

# The Role of Modern Scientific Evidence in Proving Rights and Resolving Financial Disputes according to Islamic Jurisprudence

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## Abstract

This research focuses on the topic of proving rights and resolving financial disputes by means of modern scientific evidence. Examples of these rights and disputes are the right of inheritance, the spouses' financial rights, commercial fraud crimes and the consequent financial compensation and penalties. These penalties are explained after defining them, indicating their types, and their validity according to the four schools of jurisprudence. The most well-known types used in the security and judicial fields are also mentioned.

The research objectives are as follows:

- 1- Clarify the concept of modern scientific evidence and its types.
- 2- State the validity of scientific evidence in the sight of Islamic jurists when proving financial rights.
- 3- Prove the financial rights related to inheritance issues, spouses' rights, commercial fraud crimes, and resolving disputes by means of modern scientific evidence.

An analytical inductive approach is adopted. It is based on the clarification of the role of modern scientific evidence in proving rights and resolving financial disputes according to Islamic jurisprudence.

Findings from this research are explained at the end. They confirm the importance of modern scientific evidence in proving people's rights and resolving financial disputes among them.

The research also made important recommendations that are listed at the end.

**keywords:** *rights - disputes - evidence - clues – compensation.*

## INTRODUCTION

People's rights are enshrined in Sharia which prevents losing them. Sharia imposes deterrent penalties on those who caused these rights to be lost. It also allows litigation if each party claims that s/he has the right to own something. Every evidence and clue that confirm this ownership is taken into consideration. Sharia also permits reconciliation between claimants before litigating to prove one's right. Basically, if someone has something in hand, this proves his ownership of this thing unless another

party claims that this thing is stolen. Modern evidence can be employed to prove financial rights and resolve disputes between the parties.

### Significance of the Research:

The importance of this research lies in producing evidence that proves people's rights beyond doubt. It offers evidence by which means redress is provided and false allegations are disproved. All this gives reassurance and satisfaction with the redress provided after having used this evidence and facilitates the

fulfillment of people's compelling and un compelling needs.

### **Statement of the Problems and Research Questions:**

This research addresses a fundamental question based on: What is meant by modern scientific evidence and its role in proving financial rights and resolving disputes about them. This fundamental question leads to subsidiary questions closely related to the types of modern scientific evidence, and the validity of using them according to Islamic jurists, and proving financial rights of inheritance, spouses' rights, and related to commercial fraud crimes.

The most important reasons for choosing this topic:

The reasons can be limited to three things:

the first: The urgent desire to identify pieces of modern scientific evidence that is used to prove rights and resolve financial disputes in the light of the Islamic jurists' statements.

Second: Shari 'ah is keen to extend every right to the rightful owner.

Third: Prevent conflicts that occur and rivalries that grow with people and disturb their lives. This also negatively affects the good relations between families and individuals.

### **Research objectives:**

The most important objectives of the research are:

1- Maintain Najran University's research interests in contemporary jurisprudential issues. For the research topic is the latest developments of financial and judicial issues in light of comparative jurisprudence.

2- Clarify the concept of modern scientific evidence and its types.

3- State the validity of scientific evidence in the sight of Islamic jurists when proving financial rights.

4- Highlight the most important modern scientific evidence and the most famous used in the fields of litigation.

5- Prove financial rights related to inheritance issues, spouses' rights, and commercial fraud crimes.

### **Literature Review:**

After careful research and investigation within the limits of his sources, the researcher has found studies and conferences concerned with the study of modern scientific evidence and contemporary medical evidence and its jurisprudential effects. However, they do not touch on proving financial rights, and resolving disputes which is the research topic.

### **Methodology**

An analytical inductive approach is adopted. It is based on the clarification of the role of modern scientific evidence in proving rights and resolving financial disputes according to Islamic jurists.

### **Research Procedures**

The research consists of an introduction, a preface, three themes, a conclusion, recommendations, an index of topics and another for sources and references as follows:

Introduction: It summarizes the research topic, its significance, statement of problems, questions, the reasons for choosing this topic, its objectives, literature review, methodology, and its outline.

Preface: The preface provides a definition of the concept of modern scientific evidence, its types, validity, the most important types, the

definition of the right and its types. The right is divided into four categories:

First: The Concept of Modern Scientific Evidence

Second 2- State the validity of scientific evidence when proving financial rights.

Third: The most important types of modern scientific evidence.

Fourth: Define the right linguistically and technically, mention its types, and identify the type under study.

First Theme: The role of modern scientific evidence in inheritance cases related to proving rights and resolving disputes. There are four cases:

The First Case: Prove the life of the fetus before the death of the person inherited by means of modern scientific evidence.

The Second Issue: Order of mass deaths such as aircraft accidents, traffic, explosions, drowning and demolition by means modern scientific evidence, and their impact on the division of inheritance.

The Third Case Prove lineage by means of genetic fingerprint and the consequent right of inheritance.

The Fourth Case Identify the killer by means of modern scientific evidence, and the consequent deprivation of inheritance if s/he is one of the original beneficiaries.

Second Theme: The role of modern scientific evidence in identifying the spouses' financial rights and resolving disputes. There are three cases:

The First Case: Prove the wife's right of alimony by proving the child's lineage and

custody by means of modern scientific evidence.

The Second Case: Determine the status of divorced women in terms of pregnancy and lack thereof by means of modern scientific evidence and the consequent financial rights.

The Third Case: The husband's right to take back the dowry if his wife is not virgin on the wedding night and prove this by means of modern scientific evidence.

Third Theme: The role of modern scientific evidence in proving commercial fraud crimes and resolving disputes, and the consequent penalties and financial compensation.

