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The Legal Nature of the Hawala (Debt-Transfer) Contract: A Comparative Study of Iraqi Law, Iranian Law, and Islamic Jurisprudence

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ABSTRACT

The legal nature of the hawala contract remains a significant issue in the law of obligations because its effects overlap with several distinct legal institutions, including novation, delegation of performance, transfer of debt, assumption of liability, and guarantee. This study examines the legal characterization of hawala through a comparative analysis of Islamic jurisprudence, Iraqi civil law, and Iranian civil law. It focuses on whether hawala should be understood as a complete substitution of debtor resulting in the extinction of the original obligation, as a delegation of performance in which the original obligation survives, or as an independent debt-transfer contract with a distinct legal structure. The study adopts a doctrinal and comparative method and concentrates on those rules that reveal the nature of the contract, particularly the transfer of liability, discharge of the original debtor, consent of the parties, existence and certainty of the debt, the role of prior indebtedness, and the legal treatment of a transferee who owes no pre-existing debt to the transferor. The analysis shows that the jurisprudential foundation of hawala is better explained through the concept of transfer than through strict novation. Although the contract may produce a substitutive effect by releasing the original debtor and directing the creditor toward another person, the transferred obligation retains a sufficient connection with its original source to distinguish hawala from complete extinguishment and recreation of the debt. Iraqi law adopts a comparatively flexible and hybrid model, combining transfer with protective exceptions, whereas Iranian law remains more closely connected to the traditional jurisprudential conception of hawala as the transfer of an existing obligation. The study concludes that hawala is most accurately characterized as an independent debt-transfer contract with composite features rather than as a simple form of novation, delegation, or guarantee.

Keywords: *Hawala; Debt Transfer; Novation; Islamic Jurisprudence; Iraqi Civil Law; Iranian Civil Law; Transfer of Obligations*

Introduction

The determination of the legal nature of a contract is not merely an exercise in conceptual classification. It performs a fundamental normative function because the characterization adopted for a particular contractual arrangement directly influences the rules governing its formation, validity, effects, termination, defenses, guarantees, and the distribution of risks among the parties. This is especially evident in the case of hawala, a contractual mechanism traditionally associated with the transfer of a debt or the redirection of a creditor from one



debtor to another. Hawala occupies an important position in Islamic jurisprudence and in the civil law systems influenced by it because its effects cannot easily be assimilated to a single conventional category of modern obligation law. Depending on the doctrinal perspective adopted, hawala may be understood as a form of novation involving substitution of the debtor, as a delegation of payment, as a transfer of debt that preserves the identity of the original obligation, as a guarantee-like mechanism, or as an independent contract possessing features of several of these institutions. The difficulty in defining hawala therefore arises from the fact that its practical result may resemble several distinct legal mechanisms while its doctrinal foundation remains rooted in a specific jurisprudential tradition.

The classical understanding of hawala developed within Islamic jurisprudence before the modern civil-law doctrines of assignment, delegation, and novation acquired their contemporary form. In Imami jurisprudence, the central concern has traditionally been whether the valid conclusion of hawala transfers the debt itself from the liability of the original debtor to that of another person and thereby releases the first debtor, or whether the original obligation continues while only the duty or authority to perform is redirected. Al-Najafi describes the effect of hawala in terms of an actual movement of the debt from one liability to another, emphasizing that after completion of the transfer the creditor's claim becomes directed toward the transferee rather than the original debtor (1). This formulation demonstrates that the institution is not merely procedural or representative. It concerns the legal location of the obligation itself and thus raises questions concerning the identity and continuity of the debt, the discharge of the transferor, and the rights of the creditor against the transferee.

The legal significance of this inquiry becomes particularly clear when hawala is compared with novation. In classical civil-law theory, novation involves the extinction of an existing obligation and the creation of a new one intended to replace it. The substitution may concern the object of the obligation, the debtor, or the creditor, but the essential conceptual element is that the earlier obligation ceases to exist as a result of the parties' intention to replace it with another. The transfer of a debtor through hawala can resemble personal novation because the creditor ceases to pursue the original debtor and instead acquires a claim against another person. Yet similarity of practical outcome does not necessarily establish identity of legal nature. Katouzian argues that the Iranian law of hawala, which is substantially influenced by Imami jurisprudence, should not simply be identified with novation in its strict Western sense because the transfer operates through a distinctive contractual structure and may retain certain legal connections with the original debt (2). The conceptual problem is therefore whether the disappearance of the creditor's claim against the original debtor necessarily means that the old obligation itself has been extinguished and recreated, or whether the same debt has moved from one legal patrimony to another.

The distinction also matters because different characterizations produce different practical consequences. If hawala is treated as complete novation, the original obligation is extinguished and, as a general theoretical consequence, accessory securities connected exclusively to that obligation may also disappear unless expressly preserved. If, by contrast, hawala is understood as a transfer of the same debt, it becomes possible to argue that certain characteristics, defenses, and accessories attached to that debt may survive the change of debtor. If hawala is characterized as a mere delegation of payment, the liability of the original debtor may remain, at least subsidiarily, and the creditor's claim against the transferee may be interpreted as an additional or delegated avenue of performance rather than as a complete substitution. These alternatives demonstrate why apparently abstract disputes about contractual nature can generate concrete effects in litigation, insolvency, guarantee, secured transactions, and the recovery of payments. Al-Kaswani notes, in the broader context of the law of obligations, that

distinguishing between transfer, substitution, and other mechanisms of changing parties is necessary precisely because each model produces different consequences for the survival of the original legal relationship (3).

