

Research Article

JOINT PROPERTY DISPUTES IN DUTCH AND ISLAMIC LEGAL TRADITIONS: A SOCIAL JUSTICE PERSPECTIVE

Ahmed Mansour

ABSTRACT

Background: *Establishing joint ownership, often referred to as community assets in the Netherlands, offers a valuable opportunity for family members and friends to pool their financial resources and acquire property together, significantly reducing both initial payments and ongoing costs. Yet the potential for strain in these relationships can give rise to myriad challenges. Conflicts may arise over simultaneous use of the property, or over selling or renting it out. Navigating these complexities can transform what was once a shared dream into a source of tension and dissatisfaction, potentially escalating into costly legal battles that may even disregard the terms of a will. An essential question lingers: who should take the reins to manage this joint property, and how can co-proprietors navigate conflicts over its use and disposal with grace and effectiveness?*

Method: *This study employs a qualitative, doctrinal, and comparative legal analysis to critically examine regulations concerning joint property through the functional outcomes and the normative foundations of both Islamic and Dutch legal traditions on property rights. It identifies key issues that can*

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lead to injustices or protracted legal battles. A significant aspect of this research is the comparison of the philosophical approaches of Lawrence Becker, Thomas Merrill, Henry Smith, and others with the perspectives of historical Islamic jurists (*fuqaha*) on social justice. Three legal precedents demonstrate how courts balance the rules surrounding joint property with principles of social justice. This research aims to explore the similarities and differences in the management of joint property between Islamic and Dutch legal traditions, focusing on the underlying legal principles that shape the practical rules governing joint property.

Results and Conclusions: Although joint property ownership is a common practice, there remains a surprising dearth of academic research addressing the essential property rights issues governed by classical Islamic jurisprudence. Moreover, no studies have ventured to compare the Dutch Civil Code (DCC) with the tenets of Islamic legal jurisprudence regarding the regulation of community assets. Such a comparison is vital for grasping how these two legal systems intersect, especially given their distinct historical and cultural contexts, and for understanding their practical implications in diverse societies. The findings reveal a striking similarity between these legal frameworks in how they manage major disputes concerning community assets. This research posits that while the Dutch Civil Code and Islamic legal jurisprudence tackle different pivotal issues related to joint property, there is a compelling need for several reforms. These adjustments could foster greater alignment with fundamental principles of social justice, particularly in matters relating to the partitioning of joint property through forced sales.

1 INTRODUCTION

Investing in real estate ownership can foster investment motivation, wealth appreciation, and increased trust, which can be influenced by housing demand driven by population growth and government housing targets, leading to higher property values and rents. The way a person holds title to a property is a crucial consideration with legal and financial implications. Ownership can be sole, where one individual has an exclusive title to a property, or co-owned, referred to as "joint ownership" or "community assets," which entails shared responsibilities with trusted co-owners. Several economic and social factors contribute to the rise of co-buying, often because of inheritance upon an individual's death to their offsprings, but also as a result of partnerships aimed at investment.¹ Joint ownership can lead to disputes and negatively affect both partners, especially if one partner faces financial issues. This situation may weaken their existing relationship and result in conflict, detachment, or changes in financial obligations. Each perceives justice through their own distinct lens and interprets fairness individually. Lastly, if one owner wishes to sell their shareholding in the joint property and the other does not agree, this may constitute a clear

1 Daniel R Tilly and Patrick K Hetrick, 'North Carolina's Reincarnated Joint Tenancy: Oh Intent, Where Art Thou?' (2015) 93(6) North Carolina Law Review 16494-5.

cause of dispute. The wise course of action for resolving this uncomfortable joint ownership of the property is to divide it. Now, without clear rulings in complex family disputes, the social friction caused by prolonged litigation is reduced, which often disproportionately affects family cohesion and mental well-being. While modern law maintains that property rights in ownership deserve protection, this principle is inherently far from absolute. Partition law, for instance, permits the removal of dissenting co-proprietors from their property, paving the way for a forced sale of the entire estate in the event of disputes. This dynamic often sparks tension between ideals of social justice and the realities of joint property partition laws, particularly in the poignant context of "heirs' property." Such issues are notably prevalent in vulnerable communities, where inherited land may be lost to market pressures through court-ordered forced sales. Currently, how do the Dutch Civil Code (DCC) under Title 3.7² and Islamic legal traditions navigate the complex challenges associated with joint property, such as the use, administration, and to what extent do they resonate with fundamental principles of social justice, such as human rights, autonomy, and equality? Investigating these questions from both the DCC and Islamic legal traditions is significant, for while the functional outcomes may be similar in relation to the practical, social outcomes of both legal philosophies as well as legal rules on joint property, the normative foundations of both legal systems remain distinct because they derive authority from fundamentally different sources: divine revelation versus human-centric, secular reasoning.

2 METHODOLOGY SECTION AND SELECTION CRITERIA

This research examines the Dutch and Islamic legal traditions in relation to several complex issues surrounding joint ownership of property, through a functional approach to law. It investigates the practical and social outcomes of both legal philosophies and legal rules. It treats property not merely as a set of static, exclusionary rights, but as a social institution that arranges the use, administration, and disposal of joint assets. This research investigates essential questions about joint ownership, emphasizing the overall philosophical legal approaches governing the organization of joint ownership under Dutch Title 3.7 and Islamic law (fiqh), the definition of rights, management of contributions, and exit options for co-proprietors. Overall, these questions are practically oriented and are designed to uncover concrete legal issues arising in the context of joint property from the Dutch and the Islamic law (fiqh) perspectives.

This research adopts a problem-centered structure. It begins by identifying a specific legal issue, explains how it is addressed under Dutch law, and then discusses how it is handled under Islamic law. Finally, the paper concludes with a comparative observation. This

2 Dutch Civil Code (Civil Code of the Netherlands) <http://www.dutchcivillaw.com/civilcodegeneral.htm> accessed 20 February 2026.

approach provides readers with clear guidance at each stage and effectively highlights the paper's comparative contributions.

The reasons for selecting the Netherlands as the secular benchmark and the most suitable point of comparison for Islamic jurisprudence in this context are crucial for this research. Both legal systems exhibit a remarkably similar structure of **systematization**, with well-defined legal principles intricately arranged into a coherent body of law governing joint property matters. First, although the functional outcomes of treating joint ownership of property may appear similar between the Dutch and Islamic Legal Traditions, their normative foundations regarding property rights are profoundly distinct. They draw their authorities from fundamentally different sources: divine revelation in Islamic law and human-centered, secular reasoning in Dutch law. Second, the Islamic law (fiqh) and the DCC, Book 3 Title 3.7 defines a community of property as a situation where one or more assets belong to two or more co-proprietors jointly, with designed rules as an abstract, overarching framework with a permanent management structure that applies to all forms of joint property, whether from marriage, inheritance, or a business partnership, unless specific rules dictate otherwise. Third, and perhaps most importantly, both legal systems treat joint ownership primarily as a permanent state rather than a transitional one (often following death or divorce), with improvements expanding its flexibility. Thus, Islamic law and Title 3.7 of Book 3 provide a flexible general framework for joint ownership, including rules on administration, use, disposition, and the division (apportionment) of shared assets. Co-proprietors have significant freedom to create their own management regulations. If they cannot agree, a subdistrict court can impose a regulation that balances their interests. Fourth, while Dutch law does not directly apply Islamic law, it frequently interacts with it through private international law when dealing with citizens from countries where Islamic law is prevalent. For example, Dutch courts often face the challenge of recognizing foreign awards arising from joint property disputes stemming from inheritance, divorce, or co-investment. These cases may align or conflict with Dutch public policy. Overall, this research aims to highlight 'functional equivalents' of different legal mechanisms that achieve the same practical result, emphasize general principles that transcend national boundaries, and consider the possibility of a universal law grounded in reason.

The reasons for selecting the Netherlands as the benchmark and the most suitable point of comparison are it's the regulatory history of community assets in the Dutch Civil Code (DCC), which transitioned from a rigid Napoleonic model to a highly flexible, modern system that prioritizes "reasonableness and fairness". After WWII, jurist E.M. Meijers began drafting a "New Civil Code" to integrate commercial and civil law into a single system.³ When the new Code entered into force on January 1, 1992, it introduced Title 3.7 of Book 3. This created a standardized, abstract framework for *all* joint property (inheritances, business partnerships, etc.), not just marital assets. It codified "open norms" such

3 Remy D Chavannes, 'EM Meijers and the Recodification of the Dutch Civil Code after World War II: Renewal's Only Victory?' (Optional Thesis, Oxford University 1997).

as **reasonableness and fairness**, allowing courts greater leeway to intervene in joint property disputes than the previous formalistic regime. Islamic legal jurisprudence continues to wield considerable influence over the legislation in numerous countries, including Saudi Arabia, while also profoundly shaping the spiritual lives of Muslim communities during their sacred worship rituals.

In comparison to the French Civil Code,⁴ which relies on a more traditional and sometimes rigid concept of indivision, often seen as a temporary state where co-proprietors can trigger a partition (sale) at any time, Title 3.7 of the DCC offers a more integrated and flexible framework for joint ownership between co-proprietors, is governed by principles of reasonableness and fairness. In effect, Title 3.7 grants a court broad discretion to resolve disputes based on the specific context of the co-proprietors' relationship. As a result, judges are empowered to choose among different options, provided that their solutions are appropriate and proportional responses to any infringements.

Lastly, it is quite essential to highlight that Islamic legal jurisprudence (fiqh) is formed by deriving legal rulings from the Islamic primary sources, the Quran and Sunnah, through a systematic methodology.⁵ As Tom Houston noted, qualified scholars (mujtahidun) use interpretation and reasoning to apply divine principles to new situations, such as joint ownership of different issues, ensuring legal adaptability while maintaining adherence to Islamic principles.⁶ For example, the jurist (mujtahid) first searches for a direct, clear ruling from the two foundational sources, namely the Gracious Quran and the Sunnah.⁷ More specifically, the jurist (mujtahid) looks for an explicit verse (Ayat) addressing the issue. If the text is "definitive" (Qatai), meaning it has only one possible meaning (e.g., the prohibition of murder), the search ends here. In the context of joint ownership, in the Qur'an, Allah says: (and if a man or a woman is to be inherited by a non-linear heir while having a uterine brother or sister, then to each one of them goes one sixth, but if they 'number' more than two, then they all share equally in one-third). This represents an explicit text support for the permissibility of forming joint ownership in Islamic law. However, qualified scholars (mujtahidun) still need to search for other explicit verses that govern the rights and obligations of co-proprietors. Then, if the Quran does not provide further verses showing further procedures, scholars turn to the Sunnah, the practices, traditions, sayings, and silent approvals of the Prophet Muhammad, for specific details and practical

4 French Civil Code (Code civil) https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/ accessed 20 February 2026.

5 Ahmad Zaki Hammad, *The Gracious Qur'an: A Modern Phrased Interpretation in English* (Arabic-English Parallel Edition, Lucent Interpretations 2008); Shaykh Muhammad Aman Al-Jami, *The Position of the Sunnah in the Islamic Legislation* (Authentic Statements 2017).