Conclusion: Conclusion, which includes the findings of the research and recommendations:

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Preface: The preface provides a definition of the concept of modern scientific evidence, its types, validity, the most important types, the definition of the right and its types. The right is divided into four categories:

First: The Concept of Modern Scientific Evidence

Modern scientific evidence is a phrase that has been frequently and recently mentioned in various disciplines, and its main pillars are three:

1- Evidence: As regards the language definition of "daleel", the Arabic equivalent to "evidence", it means a guide to anything whether sensory or moral. Jurisprudential evidence is the texts from which jurists deduce the provisions of Sharia. Taking this into consideration, the term "evidence" expresses the meanings of guidance, clarification, and statement. [19] [35] [8] [39]

As regards the technical definition of “daleel”, the Arabic equivalent to evidence, it is that which, with proper examination, can lead to knowledge of things that are not known by necessity. Some say: It is something clarified after having been argued about. It is also said: That which is known by knowing something else. [14] [34] [12] [17]

In fact, all these definitions signify a single meaning: a means by which knowledge of something else is reached.

2-Scientific: It is an adjective that describes evidence. In this research, it is referred to as a set of clues and clues known by scientific specialists, such as surgeons who conduct autopsies to determine the dates of death, the recent and old deaths. Based on this determination of time, jurisprudential rulings related to inheritance rights are made.

3- Modern: An adjective that modifies scientific and is meant to refer to common evidence and clues used in proving rights in this day and age.

Thus, it can be said that modern scientific evidence is: A set of clues used by specialists on medical and criminal sciences, and similar common specialties in the present era or the previous one.

These are clues that lead to identifying rights on the one hand, and determining who deserves them on the other hand. They are regarded as evidence. In this respect, Islamic jurists have opinions, which are addressed as follows:

Second: The validity of scientific evidence when proving financial rights.

Basically, if someone owns something in hand, safe or bank account and there is no clue that disproves his ownership such as his keeping of a trust or mortgage, he is supposed to be the

owner of that thing. There is no difference of opinion on this matter among Islamic jurists. That is why they differentiate between ownership, trust and guarantee. There is a hadith that reads: (The hand that takes is responsible for what it has taken till it returns it.[23] [25] [24] [44] [2]

The clues that prove ownership are numerous. Islamic jurists elaborated on these clues, the most important of which in the researcher's opinion are the following:

1- The existence of valid notarized documents proving that the one holding these documents is the owner of the property notarized.

2- Laying hand on something which is not owned by the state, nor is it an expensive lost property.

The transfer of property by inheritance.

Every clue that proves the validity of ownership is a valid clue according to Sharia and law, provided that there is no party claiming ownership. In this case, a trial is started to determine the real owner. Furthermore, scientific evidence plays a prominent role in resolving disputes, and determining the owner of the financial right as evidenced by many cases where the rightful owner is confused except by the intervention of modern scientific means. The clearest cases are the following:

A- Races such as running, horse, car races and the like. Some runners apparently and rarely arrive at the same moment within sight of the supervisors of the races. Using the technology of slow motion and lasers, this problem is completely solved. It becomes very easy to know the first winner and the next within the merest fraction of a second. Accordingly, the prize money will safely go to all contestants and supervisors deserving it.

Var technique has been recently used in verifying that the ball does not exceed the goal line. It is a 3D technique accompanied accurate lasers and cameras close to the goal net. This problem has been solved completely. This modern scientific technique is used in all sports settings. Consequently, all prizes money goes to those deserving them.

C- The genetic fingerprint also has a major role in giving rights to the rightful owners.

In general, these pieces of modern scientific evidence are characterized by extreme accuracy. By using it, justice is achieved, and the parties entitled to their financial rights are determined. This evidence plays an important role in sports field, criminal and judicial fields. These rights, means of reserving them, means of warding off evil are all enshrined in Sharia. Legitimate means are established for the purpose of serving interests and warding off evil. If modern scientific evidence achieves these interests, it is regarded as legitimate means, and used in case of disputes.

It is worth noting that Islamic jurists disagree on whether a clue is regarded as a means of proving rights or not. There are two famous opinions:

First Opinion: Those holding this opinion believe that a clue is a means of proving something. The majority of Islamic jurists agree on this opinion.[10] [9] [1] [29]

Second Opinion: A clue cannot be a means of proving something. Al-Gassas who belongs to Hanafi school of thought, and al-Qarafi who belongs to Malki school of thought hold this opinion.

The most correct opinion is the one held by the majority. Many papers were submitted to the conference "Contemporary medical evidence and its jurisprudential implications" organized

by Imam Muhammad bin Saud University in Riyadh from 8-9 Jumada II 1435AH corresponding to 8-9 April 2014AD. Most papers propose the permissibility of using clues as a means of proving something.

Third: The most important types of modern scientific evidence.

As previously mentioned, modern scientific evidence is defined as: A set of clues used by specialists on medical, forensic sciences, and similar common specialties in the present era or the previous one. Accordingly, the researcher investigates these pieces of evidence, taking into account several considerations. The diversity of these considerations leads to identifying them:

A-: Taking into account the traces of crime that the perpetrator leaves behind, these traces will be important forensic evidence. These are clues that are observed by the forensic expert at the crime scene, such as fingerprints on the body of the victim, or a stray wisp of hair.

B- Taking into account the perpetrator himself, it is possible to use some methods and means that reveal the extent of his honesty and lying, such as a polygraph.

The polygraph is a means of seeking evidence of criminal conviction.

Hypnosis whereby the hypnotized makes a confession. Sharia jurists have reservations about this means. The Permanent Committee for Scholarly Research in KSA issued a fatwa on hypnosis and regards it as a kind of seance.

C- According to the means used, the following can be termed as: Media evidence, such as recording a call through a wiretap device through which the speaker admits without realizing his call is recorded. S/he may confess that s/he stole someone's money or property.