The comparative dimension is particularly important because Iraqi and Iranian civil law both draw, to differing degrees, upon Islamic jurisprudence while also operating within codified civil-law frameworks. Iraqi law regulates hawala through provisions that indicate a substantial transfer of liability and the discharge of the original debtor, but at the same time recognizes circumstances in which the creditor may again have recourse or in which the protective function of the original relationship is not completely eliminated. Abbas explains that the Iraqi regulation of debt assignment reflects an attempt to reconcile the transfer effect of hawala with protection of the creditor in exceptional situations (4). This produces a model that resembles substitution in its principal effect but does not necessarily embrace all the theoretical implications of strict novation.

Iranian law is even more directly rooted in Imami jurisprudence in its treatment of hawala. The Iranian Civil Code conceptualizes the arrangement as a contractual transfer of the creditor's claim from the liability of one person to another. Katouzian emphasizes that this language is significant because it suggests transfer rather than destruction and re-creation of the obligation (5). The requirement of consent and acceptance among the relevant parties, the treatment of a transfer made to a person who was not previously indebted to the transferor, and the consequences of defects in the underlying obligation all demonstrate that the Iranian legislator did not simply import the Roman-French concept of novation. Instead, it codified a jurisprudential institution whose effects overlap with novation while remaining doctrinally distinct. Moumni similarly considers hawala to be an institution whose autonomous rules prevent it from being reduced mechanically to another contractual category (6).

Another important dimension concerns the relationship between hawala and the general theory of the transfer of claims and debts. Modern positive law often distinguishes the assignment of a claim, by which a creditor transfers a right to another creditor, from the assumption or transfer of a debt, by which a new debtor becomes liable. Islamic jurisprudence developed mechanisms for the circulation of financial rights and obligations through concepts that do not correspond exactly to these modern categories. Safaei and Jawaher al-Kalam regard the jurisprudential treatment of debt and claim transfer as capable of providing a broader theoretical basis for understanding the movement of obligations between legal persons (7). From this perspective, hawala is not only a specific nominate contract but also an important illustration of the broader idea that an obligation can be transferred without necessarily being extinguished in the technical sense associated with novation.

The question of hawala to a person who does not already owe a debt to the transferor further exposes the theoretical complexity of the institution. If hawala necessarily involves the transfer of an existing debt from one liability to another, the absence of an antecedent debt between the transferor and transferee creates a conceptual difficulty. Some approaches respond by treating such an arrangement as valid through consent even in the absence of prior indebtedness, whereas others consider it closer to guarantee or the independent assumption of an obligation. Salimi's analysis of hawala involving a person who is not previously indebted demonstrates that this issue has generated sustained jurisprudential debate precisely because it tests the limits of the transfer theory (8). The treatment of this case under Iraqi and Iranian law therefore provides an especially useful indicator of the conception of hawala adopted by each system.

The objective of this article is to determine the most convincing legal characterization of hawala through a comparative examination of Imami jurisprudence, Iraqi civil law, and Iranian civil law. It seeks to identify the conceptual foundations of the contract, evaluate the competing theories of novation, delegation, debt transfer, and

contractual independence, and assess how these theories are reflected in legislative rules concerning discharge, consent, prior indebtedness, and the continuing relationship between the transferred debt and its original source. The analysis is comparative and doctrinal. It does not attempt to provide a comprehensive treatment of every procedural or commercial application of hawala, nor does it examine unrelated aspects of the general theory of obligations. Its focus is the legal nature of the contract and those conditions and effects that illuminate that nature.

Conceptual and Jurisprudential Foundations of the Hawala Contract

Hawala is fundamentally concerned with the relocation of an obligation from one person to another within a tripartite legal relationship. In its conventional structure, one person owes a debt to a creditor and directs that creditor to another person who becomes responsible for satisfying the debt. The terminology used for the participants varies across translations and legal systems, but the relationship ordinarily includes the original debtor or transferor, the creditor whose claim is redirected, and the person toward whom the claim is transferred. The decisive issue is not simply that payment will be made by a third person, because third-party payment can occur without changing the legal structure of an obligation. Rather, hawala acquires its distinctiveness from the claim that, once validly concluded, the creditor's legal demand ceases to be directed against the original debtor and becomes established against the transferee. Al-Najafi treats this transfer as a substantive movement of the debt rather than a mere authorization to make payment, thereby giving hawala an effect on the underlying legal relationship itself (1).

This aspect differentiates hawala from agency. In an agency for payment, the debtor appoints another person to perform the obligation on the debtor's behalf, but the original debtor ordinarily remains liable until performance occurs. The agent's participation does not substitute one debtor for another; it concerns the manner in which the existing debtor fulfills an obligation. Hawala, when understood in its classical transfer form, goes further because acceptance of the transfer changes the person against whom the creditor may claim. The distinction is decisive in the event that the third person fails to pay. Under a pure agency model, the creditor continues to possess the original action against the debtor. Under a full transfer model, the creditor's right against the transferor is extinguished or suspended because the liability has been relocated. Al-Khwansari's treatment of hawala emphasizes the significance of discharge and the transfer of the creditor's demand, indicating that the contract cannot be adequately explained as a simple mandate to perform (9).