6 Tom Houston, 'Islamic Law - the Beginnings' (2010) 55(4) *The Journal Law Society of Scotland* <https://www.lawscot.org.uk/members/journal/issues/vol-55-issue-04/islamic-law-the-beginnings/> accessed 20 February 2026.

7 'The Craft of Issuing Fatwa' (*General Secretariat for Fatwa Offices Worldwide*, 2016) <https://www.fatwaacademy.org/enArticles/ViewArticle?id=1152&catid=24> accessed 20 February 2026.

application. In reference to joint ownership, *the Messenger of Allah decreed pre-emption in every joint ownership, whether it be a dwelling or a garden. It is not lawful for him to sell it until his partner gives his consent. He (the partner) is entitled to buy it when he wishes, and he can abandon it if he so chooses. And if he (the one partner) sells it without getting the consent of the (other partner), he has the greatest right to it.*⁸ Furthermore, Qualified scholars (mujtahidun) heavily center their interpretation and reasoning about rights and obligations of joint ownership within the Prophetic tradition (Hadith) of the Prophet Muhammad: (There should be neither harming nor reciprocating harm) (La darara wa la dirara). Still, if no direct text is found, or the text is open to interpretation, the jurist checks for this, which is the unanimous agreement of qualified scholars from a previous generation on that specific issue (Ijma). Once a consensus is confirmed, it becomes a binding legal authority.

3 PERCEPTION OF 'OWNERSHIP' OF AN ASSET UNDER THE DUTCH & ISLAMIC (SHARIA) PROPERTY LAWS

Early Islamic legal jurists (fuqaha) interpreted the concept of ownership in diverse ways, with insights grounded in the Qur'an. Central to this discussion is the idea that God grants humanity the gift of treasures, allowing them to be authorized owners, as illustrated by the story of Korah.⁹ Furthermore, it emphasizes the significance of avoiding unauthorized use of another person's property with the aim of fostering a culture of respect and accountability within society.¹⁰ Currently, Islamic legal jurists (fuqaha) such as *al-Kasani* (d. 1191 AD/ 587 AH) define 'ownership' as the authoritative power to have complete control over a specific item through making binding decisions with regard to management and control over an object that a particular owner distinctly owns.¹¹ Furthermore, *sadr al-Shari'a* (d. 1346 AD /747 AH) viewed ownership as a legitimate bond between a person and an object, wherein the nature of that object allows for both possession and disposal. The owner has the right to prevent others from interfering with their rights.¹² *Al-Kasani's* perspective seems to align

8 Abu al Hussain Muslim ibn al-Hajjaj al-Nishapuri, *Sahih Muslim, Book 22: The Book of MUSAQAH*, (28) Ch: Pre-emption, Hadith 167 <https://sunnah.com/muslim:1608b> accessed 20 February 2026.

9 Hammad, *The Gracious Qur'an* (n 5) Surah 28: Al Qasas (the Stories), Verse 76. "Now, Korah, was indeed from Moses people. But he committed injustices against them with insolence and arrogance, though we had given him such treasure-troves that their keys alone would weigh down a band of men endowed with might."

10 *ibid*, "O you who believe, you shall not consume one another's wealth unjustly by false means. But rather let there be free trade with consent among yourselves, and do not kill yourselves [or one another]. Indeed, God is ever Merciful to you."

11 'Ala' al-Din Abu Bakr ibn Mas'ud ibn Ahmad al-Kasani al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'* (2nd edn, Dar Al-Kotob Al-Ilmiyah 1986) vol 5, 107 [in Arabic].

12 Sadr al-Shari'a Ubaydullah ibn Mas'ud al-Mahbubi, *Explanation of Prevention in Matters of Guidance, which is an explanation of guidance for beginners in the jurisprudence of Abu Hanifa* (Public Domain Mark 2006) pt 2, 197 [in Arabic].

closely with Honoré's observation that possessing a property right in an object means holding a bundle of rights that defines ownership. Honoré articulates eleven essential elements that enrich the concept of ownership, each adding depth and significance to our understanding of what it truly means to possess something. Each element can vary in its definition and the types of things it applies to, for example, the right (liberty) to use, the right (power) to manage. Full ownership is achieved when all eleven elements are combined, regardless of how they are defined.¹³ Moreover, *sadr al-Shari'a* masterfully captured a vital dimension of ownership, as highlighted by Honoré. To be genuinely acknowledged as an owner, one must not only hold the right to security, ensuring robust protection against expropriation, but also possess the power to transfer ownership. This property right seems to award entitlements, including the ability to take specific actions regarding the asset, known as the "rights of access," as well as the authority to prevent others from taking particular actions, termed as the "rights of exclusion."¹⁴

In a different context, based on *al-buhūti* (d. 1641 AD / 1051 AH), joint property is recognized as a form of partnership under Islamic law (al-sharika), involving two main types: co-proprietorship of assets (sharikat al-amlak) and contractual partnerships (musharakah). Co-proprietorship of assets (sharikat al-amlak) is often without a formal partnership contract, often automatically via inheritance or joint purchase, indicating that each co-proprietor holds an undivided interest, an intangible yet significant fractional stake in a shared property held collectively by two or more individuals, presumably, with an equal claim on the entire asset, unless there is compelling evidence to suggest otherwise.¹⁵ The legitimacy of the property partnership has been established in the Qur'an and the Prophetic traditions, which show in practice the formation methods of joint ownership. In the Gracious Qur'an, Allah says: (and if a man or a woman is to be inherited by an non-lineal heir while having a uterine brother or sister, then to each one of them goes one sixth, *but if they 'number' more than two, then they all share equally in one-third*).¹⁶ *Al-'Ayni* (d. 1451 AD / 855 AH) insightfully

13 Lawrence Becker, 'The Moral Basis of Property Rights' in J Roland Pennock and John W Chapman (eds), *Nomos XXII: Property* (New York UP 1980) 190-1.

14 Ilya Segal and Michael D Whinston, 'Property Rights' in Robert Gibbons and John Roberts (eds), *Handbook of Organizational Economics* (Princeton UP 2013) 100, doi:10.2307/j.ctt1r2ggg.7. See also, Bruce G Carruthers and Laura Ariovich, 'The Sociology of Property Rights' (2004) 30(1) *Annual Review of Sociology* 24, doi:10.1146/annurev.soc.30.012703.110538.

15 Manşūr Ibn Yūnus bin Younis bin Salah al-Din bin Hassan bin Idris Al-Buhūti, *Al-Rawd al-Murabba' Sharh Zad al-Mustaqni* (Modern Riyadh Library 1970) vol 2, 260 [in Arabic]. See also, Bradley T Borden, 'TICnerships' (2023) 18(2) *Brooklyn Journal of Corporate, Financial & Commercial Law* 587.

16 Hammad, *The Gracious Qur'an* (n 5) Surah 4: Al Nisa (Women), Verse 12. See also, the Messenger of Allah decreed pre-emption in every joint ownership and not divided, whether it may be a dwelling or a garden. It is not lawful for him (for the partner) to sell that until his partner gives his consent. He (the partner) is entitled to buy it when he desires and he can abandon it if he so likes. And if he (the one partner) sells it without getting the consent of the (other partner), he has the greatest right to it). Muslim ibn al-Hajjaj. *Sahih Muslim*, Book 22 (n 8) Hadith 167.

noted that co-proprietorship of assets occurs in various ways, including through mixing of assets or legal joint ownership, such as through inheritance.¹⁷

From a comparative perspective, the views of early Islamic legal jurists (fuqaha) on joint ownership closely resemble the concept of ‘community of property’ found in the DCC, specifically in Title 3.7 of Book 3. This concept embodies a significant idea: when two or more individuals legally share an asset, such as a home, land, or other property, they also share rights, responsibilities, and costs associated with that asset. The Dutch Title 3.7 outlines general provisions in Articles 1 and 2, which presume that each partner in a community of property holds equal shares, unless a different arrangement is established through their mutual legal relationship. Similarly, Articles 3:7.2 and 4:11 address situations in which co-proprietors in a joint property arrangement may have their assets inadvertently blended, for example, due to the marital community of property. This legal framework recognizes all assets and debts acquired during a marriage as joint property, shared equally by both spouses (50/50).¹⁸ Additionally, inheritance plays a crucial role in forming community assets. According to Article 4:11 of the DCC, individuals designated as intestate heirs to a deceased person’s estate are entitled to inherit equal shares, ensuring a fair distribution among heirs.¹⁹

4 KEY LEGAL PITFALLS OF JOINT OWNERSHIP

From a legal practice perspective, based on Kristen Jackson, the proper formation of a joint ownership can be beneficial. Still, several factors should be considered before choosing this co-purchase option.²⁰ First, in case a co-proprietor faces financial difficulties that affect their stability, this situation potentially impacts the other owner as well because it potentially exposes the whole asset to the sale by creditors, for example, if one owner falls behind on mortgage payments, the bank may initiate foreclosure on the shared assets, which would affect all owners. Second, disagreements can frequently occur, such as when one owner wants to make significant changes to the shared property, while the other does not. Third, if one owner wants to sell the property, all owners may need to agree and participate in the

17 Rosalina Limbong, ‘A Legal Perspective on Inheritance of Joint Property: A Comparative Analysis of Various Legal Systems’ (2025) 1(1) *Legal Frontier* 11-2. See also, Abu Muhammad Mahmoud bin Ahmad bin Musa bin Ahmad bin Hussein Al-Ghitabi Al-Hanafi al-Din al-Ayni, *Mayor of Al-Qari Explanation of Sahih Al-Bukhari* (Dar Ihya Al-Turath Al-Arabi) vol 13, 40 [in Arabic].

18 Hannelore Thijs, ‘The New Dutch Default Community of Acquests Regime: Key Innovations from a Comparative Perspective’ (2025) 39(1) *International Journal of Law, Policy and The Family* ebae026, doi:10.1093/lawfam/ebae026.

