CHAPTER
FOUR
CHAPTER FOUR

INSURANCE CONTRACT FROM
THE SHARI‘AH PERSPECTIVE

4.1 Introduction

In Islam, every part of the total system is justified as a link in the chain of interrelations, which cannot be divided or split from one another. Islam lives, not for itself, but for mankind. Islam means absolute submission to the will of Allâh. This implies, believing in Allâh- Faith-, doing right, being an example to others to do right, and having the power to see that the right prevails, and also avoiding wrong, being an example to others to avoid wrong. A contract in Islamic Law is part of the whole Islamic system. Allâh the almighty says: “O ye who believe! Fulfil (all) obligations” (Al-Mâ‘idah (5), 1). This noble verse is the fundamental principle which governs the sanctity of all contracts, whether private, public civil or commercial. However, hereunder some of the characteristics of the Islamic Law of contract:

a. Its formality is very simple

According to Islamic law, a contract is considered automatically concluded by a valid expression of an offer by one party and its acceptance by the other party. Al-Imâm Ibn Taimiy’ah (may Allâh’s mercy be on him) said: a contract is concluded by every term and every act which that particular social group recognize as capable of concluding a

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specific transaction. However, every word, or act which expresses the motives or intentions of purchasers in all contracts are considered concluded according to Islamic law (Sharī‘ah).

b. Immediate transfer of ownership at the meeting

The ownership must be transferred as soon as a contract is formed in principle in order to avoid any element of ribā. According to Islamic law (Sharī‘ah) a future transfer should be avoided, for there are elements of speculation or risk in future, which produce a kind of unforeseeable gain or loss.

c. Its stress on oral testimony

Allāh the almighty says:

“But take witness whenever ye make contract”

(Al-Baqarah (2) 282).

In Islamic Law, the personal word of a pious Muslim was deemed worthier than an abstract piece of paper or a piece of information subject to doubt and falsification. However, documents are only a useful support for oral testimony in Islamic legal system, because it is assumed that no pious Muslim would lie under oath. For that Allāh the almighty says:

“O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor, for Allah can best protect both, follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.” (An-Nisā‘(4) 135).

4.2 work and earning a living

a. Shari‘ah basic objectives

Every objective of the Shari‘ah is to promote the welfare of the people in particular, in safeguarding their faith, their life, their intellect, their posterity, and their property. Hence, whatever ensures the safeguard of these five basic objectives of Shari‘ah serves public interest and is desirable. It is for this reason that Muslim jurists unanimously held that catering for the interest of the people and relieving them of hardships is the basic objective of the Shari‘ah. In this regard, Al-Imām Ibn Qayyīm said: “The basis of the shari‘ah is wisdom and the welfare of the people in this world as well as the Hereafter. This welfare lies in complete justice, mercy, welfare and wisdom, anything that departs from justice to oppression, from mercy to harshness, from welfare to misery, and from wisdom to folly, has nothing to do with the Shari‘ah.”\(^{199}\) Allah the almighty says in the Noble Qur‘ān:

“Allah desires ease for you and desires not hardship for you”

(Al-Baqarah (2) 185).

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“Allah desires to alleviate your burdens for man is created weak” (*An-Nisā’* (4) 28).

“Allah desires not to place a burden on you but He wishes to purify you and to complete His favour on you so that you may be grateful. And remember Allah’s Favour to you and His covenant with which He bound you when you said: “We Hear and obey.” And fear Allah. Verily, Allah is All-Knower of that which is in (the secrets of your) breasts” (*Al-Māidah* (5), 6-7)

“Help ye one another in righteousness and piety, But help ye not one another in sin and transgression, and fear Allah. Verily, Allah is severe in punishment” (*Al-Māidah* (5), 2)

“O Believers, fear Allah as He should be feared and see that you do not die save as true Muslims. And hold fast together to Allah’s cord and let nothing divide you. Remember the favour of Allah upon you” (*āl- ‘Imrān* (3), 102- 103).

“There should always be among you some people who invite to what is good and enjoin what is right and forbid what is wrong: They alone will attain true success” (*āl- ‘Imrān* (3) 104).

“Now you are the best community which has been raise up for the guidance of mankind: you enjoin what is right and forbid what is wrong and believe in Allah” (*āl- ‘Imrān* (3) 110).

b. Islam is not an ascetic religion

Islam is not an ascetic religion and does not aim at depriving *muslims* of the good thing that Allah has provided for the mankind. Rather, it takes a positive side of life considering man as the vicegerent of Allah on this earth in order to fulfil the will of the delegating Authority, as Allah the almighty has said:

“And when your Lord said to the angels: Verily, I am going to place a vicegerent on earth.” They said: “will place therein those who will make mischief therein and shed blood, while we
glorify You with praises and thanks and sanctify You” He said: “I know that which you do not know.” (Al Baqarah (2) 30).

Islam is designed to serve as a blessing for mankind, and aims at making life richer not poorer or full of hardships. Rather, it urges Muslims to enjoy the bounties provided by Allâh the merciful, and set no quantitative limits to the extent of material growth of Muslim society. We read in the Holy Qur’ân:

“When the prayers is ended, then disperse in the land, and seek Allâh’s bounty, and remember Allâh much: that you may be successful.” (Al-Jumu ‘ha (62) 10).

Virtue therefore lies not in avoiding and shunning the bounties of Allâh, but enjoin them within the framework of values for righteous living through which Islam seeks to promote human welfare. In this regard Allâh says:

“O Muhammad, ask them, “Who has forbidden the decent garments that Allâh brought forth for His servants and all kinds of lawful things bestowed by Him” Say, “All these things are for the Believers in this world but on the Day of Resurrection, these shall be exclusively for them. Thus We make quite plain Our Revelations to those who possess knowledge.” (Al-A ’arâf (7) 32).

“And the monasticism which they have innovated, We did not prescribe it for them” (Al-Hadid (57) 27).

Once after the prophet (pbuh) had given a lecture on the certainty of the Day of judgment and the accountability before Allâh the almighty, a few of his companions gathered in the house of Uthman bin Maz’un and resolved to fast everyday, to pray every night, not to sleep on beds, not to eat meat or fat, not have anything to do with women or perfume, to
wear coarse clothes, and in general to reject the world. The prophet (pbuh) heard of this and told them:

I have not been directed by Allâh to live in this manner. Your body certainly has right over you; so fast but also abstain from fasting, and pray at night but also sleep. Look at me, I pray at night but I also sleep; I fast but I also abstain from fasting, I eat meat as well as fat, and I also marry. So whoever turns away from my way is not from me.”

c. Acquiring wealth through unfair means is prohibited in Islam

Islam does not permit its followers to earn wealth in any way they like, rather it differentiates between lawful and unlawful methods based on the criterion of overall well-being of the society. Therefore any transaction in which one person’s gain results in another’s loss is unlawful, while any transaction which is fair and beneficial to all the parties concerned and which is transacted by mutual consent is lawful. Allâh says:

“O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allâh is most Merciful to you. And whoever commits that through aggression and injustice, We shall cast him into the Fire, and that is easy for Allâh. If you avoid the great sins which you are forbidden to do, We shall expiate from you your sins, and admit you to a noble entrance (i.e. Paradise)” (An-Nisâ’ (4) 29-31).