Hawala must also be distinguished from guarantee. A guarantee commonly involves the addition of another person who undertakes responsibility for an existing debt or secures the creditor against nonperformance. Depending on the legal system, the guarantor's liability may be secondary or, in some arrangements, joint with the principal debtor. The essential point is that the obligation of the original debtor does not normally disappear merely because a guarantee has been created. Hawala, by contrast, is traditionally associated with transfer and discharge. The conceptual boundary becomes less clear where the transferee was not previously indebted to the transferor. In such a situation, there is no pre-existing liability in the hands of the transferee into which the debt can naturally be relocated. Salimi explains that the jurisprudential treatment of hawala to an innocent person reveals disagreement over whether prior indebtedness is intrinsic to the contract or whether consent is sufficient to support a valid assumption of the debt (8). This dispute is important because a system that treats such an arrangement as hawala adopts a broader notion of contractual debt assumption, whereas a system that reclassifies it as guarantee adheres more closely to a transfer-based understanding.

The comparison with assignment of rights raises a different issue. Assignment of a claim usually concerns a change on the creditor's side: the original creditor transfers the right to demand performance to another person while the debtor remains the same. Hawala, in its usual debt-transfer form, concerns a change on the debtor's side. Nevertheless, both institutions demonstrate that the law may separate the identity of an obligation from the identity of the person who presently holds the right or bears the liability. Safaei and Jawaher al-Kalam emphasize that the jurisprudential concepts surrounding the transfer of debt and claim have a theoretical importance extending beyond hawala because they establish that financial rights and liabilities may move between persons under legally defined conditions (7). This approach contrasts with older conceptions of obligation as an intensely personal bond that could be altered only by extinguishing the existing obligation and creating another.

The comparison with novation is more difficult because hawala and novation by substitution of debtor can produce nearly identical external results. In each case, the creditor may cease to proceed against the former debtor and instead rely on another person. Yet the mechanism by which this result is reached differs. Novation presupposes the extinction of one obligation and the creation of a new obligation. The new debtor does not simply receive the existing liability; rather, the old juridical bond is replaced by another. Hawala, as understood in much of Imami jurisprudence, operates through transfer. The debt is not necessarily conceptualized as disappearing and being recreated but as moving from one patrimonial liability to another. Katouzian therefore rejects the unqualified identification of hawala with novation and describes the institution as possessing a specific structure derived from jurisprudence rather than from the Western theory of renewal of obligations (2). The resemblance lies in discharge and substitution of debtor, but the theoretical explanation of those effects differs.

The intention required for the two mechanisms also illustrates the distinction. Classical novation depends upon an intention to extinguish the previous obligation and replace it. Without such an intention, the law may treat the new undertaking as cumulative rather than substitutive. Hawala, by contrast, produces its transfer effect because the parties conclude the nominate contract with the legal consequences attached to it. The parties do not necessarily need to form an abstract intention to extinguish and recreate the debt. Their agreement to the hawala itself generates the result defined by jurisprudence and legislation. This distinction supports the view that hawala is institutionally autonomous. Mourni argues that its specific rules concerning consent, transfer of liability, and the relationship with the underlying debt reveal a legal identity that cannot be exhausted by importing categories developed for different contractual structures (6).

The autonomy of hawala also appears in its tripartite structure. Unlike an ordinary bilateral assumption of debt, hawala directly affects the legal positions of three persons. The original debtor seeks to redirect the creditor; the creditor must accept a change in the person responsible for performance; and the transferee assumes or receives the transferred liability. Safaei and Jawaher al-Kalam stress the importance of the parties' consent in understanding the general theory of hawala because the agreement rearranges an existing network of legal relations rather than merely creating a new bilateral promise (7). The creditor's acceptance is particularly important because the identity and solvency of the debtor are material to the value of a claim. The creditor cannot ordinarily be compelled to exchange a reliable debtor for an unknown or insolvent person simply because the original debtor wishes to transfer the obligation.

The role of the transferee's acceptance is equally significant. If hawala were merely an instruction from the debtor to the creditor, the participation of the transferee would be difficult to explain. The need for acceptance indicates that hawala imposes a legally enforceable obligation upon that person. This is especially clear when the transferee

was not originally indebted to the transferor. In such a case, acceptance is not merely acknowledgement of a pre-existing financial relationship but the legal act through which the transferee assumes responsibility for the creditor's claim. Salimi shows that the doctrinal controversy over this form of hawala is closely connected with whether the institution is defined by the transfer of an existing debt between two liabilities or by the broader contractual substitution of one debtor for another (8).

Another foundational issue concerns the existence and certainty of the debt. A transfer presupposes a legal object capable of being transferred. Classical jurisprudential analysis therefore emphasizes that the debt should be established and sufficiently known rather than purely hypothetical or indeterminate. Al-Najafi's discussion of hawala treats the existence of the debt as central to the conception of the contract as a real movement of liability (1). If no debt exists, there is nothing to move from the original debtor's liability to that of the transferee. This requirement reinforces the distinction between hawala and a wholly independent promise to pay another person's future or hypothetical obligation.

