

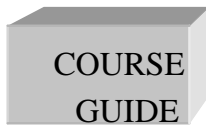


**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**FACULTY OF ARTS**

**COURSE CODE: ISL322**

**COURSE TITLE: *AL-MU'ĀMALĀT* IN THE *SHARĪ'A***



**ISL322**

***AL-MU'ĀMALĀT IN THE SHARĪ'AH***

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For

National Open University of Nigeria **INTRODUCTION**

You are welcome to 1SL 322: *Al-Mu‘āmalāt in the Sharīah* is a two-credit units course for part three students of the B. A. Degree Islamic Studies programme in the National Open University of Nigeria. The text book is an exposition of the concept and operation of social transactions in Islam in line with provisions made for them in the *Sharī‘ah*. This Course Guide provides you with a clear picture of the subject. It avails you the background, the sources, the guiding principles as well as examples of

Social Transaction stipulations in the Islamic law and as it is been practised in some parts of the Muslim world.

### **What You Will Learn in This Course**

The general aim of this course is to present to you the social transaction provisions in the Shariah with the Glorious *Qur'ān* and the Apostolic Traditions as their undisputable original, basic, primary and final sources. You will also come across some secondary and supplementary sources. Thus the Course discusses the background, scope and requisites of the transactions in some cases. Further it highlights the impact of the transactions on some Muslim Communities. The textbook thrashes out the subject matter of Social Transactions, their various kinds and their operation and advantages.

### **Course Aims**

There are fifteen (15) units in the Course, with each unit having its objectives. You should read the objectives of each unit and be conscious of them all along your study of the course. In addition to the objectives of each unit, the overall aims of this course include:

- (i) Providing you with past and present historical background information on provisions relating to *al-Mu'āmalāt* (social transactions) in the *Sharī'ah*.
- (ii) To acquaint you with the concept, doctrine, nature and scope of Islamic Social Transactions.
- (iii) To point out the various prohibitions and permissible matters in the Islamic law of social transactions.
- (iv) To impart to you the concept of Islamic banking as an emerging modern way of fiscal transactions alternative to interest infested conventional banking system.

### **OBJECTIVES OF THE COURSE**

Based on the general aims of this course, some objectives of the course as a whole are set out. These are the essential things you should be able to do at your completion of this course:

- (i) Define the various terms used in connection with *Muāmalāt* (social transaction provisions) in the *Sharī'ah*.
- (ii) Analyse the primary and secondary sources, as well as the background of the *Muāmalāt* (social transaction provisions) in the *Sharī'ah*.
- (iii) Discuss the subject matter, guidelines, scope and impact of the *Muāmalāt* (social transaction provisions) in the *Sharī'ah*.
- (iv) Evaluate the operation, problems and prospects of Social Transactions.
- (v) Underscore and discuss the role played by certain Muslim countries, institutions, societies and individuals in the implementation of Social Transactions.

## WORKING THROUGH THIS COURSE

It is essential that you work through the study units in this course. There are fourteen (14) Units in all.

### Course Materials

Major components of the course are:

1. Course Guide
2. Study units
3. Text Books, including the ones listed under each unit.
4. Assignments File
5. Presentation Schedule

### Study Units

There are fourteen (15) Units (in three modules) in this course. They are listed below:

#### **MODULE 1: CONCEPT AND SCOPE OF *MU'ĀMALĀT* (SOCIAL TRANSACTION PROVISIONS IN THE *SHARĪ'AH*)**

**Unit 1:** Background to *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 2:** The Law and Nature of *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 3:** Requisites of *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 4:** Scope of *al-Mu'āmalāt* provisions in the *Sharī'ah*

**Unit 5:** Prohibitions and Permissibility in the *al-Mu'āmalāt* provisions in the *Sharī'ah*

#### **MODULE 2: THE *AL-MU'ĀMALĀT* SOCIAL TRANSACTION PROVISIONS AND THEIR DISPOSITIONS**

**Unit 1** Subject Matter of *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 2** Company, Professionals' and Credibility *al-Mu'āmalāt* provisions in the *Sharī'ah*

**Unit 3** Joint and Advance Payment provision in *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 4** Special *Mu'āmalāt* provision in the *Sharī'ah*

**Unit 5** Dispositions in *al-Mu'āmalāt* provisions in the *Sharī'ah*

#### **MODULE 3: ISLAMIC FINANCIAL SERVICES INDUSTRY (IFSI)**

**Unit 1:** Principles of Islamic financial services industry

**Unit 2:** Evolution and Composition of Islamic Financial Services Industry (IFS1)

**Unit 3:** Towards Islamic Banking System

**Unit 4:** Islamic Insurance (*takāful*) and Re-insurance (re- *takāful*) services

**Unit 5:** Legal Capacity of Islamic Insurance (*takāful*) Operation

## REFERENCES AND OTHER RESOURCES

Certain books have been recommended to deepen your understanding of the course. You are hereby provided with a list containing some of them. Try to acquire as many as possible of those material.

1. Ali, A. Y. (1973). *Holy Qur'ān: Text, Translation and Commentary*, London: The Islamic Publications.
2. Ali, M. M. (1986). *Religion of Islam*, Delhi: Taj Company.
3. Al-Asqalani, A. H. (1996). *Attainment of the Objective According to Evidence of Ordinances*, Riyadh: Riyadh-Saudi Arabia
4. Cowan, J. M. (1974). *A Dictionary of Modern Written Arabic*, London: MacDonald & Evans Limited.
5. Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
6. Gusau, S. A. (1993). "Prospects and Problems of Islamic Banking in Africa", *Islam in Africa; Proceedings of the Islam in Africa Conference*, Ibadan: Spectrum Books Limited.
7. [failaka@.com](mailto:failaka@.com)
8. <http://http://www.icib-riu.org/>
9. [http://en.wikipedia.org/wiki/islamic\\_banking](http://en.wikipedia.org/wiki/islamic_banking)
10. [http://en.wikipedia.org/wiki/islamic\\_banking#](http://en.wikipedia.org/wiki/islamic_banking#)
11. <http://http://www.icib-riu.org/>
12. <http://www.imcbahrain.com>.
13. <http://www.modarabas.com>.
14. [ibfd@idb.org](mailto:ibfd@idb.org)
15. [marketingasia@oliverwymwn.com](mailto:marketingasia@oliverwymwn.com)
16. [marketingna@Oliverwyman.com](mailto:marketingna@Oliverwyman.com)
17. [marketingeu@Oliverwyman.com](mailto:marketingeu@Oliverwyman.com)
18. [masun2001@Yahoo.com](mailto:masun2001@Yahoo.com) 19. [sabir@icmif.org](mailto:sabir@icmif.org).

20. Khan, M. M. (1985). *Sahih Al- Bukhari, Arabic-English*, Lebanon: Dar Us-Salam Publications
21. Khan, M. M. (1994). *Summarized Sahih Al-Bukhari, Arabic-English*, Saudi Arabia: *Maktab Dar-Us-Salam*.
22. Sharif, M. M. (ed) (1963). *A History of Muslim Philosophy*, Vol.1, Pakistan: Pakistan Philosophical Congress.
23. Sharif, M. M. (ed) (1966). *A History of Muslim Philosophy*, Vol.2, Pakistan: Pakistan Philosophical Congress.
24. Shatta, H. H. (1999). *Business Ethics in Islam*, Egypt: *Al-Falah* Foundation.
25. Roshash, M. A. A. (1993). "The Islamic Alternatives to the Present Modes of Investment in African Banks and Companies", *Islam in Africa; Proceedings of the Islam in Africa Conference*, Ibadan: Spectrum Books Limited.
26. Khan, M. M. (1985). *Sahih Al-Bukhari, Arabic-English*, Lebanon: Dar Al-Arabia.
27. Mahmud, A. B. (n.d.). *Supremacy of Islamic Law*, Zaria: Hudahuda Publishing Company.
28. Norton, P. B. *et al* (1995). *The New Encyclopaedia Britannica*, vol. 22, London: Encyclopaedia Britannica, Inc,
29. Padfield, C. F. (1978). *Law Made Simple*, London: W. H. Allen, A Howard & Wyndham Company.
30. Zeno, M. J. (1996). *The Pillars of Islam and What Every Muslim Must Know about His Religion*, Riyadh-Saudi Arabia: *Dar-Us-Salam* Publications.

## **ASSIGNMENT FILE**

In this unit, you will find all details of the work you must submit to your tutor for marking. The marks you obtain from these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the Assignment File itself and later in this **Course Guide** in the section on assignment.

## **ASSESSMENT**

Your assessment will be based on four Tutor-Marked Assignments (TMAs) and a final examination which you will write at the end of the course.

## **TUTOR-MARKED ASSIGNMENTS (TMAS)**

Every unit contains one or more assignments. You are to work on four of them and submit them for assessment. Your tutor will assess the assignments and select best three, which will constitute 30% of your final grade. The tutor marked assignments may be presented to you in a separate file. Just know that for every unit, there are

some tutor-marked assignments for you. It is important you do them and submit for assessment.

## FINAL EXAMINATION AND GRADING

At the end of the course, you will write a final examination, which will constitute 70% of your final grade. In the examination, which shall last for two hours, you will be requested to answer three questions out of at least five questions. You should endeavour to revise the entire course before the final examination.

## COURSE MARKING SCHEME

This table shows how the actual Course marked allocation is broken down

Assignment	Marks
Assignments (best three assignments out of four marked)	= 30%
Final Examination	= 70%
<b>Total</b>	<b>= 100%</b>

## PRESENTATION SCHEDULE

This Presentation Schedule included in your course materials gives you the important dates for the completion of tutor-marked assignments and attending tutorials. Remember, you are requested to submit all your assignments by the due date. You should guard against falling behind in your work. You will be informed of the date for your final examination.

## COURSE OVERVIEW AND PRESENTATION OF SCHEDULE

Unit	Title of Work	Weeks Activity	Assignments
<b>Module 1 : Concept And Scope Of <i>Mu'āmalāt</i> (Social Transaction Provisions In The <i>Sharī'ah</i>)</b>			
Unit 1	Background to <i>al-Mu'āmalāt</i> in the <i>Sharī'ah</i>	Week 1	
Unit 2	The Law and Nature of <i>al-Mu'āmalāt</i> in the <i>Sharī'ah</i>	Week 2	
Unit 3	Requisites of <i>al-Mu'āmalāt</i> in the <i>Sharī'ah</i>	Week 3	
Unit 4	Scope of <i>al-Mu'āmalāt</i> provisions in the <i>Sharī'ah</i>	Week 4	
<b>Module 2: The <i>Al-Mu'āmalāt</i> Social Transaction Provisions And Their Dispositions</b>			
Unit 1	Subject Matter of <i>al-Mu'āmalāt</i> in the <i>Sharī'ah</i>	Week 5	Assignment 1



Unit 2	Company, Professionals' and Credibility <i>al-Mu'āmalāt</i> provisions in the <i>Sharī 'ah</i>	Week 6	
Unit 3	Joint and Advance Payment provision in <i>al-Mu'āmalāt</i> in the <i>Sharī 'ah</i>	Week 7	Assignment 2
Unit 4	Special <i>Mu'āmalāt</i> provisions in the <i>Sharī 'ah</i>	Week 8	
Unit 5	Dispositions in <i>al-Mu'āmalāt</i> provisions in the <i>Sharī 'ah</i>	Week 9	Assignment 3
<b>Module 3: Islamic Financial Services Industry (Ifsi)</b>			
Unit 1	Principles of Islamic financial services industry	Week 10	
Unit 2	Evolution and Composition of Islamic Financial Services Industry (IFS1)	Week 11	Assignment 4
Unit 3	Towards Islamic Banking System	Week 12	
Unit 4	Islamic Insurance ( <i>takāful</i> ) and Re-insurance (re- <i>takāful</i> ) services	Week 13	
Unit 5	Legal Capacity of Islamic Insurance ( <i>takāful</i> ) Operation	Week 14	
	<b>Revision</b>	<b>Week 15</b>	

## HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the University lecture. This is one of the great advantages of distance learning. You can read and work through specially designed study materials at your own pace, and at a time and place, that suit you best. Think of it as reading the lecture instead of listening to the lecture. In the same way, a lecture might give you some reading to do; the study units tell you where to read, and which your text materials are or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study units follows a common format. The first item is introduction to the subject matters on the units, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course. The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading section. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

1. Read this Course Guide thoroughly, it is your first assignment.
2. Organize a study schedule. Design a 'Course Overview' to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.
3. Once you have created your own study schedule, do everything to stay faithful to it. The major reason that students fail is that they get behind with their coursework. If you run into difficulties with your schedule, please let your tutor know before it is too late to help.
4. Turn to unit 1, and read the introduction and the objectives for the unit.
5. Assemble the study materials. You will need your set books and the unit and the unit you are studying at any point in time.
6. Work through the unit. As you work through the unit, you will know what sources to consult for further information.
7. Keep in touch with your Study Centre. Up-to-date course information will be continuously available there.
8. Well before the relevant due date (about 4 weeks before due dates), keep in mind that you will learn a lot by doing the assignments carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
9. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study material or consult your tutor.
10. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself busy on schedule.
11. When you have submitted assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the assignment is returned, pay particular attention to your tutor's comments, both on the Tutor/Marked Assignment form and also the written comments on the ordinary assignments.
12. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).
- 13.

## **FACILITATORS/TUTORS AND TUTORIALS**

The dates, times and location of these tutorials will be made available to you, together with the name, telephone number and address of your tutor. Your tutor will mark each assignment. Pay close attention to the comments your tutor might make on your assignments as these will help in your progress. Make sure those assignments reach your tutor on or before the due date. Your tutorials are important. Therefore, try not to skip any. It is an opportunity to meet your tutor and fellow students. It is also an

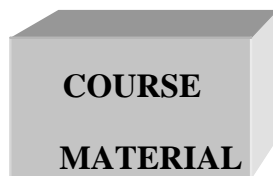
opportunity to get the help of your tutor and discuss any difficulties encountered on your reading.

## **CONCLUSION**

Much as I cannot promise you too-easy ride on this course, I equally do not envisage much difficulty as long as you play the roles assigned to you in the whole exercise.

## **SUMMARY**

In this Course Guide, you have been provided with a general overview of ISL 322: *Al-Mu‘amalah* in the *Sharī‘ah* in which students pursuing University Degree programme must earn three credit units. The Course Aims and Objectives are stated clearly at the onset. You have also been provided a list of books and references for your further reading. As an inference in the Guide, to develop an active interest in the Course is a prerequisite for its successful completion. Assess yourself through the Self-Assessment Exercises (SAEs). You will equally be assessed for grading purposes through the Tutor-Marked Assignments (TMAs). Thus, to do well in the course, you must get yourself organised and try to conform to presentation schedule. I wish you success with the course and hope that you will find it both interesting and useful.



**ISL322**

***AL-MU‘ĀMALĀT IN THE SHARĪ‘AH***

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## **MODULE 1: CONCEPT AND SCOPE OF MU'ĀMALĀT (SOCIAL TRANSACTION PROVISIONS IN THE SHARĪ'AH)**

**Unit 1:** Background to *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 2:** The Law and Nature of *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 3:** Requisites of *al-Mu'āmalāt* in the *Sharī'ah*

**Unit 4:** Scope of *al-Mu'āmalāt* provisions in the *Sharī'ah*

**Unit 5:** Prohibitions and Permissibility in the *al-Mu'āmalāt* provisions in the *Sharī'ah*

### **UNIT 1 BACKGROUND TO AL-MU'ĀMALĀT IN THE SHARĪ'AH**

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1.0 Introduction

2.0 Objectives

3.0 Main Contents

3.1 History of Early Social Transactions in Islam

3.2 Some Modern *Mu'āmalāt* in Islam

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

#### **1.0 INTRODUCTION**

In the Introduction to Shariah Course during your second year in this programme, you have learnt the concept of shariah, its primary, secondary and supplementary sources and the importance of its understanding in the practising of Islam. Since this course aims at given you exposure to the social interaction and contracts provision (*Mu'āmalāt*) in the *Sharī'ah*, an historical background of the subject matter hereby opens the discussion.

#### **2.0 OBJECTIVES**

At the end of this unit, you should be able to

Trace the early and modern history of Social Transactions (*Mu'āmalāt*) in Islam.

Appreciate the importance of the foundation for the Social Transactions laid down in the early period of Islam.

Examine the practice of Social Transactions in the present day in relation to the early history of Islam.

### 3.0 MAIN CONTENTS

#### 3.1 History of Early Social Transactions in Islam

The history of Social Transactions in Islam can be traced back to the period of the revelation of the Glorious *Qur'ān* in Makkah and Madinah (610-632 AD).

Characteristic of Islam, there is nothing left out in the mundane affairs of man and his life in the Hereafter without necessary divine guidance. The *Qur'ān* emphasises that it has addressed all issues (*Qur'ān* 6: 38). However, there is the need to understand and apply them appropriately. Islam pays unsurpassable attention to the Social Transactions where the interests of the contracting parties and the society are taken into consideration. It also gives magnificent encouragement to lawful social transactions.

Woe to those who deal in fraud. Those, when they take measure from people, take exact full measure. However, when they give by measure or by weight to them, they give less than due. Do they not think that they will be called to account? On a Mighty Day (*Qur'ān* 83: 1-5).

The Prophet extols and encourages honesty and fair play in all Social Transactions, including buying and selling. He likens the status of honest traders to that of the Prophets, the righteous and the martyrs (*Shuhada'*). Throughout his prophethood, he guided the Muslims towards Islamic-Compliant transactions.

Generally, Islamic Law includes matters that are not of practical nature, such as beliefs and charity. Public affairs are also covered by the provisions of the *Shari'ah*. Some matters of politics and administration fall within the purview of its law. The virtues of the days of ignorance, approved by the Prophet, can be acted upon in Islam. The revelations to the previous Messengers of Allah as well as the rules promulgated by Muslim governments (*Ahkamus-Sultaniyyah*) also are part of the materials for the formulation of Islamic laws in the early days of Islam. International laws that did not negate the principles of Islam were put into use. For an example, 'Umar Ibn Al-Khattab ordered that the Muslims should levy the same *tarriif* on traders from other territories as much as they were levied on the Muslims. He also introduced insurance units to attend to incidence of disasters.

During the Caliphate, a vigorous monetary economy was created in the Muslim States. The levels of their economy grew astronomically, their wealth expanded, circulation of stable economy was pursued vigorously, and high-value currency and integration of monetary matters were witnessed.

A number of economic concepts and techniques were applied in the Islamic banking system. These included Joint Partnerships (*Mudarabah*), Bills of Exchange, Capital Accumulation (*Namal-Mal*), Relief Trust Fund (*Waqf*), Transaction Accounts, Loaning, Ledges and Assignments. Others were cheques, promissory notes, and independent organisational enterprises. Moreover, a higher system of Islamic social transactions (*Mu'āmalāt*) and Islamic economy were introduced.

### Self-Assessment Exercise

- Examine the introduction of Islamic Social Transactions in the early era of Islam.

### 3.2 Some Modern *Mu‘āmalāt* in Islam

Some Muslim scholars in the last century have produced useful theories on interest-free socio-financial transactions. Prominent among the scholars were Anwar Qurayshi, Na‘īm Siddīqī, Mahmud Ahmad, al-Mawdūdī and Hamīdullāhi Abdu’l-Ātī. Their major focus was the Islamic social transaction that could yield profits, lead to setting up of interest-free banking in Islam, based on profit and loss sharing agreement. In the 1950s, the Islamic scholars and economists made a landmark attempt to outline Islamic-compliant banking transactions alternative to *Riba*-involved partnership. They took practical steps by offering theoretical models of finance and banking with the noble objective of raising interest-free banking and in all forms of partnership.