19 Dutch Civil Code (n 2) art 4:11. See also, Tilly and Hetrick (n 1) 1694-5.

20 Kristen M Jackson, ‘Jointly Owned Property’ (*Jackson Law PA*, 2025) <https://www.jacksonlawpa.com/documents/Jointly-Owned-Property.pdf> accessed 20 February 2026. See also, ‘Joint Property Ownership Disputes: The Basics’ (*Jacksons*, 30 September 2025) <https://jacksons.law/news/joint-property-ownership-disputes-the-basics/> accessed 20 February 2026.

sale. These frequent situations can make co-proprietors susceptible to "post hoc" attempts to justify unequal contributions to the shared property. They can truly conflict with several principles of social justice by introducing financial instability, imbalanced power dynamics, and housing insecurity for co-proprietors. In this respect, the Gracious Qur'an observed this troublesome situation that takes place between co-proprietors in partnership of assets, as God says: *{And indeed, many of the partners are unjust to one another, except those who believe and do righteous deeds, and they are few}*²¹

4.1. Joint Ownership and the Principles of Social Justice

Joint ownership (often termed common property) is significantly intertwined with the principles of social justice, acting as a structural mechanism for achieving equity, fairness, and inclusion. While private property focuses on individual exclusion, joint ownership enables **redistributive potential** often allowing for the fair distribution of benefits, such as profit-sharing from community-owned land, and protection for vulnerable members of society. Currently, the central inquiry is: How do conflicts over joint ownership relate to fundamental principles of social justice, human rights, autonomy, and equity? According to Mona Khechen at UNESCWA, the term "social justice" does not have a universally accepted definition, but it is often linked to the establishment of a just society.²² This concept is based on the belief that justice entails promoting human welfare through equal rights and access to benefits. It also emphasizes the importance of fair treatment, recognition of cultural differences, and equitable access to resources, opportunities, participation, and inclusion. She further clarifies that there are generally three key concepts inherent in Rawls' two principles of justice and rights: equality and equity. Rights, as a fundamental principle of social justice, can be divided into two sub-groups: (a) legal rights, which include inherited rights, and (b) moral rights, which encompass basic human rights, liberties, and entitlements such as the right to have a say in matters that affect individuals, as well as the rights of certain groups to specific geographic territories. In addressing the concerns surrounding the interplay between human rights and ownership, Conway and Stannard, in their arguments, highlight that the sensation of ownership of land or other property is a deeply profound psychological experience, intricately embedded in our overall opinions and values and reflecting who we are.²³ In this regard, ownership is viewed as a fundamental human right, comparable to the rights to bodily security and integrity, and it is often considered to exist independently of state authority. Lawrence Becker proposed that if human beings are inherently territorial, acquisitive, and egoistic, motivated by a complex interplay of genetics, psychology, and sociology, then important implications follow for the theory of property rights. The instinctual freedom to pursue self-serving ambitions, along

21 Hammad, *The Gracious Qur'an* (n 5) Surah Sad, Ayat 24.

22 Mona Khechen, *Social Justice: Concepts, Principles, Tools and Challenges* (UN ESCWA 2013).

23 Heather Conway and John Stannard, 'Property and Emotions' (2016) 8(1) *Emotion Review* 38, doi:10.1177/1754073915601225.

with the right to acquire and safeguard both land and cherished possessions, are essential human needs. These compelling desires foster a robust presumption in favor of the legitimacy of social institutions, such as private property rights systems, that cater to and fulfill these intrinsic requirements.²⁴ As a result, both Thomas Merrill and Henry Smith contended that property rights and human rights seem to share more profound connections than is commonly acknowledged, because both create powerful obligations of non-interference placed on an undefined array of duty holders.²⁵ Additionally, both argue that because of the inherent communication challenges in establishing and upholding extensive responsibilities, it is essential that the corresponding rights remain straightforward and clear. In this context, "No punching" compellingly mirrors the principle of "No taking." Nevertheless, disputes surrounding joint ownership of property can clash with ownership as a fundamental human right when the legal framework governing shared assets restricts individual autonomy, disproportionately impacts vulnerable parties, or conflicts with the right to respect for family life and home. While international law generally protects the right to own property alone or in association with others, disputes arising from shared ownership often violate the "peaceful enjoyment" of possessions and the right to a home recognized in Article 8 of ECHR²⁶ as well as the peaceful enjoyment of possessions found in Protocol 1, Article 1,²⁷ especially if co-proprietors face disputes, unfair eviction (especially in social housing) leading to homelessness or forced sale of the entire shared joint property, highlighting potential conflict with essential human right for vulnerable cohabitants or those in shared housing schemes. The case of *Allard v. Sweden* (2001/2003), brought before the European Court of Human Rights (ECtHR), serves as a crucial example of the conflict between joint ownership and human rights centered on the state's failure to strike a "fair balance" between the property rights of different joint owners over a house built on jointly owned land. This case involved a compulsory demolition of a disputed house built by Inga Allard, a Swedish national, who, in 1988, built a house on land she jointly owned with family members. Although she had a building permit, she did not have the formal consent of all other joint owners as required by Swedish law. In 1989, other joint owners sued the applicant, leading to a 1990 District Court judgment ordering her to remove the house at her own expense because it was built without unanimous consent. While the removal order was being appealed, the applicant initiated **division proceedings** in 1990 to dissolve the joint ownership and assign individual plots to family members. Despite the ongoing division case, which might have legally assigned the specific plot to the applicant, the Swedish Supreme Court refused to stay the removal proceedings in March 1996. In June 1996, the house was

24 Becker (n 13) 200.

25 Thomas W Merrill and Henry E Smith, 'The Morality of Property' (2006) 48(5) *William & Mary Law Review* 1851.

26 Council of Europe, *European Convention on Human Rights: as amended by Protocols nos 11, 14 and 15; supplemented by Protocols nos 1, 4, 6, 7, 12, 13 and 16* (ECHR 2013) **art 8** https://www.echr.coe.int/documents/d/echr/convention_eng accessed 20 February 2026.

27 *ibid*, art 1 of Protocol no 1.

demolished by a construction firm under the direction of the Enforcement Office. The demolition began while the applicant's appeal against the enforcement process was still pending before the appellate court. Just months after the demolition, the Real Estate Court ruled in the division proceedings that the property should be split, assigning the applicant the exact plot where the house had once stood.

The ECtHR found a **human rights violation** and ruled that the demolition imposed an "**individual and excessive burden**" on the applicant. The court noted the lack of coordination among the judicial bodies and that the house was not even visible to the other joint owners, meaning their interest in its removal was minimal compared to the loss suffered by the applicant. As a result, the ECtHR concluded that the demolition decision was a violation of the applicant's right to peaceful enjoyment of her possessions as protected under Article 1 of Protocol No. 1 of the European Convention on Human Rights. Given these circumstances, the Court awarded the applicant EUR 100,000 for pecuniary damage and EUR 25,000 for costs. The property was later divided, and the applicant received the plot where her house had been, subsequently gaining permission to rebuild.²⁸

In fact, *Allard v. Sweden* serves as a cautionary tale about the "tyranny of the minority" in joint property ownership and the failure of state bureaucracy to see the bigger picture. The core of this case is the **proportionality principle**. While the Swedish courts were technically following the letter of the law (which required unanimous consent for construction), the ECtHR looked at the *effect*. Demolishing a home while a legal process (the division of land) was already underway to settle the dispute was seen as "manifestly unreasonable." Furthermore, the case exposes how joint ownership laws can be weaponized. The court noted that the other owners couldn't even see the house from their plots. Their insistence on demolition provided them no tangible benefit but caused the applicant massive "pecuniary and non-pecuniary" damage. By ruling in favor of Allard, the ECtHR signaled that **Article 1 of Protocol No. 1** protects individuals from state-sanctioned actions that serve no real public or private interest other than rigid legalism.

Second, joint ownership, while fostering collaboration, often conflicts with the principles of autonomy, the right to self-determination, and independent decision-making by introducing interdependency that restricts individual control over assets, decisions, and actions. While not always listed as a primary, top-level principle of social justice, **autonomy** (or self-determination) is often included within the principles of **human rights** of participation, and inclusion.²⁹ Joint ownership requires that members make **collective** decisions about the use of the property. This participatory structure ensures that marginalized voices are included in decisions that directly affect their lives. From Damjan

28 *Allard v Sweden* App no 35179/97 (ECtHR, 24 June 2003) <https://hudoc.echr.coe.int/eng?i=001-61164> accessed 20 February 2026.

29 Taofeek K Owonikoko, 'Upholding the Principles of Autonomy, Beneficence, and Justice in Phase I Clinical Trials' (2013) 18(3) *Oncologist* 242, doi:10.1634/theoncologist.2013-0014.

Kukovec's perspective, autonomy is generally understood as the capacity for self-governance and the ability to choose one's own path. It also encompasses the relationship between an autonomous entity and others, as well as the ability to shape that relationship.³⁰ Additionally, autonomy is defined as independence and freedom from external control or influence. In this sense, Damjan Kukovec's perspective seems to depend on Joseph Raz's argument on autonomy. Raz defines personal autonomy as the capacity of an individual to be a "part-author" of their own life, shaping it through freely chosen, meaningful, and valuable options. This substantive conception requires three conditions: appropriate mental capacities, freedom from coercion or manipulation, and a range of valuable options provided by an autonomy-supporting society.³¹ The degree to which the principle of autonomy is compromised largely hinges on the circumstances surrounding the establishment of joint ownership. On one hand, when co-proprietors inherit their stakes, they may be unwittingly thrust into partnerships with individuals they would not have chosen voluntarily. This erosion of autonomy in the formation of joint ownership is strikingly apparent in such situations, highlighting the complexities and challenges of shared ownership. On the other hand, if a person chooses to partner with others and co-purchase properties, they exercise their autonomy by utilizing various faculties with minimal rationality. This includes the ability to understand the means necessary to achieve their goals through joint ownership, as well as the mental faculties required for planning actions such as investment or other purposes. In other words, as Aruna Nair argues, an autonomous individual, namely a co-proprietor, has opted to make free commitments to others, thereby limiting their future choices in service of shared or overlapping projects.³² This commitment can significantly conflict with their autonomy.

Most significantly, Cécile Fabre observed that recent scholarship on distributive justice seeks to illuminate the complexities of ownership rights over property, such as land and natural resources, collectively known as "the world."³³ These precious resources are fundamental for individuals to attain a quality of life that is not just decent but comparable to that of others. Such discussions delve into various perspectives on who, among the privileged and the disadvantaged, possesses the authority to determine how a particular property will be utilized (control rights). Furthermore, they explore the rights to the income generated from that property (income rights) and the ability to transfer these rights to others (transfer rights). In doing so, this discourse not only reframes our understanding of justice but also challenges us to consider the profound implications of ownership in shaping

30 Damjan Kukovec, 'Autonomy: The Central Idea of the Reasoning of the Court of Justice' (2023) 8(3) *European Papers* 1407, doi:10.15166/2499-8249/723

31 Nicole Hassoun, 'Raz on the Right to Autonomy' (2014) 22(1) *European Journal of Philosophy* 96-7, doi:10.1111/j.1468-0378.2011.00473.x.

32 Aruna Nair, 'Property and Autonomy in the Marketplace: Freedom to Sell as Freedom of Exit' (2022) 33(1) *King's Law Journal* 34-5, doi:10.1080/09615768.2022.2034591.

33 Cécile Fabre, 'Justice, Fairness, and World Ownership' (2002) 21(3) *Law and Philosophy* 250, doi:10.1023/A:1015552412506.

our collective future. Following Cécile Fabre's argument, joint ownership may satisfy the sufficiency principle as a key principle of social justice, in which a group of individuals shares ownership rights, meaning that no individual can exercise those rights without obtaining permission from the other members of the group. Decisions about how the property should be used and by whom are made unanimously by the group. For example, if we co-own a piece of land, we each have equal rights over it. The production and distribution of resources are the result of a bargaining process where both parties have equal leverage over each other. This setup satisfies the sufficiency principle, as either of us can threaten to withhold access to the land unless the other provides the necessary resources, and vice versa. Despite this, because a co-proprietor cannot exercise their control over the land without the other's consent, to the point that a co-proprietor cannot even use the land unless both parties agree, we cannot be considered autonomous. Consequently, the autonomy principle is not upheld, and justice is therefore not achieved. Additionally, fairness is compromised because neither of the co-proprietors has meaningful control over the decisions that most impact our lives.³⁴

Third, joint property disputes can conflict with the social justice principle of equity, i.e., the fair distribution of resources, opportunities, and responsibilities within society, by revealing hidden inequalities, reinforcing existing power imbalances, and limiting marginalized groups' access to resources. For example, in personal relationships, joint accounts can obscure inequalities in financial access if one partner contributes more or controls the funds, disproportionately affecting the financial autonomy of the lower-earning partner. Moreover, joint property does not ensure equal control. Research shows that partners may feel entitled to control assets in proportion to their financial contributions rather than equally, allowing the financially stronger party to dominate decision-making. This contradicts social justice principles of equal agency. In economic contexts, joint ownership structures can create barriers to asset access for marginalized groups, such as women and youths, who may struggle to obtain credit, contribute equally to capital, or navigate complex and restrictive legal frameworks. This is particularly relevant in cases of joint ownership where a majority owner may pursue a court order for a forced sale of the entire property, potentially leading to losses for vulnerable co-proprietors. Overall, it seems that joint property often prioritizes formal equality (equal shares on paper) over substantive equity (fairness based on individual circumstances and needs), which can exacerbate, rather than alleviate, social and economic disparities.

