

IN THE NAME OF ALLAH THE BENEFICENT THE MERCIFUL  
THE ASSEMBLY OF MUSLIM JURISTS OF AMERICA (AMJA)

THE FOURTH ANNUAL CONFERENCE

JULY 29 – AUGUST 1, 2006  
SHERATON HOTEL – HELIOPOLIS  
CAIRO – EGYPT

**DECISIONS AND RECOMMENDATIONS**

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA) has convened its 4<sup>th</sup> Annual Conference in Cairo – Egypt, in the period July 29 – August 1, 2006, which lasted for four consecutive days and its agenda topics were discussed and debated in seven sessions. The final decisions were four, in addition to a separate decision on “Charter Schools” and a statement on the “The Current Events in the Arab Region”. The four main topics were elaborately discussed and ornately debated. They covered the following issues:

- 1- The Islamic Financial Institutions in America
- 2- Explaining the Shari’ah Rulings and Interests for the Society and the Family in Dressing the Familial Relationship between the two Spouses
- 3- Necessity and Need: Their Implications on Alleviating the Sense of Being Sinful in Involving in some Jobs, Positions, Professions and Crafts in the West
- 4- Involvement in Political Work

After reviewing and discussing the various papers of these topics, the Assembly issued the following decisions:

Topic One  
The Islamic Financial Institutions in America

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA) has convened its 4<sup>th</sup> Annual Conference in Cairo – Egypt, in the period July 29 – August 1, 2006, and after discussing the papers presented in the topic of “The Islamic Financial Institutions in America”,

AMJA Decided the Following:

First: the financing transactions that are conducted by some financial institutions which are called “Lease-To-Purchase”, (LTP), i.e. leasing ending up by purchasing to finance owning houses, cars equipment, etc;

LTP has various forms, and the one that the decision addresses is the diminishing partnership with leasing, which is based upon combining between (the company of possession, leasing and selling), and is executed by buying the property from the financier and the customer, with a promise from the financier that he would gradually sell his share to the customer on installments with successive selling contracts, and that he would lease to him the shares that are not sold until the ownership of the whole property would be shifted to the customer. This kind of transaction is legally permissible from the Shari'ah point of view, on condition that the financier share must be sold every time with a price that is agreed upon at every selling transaction, and it is not permissible to promise to buy the share with the same price when establishing the company (i.e. with the nominal value).

Some Islamic financial companies in America declare that they apply LTP policy according to this pronounced statement, but after studying some of their contracts, it was clear that the truth about the contract is a usury loan with interest, and not with a partnership, and hence their contracts are not permissible. Besides, there are violations of Shari'ah rulings, such as the following:

- 1- Agreeing that the financier sells his share to the customer with the same price when he bought it on establishing the partnership (with the nominal value).
- 2- The customer alone bears the necessary costs of the property during the partnership period, like insurance, taxes and maintenance fees.
- 3- The customer alone gets the gains and bears in some partnerships the losses that are there when the property is sold before the end of the partnership term.
- 4- Registering the partnered property in the name of the customer alone without mentioning the name of the financier as a partner, and mentioning that the revenue that the financier partner gets is an interest on the capital money.
- 5- Conditioning of leasing and selling in the partnership contract.

Second: Financing by profiting method for the one who orders buying: is legally permissible, according to the Shari'ah controlling rules which necessitates that the financier possesses and holds the property, then he could re-sell it to the customer with the cost of buying plus a profit that be agreed upon, on condition that the price would be paid in installments and without binding it with burdening the customer with delay fees. This is the prevailing case with its controlling rules in the American Islamic financial institutions, which follow this kind of financing, and their contracts have been reviewed and approved.

Third: Investment methods that are practiced by some institutions that receive the customers' money and investing them on their behalf in stock market on their behalf with stipend:

This kind of investment is legally permissible, according to the Shari'ah controlling rulings, because it is considered as a representation in return for a stipend or a commission, on condition that the following controlling rules are taken into consideration:

- 1- There should not be any dealings with shares of prohibited companies.
- 2- There should not be any dealings with bonds and preferred shares that yield usury interests.

3- There should not be any dealings with the methods of buying by margin, overtly buying, future buying, option buying, swap buying and indexation buying.

After investigating the current transactions in this regard that are practiced by some American Islamic financial institutions, it was assured from their declarations that they receive money for investment, according to the Shari'ah controlling rules, and accordingly, it is permissible to deal with these institutions as long as they abide by the aforementioned controlling rules.

Forth: Muslims living in the West have to do their best to find Islamic alternatives in the field of investment and financing, such as co-operation among themselves to establish an Islamic Bank that would have branches in many American and Western cities.

Allah is the Lord of Success and Prosperity.

Prayers and peace of Allah be upon Prophet Muhammad, his family members, companions, and followers until the Day of Judgment. And praise be to Allah the Lord of the Worlds.