The requirement of homogeneity between the transferred debt and the liability existing between the transferor and transferee has also occupied an important position in jurisprudential analysis. The issue is particularly relevant where the transferee already owes something to the transferor, because the transfer can then operate against that existing liability. Traditional doctrine has considered whether the two debts must correspond in kind, amount, maturity, or other characteristics. Although the precise degree of required correspondence is disputed, the very existence of the debate demonstrates the transactional logic of classical hawala: the creditor is redirected toward a liability already located within the transferee's patrimony. Where the debts differ materially, the operation may involve not only transfer but also exchange or a new contractual undertaking.

These conceptual distinctions support the conclusion that hawala should be approached as a special legal institution rather than being forced prematurely into a category such as novation, guarantee, or agency. Its structure contains elements resembling each. It releases or may release the original debtor, as novation does; it redirects performance to another person, as delegation does; it may serve a protective function analogous to guarantee; and it operates through a transfer of liability that resembles modern debt assumption. Yet the combination of these elements, together with the requirement of tripartite participation and the jurisprudential conception of the debt as transferable, gives hawala a distinct legal architecture. That architecture forms the basis for evaluating the competing characterizations adopted in Islamic jurisprudence and reflected, with different emphases, in Iraqi and Iranian law.

The Legal Nature of Hawala in Islamic Jurisprudence

The classification of hawala in Islamic jurisprudence has historically generated competing explanations because the practical consequences of the contract support more than one theoretical interpretation. One approach emphasizes the discharge of the transferor and therefore characterizes hawala as functionally equivalent to substitution or novation. Another concentrates on the continuity of the underlying debt and views hawala as a form of delegation or redirection of performance rather than the creation of a wholly new obligation. A third and more nuanced approach regards hawala as an independent nominate contract whose legal structure incorporates elements of transfer, discharge, and delegation without being reducible to any of them. The importance of these theories lies not merely in terminology. Each provides a different explanation for why the transferor ceases to be

liable, why the creditor acquires a claim against the transferee, and whether the transferred obligation remains legally connected with its original cause and characteristics.

The first theory is based on the proposition that a valid hawala produces a complete substitution of liability. Once the creditor accepts the transfer, the debt leaves the liability of the original debtor and becomes established against the transferee. Al-Najafi describes the effect in strongly transfer-oriented terms, treating the claim after hawala as directed exclusively to the transferee (1). From the creditor's practical perspective, this resembles personal novation. The original debtor is discharged, the new debtor becomes responsible for payment, and the creditor's right is no longer enforceable against the first liability. This resemblance has led some jurists and later legal commentators to interpret hawala as the Islamic equivalent of a change of debtor through novation.

Al-Khwansari also emphasizes the complete discharge associated with a valid transfer, explaining the jurisprudential understanding that the debt becomes attached to the liability of the transferee after the contract has satisfied its requirements (9). If the legal inquiry is limited to the identity of the person against whom the creditor may proceed, the novation analysis appears persuasive. The creditor begins with one debtor and ends with another. The earlier debtor is no longer subject to the same claim, while the transferee occupies the position of the person obligated to satisfy it. In this sense, hawala achieves an economic result similar to substitution of debtor.

Nevertheless, equating hawala with novation creates conceptual difficulties. Strict novation involves the extinction of the original obligation and the creation of a new obligation. The central question is therefore whether Islamic jurisprudence understands the debt after hawala as a new legal obligation or as the same debt relocated to another liability. The language of transfer employed by Imami jurists supports the latter interpretation. Al-Najafi does not explain hawala as the destruction of one debt followed by the creation of another but as the movement of the debt from one liability to another (1). That distinction is fundamental. If the debt retains its identity, hawala cannot be identified fully with novation even where its effect on the original debtor resembles novation.

The second theory therefore characterizes hawala as a form of delegation or authorization connected with performance. According to this view, the essence of the relationship lies in redirecting fulfillment toward another person while preserving the underlying obligation. This explanation is attractive where the transferee already owes the transferor an equivalent debt because the transfer may be seen as a mechanism for simplifying reciprocal financial relations. Instead of the transferee paying the transferor and the transferor then paying the creditor, hawala authorizes or requires the transferee to pay the creditor directly. The transaction can thus be understood economically as shortened performance among three persons.

The delegation theory, however, encounters difficulty in explaining the discharge of the transferor. A true mandate or delegation of payment ordinarily does not eliminate the debtor's liability before the creditor has actually received satisfaction. If a debtor tells a third party to pay and the third party fails to do so, the creditor normally remains entitled to demand payment from the debtor. Hawala differs because its characteristic effect in Imami jurisprudence is the movement of the creditor's claim away from the original debtor after valid acceptance. Al-Khwansari's emphasis on the transferor's release is inconsistent with a characterization limited to agency or delegated performance (9). The theory of mere delegation therefore does not adequately account for the alteration in legal liability created by the contract.

The strongest account is consequently the theory that hawala constitutes an independent contractual institution. Under this approach, the contract is recognized as having a special legal nature that combines effects found separately in other legal mechanisms. It produces discharge resembling novation, involves a redirection of

performance resembling delegation, and transfers an existing financial liability in a way comparable to modern debt assumption. Katouzian explains that hawala within Iranian jurisprudential doctrine achieves some of the practical results of novation but does so through a specific transfer mechanism that does not require acceptance of the complete conceptual apparatus of novation (2). The independence theory therefore avoids the false choice between treating hawala as either pure substitution or mere delegation.