This verse lays down two conditions for a transaction:

1. Any transaction should be with the mutual consent of the two parties.
2. The benefit to one party should not be a loss to the other.

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Maudūdī in explaining the meaning of “Do not kill yourselves” has given two interpretations, both of which are generally applicable here.

1. It would mean the one who devours unlawfully the property of others, does in fact lead himself to his own destruction, for such an evil did ruin the social order to such an extent that ultimately he himself cannot escape its consequences, and in the Hereafter most surely he incurs severe punishment.

2. It would mean, “Do not kill each other”, or “Do not commit suicide”. Allāh has used such comprehensive words that in the context they occur. 202

In regard to the above mentioned prohibited means of acquiring wealth Prophet Muhammad (pbuh) said:

“Fear Allāh and be moderate in your pursuit of wealth; take only that which is allowed and leave that which is forbidden.”

And he also said:

“The best of Muslims is he who is concerned about the affairs of this world as well as the affairs of the Hereafter.”203

A Ḥadīth narrated by Abū Huraira in al-Bukhārī in the chapter: The one who does not care from where he earns his money (i.e. whether through legal or illegal ways); the Prophet (pbuh) said:

“A time will come when one will not care how one gains one’s money, legally or illegally.”204

Al-Imām Ibn Kathīr, while interpreting a verse from sūrah al-Jumu‘ah, verse 10,

“When the prayers is ended then disperse in the land and seek of Allāh’s bounty but remember Allāh much so that you may be successful”

said: “Remember Allāh much” means that while selling or buying and taking or giving, you must remember Allāh much so that these worldly pursuits do not cause you to lose sight of what benefits you in the Hereafter.205

4.3 Prohibition of Certain Forms of Business Transaction in Islam

4.3.1 Formalities of contract as constituted by Islam

In Islam, contracts and transactions can be entered into in either one of these two forms, oral, or written. However, if the transactions involve future obligations in a fix period of time a written document is recommended.206 We read in the Holy Qur’ān regarding this in the following verses:

“O Believers, when you contract a debt for a fixed term, you should put it in writing. Let a scribe write with equity the document for the parties. The scribe whom Allāh has given the gift of literacy should not refuse to write. Let him write and let the one under obligation (the debtor) dictate, and he should fear Allāh, his Lord, and should not diminish from or add anything to the terms which have been settled.

But if the borrower were of low understanding or weak or unable to dictate (for any reason), then let the guardian of his interests dictate it with equity. And let two men from among you bear witness to all such documents. But if two men were not available, there should be one man and two women to bear witness so that if one of the women forgets [anything], the other may remind her. The witnesses should be from among such people whom you approve of as witnesses. When the witnesses are asked to testify, they should not refuse to do so. Do not neglect to reduce to writing your transaction for a specified term, whether it is big or small. Allâh considers this thing more just for you, for it facilitates the establishment of evidence and lessens doubts and suspicions. Of course, there is no harm if you do not put in writing the common commercial transactions you conclude daily on the spot, but in the case of commercial transactions you should have witnesses. The scribe and the witnesses should not be harassed. If you do so, you shall be guilty of sin. You should guard against the wrath of Allâh; He gives you the knowledge of the right way for Allâh has the knowledge of everything. If you are on a journey and cannot find a scribe to write the document, then transact your business on the security of a pledge in hand. And, if any one transacts a piece of business with another merely on trust, then the one who is trusted should fulfil his trust and fear Allâh, his Lord. And never conceal evidence for he who conceals it, has a sinful heart; Allâh knows everything you are doing."

(Al-Baqarah (2) 282-283).

Narrated by ‘Aishah (Allâh be pleased with her) said, the Prophet (peace be upon him)

"Bought some foodstuff on credit for a limited period and mortgaged his amour for it."207

From the guidance of the above noble verses, and the traditions of the prophet Muhammad (peace be upon him) the following instructions must be observed in any business transaction:

1. The term of a debt must be specified.

2. Any agreements concerning debt and business should be recorded and testified by witnesses in order to keep the affairs of the people clean. Thus, the common practice by friends and relatives who do not put debt agreements into formal writing, for such a thing, according to them, shows lack of trust is absolutely unacceptable.

3. During the agreements, Muslims should have Muslims as their witnesses.

4. Only those persons who are known to lead respectable lives and bear good moral character and are honest should be made witnesses.

5. No one should be forced to become a scribe or a witness against his will, and no one should harass the scribe or the witness just because he gives true evidence against the interest of any party.

According to Mu`āwiyah, the security of a pledge in the above mentioned verses of surah al-Baqarah does not mean only while on a journey, but it has been specially mentioned in this connection because such a condition generally occurs on a journey. Moreover, inability to get a scribe is not an essential condition for holding something as a pledge. If a needy person cannot obtain a debt unless he delivers something as security for it, he is allowed to do so. Holy Qur'a`n deliberately omits the mention of this latter condition, because it intends to teach generosity to the Believers. It is obviously below the dignity of a man of high character not to lend money to a needy person without having a pledge in hand. It is, however, understood that if the pledge is productive, the creditor should keep a regular account of the produce and deduct it from the debt; otherwise any profit drawn from the pledged property would be interest. The only object in view of holding a pledge is the security of the repayment of the debt and it does not entitle the creditor in any way to make profit out of it. For instance, if a creditor himself lives in the house which he
holds as a pledge for his debt or if he lets it to someone else, he in fact is guilty of taking interest, if he does not credit the rent of the house to the debtor, for there is no difference between taking direct interest on a debt or earning money from it or making use of the property delivered as a pledge. The creditor, however, may benefit from the milk of a pledged cattle, or may ride or carry burden on a horse, camel etc., because that would be the compensation for the fodder given to them.  

4.3.2 Trade is permitted in Islam

Allāh has created human beings in a state of dependence upon one another, and He has directed them toward exchanging good and utilities through buying and selling because such transactions make social and economic life function smoothly. Allāh says:

“There is no sin on you if you seek the Bounty of your Lord” (during the pilgrimage by trading) (Al-Baqarah (2) 198).

“Allāh has permitted trading and forbidden Ribā (usury)” (Al-Baqarah (2) 275).

“Except when it is a present trade which you carry out on the spot among yourselves, then there is no harm if you don’t write it down” (Al-Baqarah, 282).

“O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent” (An-Nisā (4) 29).