D- In view of the appearance and disappearance of the evidence, it is classified into two types: apparent evidence, which is every means usually perceived by the eye, such as a polygraph, and hidden evidence, such as a listening device planted in a place not felt by the accused.

Thus, several types of modern scientific evidence can be sought in view of different considerations. These types are: forensic evidence, direct evidence, media evidence, apparent evidence, hidden evidence. Basically, using all of them is permissible in sharia. However, special conditions imposed by Islamic jurists apply to the use of these means .

Since this modern scientific evidence is a means of obtaining various rights, it is important to shed light on the term “right” and its types, which is addressed by the following requirement.

Fourth: Define the right linguistically and technically, mention its types, and identify the type under study.

The language definition of “Haqq” the Arabic equivalent to “right” includes meanings of proof, obligation, stability, entitlement, and validity.

The technical definition of “haqq” is not different from the language one and both are closely related.

Al-Laknawi defined “haqq” as a proven ruling. He said: ((Haqq: what exists, and what is meant here is a proven ruling)) [32]. There is no doubt that he means by “ruling” that a right is proven by Allah the Exalted because this is the meaning of ruling according to Islamic jurists:. Accordingly, it can be argued that “right” is a ruling made by Allah.

El Aini defined it as: What a man is entitled to. It is evident that a man enjoys a right which is acknowledged and protected by Allah. Thus, Allah gives this right to him.

Sheikh Mustafa al-Zarqa defined it as “a jurisdiction by which Allah establishes an authority or imposes an obligation””. [36]

Some researchers choose a comprehensive definition. They say: ((The right is legally established to serve an interest and requires authority or obligation).

Jurisdiction is the essence and merit of right. We say: Proven lawfully with reference to the source of right which is Sharia, it is proved as long as it is acknowledged by Allah. Achieving an interest is the fruit and purpose of right. Its subject matter is Authority established or obligation imposed.

In fact, the jurisdiction directs the rightful owner to obtain his right. If the right is denied by someone else, he is charged with getting it.

The jurists state rights individually. Therefore, they talk about the right of preemption, for example, the right of custody, and the right of ownership. Fundamentalists investigate rights with respect to the rightful owners. They divided rights into: God's right, the slave servant's right, and a mutual right between them. The following are the most important types of rights in Sharia.

First: Financial rights, which are related to money. These rights are numerous, for example, the right of ownership of property or debts and benefits and the right to preemption.

Second: Non-financial rights that are not related to money and are not intended for money, such as: The right of the heir of the person killed to retribution, his right to forgive the killer, and the right of custody.

There are abstract rights, non-abstract rights, rights that can be denied, others that cannot, rights that can be inherited and others that cannot, rights that can be transferred and others that cannot, God's rights and slave servants' rights. It would be inappropriate to elaborate on these rights. However, financial rights will be elaborated as well as the role of modern scientific evidence in proving them, and resolving disputes about them.

First Theme: The role of modern scientific evidence in proving rights related to inheritance and resolving disputes. There are four cases:

The First Case: Prove the life of the fetus before the death of the person inherited by means of modern scientific evidence.

Islamic jurists unanimously agreed that if a man dies and leaves his wife pregnant, the child in her belly, who will be born alive, inherits and is inherited. They all say: If he is born dead, he does not inherit [4]

They have a disagreement over his right to inherit if he is born alive but does not scream. There are two opinions.

First: S/he has no right of inheritance. This opinion is held by Malik, and Ahmad bin Hanbal.

Second: S/he has a right of inheritance. Abu Hanifah, ash-Shafi'i, and the Dhahiriyah hold this opinion.

Those who argue that s/he has no right of inheritance base their argument on the following hadith:

1-((When a new born raises its voice at the time of birth and then dies), s/he is regarded as an heir."

2- Not screaming proves his death.

Those who argue that s/he has the right of inheritance base their argument on the following:

1- His life is proved by a movement or sneezing even if he does not cry at the time of birth.

2- The hadith means the newborn's appearance not its crying.

The most correct opinion is that the fetus has the right to inherit as soon as it is born alive and any sign of its life appears such as the movement of an eye or sneeze and the like. Its right of inheritance is not conditional on its crying. Inheritance texts support this opinion, Ibn Hazm said: "Whoever is born after the death of his inheritor, then he is born wholly or partially, and then died, but his life was confirmed by the movement of an eye, a hand, or by anything, then he inherits and is inherited."

The fetus inheritance rights are based on two aspects:

The first: He was still alive after the death of his inheritor.

Second: Proof of any sign and clue of life.

In fact, Islamic jurists do not disagree that if a fetus is born alive, it will inherit the deceased. For inheritance is conditional on the heir's life that has been proven after the inheritor's death. It is also inherited after it has died. According to Hanafi school of thought, it is inherited if most of the fetus is alive after its birth. According to Ibn Hazm, if a little part of the fetus is alive after its birth, it is also inherited.

Any modern scientific means that proves the life of this fetus in the womb or after its birth, even if it does not cry at the time of birth, is a legitimate clue by which means it has the right to inheritance.

The most important clues are:

1- Monitor the movement of the fetus through ultrasound.

2-Hear the heartbeat, even if it is faint.

3- Analyze the blood of the fetus to prove that it has died after the inheritor had died.

The Second Issue: Order of mass deaths such as aircraft accidents, traffic, explosions, drowning and demolition by means of modern scientific evidence, and their impact on the division of inheritance.