During the last three decades, more scholars that are Muslim have started to give more attention to the issue of interest-free banking system. They do not only expound theories and formulate Islamic principles that should be followed; they also encourage governments and Islamic institutions to be more pro-active in establishing and promoting interest-free banking system.

In response to the clarion calls, the Conference of the Ministers of Islamic countries held in Karachi-Pakistan, in 1970; the First international Conference on Islamic Economics was held in Makkah in 1976; the International Economic Conference was held in London in 1977. Hitherto, the involvement of Islamic Institutions resulted in the establishment of interest-free banks such as the Islamic development Bank, which was established in 1975. Egypt took commendable step by its establishment of savings banks based on profit sharing in 1963. By 1981, there were nine of such banks in Egypt. In 1975 the first modern commercial Islamic bank, known as Dubai Islamic Bank was established in Dubai.

In 1981, the Organisation of Islamic Conference (OIC) and the Development of Africa set up three Standing Committees during its Third Islamic Conference held in Makkah. They are Economy and Commerce, Information and Culture, and Science and Technology. The heads of States and government of the OIC made certain bold resolutions. These included

- (1) Declaration of its determination to eliminate poverty from which some of our people continue to suffer, by consolidating its economic cooperation on the basis of complimenting and pooling of resources to achieve coordinated development of our countries.



- (2) Declaration of resolve in a spirit of Islamic solidarity to promote economic development of the countries, which are least developed amongst member countries.
- (3) Pronouncement of resolve to rationalize development policies that would ensure balanced progress in both the material and spiritual domains.
- (4) Calling for efforts to be made to establish economic relations in the world on bases of justice, interdependence and mutual interest.
- (5) To ensure the disappearance of the wide gap that separates the industrialized countries and the developing poor countries.
- (6) Institution of a new economic order based on equality and solidarity, under which development policies are rationalized and integrated to eliminate famine and its dangers.
- (7) To put an end to all kinds of deprivation and exploitation of peoples that are suffering under the effects of colonialism and backwardness.
- (8) To ensure these countries developed and make proper utilization of their resources.
- (9) To re-affirm the right of every state to exercise sovereignty over her respective natural resources and control of her exploitation.

Another International Conference on Islamic Business and Finance took place from 7th to 9th February 2011 at National Institute of Banking and Finance (NIBAF), Islamabad Pakistan. This event will provide a podium for coming together of the Islamic scholars and experts in many fields of human endeavour. These include practitioners of Islamic finance industry, economics, business and finance intellectuals as well as Ph. D /research scholars of the Universities and other stakeholders. The major reason for this intellectual gathering is to discuss the achievements, the challenges and latent issues in the fields of Islamic business, banking and finance. World's top scholars of Islamic Banking and Finance are expected to deliver thought provoking lectures on areas of interests to the Muslim world.

It is on record that in 2005, Islamic banking was growing at a rate of 10-15%, per year, signalling consistent future growth. The success of this bold step of setting up Islamic banks is manifested in the establishment of well over 300 of its institutions spread over 51 countries, including United States of America.

In 2005, *Shari'ah*-Compliant assets in those Islamic banking institutions have risen to 822 billions, US dollars. Moreover, CIMB Group Holdings has announced, "the Islamic finance is the fastest growing segment of the global financial system and sales of

Islamic bonds may rise by 24 percent to 25 billion US dollars in 2010". The Vatican is not left out in applauding the brilliant idea that "the principles of Islamic finance may represent a possible cure for ailing markets". According to the Standard and Poor Ratings Services in 2009, "the *Shari'ah* -Compliant assets reached about 40 billions US, dollars throughout the world, and its potential market is 4 trillion", while Iran, Saudi Arabia, and Malaysia have the biggest *Shari'ah*-Compliant assets". Moreover, the Iranian banks accounted for about 40 percent of total assets of the world's top 100 Islamic banks. Iran also topped the 500 Islamic Financial Institutions. The Muslims are expected to cooperate with the Islamic-Compliant banks to achieve their noble objectives.

The Islamic Development Bank, an arm of the OIC, has three main types of financing operations. These are Ordinary Operations, Foreign Trade Operations and operations financed under Special Assistance Account. The ordinary operations include loan financing of projects such as agriculture, basic infrastructure projects, education and rural development projects.

Its equity development projects are financed for revenue generation and encouragement of transfer of technology and expertise. Its leasing financing of medium-term operation is aimed at providing financial assistance to development projects that are capable of yielding revenue in industrial, transport, agro-industrial and other sectors of the economy among the member countries. Others include profitsharing projects, instalment sale, technical assistance to member countries to establish Islamic banks, technical co-operating programmes, scholarship programmes, etc.

### **Self-Assessment Exercise**

- Analyse the efforts of the Muslims in the modern age towards the operation of Islamic Social Transactions
- Examine the concept of Islamic Social Transactions in the modern age.

## **4.0 CONCLUSION**

From the foregoing, you would have been able to discover that Social Transactions (*Mu'amalat*) started with the introduction of Islam by the Prophet. You should have realised that the noble effort of promotion and operation of Social Transactions have become more popular and complex. You would have also ascertained that Islamic Law (*Shari'ah*) provides the solid bedrock for the implementation of Social Transactions in Islam. You should also have been informed that the later generations of the Muslims in modern times have continued to expand and consolidate on the gains of the early Muslims.

## **5.0 SUMMARY**

1. The background history of the Islamic Social Transactions (*Mu'amalah*) is traceable to the advent of Islam.
2. The generations of Muslim scholars and true practitioners of Islam continued to live in accordance with its teachings.

3. Islam gives a unique attention to Social Transactions in its teachings.
4. Social Transactions in Islam are a model business contract for all the people in the world.
5. Muslim scholars, administrators, bodies and states have opened up various Islamic-Compliant business opportunities for both Muslim and non-Muslim collaborates in many parts of the world.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Examine the roles of the Muslims in the introduction and implementation of Islamic Social Transactions

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## UNIT 2: LAWS, KINDS AND NATURE OF SOCIAL TRANSACTIONS (MU'ĀMALĀT)

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents

3.1	Concept of the Mu‘āmalāt (Social Transactions)	3.2
	Kinds and Nature of Social Transactions ( <i>Mu‘āmalāt</i> ).	
3.2	Laws of the Social Transactions ( <i>Mu‘āmalāt</i> )	
4.0	Conclusion	
5.0	Summary	
6.0	Tutor-Marked Assignment	
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## • INTRODUCTION

In the last module, you have become acquainted with the foundation of Social Transactions laid down solidly by Prophet Muhammad and his companions. You have also perceived how the later generations of the Muslims continued to develop and apply the principles of Social Transactions to life in some parts of the world. In this unit, you will be exposed to the mode of Social Transactions, and their significance.

## • OBJECTIVES

At the end of this unit, you should be able to:

Define and state the Law of Social Transactions in Islam    Analyse  
the kinds and nature of Social Transactions

Examine the Significance of Social Transactions

## • MAIN CONTENT

### 3.1 Concept of Social Transactions (Mu‘āmalāt)

Islamic prescriptions for social transactions and business contracts are made in order to guide the Muslims to the right path in their social relations. It draws the attention of those who want to collaborate in a joint venture or business transactions to take precautionary measures that would enhance the success of their venture. The precautionary measures are also to safeguard the interests of all the contractual parties. It provides the mechanisms for checking fraudulent practices, conflicts of interests, forgetfulness, laziness, cheating, erosion or loss of mutual understanding and co-operation. It builds healthy relationship in the minds of all parties whose collective goals are harmonised in such a way that teamwork and sense of belonging are present in the operation of social transactions. It is to be implemented in obedience to Allah and His Prophet for the overall benefit of all business partners and the society.

Proper understanding of all terms of the contract before finalization of agreements and their documentation provide a kind of insurance to the capital and shares of the profit. Unlike contract of usury, it shares either profit or loss par capital or labour imputes of the contracting parties. In case of loss, every party will share the loss, and

this reduces the burden. If only one party suffers the entire burden of loss, it will be more severe and that could lead to many social, economic and psychological problems. The parties will nurse the hope of gaining the favours of Allah both in this life and in the Hereafter because of the obedience to Him. It presents an excellent example to the west and international community that Islam is capable of operating the most transparent, just, egalitarian and successful poverty alleviation businesses.

### Self-Assessment Exercise

- State the reasons behind the Islamic Law on social transactions.
- Examine the provisions of Islam on social transactions.
- Analyse the possible impact of Islamic social transactions on the world.

### 3.2 Kinds of al-Mu‘āmalāt (Social Transactions in Islam)

The term “*al-Mu‘āmalāh*” is an Arabic/Islamic word. It simply means Social Transactions or business relations. The Muslim Jurists divide Islamic jurisprudence into three broad categories. These are acts of worship (*‘Ibādāt*), penal code or crimes (*‘Uqūbāt*), and socio-business contracts (*Mu‘āmalāt*). In the whole, the Islamic Law of transactions is dominated by the doctrine of interest or usury (*Riba*), which covers any form of capital loan or investment. It also includes speculative transactions such as gambling.

Many lawful business relations or contracts are recognised in Islam. These include matrimonial, commercial, industrial, and agricultural. Third parties are involved in the time of making the contract to avoid irresolvable disagreement. However, should differences arise during the execution of business contract, or matters of sharing of profits or loss, the witnesses during the contractual agreement should be called upon. However, if the disagreement could not be resolved, Islam allows invitation of the third parties, such as arbiters, judges, Muslim leaders, scholars and State authorities.

Islam sheds light on the nature of Islamic social transactions. It distinguishes between fixed profit or interest on loans (*Riba*) and commercial gains from social transactions (*Mu‘āmalah*). Only the debtor in the interest on loan contract suffers payment of a fixed profit for the provider of the capital without consideration for unfavourable circumstances in the venture. The borrower of capital is left to face the outcome of his business adventure. If he gains, he alone takes the gain. On the other hand, if he suffers loss, he alone will bear the debt burden. Worst still, the interest continues to multiply, as many times as the fixed period for payment lapses. Consequently, the capital and the interests of the borrower increase geometrically, thereby increasing the debt of the borrower in the same rate. On the other hand, the nature of Islamic social transactions or joint ventures gives just and fair treatment to each party in the *Mu‘āmalah*. It gives room for all parties in the social transactions to share either the profit or loss equally, par capital ratio.

Invariably, it is very rare and difficult to find rich individuals or private capitalists who can offer interest-free loan to the outsider. Hence, Islam makes it the duty of Muslim State, Institutions and organisations to make provisions for the Muslims to

access interest-free loans for business ventures. It encourages the governments and well-to-do Muslim organisations to provide for it in their budgets. It stresses that proper implementation of the law of social contract will discourage many Muslims from conventional systems of social transactions, which are laden with capitalist interests. Directing on the mode of Social Transactions, Allah warns that

Those who swallow usury (*Riba*) cannot arise (on the day of resurrection) except as he arises whom the devil has been driven to madness by his torch. That is because they say: Trade is like usury. But Allah has permitted trade and forbidden usury. Therefore, whoever has received admonition from his Lord and desists, he may have what is past, and his affair is in the hands of Allah. Moreover, whoever returns to it, those are the companions of Fire. They will abide eternally in it (*Qur'ān* 2: 275).

### **Self-Assessment Exercise**

Analyse the mode of Social Transactions in Islam

Differentiate between *Riba* and *Mu'amalah*

### **3.3 Laws governing the *Mu'amalāt* provisions in the *Sharī'ah***

The legal capacity to transact business by any Muslim male or female is regarded as prudent judgement (*Rushd*). The *Rāshidīn* are the people who have attained the age of puberty (*bulūgh*), mentally all right (*'Aql*) and not prodigal. Anyone who is not *Rāshid* is interdicted or embargoed. Hence, his/ her guardian (*Waliyy*) is to manage his/her affairs, because he/she is not capable to transact effectively without the assistance of a guardian. It is noteworthy that the exact age of puberty cannot be mentioned specifically because it is more or less the matter of physical development. The variation is caused by many factors including heredity, exposure to sexual relation, food, liquid and drug intake.

The fundamentals and guiding principles of the law of Social Transactions are rooted in the Glorious *Qur'ān*, the teachings and practices of the Prophet and his companions. Moreover, the Muslim scholars, leaders, states, institutions, organisations and pieties of all generations found themselves obliged to expand, strengthen and apply *Mu'amalāh* in such a way that the Muslims in particular and the world in general would continue to benefit significantly from their provisions.

- **Self-Assessment Exercise**
- Explain the conditions for eligibility to transact contract legally in Islam.

- **CONCLUSION**

A careful study of this unit shows that Islam has its own distinctive Social Transactions that remain the exemplary to the world. Invariably, in line with its cherished system of justice, earning ones livelihood should be according to one's capabilities and imputes. It makes provisions for acquisition of wealth through Islamic-compliant business ventures. At the same time, it directs the attention of the

believers to the divine condemnation of exploitative capitalism, which is the goal of usury. It leads to the understanding of the fact that Islamic system of social interactions is the best alternative solution to poverty eradication and economic depression.

## 5.0 SUMMARY

1. The Arabic/Islamic term for Social Transactions is *Mu‘amalah*.
2. Usury or interest (*Riba*) is forbidden and discouraged, while social transactions (*Mu‘amalah*) are permissible and encouraged in Islam.
3. Divine punishments await those who engage in usury (*Ribā*), while blessings and favours of Allah are promised those who engage in lawful social transactions.
4. Islamic social transactions promote mutual understanding, growth and prosperity of the people of any nation.
5. The law of social transactions spells out pre-cautionary measures against loss or failure of the business ventures.

## 6.0 TUTOR-MARKED ASSIGNMENT

State the main requirements and advantages of *Mu‘amalah* in the *Shari‘ah*

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## UNIT 3 REQUISITES OF THE MU‘ĀMALĀT IN THE SHARI‘AH

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Muslim Attitudes towards the *Mu‘āmalāt provisions in the Shari‘ah*
  - 3.2 Causes of Certain Variations in the Social Transactions
  - 3.3 Central Theme of the Social Transactions (*Mu‘āmalāt*)
- 4.0 Conclusion

- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

## 1.0 INTRODUCTION

In the characteristic nature of the true Muslims, whatever Allah and His Prophet say is good or permissible, they have no option other than to obey. In the same vein, whatever is prohibited would be abstained from. Nevertheless, there are minor variations in the implementation of Social Transactions in different Muslim localities. Some factors determine the differences, which are allowed in Islam, as long as they do not run contrary to the basic teachings of Islam. A thorough understanding of the Muslims' attitude to and perception of the central theme and nature of Social Transactions in Islam is germane to the proper implementation of the *Mu'āmalāt* provisions in the *Sharī'ah*.

## 2.0 OBJECTIVES

At the end of this unit, you should be able to

- Assess the attitude of the Muslims to Social Transactions in Islam

- Adduce reasons for the minor variations in the implementation of Social Transactions in different Muslim localities.

- Pinpoint the central theme of Social Transactions in Islam.

## 3.0 MAIN CONTENT

### 3.1 Muslims Attitudes towards the *Mu'āmalāt* provisions in the *Sharī'ah*

All beliefs and practices of any true Muslim are guided by the provisions of *Sharī'ah*. The socio-financial contracts in Islam come under the principles of *Sharī'ah* law. Before any Muslim can engage in any contract or activity, he/she must examine critically what he/she wants to do vis-a-vis. *Sharī'ah* provisions. For example, collection of payment of usury or interests (*Ribā*), business in intoxicants, pork, pornography, gossip columns in media, etc are prohibited and abhorred in *Sharī'ah*. Likewise, the Islamic banking system has zero tolerance for investment in unlawful businesses. The establishment of Islamic banking is a positive response to the challenges that confront the enlightened true Muslims who are willing to engage in business transactions that are free from prohibition by *Sharī'ah*. Generally, all true Muslims will support and abide by the rules and regulations on Social Transactions in Islam. Where there are no facilities or opportunities to access the Islamic-Compliant Social Transactions, they will make efforts to establish, run and promote the scheme. Where it is not possible, they would try as much as possible to avoid conventional institutions, which operate interest driven financial operations.

However, some Muslims are not aware of the immense values of the Social Transactions in Islam. Yet there are those who are in the habit of showing



indifference to such business venture because of natural pessimism to any venture. These sets of people need adequate orientation and sensitisation. Invariably, there are many constraints, ranging from non-availability of resources, including adequate capital and expertise, to unyielding government attitude to conventional sources and non-enabling environment. These need collaborative efforts of the Muslims of all callings and setup to overcome the lingering problems, systematically and lionheartedly. This should be the positive attitude of the Muslims, who will never submit to what could be erroneously regarded as an irredeemable situation.

#### **Self-Assessment**

#### **Exercise**

Examine the attitude of the Muslims to the *Muāmalāt* provisions in the *Sharī'ah*.

### **3.2 Causes of Certain Variations in Social Transactions**

Invariably, a thorough look at a given society reveals that the population and kinds of people living in a particular society usually determine the type of law or rules of that society. In a small community, the law would be simple. On the other hand, when members of the society are large and diverse, the law will be huge and complex. In a multi-religious and multi-cultural society like Nigeria, the rules are likely to be complex, corpus and multifarious.

In the eve of colonial rule in Nigeria, the laws in operation in Nigeria were multifaceted. To a large extent, *Sharī'ah* law was enforced in many parts of Northern Nigeria, while customary laws were enforced generally in the Eastern and Western parts of Nigeria. With the introduction of Islam to Yorubaland, some aspects of Islamic law were implemented, voluntarily in most cases, by the Muslims alongside the customary laws that are imposed by the non-Muslims, on the generality of the various peoples in the Western part of Nigeria.

In the same vein, the views of Muslim scholars of different environments on certain aspects of *Sharī'ah* that do not have specific injunctions in the Glorious *Qur'ān* and Apostolic Traditions also affect the variations. The customary laws of different locations that do not negate the teachings of Islam are considered in the law of Islam. Hence, certain variations are noticed in the Social Transactions of the peoples of Iraq, Madinah, Palestine, Persia, Egypt and other Muslim countries. In the whole, the minor differences are determined by the genuine interests in taking proper care of the welfare of the masses.

#### **Self-Assessment**

#### **Exercise**

State the determining factors for the variations in Social Transactions.

Examine the perceptions of the Muslims of the Social Transactions

### **3.3 Central Theme of Social Transactions**

In Islam, the law of contract revolves around the property (*Māl*) of a particular person, institution, company, tribe or group. The term property connotes possessions, money, home, land, material goods, produce belongings, assets, etc. The owner of a

property offers it to the buyer or another party to the bargaining. In *Shari'ah*, ownership refers to a relationship between a property and a person who possesses it entirely, being free from other claimant. Contract is introduced when one party offers a particular thing to other party for consideration. Contract can only take place when the offer and acceptance are made freely in a peaceful atmosphere and both of them mutually agree on specific terms.