Moumni's analysis similarly supports the autonomous character of the contract by emphasizing that its rules are internally coherent and should be interpreted according to the legal logic of hawala itself rather than by analogy alone with neighboring institutions (6). The autonomy approach is particularly persuasive when the contract's formation requirements are considered. Hawala is not simply a unilateral act of the original debtor. Because the creditor's legal position is altered and the transferee becomes responsible for an obligation, the agreement of the relevant parties has substantive importance. Safaei and Jawaher al-Kalam place consent at the center of the jurisprudential theory of debt and claim transfer, demonstrating that hawala operates as a consensual rearrangement of legal liabilities rather than as a mechanical payment instruction (7).

The independent-contract theory also explains why the transferred obligation may retain significant elements of its previous identity. If hawala created an entirely new debt, defects in the original obligation would not necessarily affect the new one unless the parties had made the new obligation dependent on the previous relationship. By contrast, the jurisprudential requirement that an existing and established debt serve as the subject of transfer suggests continuity. The validity of the transferred liability depends upon the existence of something legally transferable. Al-Najafi's conception presupposes an existing debt that moves from one liability to another rather than an abstract new promise detached from its source (1). This causal connection is more consistent with a transfer theory than with complete novation.

The treatment of hawala to a person who does not owe the transferor further tests the boundaries of the jurisprudential model. Where the transferee already owes the transferor, the movement of liability is conceptually straightforward: the creditor is redirected toward a pre-existing debtor of the transferor, and the network of obligations is simplified. Where no such indebtedness exists, however, the transferee's obligation must arise from acceptance of the hawala itself. Salimi shows that this issue has divided analysis because it challenges the traditional idea that hawala transfers debt rather than creates liability *ex nihilo* (8). The possibility of validating such a transaction may suggest that consent, rather than antecedent indebtedness, is the ultimate basis of the transferee's liability. Conversely, treating the arrangement as guarantee preserves a narrower understanding of hawala as the transfer of an existing debt structure.

The significance of consent is particularly pronounced from the creditor's perspective. The transfer of a debtor alters the credit risk associated with the claim. A creditor who has extended value in reliance upon the financial capacity, assets, or reliability of one debtor cannot automatically be compelled to accept another. Safaei and Jawaher al-Kalam consequently treat the creditor's acceptance as part of the theoretical foundation of the transfer (7). The transferee's acceptance is likewise required because the contract may impose a direct liability enforceable by the creditor. This tripartite consensual structure distinguishes hawala from a purely objective migration of debt occurring independently of the parties' wills.

The requirement that the transferred debt be sufficiently certain further confirms the contractual and proprietary logic of the institution. A debt that is disputed, indeterminate, or legally nonexistent cannot readily serve as an object of transfer. The traditional insistence upon the establishment and determinacy of the debt protects the parties

against uncertainty and prevents hawala from becoming a mechanism for shifting speculative or undefined liabilities. It also reinforces the principle that hawala works upon an existing legal obligation. The same logic underlies the debate over correspondence between the transferred debt and the debt owed by the transferee. Although jurisprudential views differ on the exact degree of similarity required, the requirement reflects concern with preserving transactional equivalence and avoiding transformations that would effectively convert hawala into an exchange of fundamentally different obligations.

The jurisprudential position can therefore be summarized as recognizing hawala as a distinctive contractual means of transferring liability. The contract may resemble novation because the transferor is discharged, but it does not necessarily extinguish the identity of the debt. It may resemble delegation because payment is redirected, but it goes beyond delegation by altering the creditor's legal recourse. It may resemble guarantee where the transferee has no prior debt, yet its classical form is based more strongly on transfer than on cumulative security. The prevailing independent-contract theory accommodates these overlapping features without distorting the specific structure developed in Imami jurisprudence. This theoretical foundation is essential for understanding why Iraqi and Iranian legislation, although different in significant details, both reflect a legal tradition in which hawala is neither ordinary novation nor a simple mandate for payment.

The Legal Nature of Hawala under Iraqi and Iranian Law: A Comparative Analysis

The treatment of hawala under Iraqi and Iranian civil law demonstrates how a jurisprudential institution may be incorporated into modern codified systems without losing its distinctive characteristics. Both legal systems recognize the transfer of liability and the reorientation of the creditor's claim toward another person, yet they differ in the degree of flexibility permitted, particularly in relation to prior indebtedness, the position of a transferee who owes nothing to the transferor, and the extent to which the discharge of the original debtor is qualified. These differences are especially important because they reveal the implicit theoretical choices made by each legislature regarding whether hawala should be treated primarily as substitution, transfer, guarantee, or an independent contractual mechanism.

Under Iraqi law, the regulation of hawala reflects a combination of jurisprudential influence and the general civil-law theory of obligations. Abbas observes that the Iraqi treatment of debt assignment is structured around transfer of liability but incorporates safeguards designed to prevent the creditor from suffering unfair prejudice when the transferred obligation becomes ineffective or the transferee cannot provide the expected performance (4). The resulting system does not correspond perfectly either to strict novation or to simple delegation. It produces a substantial change in the identity of the debtor, but the statutory framework retains certain connections with the original relationship.