4.2. The Use and Administration of a Joint Property

Building on the last discussion, owning a property with others is a strategic way to share costs and build wealth, but its success depends entirely on a clear framework for the use and administration of joint property. These two pillars transform a complex legal arrangement into a functional, shared asset. Without a solid framework for these pillars, owners often

34 *ibid* 256.

face "the tragedy of the commons," where individuals, acting in their own self-interest, overexploit a shared, finite resource, leading to its ultimate depletion, the property is neglected, or one person dominates the space. Defining these terms upfront is the only way to protect each owner's **legal rights**, prevent **costly disputes**, and ensure the property remains a **valuable investment** rather than a source of personal or financial stress. What are the philosophical and legal approaches governing the organization of joint ownership under Dutch Title 3.7 and Islamic traditions?³⁵

In general, both legal systems regard joint ownership as a permanent arrangement rather than a temporary stage. They offer considerable flexibility regarding the administration and use of shared assets. Co-proprietors have significant freedom to establish their own management rules. If they are unable to reach an agreement, a subdistrict court can impose a regulation that balances the interests of both parties. More precisely, both the Dutch Title 3.7 and Islamic legal jurisprudence distinguished between the use of an owned indivisible portion and the use of the entire joint property by each owner, perhaps with a view to distributive justice, focusing on the fair allocation of assets, rights, and responsibilities among co-owners. More systematically, two distinct legal philosophies guide the nature of joint ownership of a property under Dutch Title 3. The philosophical approach asserts that owners possess absolute control over their shares, even though they are indivisible, granting them the freedom to use or manage them without requiring the consent of their fellow co-proprietors. This approach aligns with the principle of autonomy and resonates with an individual's right to self-determination and their inherent ability to govern their own property without the burden of external coercion, manipulation, or interference from others. More particularly, Article 3:169 of the Dutch Title 3.7 allows each co-proprietor to utilize all community assets, provided that this usage is consistent with the rights of other co-proprietors. Furthermore, under Article 3:168, the Subdistrict Court may, upon the request of a relevant party, create a plan for the enjoyment, use, and administration of community assets. However, this inherent right can be inferred from reading Article 3:175, which mentions that each co-proprietor is allowed to convey (transfer and encumber) their share in a community asset, which explicitly grants each co-proprietor full autonomy over their respective shares.

Nevertheless, the second competing philosophical approach confirms that co-proprietors have limited authority over the use of the entire shared property, indeed. They cannot make decisions about the entire property without the collective permission of their fellow owners. Article 3:169 of the Dutch Title 3.7 allows each co-proprietor to use all community assets, provided that such use is consistent with the rights of other co-proprietors. Furthermore, under Article 3:168 the Subdistrict Court may, upon the request of a relevant party, create a plan for the enjoyment, use, and administration of community assets. Perhaps this approach emphasizes that joint property hinges on the notion of an 'indivisible share', which signifies that each joint owner holds a stake that cannot be physically divided among them, thus

35 Dutch Civil Code (n 2) art 3:7.

creating a unique bond of shared responsibility and collective interest. As a result, in this situation, the principle of autonomy is not upheld because each co-proprietor does not have meaningful individual control over decisions regarding the entire joint property. Furthermore, it seems significantly essential to exercise the right to use the joint property with caution. If such actions inadvertently cause damage to the shared property, the responsible individual will be held liable for any necessary repairs. This issue is supported by Václav Bělohradský, who observed that private property, arguably, includes joint property, is a convention, and is one of the artificial rights, in which each individual with private ownership must, to some extent, consider the public framework that governs it. This framework includes not only legal regulations but also shared ethical principles that impose limits, as private property can significantly impact others.³⁶

From the perspective of Islamic jurists, their philosophical approaches are often similar to those outlined in Dutch Title 3.7. For instance, *ibn 'Ābidīn* (d. AD 1836 / 1252 AH) distinguished between various situations in which each co-proprietor may use their share of a property or, in some cases, the entire property. More particularly, *ibn 'Ābidīn* was asked about a situation where an agricultural land *devoted to farming* is jointly shared between co-proprietors, and one co-proprietor takes the initiative to plant all that shared land without permission from the other proprietor. Then, firstly, this farmland shall be divided between them. The farmer who planted the crops is fully acknowledged for his rightful planting on his share, and whatever plants fall into his co-proprietor's share, he shall be ordered to uproot them and compensate for the value decrease in the farmland. This is if the crop has not yet reached maturity. If it has reached maturity or is close to it, the cultivator must compensate his partner for the decrease of half of his share if it has decreased, because he is a usurper of his partner's share. *Ibn 'Ābidīn* justified his approach by noting that the farmer is considered a usurper if he had knowledge that the planting and cultivation diminishes farmland, primarily, I believe, through **soil erosion and degradation**,³⁷ yet, he also sees that if he knew that the cultivation would benefit the shared farmland and not diminish it, then he has the right to cultivate all of it.³⁸ In his writings, *Ibn 'Ābidīn* clearly distinguishes between using an individual share and using the entire joint property. A person can use their share as they wish, even if it has a positive or negative impact on its value. However, if

36 Luboš Blaha, 'Theories of Private Property: Ownership and Social Justice' (2018) 18(1) Slovak Journal of Political Sciences 112.

37 Cultivation diminishes farmland primarily through **soil degradation** (roughly 5.2 million hectares lost annually), which turns productive land into barren or less efficient ground. This degradation is driven by intensive practices like continuous monoculture, excessive tillage, and chemical overuse, which destroy soil structure and fertility, reducing the land's capability to support crops. See, 'Soil Erosion and Degradation' (*WWF World Wildlife Fund*, 2025) <https://www.worldwildlife.org/our-work/forests/soil-erosion-and-degradation/> accessed 20 February 2026.

38 Muhammad Amin ibn 'Umar ibn 'Abd ar-Raḥīm ibn Najmuddin ibn Muḥammad Ṣalāḥuddin al-Shāmī, *Hashiyat Rad al-Mukhtar, on al-Durr al-Mukhtar: Sharh Tanwir al-Absar* (2nd edn, Mustafa al-Babi al-Halabi and Sons Library and Printing Company 1966) vol 6, 304 [in Arabic].

the use of the entire shared property does not decrease its value, each co-proprietor is permitted to utilize the entire property, provided that such use does not diminish the property or reduce its overall value. This perspective distinguishes between personal property (needed for livelihood) and private property (means of production). Nevertheless, this privilege comes firstly with the obligation not to inflict harm on the rights of fellow owners, and secondly, that the property's intended purpose remains intact. A legal observation which seems similar to Article 3:169 and Article 3:168 of the Dutch Title 3.7, echoing the wisdom of *ibn 'Abidin*.

In the face of disputes over the use of joint property, *al-Maqdisi* (d. 1624 AD / 1033 AH) observed that if the co-proprietors disagree on how to use or benefit from a house, a judge may require them to either divide the benefits equally or rent the property to each party on a rotating basis. This arrangement allows for the sharing of benefits without permanently dividing ownership of the property (mohaiaah).³⁹ This (mohaiaah) arrangement allows one co-proprietor to have exclusive access to the entire property for an agreed-upon period, in exchange for allowing other co-proprietors to use the shared property for the next same period for themselves. This concept of (mohaiaah) was directly inspired from the Quarn: "He said: Here is a she-camel 'brought forth as a sign from God' For her is to be her drinking share and for you is to be your drinking share, each on a known day at the watering place".⁴⁰ Now, the concept of (mohaiaah) does not exist under the Dutch Title 3.7, similar to Islamic jurists; however, it potentially fits well with Article (3:168), which handles if no contractual arrangement exists, the subdistrict court has the authority, upon the request of an appropriate party, to create an arrangement for these purposes, which may involve appointing a fiduciary to manage one or more community assets.

In relation to the right of administration, Article (3:170 (2)) of the Dutch Title 3.7 assures co-proprietors' right to 'administration' which includes managing and exploiting the shared property, including leasing it to either other co-proprietors or outsiders.

In the Islamic legal jurisprudence context, *al-Zayla'i* (d. 1342 AD / 743 AH) provided a captivating analysis of the complexities of leasing shared assets, sprinkling this issue with his keen observations. On the one hand, as he observed, according to the teachings of both Abu Hanifa and Zufar, it is not permissible for a co-proprietor to lease their share of the shared property, whether it is divisible or indivisible, unless the lessee is another co-proprietor of that property. Abu Hanifa maintains that renting out a joint share to someone who does not hold joint ownership is prohibited. *Abu Hanifa* noted that leasing is inherently a contract designed to derive benefits from leased property. However, the state of joint ownership results in the intended benefits being non-specific to portions of the property,

39 Abdul Rahman bin Muhammad bin Ahmad bin Qudamah Al-Maqdisi Al-Jamaili Al-Hanbali, Abu Al-Faraj, Shams Al-Din, *The Great Explanation of Al-Mughni* (Dar Al-Kitab Al-Arabi Publishing and Distribution) vol 11, 498 [in Arabic].