The offer and acceptance can be made in various ways. It can be made verbally (*lazan*) in a specific manner, at the same meeting of the contracting parties. It can be written (*kitābah*), for documentation. If a party that offers the contract sent it through a messenger (*rasūl*), the recipient must sign it without any unnecessary delay and return the copy or copies, as agreed upon, immediately to the one who offers the contract. If the contract letter or document is given at the same seating, the recipient should sign it after proper understanding of the contents and implications of the deal, and both of the contracting parties should have their copies of the document. In either case, both parties must sign the offer and acceptance of the contract. Nevertheless, any offer that does not satisfy the rules of contract can be rejected. In Islam, every party involved in the contract should fully understand the terms of the agreement. They are required by Islamic Law (*Shari'ah*), to fully understand and meticulously document the terms of the contract.

Stressing the importance of fulfilling the terms of obligation, Allah commands that all true believers in Him should fulfil all obligations (*Qur'ān* 5: 1). This verse signifies that all mutual agreements should be fulfilled, either under the law of Islam or the common law, where there is no provision for such facility in accordance with Islamic Law. Hence, it is essential that anyone who wants to enter into any contract should examine all the terms properly to make sure that it is not detrimental to his own interest or that of others and that it is not against the teachings of Islam.

#### **Self-Assessment**

#### **Exercise**

Analyse the central theme of Social Transactions in Islam.

### **3.4 The Enforcement of Social Transactions in Islam**

Similarly, in the common law, Contract is a legally binding agreement between two or more parties. When the parties agreed on the same thing, it means that they have reached a consensus on an issue of common interest. In order to make their agreement meaningful, they must have the intention and clear understanding that their contract must be legally enforceable. If the law of contract does not recognise and cannot enforce the agreement of the parties, the business or commercial contract is meaningless. The contractual agreements amount to rights and obligations that the law recognises and enforces. It is noteworthy that not all agreements are intended by the parties to have legal enforcement. Hence, certain agreements have legal enforcement while others do not. Law cannot enforce agreements such as social and domestic agreements that are not intended by the parties to be legally binding. If a husband and a wife agreed to eat the same food at lunch, at a particular time, while the wife waited and the husband could not turn up as agreed upon, no law can be enforced it on the

husband, because it is not a contract in law. Likewise, if two schoolmates agreed to go back and forth a school together, and one of them fails to honour the agreement, the law cannot do anything about it. In both cases, no contract in law has been made because there was no intention to make legal rights and duties in the agreements. In Islam, the Muslim courts of law, Muslim personalities, institutions, organisations and the mosque do enforce the law of Social Transactions.

### **Self-Assement Exercise**

Examine the central theme of Social Transactions In Islam.

## **4.0 CONCLUSION**

All true Muslims are eager to engage in permissible Social Transactions because of the injunctions of Allah as well as the benefits of compliance and the reprisals of non-compliance to the contractual parties and the society in general. The minor variations in the Social Transactions mechanism from one locality to the other can be accommodated as long as there is no violation of the basic teachings of Islam. The central theme of the Social Transactions in Islam is engagement in lawful business and avoidance of the wrath of Allah, both in this world and in the next. Proper contractual agreement must be made, preserved and observed. Enforcement can be resorted to, if there is any case of breach on the part of either of the associates or collaborators in contract.

## **5.0 SUMMARY**

In this unit, the attitudes of the Muslims to Social Transactions have been looked into. Efforts have been made to find out the causes of certain variations in the implementation of Social Transactions in Islam. The central theme of the Islamic system of Social Transactions and their enforcement has been evaluated. Suggestions have also been made to salvage the situation when things do not go on well.

## **6.0 TUTOR-MARKED ASSIGNMENT**

Analyse the attitudes of the Muslims to the implementation of *Mu'amalah* provisions in the *Shari'ah*.

Examine the implications of certain variations in the implementation of Social Transactions in Islam.

Examine the central theme and the nature of *Mu'amalah*

Make useful suggestions on how Islamic Social Transactions can be widely implemented in Nigeria.

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## **UNIT 4 SCOPE OF THE AI-MU'ĀMALĀT, QURAN AND APOSTOLIC GUIDES**

### **CONTENTS**

1.0 Introduction

2.0 Objectives

3.0 Main Contents

3.1 Scope of the *Mu'āmalāt*

3.2 *Qur'ānic* Guidelines on the *Mu'āmalāt*

3.3 Apostolic Guidelines on the *Mu'āmalāt*

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

### **1.0 INTRODUCTION**

In the last unit, you have examined the Islamic doctrines of Social Transactions and their implications. You have also studied the central theme and nature of Social Transactions, as well as their implementation. In this unit, the scope of Social Transactions provision in the Shari‘ah will be presented to you. Attention will also be focused on the general rules and regulations that are stipulated for proper operation of Islamic Social Transactions. In the process, you will be introduced to the panacea of Islam against non-Islamic compliant Social Transactions.

## 2.0 OBJECTIVES

At the end of the unit, you should be able to

- State the scope of the *Mu‘āmalāt* provisions

- Analyze the Islamic guidelines on Social Transactions

- Explain the roles of Apostolic Tradition in Social Transactions

## 3.1 Scope of Social Transactions

The scope of Social Transactions (*Mu‘āmalāt*) provisions in the *Sharī‘ah*, is very broad. It covers all human relations and activities. These include social, political, economic, cultural, biological and professional way of life. It also covers all other relationships of a human being with other creatures including animals, rivers, plants and animals, atmosphere and land, celestial bodies and terrestrial entities. It consists of all actions that can be rewarded or punishable by Allah.

Different terms come under the *Mu‘āmalāt provisions* in the *Sharī‘ah*. One is called ‘*Aqd*’ (pl. ‘*Uqūd*’). The word “*Al-‘Aqd*” is an Arabic term. Technically, it means contract, obligation or tie. It means putting a contract or tie into mutual bargaining. Hence, it connotes contracts, engagements, covenants, agreements, leagues, treaties. When two parties entered into a contract, and tie up or agree on an offer, it is known as *Al-in‘iqād*. The obligations that take place consequent to mutual offer and acceptance of the terms of contract are called ‘*Uqūd*’. Likewise, in the technical language of Islam, the term “*Shirkah*” or “*Sharīkah*”, means, company, corporation, cooperative, partnership. In the *Sharī‘ah* usage, it connotes a contractual agreement entered into by two or more parties. It is a business venture that involves contribution of capital, participation, skill, and labour, sharing of profit or loss. Two, *Sharīkah* or *Shirkah* is an Arabic word. It means partnership, company, and corporation. It connotes a contractual agreement entered into by two three or more partners.

Specifically, the scope of Social Transactions covers the following two major spheres:

- Islamic Financial Derivatives, Relief / Endowment Fund (*Waqf*), Safekeeping/Trust (*Wadi‘ah*), Islamic Insurance (*Takaful*), Islamic Equity Fund, Three Simultaneous and Interconnected Legal Contracts, Credit Sale (*Bay‘*

*Mua'jjal*), Rent-to Own Contract (*Murabah*). Others are Islamic Bonds or cheques (*Sukuk*), Leasing and Purchasing Venture (*Ijarah Wal-Iqtina'*), Advance Payment Contract (*Bay's-Salam*), Recognition of Selling Price (*Musawamah*).

In order to stem out the debilitating effects in the financial sector on human life, the Muslims scholars brought into the fold of all ventures and businesses the Islamic panacea. This has been successfully done by launching in the Muslim world some practicable usury-free banking systems. Monumental facilities, resources and expertise are committed into the poverty alleviation and empowerment programmes and projects that are offered magnificently to the millions of Muslims worldwide. A great number of non-Muslims do enjoy the facilities in many parts of the world. These include current and saving, long-time and short time investment deposits to enable the depositors access interest-free loans, without stress or manipulation that are characteristics of the conventional banks.

Granting long time deposits, for at least one year, in order to afford some stipulated incentives for the depositors because of the contracts. The depositors are granted utilization of the deposits on particular projects Islamic-compliant ventures, and the banks shall divide the accrued profits in proportion to the funds utilized. The only charge to be received by the banks from the depositors is its attorney's fees. Comparatively, the resources of *Qard al Hasan* deposits are the major distinguishing feature Islamic banking system against others.

However, attention will be focused here on social relations that involve resources, including money, human labour, investment, professionalism, sharing of profit and loss. The implementation of Social Transactions and maximization of profits are with the constant awareness of the presence of Allah (*Taqwa*).

### **Self-Assessment Exercise**

Evaluate the scope of Social Transactions in Islam.

## **3.2 Qur'ānic Guidelines on the Social Transactions**

In Islam, the prohibited is often mentioned in detail, while, in most cases, those that are permissible are not always enumerated in details. It is generally assumed that what has not been prohibited is permissible. In the same vein, the types of Social Transactions that do not fall in the scope of the prohibited are regarded as permissible. Hence, the attention will be focused here on those Social Transactions that are specifically prohibited in Islam. In order to protect and promote individual interests in all Social Transactions, Allah warns

O you who believe! Do not devour your property among yourselves by unlawful means, except you earn by trade with mutual consent. And do not kill your people. Surely, Allah is Merciful; to you. Whoever does that by way of transgression and injustice, We shall cast him into Fire; and that is easy for Allah (*Qur'ān* 4: 29-32).

Woe to those who give less in measure and weight to others. Those, who take full measure from people; But are in the habit of giving less than due measure or weight to others. Do they not think that they will be raised up for judgement, on a Great Day? (*Qur'ān* 83: 1-5).

Give full measure, and do not be among those who give less. And weigh or measure with a true balance. And do not diminish the things (the property) of people. And do not make mischief (bribery and corruption) in the land (*Qur'ān* 26: 181-183).

Moreover, the Glorious *Qur'ān* Chapter 2 verses 282 and 283 and other relevant portions give comprehensive guidelines on all Social Transactions.

### **Self-Assessment      Exercise**

Comment fully of the general *Qur'ānic* guidelines on Social Transactions

## **3.3 Apostolic Guidelines on Social Transactions**

In a report credited to the Prophet, he “cursed the one who consumes interest or usury (*Riba*), the one who pays it, the scribe who writes it, and the witness to it, and said: “They are all equal in sin” (Muslim).

Abu Hurayrah reported that the Messenger of Allah said, that, Allah has declared that : I am third (partner) of two partners as long as one of them does not cheat his companion, but when he cheats, I depart from them (Abu Dawud).

<b>Self-Assessment</b>	<b>Exercise</b>	Analyse the general Apostolic Traditions on social contract.
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## **4.0 CONCLUSION**

The discussions on the scope and general guidelines on social transactions and contracts in Islam indicate that Allah and His Prophet love all believers in particular and mankind in general. Cheating or any unlawful transactions usually lead to social disharmony and accumulation of wealth in the hands of a few individual at the detriment of the majority of the people. Hence, they are categorised among those who transgressed and gone beyond the limits set by Allah. Punishments of Allah in various forms, both in this world and the next awaits such people.

## **5.0 SUMMARY**

1. Social Transactions in Islam are very broad and multifaceted.
2. The guidelines for Social Transactions include consciousness of Allah in the process, capital, material, labour as well as profit or loss sharing.
3. All lawful Social Transactions are the Islamic-Compliant, while all non- permissible

contractual relations fall outside Islamic scope of *Mu‘āmalāt* provisions in the Sharī‘ah.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Give a highlight of the scope of Social Transactions
- Comment fully on general *Qur’ānic* injunctions on Social Transactions
- Examine the Apostolic Traditions on Social Transactions

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## UNIT 5: PROHIBITIONS AND PERMISSIBILITIES IN THE ALMU‘ĀMALĀT PROVISIONS IN THE SHARĪ‘AH

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Prohibitions in the *Mu‘āmalāt* provisions in the Sharī‘ah
  - 3.2 Permissibilities in the *Mu‘āmalāt* provisions in the Sharī‘ah
  - 3.3 The Essentials and Wavers in the *Mu‘āmalāt* provisions in the Sharī‘ah
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings



## 1.0 INTRODUCTION

In the last unit, efforts have been made to fathom the essentials of Social Transactions in Islam. In this unit, the basic various prohibitions in Social Transactions will be highlighted.

## 2.0 Objectives

At the end of this unit, you should be able to

Analyse the underlying philosophy behind the prohibition of certain Social Transactions.

State the various prohibitions and permissible in Social Transactions.

Examine the essentials and the recommended in Social Transactions.

## 3.0 MAIN CONTENT

### 3.1 Prohibitions in the *Mu'āmalāt* provisions in the *Sharī'ah*

According to the teachings of Islam, certain things are prohibited (*Harām*), while others are permitted (*Halāl*). In order to be safeguarded from the wrath of Allah and to promote Islamic ethics of Social Transactions, those things that are prohibited are clearly spelt out by the Glorious *Qur'ān*, the Apostolic Traditions, as well as the writings of some Muslim scholars.

The Prohibitions in Social Transactions are what Islam declared unlawful or non-permissible (*Haram*), especially when the interests of certain people are jeopardised. These are :

1. Income from illegal sources e.g. theft, dishonesty, fraud, usurpation, gambling interest.
2. All contractual dealings that involve dishonesty, corruption, ambiguity, deceit, et cetera.
3. Refusal of any capable and qualified scribe to document the agreement
4. Denial, concealment, or reduction of anything from what he owes the creditor, in terms of cash, good or capital.
5. Refusal of any of the witnesses to bear witness when called upon to do so.
6. Causing any of the contractual parties to subject any of the witnesses to any hardship, embarrassment, loss or injury.
7. Selling of prohibited things.
8. Transactions that involve uncertainty that can lead to quarrel, ill feeling or litigation.
9. Unripe fruits in the orchards, spoilt goods before deliverance, fish in the river, birds in the air, animals in the wilderness.
10. Hoarding in order to create artificial scarcity, sell at exorbitant prices.
11. Selling or buying stolen property. The Prophet warns, "He who buys the stolen property, with the knowledge that it was stolen, shares in the sin and shame of stealing".
12. Frequent swearing in order to sell. The Prophet says, "Swearing provides a ready sale but blots out the blessing".

13. Selling of a defective property. The Prophet cautions, “it is not permissible to sell an article without making everything (about it) clear; it is also not permissible for anyone who knows (about its defects) to refrain from exposing it”.
14. Dishonesty and manipulation in contracts.
15. Withholding full measure or weight.
16. Anything that involves interest or usury (*Riba*).
17. Share-cropping partnership (*Al-Muzāra‘ah*) whereby the contract would give one partner the produce of a specified area of a farm for a fixed amount of grain. It is a kind of gambling or usury because one partner alone will still get his share, while the other partner alone will suffer loss.

#### **Self-Assessment Exercise**

- Analyse the general Islamic guidelines on social transaction.
- Examine the disadvantages of engagement in prohibited dealings.

### **3.2 Permissibilities in the *Mu‘āmalāt* provisions in the Sharī‘ah.**

All contractual transactions that are based on mutual agreement by the contracting parties.

1. Lawful trade (*Tijārah* or *Bay‘*)
2. Fulfilment of all obligations in the context of the transactions.
3. All contracting parties possess legal capability to sell or buy, employ or been employed.
4. Giving respite to the debtor or writing off a bad debt for the sake of seeking the pleasure of Allah.
5. Praying for successful business ventures
6. Giving out part of the profits to the needy, the poor and in the way of Allah.
7. Giving out Compulsory Charity (*Zakah*) from the Social Transactions venture.

#### **Self-Assessment Exercise**

- Enumerate the permissible matters in contractual transactions in Islam.

### **3.3 Essentials and Wavers in the *Mu‘āmalāt* provisions in the Sharī‘ah**

1. If any Muslim is entrusted with something, he/she must not conceal evidence. He/she must endeavour to reveal the truth, under any circumstance.
2. Mindset for amicable settlement of disputes that may arise in the process of undertaking and implementing the contractual agreement, including sharing of profits or loss.

3. However, when the good is plentifully available to the extent that hoarding does not lead to any hardship; for preserving it, the hoarding is not prohibited; it is permitted for securing the future.
4. In case the debtor or liable party is mentally deficient, weak, or unable to understand the practical details of the contract, his guardian should faithfully represent his interest and take active part in all contractual procedures.
5. Two intelligent, trustworthy and capable male Muslims are recommended by *Shari'ah* as witnesses to the contract before it can be valid.
6. In the absence of two qualified male Muslims, one male and two female qualified Muslims are to play the role of witnesses. This is to guard against forgetfulness of the practical details of the contract so that the other female can testify, if one female forgets.
7. Short time, medium term and long-term businesses or contracts of any kind must be properly documented, alongside the mode of payment, sharing of profit or loss, according to the agreed percentage.
8. However, it is not compulsory to write down or appoint any witness for a contract that is completed or carried out in a spot.
9. All persons involved in contracts should be constantly conscious of the fact that Allah is the Supreme Witness over the contractual agreements, and He shall reward individuals accordingly.
10. If the contractual agreement is made in a journey, in the absence of witnesses, the debtor, agent or labourer should make a pledge of possession (mortgaging).
11. The property should be in the possession of the seller at the time of investment.
12. All believers (*Mu'minun*) who desire to engage in transactions with each other in what involve future obligations in a fixed period should appoint a scribe (secretary, lawyer, writer) to write it down faithfully between the parties, in their presence.
13. The debtor, agent, labour, worker who uses the capital of another party in business transaction should dictate or be fully involved in the documentation of the transaction.
14. All contracting parties must possess legal capability to engage in the contract, to employ or be employed.
15. The property should be in the possession of the partner (the one who offers) in contract.

### **Self-Assessment Exercise**

- Comment fully on the essentials of wavers in contractual transactions in Islam and the wisdom behind granting of the wavers.

## **4.0 CONCLUSION**

From the above discussion, we have found out that there are general guidelines from the Glorious *Qur'ān*, the Apostolic Traditions and Muslim scholars for Social Transactions in Islam. Some Social Transactions are prohibited, some are allowed and

some are either essential or wavers to ensure proper and successful business ventures, as well as compliance with Islamic spirit.

## 5.0 SUMMARY

1. This unit states the general guidelines of Social Transactions, the prohibited and the permissible Social Transactions.
2. It also presents the essentials as well as general wavers for the success and blessings of Social Transactions.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Examine the attitudes of Nigerian Muslims to the general social transaction stipulations in Islamic Law.
- State the factors that are responsible for minor variations in the provisions on social transaction in the *Sharī‘ah*
- Analyse the central theme of social transaction rules in the Islamic Law
- Describe the nature of Islamic social transaction regulations.

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## MODULE 2: THE MU‘ĀMALĀT (SOCIAL TRANSACTION PROVISIONS) IN THE SHARĪ‘AH AND THEIR DISPOSITION

**Unit 1** Subject Matters of *al-Mu‘āmalāt* in the *Sharī ‘ah*

**Unit 2** Company, Professional and Credibility *Mu‘āmalāt* provisions in the *Sharī ‘ah*

**Unit 3** Joint and Advance Payment provision in *al-Mu‘āmalāt* in the *Sharī ‘ah*

**Unit 4** Special *Mu‘āmalāt* provisions in the *Sharī ‘ah*

## **Unit 5** Dispositions in *al-Mu'āmalāt* provisions in the *Sharī'ah*

### **UNIT 1: SOME SUBJECT MATTERS OF *AL-MU'ĀMALĀT* IN THE *SHARĪ'AH***

#### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Usury-Free Banking
  - 3.2 Three Simultaneous and Interconnected Legal Contracts
  - 3.3 Good Loan/Benevolent Loan (*Qard Hasan/al-Qardu 'l-Hasan*)
  - 3.4 Islamic Insurance (*Takāful*): The Sudanese Experience
  - 3.5 Evils of *Ribā*
  - 3.6 Prohibition of *Bay'u 'l-Gharar*
- 3.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

#### **1.0 INTRODUCTION**

In this unit, you will discover that the Muslim Jurists and some conscious Muslim leaders introduced some loans and insurance to Islamic Banking in order that the needy, the deprived and the afflicted can access and make adequate interest-free, Islamic-Compliant funds. You will also find out that the noble steps have impacted positively on the lives of the Muslims worldwide.