The discharge of the transferor is one of the clearest indications that Iraqi law treats hawala as more than a mere payment instruction. Once the transfer is validly completed, the original debtor is in principle released from liability and the creditor must direct the claim against the transferee. Al-Kaswani considers this result comparable to personal substitution in the general theory of obligations because the legal relationship between the creditor and original debtor is replaced, for practical purposes, by a relationship between the creditor and the new debtor (3). If this effect were considered in isolation, Iraqi hawala could readily be described as a form of novation by change of debtor.

The comparison becomes less straightforward once the exceptions to discharge are considered. Iraqi regulation preserves limited circumstances in which the creditor may obtain protection despite the general transfer of liability.

The thesis identifies situations involving the transferee's insolvency or bankruptcy, disputes concerning the transfer, and defects affecting the debt. Abbas analyzes these rules as part of a system in which the law seeks to balance the transferor's interest in obtaining release with the creditor's legitimate expectation of receiving an effective substitute debtor (4). These exceptions weaken the argument that the original obligation is absolutely extinguished in the strict novatory sense. They instead suggest a hybrid structure in which transfer is the principal effect but the law preserves certain residual guarantees.

The Iraqi model is also relatively flexible concerning the existence of a prior debt between the transferor and the transferee. The legislative approach allows a broader use of hawala even where the transferee is not already indebted in exactly the same manner contemplated by traditional transfer theory. This feature makes the Iraqi system more adaptable to commercial and credit transactions because the effectiveness of the contract can rest primarily upon agreement rather than upon a pre-existing reciprocal debt structure. Abbas's analysis of Iraqi debt assignment reflects this functional orientation, in which legal validity is not confined rigidly to the traditional factual pattern of one debtor redirecting a creditor toward someone who already owes him an equivalent amount (4).

This flexibility has important theoretical implications. If the transferee does not owe a pre-existing debt to the transferor, the transaction cannot literally consist of transferring the creditor onto an existing liability of the transferee. The transferee's obligation is instead generated or activated through the hawala agreement itself. Such a model moves closer to consensual assumption of debt and, in functional terms, to personal substitution. Nevertheless, Iraqi law continues to regulate the arrangement within the institution of hawala rather than reclassifying it automatically as guarantee. The legislature therefore appears willing to extend the concept beyond its narrowest transfer-based formulation.

The Iranian Civil Code adopts a structure more directly shaped by Imami jurisprudence. Its regulation of hawala is traditionally associated with Articles 724 to 733 and defines the contract in terms of transferring the creditor's claim from the liability of the debtor to the liability of a third person. Katouzian emphasizes that the language of transfer is doctrinally important because it reflects the idea that the debt itself moves rather than disappears and is replaced by an entirely new obligation (5). The Iranian formulation therefore provides strong textual support for distinguishing hawala from strict novation.

The distinction does not mean that Iranian hawala lacks a substitutive effect. On the contrary, the original debtor is released once the transfer becomes effective, and the creditor's claim is directed against the transferee. Katouzian notes that this outcome gives the contract a functional similarity to novation by substitution of debtor (2). Yet the legal reasoning is different. The discharge is a consequence of transfer, not necessarily evidence that the old debt has been extinguished and a new debt created. The difference becomes visible where the validity or existence of the original debt is challenged, because the transferred obligation remains causally connected with the relationship from which it arose.

The requirement of consent further demonstrates the autonomous structure of Iranian hawala. The contract affects the transferor, the creditor, and the transferee, and the legal positions of all three cannot be rearranged solely by the will of one party. Safaei and Jawaher al-Kalam emphasize that consent is fundamental to the jurisprudential and legal structure of hawala because the creditor is being asked to accept a different debtor while the transferee becomes subject to a directly enforceable obligation (7). The tripartite character of the contract thus differs both from unilateral assignment of a claim and from an ordinary bilateral promise by a third person to pay another's debt.

One of the most revealing issues in Iranian law is the treatment of hawala involving a person who does not already owe the transferor. The attached thesis presents this question as a principal point of contrast between Iraqi and Iranian law. Salimi explains that the jurisprudential problem arises because the classical transfer model assumes something capable of moving from one liability to another (8). Where the transferee has no antecedent obligation toward the transferor, a literal transfer of an existing reciprocal debt becomes difficult to conceptualize. Iranian legal analysis has therefore tended to distinguish such situations from the paradigmatic case of hawala and to examine whether they function more appropriately as guarantee or independent assumption.

Moumni's critical examination of the rules governing hawala similarly demonstrates that the Iranian institution is closely tied to the existence and structure of the underlying financial relations (6). This does not mean that every form of hawala involving a previously non-indebted transferee is necessarily legally ineffective. Rather, the point is that such a transaction cannot be explained in precisely the same manner as a transfer to a person who already owes the transferor. The difference has consequences for classification because the first arrangement may represent assumption or guarantee, whereas the second more naturally embodies the transfer of an existing debt relationship.

The effect of invalidity or dissolution of the underlying obligation provides another indication that Iranian law favors transfer over strict novation. Where the obligation that supposedly forms the basis of hawala proves invalid, the transferred liability may also be affected because there was no valid debt capable of being transferred. Katouzian's analysis of Iranian civil law emphasizes this causal connection between hawala and the original obligation (5). If the contract were pure novation in the strictest sense, one could argue that the new obligation should possess greater independence after its creation. The continued relevance of defects in the original debt instead suggests that hawala transmits an existing legal position together with certain characteristics and defenses.