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“Then when the ṣalāt (prayer) is ended, you may disperse through the land, and seek the Bounty of Allāh (by trading, working, etc.) (Al-Jumu ’ah 62) 10.

*Ibn ‘Umar* (Allāh be pleased with them) reported
Allāh’s messenger (peace be upon him) as saying:

“Both parties in a business transaction have the right to annul it so long as they have not separated” 210

It is clear from the above verses of holy Qur’an and the Ḥadīth of Prophet (peace be upon him) that Islam urges muslims to engage in trade and business, therefore the true believers are not those who remain in the mosques, nor the mystics or recluses in their places of retreat, but the true believers are men of action, whose distinguishing characteristic is that the affairs of the busy world do not make them forget their obligations to their Creator. However. Good, honest trade is a form of service to community, and therefore to Allāh, hence, Islam has condemns every kind of injustice and exploitation in human relations, and wants its followers to conduct business in a sublime spirit of justice tempered with human kindness. The following verse of the Holy Qur’an has clearly stressed the importance of the fairness in business. Allāh the almighty says:

“And to the people of midian We sent their brother Shu ‘aib. He said: “O my people! Worship Allāh! You have no other God but Him, Verily, a clear sign from your Lord has come unto you; so give full measure and full weight and wrong not men in their things, and do not do mischief on the earth after it has been set in order, that will be better for you, if you are believers” (Al-‘A ‘rāf 7) 85

210 Al-Bukhārī, Vol. 3, The Book of Sales, Chapter. If the time for the option is not fixed, will the deal be considered as legal? (Ḥadīth number 324) Pp. 182-18184.
Therefore all transactions in business should be based on the fundamental principle of mutual co-operation for the cause of goodness, virtue and piety.211 We read in the Qur'an

"Help you one another in virtue and piety, but do not help one another in sin and transgression. And fear Allâh. Verily, Allâh is Severe in punishment." (Al-Mâ‘îdah (5) 2).

4.3.3 Legal and illegal things are clearly defined in Islam

Allâh the merciful did not leave mankind in ignorance concerning what is legal and what is illegal (Halal and Haram), but indeed He has explained to His servants what is lawful and what is unlawful, as He says in the holy Qur'an:

"He has explained to you in detail what is forbidden to you" (Al An ‘âm(6) 119).

However, in between the clearly Halal and the clearly Haram are some doubtful things which are to be avoided in order to stay clear of doing something unlawful.

In a Hadîth narrated by Nu‘mân b. Bashîr (May allâh be pleased with him) The Prophet peace be on him said:

"Both legal and illegal things are obvious, and in between them are (suspicious) doubtful matters. So who-ever forsakes those doubtful things lest he may commit a sin, will definitely avoid what is clearly illegal; and who-ever indulges in these (suspicious) doubtful things bravely, is likely to commit what is clearly illegal. Sins are Allâh's Hîma (i.e. private pasture) and whoever pastures (his sheep) near it, is likely to get in it at any moment."212

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212 Al-Bukhârî, Vol. 3, The Book of Sales, Chapter. "Legal and illegal things are clearly defined, and between them are some doubtful things." (Hadîth number 267) PP. 151-152.
Hassān b. Abī sinān said:

“I found nothing easier than to be pious and Allāh-fearing; (to achieve this aim) leave all doubtful things and do what is completely clear of doubt.” The Ḥalāl is clear and the Ḥaram is clear. Between the two there are doubtful matters concerning which people do not know whether they are Ḥalāl or Ḥaram. One who avoids them in order to safeguard his religion and his honor is safe, while if someone engages in a part of them he may be doing something Ḥaram, like one who grazes his animals near the Ḥima (the grounds reserved for animals belonging to the King which are out of bounds for others’ animals); it is thus quite likely that some of his animals will stray into it. Truly, every king has a Ḥima, and the Ḥima of Allāh is what He has prohibited.

4.3.4 Conditions in business transaction

Prophet Muhammad (peace be upon him) has not only disapproved of certain forms of business transactions which is been practiced by ‘Arab during the Jāhiliyyah, but he has also laid down some basic conditions which should be fulfilled in every transaction if it is to be lawful. Some of these conditions are:

1. Not to trade in things the use of which is prohibited such as wine, swine, flesh of dead animals, idols, etc. The prophet (peace be on him) said:

    “Surely Allāh has prohibited the sale of wine, the flesh of dead animals, swine, and idols”

2. Good not to be sold before obtaining their possessions (forward trading)

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213 Ibid.


215 Muslim, vol. 3, Kitāb al-Buyūʿ (i.e. the book of sales) Chapter. “Prohibition of the Sale of Wine, Carcass, Swine and Idols” (Hadith number. 3840) P. 830. See also Sunan ibn Mājah, (Abwāb al-Tijārāt), Hadith number 2185, PP.5-37.
Prophet (peace be on him) has warned the Muslims against indulging in this kind of business transaction as it is unlawful.\textsuperscript{216} Ibn ‘Abbas (Allâh be pleased with them) reported Allâh’s messenger (peace be on him) as saying:

“He who buy food grain should not sell it until he has taken possession of it”\textsuperscript{217}.

And Ibn ‘Abbas (Allâh be pleased with them) said: “I regard everything like food (so far as this principle is concerned)”\textsuperscript{218}.

3. Things sold and money offered as their price must be lawfully acquired (i.e. *tahârat al-‘ Ain*). Therefore, it is unlawful to sell stolen goods, or goods acquired in a fraudulent manner, or to purchase any thing with the money which acquired in a deceitful way, because Allâh the almighty is pure and does not accept anything except what is pure.\textsuperscript{219}

4. Goods and Commodities for sale should go into the open market, and the seller or his agents must be aware of the state of the market before any proposal are made for the purchase by the buyers.

“Whatsoever the Messenger gives you, take it; and whatsoever he forbids you, abstain from it. And fear Allâh; verily, Allâh is Severe in punishment” (*Al-Hashr* (59) 7).

\textsuperscript{216} Sayyid Sâbiq, *Fiqh al- Sunnah*, P. 93.
\textsuperscript{217} *Muslim* vol. 3, Kitâb al-Buyû , Chapter. “It is Invalid to Sell Commodity Before Taking possession of It” (Hadith number 3640) P. 801.
\textsuperscript{219} Sayyid Sâbiq, *Fiqh al- Sunnah*, P. 93.
4.3.5 Prohibited forms of business transaction

Various types of business transactions and exchanges of property where current among the Arabs at the dawn of the prophet’s mission. He (peace be on him) approved and confirmed such types of transactions which did not conflict with the principles of Islamic law, and forbade any kind of transaction which could lead to a quarrel or litigation among Muslims due to some uncertainty, or any kind of business practices which were against the purposes and aims of Islamic law. The following are some of business transactions, which are prohibited:

1. Business involving uncertainty (Gharar).

The Arabic word of Al-gharar literary signifies risk, hazard, jeopardy, danger, and peril. Technically means to sell a thing which one doesn’t have in one’s possession nor expects to bring it under one’s control, such as selling fish in the river which is not yet caught, or selling birds in the air. This includes the sort of transaction in which there is no guarantee that the seller can deliver the goods for which he receives payment.