#### **2.0 Objectives**

At the end of this unit, you should be able to discuss

- the dynamics of usury-free banking
- the operation of the Three Simultaneous and Interconnected Legal Contracts
- the advantages of Good Loan and Benevolent Loan
- how *takāful* is in compliance with the provisions of *sharī'ah*

#### **3.0 MAIN CONTENT**

##### **3.1 Usury-Free Banking**

The Usury-Free Banking is an initiative of the Muslim scholars and experts in financial activities, which constitute a subject matter of Social Transactions in Islam. The Usury-Free Banking Facilities are directed mainly towards investment and productions. The fundamental role of the bank is intermediary between current, savings and deposits of Usury-Free Banking that constitute binding obligations. Its

principal of the current and savings deposits must be refunded on demand. The bank is not expected to gain from the deposits. However, it may award prizes and bonuses to the holders.

Islamic bank accepts Short-Term Investment Deposits to enable the depositor make use of his/her funds as he/she wishes. The bank can also give Long-Term Investment deposit, for at least a year, to give predetermined incentives for the depositors on the basis of the contracts stipulated in the Law for usury. It can give permission for utilization of deposits on a particular project, and the refund of principal of deposits is granted. The depositors and the banks shall divide the accrued profits in proportion to the funds utilized, banks share of resources and duration of utilization. The banks receive attorney's fees from the depositors as a charge for its administrative input from the whole amount of profits. The banks have the right of utilization of deposits at their disposal for Islamic-Compliant ventures.

### **Self-Assessment Exercise**

- Comment fully on interest-free banking system in Islam.

### **3.2 Three Simultaneous and Interconnected Legal Contracts (Contractum Trinus)**

In this Islamic social contract, the bank generates a profit by determining in advance the cost of the item, its residual value at the end of the term and the time value or profit margin for the money being invested in purchasing the product to be leased for the intended term. The combining of these three figures becomes the basis for the contract between the Bank and the client for the initial lease contract. This type of transaction is similar to the conventional three simultaneous and interconnected legal contracts, which is a legal scheme used by European bankers and merchants during the Middle Ages to avoid the Church's prohibition on interest bearing loans. Two parties would enter into three simultaneous and interconnected legal contracts in case of contractum, the net consequence is the payment of a fee for the use of money for the term of the loan. Some Muslim scholars prohibit the use of concurrent interconnected contracts under Islamic Law because it involves usury as it is common in conventional Social Transactions. In its place, many interest-free banking relations are introduced in Islam in order not to fall prey to the conventional banks.

### **Self-Assessment Exercise**

- Examine the Three Simultaneous and Interconnected Legal Social Transactions.

### **3.3 Good Loan/Benevolent Loan (*Qard Hasan/al-Qardu al-Hasan*)**

This is an Islamic welfare oriented loan. In Islamic insurance (*Takāful*) concept, *al-Qarṇu `l-Hasan* is a loan made to Islamic insurance fund in order to cover a deficit in that fund after exhausting any unforeseen event. Simply put, *al-Qarṇu `l-Hasan* is a financing extended without any other payment from the borrower. The only thing the lender expects is reward from Allah. For regulatory reasons, the capital

available should be reduced by the amount of any *Qarñ Hasan* outstanding to reduce the shareholders equity. It is extended on a goodwill basis, and the debtor is only required to repay the amount borrowed. In accounting perspective, there are two likely ways of treating the *Qarñ*. However, at the discretion of the debtor, he/she may pay an extra amount beyond the principal amount of the loan as a sign of appreciation to the creditor. In the case that the debtor does not pay an extra amount to the creditor, this transaction is a true interest-free loan. Some Muslims consider this the only type of loan that does not violate the prohibition of usury (*Ribā*). Muslim scholars speak well of it because it is the only loan that does not compensate the creditor for the time value of money.

### Self-Assessment Exercise

What is *qard hasan* and what are its advantages?

### 3.4 Islamic Insurance (*Takāful*): The Sudanese Experience

*Takāful* is an Islamic insurance system; a contract of mutual co-operation from both parties. It is an option form of cover that a Muslim can benefit himself against the hazard of loss due to misfortunes. Contribution or premium is a form of monetary consideration (*Al- 'Iwañ*) in *Takāful* contract. *Takāful* is based on the idea that what is uncertain with respect to an individual may cease to be unsure with respect to a very large number of similar individuals. One of the sterling qualities of this Islamic Insurance is that it combines the risks of many people. This enables the individuals to enjoy the advantage provided by the law, without being involved in interest or usury (*Ribā*). Islamic insurance covers a variety of business transactions. Once the policy of insurance contract is concluded, the contributor is regarded as a participant (a debtor) and he is obliged to settle the agreed-contribution to the operator, according to the terms and conditions as declared in the policy. If a debtor is not able to settle the debt on time due to some genuine reasons, the debtor is discouraged from pressurising the creditor. Under Islamic Law, the creditor is admonished to extend the time to enable the debtor to remit the obligation with a kind heart, without penalization, or forfeiture with paid contributions. This is on the premise that *takāful* is a contract of mutual co-operation.

Nevertheless, if the participant fails to settle the unpaid contributions within the agreed period, the policy may be discontinued but the share of profits should be given to him after deduction of charges due to the operator.

The Sudanese experience in *Takāful* can be of tremendous model and inspiration to the Muslim world. In 1979, it started its Islamic insurance, when Faisal Islamic Bank established the first Islamic insurance in the Muslim world. In 1992, it introduced a new supervision law and ordered all companies to operate according to the principle of *Shari'ah*. The Insurance Supervisory Authority implements the insurance supervisory Act 2001 and the insurance Supervision regulations, 2002.

During 1979-2007, the Sudanese market has accepted the products of *Takāful* as a very effective strategic tool for rapid economic and social development as well as a requisite for personal financial planning in agricultural crops insurance and live stock

insurance, medical insurance and investments insurance. In the last decade, the agricultural sector contributes an average of 48% of the GDP of Sudan. Its Medical and Travel Insurance policies started in 2002, and these provide out hospital cover and optional cover, including maternity, dental and optical. Others are sickness, natural death, total and permanent disability due to accident, accident death, dread disease, total temporary disability coverage. Moreover, the scope of *takāful* on agriculture covers, diseases, pests, drawing or washing out of seedlings and sharp variation in temperature.

Agricultural insurance in Sudan, which can also be replicated in other nations, is of tremendous significance. These include encouragement to the farmers to increase their investments and acquire new technologies, creation of enabling environment for settlement in the countryside, thereby reducing the problems that are associated with rural-urban migration. It constitutes satisfactory guarantee to the banks to grant all required facilities and financing to the contractual partners. Others are offering security to farmers by underwriting losses resulting from insured hazards, such as diseases, flood, draught, fire, pests,

The modernization techniques in product design, distribution channels and marketing of *Takāful*, which started in 2002, has gained substantial market share in group life, up to 92% across Sudan. According to the principles of *takāful* regulations 2000-2006, the policy-holders receive surplus archived annually.

The fundamental differences between Islamic and conventional insurance are distribution of surplus and loss, participation in management and passive role of the capital in the Islamic system. The Sudanese experience is based on the common principles of Islamic Cooperative Insurance. This is characterised by Islamic Compliant transactions, payment of contributions as donations to the policy holders, keeping share capital in a separate fund, while the expenses on management and technical activities are met from the policy holders fund. The *Takāful* is practiced in the field of insurance activities (*wakālah*) and investment activities (*Mudārabah*). *Wakālah* is an agency contract whereby, one person appoints someone else to perform a certain task on his behalf, usually against a fixed date.

The policyholders are given the right to monitor the performance through policy holders' General Assembly and membership in the Board of Directors.

### **Self-Assessment Exercise**

Give account of the Sudanese experience of *Takāful* and its significance.

### **3.5 Evils of Usury (*Ribā*)**

Islam frowns at, forbids and condemns usury or interest in the strongest language because of its attendant evils to the partners and the society in general. According to Zeno, the wisdom behind the prohibition of *Ribā* is that



1. It sows the seed of enmity between individuals, and destroys the spirit of mutual help and aid between them.
2. It leads to the formation of a leisure class, which does no work at all, yet money piles up and concentrates in their hands with no effort on their part, so that they become the economic equivalent of parasites, which grows, and relishes at the expense of others.
3. *Ribā* has been and remains a major instrument of colonialism and imperialism (in fact of neo-colonialism), it is said that imperialism follows in the wake of traders and priests. We have known the damage of usury in some countries' colonialism.
4. *Ribā* is the appropriation of people's wealth without compensation, which is prohibited, by the Prophet (Muslim).

‘Urwa Al-Bāriqī narrated that the Prophet gave him a *Dīnār* to buy a ram or a goat. He bought two goats with it, sold one of them for a *Dīnār*. So, he invoked a blessing on him in his business dealings, and he was such that if he had bought the dust he would have made a profit from it (Bukhārī).

### Self-Assessment Exercise

- Write a short note on *Takaful* as a practicable social contract
- Examine the reasons behind the prohibition of *Riba*

### 3.6 Prohibition of *Bay‘u ‘l-Gharar*

The major concerns of Islam on Social Transactions are justice and fair play, whereby, no seller or buyer, offerer or offeree will suffer unwarrantedly because of any dealing with one another. In an unequivocal and stern manner the Glorious *Qur’ān* prohibits gambling (games of chance involving money) and insuring ones' wealth or property (also considered a game of chance). The hadith, in addition to prohibiting gambling (games of chance), also prohibits *Bay‘u ‘l-Gharar*. In the Islamic concept, *Gharar* is excessive danger, deception, uncertainty and trading in risk.

In the Hanbalī school, *Al-Gharar* is seen as "that whose consequences are unknown" or "that which is undeliverable, whether it exists or not." According to the *Hanafi Madh-hab* (Legal School) in Islam, *Gharar* is "that whose consequences are hidden." In the view of the Shafi‘ legal school *Gharar* is "that whose nature and consequences are hidden" or "that which admits two possibilities, with the less desirable one being more likely." Ibn Hazm of the Zahiri School wrote, "*Gharar* is where the buyer does not know what he bought, or the seller does not know what he sold." The modern scholar of Islam, Professor Mustafa Al-Zarqa, is of the opinion that *Gharar* is the sale of probable items whose existence or characteristics are not certain, due to the hazardous nature that makes the trade similar to gambling." Other modern scholars, such as Dr. Sami al-Suwailim, have used Game Theory to try to reach a more measured definition of *Gharar*, defining it as "a zero-sum game with unequal payoffs".

There are a number of (Apostolic Traditions (*Ahādith*) that forbid trading in *gharar*, often giving specific examples of *gharar* transactions (e.g., selling the birds in the sky or the fish in the water, the catch of the diver, an unborn calf in its mother's womb etc.). Jurists have sought many complete definitions of the term. They also came up with the concept of *Yasīr* (minor risk); a financial transaction with a minor risk (*Yasīr*), which is deemed permissible (*Halāl*), while trading in non-minor risk (*Bay'u 'l-Gharar*) is deemed to be prohibited (*Harām*).

The Muslim jurists have not fully decided on the implications of *Al-Gharar* because of the complication of having to decide what is and what not a minor risk is. Derivatives instruments (such as stock options) have only become common of recent. Some Islamic banks do provide brokerage services for stock trading.

### Self-Assessment Exercise

Examine the Islamic concept and attitude to *bay'u 'l-gharar*.

## 4.0 CONCLUSION

Islam discourages unlawful business transactions, ventures or dealings, which give room for cheating, indolence, and undeserved enrichment of a certain privileged people at the detriment of others. The spinal cord of this is *Riba*. In praise worthy attempt at establishing what Allah has enjoined in Social Transactions and eradicating what Satan has introduced (*Ribā*), some Muslim scholars and financial experts came up with some laudable institutions, projects and programmes in the spirit of *Shari'ah*. These include usury-free banking, good and benevolent loans, Islamic Insurance schemes, and legal framework that are backed by Muslim authorities and institutions.

## 5.0 SUMMARY

1. Interest-Free banking and other modern Social Transactions in Islam are laudable initiatives of Muslim scholars and financial experts.
2. *Ribā* is vehemently condemned as a way of Social Transaction in Islam.
3. The fundamental role of Islamic banking is intermediary between the financial institution and the customers or business partners.
4. Short-Time and Long-Time partnerships can be entered into by the banks and the policyholders.
5. The Islamic banks have the right to utilise the deposits at their disposals for socio-conventional dealing that involves cheating, fraud, doubt, exploitation or manipulation is prohibited (*Haram*) in Islam.
6. Any
7. The rich or the privileged should assist the poor or the incapacitated financially, technologically and morally to engage in profitable Islamic Social Transactions.
8. The Sudanese experience should be imitated and improved upon by the Muslim institutions, organisations and states that are yet to attain the level. Otherwise, they should begin the modern approach to Islamic Social Transactions.
9. Islamic social contract is the best panacea to all problems militating against the success of Social Transactions under *Shari'ah*.

10. The ravaging evils of interest or usury (Riba) should be avoided and Islamic Social Transactions should be embraced by the Muslims in particular and all those who hope in the mercy of Allah.

## **TUTOR-MARKED**

## **ASSIGNMENT**

Comment fully on the subject matter of Social Transactions in Islam.

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## **UNIT 2: COMPANY, PROFESSIONALS' AND CREDIBILITY CONTRACTS PROVISIONS IN THE SHARĪ'AH**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Sharikatu 'l-Amwāl (Company Contract)
  - 3.2 Sharīkatul-Abdān (Occupational Contract)
  - 3.3 Sharīkatul-Wujūh (Credibility Contract)
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### **1.0 INTRODUCTION**

In the last unit, we have discussed the attitudes to and perceptions of the Muslims about Social Transactions in Islam. We have thrashed out factors that are responsible for minor

differences in the implementation of Social Transactions. We did not fail to examine the central theme and nature of Social Transactions in Islamic law. In this unit, you shall be acquainted with the Company, Professionals' and Credibility Social Transactions in Islam, as well as their advantages to the Muslims and the society.

## 2.0 OBJECTIVES

At the end of this unit, it is expected that you should be able to

- Analyse the nature and the operation of Company social contract in Islam.
- Explain how to run Professional social contract in Islam.
- Analyze the operation of Credibility social contract

## 3.0 MAIN CONTENT

### 3.1 *Sharikatu 'l-Amwāl* (Company Transaction)

*Sharikatu 'l-Amwāl* is a business venture or contractual agreement by two or more parties to form a company in partnership with one another. They jointly contribute the capital with the intention of investing in a company, participation in its running, sharing its profits or loss, on percentage, as agreed upon at the time of forming the contract.

This kind of business venture is called *Sharikatu 'l-Amwāl* (partnership or company contract) because it involves contribution of a specific capital, property or money, in cash or in kind (*māl*). The item contributed must have a recognised value in the economy and in the Islamic law (*Mālun Muqawwam*). Those who engage in small-scale businesses, companies and contemporary finance houses usually adopt it as a method of investment. This kind of business venture has a legal backing in Islamic Law.

The Muslim Jurists of all schools are unanimous that this partnership or company venture (*Sharikatu 'l-Amwāl*) is Islamic. Partners in business contracts are allowed to contribute their respective shares in currency made of gold and silver. They can also share their profits in cash currency made of gold or silver, as agreed upon; and as long as it is acceptable in the local or international market. Moreover, the partners can contribute the same or different kinds of currency i.e. dollar, pound sterling, euro, *Dinar* or Naira. This can be done on the conditions that they are mutually agreed among themselves and that such currency would not impose unnecessary hardship on a partner or a party.

Maliki and Hanbali schools permit similar properties or chattels (*mithliyyah*), i.e. agricultural crops or dissimilar chattels (*qimiyyah*), i.e. animals, as capitals. They also allow the contribution of money or money worth chattels. This should be with the specification that at the time of making the contract the properties should constitute the share of the contributing partner. This provision is necessary because the sharing formula of profits or responsibility for the loss should be rated according to the contributions of the partners to the capital. In this kind of venture, the properties jointly owned and contributed by partners initially constitute their joint venture. All the Muslim Jurists are of the opinion that non-permissible,

unauthenticated, doubtful or yet to be valued capital cannot be offered in contractual obligations. The partners should strictly limit their operations and dispositions to the agreement accented to, in terms and measures, according to the value of the capital invested. Each partner is a principal in his own share of capital.

### **Self-Assessment Exercise**

Analyse the Company social contract

### **3.2 Sharīkatul-Abdān (Occupational Contract)**

Sharīkatu 'l-Abdān can be defined as occupational/professionals' business venture contract. It is the partnership entered into by two or more professionals. The contracting partners could be from the same or different professions. Each of them contributes his skills expertise and experience in the joint venture with agreement that they shall share the profits or loss among themselves. Architects, surveyors, construction engineers, carpenters, electricians, painters, etc can enter upon such a joint venture. Teachers belonging to different professions to establish a private school could reach it. Professionals' partnership (Sharīkatu 'l-Abdān) is given another terms in Sharī'ah. These include, Sharīkatu 'l-A'māl, Sharīkatu 'sSanā' and Sharīkatu 's-Sunda'. The schools of Hanafī and Hanbali approved professionals' venture (Sharīkatu 'l-Abdān), whether the partners come from the same profession or not.

The significance of professionals' venture cannot be underestimated. It is an easy way of procuring capital, personnel, expertise and labour for a joint venture. It affords the underprivileged artisans to invest their services to procure profits like the capital partnership. This kind of business operation boosts business transactions and greatly reduces unemployment in the society. It manifests glaringly, the significance, flexibility, elasticity, comprehensiveness and adaptability of Sharī'ah positively to all aspects of human endeavour. It encourages setting up of vocational companies and centres for the purposes of generating large-scale employment, development of human capital, sharing profits and reducing economic hardships of the society.

There is the need for Muslim organisations, Islamic Trusts and Foundations, as well as Islamic banks to set up vocational centres where Sharīkatu 'l-Abdān mode of investment will be practised. This will provide healthy-opportunity for the teeming skilled but unemployed population to render diverse services to industrial, contracting and constructing firms. This Islamic social contract method will engender massive production of the required goods accelerated sufficiency of various kinds of goods and materials in the society. Eventually, poverty, crimewave, immoral practices, indolence and insecurity to life and property would be reduced to the barest minimum.

### **Self-Assessment Exercise**

Analyze the theory of Occupational Contract

### **Sharīkatu 'l-Wujūh (Credibility Contract)**

Credibility venture in the *Sharī'ah* is termed *Sharikatu 'l-Wujūh*. In this kind of business partnership, a partner provides the entire capital, in cash or in kind, to form partnership in trade (*Tijārah*). The other partner has no capital to contribute. The owner of the capital enters into trade partnership with him because of his credibility, track record, prestige and confidence he reposes in him. The capital owner employs him because of his skill, expertise, honesty and experience in order to carry out certain services in trading business on a specific solid agreement. The capital, in terms of money, kind or material is supplied by the capitalist to the other party who acts as the agent to the creditor to sell or deliver certain goods on credit. After selling or delivering the goods to the market, the owner of the capital or goods will receive his capital. In addition, he will receive the share of the profits accruing from the trading, and the agent will receive his own share based on the sharing formula agreed upon when entering into the contract.