## Topic Two

### Explaining the Shari'ah Rulings and Interests for the Society and the Family in Dressing the Familial Relationship Between the Two Spouses

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA) has convened its 4<sup>th</sup> Annual Conference in Cairo – Egypt, in the period July 29 – August 1, 2006, and after discussing the papers presented in the topic of: “Explaining the Shari'ah Rulings and Interests for the Society and the Family in Dressing the Familial Relationship Between the Two Spouses”,

#### AMJA Decided the Following:

After reviewing and presenting the papers and after debating and discussing them by AMJA members and experts, and taking into consideration that affairs related to the humanity of man has nothing to do with masculinity or femininity, because Islam has equalized between man and woman in this issue. AMJA emphasizes the following issues in this regard:

#### First: Woman's Inheritance:

Islam has allotted financial obligations and burdens between the two sexes on a solid basis of justice and balance. At one time, the man's share is bigger than the woman's, and at other times, the woman's is higher, and sometimes they are equal. There are some governing rules to justify these variations, such as:

- 1- Equality between man and woman in inheritance in many cases, such as: brotherhood and sisterhood of the mother's side, and the two parents in some cases when there is an inheriting branch.
- 2- Preferring woman to man in cases, like: the son supposedly with the daughter even if a son's son replaces her, then he gets the rest of blood relation, and it may be less than one sixth, and it may be nothing, like when there is a husband or a wife, and when there is only one daughter.
- 3- Woman inherits and man does not, in cases like: the grandmother from the mother's side, and the grandfather from the mother's side inherits nothing.
- 4- Preferring man to woman in cases like: sons with daughters, brothers with sisters, and sometimes the parents, and the two spouses.

Thus, inheritance is not based upon preferring one of the sexes to the other as such, but it is tied in the Islamic Shari'ah to the system of expenditure, because the man is obliged to spend on the woman as a mother, as a sister, as a daughter, or as a wife, whereas the woman is not obliged to spend on anyone.

#### Second: Woman's Testimony:

The woman's testimony before the judiciary is generally and principally accepted, and it has three cases:

- 1- Cases in which the woman's testimony is not accepted, as in executing divinely ruled punishments and retaliations, unless when there are no witnesses present except women, like when crimes happen in women's gathering places.
- 2- Cases in which the woman equally shares testimony with the man, as in matters related to money, properties, etc. However, Al-Hanafiyyah Shari'ah scholars of Fiqh accept the woman's equal share of testimony with the man in all issues, except in cases of executing divinely ruled punishments and retaliations.
- 3- Cases in which the woman alone without the man has the testimony in feminine affairs, like in cases of pregnancy, giving birth, checking the new-born infants, suckling, and women's deformities.

#### Third: Making Divorce at the Instance of the Man without the Woman:

The Islamic Shari'ah has made divorce at the instance of the man, in principle, because the man is capable to bear hardships that would face the family, and because he bears all the expenses on which the family is built, and all that would be resultant from financial burdens if divorce occurs.

Sometimes, there are special circumstances in which the husband would give up his right in divorce to his wife to be at her instance.

Also, the Islamic Shari'ah has given the woman the right to request divorce or repudiation if she finds herself incapable to continue her marital relationship with her husband, as well as her right in requesting divorce and termination of the marriage contract due to the husband's mistreatment and abusing her, and not for spending on her, or his absence from her for a year or more due to poverty, imprisonment, or expatriation, or due to a repulsive defect with the husband, or his inability to satisfy her sexually (impotency, dysfunction, etc.).

#### Fourth: Polygamy

Islam has permitted polygamy with strict controlling rules, like fairness in sharing out and sufficiency in subsistence, for needs or emergencies that would face the man or the woman, like if the wife is sick or she does not reproduce children, and the increase of women after wars, etc, or when the husband needs more sexual satisfaction, on condition that he must not hurt or cause harm to the other wife, if her marriage contract is not officially documented.

#### Fifth: Imprecation (Le'aan) \* is the man's right without the woman's:

The Islamic Shari'ah has permitted imprecation (the five cursing oaths) as a way out for the husband in order that a fetus must not be attributed to him, and also, as a mercy upon him so as not to face that crime that would affect his honor and dignity.

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\* Imprecation (Le'aan) is when a husband suspects that his wife cheats on him, but he has no proof or witnesses, and she denies that, then he goes to the Shari'ah judge to litigate between them. The judge asks the husband to call upon Allah the Almighty five times to drive him or his wife out of His mercy if he or she is lying. The method of doing this process is revealed to us by the Holy Quran as follows: "And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by God that they are solemnly telling the truth; And the fifth (oath) (should be) that they solemnly invoke the curse of God on themselves if they tell a lie. But it would avert the punishment from the wife, if she bears witness four times (with an oath) by God, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of God on herself if (her accuser) is telling the truth", (Quran, 24:6-9). [Explanation provided by the translator].