According to Al-Qaraḍāwī. “Not every sale or business transaction involving what is unknown or uncertain is prohibited: for example, a person may buy a house without knowing the condition of its foundation or what is inside the walls. What is prohibited is selling something about which there is an obvious element of uncertainty, which may

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lead to dispute and conflict, or may result in the unjust appropriation of the other people’s money. Also if the risk of uncertainty is small-and this is determined by experience and custom-the sale or the business involved is not prohibited. For example one may sell root Vegetables such as carrots, onions, and radishes while they are still in the ground, or fields cucumbers, watermelons, etc.\textsuperscript{222}

Example of Al-Gharar sale in the tradition of the prophet Muhammad (peace be on him and his family). Narrated by 'Abd Allah b. 'Umar (May Allâh be please with them) Allâh’s Apostle (peace be on him) forbade the sale called Ḥabal-al-Ḥabala’ which was a kind of sale practiced in the pre-islamic period of ignorance. One would pay the price of a she-camel, which was not born yet, would be born by the immediate offspring of an extant she-camel.\textsuperscript{223}

Narrated by Abû Sa'îd (Allâh be pleased with him) Allâh’s Apostle (peace be on him) forbade the selling by Munâbadha, i.e. to sell one’s garment by casting it to the buyer not allowing him to examine or see it. Similarly he forbade the selling by Mulâmasah. Mulâmasah is to buy a garment, for example, by merely touching it; not looking at it\textsuperscript{224}

Narrated by Abû Huraira (Allâh be pleased with him) Allâh’s Messenger (peace be on him) forbade selling by Mulâmasah and Munâbadha.\textsuperscript{225}

\textsuperscript{222} Yûsuf al-Qara ðawi, \textit{Al-Hal ðl wal-har ðm fî al-Islam}, , Kuwait,1993, PP. 253-255.

\textsuperscript{223} \textit{Al-Bukhârî}, Vol. 3, Book of Sales, Chapter. Ḥabal-al-Ḥabalah (i.e. the sale of what is in the womb of an animal), p. 199, (Hadith number 353).

\textsuperscript{224} \textit{Al-Bukhârî}, Vol. 3, Book of Sales, Chapter. Mulâmasa Sale (i.e. by touching the thing only and not looking at it), (Hadith number 354) PP. 199-200.

\textsuperscript{225} \textit{Ibid.}, (Hadith number 356) P. 201. See also Sunan ibn Mûjah, (Abwâb al-Tijîrî), Hadith number 2187, PP.5-37.
All these forms of business transactions were prohibited in Islam because in either case the purchaser got no opportunity to examine the things sold to him, and the bargain was likely to prove unduly disadvantageous to one side. In fact the stand of Islam is clear and fair to both parties to a transaction, therefore any step on the part of one, that is advantageous to him and disadvantageous to the other, is not permissible. The seller is expected to make the defects-if any-in the goods manifest to the buyer, nor is the buyer expected to take undue advantage of the ignorance of the seller. Allâh the almighty says:

"Deal not unjustly and shall not be dealt with unjustly."

(Al-Baqarah (2) 297).

3. Transaction involving Ribâ (interest)

A detailed discussion on Ribâ is available in chapter two. However, the following are the components of usurious transactions:

1. The two things, of exchange between the two parties must be of the same character e.g. if gold is exchanged for gold of the same weight and quality in hand to hand transaction, it is not interest, if unequal, the excess is interest.

2. In case there is a stipulation or demand for the excess over and above the principal sum to be paid at a future date, the excess is considered as interest. Abû Sa 'îd al-Khudrî reported Allâh’s Messenger (pbuh) as saying:

"Do not sell gold for gold, except like for like, and don’t increase something of it upon something; and don’t sell silver unless like for like, and don’t increase something of it upon

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227 The meaning of Sahih Muslim, (tr.) Abd al- Hamid Siddiqi, (Kitab Bhavan, New Delhi,1997), P.831.
something, and do not sell for ready money something to be
given later.”

Uthman b. ‘Affân (Allâh be pleased with him) reported Allâh’s Messenger (Peace be on
him) as saying:

“Do not sell a dinâr for two dinâr and one dirham for two
dirhams.”

(This rule does not apply to the currency notes, as these are not identical or similar as
their denominations are different from one another.) However, Islam permits increase in
capital through genuine trade, and blocks the way for any one who tries to increase his
capital through lending on usury or interest (Ribâ) whether it is at a low or a high rate, in
order that to protect helpless persons from the exploitation of the money-lender who the
holy Qur’ân likens to a madman. Allâh the almighty says in Sûrah Al-Baqarah:

“Those who eat Ribâ (usury) will not stand (on the Day of
Resurrection) except like the standing of a person beaten by
Satan leading him to insanity. That is because they say:
‘Trading is only like Ribâ’” whereas Allâh has permitted trading
and forbidden Ribâ. So whosoever receives an admonition from
his Lord and stops eating Ribâ shall not be punished for the past;
his case is for Allâh (to judge); but whoever returns (toRibâ),
such are the dwellers of the Fire they will abide therein”
(Verse 275).

“Allâh deprives interest of all blessing and develops charity; and
Allâh does not like ungrateful sinful person.”
(Al-Baqarah (2) 276).

"O believers, fear Allāh and give up that interest which is still due to you, if you are true Believers; and if you do not do it, then take a notice of war from Allāh and His Messenger but if you repent, you shall have your capital sums. Deal not unjustly and shall not be dealt with unjustly."

(Al-Baqarah (2) 278-279).

Prophet Muhammad (pbuh) has cursed the one who accepts interest and the one who pays it. ‘Abd Allāh b. Mas ‘ūd (Allāh be pleased with him) said that Allāh’s Messenger (peace be on him) cursed the one who accepted interest and the one who paid it.230

Jābir said that Allāh’s Messenger (may peace be upon him) cursed the acceptor of interest and its payer, and one who records it and the two witnesses; and he said: They are all equal.231

The wisdom of prohibiting interest in Islam

The strict and firm prohibition of interest transactions in Islam is a result of its deep concern for the moral, social and economic welfare of mankind.

According to Al-Qaraḍāwī "in a society in which interest is lawful, the strong benefit from the suffering of the weak. As a result, the rich become richer and the poor poorer, creating socio-economic classes in the society separated by wide gulfs. Naturally this generates envy and hatred among the poor toward the rich, and contempt and callousness among the rich toward the poor. Conflict arise, the socio-economic fabric is rent, revolutions are born, and social order is threatened."232

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231 Ibid, (Hadith number 3881).