It should be recalled that in the operation of the *Sharikatu 'l-Amwāl* the partners in business jointly supply the capital and the entire partners share the profit or loss on ratio basis. Contrarily, in the *Sharikatu 'l-Wujūh*, the capital owner provides all the capital and suffers all the loss that might be incurred. While the creditor (other party) uses the capital or goods for sale. Understandably, the agent has no capital to contribute so; he cannot share from the capital. Based on his services, he can only share from the profit and not from the loss.

Islam recognises this business partnership whereby two parties can enter into business venture as long as both parties abide by the injunctions of the *Sharī'ah* and their contractual agreements. Giant and small-scale companies, factories and industries are in the practice of assigning their products to distributors and agents for disposal on agreed bases.

### **Self-Assessment Exercise**

Analyse Credibility contracts from the Islamic perspectives.

## **4.0 CONCLUSION**

An in-depth study of this unit reveals that Company, Occupational/Professional and Credibility contracts are regulated and permitted by Islam. Each of them provides a veritable means of investments that are capable of enriching the partners in the social contracts. Interests of all partners are adequately safeguarded. The focuses of Islamic Jurists are to provide enabling environment for lawful social transactions and to make life more meaningful to the partners. If social contracts are practised widely, the Muslim bodies and institutions provide great incentives to the needy, most of the crimes that malign the society would be reduced drastically.

## **5.0 SUMMARY**

1. *Sharīkatu 'l-Amwāl* is a business venture between two or more parties who contribute capitals for investment in a particular business with an agreement on

the roles and rights of every contracting party. This is known as Company social Contract

2. Sharīkatu 'l-Abdān is a business venture by the parties in the same or different professions with the agreement on their respective roles, sharing of profits or loss on a stated ratio. This kind of business relationship is referred to as Occupayional/Professionals' Social Contract
3. Sharīkatu 'l- Amwāl is the social contracts between the provider of the entire capital and the competent worker or agent. Both share profit, but only the capital provider incur loss that affects the capital

## 6.0 TUTOR-MARKED ASSIGNMENT

- Define Sharīkatu 'l-Amwāl, Sharīkatu 'l-Abdān and Sharīkatu 'l-Wujūh
- Explain how the three kinds of social contracts can be operated.
- Indentify the similarities and differences between them.

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## **UNIT 3 JOINT BUSINESS AND ADVANCE PAYMENT PROVISIONS IN THE SHARI‘AH**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Joint Social Contract
  - 3.2 Differences between Credibility Contract and Joint Contract
  - 3.3 Advance Payment Contract (*Bay‘u `s-Salam*)
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/ Further Reading

### **1.0 INTRODUCTION**

Joint and Advance Payment are among the most popular business transactions in Islam. Like the Company, Professionals’, and Credibility transactions, Joint Business is designed by Muslim Jurists to provide solutions to economic problems by engaging in lawful economic partnership. Their similarities and differences are



highlighted. Some Muslim Jurists are critical about Advance Payment contract because of the possibility of cheating on the part of either the seller or the buyer of certain goods.

## 2.0 OBJECTIVES

At the end of this unit, you should be able to

Explain the operation of both Credibility and Joint Contract provisions in the *Sharī‘ah*

Analyse the differences and similarities between Credibility and Joint Contract provisions in the *Sharī‘ah*

Discuss the operation of Advance Payment business contract provisions in the *Sharī‘ah*

## 3.0 MAIN CONTENTS

### 3.1 *Sharīkatu`l-Muñārabah* (Joint Partnership Business)

Technically, *Sharīkatul-Muñarabah* is business contract between two parties. One of them is the owner of the entire capital. He provides, lends or gives out his capital to the other partner who is the worker or agent (*‘Amīl* or *Muñārib*) who contributes his skill, labour and time to the investment. The contract agreement is made between the capital provider and labour provider on the agreement that the capital will be for the owner, while the owner of the capital and the worker will share the net profit and loss pro rata. This is often used in real estate or property, investment projects, letters of credit, and the purchase. It is worthy of note that trading normally involves travelling or movement from one place to another. The *Sharī‘ah* permits this kind of partnership.

The Iraqi Jurists call it *Sharīkatu`l-Muñārabah*, while the Madinah Jurists call it *Sharīkatu`l-Qirāñ* or *Sharīkatu`l-Muqārañah*. The term “*Muñārabah*” is an Arabic word, which is also found in the Glorious *Qur‘ān*, Chapter 4, verse 101. The term “*Qirāñ*” is an Arabic word, which connotes a transaction whereby an owner of capital gives out money to another to invest on the agreement that they will share the profit on a particular ratio. If there is a loss, it will only be incurred by the provider of the capital. Hence, the people of *Hijāz* call it *Qirāñ* or *Mūqārañ*, which signifies cutting off the nose. In essence, it is the capital provider who loses his wealth or his capital to trading business, while the agent loses some of the profit from the investment to the creditor. This concept is different from fixed income investing (i.e. issuance of loans). If the Bank provides capital, the same conditions apply. This financial hazard justifies the bank's claim to part of the income. Each partner may or may not partake in carrying out the business. A working partner gets a greater profit share compared to a non-working fellow worker.

### Self-Assessment Exercise

Examine *Sharīkatu`l-Muñārabah* provision in the *Sharī‘ah*.

### 3.2 Differences between Sharīkatu 'l-Wujūh and Sharīkatu 'l-Mudārabah.

The difference between *Musharakah* and *Madarabah* is that, in *Musharakah*, every partner contributes some capital, whereas in *Madarabah*, one partner, e.g. a bank or a financial institution provides all the capital, while the entrepreneur, who is the other partner, provides no capital but service. It is important to note that

*Musharakah* and *Madarabah* have differences and common characteristics.

There are certain differences between Sharīkatu 'l-Wujūh (Islamic Credibility Contract) and Sharīkatul-Mudarabah (Joint Contract). The former does not involve investment like the latter. The similarities are that one party provides the entire capital and the partner provides labour. Both of them share the profits accruing from the investment. Only the provider suffers the loss incurred as far as the capital is concerned. Both partners will lose profit sharing, if there is no gain or profit. The profit sharing will be based on the particular ratio agreed upon during the contractual agreement.

Joint social contract affords a golden opportunity to the wealthy, but not talented, not capable, not-skilled and having no much time, or not able to move about with goods, to come over to the qualified one to enter into profitable venture with him.

#### **Self-Assessment Exercise**

State the differences between Sharīkatu 'l-Wujūh and Sharīkatu 'l-Mudārabah.

### 3.3 *Bay' u 's-Salam* (Advance Payment Contract provision in the Sharī'ah)

*Bay' u 's-Salam* (Advance payment Business Transaction) means a contract in which advance disbursement is made for goods to be delivered later on. The seller assumes the responsibility to supply some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of transaction. It is essential that the quality of the product proposed to be purchased is fully specified, without uncertainty that can lead to disagreement. The items of this sale should be goods and not gold, silver, or currencies based on these metals. Apart from this, *Bay' u 's-Salam* covers almost everything that can be referred to as quantity, quality, and workmanship.

#### **Self-Assessment Exercise**

State the duties of the seller in the Advance Payment Business Transaction as provided in the *Sharī'ah*

### 3.4 Basic Features and Conditions of *Bay' u 's-Salam*

The contract is Advance Payment (*Salam*) if the buyer has paid the purchase price to the seller in full at the time of transaction. This is indispensable so that the buyer can show that they are not flinging into liability with a second party in order to get rid of the debt with the first party. This is prohibited under *Sharī'ah*. The foremost idea of *Salam* is to provide a means that ensures that the seller has the liquidity expected from entering into the business. If the price were not paid in full, the fundamental purpose of the transaction would have been defeated. Muslim jurists are unanimous in their opinion that full payment of the purchase price is essential for *Salam* to exist. Imam Malik is also of the

view that the seller may suspend accepting the funds from the buyer for two or three days, but this postponement should not form part of the agreement.

Advancement Payment Contract (*Salam*) can be made in only those commodities, the quality and quantity of which can be specified exactly. The things whose quality or quantity is not determined by specification cannot be sold through the contract of *Salam*. For example, precious stones cannot be sold on the basis of *Salam*, because every piece of precious stones is normally different from the other either in its quality or in its size or weight and their exact specification is not generally possible.

*Salam* cannot be achieved on a particular commodity or on a product of a particular field or farm. For example, if the seller agrees to supply the corn of a particular field, or the fruit of a particular tree, the *Salam* will not be legitimate, because there is a possibility that the crop of that particular field or the fruit of that tree is spoilt before delivery, and, given such possibility, the delivery remains uncertain. The same rule is applicable to every commodity, which should not be supplied except all uncertainties are removed and all possible details in this respect are expressly mentioned.

It is also necessary that the quantity of the commodity is agreed upon in unequivocal terms. If the commodity is quantified in weights according to the usage of its traders, its weight must be determined, and if it is quantified through measures, its exact measure should be known. What is normally weighed cannot be quantified in measures and vice versa. *Salam* cannot be effected in respect of things which must be delivered at spot. For example, if gold is purchased in exchange of silver, it is necessary, according to *Shari'ah*, that the delivery of both be simultaneous. Similarly, if wheat is battered for barley, the simultaneous delivery of both is necessary for the validity of sale. Otherwise, the contract of *Salam* in this case is permissible.

### Self-Assessment Exercise

- Analyse the term “*Sharikatul-Muñārabah*” provision in *Shari'ah*.
- Compare and contrast between *Sharikatul-Wujūh* and *Sharikatul-Muñārabah*.
- Examine the theory of Advance Payment Contract provision in the *Shari'ah*.

## 4.0 CONCLUSION

An in-depth study of this unit demonstrates to you that the Company and Professionals' social contracts are approved and recommended by the *Shari'ah*. Each of them is a veritable means of investment that is capable of enriching all the partners in the social contract. There are adequate provisions in the Islamic law for safeguarding the interests of every partner, dictating their duties and rights. The focus of the attention of the Jurists in Islam is to provide enabling environment for lawful social transactions, without going beyond the limit of *Shari'ah* and to make live more

meaningful. If social contracts are practiced widely and the governments, Muslim bodies and institutions provide adequate incentives to the needy, most of the crimes and deprivations that malign the society would be reduced drastically.

## 5.0 SUMMARY

1. *Sharīkatul-Wujūh* is a business partnership entered into by a supplier of the entire capital to the worker or an agent with the proviso that both of them would share profit, while only the capital provider will suffer the loss incurred.
2. The supplier of the entire capital takes the credibility of the worker into consideration before entering into this kind of contract. Hence, it is known as Company Social Contract.
3. *Sharīkatul-Muñārabah* is the business venture between the capital owner who supplies the entire capital for a trading venture with the worker who brings his skill, expertise and labour to the investment. For this reason, it is called Joint Social Contract.
4. *Sharī'ah* permits these kinds of social contracts because of their advantages in solving unemployment and other social problems in the society.
5. Advance Payment Contract (*Bay'uns-Salam*) is a social contract in which one can easily become a cheat or a swindled.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Define the three kinds of social contracts and state their differences and similarities.
- Analyse how each of the social contracts is operated.

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- Ali, A. Y. (1973). *Holy Qur'ān: Text, Translation and Commentary*, London: The Islamic Publications.
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## UNIT 4 SPECIAL SOCIAL TRANSACTION PROVISIONS IN THE *SHARĪ‘AH*

### CONTENTS

1.0 Introduction

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3.0 Main Content

3.1 Hire Purchase Social Contract (*Ijārah*)

3.2 Leasing and Purchase Social Contract (*Ijārah Wa ‘l-Iqtinā*)

3.3 Islamic Bonds (*Ṣukūk*)

3.4 Rent-to-Own Contract

3.5 Free-Gift Contract (*Hibah*)

3.6 Trust (*Wadī‘ah*)

3.7 Microfinance

### 1.0 INTRODUCTION

The roles of special Islamic social contracts in the life of the beneficiaries cannot be underestimated. *Ijārah* Hiring items for uses and services for a fixed period by bank to the customer affords a grand opportunity to the leaseholder to access equipment on disbursement of the first instalment, which enhances commercial scheduling. Financial certificates are equivalent to securities or bonds that prohibit interest. The fixed income loan for the purchase of real asset provides for a profit margin for both parties. The Islamic banks voluntarily pay their customers certain amount on savings account balances in appreciation of using these savings for other performances. Microfinance is compatible with Islamic finance because it enhances security of tenure and contributes to the alleviation of the deplorable conditions of the masses, especially at the grass root level.

## 2.0 Objectives

At the end of this unit, you should be able to

Analyse the theory of Hire Purchase Contract and its benefits

Explain what is meant by Leasing and Purchase contract and its relief system

Describe how the financial certificates and bonds (*Sukuk*) in contracts comply with Islamic law

Elucidate the operation of Rent-to-Own contract

Clarify the differences between the “free-gift” by Islamic banks and interest in conventional banks

Explain the term *Wadī‘ah* in Islamic social interactions.

Point out the roles of microfinance in the enhancement of security tenure and contribution to the transformation of the lives of the teeming masses

## 3.0 MAIN CONTENT

### 3.1 Hire Purchase Contract (*Ijārah*)

It is the transfer of right of use (usufruct) of property for a consideration. It means lease, rent or wage. Generally, *Ijārah* concept means selling the benefit of use or service for a fixed price or wage. Under this concept, the Bank makes available to the customer the use of service of assets or equipments such as plant, office automation, motor vehicle for a fixed period and price. It affords the contractual parties to come into effect in sequence to form a complete lease/ buyback contract. The first contract is an *Ijārah* that outlines the terms for leasing or renting over a fixed period, and the second contract is a *Bay‘* that generates a sale or purchase once the term of the higher purchase is complete. For example, in a ship financing facility, a customer enters into the first contract and leases the ship from the owner (bank) at an agreed amount over a specific period. When the lease period expires, the second contract comes into effect, which enables the customer to purchase the ship at an approved price.

Many **benefits** can accrue from the Islamic Hire Purchase Contract. These include granting permission to the Lessee to access the equipment on disbursement of the first instalment and using of the equipment that generates income. Allowing up to 100% financing and conserves the Lessee' capital and enhances commercial scheduling and budgeting by allowing the negotiation of flexible terms. It provides a splendid opportunity to the leaseholder to enter into other hire financing arrangements without influencing his overall debt rating positively due to the opportunity of off-balance-sheet financing. Taking care of all overheads towards hire purchase bonds as operating expenses and are therefore fully tax-deductible. Offering tax-advantages to commercial operations and tolerates the transfer of risk from the Lessee to the leaseholder in exchange for a higher rent rate as an insurance against rejection in the future.

### Self-Assessment Exercise

Analyse the Hire Purchase Contract as an Islamic social system and comment on its advantages.

### 3.2 Leasing and Purchase Transactions (*al-Ijārah Wal-Iqtinā*)

The Leasing and Purchase Social Contract (*Ijārah Wal-Iqtinā*) is a relief system introduced by Islamic bank for financing contract through leasing and purchase mechanism. The Islamic bank provides equipment, building, and other resources to the customer on contractual basis. The bank and the client reaching an agreement that at the end of the lease period, the ownership in the asset would be transferred to the renter. The leasing as well as the purchase price is fixed in such manner that the bank gets back its principal sum along with proceeds over the period of lease.

#### **Self-Assessment Exercise**

Leasing and Purchase social contract is an Islamic relief system introduced by Islamic financing contract. Discuss.

### 3.3 Islamic Bonds (*Ṣukūk*)

Ṣukūk, plural of *Ṣakk*, is the Arabic name for financial certificates that are equivalent to securities or bonds, which are permissible in Islam. It is noteworthy that fixed-income, interest-bearing bonds are not permissible in Islam. Hence, Sukuk are securities that comply with the Islamic law and its investment principles, which prohibit the charging or paying of interest. Financial assets that comply with the Islamic law can be classified in accordance with their tradability and non-tradability in the secondary markets. It is known as financial paper or cheque that entitles the holder to the amount of the money shown on it.

#### **Self-Assessment Exercise**

Ṣūkuk is the Arabic name for financial certificates that are equivalent to securities or bonds. Explain.

### 3.4 Rent-to-Own Social Contract (*Murābahah*).

This is a fixed-income loan for the purchase of a real asset (such as real estate or a vehicle), with a fixed rate of profit determined by the turnover margin. This theory refers to the sale of goods at a price, which includes a profit margin agreed to by both parties. The procurement and selling price, as well as other costs and the profit margin must be specified at the instant of the sale agreement. Although the bank is remunerated for the time value of its money in the form of the profit margin, it cannot be compensated for the time value of money outside of the contracted term. The bank cannot charge additional profit on late payments, but the asset remains as a mortgage with the bank until the default is settled. This type of transaction is similar to rent-to-own arrangements for furniture or appliances that are common in North American stores.

#### **Self-Assessment Exercise**

Analyse the theory of Rent-to Own contract.

### 3.5 Free-Gift Contract (*Hibah*)

This is a token given voluntarily by a debtor to a creditor in return for a loan. More often than not, *Hibah* arises in practice when Islamic banks voluntarily pay their customers a 'gift' on savings account balances, representing a portion of the earnings made by using those savings account balances in other performances. The terms *Hibah* (Free-Gift), *Tabarru'* (Donation) and *Ṣadaqah* (Charity) are used interchangeably and share the common meaning of donation, and not a contribution (*Musāhamah*). It is noteworthy that it is usually made freely in favour of someone or something to show affection, love or for spiritual achievement. Once the donation is made, ownership is transferred in perpetuity from the donor to the recipient.

Henceforth, it is prohibited to the donor to seek any benefit from the donation.

According to the Prophet

It is not lawful for a man to give and afterwards to take it back except a father regarding what he gives his child. The parable of one who gives a gift and takes it back is like the parable of a dog which eats till when it is satisfied, it vomits and then takes his vomiting back (Ibn 'Umar and Ibn 'Abbas).

Although, Free-Gift Contract appears similar to interest, and can have the same outcome, in reality, *Hibah* is a voluntary payment or donation at the wish of the bank. However, the opportunity of receiving *Hibah* will encourage customers' savings and provide the bank with capital necessary to create its profits. If the business enterprises are advantageous, then some of those profits may be gifted back to its customers as *Hibah*.

### Self-Assessment Exercise

Examine the theory of Free-Gift Contract and identify its differences from interest contract

### 3.6 Trust Fund (*Wadī'ah*)

In *Wadiah*, a bank is deemed as a keeper and trustee of funds. A person deposits funds in the bank and the bank guarantees refund of the entire amount of the deposit, or any part of the outstanding amount, when the depositor demands it. The depositor, at the bank's discretion, may be rewarded with *Hibah* as a form of appreciation for the use of funds by the bank.

### 3.7 Microfinance

This is a major concern for Muslim States and Islamic banks. Ideologically, it is compatible with Islamic finance, capable of *Shari'ah*-compliance, and possesses a sizeable possible market. Islamic microfinance implements can enhance security of tenure and contribute to transformation of lives of the poor. The use of interest found in conventional microfinance products and services can easily be circumvented by creating microfinance hybrids delivered based on the Islamic contracts of *Murabah*,



*Mudarabah*, and *Musharakah*. Islamic-compliant financial instruments that accommodate *Shari'ah* criteria have been introduced by several microfinance institutions (MFIs) such as FINCA Afghanistan.