Iraqi law also reflects the continuing relevance of the underlying debt, although the legislative technique differs. Abbas notes that the Iraqi system permits defenses and questions concerning the validity of the debt to remain significant after the transfer (4). This feature again undermines a theory of complete and abstract novation. If the new relationship were entirely severed from the old, defects in the first obligation would have less reason to affect the transferee's liability. The fact that such defects remain material supports the interpretation that Iraqi hawala, like its Iranian counterpart, is ultimately concerned with transfer of an obligation rather than simple creation of a replacement obligation.

A further comparative question concerns the homogeneity of the debts. Traditional jurisprudence paid considerable attention to whether the debt owed by the transferee to the transferor corresponded in kind or amount to the debt owed by the transferor to the creditor. The rationale was connected with the classical image of hawala as a restructuring of existing liabilities rather than the creation of a wholly new promise. Iraqi law adopts a more flexible stance, allowing party agreement to play a stronger role and thereby reducing the importance of strict identity between the obligations. Iranian law, because of its closer jurisprudential orientation, has traditionally been more attentive to the structure of the underlying debts. This difference reinforces the broader characterization of Iraqi law as comparatively functional and Iranian law as comparatively doctrinal in its treatment of hawala.

Despite these differences, the two systems share several fundamental characteristics. Both recognize that hawala has a legal effect on the identity of the person responsible to the creditor. Both attach importance to consent. Both preserve a relationship between the transferred debt and its legal source. Both are influenced by a jurisprudential conception in which debt can move from one liability to another without requiring the complete

conceptual destruction of the original obligation. Al-Kaswani's discussion of substitution helps explain why the result can nevertheless resemble novation from the perspective of general obligation theory (3), while Katouzian's analysis explains why the Iranian institution should remain distinguished from strict novation despite this resemblance (2).

The most convincing comparative characterization is therefore that neither Iraqi nor Iranian law embraces a pure model. Iraqi law adopts a relatively flexible and hybrid form of debt transfer. It generally releases the original debtor and permits broad contractual use of hawala, which brings it closer to consensual debt assumption and personal substitution, but it also preserves exceptions and defenses inconsistent with absolute novation. Iranian law adheres more closely to the jurisprudential idea of transfer of an existing debt and therefore places greater conceptual weight on the underlying obligation and on the distinction between a transferee who is already indebted and one who is not. Moumni's analysis supports the conclusion that the Iranian contract maintains an autonomous doctrinal identity rather than being absorbed into the Western category of novation (6).

The comparative evidence accordingly favors the theory of hawala as an independent debt-transfer contract. Its substitutive effect explains the discharge of the transferor. Its transfer character explains the continuing relevance of the original debt, defenses, and causal relationship. Its consensual nature explains the requirement that the parties whose legal positions are transformed participate in the arrangement. Its special treatment of the previously non-indebted transferee explains why hawala can approach guarantee or assumption without becoming identical to either. Safaei and Jawaher al-Kalam's broader treatment of debt and claim transfer confirms that the jurisprudential framework is capable of recognizing the circulation of obligations without forcing such transactions into the binary alternatives of novation or delegation (7). The Iraqi and Iranian regimes differ in technique and flexibility, but both ultimately preserve this distinctive conceptual foundation.

Conclusion

The comparative analysis demonstrates that the central difficulty in determining the legal nature of hawala results from the coexistence of several effects that, in other areas of obligation law, are associated with distinct legal institutions. A valid hawala changes the person against whom the creditor directs the claim, generally releases the original debtor, obligates the transferee, and may preserve important connections with the original debt. These effects resemble novation, delegation, transfer of debt, assumption of liability, and, in certain circumstances, guarantee. None of these categories taken alone, however, provides an entirely satisfactory explanation of the institution.

The theory of complete novation captures one important consequence of hawala: the creditor no longer proceeds against the original debtor and instead turns to the transferee. Yet strict novation requires the conceptual extinction of the former obligation and the creation of a new one. Hawala does not necessarily operate in this manner. Its traditional jurisprudential structure is based on the movement of the debt from one liability to another, which implies continuity of the obligation rather than its destruction. The continuing relevance of defects in the original debt and the dependence of the transfer upon the existence of a legally recognizable obligation further weaken the argument that hawala is simply a form of novation.

The theory of delegation is similarly incomplete. Hawala certainly redirects the act of performance toward another person, and in economic terms it may simplify a chain of reciprocal obligations by allowing one person to pay the creditor of another directly. However, a mere delegation of performance ordinarily leaves the liability of the original debtor intact until actual satisfaction. Hawala is distinguished by the fact that the creditor's legal claim itself may

shift to the transferee following the valid conclusion of the contract. The release of the original debtor therefore exceeds the effect of ordinary agency or authorization for payment.