Mass death is one of the dilemmas of inheritance issues. Islamic jurists, may God have mercy on them, have expressed the issue by saying: (((Inheritance of those drowned, burned or persons who died due to demolition))) [6] [4] [20] [40] They refer to mass death due to floods striking villages and causing the death of people at the same time, or earthquakes that cause the death of many people, or fires that lead to death of suffocation. This mass death frequently occurs and there is a great controversy about it. A group of people die at the same time and, consequently, inheritors cannot be differentiated from heirs. The reason for this is that nobody knows who dies first and, consequently, the inheritor, and who dies next and, consequently, the heir. In this day and age, many groups of people die in accidents that frequently occur such as car accidents, plane, ship, train crashes, in addition to demolition, fire, drowning, bombing in wars and so forth.) [42]

On the one hand, the issue of drowning, demolition, burning and their types is linked to time to determine who died first and who next, such as relatives who died suddenly at the same time and have inheritance rights over each other. Islamic jurists laid down a guideline for this issue. Having known he died first, he is

regarded as an inheritor. Having known he died next, he is regarded as an heir. They did not touch on the means by which the chronological order is known. How could they know this with bodies accumulated in one place or scattered in several places? Some of these bodies became remains, or ashes, or gone by floods and without a trace. In this day and age, the chronological order of death can be identified through medical evidence noticed by specialists. There is a study by two researchers entitled "Dead Heirs". They stated in the abstract that inheritance is given on condition that the heir is alive after the inheritor's death. Verification of this condition is very important because those entitled to inheritance will be identified. Nevertheless, it may be difficult to verify this condition in cases of mass death. However, doctors can help us determine the moment of death in mass death because of medical development. However, there is a genuine difference of opinion between them about determining the moment of death. Some of them consider the death of the brain as the moment of death, and some of them consider cardiopulmonary arrest as the moment of death. [43]

The one who ponders over several pieces of research on this issue observes pieces of evidence by which the chronological order of deaths is identified.

An autopsy allows surgeons to know the exact time of death.

2- Emails are sent by those who think there will be a mass death such as the sinking of a ship or the fall of an airplane. Therefore, they send messages to their families at specific times. Given the total number of messages, the one who died first is differentiated from the one who died next.



3- See some of them alive and some of them in their last breath. This is clear evidence of the first and next death in mass death.

Basically, these pieces of evidence are as legitimate and lead to inheritance entitlements that are elaborated by scholars of inheritance and not elaborated in this research. [37]

The Third Case Prove lineage by means of genetic fingerprint and the consequent right of inheritance.

Proving paternity of the child is based on the reality of the individual who lives among his family, kinship, group and tribe. Their acknowledgment that this individual belongs to them is enough in proving his paternity. On the family level, people are entrusted with keeping their lineage. In addition, marriage documents prove one's paternity. Basically, every child is attributed to his father by his surname which is passed on from father to son. In this respect, diagrams that show a particular person's line of ancestors are evidence and so are birth certificates. Still, there is a controversy on some exceptional cases where lineage cannot be proved. The first of these cases is the fingerprint on which many studies have been conducted. These studies are conducted to know the permissibility of using a fingerprint in proving or disproving one's paternity.

Conferences and seminars have been held for the purpose of determining the permissibility of the use of genetic fingerprinting in proving or disproving one's paternity. The Islamic Fiqh Academy in Mecca summarized all those modern studies, and came to some precise decisions that read: [31]

First: There is no legitimate objection to reliance on the DNA fingerprint in the criminal investigation. It can also be considered as a means of proof in crimes that have no

prescribed punishment or retribution because of the following hadith: (Ward off prescribed punishments by means of suspicion)) [2]

This achieves justice and security for the community. Thus, the criminal is punished, and the accused is acquitted, which is an important aim of Sharia.

Second: The use of the genetic fingerprint in paternity suit must be made with the utmost caution and confidentiality. Therefore, legal texts and rules must take precedence over the genetic fingerprint.

Third: It is not permissible in Sharia to rely on the genetic fingerprint to disprove one's paternity, and must not be given precedence over li'an, a form of divorce which takes place under the following circumstances "if a man accuses his wife of adultery and does not prove it by four witnesses, he must swear before Allah that he is the teller of truth four times and then adds: "if I am a liar, Allah curse me". The wife then says four times: "I swear before Allah that my husband lies, and then adds: "May Allah's anger be upon me."

The Fourth Case Identify the killer by means of modern scientific evidence, and the consequent deprivation of inheritance if s/he is one of the original beneficiaries.

Premeditated killing is one of the deadly sins in Sharia which prescribed retribution for this felony. Retribution is prescribed so that people are not killed. Societies are secure, the human race is saved, justice is achieved by means of this retribution. In this respect, there is no more eloquent expression than the Qur'anic expression. Allah the Exalted said: And there is for you in legal retribution [saving of] life. [179], it contains a statement and a warning given to people. The legislation of retribution

on the offender is completely fair and leads to the safety of all individuals' lives.

The legislation of retribution is not arbitrary, but based on factual evidence that confirms the perpetrator's felony unquestionably, and the strongest evidence is as follows:

1-Reliable witnesses who saw and witnessed the crime, testified before the judge about its details: the aggressor and the deceased victim.

2-The offender's confession, which is the strongest piece of evidence.

3- The numerous pieces of evidence about the crime. Most of this evidence is linked to the perpetrator. This is done by criminal investigators who seek evidence, clues, marks, and traces at the crime scene. The perpetrators often leave traces behind them, but identifying these traces depends on the criminal investigator's extraordinary skills.

Among these clues and evidence:

1- The existence of a killing machine such as a pistol and the like with a serial number. By referring to the list of buyers from gun shops, the name of the person who obtained the murder weapon is identified.

2- Traces of the perpetrator such as a stray wisp of hair, blood or saliva drops, fingerprints, footprints, remnants of a cigarette, or half a rope half at the crime scene, and the other half at the perpetrator's home. The connection of the two ropes indicates the exact match between their ends.