#### 4.0 CONCLUSION

This unit shows that the roles of special social contracts in Islam are significant in the lives of the beneficiaries and the society. The individual beneficiaries are empowered directly without the usual stress, strain and exploitative machineries of the conventional banks and other financial houses. The customers easily access capital, expertise advice and equipments that will enhance the success of their businesses or ventures without falling prey to Islamic prohibitions. The society in general benefit indirectly from the prospect and relief from problems associated with non-employment. Invariably, the contractual parties are not only able to contribute their quota to the overall development of themselves and the society; they also have the opportunity to promote their capital and livelihood in a sustainable manner.

#### 5.0 SUMMARY

The Joint Social Contract (*Sharikah* or *Shirkatu 'l-Mudarabah*) provides reciprocal opportunity for the capital owner and the agent in trading transaction. In the Credibility partnership (*Sharikatu 'l- Wujūh*), the capital owner provides it to the skilled, experienced entrepreneur on trust that he will use the capital in achieving the desired profit. In both contracts, both parties share profits, whereas in case of loss, only the capital owner would suffer the loss. In Advance Payment Contract, the seller or buyer of certain goods or commodities take them on credit from the owner on the agreement of specific payment in future.

#### 6.0 Tutor-Marked Assessment

- Define Joint Social Contract and Credibility Social Contract
- Analyze the theory of Advance Payment Contract

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## **UNIT 5 DISPOSITIONS IN THE SOCIAL INTERACTION PROVISIONS IN THE SHARĪ‘AH**

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- 3.0 Main Content
  - 3.1 Recognition of Selling Price Contract (*Musawamah*)
  - 3.2 Sale and Exchange Agreement (*Bay‘unl-Inah*)
  - 3.3 Deferred Payment Sale (*Bay‘un Bith-Thamani l-Ajil*)
  - 3.4 Islamic Equity Funds
  - 3.5 Islamic Financial Derivatives
  - 3.6 Relief/Endowment Fund (*Waqf*)
  - 3.7 Credit Sale (*Bay‘un Mu‘ajjal*)
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### **1.0 INTRODUCTION**

In this unit, you will discover that the Islamic ethics of dispositions in social contracts stipulate that all terms of contracts must be specified, free from ambiguity, fraud, disagreement and interest. In all respects, the banks and the customers have their profit margins secured. In essence, you will become familiarized with the selling and buying systems, disposals and acquisitions that are in compliant with Islamic prescriptions.

### **2.0 Objectives**

At the end of this unit, you should be able to

Give account of the theory of recognition of Selling Price Contract

Discuss Islamic Sale and Exchange Agreement in contra-distinction to the conventional banks

Expatriate upon Deferred Payment Sale as an Islamic social contract  
Discuss Islamic Equity funds and Islamic Financial Derivatives  
Explain the Relief Fund/Endowment and Credit Sale as social contracts in Islam

### 3.0 MAIN CONTENT

#### 3.1 Recognition/Negotiation of Selling Price Contract (*Musāwamah*)

This is the negotiation of a selling price between two parties without reference by the seller to either costs or request price. While the merchant may or may not have full knowledge of the cost of the item being discussed, they are under no responsibility to reveal these costs as part of the negotiation process. The key distinction between *Murābahah* and *Musāwamah* with all other rules as described in *Murābaha* is the same difference in obligation by the seller. *Musāwamah* is the most common type of trading negotiation seen in Islamic commerce.

##### Self-Assessment Exercise

Analyze the theory of Selling Price Social Contract

#### 3.2 Sale and Exchange Agreement (*Bay‘u ‘l- ‘Ayn/Īnah*)

Sale and exchange is a financing facility made available by an Islamic bank for buying and selling transactions between the financier and the customer. The financier buys an asset from the customer on spot basis. The disbursement under the facility is the price paid by the financier. Eventually, the asset is sold to the customer on a deferred-payment basis and the price is payable in instalments. The second sale serves to create the obligation on the part of the customer under the facility. This kind of contract is practised in Malaysia. A set of strict conditions must be observed and the like jurisdictions.

##### Self-Assessment Exercise

Explain sale and exchange kind of trade transaction.

#### 3.3 Deferred Payment Sale (*Bay‘un Bith-Thamani ‘l-Ājil*)

The Deferred Payment Sale is the sale of goods on a postponed payment basis at a price, which includes a profit margin agreed to by both parties. Like sale and exchange agreement, this concept is also used under an Islamic financing facility. There is no payment of interest because the customer pays the sale price, which is not the same as interest (usury) charged on a loan. The problem here is that this includes

linking two transactions in one, which is forbidden in Islam. The common observation is that this is simply basic charging of interest disguised as a sale.

### **Self-Assessment Exercise**

Examine the concept of deferred payment sale in an Islamic social interaction .

## **3.4 Islamic Equity Funds**

Islamic investment equity funds market is one of the fastest-growing sectors within the Islamic financial system. Currently, there are approximately 100 Islamic equity funds worldwide. The total assets managed through these funds currently exceed US\$5 billion and is growing by 12–15% per annum. With the continuous interest in the Islamic financial system, there are positive signs that more funds will be launched. Some Western Institutions and scholars have joined the forage or are thinking of commencing similar Islamic equity programme.

Target markets for Islamic funds vary; some cater for their local markets, e.g., Malaysia and Gulf-based investment funds. Others clearly target the Middle East and Gulf regions, neglecting local markets and have been accused of failing to serve Muslim communities.

Since the launch of Islamic equity funds in the early 1990s, there has been the establishment of credible equity benchmarks by Dow Jones Islamic market index pioneered Islamic investment indexing in 1999) and the FTSE Global Islamic Index Series. The performance of Islamic equity funds provides a comprehensive list of the Islamic funds worldwide.

### **Self-Assessment Exercise**

Assess the progress and impact of Islamic Equity Funds

## **3.5 Islamic Financial Derivatives**

With the assistance of Bahrain-based International Islamic Financial Market and New York-based International Swaps and Derivatives Association, global standards for Islamic derivatives were set in 2010, the “Hedging Master Agreement” provides a structure under which institutions can trade derivatives such as profit-rate and currency swaps.

## **3.6 Relief Fund/Endowment (Waqf)**

This is a peculiar Islamic Institution whereby the founder relinquishes his ownership of a real property on trust for Allah. He can dictate the income or usufruct of the property in perpetuity to some pious or charitable purposes. This may include settlements in favour of the founders own family.

### Self-Assessment Exercise

Point out the benefits of Relief Fund and Islamic Financial Derivatives

### 3.7 Credit Sale (*Bay'un Mu'ajjal*)

It is a financing technique adopted by Islamic banks, which take the form of *Murābahah Mu'ajjalah*. It is also called Deferred Payment Sale. The bank earns a profit margin on the purchase price and allows the buyer to pay the price of the commodity at a future date in a lump sum or in instalments in a bond. It has to state the actual cost of the commodity and the margin of profit is mutually agreed. The price fixed for the product in such a transaction can be the same as the spot price or higher or lower than the spot price. However, one of the essential descriptions of interest (*Riba*) is an unpardonable delay in payment or either increasing or decreasing the price if the payment is immediate or postponed. Any issue of *Ribā* has to be totally avoided in the transaction.

### Self-Assessment Contract

Examine the Credit Sale as an Islamic social contract.

## 4.0 CONCLUSION

It can be concluded from the foregoing that various systems of dispositions prescribed in the Islamic Law are all geared towards avoidance of usury and cheating in contractual transactions. They are also meant to provide veritable opportunities for making goods and services available to the partners for reciprocal benefits of the partners in a free and Islamic environment.

## 5.0 SUMMARY

1. The negotiation of a selling price between two parties without reference by the seller to the costs or request price is non-Islamic.
2. Islam gives the opportunity to the financier to buy an asset from the customer on the spot and the asset is later sold to the customer on a deferred payment basis.
3. Selling of goods on a postponed payment basis without payment of interest is permitted by Islam.
4. Local and international markets are used by Islamic equity funds to provide a comprehensive list of the Islamic funds, worldwide.
5. Islamic Financial Derivatives provide institutions to enhance profit-rate and currency swaps.
6. The Relief/Endowment Fund (*Waqf*) is the best poverty alleviation offer, which is very capable of ameliorating the deplorable conditions of the deprived

and the poor but willing to be productive. Eventually, it empowers them to become truly independent and gainfully employed and employers of labour.

7. The credit sale provides a good platform for the Islamic banks and the customer to engage in gainful lawful social transactions

## **6.0 TUTOR-MARKED ASSIGNMENT**

- Examine the Recognition of Selling Price and Credit Sale social contracts
- State the advantages and operation of dispositions in social contracts

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## **MODULE 3: ISLAMIC FINANCIAL SERVICES INDUSTRY (IFSI)**

**Unit 1:** Principles of Islamic Financial Services Industry

**Unit 2:** Evolution and Composition of Islamic Financial Services Industry (IFS1)

**Unit 3:** Towards Islamic Banking System

**Unit 4:** Islamic Insurance (*takāful*) and Re-insurance (re-*takāful*) services

**Unit 5:** Legal Capacity of Islamic Insurance (*takāful*) Operation

## **UNIT 1: PRINCIPLES OF ISLAMIC FINANCIAL SERVICES INDUSTRY**

### **CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Contents
3.1	Ethics of Business Transactions
3.2	Essential Elements in the Application of Social Contracts
3.3	The Ideal Muslim Businessman or Woman
4.0	Conclusion
5.0	Summary
6.0	Tutor- Marked Assignment
8.0	References/ Further Readings

## **1.0 INTRODUCTION**

Ethics or moral values are important requirements of decent human relations universally. Most importantly adequate attention is given to it in the Islamic socioeconomic transaction tenets. In other words, Islam lays down some essential ethical principles that must be observed in business transactions. You are hereby presented some of such guidelines in this Unit.

## **2.0 OBJECTIVES**

At the end of this unit, you should be able to:

Define and explain the Islamic ethics of financial transaction.

Analyse the essential elements in the application of Islamic ethics in financial transactions.

Distinguish a righteous Muslim business person from the evil ones.

## **3.0 MAIN CONTENT**

### **3.1 Ethics of Business Transactions in Islam**

The term “ethics” in this context simply means moral belief that influences peoples’ behaviour, attitudes and ideas. It also means moral beliefs and rules about right and wrong things. In the Islam “*Mithaq*”, is the terminology for covenant, agreement, contract, treaty, pact, charter or alliance. In essence, Islamic ethics of financial transactions are the codes of ethics laid down to ensure that the exact contractual agreements or pacts are carried out in accordance with the teachings of the Glorious Qur’an, Apostolic Traditions and other authentic books on Islam.

Allah has given stern warning to the Muslims to fulfil their agreements in all their transactions. It is taught in Islam that whenever two people or more want to enter into an agreement, Allah is together with them as the Surety and the Witness. For example, Allah commanded that

Fulfil the Covenant of Allah when you have entered into it, and do not break your oaths after you have confirmed them. Indeed, you have made Allah your surety. Allah knows all what you do. And do not be like a woman who breaks into untwisted strands of the thread which she has spurned, after it has become strong. Nor take your oaths to practise deception between yourselves one party should one party be more numerous (powerful) than another. Allah will test you by this; and on the Day of Judgement, He will certainly make clear to you (the truth of) that wherein you used to differ (Qur'an 16: 91-92).

Those who break Allah's Covenant after it is ratified, and who sunder what Allah has ordered to be joined, and do mischief on the earth. These cause loss to themselves (Qur'an 2: 27).

The above Qur'anic verses make it abundantly clear that Allah is aware of all inner and obvious intentions and actions, including social transactions. He admonishes that contracts must be agreed upon and confirmed through all the necessary instruments such as appending signatures of principal members of the parties after all terms of the contracts have been unambiguous stipulated, understood, considered and freely agreed upon. Everyone involved in the contracts are strictly warned by Allah to abstain from all forms of deception because of its inevitable bad consequences, both in this world and in the next. Moreover, the Prophet Muhammad has warned all dishonest businessman or associates in fraudulent practices will not gain the pleasure of Allah on the Day of Reckoning. For an example, Abu Hurayrah reported from the Prophet that the Messenger of Allah said:

The Almighty Allah said: there will be three persons whose opponent I shall become on the Resurrection Day: Anyone who gave in My name and then broke the trust, and a man who sold a free man and enjoyed his price, and a man who engaged a labourer and enjoyed full labour and from him but he did not pay his wages (Bukhari, Vol. II, 1939: 301).

The above Apostolic Tradition further emphasises the importance of full compliance with the Islamic ethics of social transactions, on the one hand, and the evil consequences of refusal to abide by the terms of contract as a grievous sin punishable in this world and in the Hereafter.

### **Self-Assessment Exercise**

Define and analyse Islamic ethics of social contract.

Examine the position of Islam on the ethics of social contract.

Distinguish between the righteous and the unrighteous business people.

### **3.2 Essential Elements in the Application of Social Contracts**



Below are some basic and essential elements to be fulfilled in order to succeed in contractual business which are in conformity with the Islamic ethics of Social Transactions,

1. The existence of a legal body such as a union, an association or company that will set up its codes of conduct and discuss it exhaustively and as well ensure that it is credited and awarded a certificate by relevant government agency or agents in order be able to operate legally.
2. Interests of the public and the nation should be taken into consideration when drafting the codes of conduct and necessary provisions should be made for their application.
3. Setting up a Monitoring Committee that has legal backing which will enable it to watch and query anyone that flouts its codes of conduct and as well enhance the success of the transaction, and protect the fundamental human rights of all members of the contractual parties. This body will also be saddled with the duty of ensuring that every person involved in a contract abides by the rules and regulations of Islam.
4. Publishing, classifying and giving enlightenment on the codes of the social contract that will continuously promote trust, shared aims and security of the social contract.
5. Establishment and sustenance of good internal relationship, mutual respect, love and understanding which are informed by the teachings of Islam.
6. Creation of healthy atmosphere and good environment for achieving the aims and objectives as well as the programmes and projects of the contractual parties.

### **Self-Assessment Exercise**

Analyze the essential things that must be done to enhance the success of Social Transactions in line with the teachings of Islam.

### **3.3 The Ideal Muslim Businessman or Woman**

Characteristics of Islam, it lays down the maxims which seek to guide intentions and actions of a Muslim in private and public life, religious and spiritual matters, economic and political as well as cultural and social affairs. While considering proper human socio-economic life, it takes cognizance of all aspects of life. It also takes a comprehensive care of the issues of the Hereafter, including the inevitability of resurrection, accountability and reward by Allah. Allah has stated that

...and there are among them (mankind) who will say: Our Lord! Give us (your bounties) in this world! But they will have no portion in the Hereafter. And there are (people) who will say: Our Lord! Give us the

good in this world and good in the Hereafter, and protect us from the torment of the Hell Fire! (Qur'an 2: 200-201).

Thus Islam advocates balanced equilibriums between the pursuit of this world and the Hereafter.

Also, Islam does not tolerate anyone making himself a burden on another, especially when he or she is not seriously challenged to the extent that he or she cannot do anything on his own. Hence, it discourages begging and extols working for ones earnings or livelihood. Prophet Muhammad was reported to have said that

Verily it is better for any of you to take your rope and bring a bundle of wood upon your back and sell it, in which case God guarded your honour, than to beg of people, whether they give it or not; if they do not give, your reputation suffers, and you return disappointed; and if they give, it is worse than that, for it lays you under obligation (AlSuhrawardy, 1979: 57).

The above Tradition of the Prophet exemplifies the importance which Islam attaches to dignity of labour and critical position it takes against begging. It is to be noted that begging promotes laziness and over-reliance on others to survive. It could lead to disgrace of the beggar in the eyes of the giver. While the latter receives blessings and rewards from Allah, the former can suffer perpetual indignity before the giver and those who know about his act of begging. However, under certain helpless circumstances, such as loss or non-availability of money or food in an environment where it is not possible to access the need by the victim of circumstance, he or she can resort to begging. However, he or she must desist immediately he or she has relief. Moreover, according to the teachings of Islam, it is prohibited to engage in sharp practices in any affairs, including matters of social contract. Allah has cursed those who do not observe the ethics of social contract. For an example Allah declares that

Woe to those who deal in fraud. Those who, when they have to receive by measure from human beings, exact full measure. But when they have to give by measure or weight to human beings, give less than due. Do they not think that they will be called to account? On a Mighty Day; A Day when all mankind will stand before the Lord of the worlds? Surely, the record of the wicked is preserved in Sijjin (Qur'an 83:1-6).

This is a serious warning and divine curse onto traders who engage in various forms of fraudulent practices; they are promised inevitable accountability, reward for their misdeeds all of which are clearly and comprehensively known by Allah. They are promised severe punishments in the Hereafter.

### **Self Assessment Exercise**

Identify the qualities of righteous Muslim business men and women  
State the advantages of righteous transactions in Islam

## 4.0 CONCLUSION

From the above, you should have become well acquainted with the essential elements of financial services in industrial relations under Islamic law, the qualities of ideal Muslim business males and females, as well as the significance of righteousness in Social Transactions.

## 5.0 SUMMARY

1. Islamic tenets contain some ethics which are most needed for business transactions and by which if applied a man can achieve ‘the goodness in this life and the goodness in the Hereafter’.
2. Constant consciousness of Allah and sense of eventual accountability to Him are the driving-force of all righteous deeds, including matters of social transaction.
3. Proper application of the essential requirements for the Social Transactions in Islam is a determining factor for identifying the ideal business men and women in Islam.
4. The disadvantages of failure to abide by the guiding principles of Social Transactions are highlighted.
5. Dignity of labour, mutual trust, love, and understanding are encouraged and emphasized while liability, begging and laziness are discouraged in Islam.
6. Allah is the Surety and Ever-Watchful of the intentions and actions of all human kind.

## 6.0 TUTOR MARKED ASSIGNMENT

Examine the significance of ethical principles of Islam in Social Transactions. State the disadvantages of non-compliance with the principles of Islam on Social Transactions.

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## **UNIT 2: EVOLUTION AND COMPOSITION OF ISLAMIC FINANCIAL SERVICES INDUSTRY (IFS1)**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Evolution of Islamic Financial Services Industry (IFSI).
  - 3.2 Composition of Islamic Financial Services Industry
  - 3.3 Usury-Free Banking
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor- Marked Assignment
- 7.0 References/Further Readings

### **1.0 INTRODUCTION**

In this unit, you will discover that concerted scholarly efforts of many Muslim scholars and economists across the globe at ridding social transactions of all elements of cheating, usury or usury, as well as all things which can create misunderstanding, mistrust and conflicts led to the evolution, composition and growth of Islamic financial

services. You should also be able to identify the evils of usury to those who are involved in it, the economy and to the society.

## **2.0 OBJECTIVES**

At the end of this unit, you should be able to

Relate the factors that led to the evolution of Islamic Financial Services Industry (IFSI).

Highlight the composition of the Islamic Financial Services Industry.

Expound the initiatives of Muslim scholars and economists on interest-free banking and its advantages.

## **3.0 MAIN CONTENTS**

### **3.1 Evolution of Islamic Financial Services Industry (IFSI)**

Since the early days of Islam, various Muslim communities in the world have been making efforts to evolve sound Islamic financial services that will be fully *Shari'ah* compliant. Consistently, appropriate regulatory frameworks are being put in place to enable a larger percentage of the Muslims to participate productively and successfully in the Islamic economic development. The strategies also involve opening avenues for capacity development, the needed capital, resource utilization and marketing.

