafaqat fi Usul al-Shariʿah*, vol. 1, p. 216, 330.

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HILAH BEFORE AND AFTER THE RIGHT IN THE HANAFI SCHOOL

Hanafi jurists appear to have taken varying approaches to hiyal, depending on the time of operating the hilah vis-à-vis the right it is supposed to avoid or alter. They are said to have considered it offensive to adopt hiyal for evading an obligation or right that has already become established. Thus, adopting a measure that abolishes the right of a neighbour to pre-emption to which he has already become entitled through a stratagem such as obtaining his consent to relinquish his right against monetary compensation is disapproved. In this instance, the neighbour loses his right to pre-emption as well as any right to claim the agreed compensation in Hanafi law. With regard to having recourse to hiyal before the onset of the ruling, al-Kasani records that Imams Abu Yusuf and Muhammad ibn al-Hasan have differed on this issue. Hiyal could be employed in this situation for a purpose such as avoiding an obligation, before the relevant ruling becomes applicable. Imam Abu Yusuf generally considers hiyal admissible when they are applied before the obligation, while Imam Muhammad holds them offensive due to the hilah preventing the establishment of a right, thereby resulting in its annulment. Abu Yusuf contends that the hilah prevents the right through creating a legally acceptable reason that results in the non-applicability of the right, e.g. sale, gift or donation as in a case of pre-emption, which is lawful. It could not be said that a right is abolished or violated here, as the right had not yet become established. The hilah had prevented the establishment of the right through a legally valid means. Al-Kasani concludes that while the position adopted by Muhammad reflects a precautionary approach (*ihtiyat*), the ruling in the issue is the verdict of Abu Yusuf.[24]

This issue is finds more pronounced expression in the case of hiyal pertaining to Zakat, which has been given especial consideration by al-Bukhari too in his Sahih, who has taken to task the jurists who consider Zakat inapplicable if one evades its obligation on livestock by adopting measures to maintain the size of the herd below the threshold of Zakat. In explaining the issue, Al-Asqalani records the consensus of scholars narrated by Ibn Battal that one is permitted to transact in his wealth through sale, gift and slaughter before the completion of a Zakat year when he does not intend evasion of Zakat thereby. There is also unanimity also on the fact that it is no longer permissible to adopt hiyal for avoiding the obligation of Zakat after the Zakat year is complete, by such measures as splitting or pooling together assets such as livestock. The juristic difference in this regard is only concerning the act of one who resorts to hiyal prior to the completion of the Zakat year, with the aim of avoiding Zakat. Imam Malik, who strongly favours sadd al-dhara'i', has taken the position that Zakat becomes obligatory at the end of the year on one who purposely minimizes his assets a month or so before the end of the year with the intent of avoiding Zakat, on the basis of the hadith that means "A collection is not dispersed, nor what is scattered gathered together, fearing Zakat", which has been widely interpreted by jurists. The critics of such hiyal have compared this measure to undertaking a journey which is otherwise unjustified solely for the purpose of evading the obligation of fasting, and consider it sinful. Imam Abu Hanifah considers any intention present of avoiding Zakat at downsizing one's assets a day prior to the end of the Zakat year irrelevant, as Zakat does not become applicable except at the end of the year. This position has been ascribed to Abu Yusuf, who justifies it on the basis that it is abstention (imtina') from Zakat, and does not consist of waiving (isqat) Zakat. Thus, one who possesses two hundred dirhams is free to donate a dirham a day prior to the onset of Zakat obligation, even if the intent was avoiding Zakat by not having the nisab at the completion of the Zakat year. The opponents argue that the claim of abstention from Zakat is challengeable, as the obligation is directed from the very beginning of the year, as borne out by the possibility of payment in advance; there is unanimity on the reprehension of adopting hiyal for waiving the right of pre-emption after it is established, which could be extended by analogy to the case of Zakat. Muhammad ibn al-Hasan has ruled such hiyal offensive as they comprise violating the right of the poor after the grounds for the right, i.e. the nisab, had come into existence. Abu Yusuf too has stated in *Kitab al-Kharaj* that one who believes in Allah and the last day should not withhold Zakat or transfer part of his wealth to another so as to prevent its obligation, nor should he adopt any hilah for abolishing Zakat. This could well mean a retraction of his former opinion. On the basis of this statement Al-'Asqalani considers it likely that Abu Yusuf had retracted his position on adopting hiyal for the purpose of avoiding Zakat.[25]

[24] ʿAla' al-Din al-Kasani, *Bada'iʿ al-Sana'iʿ*, Beirut, Dar al-Kotob al-Arabi, 1982, vol. 5, p. 35.
[25] Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, vol. 12, p. 331.

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POSSIBLE BASIS

From the preceding discussion, it is observed that the difference on the validity or otherwise of hiyal, especially in the domain of transactions, may lie elsewhere. The root of the scholastic disagreement on the issue could be traced to the fundamental difference on the basis of contracts with regard to the wording of a contract and its meaning or intent. A segment of jurists have treated the textual wording or formula of a contract to be the basis on which a judgement on its validity should primarily depend, while others have considered the meaning intended thereby to be the critical factor. It would be immediately apparent that the former position would dictate the legality of hiyal in general, as the primary purpose of hiyal is overt conformity to law. This is reiterated by al-Asqalani, who observes that jurists who give precedence to the text of contracts over the intent are on the whole noted to treat hiyal too as permissible.[26] Of those who consider the validity to be based on the text of the contract, some regard a contract where the text differs from the intent to be valid externally and factually in all situations, while some others restrict its applicability to certain situations only. Others who consider such contracts operative only externally while they are in reality invalid, treat them to be void contracts; Thus, according to the latter, only contracts whose textual formula corresponds with the true intent of the contract as indicated by circumstantial factors are allowed. This fundamental difference appears to bear a direct relationship to the issue of hiyal.

CONCLUSION

Usage of the term hiyal predominantly denoted legal structures of a particular nature that had some aspect of intricacy or conveyed a sense of dexterity and skill in avoiding violation of the law. Majority of juristic trends are inclined to categorise hiyal into permissible and impermissible types. Al-Bukhari in the chapter he devotes for denouncing hiyal in his Sahih implies that he does not advocate the renunciation of all hiyal, rather, acknowledges the legality of some of them. The validity of hiyal which consist of multiple contracts executed one after the other based on a prior understanding or otherwise, has been a centre of a lively debate among Islamic jurists from the early periods. Based on the principles upheld by different juristic allegiances concerning the main issues affecting hiyal such as the debates over text and intent and closing of avenues, the approach of jurists to the complex hiyal varied. The theoretical principle in this regard is that if the device in question repels some injustice or wrong, it is approved, while if it results in the lapse of a right, it is disapproved. Hanafi jurists appear to have taken varying approaches to hiyal, depending also on the time of operating the hilah vis-à-vis the right it is supposed to avoid or alter. A segment of jurists have treated the textual wording or formula of a contract to be the basis on which a judgement on its validity should primarily depend, while others have considered the meaning intended thereby to be the critical factor. According to the latter, only contracts whose textual formula corresponds with the true intent of the contract as indicated by circumstantial factors are allowed.

[26] Ibn Hajar al-ʿAsqalani, *Fath al-Bari*, vol. 12, p. 326.