3- Correctly documented video recordings, photographs taken, and voice recordings are stronger evidence than images, although both can be forged. Therefore, courts reserve these two means until they are supported by other evidence.

4- Inquire about the relationship between the perpetrator and the victim in the period preceding the crime. By asking the relatives who knew them, it is evident that they had been involved in severe disputes with each other and made death threats against each other. Such evidence is not conclusive and does not prove the crime, but it helps to clarify the truth during the trial.

Based on previous cases, a single clue may weaken the case against the perpetrator. However, if there are many clues and they are all directed towards one person, the Attorney General is authorized to issue a warrant to arrest and imprison the accused till investigations and procedures are finalized. He also should appoint a lawyer for the accused so that truth is clarified, and justice is achieved.

In fact, Sharia seeks to find out the perpetrator, and encourages his confession as initial evidence that obviates many means prolonging the investigation. If he refuses to confess, it is self-evident that any other scientific evidence, which contributes to the identification of the perpetrator, and the achievement of justice for the victim, will be sought. Islamic jurists unanimously agreed that if the perpetrator is one of the victim's relatives, such as son and the like, he is deprived of inheritance as a punishment for his bad intention. [40] [45] [26] [15] Their ruling is based on the following: (The one who hastened something will be punished by depriving him of it)[5]. All possible means of proving conviction apply to this heir who is hasty in getting inheritance like other perpetrators who receive appropriate punishments in Sharia.

Second Theme: The role of modern scientific evidence in identifying the spouses' financial rights and resolving disputes. There are three cases:

The First Case: Prove the wife's right of alimony by proving the paternity and custody of the child by means of modern scientific evidence.

In many cases, a man refuses to admit paternity of the child when he has divorced his pregnant wife. This is an implicit accusation of the wife's obscenity, and that this child is from another man's water. However, the husband does not have four witnesses to the wife's perpetration of the obscenity. Consequently, he refuses to admit the child's paternity to spare himself the retribution. He also asks the court not to maintain his divorced wife, nor her child, who is not his based on his claim. Meanwhile, the wife insists before the judge that this child is his son, and she needs maintenance in order to breastfeed him after birth, raise him till adulthood. She is entitled to custody as long as she does not re marry. The custody is long and requires maintenance, money, care and follow-up. Therefore, a dispute between the spouses erupts. He asks to drop the alimony, and she demands that she should have it.

Basically, reconciliation is sought for the sake of the infant, regardless of whether he is his father or not, As evidenced by the verse: If a woman fears indifference or neglect from her husband, there is no blame on either of them if they seek 'fair' settlement, which is best. Humans are ever inclined to selfishness.<sup>1</sup> But if you are gracious and mindful 'of Allah', surely Allah is All-Aware of what you do." (Quran 4:128). If reconciliation is not possible, the dispute will be resolved using public and private means of proving the child's paternity. Islamic jurists have many statements on these

means which are public and private. The public includes the following:

1- Acknowledgment. The husband acknowledges that this child is his son and so does the wife.

2- Evidence by the testimony of two male witnesses, or a man and two women, that this child is the son of so-and-so, and that he was born on his bed shared with his wife or his slave.

3- Judge's verdict: This is also evidence of the child's paternity and the like. The judge's verdict adjudicates the dispute.

4- Elaboration: It is called listening: a reliable group of people say that they have heard that so-and-so is a son of so-and-so, and that this paternity is known to people.

Means of proving paternity, which are not used in other matters, include the following:

1- Bed: The marriage contract necessitates that the wife has sexual intercourse with her husband only. He is the one who enjoys her not another person. If she delivers a baby, this means that he is his father because they shared a bed. This is basically supported by the hadith that reads: "The child belongs to the owner of the bed and the adulterer is stoned." [27]

2- Qiyaafah (tracking and looking for places and clues) It means attributing the child to his ancestors because of the similarity between him and them, According to Islamic jurists, qiyaafah is limited to the identification of one's paternity in case of suspicion.

3- Istlihaq (accepting a child as one's son):

This is another evidence of proving paternity. This evidence is used only cases related to the mothers of the children. In other words, the

master claims that his slave's newborn baby belongs to him. [28]

If these means cannot be used, the modern scientific evidence can be used instead to resolve disputes between the spouses, hence achieving the interest of the infant. Scientific and biological development, as well as advanced scientific research led to the development of new means of identifying paternity or maternity.

The Second Issue: Determine the status of divorced women in terms of pregnancy and lack thereof by means of modern scientific evidence and the consequent financial rights.

Islamic jurists unanimously agreed on the permissibility of divorcing one's wife while she is pregnant. This consensus is told by more than one scholar. Among them is ibn al-Qayyim. [22] It is an undisputed Sunni divorce that causes no controversy. Pregnancy is a matter that is often known by women. By nature, a woman is aware of her pregnancy in its early phases. This is not known by husbands. If the wife does not inform her husband of this pregnancy, he will notice suddenly her swollen abdomen as a sign of pregnancy. Allah the Exalted forbids the divorced woman from hiding her pregnancy. Allah says: Divorced women must wait three monthly cycles 'before they can re-marry'. It is not lawful for them to conceal what Allah has created in their wombs, if they 'truly' believe in Allah and the Last Day. And their husbands reserve the right to take them back within that period if they desire reconciliation. Women have rights similar to those of men equitably, although men have a degree 'of responsibility' above them. And Allah is Almighty, All-Wise. (Quran 2:228) Ibn Kathir said: They are warned against hiding the truth. This indicates that they are the source of this matter. This matter is known by