40 Hammad, *The Gracious Qur'an* (n 5) Surah 26: Al Shuarah (Poets), Verse 155.

and ultimately undeliverable.⁴¹ On the other hand, *al-Qudūri* (d.1037 AD/428 AH) noted that most jurists (*fuqaha*) of Islamic legal jurisprudence agree that it is permissible to lease a joint asset to either one of the co-proprietors or a third party. This is because a joint property offers benefits, and it can be transferred through abandonment or preparation, as such, leasing is viewed as a form of sale, and similar to sales agreements, if the benefits of the lease are not clearly defined, the lease becomes invalid.⁴²

However, neither Islamic legal jurisprudence nor Dutch Title 3.7 adequately addresses the management issues surrounding joint property, especially the burdens faced by the majority due to a minority's control or refusal to participate in abnormal administration. Critically, the Dutch Title 3.7, specifically under Article 3:170, distinguishes between normal and abnormal exploitation of a common asset that falls outside the conventional management of joint property. Most importantly, the law states that these activities include ordinary maintenance operations useful for the normal management of a common asset. It grants all co-proprietors, jointly, or each co-proprietor, independently, the authority to perform these activities. However, any activities beyond the normal exploitation of a common asset may be performed only jointly by the co-proprietors. Currently, the implications of this limitation are severe because Article 3:170 fails to outline the proper procedures that both majority and minority co-proprietors should follow when a unanimous agreement cannot be reached and urgent decisions are required to conduct abnormal exploitation of a common asset. These activities include abnormal modifications to the intended purpose of the entire joint property to enhance its use and value without disposing of it. This could involve, for example, converting a residential house into a hotel, which typically requires urgent decisions to secure zoning permits, conducting a feasibility study, and upgrading the property to meet commercial safety standards, such as fire safety and accessibility. Such actions are considered unusual exploitation of a common asset. Additionally, Article 3:168 grants the subdistrict court the authority, upon the request of a relevant party, to establish appropriate arrangements to ensure that the needs and concerns of all parties involved are addressed thoughtfully. However, Article 3:168, like Article 3:170, does not address situations in which a majority of co-proprietors is willing to undertake an unusual administrative action, while minority owners refuse to do so. In this context, Article 3:168 allows only the opposing or requesting co-proprietors to file a claim in the subdistrict court to resolve the issue at hand. As a result, neither the majority nor the minority co-proprietors has the power to enforce their decisions on the others without resorting to litigation. This can lead to frequent legal disputes over unusual administrative activities concerning joint property. These disputes may be initiated by one owner against another, or vice versa,

41 Uthman ibn Ali ibn Muhjan al-Bari'i, Fakhr al-Din al-Zayla'i al-Hanafi, *Clarification of the Facts, Explanation of the Treasure of the Minutes and Al-Shalabi's Commentary* (The Grand Amiri Printing Press 1895) vol 5, 126 [in Arabic].

42 Ahmad bin Muhammad bin Ahmad bin Ja'far bin Hamdan Abu al-Hussein al-Qudūri, *Al-Quduri Summary* (Dar Al-Kotob Al-Ilmiyah 1997) vol 7, 3655 [in Arabic].

leading to significant drawbacks. Specifically, this may increase the frequency of court cases requesting permission to engage in unusual exploitation activities of a shared asset, which could result in substantial financial and litigation costs due to disputes among undecided co-proprietors over the management of a common asset. Furthermore, a history of ongoing legal disputes may diminish the property's value and marketability.

In this scenario, this research proposes that Articles 3:168 and 3:170 should be revised to clearly differentiate between normal and abnormal administrative activities. It should require a two-thirds majority to authorize any abnormal exploitation of a common asset, without requiring the majority go to court to enforce their decision. However, the law must stipulate that the enforcement of a two-thirds majority decision is only permissible when there are strong justifications for the benefits it provides to the co-proprietors. Additionally, dissenting minority co-proprietors should be notified of the decision and have the option to seek to have it overturned in court.

Saudi Arabia's new Civil Transactions Law (issued June 2023) under Article 623 deals with this specific issue, more specifically, partners who own at least three-quarters of the jointly owned property may decide, in order to improve the utilization of this property, to make fundamental changes and modifications to its intended purpose that go beyond the scope of ordinary management, provided that they inform the other partners of their decisions. Any dissenting partner has the right to object before the court within thirty days of being notified.⁴³

4.3. The Exit Rights Outside the Joint Ownership

Inherently, both the Dutch Title 3.7 of the DCC and Islamic legal jurisprudence recognize a profound truth: a joint ownership of property is a dynamic, mutable reality that constantly changes, is plural, and is shaped by human action, belief, and perceptions. It can be established and, at times, extinguished, leading to the inevitable transfer of ownership. Perhaps, this profound notion of disposal right potentially hinges on Dagan's insightful acknowledgment that there is no definitive formula for striking the perfect balance in our relationship.⁴⁴ A co-proprietor's freedom to walk away from their prior commitment to others establishing joint ownership, in the pursuit of evolving understanding of the good, inevitably clashes with their own freedom to rely on that commitment as a person strives toward their original vision of the good. This tension captures the complex interplay of our individual pursuits and highlights the delicate nature of our mutual obligations. Therefore, it seems impractical to expect that all co-proprietors will retain joint property indefinitely. For instance, reaching a unanimous agreement on vital matters concerning the use, enjoyment, and management of the joint property can often present significant challenges,

43 Royal Decree no M/191 'Civil Transactions Law' (18 June 2023) <https://misa.gov.sa/app/uploads/2025/07/Civil-Transactions-Law.pdf> accessed 20 February 2026.

44 Hanoch Dagan, *A Liberal Theory of Property* (CUP 2021) 202.

making an unwilling co-proprietor more than just an unexpected presence; they can disrupt the harmony and collaboration essential to the effective management of joint property.

Such situations potentially necessitate an exit from joint ownership, which can be achieved through several methods, ranging from amicable agreements to court-ordered actions. When a co-proprietor expresses a desire to dispose of their share, the remaining owners must move quickly to evaluate the legal, financial, and operational impacts. Thus, it seems plausible to explore fundamental legal and valuation questions: Can a co-proprietor unilaterally dispose of the entire joint property, or can they sell individual undivided share? Can a selling co-proprietor force dissenting co-proprietors to sell their shares too? Do the remaining owners have a **Right of First Refusal (ROFR)** to match an outside bid before shares are sold to a third party? Could the exiting owner legally force a physical division or court-ordered sale of the entire asset if no agreement is reached? To address these questions, the research focuses them simultaneously. The following sections investigate legal-philosophical approaches and the scope of conformity with principles of social justice in relation to both the disposal and partitioning of joint property.

4.3.1. Disposal of a Joint Property

In relation to the co-proprietor's disposal authority of joint property, it seems that it is governed by two approaches as described by Article 3:175 and Article 3:190. More specifically, Article 3:175 describes a **simple community**, where the law *presumes* that co-proprietors are free to sell their shares, unless they have specifically agreed (or the law has mandated) that they may not. Thus, Article 3:175 of Title 3.7 of the DCC defines the default rule for a co-proprietor's power to manage their individual share in a community of property. The law assumes that your co-proprietor is free to "convey" (transfer or encumber) their specific share in a community asset. For instance, a co-proprietor can sell their 50% share to a third party or use it as collateral (mortgage or pledge) for a loan without the other co-proprietor's permission. If the co-proprietor sells their share, the buyer "steps into their position," becoming the new co-proprietor alongside the original partner. In fact, Article 3:175 establishes the legal basis for asserting that owners exercise complete control over their shares. The immanent theory of property rights may also encompass Hegel's view that an individual reflects themselves through their possessions. Hegel states, "A person has the right to direct his will upon any object, as his real and positive end. The object thus becomes his. As it has no end in itself, it receives its meaning and soul from his will. Mankind has the absolute right to appropriate all that is a thing."⁴⁵

However, this freedom exists only if there is no **restricted community** in which no independent action is allowed as stated in Articles 3:175 and 3:190. In practice, this exception often overrides the rule. Examples of these restricted **communities** include

45 GWF Hegel, *Philosophy of Right* (SW Dyde tr, Batoche Books 2001) § 44, 57. See also, Becker (n 13) 209-10.

marital communities, which that generally prohibit a spouse from selling their share in the house or car while the marriage exists. In other situations, co-proprietors place **contractual restrictions**, often signing agreements that explicitly forbid selling or mortgaging their shares without mutual consent. Currently, in legal discussions, Prof. Wendy Schrama argues that the relationship between cohabiting partners fundamentally challenges this option. Notably, the interactions among co-proprietors are governed by the essential principles of reasonableness and fairness, as outlined in Article 3:166, paragraph 3. It defies these principles to unexpectedly introduce a new co-proprietor of the house to one partner. Despite this important consideration, there is a notable absence of case law on the matter, highlighting a gap in legal clarity that needs to be addressed.⁴⁶ Nevertheless, Article 3:175 still provides a release: if there is an existing contract or court order dictating how a shared asset is used, managed, or disposed of, the **subdistrict court** can **rewrite or end** that arrangement. This only happens if events occur that the parties didn't account for when they made the deal, such as extreme inflation, a total breakdown in the relationship, or a physical disaster. Any co-proprietor who is significantly affected by these new circumstances can request this intervention.

In a different context, Islamic legal jurists (fuqaha) hold various opinions on the authority of a co-proprietor to sell their own share, especially regarding whether this action may harm other co-proprietors without a legitimate right. In total, those diverse perspectives seem to align with the scope of Articles 3:175 and 3:190 of Title 3.7 of the Dutch Civil Code, suggesting a nearly systematic approach. A key principle guiding the Islamic approaches is the foundational **Islamic legal norm** and Prophetic tradition (Hadith) of the Prophet Muhammad: (*There should be neither harming nor reciprocating harm*) (***La darara wa la dirara***), which nearly applies to nearly every aspect of life, including property law and banning unfair practices like hoarding or cheating in trade.⁴⁷ This statement implies that one must not initiate harm against others or themselves. It also refers to causing harm for personal gain. These principals mandate that harm must be eliminated or prevented before it occurs. It also **balances interests**: if two harms are unavoidable, this rule dictates choosing the **lesser of the two evils** to minimize overall harm. Overall, this wisdom emphasizes the importance of responsibility and ethics, urging Islamic followers to prioritize fairness and the well-being of others in their interactions. On one hand, *as al-Khārāshī* (d. 1690 AD / 1101 AH) observed that a significant number of Islamic jurists (fuqaha) assert that a co-proprietor should never be compelled to sell their share in a joint property without obtaining permission from other co-proprietors, *because* a co-proprietor has the right to divide, sell, and transfer their share without needing permission from their

46 Wendy Schrama, 'Informal Relationships: Dutch Report' in Katharina Boele-Woelki, Charlotte Mol and Emma van Gelder (eds), *European Family Law in Action*, vol 5: Informal Relationships (Intersentia 2015) 19.

47 A hadith compiled by Imam Ahmad ibn Hanbal (d. 241 AH/855 AD).

co-proprietor.⁴⁸ Furthermore, this right to engage in sales is granted equally to both men and women, a principle astutely noted by *al-Jaṣṣāṣ* (d. 980 AD / 370 AH) that Abu Hanifa, Abu Yusuf, Muhammad, Zufar, al-Hasan ibn Ziyad, and al-Shafi'i stated that if a woman has reached puberty and possesses sound judgment, she is allowed to manage her property, including making gifts, regardless of whether she is a virgin or not.⁴⁹ Potentially, this Islamic legal perception is based on *al-Qarāfi's* accumulated conclusion (d. 1285 AD / 684 AH) when he acknowledged that the state of joint property does not undermine the essence of ownership as a whole.⁵⁰ In other words, a co-proprietor shall have the ability to sell their own shares freely without restrictions, even in joint ownership, because they are still the owner of the sold share. Furthermore, this issue had been contextualized by the general governing principle established by *al-Kasani* (d. 1191 CE / 587 AH), who compellingly argued that in the state of joint property, each co-proprietor is considered a stranger to the other co-proprietor's share. Therefore, neither co-proprietor can dispose of the other's share without permission.⁵¹ This implies that a co-proprietor shall have the complete authority to dispose of their share without a need for other's consent. Perhaps, *al-Kasani* sees ownership as a fundamental human right, equal to the rights to bodily security and integrity, as observed by Thomas Merrill and Henry Smith in their perspective of a close connection between property rights and human rights in which both categories of rights create powerful duties of non-interference that extend to both co-proprietors.⁵²

On the other hand, even fewer Islamic jurists (*fuqaha*) contend that a co-proprietor cannot sell their share separately without the permission of the other joint proprietor. In this context, *al-Mardāwī* (d. 1480 AD / 885 AH) noted that if someone sells his share of a specific shared thing and delivers it to the new buyer without obtaining their co-proprietor's permission, the seller is infringing upon their partner's rights. If the buyer is aware that the seller lacked permission to transfer their rights, the buyer is liable for any consequences. The decision regarding the situation is up to the buyer. This also applies if the buyer was unaware of the partnership or the need for permission and did not know about any related matters. However, the responsibility ultimately lies with the seller because they had misled the new buyer.⁵³ *Al Sarakhsī* (d. 1090 AD/ 483 AH) emphatically asserted that the actions of one co-proprietor can harm their partner. If a co-proprietor disposes of their share in a way that negatively affects their partner, those actions will not be considered valid in relation to the

48 Muhammad 'abu Eabd Allah Muhamad 'Ibn Eabd Allah 'Ibn Eali Al-Kharaashii, *A Brief Explanation by Khalil al-Kharashi* (The Grand Amiri Printing Press 1899) vol 5, 239 [in Arabic].