However, landmark events in the evolution of Islamic Financial Services Industry started in earnest in 1890s with the formal opening of Barclays Bank in Cairo which was aimed at processing financial transactions that were related to the construction of Suez Canal. While operating this first commercial bank in the Muslim world, some Islamic scholars started to initiate the critique of bank interest as the prohibited (*Ribā*). Between 1900 and 1930, many Muslim scholars, especially in Arab regions and the Indian sub-continent, subscribed to the opinion that all forms of interest were *Ribā*, therefore they stand prohibited (*Harām*). Between 1930 and 1950, Islamic economists made commendable efforts to outline *Shari'ah*-compliant alternatives in the form of partnership.

In the 1950s, both Islamic economists and scholars began to offer theoretical models for interest-free banking and finance that were based on both collection of funds and finance. Later, they presented the model of financial intermediation that can be organized on the principle of an agency contract whereby a person can be appointed to perform a certain task on his behalf on a fixed fee (*Wakalah*). In 1960s, a number of books on Islamic banking that were based on profit-and-sharing formula, as well as bearing and leasing, were published. They also started to propose operational mechanisms for institutions offering Islamic Financial Services (IFSI).

Consequently, in the 1970s, full-fledged Islamic banks emerged in Dubai and Islamic Development Bank (IDB). Due to sustained objections to conventional

Insurance, there emerged a form of financial partnership between the buyer and the seller at an agreed-market price (*Mudārabah*). In 1980s, many academic institutions and Islamic financial system developed in Muslim countries while products of Islamic finance increased, several countries introduced legislation to facilitate Islamic banking and supervision. Between 2000 and 2006, the Muslim world witnessed the emergence of the cheque and other financial instruments that entitle their holders to some financial claims (*Sukuk*).

### **Self-Assessment Exercise**

1. Give a historical account of origin and development of Islamic Financial Services Industry (IFSI).
2. Assess the importance of the emergence of Islamic Financial Services Industry to the Muslim world.

### **3.2 Composition of Islamic Financial Services Industry**

According to Islamic Research and Training Institute, Islamic Development Bank and Islamic Financial Services are composed of Islamic financial architecture and infrastructure which include; regulators, supervisors, licensing authorities etc; rating and external credit assessment institutions; financial statistics and information providers;

They also include regulators and supervisors, licensing authority; payment settlement-systems and infrastructures; support facility provider, safety net, liquidity support providers, legal institutions and framework; financial markets and products, including market microstructures, trading and clearance systems, and e-business infrastructure.

Others are standard setters for financial reporting, accounting and auditing, capital adequacy and solvency, risk management, transparency and disclosure monitors, corporate governance and knowledge management.

These also invariably include human resources development institutions, research and development institutions. It must be observed that it is the sincere resolve of the Muslim economists at applying the guidelines that will enable the Muslims to avoid *Ribā* and its evil consequences that has been affecting the various forms of Islamic Social Transactions in this modern period.

### **Self-Assessment Exercise**

State the composition of the Islamic Financial Services Industry (IFSI)

State

### **3.3**

### **Usury-Free**

### **Banking**

The Usury-Free Banking is an initiative of the Muslim scholars and experts in financial activities for the Muslims' financial transactions. The Usury-Free Banking Facilities are directed mainly towards investment in productions. The fundamental role of the bank is intermediary between current, savings and deposits of Usury-Free Banking that constitute binding obligations. Principally, the current and savings

deposits must be refunded on demand. The bank is not expected to gain from the deposits. However, it may award prizes and bonuses to the holders. Islamic bank accept Short-Time Investment Deposits to enable the depositor make use of his or her funds as he/she wishes.

The bank can give Long-Time Investment deposit, for at least a year, to give pre-determined incentives for the depositors on the basis of the contracts stipulated in the Law for usury. It can also give permission for utilization of deposits on a particular project, and the refund of principal or deposits is granted. The depositors and the banks shall divide the accrued profits in proportion to the funds utilized including banks share of resources and duration of utilization. The banks receive attorney's fees from the depositors as a charge for its administrative input from the whole amount of profits. The banks have the right of utilization of deposits at their disposal for Islamic-Compliant ventures.

### **Self-Assessment Exercise**

Expound interest-free banking from an Islamic point of view. Identify the advantages of interest-free banking

### **4.0 CONCLUSION**

An in-depth study of this unit makes it known that the evolution and composition of Islamic Financial services which are free from interest and fraudulent practices were the outcomes of intellectual works of Muslim scholars and economists. This unit also addresses the issue of banking without interest and its advantages.

### **5.0 SUMMARY**

1. The sustained efforts of some Muslim scholars and economists resulted in the establishment of Islamic financial services of the modern period.
2. Islamic financial services are composed of Islamic financial services for human capacity development, various avenues opportunities for gainful employment and wealth creation under Islamic law.
3. Usury-free banking focuses attention on promotion of *Shari'ah*-compliant investments, while acting as intermediary between current, savings and deposits.
4. Apart from sharing the accrued profits in proportion to the utilized funds, Islamic banks receive attorney's fees.

### **6.0 TUTOR-MARKED ASSIGNMENT**

Analyze the historical development of Islamic Financial Services Industry Identify the importance of Islamic Financial Services Industry

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## UNIT 3: TOWARDS ISLAMIC BANKING SYSTEM

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Attitude of the Muslims to Usury or Interest (*Ribā*)
  - 3.2 Evils of (*Ribā*)
  - 3.3 Process of Transformation of Islamic Banking
  - 3.4 Essential Elements of the Growth of Islamic Banking
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-marked Assignment
- 7.0 References/Further Readings

### 1.0 INTRODUCTION

In the last unit, we have surveyed the evolution and composition of Islamic financial Services Industry (IFSI), and the Islamic perspective and practice of Interest-free banking, in this unit attention will be focused on the attitudes of the Muslims to usury, its evils and the process of transformation of Islamic banking.

### 2.0 OBJECTIVES

At the end of this unit, you should be able to  
Discuss the attitude of the Muslims to Usury.



Identify the evils of *Ribā* to individuals, to the economy and the society. Analyze the process of transformation of Islamic banking.

### 3.0 MAIN CONTENTS

#### 3.1 Attitude of the Muslims to Usury or Interest (*Ribā*)

The term “*Ribā*” is an Arabic word, which means interest, usurious interest or usury. It connotes an increase on stipulated or sought over the principal of a loan or debt; thereby interests are continuously added to the capital. In the alternative, the informed and interested Muslims prefer Islamic banking system to conventional banking. Islamic banking is a banking system which is operated in consonance with the spirit, philosophy and value system of Islam; hence, it is governed by the principles laid down by the Islamic law. Interest-free banking is a narrow concept symbolizing a number of banking instruments or operations which are interest-free. It is based on interest-free transactions since interest is prohibited in Islamic Law; it is regarded as unethical and un-social practice. Hence, Islamic Banking serves the needed transformation of conventional money lending into transactions based on tangible assets and real services..

The philosophy of Islamic banking system is derived from the teachings of Islamic Law. Accordingly, it is not permissible for it to deal in any transaction that involves interest (*Ribā*), excessive level of uncertainty or ambiguity created due to lack of information or control in a contract (*Gharar*) or game of chance (*Maysir*). Moreover, they cannot deal in any of such transactions because they all negate the teachings of Islam and consequently are invalid. The focus of Islamic banks is on generating returns through investment tools which are *Shari‘ah*-compliant. In the Islamic system of social contract, the gain on capital is linked with its performance. Therefore, the operations of Islamic banking are based on sharing the risk which may arise through trading and investment activities, while applying relevant principles of various Islamic modes of finance. Unequivocally, *Ribā* is prohibited, cursed and strongly condemned by Allah; at the same times, He extols, encourages and blesses lawful

trade and charity. The Almighty Allah has warned that

Those who devour interest (*Ribā*) will not stand except like a person whom Satan’s touch has driven to madness. That is because they proclaim that trade is like interest. Allah has permitted trade and forbidden interest. Those, who after receiving direction from their Lord should desist in order to receive pardon for the past, their case is for Allah to judge. But those who repeat (the wrong deed) are the companions of Hell Fire where they will abide forever. Allah will deprive usury of all blessings but (He) will cause deeds of charity to prosper.

Allah does not love the ungrateful, sinful creatures (*Qur’ān* 2: 275-276).

O you who believe! Do not devour usury, doubling and multiplying.  
But keep your duty to Allah, so that you may be successful (3: 129-130)

For their taking usury, although they knew that they were forbidden from devouring people's property wrongfully, We have prepared for those disbelievers among them a grievous punishment (Qur'ān:4: 161)

From the foregoing, it is made understandable that Islam does not tolerate any form of interest or usury which usually worsens the pitiable conditions of the borrower, whereas the lender continues to grow fat on the sweat of the former without any significant contribution to the development of the individuals and the society. Allah has rained curses on those who profit from interest or usury and has warned unequivocally that He will not only deprive them of the blessings that might accrue to them from it, He has also promised them severe punishment in this world and in the Hereafter. It is for these basic reasons that the Muslim Scholars and economists made concerted efforts to evolve Islamic financial systems that will not only be free from interest but also give the Muslims the opportunity to gain the pleasure and blessings of the Creator.

### Self Assessment Exercise

- Define the term “*Ribā*” and highlight some Qur'ānic verses which condemn its practice.

### 3.5 Evils of Usury (*Ribā*)

Islam frowns at, forbids and condemns usury or interest in the strongest language because of its attendant evils to the partners and the society in general. According to Zeno, the wisdom behind the prohibition of *Ribā* is that

5. It sows the seed of enmity between individuals, and destroys the spirit of mutual help and aid between them.
6. It leads to the formation of a leisure class, which does no work at all, yet money piles up and concentrates in their hands with no effort on their part, so that they become the economic equivalent of parasites, which grows, and relishes at the expense of others.
7. *Ribā* has been and remains a major instrument of colonialism and imperialism (in fact of neo-colonialism), it is said that imperialism follows in the wake of traders and priests. We have known the damage of usury in some countries' colonialism.
8. *Ribā* is the appropriation of people's wealth without compensation, which is prohibited, by the Prophet (Muslim).

‘Urwa Al-Bāriqī narrated that the Prophet gave him a *Dīnār* to buy a ram or a goat. He bought two goats with it, sold one of them for a *Dīnār*. So, he invoked a blessing on him in his business dealings, and he was such that if he had bought the dust he would have made a profit from it (Bukhārī).

### Self-Assessment Exercise

Highlight the evils of *ribā*.

### 3.3 Process of Transformation of Islamic Banking

In their bid to establish result-oriented and desirable Islamic banking, some Muslim scholars and economists embarked on significant and relevant research works. Although many approaches were suggested in different jurisdictions to authorize Islamic financial services, two distinctive approaches seem more appealing. These are (i) a policy framework that requires legal reforms and distinct licensing initiatives; and (ii) a market-driven financial engineering that encourages the development of *Shari'ah*-compliant products and services within the existing legal and licensing regime.

The policy framework of Islamic Research and Training Institute stipulates three types of governance structures. These include full-fledged Islamic banks, either newly licensed or converted from conventional banks; Islamic banking windows of conventional banks; and Islamic banking subsidiaries of conventional banks either newly established or converted from existing Islamic window. It is to be noted that Islamic window is a conventional, self-contained financial institution; but self-contained in *Shari'ah*-compliant deposit-taking, investment, financing and fund management activities. On the other hand, the financial engineering approach adopts the policy of allowing conventional institutions to offer *Shari'ah*-compliant services alongside their conventional banking services. Moreover, it permits full Islamic window operations as well as full-fledged Islamic services as long as they are able to meet the terms of the existing banking regulations. In order to ensure compliance with regulatory mechanisms, supervisory authorities take necessary steps to ensure that internal *Shari'ah*-compliant system is respected.

### Self-Assessment Exercise

- Examine the two distinct approaches to Islamic financial services.
- Assess the three governing structures of the transformation of Islamic banking.

### 4.0 Conclusion

Based on the above discussion, the practising and properly informed Muslims abhor usury and its relations because Islam forbids it and promises various punishments for involvement in any illegal social transactions and anything that has to do with usury. Various elements of the growth of Islamic Banking; the policy of sharing gain and loss, as well as the three type's governance structure of Islamic banking are excellent and most desirable. It goes further to survey the process of its transformation, identifies the evils of *Ribā*, and as well analyzes the three distinctive approaches to Islamic financial services. Moreover, it demonstrates how Islamic banking can work hand-in-hand with conventional banking without involvement in usury.

## 5.0 SUMMARY

1. The underlying philosophy behind the prohibition of usury in Islam are mainly to protect the interest of the less privileged, reduce poverty and promote love and human welfare;
2. The establishment and operation of Islamic banking underscores the elements of development, governing arrangement, process of transformation and consolidation; 3. The evils of *Ribā* are extremely inimical to those who take it and eventually to those who benefit from it as well as the society;
4. The importance of the Glorious *Qur'ān* and Apostolic Traditions as the basic sources of Islam, including Social Transactions, cannot be underestimated; and

## 6.0 TUTOR-MARKED ASSIGNMENT

- Examine the reasons behind the prohibition of *Ribā* in Islam.
- Assess the importance of Islamic banking industry.

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## **UNIT 4: ISLAMIC INSURANCE (*TAKĀFUL*) AND RE-INSURANCE (RE-*TAKĀFUL*) SERVICES**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 The Conceptual Framework of Islamic Insurance (*Takāful*)
  - 3.2 Nature and Principles of *Takāful*
  - 3.3 Challenges of *Takāful* and Re-*Takāful*
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### **1.0 INTRODUCTION**

In the last unit, you have been acquainted with the usage of the term “*Ribā*” its prohibition, and the transformation of Islamic banking. In this unit, you will be acquainted with the conceptual framework of Islamic Insurance (*Takāful*), its nature, its principles and challenges.

## 2.0 OBJECTIVES

At the end of the unit, it is expected that you should be able to:

Analyze the conceptual framework of Islamic Insurance (*Takāful*).

Assess the nature and principles of Islamic Insurance.

Identify the challenges of Islamic Insurance.

## 3.0 MAIN CONTENT

### 3.1 Conceptual Framework of Islamic Insurance (*Takāful*)

A`*t-Takāful*” is the Islamic word equivalent of the English term Insurance. It implies an arrangement whereby a group of people agreed on mutual co-operation, solidarity and brotherhood, to contribute genuinely to a contract and share a certain risk or catastrophes that may arise. It is a *Sharī‘ah*-compatible risk intermediation.

However, the principles of Islamic Insurance are different from that of conventional insurance which is *Ribā* oriented. It is widely believed in Islam that conventional insurance is against the injunctions of Islamic Law.

As a conceptual framework, *a`-t-Takāful* is acceptable Insurance system because it does not derive its profits at the detriment of others and there is limitation to the elements of uncertainty as far as compensation and subscription are concerned. In order to assist those who are in need of assistance, every policy holder is expected to pay his or her subscription promptly. This is aimed at dividing losses and spreading liability according to the community pooling system; hence, it falls under donation contract. Moreover, according to Islamic jurists, the policy holders are obliged to co-operate among themselves in order to promote their common good. Generally, Islamic Insurance must be totally free from any element of usury, uncertainty and unjustified enrichment or risks.

### Self-Assessment Exercise

- Discuss the conceptual framework of Islamic Banking

### 3.2 The Nature of Islamic Insurance (*Takāful*)

It is noteworthy that the nature of the principles of *Takāful* is fundamentally different from the principles of conventional insurance. While the nature of the principles of conventional insurance is based on the business-like, profit at all cost nature (*Ribā*) of the western policy- makers and policy holders, the Islamic Insurance is guided by welfare-concern, constant-consciousness of Allah (*Taqwā*) and the Day of Accountability (*Yawmul-Qiyāmah*). Hence, the operations of *Takāful* must be in compliance with the principles of *Sharī‘ah*; failure to abide by the principles of Islamic Insurance renders its operation invalid, null and void, and contra-*Sunnah*. Generally, the operations of Islamic Insurance is based on the governing principles of profit and loss sharing (*Muñarabah*) financing technique.

### Self-Assessment Exercise

- Analyze the nature of Islamic Insurance.

### 3.3 Principles of Islamic Insurance (*Takāful*)

There must be no hindrance to any of the contractual parties or beneficiaries from claiming the benefits over the policy. It is fundamental to recognize the legitimate wealth of every policy holder. Since both the policy and benefits of the policy are legitimate wealth of the policy holder, no room could be created for cheating. It is a policy of mutual co-operation, solidarity and brotherhood. Insurable interest must exist between the policy buyer and the proposed beneficiary because the absence of an insurable interest is solely for gain, which is contra-*Sunnah*. Generally, in the field of insurance practices, the agents and the brokers are the contributors to the development of insurance practices in the commercial societies, in tandem with the basic general principles of contract (*Al-Uqūd*). An insurance policy is a financial transaction which binds both the operator and the participant. Although, it is good to set the age of the contracting party at the age of majority or puberty (*Rushd* or *Balāghah*), some jurists do not agree with this view.

### Self-Assessment Exercise

- Evaluate the principles of Islamic Insurance.

### 3.3 Challenges of *Takāful* and Re-*Takāful* Services

A myriad of vital challenges confront Islamic Insurance Industry and are calling for proactive; collective and urgent attention. These include

- (i) Non-availability of highly-rated companies both inside and outside of the Islamic insurance sector. It should be acknowledged that Islamic re-insurance depends largely on acceptable assets for investment.
- (ii) Adequate awareness campaigns and marketing of *Takāful* and Re-*Takāful* services and products are still lacking.
- (iii) At times, investment products are offered with little or without *Takāful* coverage.
- (iv) Inclination towards a conventional insurance model.
- (v) Non-availability of a supportive legal regulatory framework.
- (vi) Islamic Insurance Services providers face difficulty in competing favourably with conventional insurance providers. Consequently, significant global development is yet to be recorded, especially in Muslim minority areas. Along that line, attempts to up-date *Takāful* related laws with a distinctive and legal framework could be a Herculean task.
- (vii) Lack of universal terminologies as well as a series of unresolved jurisprudential issues pose more serious problems in the Islamic Insurance sector than in any other Islamic Financial Services Industry.

- (viii) Inability to meet the speed of technological development in the Islamic Insurance sector with such development in the general market place.
- (ix) Short supply of long-dated sovereign and corporate Islamic Financial product, in which funds collected by Islamic Insurance companies can be invested. In essence, the available financial assets cannot adequately match the long-time nature of the risk of Islamic Insurance contracts.
- (x) Utilization of funds of the participants or policy holders in a manner that contradicts good governance of the company within Islamic insurance segment.
- (xi) Unresolved jurisprudent (*Fiqh*) issues, such as lack of common understanding of certain basic foundations, standard financial contracts and products, direct discussion on partner's liability; lack of agreement on permissibility of some of the lease contracts as well as differing attitudes towards hedging techniques.
- (xii) Inadequate number of *Shari'ah* experts in banking and finance, and regulators. (xiii) Non-universal agreement on the principles of Islamic asset-based financing contracts.
- (xiv) Non-enabling supervisory framework that can provide sufficient, credible and more supportive supervision and regulation that have room for its specificities. These include risk management; transparency and disclosures; corporate governance; and internal control systems; liquidity support; investment opportunities in sovereign issues; ensuring supportive legal system and tax neutrality. Others are appropriate treatment of investment accounts for mandatory reserves and capital requirements.
- (ix) Problem of credibility and sustainability.