them only. It is not possible to prove such a matter, that is why Allah refers to them and warns them against hiding the truth. They hide this pregnancy so that Iddah finishes quickly or is prolonged. Women are ordered to tell the truth and nothing but the truth. [13] Transparency and truthfulness are required so that marital rights are reserved. Similarly, some divorced women claim that they are pregnant so that the husband provide accommodation for her and alimony for the fetus. Allah the Exalted said: Let them live where you live 'during their waiting period', according to your means. And do not harass them to make their stay unbearable. If they are pregnant, then maintain them until they deliver. And if they nurse your child, compensate them, and consult together courteously. But if you fail to reach an agreement, then another woman will nurse 'the child' for the father. (Quran 65:6) The husband may believe her because he pities his son who is a fetus. In fact, there is no baby in her womb. Therefore, the alimony that she takes from her husband is unlawful. Similarly, she does not deserve the accommodation provided for her. Some husbands do not believe their ex-wives' claim that they are pregnant. There is a general clue that she is not pregnant at the time and after divorce. The wife does not tell the truth as evidenced by her claim that she made when the divorce procedures have been finalized. The importance of modern scientific evidence lies in proving and disproving her pregnancy.

It is worth noting that women in the past were used to knowing their pregnancy by traditional symptoms such as menopause, swollen breasts and pain in them, nausea with or without vomiting, polyuria, and severe fatigue. However, such symptoms are not conclusive evidence of pregnancy. Many women experience some of these symptoms which turn out to temporary health problems.

Medical specialists said that there are some tests that indicate pregnancy conclusively. One of these tests is home pregnancy test which is affordable. This test is based on scientific evidence: pregnancy hormone (HCG) is secreted into the bloodstream at the beginning of pregnancy. Afterwards, this hormone is secreted to urine. This hormone is secreted during pregnancy only, hence the reliability of this test. If the result is positive, a woman sees a gynecologist to do a blood test so that pregnancy is confirmed. In addition, pregnancy can be identified through a blood test. The result of blood test includes the digital value indicating the amount of pregnancy hormone in the blood. The hormone increases as the pregnancy progresses. This test is done through collecting your urine in a cup and dipping the test stick into the cup. After waiting a certain number of minutes, results on the test stick are checked. The period of waiting depends on the type of device. A woman waits till she gets an answer to her query: is she pregnant or not. After dipping the stick into the urine, one or two lines appear on the stick. The first line that appears is the examiner line, which always appears if there is pregnancy or not. The function of this line is to ensure the safety of the used tools and that the woman performs the examination properly. The appearance of only one line means a negative result of the test and indicates that the pregnancy did not occur or that the test was carried out early. If two lines appear, it means that the test result is positive, and the woman is pregnant.

In fact, these medical analytical methods are scientific conclusive evidence of pregnancy or not. They are used by judges in disputes between a man and his ex-wife. Traditional methods can be applied in addition to modern methods for more authentication and

verification. All these methods are permissible in Sharia, and no one can object to them.

If pregnancy is proven, the divorced woman's claim that she is pregnant is valid and true. Consequently, the man provides accommodation for his divorced woman if he does not have a house. He should also provide alimony for the fetus, either weekly or monthly as agreed, Islamic jurists unanimously agreed that the divorced woman deserves an alimony till she delivers her baby. this consensus has been told by many jurists, one of whom is Ibn Qudamah al-Maqdisi. [40]

However, if it is proven that the divorced woman is not pregnant, falsely claimed pregnancy after the divorce, and her ex-husband sent her money during the claimed period of pregnancy, which is usually nine months, she must return what she received. Otherwise, the divorced man can file a lawsuit for compensation. He can offer evidence that his divorced woman lied and falsely claimed pregnancy. Cordobi said: Whoever takes someone's money for no justifiable reason in Sharia, they take it unlawfully. [18]

The Third Case The husband's right to take back the dowry if his wife is not virgin on the wedding night, and prove this by means of modern scientific evidence.

Basically, the virginity of a virgin who is betrothed by a man is inviolable. A virgin is a woman who has never had a sexual intercourse with anyone and does not lose her virginity. Unlike the previously married, whether a man or a woman. Everyone who did not marry is called a virgin. According to jurists a virgin is: S/he is the one who did not get into a correct marriage, or into a corrupt contract that acts like the correct one, whether a man or a woman. This technical definition is similar to the dictionary one, which is: Whoever does not

marry, whether a man or a woman. As for the third meaning, it means a virgin woman who did not lose her virginity. This meaning is not similar to the meaning enshrined in Sharia. [41] [11] [38] [12] Therefore, al-Kasani al-Hanafi said: ((There is no disagreement that every woman whose virginity was lost by a leap, a mutation, menstruation, or by the length of celibacy, is regarded as a virgin and should get married like virgins. [6]

If a man proposes to a woman and agreed with her family on an appropriate dowry like the dowry given to her counterparts and paid it on the basis that she is a virgin, but he discovers on the wedding night that she is not a virgin, he is deceived by the woman. She should have told him the truth and explained the reason for losing virginity during the engagement. Accordingly, the man has the freedom to do whatever he likes. Sometimes a man marries a woman because of her truthfulness. He also does so because he wants to keep her chaste especially if he notices her religiosity, integrity and chastity.

A woman loses virginity for many reasons:

1- A previous correct marriage in which there was a legitimate sexual intercourse that leads to the loss of virginity. If this woman gets divorced, she is called “thayyb”, the Arabic equivalent to “previously married. Basically, she should tell the new fiancé that she was previously married and not a virgin. Many men prefer a virgin to a previously married woman, but he may marry a previously married for her truthfulness. If a woman claims that she is a virgin while she was previously married, her marriage is based on deceit. A true Muslim woman should not deceive anyone.