Muslim scholars outline the wisdom behind the prohibition of interest in any transactions as follow:

1. To protect the property of the Muslim not be eaten unjustly.

2. To encourage and direct Muslim to invest his money through lawful channels.

3. To block anything, which will generate hatred, evil and envy among the Muslims.

Because if the interest is made permissible the needy person will be required to pay back more on loans, from the moral aspect this will weakening his feelings of good will and friendliness toward the lender.

4. Interest by its nature, creates selfishness, cruelty, hard-heartedness, money-worship etc., and kills the spirit of fellow feeling and co-operation. It is therefore, ruinous for society both morally and economically.

5. To encourage people to do good to one another as required by Islam, therefore if interest prohibited in a society, people will lend to each other with good will, expecting back no more than what they have loaned, so that the spirit of mercy and charity among the muslims will be more firm and strong. We read in the Qur’ān:

“Help you one another in virtue, righteousness and piety but do not help one another in sin and transgression. And fear Allāh. Verily, Allāh is Severe in punishment.”
(Al-Mā‘idah (5) 2).

“The believers, men and women, are Aunity (helpers, supporters, friends, protectors) of one another; they enjoin what right and forbid what is wrong; they perform Prayer (ṣalāt) and give the zakat and obey Allāh and His Messenger. Allāh will have His mercy on them. Surely Allāh is All-Mighty, All-Wise.”
(At-Taubah (9) 71).

The fundamental difference between profit and interest.

"They say "Trade is just like interest", whereas Allâh has made trade lawful and interest unlawful" (Al-Baqarah (2) 275).

The polytheists money-lenders, here, objected the Allâh’s decree regarding the interest and based their argument on a wrong theory without taking into consideration or seeing the fundamental difference between profit and interest. They say: When profit on capital is lawful in trade, why should then interest on money invested in loans be unlawful? And the contemporary money-lenders and bankers also put forward similar argument for charging interest. However, the fundamental difference between profit and interest out line as follow: Table: 1

<table>
<thead>
<tr>
<th>Profit</th>
<th>Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-The settlement of profit between the buyer and the seller is made on equal terms.</td>
<td>1-The debtor cannot settle the transaction on equal terms with the creditor because of his weaker position.</td>
</tr>
<tr>
<td>2-The trader charges his profit, however high it may be, once for all.</td>
<td>2-The money-lender goes on charging interest over and over again and it goes on increasing with the passage of time.</td>
</tr>
<tr>
<td>3-Whoever engaged in trade, industry, agriculture etc. Earns profit by spending time, labour and intelligence.</td>
<td>3-Money-lender becomes the stronger partner in the earnings of the debtor without any risk or labour on his part.</td>
</tr>
</tbody>
</table>
It is quite clear that even from the economic point of view, trade helps construct society but interest as mentioned before leads to its ruin morally and economically. The money for which one has no use what should one do with it? The answer is that he may invest it in lawful business such as commerce, industry etc. on the basis of the partnership and share profits and losses alike.\textsuperscript{234}

3. A transaction similar in nature to gambling.

The Arabic equivalent to gambling is (Maisir) which literally means getting something too easily, getting a profit without working for it; hence gambling. That is the principle on which gambling is prohibited. Allâh says:

"They ask you concerning alcoholic drink and gambling. Say: "In them is a great sin" (Al-Baqarah (2) 219).

"O you who believe! Intoxicants and gambling, and Al-Ansâb, and Al-Azlâm {arrows for seeking luck or decision} are an abomination of Satan handiwork, So avoid that in order that you may successful. Satan wants only to excite enmity and hatred between you with intoxicant and gambling and hinder you from the remembrance of Allâh and from the prayer. So will you not then abstain." (Al-Mâ‘idah (5) 90-91).

Example of a transaction similar in nature to gambling is the sale of Al-Mulâ‘amasah (i.e. to buy a garment or anything else by touching it only not looking at it\textsuperscript{235}), and Al-Munâ‘abadhah (i.e. to sell one’s garment or anything else by casting it to the buyer not allowing him to examine or see it\textsuperscript{236})


\textsuperscript{235} Sayyid Sâbîq, \textit{Fiqh al-Sunnah}, P. 105.

\textsuperscript{236} \textit{Ibid.}
The sale of *Al-Mulāmasah* becomes valid on the buyer’s by touching the clothes or anything without looking at them. For example, one brings a folded garment or anything for sale in the dark and the buyer offers a price and the owner of the thing says, “I sell it to you on condition that you will only touch it, not see it, and if you see it, you have no option to cancel the sale.”

In *Al-Munābadhah* transaction the two persons may agree to barter one thing for another without seeing or checking either of them. One may say to another, “I barter my garment for your garment,” and the sale is achieved without either of them seeing the garment of the other. Or one may say, “I give you what I have and you give me what you have,” and thus they buy from each other without knowing how much each has had. These types of transactions are indeed similar to gambling in nature as both depend on luck and mere chance. *Anas* (Allāh be please with him) said: “The prophet (peace be on him) forbade such sale.”

Also *Abū Huraira* (Allāh be pleased with him) narrated that Allāh’s Apostle (pbuh) forbade selling by *Mulāmasah* and *Munābadhah*.\(^{237}\)

Narrated by *Abū Sa‘īd* (May Allāh be pleased with him): The prophet (peace be on him) forbade two kinds of dresses and two kinds of sale, i.e. *Mulāmasah* and *Munābadhah*.\(^{239}\)

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\(^{238}\) *Al-Bukhārī*, Vol.3, The Book of Sales, Chapter, “Selling by Munābadhah” (Ḥadith number, 356) PP. 200-201

\(^{239}\) *Ibid.*, (Ḥadith number 357).
4. **An-Najsh**: means to offer a high price of something without having intention to buy it but just to cheat somebody else who really wants to buy it. Such a person may agree with the seller to offer high prices before the buyers to cheat them. The seller may falsely tell The buyer that he has previously bought the goods at a certain price, which is in reality higher than the actual price.  

*Ibn Abī Abla* said: “one who practices *Najsh* is a *Riba*-eating, traitor” and such a practice is false trick which is forbidden, and the prophet (peace be no him and his family) said, “Deception would lead to the Hell and whoever does a deed which is not in accord with our tradition, then that deed will not be accepted.”

And also narrated by *ibn ‘Umar* (May Allâh be pleased with them) Allâh’s Apostle (peace be on him) forbade *Najsh*.

5. A seller should not urge somebody to cancel a bargain the latter has already agreed upon with another seller so as to sell him his own goods; and a buyer should not urge the seller to cancel a bargain already agreed upon with another buyer so as to buy the goods himself, unless they are given permission in both cases or the bargain are cancelled with the willing of both the seller and the buyer.