49 Abū Bakr Aḥmad ibn 'Alī al-Rāzī, *The Rulings of the Qur'an by Al-Jassas* (Dar al-Kutub al-Ilmiyah 1994) vol 2, 352 [in Arabic].

50 Abu al-Abbas Shihab al-Din Ahmad ibn Idris ibn Abd al-Rahman al-Maliki, *Lights of Lightning in the Clouds of Differences* (World of Books) vol 3, 232 [in Arabic].

51 Al-Kasani al-Hanafī (n 11) vol 6, 65.

52 Merrill and Smith (n 25) 1851.

53 Alā' al-Dīn Abu al-Hasan Ali ibn Sulayman al-Mardāwī, *Fairness in knowing the most correct of the disagreement by Al-Mardawi* (House for the Revival of Arab Heritage) vol 4, 471 [in Arabic].

partner.⁵⁴ It seems that the view of non-sale rights is best understood as stemming from a direct or indirect relationship that necessitates unanimous agreement among partners to sell private shares to outsiders. This concept is supported by both *al-Mardawī* and *Al-Sarakhsī*, who refer to the term "partnership," which is now comparable to modern business companies and is similar to Articles 3:175 and 3:190 of Title 3.7 of the DCC.

Most critically, however, if a co-proprietor disposes of the entire joint property without prior unanimous agreement from all co-proprietors, this disposal shall be deemed null and unenforceable because the selling co-proprietor disposes of a property which is owned by others. This issue is based on the fundamental principle of the rule of law, as observed by *al-Kasani*, which holds that a person cannot sell what they do not own, as they lack the authority to do so; and, thus the eventual buyer does not acquire good title. Despite this, exceptions have arisen due to the apparent unfairness that the general rule might create, leading innocent buyers to lose their money in difficult circumstances. Still, some scholars, such as Ali Haydar Afandi, consider that if one of the owners of a shared house sells both his own share and his partner's share to another person without obtaining permission from the partner, this sale is considered a voidable act regarding the partner's share. The partner has the option to either rescind the sale of their share or ratify it, as long as the conditions for ratification are met, considering the seller's action as a "meddler," who is a person who interferes in other people's affairs.⁵⁵

4.3.2. Termination of Joint Ownership Through Partition

It seems indispensable to establish independent management and a legal option for co-proprietors in the event of disputes over a joint property when they can no longer agree on its use or sale. Therefore, the termination of joint property can be achieved by partitioning as an escape route, which is essential for converting shared property into clearly defined, individual ownership, eliminating ambiguity and preventing disputes among co-proprietors. It grants each owner the legal right to sell, lease, or mortgage their share independently, and provides a lawful release to terminate co-proprietorship. This dissolution can be effectively achieved through court-ordered actions, such as in-kind partition or forced sale. Both the Dutch Title 7 and Islamic legal scholars offer sophisticated and varied perspectives in this regard. A question arises: What types of partitioning are relevant to joint ownership, and what is the court's preference? To what extent does the termination of partition align with principles of social justice, particularly in protecting vulnerable individuals from losing housing? While modern law supports the principle that property rights should be protected, this principle is not absolute. Still, both Yun-chien Chang and Lee Fennell recognize the partition of a joint property to constitute a legal safety

54 Muhammad ibn Ahmad ibn Abi Sa'd Shams Al-Sarkhsi, *Al-Mabsut* (Dar Al-Ma'arifa) vol 21, 39 [in Arabic].

55 Ali Haydar Khawaja Amin Afandi, *Durar al-Hakam fi Sharh Majallat al-Ahkam (The Pearls of Rulers in Explaining the Journal of Rulings)* (Dar Al-Jil 1991) Vol 3, 29 [in Arabic].

valve that prevents individuals from being tied to an undesired joint ownership.⁵⁶ While a partition is often presented as fulfilling the right to self-determination, it provides a legal method to force long-term residents off their land when a minority shareholder or third party forces a sale, in case disputes arise. This frequently results in the artificial division of homelands and populations, leading to the displacement of vulnerable people. Another critical concern with partitioning is that it often results in a property's value being below market value, causing economic losses for co-proprietors who cannot afford to buy out the others and often disadvantaging disadvantaged or rural landowners.

Recognizing the potential social effects of partitioning joint ownership, it can be achieved either by agreement (extrajudicial partition), which allows co-proprietors to voluntarily divide property without court intervention, usually through a signed contract or partition deed. The primary kinds include physical division (in kind) of the asset, sale of the property to divide proceeds, and buyout of shares by one owner. In a different context, courts can order the partitioning of a joint ownership when extrajudicial partition is not typically an option. In this case, after a co-proprietor initiates a partition action, the courts usually consider two methods of partitioning: "in kind," where the property is divided into separately titled parcels, or by "sale," where the property is sold, and the proceeds are distributed among the co-proprietors. The in-kind method is seen as more consistent with safeguarding the heritage of real property within families, ensuring that it remains in their lineage, while also protecting owners from being compelled to sell against their will. Conversely, ordering a partition in-kind can be problematic when there are multiple interests in a property, as courts may find it impracticable if dividing it would diminish the economic value of the disputed property. The alternative is partition by sale, in which the proceeds are distributed among the owners based on their fractional shares.

Under the Dutch Title 3.7, co-proprietors are allowed to both manage their property independently and participate actively in the apportionment process, usually through agreement, yet if no agreement is available on dividing the community property, the court may intervene to determine the division at the request of an appropriate co-proprietor.⁵⁷ In reference to Article 3:185 of the Dutch Title 3.7, the court may also conduct the division itself, ensuring fairness in apportionment by considering the interests of all parties involved where it can: a. assign a portion of a community asset to each co-proprietor; b. allocate more than their fair share to some co-proprietors, who must then compensate others based on the asset value; c. distribute net sale proceeds of a community asset as directed by the court.

Currently, to what extent do Dutch courts maintain a balance between the legal rules governing joint ownership and principles of social justice? Arguably, courts balance joint ownership rules with social justice by adapting strict property laws to reflect equity,

56 Yun-Chien Chang and Lee Anne Fennell, 'Partition and Revelation' (2014) 81 *The University of Chicago Law Review* 27.

57 Dutch Civil Code (n 2) art 3:183 and 3:185.

fairness, and human rights, particularly in housing disputes. While property law focuses on formal ownership and certainty, courts use discretion to prevent unjust outcomes, weighing personal rights against public interest. This balance is often struck by ensuring legal decisions serve the broader community. In this context, it seems important to discuss the implications of the recent Dutch case ECLI:NL:RBLIM:2025:4250, in which the Limburg District Court focused its analysis on a **civil dispute over the distribution of an estate** between a mother and her daughter following the father's death. The daughter sought to dissolve co-proprietorship of assets with her mother, who had been disinherited, despite a prenuptial agreement that stipulated cold exclusion.⁵⁸ In 2023, a father born in 1938 died in southeastern Netherlands. He was married to the defendant under a prenuptial agreement that excluded her from inheritance. His daughter, the plaintiff, is the sole heir and executor under his will dated October 25, 2022, which revoked prior wills and disinherited the defendant. The couple had been living separately since May 30, 2022, and were legally divorced on January 23, 2023, though the divorce decree was not yet registered at the time of his death. The couple has jointly owned a house since December 31, 2004. After disputes, the plaintiff, as the sole heir, requested termination the joint ownership with the defendant, despite a prenuptial agreement that excluded marital community property. The Limburg District Court is considering two court orders: the plaintiff's request for a division of the property and the defendant's request to temporarily exclude this claim under Article 3:178 of Title 3.7 of the DCC. The court determined that there is no marital community of property due to a prenuptial agreement. It ruled that no one should be forced to remain in an undivided community for an unreasonable period. Under Article 3:178 of Title 3.7 of the DCC, a claim for division can be temporarily excluded if one co-proprietor's interests in immediate division significantly outweigh the others. Ultimately, the court prioritized the plaintiff's interest in ending the indivisibility and rejected the defendant's appeal for exclusion from distribution. The court recognized the mother's long-term residence and co-proprietorship of the house since December 31, 2004. Consequently, the house will be assigned to the defendant, who must pay the plaintiff a usage fee. Most critically, the court outlined a detailed plan for dissolving the community home. If the defendant wants to keep the property, she must pay the plaintiff's estimated share within three months; otherwise, the house will be sold to a third party. A thorough investigation of this Dutch legal precedent revealed several practical issues deliberately invented by the Limburg District Court. First, it lies in practice how courts should structure complex settlements surrounding the in-kind and sale partition of an estate to prevent further deadlock between heirs. Second, this legal proceeding demonstrates how courts can intervene in a "simple community" (e.g., a jointly owned house) when heirs cannot reach an agreement, using procedural mandates to force a division that is both equitable and efficient. More precisely, the court did **not** immediately order the house to be sold to a third party. Instead, it established a conditional process, known as a "**roadmap**," to resolve the

58 Case C/03/331095 HA ZA 24-251 (Court of Limburg, 7 May 2025) ECLI:NL:RBLIM:2025:4250.

dispute between the mother and daughter. The court's primary decision was to grant the mother the first opportunity to **take over the entire property** (buy out the daughter's share). As such, the court protected a vulnerable mother by prioritizing her housing stability over an immediate forced sale, granting her the first opportunity to take over the marital home. A structured roadmap for financing, combined with a usage fee for continued occupancy and an independent valuation, was utilized to balance her needs against the daughter's inheritance rights.

The daughter sought to terminate the joint ownership of the apartment she shared with her mother, in accordance with the default rule set out in Article 3:175 of Title 3.7 of the DCC. As a co-proprietor, she had the authority to dispose of her specific share in the communal property. While her primary goal was likely to receive her share of the apartment's value, she prioritized her mother's buyout of her 50% ownership. If the mother was unable to secure financing within the court-mandated timeframe, the daughter successfully argued for a mandatory sale of the entire property to a third party. Ultimately, the Limburg District Court's order focused on her being paid out by the mother rather than an immediate public sale.