2- A forbidden sexual relationship. The woman may have been pregnant during her engagement with the new suitor, or she may

have abortion to conceal what happened and to ward off scandal. Otherwise, she may not be pregnant during this forbidden relationship, and then repents and her behavior improves. Some women are courageous and inform the suitor of her repentance and integrity, hoping that he will conceal what happened and marry her. In this case, the suitor can choose between marrying a woman who committed adultery and then repented, and refraining from marrying her and does not seek to scandalize her. She may have a suitor who is not interested in virginity and is eager to marry a previously married woman. Islamic jurists unanimously agreed on the permissibility of marrying a woman who committed adultery and then repented.

Judge Abdul Wahab said: As for the adulteress, it is permissible for the adulterer to marry her, even if he has committed adultery with her, and it is permissible for others to marry her as well. This opinion is held by all jurists. [4]

3- An accident happened to the woman. This accident most probably occurs at a young age. She might have fallen from a high place or made a high jump, or a column penetrated her vagina, or she got sick in her old age due to the length of celibacy, or a disease struck her womb. In these cases, her family should get an official medical document that details the accident or illness, specifying the date. This document is strong evidence of her innocence and should be submitted by the betrothed woman to the one who proposes to her if she informs him of her nonvirginity. Basically, a man should believe the woman due to this document. It is not permissible for him to tell other suitors about this matter out of scandalizing her and warning them. The Prophet (PBUH) said: Whoever covers up his Muslim brother in this world, Allah will cover him on the Day of Resurrection. [24] The most difficult scandals are related to girls' virginity.

Just as it is not permissible to slander chaste women, it is not permissible to slander the girl who lost virginity due to an accident or so by saying that it was lost due to adultery.

There is a controversy on the dispute between a wife and her husband who found out she is not a virgin. He has clear evidence, that is his penis penetrates her vagina easily. Basically, a man encounters difficulty in tearing a girl's hymen. Meanwhile, the wife denies that she is not a virgin. This dispute leads to:

- 1- Suspect woman's chastity.
- 2- The husband's thinking of dissolving the marriage.
- 3- Accuse women of cheating and deceit.
- 4- Ask to take back the dowry.

Ibn Qayyim said that if a man stipulates that he marries a virgin and finds out she is not, he has the right to cancel the contract. If this occurs before marriage, she is not entitled to the dowry. If this occurs after marriage and she is the one who deceives him, she should give him back the dowry. If he is deceived by her guardian, he should be paid the dowry by this guardian. [22] If the wife insists that she was a virgin and her husband is the one who tore her hymen, then this will be a dispute that could be hardly resolved because it is related to a woman's vagina. This is one of the hidden matters that are covered by female gynecologists. A gynecologist may get the remains of the woman's hymen, which proves her virginity. A woman may get an ultrasound copy of her hymen and attached it to an official report signed and sealed by the gynecologist who did this ultrasound. Some women resort to repair her hymen due to an accident or adultery. In this case, has nothing to do but a ruling on the basis of what appears to be the case. In this

case, it is impossible to do medical radiative tests to such hymen.

Third theme: The role of modern scientific evidence in proving commercial fraud crimes and resolving disputes, and the consequent penalties and financial compensation.

Basically, Muslim merchant should be truthful in his dealings and should not practice fraud or deception. There is a sound hadith that reads: Whoever cheats is not one of us. This is a very great threat.

Ibn Hubayrah said:(Cheating is the antonym of advice, and showing what is not inside.) [27]

Ibn Hubayrah provided a comprehensive definition of the concept of cheating which is based on showing something whose inside out is not like the outside. [3] Examples of cheating are numerous:

- 1-Put a good commodity on the top and a rotten commodity in the bottom.
- 2-Spray damaged old cars with a new paint to delude the buyer that it is original.
- 3- Sell an expired commodity and set new fake dates.
- 4- Sell goods with counterfeit (brands) as if they are original (brands).
- 5- Tie the udder of the cow, the she-camel and the ewe to show the buyer that they are milky.

The examples are innumerable, and all of them have the meaning of concealing defects or wrapping them so that the undesirable defects turn to advantages that attract the buyer.

Basically, whoever is cheated can choose between canceling the sale and taking back the price, and going ahead with the sale and accept the fraudulent commodity.

The dispute between the buyer and the seller remains problematic when the buyer claims the commercial fraud, and the seller denies this. The seller may and may claim that he received the commodity from suppliers or from wholesale markets s such.

In fact, the ministries of trade in countries are laid down strict regulation on fighting commercial cheating to verify the validity of goods offered and its lacking any sign of cheating. Whoever is proven to commit fraud will receive punishments, the most important of which are:

- 1-Close the commercial place
- 2- Confiscate counterfeit goods.
- 3- A fine determined by the regulations of the Ministry of Commerce in coordination with the Ministry of Justice or the judiciary.
- 4-Defame of the trader who cheated in one of the means of defamation such as newspapers.

If the customer consumes a commodity that harms his body and leads to blood poisoning and the like, a lawsuit can be filed against the seller. Here, the judicial investigation begins through the criminal investigator to trace the source of the commodity. The analytical laboratories are used to conduct laboratory tests whose results are attached to official reports submitted to the judicial court. If it is proven to the judge that the commodity is fake and caused the material damage or death, the case turns into a felony, which results in a punitive measures, financial fines, and significant compensation received by those affected by the consumption of the fraudulent commodity.