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Narrated by *Abd Allâh bin 'Umar* (Allâh be pleased with them) Allâh’s Apostle (peace be on him) said:

“Do not urge somebody to return what he has already bought {i.e. in optional sale} from another seller so as to sell him your own goods”\(^{244}\)

“O Prophet, tell the people, “If you sincerely love Allâh follow me; then will Allâh love you and forgive your sins, for He is Forgiving and Merciful.” Also say to them, “Obey Allâh and His Messenger.” And if, in spite of this, they do not accept your invitation, (warn them that) Allâh does not love those, who refuse to obey Him and His Messenger.” (\*al-'Imrân* (3) 31-32).

\(^{52}\) *Ibid.* (Hadith number 349).

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4.4 ruling of shari‘ah scholars pertaining to conventional insurance contract

4.4.1 Introduction

Islamic Law is systematic and dynamic; its several institutions are well put into relation with one another. Allāh the almighty says:

“To each among you, We have prescribed a law and a clear way” (Al-Mā‘idah (5) 48).

“We have put you (O Muhammad) on a plain way of Our commandment. (Al-Jāthiyah (45) 18).

However, the course of history has forced Muslims to accept wittingly or unwittingly institutions which have developed in the west and yet in conflict with the Islamic values and principles, the insurance system is an example among the many of these institutions which have penetrated all the aspect of our daily life, socially and economically.

Most of the Sharī‘ah scholars who are working hard of rescuing the Muslim ummah against anything in conflict with the values and principles enunciated by Islam, have objected the legality of the commercial insurance contract for various reasons. While the few who advocate modernism in Islam hold that it is permissible under the Islamic law. However, I think it is important before I put forward the opinion of the Sharī‘ah scholars pertaining to the subject, to lay down before the reader these following facts:
1. Modern conventional insurance in general originated in the west, it was not known in the Islamic world until the 19th century when the Ibn 'Abidīn a Ḥanafī jurist discussed the idea of insurance and its legal basis. He was the first to touch on the issue.²⁴⁵

2. Elements of the modern insurance contract have been illustrated and explained through legal studies, therefor relying on these studies as it stated while discussing the subject is recommended, in other to determine the Sharī'ah’s ruling on the issue.

3. All the evidence mentioned regarding the subject (from those who object the system of the modern insurance and those who permit it) is absolutely depending on the jurist reasoning (i.e. analogy or al- Qiyas in Arabic).

4. It is necessary that an objective study be made in other to develop alternatives, which can fulfil the need of Muslims against every needful thing, which violate the fundamental principles of Islam.

5. Permitting the unlawful (Ḥaram) to be lawful (Ḥalal), and prohibiting the lawful to be come unlawful both are distorting and misrepresenting the beauty of the honorable Islamic law. Consequently, Islam has restrict the authority to legislate the unlawful and the lawful, taking it out of the hands of human beings, regardless of their religious or worldly position and reserving it for the almighty Allāh alone, because no worship can be legislated except by the command of our creator Allāh the most Gracious, and no practice can be prohibited except by His prohibition. In regard to this Allāh says:

"Do you see what Allāh has sent down to you for sustenance and yet you have made some part of it lawful and some part unlawful. Say (O Muhammad) "Has Allāh permitted you (to do so), or do you invent a lie against Allāh?" (Yūnus (10) 59).

"And say not, concerning the falsehood which your tongues utter, This lawful and this is forbidden, so as to invent lies against Allāh, verily, those who invent lies against Allāh will never prosper" (An-Nahl (16) 166).

As mentioned earlier Muslim scholars (ʿulamāʾ) and researchers have differed on the legality of the subject according to Islamic law. The majority disagrees with the whole concept of the modern form of insurance companies and their practices. And few agree with the whole concept, as they see nothing unlawful or contrary to the Islamic law in the operational system of the modern form of conventional insurance and its contracts. However, following are the arguments presented by the two parties on the issue:

a. Arguments advanced by majority of Muslim jurists and intellects on the issue

As mentioned before majority of Muslim jurists (fuqahāʾ) are of the opinion that the concept of the modern form of conventional insurance system is unlawful according to Islamic law (Sharīʿah) due to the presence of unlawful elements in its contracts. The following are the Arguments advanced by them on the subject:

1. It is a system, which involve an excessive degree of al-Gharar (i.e. risk, jeopardy, danger, peril, and uncertainty). Muslim jurist unanimously agreed that a large quantity of al-Gharar nullifies contracts and transactions due to obscurity, or want of knowledge (jahālāh).
In a Ḥadīth narrated by Abū Hurairah (may Allāh be pleased with him) reported that Allāh’s Messenger (may peace be on him) forbade a transaction determined by throwing stones, and the type which involves some uncertainty.

A contract of insurance according to those who objected it, is made of on risk in the sense that both parties to the contract are ignorant of the degree or limit of their obligation and responsibilities to each other. The insurer does not know the limit of his commitments or the happening of the peril nor does he know how and when the peril will occur. Likewise, the insured does not know how much and how long he will have to pay his premium installments nor does he know the quantity of his gains on the happening of the peril. Thus, the both parties concern is completely in the dark with regard to their commitment to each other because of the doubtful nature of risk. Therefore the presence of an element of al-Gharar is quite evident. Islamic Law has emphasis that there must be no doubt concerning the obligations undertaken by the parties to a contract, therefore, the object of the any contract or transaction must be determined.

In the case of commercial insurance contract, the Gharar exists in determining the amount of premium money to be paid by the insured because it is not possible to fix a premium, which, on the average, will exactly cover the risk.

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246 This is a type of transaction which prevalent in the markets of pre-Islamic Arabia. The transaction was done by throwing a stone either by the seller or by the purchaser and whatever the stone touched its transaction became biding.

247 Muslim, Vol. 3, (Kitāb al-Buyū’) Chapter. “Invalidity of a Transaction by Throwing a Stone” (Ḥadīth number 3614). P. 798

The insured may pay his first premium and die or suffer a peril, yet the insurer will pay him the full amount of insured money agreed upon at the time of insurance contract. Also the insured may pay all the premium installments for years without any event occurs and yet shall not receive anything in exchange for all the premium money.\textsuperscript{249}

\textit{Ibn 'Umar} (Allâh be pleased with them) reported that the prophet Muhammad (peace be on him) forbade the sale of fruits until they were clearly in good condition; he forbade it both to the seller and the buyer.\textsuperscript{250}

From all the \textit{ahādith} mentioned regarding \textit{al-Gharar} two points emerge into preeminence:

a. The transaction should be done after full inspection and not haphazardly leaving much to chance.

b. Islam does not approve of the transaction, which may be called as buying a bird in a bush. The bargain should be struck about what is present and lying in the possession of the seller. What lies uncertain in the womb of the future or what stands outside the possession of the buyer is not a valid bargain in Islamic law. The modern speculation in the world market is thus forbidden according to Islam.\textsuperscript{251}

2. It comprises the two kinds of \textit{Ribā} and they are:

a. \textit{Ribā al-faḍl} (i.e. taking a superior thing of the same kind of goods by giving more of the same kind of goods of inferior quality.)

b. \textit{Ribā An-Nasī'ah} (i.e. interest on lent money.)\textsuperscript{252}

\textsuperscript{249} \textit{Ibid.}, P.300ff,

\textsuperscript{250} \textit{Muslim}, Vol. 3, (\textit{Kitāb al-Buyā'}), Chapter. "Prohibition of the Sale of Fruits Until they are Clearly in Good Condition" (Hadith number 3665) P. 805.