To ensure a smooth and efficient forced sale process, the court used a self-executing roadmap to bypass a dissenting co-proprietor by granting a substitute consent, allowing the court's ruling to serve as the necessary signature for the sale. This is procedurally significant as it provides a self-executing remedy used when a property co-proprietor refuses to sign documents required for a sale, reducing the need for the parties to return to court if one heir becomes uncooperative during the sale process. The court further authorized the real estate broker to determine the sale price, enforced strict timelines for a public sale, and mandated access to the property, effectively preventing a deadlock in the division of property. In fact, by mandating a valuation, the court ensured a fair valuation process by appointing a jointly selected independent appraiser to determine the current market value rather than the historical claimed value that lacks consensus.

The Limburg District Court ordered a usage fee as a crucial method for financially compensating the non-occupying co-proprietor (the daughter) for the loss of utility from the property while the other co-proprietor (the mother) resides alone in the shared house. The court imposed this fee to ensure a fair division of assets, rejecting a standard "free" grace period intended to encourage prompt resolution of the estate. The total accrued fees are deducted from the occupant's share, thereby ensuring fairness in the final inheritance settlement. The court also indirectly referenced Article 3:169, which governs the right to use community assets. While awarding the vulnerable co-proprietor the right to use the entire community house, the court ensured that this usage was compatible with the rights of the other co-proprietors by granting the plaintiff compensation in the form of a usage fee for not occupying the property.

In the context of social justice, when an in-kind distribution of assets was not feasible, the court provided temporary protection for the vulnerable parties. It allowed the mother to retain her home while ensuring that the daughter received her rightful financial share. This

decision reflects the social goal of intergenerational equity. The court granted the mother the first opportunity to take over the marital home, recognizing the importance of housing stability for surviving spouses who often have a deep emotional and practical connection to their long-term residence. To prevent the daughter from being unfairly deprived of her share's value, the court ordered the mother to pay a user fee for the period during which she lived in the home alone. This arrangement ensures that the mother's right to remain in the home does not impose an unjust financial burden on the other heir.

In the context of partitioning joint ownership under Islamic law, this is a legal issue that has been explicitly addressed. Partitioning a jointly owned property, particularly in inheritance cases, typically occurs when multiple beneficiaries inherit the property together. The Quran graciously mentions this process and provides guidance on it, who mentions: (For men, there shall be a portion of what parents and nearest relatives leave 'behind in death' and for women, there shall be a portion of what parents and nearest relatives leave 'behind' whatever there is of it 'be it' little or much, 'there shall be' an obligatory apportionment 'made'. Moreover, when close relatives or orphans, or the indigent, attend the division 'of inheritance', provide for them out of it. Moreover, say to them a gracious and 'comforting' word)⁵⁹.

Islamic legal jurists (*fuqaha*) have proposed several methods for partitioning a property (*qasama*), either through agreements among co-proprietors or by a court's intervention. Notably, *ibn Taymiyyah* (d. 1328 AD / 728 AH) was asked about a scenario involving two men who co-own a house, and if one co-proprietor requested a division of the property, but the other refused. Ibn Taymiyyah's response was that if in-kind partitioning can be accomplished without harm among co-proprietors, such that there would be no diminished value as a result of in-kind partitioning, then the co-proprietor who refuses a division must be compelled to do so. However, *ibn Taymiyyah* continues to hold that if a division is not possible without harm, the party requesting the division may opt for a sale, and the party that refuses may be forced to share the proceeds. According to *ibn Taymiyyah*, forcing a division is the consensus among the four major schools of thought, while forcing a sale is the viewpoint of Malik, Abu Hanifa, and Ahmad.⁶⁰

In addition, *al-Bahuti* (d.1641 AD / 1051 AH) stated that co-proprietors have the option to divide their shared property either according to a ratio they agree upon or by requesting a judge to determine the division. The judge must assist them in resolving their dispute. Furthermore, the salary of the judge will be covered by the co-proprietors in proportion to their respective shares of the property.⁶¹

59 Hammad, *The Gracious Qur'an* (n 5) Surah 4: Al-Nisa (Women), Verses 7-8.

60 Taqi al-Din Abu al-Abbas Ahmad ibn Abd al-Halim ibn Abd al-Salam ibn Abd Allah ibn Abi al-Qasim ibn Muhammad ibn Taymiyyah al-Harrani al-Hanbali al-Dimashqi, *Books, Letters, and Fatwas of Ibn Taymiyyah on Jurisprudence* (Dar al-Kutub al-Ilmiyyah 1987) vol 35, 416 [in Arabic].

61 Mansur bin Yunus al-Bahuti, *Al-Rawd al-Murabba' with Commentary on Zad al-Mustaqni' al-Mukhtasar al-Mukhtaf* (Dar Al-Raka'iz Publishing and Distribution 2016) vol 3, 410 [in Arabic].

Islamic jurists (fuqaha) continue to disagree on the definition of 'harm' or 'injury' that may restrict the partitioning (qasama) of joint property, which provides equitable relief to co-proprietors, such as heirs who oppose forced sales. Courts should interpret the concept of injury to permit a sale whenever the proponent of the sale can show that a partition in kind of real property would cause financial loss to some or all of the owners. More specifically, *al-Maqdisi* (d. 1624 AD / 1033 AH) noted that the harm preventing partitioning (qasama) occurs when partitioning leads to a decrease in value, which means that neither co-proprietor benefits from the partitioning. Moreover, he observed that, the issue arises when neither party can benefit from their individual share as they did under the joint ownership.⁶² For instance, if two parties co-own a small house and it is divided in-kind, each person may end up with a narrow space that offers no practical benefit. Even if there may be other uses for the divided property, a party is not obligated to proceed with the division, as this scenario represents a harm akin to destruction. In contrast, he brought another perspective, which holds that what prevents division is the possibility that the value of one party's share would diminish upon division, regardless of whether they could use the property differently after it is divided. Consequently, it may be argued that forcing a sale to divide joint property can undermine the integrity of that property and potentially expose vulnerable persons to lose housing. However, adopting the pecuniary-loss standard would reduce the presumption of in-kind partition to a mere procedural hurdle. This hurdle can be easily overcome by simply demonstrating any loss in financial value if the in-kind partition is carried out.

In pursuit of applying the principles of social justice, Islamic jurists (fuqaha) allow preemption or right of first refusal (shufa), permitting a co-proprietor to compel the new purchaser of a share in the joint property to transfer ownership to the requesting a co-proprietor at the sold price. This prevents harm from strangers and preserves privacy, applying specifically to sales. In this context, *al-Dasuqi* (d. 1815 CE / 1230 AH) discussed possible ways to resolve the conflict between forced sale partition and the principles of social justice. He emphasized that a primary reason supporting the right of pre-emption is the potential disadvantage faced by the partner who chooses not to sell. In cases involving indivisible items, this disadvantage arises from the risk of a price drop if the partner does not agree to the sale.⁶³

In Saudi Arabia, the implementation of property rights is in accordance with Islamic law, as established by the New Civil Transactions and regulations on joint properties enacted in 2023. However, previously, family-related issues in Saudi courts were governed by both Islamic law principles and additional regulations. This is evident from the investigation of case 8765 from 2021, which was examined in the First Commercial Court in Riyadh. This

62 Al-Maqdisi (n 39) vol 11, 491 [in Arabic].

63 Muhammad ibn Ahmad ibn Arfa al-Dasuqi al-Maliki, *Al-Dasuqi's Commentary on Al-Sharh al-Kabir (Dar al-Fikr)* vol 3, 476 [in Arabic].

case addressed the lack of enforcement of a valid partitioning agreement.⁶⁴ Historically speaking, a partnership was established in 1962 between the sons of Ibrahim: Badr, Rashid, and Dakhil (...) operating under the name "Rashid Ibrahim and Brothers for Watches." Each brother also owned individual properties, real estate, company shares, shops, and cash that were generally associated with the company. However, these individual holdings were not included in the original partnership deed or its annexes. As a result, the heirs of the partners agreed that all properties held in the names of any of the three brothers would be considered jointly owned, with each brother owning one-third. In 2002, the brothers established a division agreement to formally separate their assets and end their joint ownership, with each brother receiving a specific share.

The heirs of the two founding brothers have refused to relinquish the plaintiff's inheritance and have taken control of the real estate and other funds, completely disregarding the 2002 agreement. In a surprising turn of events, the first commercial court in Riyadh ruled the case inadmissible in 2021 on procedural grounds, stating that it did not comply with the required rules. Specifically, the plaintiff's representative failed to include an inventory of the estate belonging to the heirs in their statement of claim, which is essential for verifying the identities of the plaintiffs. They also did not submit the founding contract for the company involved in the lawsuit. As a result, the court's rejection ruling addressed these shortcomings in its operative part. Currently, there is no further explanation as to why the plaintiff's representative did not submit the necessary documents. However, what is notable is that the case involves a total of twenty-nine plaintiffs and defendants, as indicated by the case documents, underscoring the significance of this dispute surrounding the division of joint ownership.

In this Saudi legal precedent, key issues to note. Initially, the co-proprietors began the process of partitioning their property by mutual agreement. However, since this case involves an agreement made before 2002, the New Civil Transactions Law does not apply. Their actions may have been guided by adherence to Islamic principles and possibly influenced by the views of *Al-Bahuti* (d. 1641 AD / 1051 AH). He noted that co-proprietors can divide their property either through mutual agreement or by requesting a judge to intervene. Notably, *Al-Bahuti* was the primary legal authority on Islamic law in Saudi courts until the introduction of the New Civil Transactions Law. Furthermore, this case highlights a common procedural hurdle in Saudi commercial courts, where the complexity of "family-owned" de facto partnerships often clashes with the strict **procedural** requirements. In cases involving twenty-nine heirs, the court cannot verify **legal standing (locus standi)** without an official Inventory of the estate. The court needs to ensure every person named as a plaintiff or defendant is a legitimate heir and that no one is missing. Even if the 2002 division agreement exists, the court requires the founding documents of "Rashid Ibrahim and Brothers for Watches" to establish the

64 Case no 8765 [2021] First Commercial Court in Riyadh.

partnership's legal starting point. Additionally, if all procedural requirements have been met, the Saudi court will enforce the agreement made prior to 2002 under Article 626. This article states that if all partners agree to the division, it is valid even if it diminishes the property's benefit or value. Notably, Article 626 accurately reflects the views of *al-Bahuti* (d. 1641 AD / 1051 AH) and other Islamic legal scholars.

5 CONCLUSIONS

Grasping the distinction between sole and joint ownership as forms of property ownership is vital for effectively navigating the intricate complexities and challenges these arrangements present. Joint property is not the sole property of a single partner; rather, this delicate balance ensures that, while each owner thrives, the collective harmony is preserved, yet remains precarious. From a doctrinal perspective, both Islamic (fiqh) and Dutch property law traditions under Title 3.7 exhibit a surprisingly similar structure in their systematization of joint ownership of a property. Each legal tradition is organized around well-defined principles that, collectively, form a coherent body of law governing various matters related to property. This level of sophisticated organization particularly highlights joint ownership or community assets, primarily as a permanent state rather than a transitional stage (often formed following a death or a divorce), with designed rules as an abstract, overarching framework with a flexible management structure that applies to all forms of joint property.