The most convincing characterization is that hawala constitutes an independent contract of debt transfer with a composite legal structure. Its independence does not mean that it bears no resemblance to other institutions. Rather, its distinctive identity is established precisely by the manner in which it combines effects that those institutions embody separately. Hawala has a substitutive dimension because the transferee takes the position of the original debtor in relation to the creditor. It has a transfer dimension because the liability is conceived as moving rather than being extinguished and recreated. It has a delegative dimension because performance is redirected to another person. In some situations involving a person who owes no prior debt, it may also display features resembling guarantee or consensual assumption of liability.

The analysis of Imami jurisprudence strongly supports this autonomous characterization. The jurisprudential structure of hawala is centered on the transfer of an established debt, the discharge of the transferor, the establishment of liability against the transferee, and the consent of the parties whose legal positions are affected. These elements form a coherent contractual system that does not require the importation of novation as its doctrinal foundation. The distinction between the transfer of the same debt and the creation of a new debt is particularly important because it explains why the original obligation continues to influence the legal consequences of hawala even after the identity of the debtor has changed.

The Iraqi legislative model represents a comparatively flexible implementation of this general idea. Iraqi law gives substantial effect to the discharge of the original debtor and is willing to accommodate transfers in a broader range of circumstances. This orientation makes Iraqi hawala resemble consensual debt assumption more closely than the traditional jurisprudential model in some respects. Nevertheless, the existence of exceptions to complete discharge and the continuing significance of the validity of the original debt demonstrate that the Iraqi system does not embody pure novation. Its structure is better understood as a hybrid model in which transfer is the principal rule while protective mechanisms preserve elements of the original legal relationship.

Iranian law remains more closely connected to the conceptual foundations of Imami jurisprudence. Its formulation of hawala in terms of the transfer of a claim from one liability to another is especially significant. The Iranian approach gives greater attention to the existence of the underlying debt, the relationship between the transferor and transferee, the consent of the parties, and the distinction between the ordinary case of transfer and situations in which the transferee has no prior indebtedness. These characteristics make the transfer theory particularly persuasive in explaining Iranian law and simultaneously demonstrate why equating Iranian hawala with Western novation would obscure important doctrinal differences.

The comparison between the two systems also reveals that the treatment of a transferee who is not previously indebted is one of the clearest indicators of legislative philosophy. A narrow transfer theory naturally assumes a debt already located in the transferee's liability, whereas a broader contractual theory permits the transferee to assume responsibility solely through consent. Iraqi law demonstrates greater flexibility in this respect, while Iranian law retains a stronger conceptual connection with the classical structure of debt transfer. The difference is not merely technical; it reflects competing understandings of whether hawala is defined principally by the movement of an existing liability or by the contractual substitution of one debtor for another.

The role of consent further confirms the distinctive nature of the contract. Hawala does not merely affect two contracting parties. It rearranges the rights and liabilities of three persons and may materially alter the creditor's

risk. The creditor's acceptance protects the freedom to determine the person from whom performance is expected, while the transferee's acceptance provides the juridical foundation for the new liability. The original debtor's participation initiates the transfer and seeks discharge from the existing obligation. This tripartite structure gives hawala a form that cannot be captured adequately by ordinary assignment, agency, or unilateral debt assumption.

The requirement that the debt exist and be sufficiently determinate should also be regarded as a central feature of the contract. Because hawala operates primarily as a transfer, there must ordinarily be a legal obligation capable of forming the object of that transfer. The closer the transaction moves away from an existing and identifiable debt, the more difficult it becomes to explain the arrangement through the traditional concept of hawala. This explains why hypothetical liabilities, materially different obligations, and transfers to persons who owe nothing to the transferor create theoretical and legislative difficulties. Such cases approach the boundary between hawala and neighboring institutions and therefore require careful classification according to their actual legal effects rather than their contractual label alone.

The preferable approach is thus to preserve hawala as an autonomous institution within the general law of obligations while clarifying its relationship with adjacent mechanisms. It should not be described as novation merely because it can release one debtor and substitute another. Nor should it be treated as simple delegation merely because another person performs the debt. Its defining characteristic is the consensual transfer of liability in a manner that changes the person responsible to the creditor while maintaining sufficient continuity in the underlying obligation to distinguish transfer from complete extinguishment and recreation.

From a legislative perspective, greater conceptual clarity would improve the predictability of the institution. Iraqi law would benefit from a clearer statement of the relationship between the discharge of the transferor and the exceptional circumstances in which protection connected with the original relationship survives. Such clarification would make it easier to determine the effect of hawala on guarantees, defenses, and other accessory rights. Iranian law, by contrast, could benefit from a more explicit treatment of contemporary forms of debt assumption involving a transferee who is not previously indebted, particularly where commercial practice requires greater flexibility than the classical reciprocal-debt model provides.

Ultimately, the comparative examination of Islamic jurisprudence, Iraqi law, and Iranian law shows that hawala is best understood as a distinctive mechanism for transferring debt rather than as an imperfect version of another legal institution. Its historical development within Islamic jurisprudence produced a sophisticated method of rearranging obligations among several parties while protecting consent and preserving the juridical identity of the transferred debt. Iraqi and Iranian law have both incorporated this foundation, although Iraqi law has developed a comparatively flexible model and Iranian law has preserved a closer relationship with the traditional jurisprudential conception. Recognizing hawala as an independent debt-transfer contract provides the most coherent explanation of these similarities and differences and offers the strongest basis for resolving future questions concerning discharge, guarantees, defenses, and the legal consequences of transferring obligations between parties.

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