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THE LEGAL IMPLICATIONS OF ABANDONED DIGITAL ASSETS IN SHARĪ AH-COMPLIANT FINTECH PLATFORMS
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Abstract

Purpose — The recent surge in Sharī ah-compliant fintech platforms has created an increasing volume of intangible digital assets of increasing value across emerging technological platforms. This phenomenon has generated a significant number of digital assets left behind after the demise of their owners. This paper provides a legal analysis of the implications of abandoned digital assets in Sharī ah-compliant fintech platforms. It seeks answers to two central research questions: what are the Sharī ah and legal implications of digital assets after the passing of the owner? How can the existing Sharī ah-compliant fintech platforms prevent uncertainty over digital assets? **Design/Methodology/Approach** — This is a conceptual paper which adopts a qualitative analysis of both primary and secondary sources from existing journals and regulatory instruments in Islamic finance jurisdictions to explore the gaps in the law regarding digital assets and regulations regarding unclaimed money. The paper further compares the approaches adopted in Malaysia and Saudi Arabia in regulating digital assets and unclaimed moneys. **Findings** — The paper finds that there is scope for the administration of digital assets in both regulated and unregulated Sharī ah-compliant fintech platforms. Similarly, the adoption of e-KYC that complies with the Sharī ah ethos is essential to ensure that digital assets are not lost upon the account holder's demise. The legal right and title of the account holder and legal heirs can only be protected through the operation of digital assets regulation in a Sharī ah-compliant fintech environment. **Originality** — This paper is of value to administrators and legal heirs of account holders in fintech environments. It recommends measures to prevent intestacy and uphold the account holders' and legal heirs' intergenerational property rights and financial benefits. **Research Limitations/Implications** — As a conceptual paper, the attitude of digital asset users is not examined due to the absence of quantitative or qualitative data on devolution of digital assets. **Practical Implications** — Although this study focuses on the implication of digital assets for Sharī ah-compliant fintech platforms, the findings may well have a bearing on policymakers, legal practitioners, and administrators of estates in the management of emerging asset classes. © Sodiq Omoola and Hafsat Kamal Ibrahim. Published in ISRA International Journal of Islamic Finance by ISRA Research Management Centre, INCEIF University.

Author Keywords

Digital assets; Fintech; Securities; Sharī ah; Unclaimed money

References

- Abiteboul, S., André, B., Kaplan, D.
Managing your digital life
(2015) *Communications of the ACM*, 58 (5), pp. 32-35.
- Ali, A.
Luqaṭah and laqeet (in doctrine of Shariah): The things found in way possessed by unknown
(2010) *Islamic Culture (Al-Thaqāfat al-Islāmiyyah) Research Journal*, 24, pp. 19-50.
- AlMasnad, A.
(2016) *SJD Thesis, Unclaimed Money in Saudi Banks*,
Indiana University Maurer School of Law
- Ante, L., Fiedler, I., Strehle, E.
The impact of transparent money flows: effects of stablecoin transfers on the returns and trading volume of Bitcoin
(2021) *Technological Forecasting and Social Change*, 170 (C).
- Azmi, F.A.B.M., Mohammad, M.T.S.H.
The causes of unclaimed, late claimed or distributed estates of deceased Muslims in Malaysia

- (2011) *2011 International Conference on Sociality and Economics Development, IPEDR*, 10.
- Berisha-Shaqiri, A.
Impact of information technology and internet in businesses
(2015) *Academic Journal of Business, Administration, Law and Social Sciences*, 1 (1), pp. 73-79.
 - Bhala, R.
(2011) *Understanding Islamic Law*,
LexisNexis, New York, USA
 - Blachly, V.
Uniform fiduciary access to digital assets act: What UFADAA know
(2015) *Prob. & Prop., HeinOnline*, 29, pp. 8-20.
 - Bukhari, M., ibn, I.
(1956) *Sahih Bukhari*, 3.
Ahmadiyya Anjuman Ishaat-i-Islam, Lahore
 - Davidson, C.
(2013) *Does my digital estate belong to me? Estate planning for digital assets*,
(accessed 28 November 2022)
 - Dong, H.
Monetary policy in the digital age: crypto assets may one day reduce demand for central bank money
(2018) *A Quarterly Publication of the International Monetary Fund*, 2, pp. 13-16.
 - Drigă, I., Isac, C.
E-banking services—features, challenges and benefits
(2014) *Annals of the University of Petroșani, Economics*, 14, pp. 49-58.
 - Elipses, D.
(2021) *Global Islamic Fintech Report 2021*,
(accessed 9 June 2022)
 - Foster, N.H.D.
Owing and owning in Islamic and Western law
(2019) *Yearbook of Islamic and Middle Eastern Law Online*, 10 (1), pp. 59-95.
 - Griffin, V.C.
Title to Unclaimed Money
(1958) *J. Nat'l Ass'n Ref. Bankr*, 32, pp. 8-9.
 - Habachy, S.
Property, right, and contract in Muslim law
(1962) *Colum. L. Rev.*, 62, pp. 450-473.
 - Haleem, M.A.S.A.
Threefold debt security in the Qur'an: āyat al-dayn
(2017) *Journal of Qur'anic Studies*, 19 (1), pp. 137-142.
 - Halim, A.H., Noor, N.A.M., Arshad, A.
Administration of unclaimed estates in Malaysia: the peculiarities of unclaimed money, undistributed fund and bona vacantia
(2018) *The Journal of Social Sciences Research*, 6, pp. 1075-1079.
 - Hester, R.
Whose account is it anyway: managing the life and death of online user accounts
(2012) *Estates, Trusts & Pensions Journal*, 32, pp. 5-10.