**It is as a result of the above reasons as challenges/obstacles, it is always recommended that all agreements in transactions under the Islamic Banking and finance institutions such as takaful etc, should contain arbitration clause in other to give room, for the participation of experts in the Islamic jurisprudence, in the resolution of disputes likely to arise thereof to which the conventional Courts would have no jurisdiction to entertain or the judges not competent to handle.**

#### **Self-Assessment Exercise**

- Enumerate ten challenges of *Takāful* and re-*Takāful*.

#### **4.0 CONCLUSION**

A careful study of this unit reveals that Islamic Insurance is acceptable, dynamic, focused and result-oriented. It is naturally and significantly different from conventional insurance. It consciously avoids usury and fraudulent practices. On the other hand there are myriads of problems that are facing the industry which constitute impediments to its growth and are begging for proactive and collective solution in order to sustain its existence.

#### **5.0 SUMMARY**

1. *A`t-Takāful*, is *Shari'ah* compliant Insurance system.



2. It is based on the guiding principles of profit and loss sharing financial technique, brotherhood, solidarity and mutual-co-operation;
3. Although, it has a myriad of challenges, these can be solved collectively and pro-actively in the interest of Islam, the contractual parties and the society.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Consider the significance of the conceptual framework of Islamic Insurance (*Takāful*).
- Identify some of the major challenges facing Islamic Insurance industry and proffer possible solutions to the problems.

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## UNIT 5: LEGAL CAPACITY IN ISLAMIC INSURANCE (*TAKĀFUL*) OPERATION

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 The Two Parties to *Takāful* Operation
  - 3.2 Guidelines for Participation in *Takāful* Operation
  - 3.3 Conditions for Legalization of *Takāful* Operation

	3. 4 Regulatory Framework of Family <i>Takāful</i>
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Readings

## 2.0 INTRODUCTION

That Allah has made trade lawful and has prohibited *Ribā*; and that Muslim Jurists and economists have formulated policies that encourage development of lawful production and services cannot be overstressed. This unit is intended to acquaint you with the qualification requirements of *Takāful* operators, guidelines for participating in its operation, conditions for its legalization as well as its regulatory framework.

## 3.0 OBJECTIVES

At the end this unit, you should be able to

Analyze the qualification requirements of a *Takāful* operator

State the guidelines for legalization of *Takāful* operation Assess the regulatory framework for a family *Takāful*

## 3.0 MAIN CONTENT

### 3.1 Qualification of the Two Parties to *Takāful* Operation

Generally, two main parties are involved in the operation of *Takāful* business.

They are the *Takāful* operator (*Dhāmin*) and the *Takāful* participant, otherwise called *Takāful* contributor (*Mua'mman 'Alayhi*). A *Takāful* operator is a Muslim who provides an indemnity or financial security against an unexpected catastrophe or an accident in consideration of contributions paid by the *Takāful* participant. In the Islamic perspective, the insurer is the *Takāful* operator while the insured is the *Takāful* participant or *Takāful* contributor. Logically, the operator of *Takāful* is the dominant party over the entire policy. There is a justifiable apprehension that should a non-Muslim be permitted to become *Takāful* operator, he can abuse his dominating capacity by contravening *Sharī'ah* provisions and mislead the contributors and bastardize the rules and regulations.

### Self-Assessment Exercise

Analyze the qualifications of the two parties to a *Takāful* operation.

### 3.2 Guidelines for Participation in a *Takāful*

According to the policy of a *Takāful*, the participant or the contributor (*Mua'mman 'Alayhi*) eventually becomes the insured against a defined risk. He pays certain contributions regularly for the purpose of future security of the subject-matter at risk. On the other hand, the *Takāful* operator undertakes to indemnify the participant

(the insured) in consideration of the paid contributions against damage or loss caused accidentally the subject matter of the policy.

Naturally, everybody has the common right to buy a policy for the material security of life, business ventures or property which is at unforeseeable risk or danger. This common right is vested by the Glorious *Qur'ān* on every participant (Chapter 5: 2). However, certain people can be restricted or disqualified from buying or having a policy in order to sustain the basic objective of mutual co-operation, solidarity and brotherhood in order to avoid putting themselves into difficulty (*Qur'ān* 2: 185).

Moreover, a minor can be excluded from participating in *Takāful* and from being entrusted to manage his own property until he or she has reached the age of puberty, prudence or maturity according to the portion of the Glorious *Qur'ān* which states that

You should not give your property which Allah has given to you as a means of support to those who are weak of understanding; but feed them from it and clothe them and speak to them words of kindness and justice. And test the intelligence of the orphans until they attain the age of marriage (maturity). Then if you perceive sound judgement in them, deliver their property to them. You should not consume it wastefully and extravagantly against their growing up. Whoever is rich, let him abstain from taking wages; but if he is poor, let him have for himself what is just and reasonable. And when you want to release their property to them, call witnesses in their presence. Allah is SelfSufficient in taking account (*Qur'ān* 4: 5-6).

Hence, the qualification of minor can be determined through the calculation of his or her calendar year or puberty (physical maturity), although the opinions of the jurists vary between fourteen and nineteen years for males, as well as twelve and fifteen years for females.

### **Self-Assessment Exercise**

State the guidelines for participation in *Takaful*

### **3.3 Conditions for Legalization of *Takāful* Operation**

According to some Muslim scholars and economists, before operation of *Takāful* can become fully legal, certain conditions must be fulfilled. These include (i)

Registration under a specific act of the country, e. g. the Central Bank, an Islamic body or an institution in respect of any class of business or both;

(ii) Availability of adequate or a specific minimum deposit required by the Act in respect of it;

(iii) Ability to maintain, at all times, a surplus of assets over liabilities of not less than amount as may be prescribed from time to time;

- (iv) The company should be a member of *Takāful* associations approved by the country's Governor of Central Bank or Minister for Finance, provided that this paragraph shall not apply until such an association is established;
- (v) Provision of contractual capacity in the general principles of commercial contracts (*'Uqūd*);
- (vi) The *Takāful* operator must be a Muslim in his capacity as an individual, a company, partnership or a society which regulates their activities that are based on the rulings of Islamic Law;
- (vii) The restriction of the position of *Takāful* operator to a Muslim is based on his sacred duty of sustaining public interest, especially to ensure a fair co-operation in the *Takāful* practices;
- (viii) The underlying philosophy behind the mandatory restriction lies partly on the duty of *Takāful* operator to sustain mutual-co-operation, brotherhood and solidarity among the contractual parties, while putting unforeseen risk in proper perspective.

Allah has declared that

The believers should not take unbelievers for friend except the believers, if anyone does that, he will not receive help from Allah, except by way of precaution, that you may guard yourself from them (*Qur'ān* 3: 28).

Give bad news to the hypocrites that there is a painful chastisement for them. Those who take disbelievers for friends rather than the true Muslims, do they seek for might from them? Might surely belong to Allah (*Qur'ān* 4: 139).

It is noteworthy that, as a demonstration of Islamic spirit of sincerity and avoidance of anything that can jeopardize the interest of Islam and the Muslims, it is justifiable to disallow a non-Muslim from domineering role over the participant. Notwithstanding, a non-Muslim seeker of help or co-operation from a Muslim may not be rejected. This could soften the heart of a non-Muslim to Islam. He could come under a destitute as long as he is not antagonistic to Islam and the Muslims.

It is interesting to note that if any company which registers under a law that is not *Shari'ah*-compliant wishes to operate *Takāful* activities can be granted *Takāful* licence. However, this should be pre-conditioned by the express admittance that it will establish a separate, complete *Takāful* unit whereby all its activities, management, principles, including material aspect are controlled by the Muslim operator of *Takāful* in accordance with Islamic injunctions.

### **Self-Assessment Exercise**

Assess the qualifications for legalization of *Takāful*

### **3.4 Regulatory Framework of Family *Takāful***

Family *Takāful* simply means an Islamic financial technique undertaking to provide a financial security for the widows, orphans and other dependants of the assured (deceased) against an unforeseeable financial risk. The conventional insurance falls outside the realm of Islam because it is not free from usury or interest (*Ribā*) and other un-Islamic elements, according to the Islamic principle of inheritance (*Mīrāth*) and bequest (*Waṣīyah*).

The central idea of the model of an Islamic life insurance is not to safeguard the life of the assured but that of his or her dependants. The nominees are appointed by the assured. They are not absolute beneficiaries but mere trustees who receive the benefit of the deceased and distribute them among the heirs of the deceased in line with the principles of inheritance and request.

It is instructive to note that upon the maturity of the policy period, if the assured is still alive, he or she has no right to claim from the insurer the paid premiums, the share of profit made over the paid-premium, dividend and bonus according to the company's policy in addition to a donation from the company's charitable fund, and according to the financial status of the beneficiaries. Any cause of death of the assured matters; as long as he or she has been certified dead, does not disqualify his or her heir (s). Therefore, life insurance is a policy of a social transaction whereby none of the beneficiaries will be deprived as a result of any criminal act by the assured, e. g. suicide or being killed as a result of wrongful act. Since the agent in a life insurance policy works for the company, he is not entitled to a salary out of the premium of the assured. However, the policyholder himself has an insurable interest if he is alive when the policy period has expired.

### **Self-Assessment Exercise**

Discuss the regulatory framework of family *Takāful*.

## **4.0 CONCLUSION**

In the above discussion, we have analyzed the qualifications for the *Takāful* operation; discussed the guidelines for legalization of *Takāful* operation; and stated the regulatory framework for Family *Takāful*.

## **5.0 SUMMARY**

1. The *Takāful* operator (*Dhāmin*) has its qualifications for operating *Takāful* which are different from that of the participant.
2. The common rights which *Takāful* affords to the *Takāful* operator and the participant is divinely invested by Allah, the Creator, although that of the minors is until they reach the age of majority.
3. The conditions for legalization of *Takāful* are for the protection of the interest of the *Takāful* operator and the contributor, the economy and the society.
4. The regulatory framework of Family *Takāful* is designed to protect the interests of the orphans, the widows and their dependants.

5. The Sudanese experience should be imitated and improved upon by the Muslim institutions, organisations and states that are yet to attain the level. Otherwise, they should begin the modern approach to Islamic Social Transactions.

## 6.0 TUTOR-MARKED ASSIGNMENT

Analyze the qualifications, duties and rights of the *Takaful* operator and participant.

Assess the significance of the regulations on Islamic Insurance. State the operation of Family *Takaful*.

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## **UNIT 6: THE CONCEPT OF ARBITRATION AND ITS FEATURES IN ISLAMIC JURISPRUDENCE (*FIQH*) AND LAW**

### **CONTENTS**

- 1.0 Introduction**
- 2.0 Objectives**
- 3.0 Main Contents**
  - 3.1 Definition and main element of Arbitration in Shariah Law**
  - 3.2 Characteristics and features of Arbitration in Shariah**
  - 3.3 Legitimacy of Arbitration in the Quran, Sunnah and Fiqh**
  - 3.4 The Arbitration Agreement in Islamic Jurisprudence (*Fiqh*)**
- 4.0 Conclusion**
- 5.0 Summary**
- 6.0 Tutor-Marked Assignment**
- 7.0 References/Further Readings**

### **2.0 INTRODUCTION**

That Allah has made trade lawful and has prohibited *Ribā*; and that Muslim Jurists and economists have formulated policies that encourage development of lawful production and services cannot be overstressed. This unit is intended to acquaint you with the requirements and necessity of Arbitration in the world today, particularly in the Islamic banking transaction, in Nigeria and most of the developing and developed countries, the laws governing Banking and Finance institution are alien to Islam, most of the Courts are managed by non-Muslim Judges. The Shariah Courts of Appeals that are in those states that have them has no jurisdiction to entertain banking matters. It is therefore necessary for Banks operating a non-Usury-Banking (Islamic Banking) as the only available means of dispute resolution to have an Arbitration clause through which once there is a dispute between the Bank and its customers reference shall be made to Arbitration. The same applies to others who prefer their disputes to be settled by Arbitration rather than going to Courts for litigation.

### **3.0 OBJECTIVES**

At the end this unit, you should be able to understand the need for Arbitration in certain transaction where there is a dispute such as the Islamic Banking. Understand the meaning and procedures of Arbitration under the Shariah,

also to appreciate the characteristic, nature and legitimacy of Arbitration under the Shariah.

### **3.2 MAIN CONTENT**

#### **3.3 Definition and Main Element of Arbitration in Shari'ah Law**

The Majalla defined arbitration as the voluntary submission by two litigating parties of their disputes and claims to determination by a qualified person.

The Hanafis defined arbitration as the submission by two litigating parties of their dispute to determination by an arbitrator.

The Malikis defined arbitration as the submission by two litigating parties of their dispute to determination by an arbitrator who is acceptable to both.

The Shafi'is defined arbitration as the submission by two litigating parties of their dispute to determination by a qualified arbitrator.

The Hanbalis defined arbitration as the submission by two litigating parties of their dispute to determination by a qualified arbitrator who is acceptable to both.

There is no systematic definitions of arbitration in the original Shari'ah sources.

Arbitration is generally described as a permissible substitute for the jurisdiction of an ordinary Judge in an Islamic Court.

In the Hanafi, Maliki and Hanbali Schools of Islamic Jurisprudence, arbitration is simply described as a permissible procedure with restricted jurisdiction in contrast to the broad jurisdiction enjoyed by *qudāt* (sing. *qādī*) or Judges in the Islamic Courts.

Arbitration in a Shari'ah context can be broadly defined as the determination of the dispute according to Shari'ah principles.

Arbitration in a Shari'ah context requires:

- a. The will of two competent parties to submit the disputes to an arbitrator;
- b. The acceptance by the appointed arbitrator of the duty to adjudicate the dispute.

#### **Self-Assessment Exercise**

Analyze the definition and element of Arbitration.

### **3.2 Characteristics and Features of Arbitration in Shari'ah Law**

- Fast and simple procedures
- Independent choice of the place of arbitration and the arbitrators: the independence of the arbitrator from the judicial control is one of the most important characteristics of Islamic Fiqh.



- Confidential procedures.
- Arbitration provides reassurance, serves justice between the litigants, and maintains the relationship between them.
- Arbitration is based on moderation and flexibility
- Adherence to the Sharia and the freedom to choose Islamic jurisprudence: Arbitration allows the litigating parties on non-Muslim territory to avoid the obligation of compliance with laws that contradict the Islamic Sharia.
- Experience.

### Self-Assessment Exercise

Discuss the Characteristics and Features of Arbitration in Shari'ah Law

### 3.3 Legitimacy of Arbitration in the Qur'an, Sunnah, and Fiqh

Arbitration is permissible in Islam and evidence on this permission is found in the Qur'an, the *Sunnah*, and *Ijmā'*. Islamic legislation is originally based on the Qur'an that is the principal source of this legislation. Scholars have inferred arbitration from the verses of the Qur'an. Several verses of the Qur'an prove the legitimacy of arbitration.

Some scholars believe that it would have been better to rely on the verses from the Qur'an to prove the legitimacy of the arbitrator. Numerous verses in the Qur'an that address the issue of ruling the disputes between Muslims imply that the Qur'an does not differentiate between the official courts and arbitration mechanisms.

Since the *Sunnah* is the second source of Islamic legislation as mentioned in the Qur'an: "... and whatever the Messenger has given you - take; and what he has forbidden you - refrain from." and in it are found references to Arbitration, scholars have inferred the legitimacy of arbitration from the Prophet's *Sunnah* as well as verses from the Qur'an.

The Islamic *Umma* unanimously agreed on the legitimacy of courts the same way as the Sahabah unanimously agreed on the permissibility of arbitration. As Al Sarkhasi noted, "Al Sahabah unanimously agree on the permissibility of arbitration", and Al Nawawi: "the scholars have agreed on the permissibility of arbitration in the disputes and significant matters of Muslim believers. Only the Khawarij did not agree.

Scholars therefore consider arbitration permissible based on the Qur'an, the *Sunnah*, and the *Ijmā'* of the Sahabah, and *Qiyās*. It is only a group called the Khawarij that did not agree, believing that God allowed possesses the capacity and authority to arbitrate.

For the Hanafi, Maliki, Shafi'i, and Hanbali Schools, arbitration is in principle a permissible mechanism for resolving differences. Arbitration could be necessary in cases where either or both litigants urgently need a judicial ruling while on non-Muslim territory.

On the other hand, the Maliki School tends to give the arbitrators, upon their appointment by the mutual consent of the parties, the authority (or competence?) to pursue their work until they issue the final award.

In brief, the permissibility of arbitration is evident in the Hanafi and Shafi'i schools of Islamic Jurisprudence. Akin to the Maliki School of Jurisprudence, the Hanbali School gives arbitrators the authority to pursue their work until the issuance of the final award.

### Self-Assessment Exercise

Discuss the legitimacy of Arbitration under the Shariah

## 3.4 The Arbitration Agreement in Islamic Jurisprudence (*Fiqh*)

The main elements of arbitration are:

- an agreement;
- the will of the two parties to submit the dispute to an arbitrator (*al ijab*);
- the acceptance by the appointed arbitrator of the duty to adjudicate in the dispute (*al qubul*);
- the two parties to the agreement (*aqidan*);
- and the subject of the arbitration (*mahal*).

While some Islamic Jurisprudence scholars consider that together *al ijab* and *al qubul* constitute one of the agreement pillars, Hanafi scholars define *ijab* as the expressed will of one party to the agreement, and *qubul* as the expressed will of the other party to the agreement.

Modern researchers have proven the legitimacy of the arbitration agreement in Islam. They do not consider it among the agreements prohibited by the scholars, for the following reasons:

- The essence of arbitration agreements and clauses lies in their validity unless they contain elements that disagree with the purpose of the agreement, or include any uncertainty (*al gharar*), usury (*al riba*), or the like.
- This shall apply regardless of the agreement being made prior to or after the dispute.

Thus, the arbitration agreement is a contract that is subject to the general rules of contracts.

The arbitration agreement is the basis or *raison d'être* of arbitration, whereby two parties agree to submit their dispute to arbitration. However, this agreement may be repealed for any of the numerous grounds of repeal such as the ineligibility of either party at the time of agreement, or the “non-arbitrable” nature of the object or

subject of the dispute, as is the case for disputes not related to commercial rights but to penal rights.

The invalidation of the original contract that is the object of the agreement does not invalidate the arbitration agreement. In other words, the arbitration agreement would still be valid even after the contract that is submitted to arbitration becomes invalid.

1. The dispute which the parties agree to refer to arbitration shall arise from a specific legal relationship.
2. Arbitration agreements do not apply to matters forbidden in Islam. Some scholars consider that submission agreements do not apply to matters of legally fixed punishment (al Hadd), retaliation (al qisas), conjugal anathema (al li'an), and divorce. Another group of scholars specifies that arbitration is permissible in financial matters, while others consider that it is permissible to all matters that can be adjudicated by a judge.
3. The contract shall take into account the basic requirements for the validity of formalities such as the eligibility of the parties to the contract

**Drafting the agreement:** Muslim Scholars have not required that the arbitration agreement be written. They have allowed the parties to prove their agreement through the testimony of witnesses. However, the positive laws require that the arbitration agreement be written, noting that the term "Written" includes modern communication tools such as the possibility for the parties to make reference in their correspondence to a model contract.

#### **4.0 CONCLUSION**

In the above discussion, we have analyzed Arbitration, its meaning, legitimacy and Arbitration agreement.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- Analyze the Arbitration agreement under the Shariah
- Assess the validity of an Arbitration clause in the event of the failure of the main contract.

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