In fact, modern scientific evidence proves commercial fraud, which the regulatory authorities are concerned with, especially with the magnitude of the internationally imported

goods. Such goods require verification of the identification papers that prove the validity of the goods, and determine the manufacturer. This in fact takes a great effort, and a long time. Bribing immoral people may lead to the acceptance of fraudulent goods. In this case, the penalties imposed on the trader who bribes, and the bribed broker are doubled. [30] [21]

### **Research Findings:**

The study yields several findings, the most important of which are:

- 1-Modern scientific evidence is a phrase that has been frequently and recently mentioned in various disciplines, and its main pillars are three: Pieces of evidence, scientific, and modern.
- 2-Modern scientific evidence is A set of clues used by specialists on medical and criminal sciences, and similar common specialties in the present era or the previous one.
- 3 Jurists disagreed on considering the clue as a means of proving. There are two opinions. The researcher holds the opinion held by the majority of jurists.
- 4- Basically, if someone owns something in hand, safe or bank account and there is no clue that disproves his ownership, he is supposed to be the owner of that thing.
- 5- Islamic jurists differentiate between ownership, a trust and guarantee.
- 6-The clues that prove ownership are numerous. Islamic jurists elaborated on theses clues, the most important of which in the researcher's opinion are: The existence of valid notarized documents, laying hand on something and transfer of property by inheritance.



7- Every clue that proves the validity of ownership is a legitimate clue according to Sharia.

8-Scientific evidence plays a prominent role in resolving disputes and determining the financial rightful owner.

9- The genetic fingerprint also has a major role in giving rights to the rightful owners.

10- If the modern scientific evidence serves the people's financial interests, it has become a legitimate means, and can be used in disputes.

11- The modern scientific evidence is viewed with several considerations, and the multiplicity of these considerations leads to an observation of their multiple types: forensic evidence, direct evidence, media evidence, apparent evidence, hidden evidence. Basically, using all of them is permissible in sharia. However, special conditions imposed by Islamic jurists apply to the use of these means.

12- The meanings of the right revolve around proof, necessity, stability, entitlement, and validity.

13- The definition chosen by some researchers - and supported by the researcher - that the right is legally established to serve an interest and requires authority or obligation.

14-Islamic jurists unanimously agreed that if a man dies and leaves his wife pregnant, the child in her belly, who will be born alive, inherits and is inherited. They all say: If he is born dead, he does not inherit.

15-Any modern scientific means that proves the life of this fetus in the womb or after its birth, even if it does not cry at the time of birth, is a legitimate clue, by which means the fetus has the right to inheritance.

16-Mass death is one of the inheritance issues. Islamic jurists, may God have mercy on them, have expressed the issue by saying: (((Inheritance of those drowned, burned or persons who died due to demolition))) Islamic jurists laid down a guideline for this issue. Having known he died first; he is regarded as an inheritor. Having known he died next, he is regarded as an heir. They did not touch on the means by which the chronological order is known.

17-The one who ponders over several pieces of research on this issue observes pieces of evidence by which the chronological order of deaths is identified: Autopsies, e-mails, perceiving some of them alive and some of them in the last breath.

18- Basically, these clues are legalized, and lead to inheritance rights that are elaborated by scholars of inheritance.

19-Family documents are pieces of evidence.

20-Conferences and seminars have been held for the purpose of determining the permissibility of the use of genetic fingerprinting in proving or disproving one's paternity. The Islamic Fiqh Academy in Mecca summarized all those modern studies, and came to some precise decisions that read:

21-The legislation of retribution is not arbitrary, but based on factual 22-evidence that confirms the perpetrator's felony unquestionably, and the strongest evidence is as follows:

Based on previous cases, a single clue may weaken the case against the perpetrator. However, if there are many clues and they are all directed towards one person, the Attorney General is authorized to issue a warrant to arrest and imprison the accused.

23- Jurists have many statements on the means of proving one's paternity: Acknowledgment, evidence, judgment, elaboration, bedding, accommodation, qiyafa, and istlihaq.

24-The strongest legitimate way to refuse paternity of the child is li'an.

25- The jurists unanimously agreed on the permissibility of a man divorcing his wife while she was pregnant. This consensus is told by more than one scholar. Among them is ibn abd al-Barr and ibn al-Qayyim. It is an undisputed Sunni divorce that causes no controversy.

26- If pregnancy is proven, the divorced woman's claim that she is pregnant is valid and true. Consequently, the man provides accommodation and alimony for his divorced woman if he does not have a house.

27-However, if it is proven that the divorced woman is not pregnant, falsely claimed pregnancy after the divorce, and her ex-husband sent her money during the claimed period of pregnancy, which is usually nine months, she must return what she received because it is unlawful.

28-There is no disagreement between Islamic jurists that every woman whose virginity was lost by a leap, a mutation, menstruation, or by the length of celibacy, is regarded as a virgin and should get married like virgins.

29- If a man stipulates that he marries a virgin and finds out she is not, he has the right to cancel the contract. If this occurs before marriage, she is not entitled to the dowry. If this occurs after marriage and she is the one who deceives him, she should give him back the dowry. If he is deceived by her guardian, he should be paid the dowry by this guardian.

30- Recent scientific evidence proves commercial fraud.

### Research Recommendations

The research also resulted in some important recommendations for further jurisprudential research.

1- Ownership, Trust, and Guarantee: A comparative jurisprudential study.

2- Rule: whoever has previously been granted permissions is more entitled to them: contemporary jurisprudential applications.

3- Real estate documents and their impact on proving ownership.

4 Financial rights in the light of the rule "bringing interests and warding off misdeeds": contemporary jurisprudential applications.

5- Clues of ownership: a contemporary jurisprudential study.

6- Overlapping of financial rights in Islamic jurisprudence. Those who are drowned, burned and died due to demolition: contemporary comparative jurisprudential study.

7- The divorced woman who conceals pregnancy and the relevant conditions and financial rights in Sharia.

### ACKNOWLEDGEMENTS

The authors are thankful to the Deanship of Scientific Research at Najran University for funding this work, under the Twelfth Research Stage, grant code: NU/RCP/SEHRC/12/10

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