- Hon, W.K., Millard, C.
Banking in the cloud: Part 1—banks' use of cloud services
(2018) *Computer Law & Security Review*, 34 (1), pp. 4-24.
- Hopkins, J.P.
Afterlife in the cloud: managing a digital estate
(2013) *Hastings Sci. & Tech. LJ*, 5 (2), pp. 209-243.
- Howell, S.T., Niessner, M., Yermack, D.
Initial coin offerings: financing growth with cryptocurrency token sales
(2020) *The Review of Financial Studies*, 33 (9), pp. 3925-3974.
- Inalcik, H.
Land problems in Turkish history
(1955) *The Muslim World*, 45 (3), pp. 221-228.
- Iris, D.
(2022) *Mark Zuckerberg's Diem cryptocurrency plans unravel as Meta weighs sale amid regulatory pressure*,
(accessed 28 November 2022)
- Islam, M.W.
Al-Mal: the concept of property in Islamic legal thought
(1999) *Arab Law Quarterly*, 14 (4), pp. 361-368.
- Jamar, S.D.
The protection of intellectual property under Islamic law
(1992) *Steven D. Jamar, Capital University Law Review*, 21 (4), pp. 1079-1106.
- Kud, A.A.
Substantiation of the term 'digital asset': economic and legal aspects
(2019) *International Journal of Education and Science*, 2 (1), pp. 41-52.
- Laldin, M.A., Furqani, H.
FinTech and Islamic finance
(2019) *Fintech in Islamic Finance: Theory and Practice*,
Oseni, U.A. & Ali, S.N. (Eds), Routledge, New York
- Mahalingam, E.
(2017) *Growing demand for fintech in Islamic finance*,
Kuala Lumpur, 5 April
- Malkawi, B.H.
The alliance between Islamic law and intellectual property: structure and practice
(2013) *U. St. Thomas LJ*, 10, pp. 618-649.
- Malkawi, B.H.
Intellectual property protection from a Sharia perspective
(2013) *S. Cross UL Rev*, 16, pp. 87-121.
- Mersch, Y.
Money and private currencies: reflections on Libra
(2019) *Twenty Years of Building Bridges: The Process of Legalisation of European Central Banking*, pp. 15-20.
- Muhammad, M.I.
(2012) *Inheritance in Islam*,
Sadaqatu Tayyibatun Foundation, Minna Nigeria
- Nakavachara, V., Potipiti, T., Lertmongkolnam, T.
(2019) *Should all blockchain-based digital assets be classified under the same asset*