\textsuperscript{251} ‘Abd al- Ḥamīd Siddiqi, \textit{Al-Jāmi' al- Sahih}, (Kitab Bhavan,New Delhi,1977), P. 798.

Both are prohibited in Islam. Allâh the almighty says in *Surah al-Baqarah:*

“Allâh has permitted trading and forbidden Ribâ (usury)” (275).

“Allâh will destroy Ribâ and will give increase for deed of charity” (276).

“O you who believe! Be afraid of Allâh and give up what remains (due to you) from Ribâ(from now onward), if you are (really) believers” (278).

Islam has forbidden interest because it is an exploitation of helpless person. For example if money is lent for consumption purposes to the poor, and then an excess payment is demanded from them, it is nothing but sheer callousness. Moreover, the charging of interest undermines the spirit of follow-feeling and sacrifice and inculcates selfishness and miserliness in man.253

By looking deeply at the nature of the commercial insurance contract, one will see the present of Ribâ in it, from the calculation of the premium to the indemnity to the occurrence of a peril and calamity. In addition to that, the insurance companies invest their entire funds in fixed-earning investments and they may pay the insured from the profit of this usurious investment, which makes the entire issue unlawful.

Also most of the insurance companies invest over two-thirds of their wealth in fixed-interest, therefore, most of their earnings come from the interest. In the case of life insurance it is clearly stated in the policy of the insurance that the insurer will pay the insured all what he deserved with additional interest, this is pure and clear Ribâ.254

However, any transaction involving interest in whatever name and form a Muslim (male or female) must abstain from it regardless of the amount, and obey the commandment of Almighty Allâh in order to achieve success in this world and the Hereafter.

3. It involves gambling. Indeed commercial insurance is kind of gambling because it depends on circumstances, whereby a person may loss without any crime or gains a huge profit without working for it. The insured may settle only one premium installment and certain event happens, the insurer will pay the whole amount of insurance back to the insured. Likewise, the event might not occur and the insurer will have all the money paid to him by the insured. Thus, all the elements of gambling are obviously present in the contract of insurance.\(^{255}\) In forbidden of gambling and other evil things Allâh says:

"O Believers, wine, gambling, (ungodly) shrines and divining devices are all abominable works of Satan, therefore refrain from these so that you may attain true successes. Indeed Satan intends to sow enmity and hatred among you by means of wine and gambling, and to prevent you from the remembrance of Allâh and from Salât. Will you not, therefore, abstain from these things? Obey Allâh and His Messenger and abstain from these things; but if you will disobey, note it well that Our Messenger’s only responsibility was to convey the Message clearly.”

\(Al-\text{Mâ’iddah (5) 90-92}.\)

\(^{255}\) Ibid.
A number of economists have admitted that commercial insurance is a form of gambling or speculation and therefore could not be considered within the ambit of co-operative activities.²⁵⁶

4. It involves eating others property by unlawful ways, and this is unlawful. We read the command of almighty Allāh regarding to the subject matter in Holy Qur'ān:

"O Believers do not devour one another's property by unlawful ways, (instead of this) do business with mutual consent. And do not kill yourselves; believe it that Allāh is compassionate. We shall throw into the Fire the one who commits such acts of aggression and injustice; and this is very easy for Allāh."

*An-Nisa* (4) 29-30.

"Unlawful ways" include all the wrong ways that are against the Islamic law and principles and are false and immoral.²⁵⁷

However. Insurance is a contract of indemnity; therefore, it has nothing to do with donation or contribution, which based on mutuality. In the insurance contract the insurer might lose a huge amount of insurance money after a shot period of signing the agreement when suddenly certain events have taken place. Likewise, in the case of non-occurrence of an event, nothing is paid back to the insured even though he has settled all the installments. Thus, the element of immorality is obvious in the contract of insurance, therefore, this contract is nothing but taking the money of the other without any justification and this is Ḥaram.

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Among the Shari'ah scholars who are in favour of this direction are:

1. Al-Imām ibn 'ābidin
2. Sheikh 'Abd al Raḥmān Mahmūd Qurā 'ah
3. Sheikh Muḥammad Bakhī' al-Muṭī 'ī
4. Sheikh Aḥmad Ibrāhim Ibrāhim
5. Sheikh 'Abd al Raḥmān Tāj
6. Sheikh Muḥammad Abū Zahrah
7. Sheikh Issawī Aḥmad Issawī
8. Sheikh Muḥammad 'Alī al-Sais
9. Sheikh Taha al-Dīnār
10. Sheikh 'Abd al Latif al-Subkī
11. Sheikh al-Ṣādiq Muḥammad al-Dārīr
12. Sheikh 'Abd al Allāh al-'Ala'īlī
13. Sheikh 'Abd al- Sattar al-Said
14. Sheikh Fakhr al-Dīn al- Ḫusnī
15. Sheikh Amjad al-Zawāwī
16. Sheikh 'Azmī Aṭfāh
17. Sheikh Muḥammad al-Jawād al-Ḥusainī

Among the Shari'ah researchers and intellects:

1. Dr. Ḫusain Hāmid Ḥassan
2. 'Issa 'Abduh
3. 'Abd al-Nāṣir Tawfīq al-Attār. 258

b. Arguments advanced by Muslims scholars who accept the whole concept of the modern form of conventional insurance contract

A few among the Muslims scholars who advocate modernism are of the opinion that the modern form of the conventional insurance contract is lawful according to Islamic law. The following is the arguments they advanced on the subject matter.