Two distinct legal philosophies frame the realm of joint property ownership under both Islamic law and Dutch Title 3.7. The first philosophy boldly asserts that the state of joint ownership does not undermine the essence of ownership as a whole, for a co-proprietor wields absolute control over their share, even if the owned share is indivisible. This empowerment empowers a co-proprietor with the liberty to manage, use, or sell the owned portion without the need for consent from the other co-proprietors. This principle finds its roots in the teachings of *al-Shirāzi* (d. 1083 AD / 476 AH) and resonates in Article 3:175, which grants each co-proprietor the authority to determine the fate of their shares in a community asset.

However, the second competing approach explains that a co-proprietor still has limited authority over the entire shared property. They cannot make decisions about the entire property without the permission of their fellow owners. This limitation on freedom may directly conflict with the principle of autonomy in decisions about the use of the entire property and in determining who is authorized to make those decisions, which may require unanimous consent from all owners. An owner cannot be considered fully autonomous, as the interests of the other owners balance this right. Reputedly, this is perhaps partially because of an initial autonomy to forge joint ownership with others. Yet, when heirs inherit property, they find themselves without the autonomy to establish a true state of joint

ownership. This paradox highlights the complexities of shared ownership and the limitations placed upon those who may seek to shape their inherited assets collaboratively.

Although both legal systems acknowledge that co-proprietors have significant freedom to set up their own management regulations, they also stipulate that if an agreement cannot be reached, a court can impose a regulation that balances the interests of both parties. However, neither system adequately addresses the management challenges associated with joint property, particularly the burdens borne by the majority due to the control or refusal of minority owners without recourse to the courts, and the lack of differentiation between normal and abnormal administration activities that fall outside the scope of conventional management of joint property. Perhaps they can avoid it by imposing a **two-thirds majority** to accomplish abnormal exploitation activities.

In a different context, joint ownership can lead to unexpected challenges in a property's use and management, which may eventually result in division. Both Islamic and Dutch legal traditions acknowledge this unescapable issue. Notably, the Limburg District Court addressed it in case ECLI:NL:RBLIM:2025:4250, which concerned an inheritance dispute. In this case, a daughter, who was the sole heir, sought to dissolve a co-proprietorship of assets with her disinherited mother, despite a prenuptial agreement that stipulated cold exclusion.

This research indicates that the process of disposing of and partitioning a joint property can jeopardize several principles of social justice, including distributive justice and the principle of sufficiency. Partitioning a joint property may expose vulnerable individuals to the risk of losing housing. However, both Islamic and Dutch legal perspectives on property law reach a "standard solution" for property disposal by establishing safeguards to prevent such conflicts, including pre-emption (or the right of first refusal). This legal facility gives an exposed, vulnerable owner the first opportunity to purchase either a share or the entire asset before it is offered to others. If partitioning joint property through a forced sale is necessary, it should be conducted at fair market value, ensuring that the interests of all co-owners are respected.

Finally, this research highlighted that while the functional outcomes may be similar, the normative foundations of both the Islamic and Dutch law on property rights remain distinct because they derive authority from fundamentally different sources: divine revelation versus human-centric, secular reasoning. Islamic law is rooted in immutable religious texts (the Quran and Sunnah) and aims to fulfill the divine will, while Dutch law (part of the Civil Law tradition) is based on negotiated, flexible, and codified statutes enacted by human institutions.

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AUTHORS INFORMATION

Ahmed Mansour

PhD (Law), Prince Sultan University in Riyadh, Saudi Arabia

amansour@psu.edu.sa

<https://orcid.org/0009-0000-3496-7066>

Corresponding author, solely responsible for preparing the manuscript.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

СПОРИ ЩОДО СПІЛЬНОЇ ВЛАСНОСТІ В НІДЕРЛАНДСЬКІЙ ТА ІСЛАМСЬКІЙ ПРАВОВИХ ТРАДИЦІЯХ: ПЕРСПЕКТИВА СОЦІАЛЬНОЇ СПРАВЕДЛИВОСТІ

Ахмед Мансур

АНОТАЦІЯ

Вступ. Встановлення спільної власності, яку в Нідерландах часто називають спільними активами (*community assets*), надає чудову можливість членам сім'ї та друзям об'єднати свої фінансові ресурси та разом придбати майно, значно зменшуючи як початкові внески, так і подальші витрати на утримання. Однак потенційна напруженість у цих стосунках може призвести до безлічі проблем. Можуть виникнути конфлікти щодо одночасного використання майна, або щодо його продажу чи здачі в оренду. Вирішення цих складних питань може перетворити спільну мрію на джерело напруги та невдоволення, що потенційно може перерости в дорогі судові спори, які можуть навіть ігнорувати умови заповіту. Залишається важливе питання: хто повинен здійснювати управління спільною

власністю і як співвласникам ефективно та коректно вирішувати конфлікти щодо використання спільного майна та розпорядження ним?

Методи. У дослідженні застосовано якісний, доктринальний та порівняльно-правовий аналіз для критичного розгляду нормативних актів щодо спільної власності через функціональні результати, а також нормативні засади як ісламських, так і нідерландських правових традицій щодо прав власності. У ньому визначено ключові питання, які можуть призвести до несправедливості або тривалих судових процесів. Важливим аспектом цього дослідження є порівняння філософських підходів Лоуренса Беккера, Томаса Меррілла, Генрі Сміта та інших з поглядами класичних ісламських юристів (фукаха) на соціальну справедливість. Три судові прецеденти демонструють, як суди збалансовують правила, що стосуються спільної власності, з принципами соціальної справедливості. Це дослідження має на меті дослідити подібності та відмінності в управлінні спільною власністю між ісламською та нідерландською правовими традиціями, зосереджуючись на основних правових принципах, що формують практичні правила її регулювання.

Результати та висновки. Хоча спільна власність на майно є поширеною практикою, існує помітний брак наукових досліджень, присвячених ключовим аспектам права власності, що регулюються класичним ісламським правом. Більше того, жодне дослідження не наважувалося порівняти Цивільний кодекс Нідерландів з принципами ісламської правової доктрини щодо регулювання спільного майна. Таке порівняння є життєво важливим для розуміння того, як ці дві правові системи перетинаються, особливо враховуючи їхній різний історичний та культурний контекст, а також для розуміння їх практичного значення в різних суспільствах. Результати дослідження виявляють значну подібність між цими правовими системами у підходах до вирішення основних спорів щодо спільного майна. У роботі стверджується, що хоча Цивільний кодекс Нідерландів та ісламська правова доктрина вирішують різні ключові питання, пов'язані зі спільним майном, існує нагальна потреба в кількох реформах. Ці коригування можуть сприяти більшій відповідності фундаментальним принципам соціальної справедливості, особливо у питаннях, що стосуються поділу спільного майна через примусовий продаж.

Ключові слова. Спільна власність, Цивільний кодекс Нідерландів (DCC), класичне ісламське право, соціальна справедливість, поділ майна.

ABSTRACT IN ARABIC*

مقال بحثي

منازعات الملكية الشائعة في التقاليد القانونية الهولندية والإسلامية: منظور العدالة الاجتماعية

أحمد منصور

المستخلص

الخلفية: يتيح تأسيس الملكية المشتركة — المعروفة غالباً بالأصول المشتركة في هولندا — فرصة ممتازة لأفراد الأسرة والأصدقاء لجمع موارد هم المالية واقتناء العقارات معاً، مما يقلل بشكل كبير من الدفعات الأولية والتكاليف الجارية. ومع ذلك، فإن احتمال حدوث توتر في هذه العلاقات يمكن أن يؤدي إلى تحديات لا حصر لها. قد تظهر النزاعات حول الاستخدام المتزامن للعقار، أو قد تنشأ خلافات حول بيعه أو تأجيره. إن التعامل مع هذه التعقيدات يمكن أن يحول ما كان يوماً حتماً مشتركاً إلى مصدر للتوتر وعدم الرضا، مما قد يتصاعد إلى معارك قانونية مكلفة قد تتجاهل حتى شروط الوصية. ويبقى هناك سؤال جوهري: من الذي يجب أن يتولى زمام الإدارة في هذه الأموال الشائعة، وكيف يمكن للملاك المشتركين خوض النزاعات حول استخدام وتصرف ممتلكاتهم المشتركة بمرونة وفعالية؟

المنهجية: تعتمد هذه الدراسة منهجاً نوعياً وعقائدياً وتحليلياً قانونياً مقارنة لفحص اللوائح المتعلقة بالملكية الشائعة نقدياً من خلال المخرجات الوظيفية والأسس المعيارية لكل من التقاليد القانونية الإسلامية والهولندية بشأن حقوق الملكية. وتحدد الدراسة القضايا الرئيسية التي يمكن أن تؤدي إلى الظلم أو المعارك القانونية الطويلة. ومن الجوانب الهامة لهذا البحث مقارنة المقاربات الفلسفية لـ "لورنس بيكر"، و"توماس ميريل"، و"هنري سميث" وغيرهم مع وجهات نظر الفقهاء المسلمين تاريخياً حول العدالة الاجتماعية. وتوضح ثلاث سوابق قانونية كيف توازن المحاكم بين القواعد المحيطة بالملكية الشائعة ومبادئ العدالة الاجتماعية. يهدف هذا البحث إلى استكشاف أوجه التشابه والاختلاف في إدارة الملكية الشائعة بين التقاليد القانونية الإسلامية والهولندية، مع التركيز على المبادئ القانونية الأساسية التي تشكل القواعد العملية الحاكمة للملكية الشائعة.

*. The publication metadata in Arabic is presented as submitted by the authors.

النتائج والخلاصة: على الرغم من أن الملكية الشائعة ممارسة شائعة، لا يزال هناك نقص مفاجئ في الأبحاث الأكاديمية التي تتناول قضايا حقوق الملكية الأساسية التي يحكمها الفقه الإسلامي الكلاسيكي. لم تتجرأ أي دراسات على مقارنة القانون المدني الهولندي مع مبادئ الفقه القانوني الإسلامي فيما يتعلق بتنظيم الأصول المشتركة. تعد هذه المقارنة حيوية لفهم كيفية تقاطع هذين النظامين القانونيين، خاصة بالنظر إلى سياقاتهما التاريخية والثقافية المتميزة، ولإدراك تداعياتهما العملية في المجتمعات المتنوعة. تكشف النتائج عن تشابه لافت بين هذه الأطر القانونية في كيفية إدارتها للنزاعات الكبرى المتعلقة بالأصول المشتركة. يطرح هذا البحث أنه بينما يعالج القانون المدني الهولندي والفقه الإسلامي قضايا محورية مختلفة تتعلق بالملكية الشائعة، فإن هناك حاجة ملحة لعدة إصلاحات. ومن شأن هذه التعديلات أن تعزز التوافق الأكبر مع المبادئ الأساسية للعدالة الاجتماعية، ولا سيما في المسائل المتعلقة بقسمة الملكية الشائعة من خلال البيوع الجبرية.

كلمات كليدى :

الفقه الإسلامي الكلاسيكي، (DCC) الكلمات المفتاحية: الملكية المشتركة، القانون المدني الهولندي
العدالة الاجتماعية، قسمة الممتلكات