- class?*,
(accessed 28 November 2022)
- Nathan, V.
Mellon banking heir's new crypto fortune: almost \$1B in Ripple's XRP
(2018) *Forbes Magazine*,
(accessed 23 March 2022)
 - Nawawi, I.
(2014) *Riyad As Salihin: The Gardens of the Righteous*,
Tughra Books, New Jersey
 - Neil, H.
A market overview of custody of digital assets
(2020) *Deloitte*,
(accessed 9 June 2022)
 - Nelson, D.A.
The challenge of digital estate administration for executors
(2012) *Estates, Trusts and Pensions Journal*, 32 (1), pp. 11-27.
 - New, S.T., Property, N., Assets, D., Conway, I.H., Conway, H., Grattan, S.
The "new" new property: dealing with digital assets on death
(2017) *Modern Studies in Property Law*, 9, pp. 99-115.
 - Ozili, P.K.
Central bank digital currency research around the world: a review of literature
(2022) *Journal of Money Laundering Control*,
(accessed 28 November 2022)
 - Pater, J.A., Kim, M.K., Mynatt, E.D., Fiesler, C.
Characterizations of online harassment: comparing policies across social media platforms
(2016) *Proceedings of the 19th International Conference on Supporting Group Work*, pp. 369-374.
 - Perrone, M.
What happens when we die: estate planning of digital assets
(2012) *CommLaw Conspectus: Journal of Communications Law and Policy*, 21 (1), pp. 185-210.
 - Pinch, R.
Protecting digital assets after death: issues to consider in planning for your digital estate
(2015) *Wayne Law Review*, 60, pp. 545-566.
 - Pryce, A.H.
Timeshare industry structure and competitive analysis
(2002) *International Journal of Hospitality Management*, 21 (3), pp. 267-275.
 - Radziwill, N.
Blockchain revolution: how the technology behind bitcoin is changing money, business, and the world
(2018) *Quality Management Journal*, 25 (1), pp. 64-65.
 - Rahim, N.F., Bakri, M.H., Yahaya, S.N.
Fintech and Shariah principles in smart contracts
(2019) *FinTech as a Disruptive Technology for Financial Institutions*, IGI Global, pp. 207-220.

- Raslan, H.A.
Shari'a and the protection of intellectual property: the example of Egypt
(2007) *IDEA: The Intellectual Property Law Review*, 47 (4), pp. 497-560.
- Razimi, A., Shahril, M.
Concept of Islamic inheritance law (faraid) in Malaysia: issues and challenges
(2016) *Research Journal of Applied Sciences*, 11 (12), pp. 1460-1464.
- Richard, W., Massey, R., Steele, A., Welmans, T., Robinson, M., Mourtil, E., Marzelli, M., Schulhof, K.
The unique and complex considerations of digital asset custody
(2021) *Journal of Securities Operations & Custody*, 13 (2), pp. 150-162.
- Riham, A.
Heirs can access Facebook account of deceased relatives: German court
(2018) *Reuters*,
(accessed 12 July 2018)
- Romano, J.
(2011) *A working definition of digital assets*,
(accessed 28 November 2022)
- Romānova, I., Kudinska, M.
Banking and fintech: a challenge or opportunity?
(2016) *Contemporary Issues in Finance: Current Challenges from Across Europe*, 98, pp. 21-35.
- Roy, M.D.
Beyond the digital asset dilemma: will online services revolutionize estate planning
(2011) *Quinnipiac Prob. Law Journal*, 24 (4), pp. 376-392.
- **SAMA and CBUAE issue report on results of joint digital currency project 'Aber'**
(2020) *SAMA*,
(accessed 9 June 2022)
- (2022) *Guidelines on Digital Assets*,
SC Securities Commission Malaysia, Kuala Lumpur
- Stein, R.A., Fierstein, I.G.
The role of the attorney in estate administration
(1983) *Minn. L. Rev.*, 68, pp. 1107-1230.
- Turner, C.
Wealth as an immortality symbol in the Qur'an: a reconsideration of the māl/amwāl
(2006) *Journal of Qur'anic Studies*, 8 (2), pp. 58-83.
- (2019) *Framework for 'investment contract' analysis of digital assets*,
(accessed 20 November 2022)
- Van Niekerk, A.
Strategic management of media assets for optimizing market communication strategies, obtaining a sustainable competitive advantage and maximizing return on investment: an empirical study
(2007) *Journal of Digital Asset Management*, 3 (2), pp. 89-98.
- Van Niekerk, A.J.
(2006) *The strategic management of media assets: a methodological approach*,
Allied Academies, New Orleans Congress
- Vatavu, J., Estate, D., Information, C.
The importance of planning for your digital estate
(2012) *Estates, Trusts & Pensions Journal*, 32 (1), pp. 1-4.

- Veaux, C., Yamagishi, J., King, S.
Towards personalised synthesised voices for individuals with vocal disabilities: voice banking and reconstruction
(2013) *Proceedings of the Fourth Workshop on Speech and Language Processing for Assistive Technologies*, pp. 107-111.
- Wintermeyer, L., Basit, A.H.
The future of Islamic fintech is bright
(2017) *Forbes*,
(accessed 1 March 2023)
- Wright, N.
Death and the internet: the implications of the digital afterlife
(2014) *First Monday*, 19 (6).
- Ziadeh, F.J.
Property rights in the Middle East: from traditional law to modern codes
(1993) *Arab Law Quarterly*, 8 (1), pp. 3-12.

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