1. The basic refers to the permissibility of things, therefore, insurance is not part of what is generally forbidden or enjoined unless there is a clear evidence for prohibiting it. However, human transactions, which bring benefits to them, are permissible unless there is a clear evidence to say otherwise. On the other hand, Islam does encouraged Muslims to innovate new kinds of contracts as necessitated time with the consideration of Islamic principles and requirements.\(^{259}\)

2. Insurance has become necessity in this contemporary era, which cannot be escaped. People have realized their tremendous need to the insurance contract, because it is the only way to shove perils of disaster, catastrophes on their properties. This stand is reinforced by a number of principles observed by jurists, and they are:

1. Necessity Dictates exceptions.
2. If something is confined (tighten), it became widen.
3. Harm necessitates ease.\(^{260}\)


3. Contract of modern insurance is similar to contract of clientage (walā’) which is considered by some school of thought as a reason for inheritance in the absence of a blood relatives to inherit. However, the majority of the Muslim jurists are of the opinion that this old custom of the Arabs has been abolished, and it has been enjoined that the inheritance should be divided among the heirs according to the law prescribed by almighty Allâh. They are, however, allowed to give to such people, during their lifetime, whatever they like. Allâh says:

“And to everyone, We have appointed heirs of that (property) left by parents and relatives. To those also with whom you have made a pledge (brotherhood), give them their due portion (by will). Truly, Allâh is Ever a Witness over all things.”

(An-Nisâ’ (4) 33).

Hadîth narrated by Sa‘ id b. Jubayr: Ibn ‘Abbâs (Allâh be pleased with them) said: “When the emigrant came to the Prophet (peace be upon him) in Medina, the emigrant would inherit the Anşârî while the latter’s relatives would not inherit him because of the bond of brotherhood which the Prophet (peace be on him) established between them. When the verse “And to everyone We have appointed heirs’ was revealed, it cancelled (the bond (the pledge) of brotherhood regarding the inheritance),” Then he said, “The verse: To those also to whom your right hands have pledged, remain valid regarding co-operation and mutual advice, while the matter of inheritance was excluded and it became permissible to assign something in one’s testament to the person who had had the right of inheriting before.”

261 Al-Bukhârî, Vol.3, The Book of Hiring, Chapter, The Statement of Allâh ‘To those also, to whom your right hands have pledged give them their due portion.’ (Hadîth number 489) PP.274-275.
According to those scholars who advocate modernism in Islam: If we compare contract of clientage with the contract of commercial insurance, we find a close resemblance between the two.

1. Both are a contract between two parties, sponsor (insurer), and sponsored (insured)
2. Guarantee of the indemnity by the insurer is equal to the guarantee of compensation by the sponsor in the contract of clientage.
3. The money that the sponsor will inherit after the death of the sponsored in the absence of blood relatives is equal to the money that the insured pays to the insurer.262
4. It is similar to Al-Mudârribah (limited partnership) whereby a person will provide money as a capital to another person in order to do business and manage it with his efforts and the profit to be shared between them according to the agreement. In the case of insurance, the money will be provided by the partners through paying the installments, and the work will be done by the insurance company through investments and share the profit with the partners in accordance with the agreement.263
5. It is similar to the system of ‘âqila (blood money for manslaughter). The source of this system is the saying of Allâh the Most Gracious:

"It is not for a believer to kill a believer except by mistake and whosoever kills a believer by mistake, he must free a believing slave and a compensation (blood-money, i.e. Diya) be given to the deceased’s family unless they remit it" (Al-Nisâ’ (4) 92).

262 Muṣṭafâ Aḥmad al-Zarqâ’ Nizâm al-Taʾmîn, PP.48-51.
It should, however, be noted that the blood money prescribed here is not for a willful murder but for an accidental one.264

The modernist in this regard said as far as the idea and concept of co-operation is concerned, there is a great similarity between the system of the insurance contract and the system of ‘āqila.265

Among the scholars who are in favour of this direction are:

1. Sheikh Muṣṭafa al- Zarga‘.
4. Sheikh al-Taib Ḥasan al-Najjār
5. Dr. Muḥammad al-Bakhīr
7. Sheikh Muḥammad Qāsim.
10. Sheikh Daud Ḥamdūn.
11. Sheikh Muḥammad Sa‘īd Gabbash.266

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265 Ahmad Muhammad Jamāl, Ḩikām ‘Uqūd al-Ta‘mīn Wa Makāsatuhu Min Shari‘at ad-Din, PP. 59-64.
c. Conferences on conventional insurance

Many conferences have been held, and formal legal opinion (i.e. fatwâ) has been issued in the Islamic world regarding the operational system of the modern form of conventional insurance as presently practiced. Hereunder, are the most notable one’s:

1. In Malaysia, in June 1972, the Fatwâ committee of the National Religious Council declared that the present conventional insurance is unlawful in the sight of Islamic law (Shari‘ah), as it contains the elements of Riba (i.e. interest or usury), Gharar (i.e. uncertainty), and Maisir (i.e. gambling).²⁶⁷

2. In 1976, the first international conference on Islamic Economics held at Makkah, resolved that present conventional insurance does not realize the Shari‘ah aims of cooperation and solidarity because it does not satisfy the Islamic conditions for it to be come acceptable in the Islamic Law (Shari‘ah).²⁶⁸

3. In 1977, the Fatwa committee of the Kingdom of Saudi Arabia similarly declared that the modern conventional insurance is unlawful in the sight of Shari‘ah.

4. In 1978, Judicial Conference held at Makkah unanimously declared the system of the modern insurance as presently practiced is unlawful.

²⁶⁸ Muhammad Nejâtullâh Siddîqi, Muslim Economic Thinking, PP. 26-27.
5. In 1965, Unanimous Fatwā issued by the Islamic Sharī‘ah scholars in the Muslim League Conference held at Cairo, the prohibition of the modern insurance system, particularly life insurance.\(^{269}\)

As it becomes patent in this chapter, the modern form of insurance companies and their current practices are obviously objectionable Islamically. Nevertheless, that does not mean Islam is against the concept of insurance itself; it only opposes the means and methods. Islam indeed welcomes other insurance practices, which do not conflict the Islamic forms of business transactions. In the Islamic Sharī‘ah we find insurance for individuals against hazards and provision for assisting them to overcome disasters which may befall them.

According to Yusuf al Qaraḍawī, the Islamic system has already insured Muslims and other living under its governance, either through mutual help among the individuals or through the government and its treasury known as the (bait al- māl) which is the universal insurance company for all who reside within the Islamic domain. The greatest form of insurance, which Islam has legislated for its followers among those deserving to receive zakat (alms) funds, relates to the category of ghārimīn (those in debt). This word denotes one whose house has burned down or whose property or trade has been destroyed by flood or other disasters. Some jurist hold that such a person may be given, from the

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zakāt fund, an amount which would restore his previous financial position, even the amount may reach thousands of dinars.\textsuperscript{270}

Now it is the responsibility of the Islamic Sharī'ah scholars to introduce more alternatives model of Islamic insurance, in order to insure the Muslim ummah in case of unexpected peril. In encouraging Muslims to work hard for the sake of Allāh, we read in the noble Qur'ān the following verse:

"And say (O Muhammad) "Do deeds! Allāh will see your deeds and (so will) His Messenger and the believers. And you will be brought back to the All-Knower of the unseen and the seen. Then He will inform you of what you used to do." (At-Taubah (9) 105).