Also, the wife has been permitted by the Islamic Shari'ah to mutually imprecate with her husband so as to defend herself and to clear her honor in front of her family and society. There is no Shari'ah objection on making use of the modern medical techniques and lab tests to prove issues other than confirmation of paternal genealogy. Such techniques and the extent of its liability are to be referred to another coming AMJA conference to be discussed and debated elaborately from the Fiqh and medicine perspectives, and making use of the Islamic Fiqh Assembly of Makkah Al-Mukarrammah's decisions in this connection.

**Sixth: Woman's Rule:**

The majority of Islamic Shari'ah Fiqh doctors agree that the woman is not permitted to rule or govern the state or command the army. However, they differed upon allowing her to be in charge of lesser positions, like being a state secretary or a chief of the judiciary; the majority denies her such positions, whereas some of them permit them.

**Seventh: Prohibition of a Muslim Woman to marry a non-Muslim Man:**

All Muslim Shari'ah doctors of Fiqh agree that it is prohibited for a Muslim woman to marry a non-Muslim man, in accordance with the prohibitive absolute and clear Sharai'ah texts in this regard.

Prayers and peace of Allah be upon Prophet Muhammad, his family members, companions, and followers until the Day of Judgment. And praise be to Allah the Lord of the Worlds.

### Topic Three

#### Necessity and Need: Their Implications on Alleviating the Sense of Being Sinful in Involving in some Jobs, Positions, Professions and Crafts in the West

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA) has convened its 4<sup>th</sup> Annual Conference in Cairo – Egypt, in the period July 29 – August 1, 2006, and after discussing the papers presented in the topic of “Necessity and Need: Their Implications on Alleviating the Sense of Being Sinful in Involving in some Jobs, Positions, Professions and Crafts in the West”,

AMJA Decided the Following:

First: Necessity:

Necessity is the matter that without which death or incurable disease or disability to do obligations and duties would result. If necessity is realized with its legal controlling rules, then it would be permissible for the impelled person to make use of the prohibited matter, and the sin or guilt of surpassing Allah’s dues and duties is dropped from him/her, but necessity does not drop people’s dues or rights.

There are certain conditions that must be met to make necessity permissible, such as:

- 1- The harm in doing the prohibited thing must be less than of the necessity case.
- 2- The degree or amount of what would be allowed or permitted to do so, must be tied only to that degree of fending off the necessity, i.e. the physician must not look onto the private parts of the sick person except the necessary part(s) that would be treated. For this reason, the Shari’ah doctors of Fiqh put the rule which says that: “What is being permitted for necessity is restricted or limited only to its estimate”.
- 3- That the impelled person must not have the legal means to fend off his necessity.
- 4- That the time of permissibility must be tied to the stay of the necessity or the need; for what has been permitted for an excuse, is terminated by its elimination, and if the prohibitive matter is eliminated, then the prohibition becomes up there.
- 5- That necessity must be an actual fact, and not imaginary or expected; for what many people claim these days that it is necessary to wear gold rings, for example, or the necessity of dealing in usury, or the economic necessity of allowing to sell wines and open places of fun for the tourists, etc., all such claims are not actual necessities, and prohibition must not be violated for doing such acts, whether in Muslim countries or elsewhere.

Second: Need:

Need is the matter without which difficulty and hardship result, but it does not reach the limit of necessity. Need does not make the prohibited matter permissible in itself, but it makes the prohibited matter permissible because of an external incident if the following conditions are met:

- 1- That the difficulty, which drives a person to violate the general genuine Shari’ah ruling, must reach the degree of abnormal hardship.
- 2- That the need must be definite and appointed, and normally that there is no other legal way to realize the intended need except by that way.

- 3- That the consideration of the need must be seen against the condition of the average person in normal condition, and without any consideration to his individual case, because legality must be general and objective.
- 4- That the people of judgment must testify that it is really a need, because the Mufti (the judge who gives Islamic rulings) must not consider it in the light of a needy interest, and builds upon it rulings that are not of its exemplary kind.

Third: The Fiqh of comparisons and preference depends upon the rule which says: “What is prohibited for purposes, could not be made permissible except by necessity; and what is prohibited for excuses, could be made permissible for the prevailing interest”; and rulings must not be made general, rather, each case must be investigated separately, according to the differences of time, place, and the circumstances that are related to the question and the questioner.

AMJA recommends that applied questions should be referred to AMJA Fatwa Committee and to other Fatwa assemblies to have a full vision for each case separately, in the light of its own circumstances and conditions, and then the Committee suggests the solution according to the Shari’ah set rulings, and finally, the cases are referred to AMJA Council in its coming meeting.

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## Topic Four Political Participation

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA) has convened its 4<sup>th</sup> Annual Conference in Cairo – Egypt, in the period July 29 – August 1, 2006, and after discussing the papers presented in the topic of “Political Participation”,

AMJA Decided the Following:

First: Meaning of “Political Participation” and the ruling about it:

- Political participation is to take part in political decision making through political parties, parliamentary and municipality councils, and other constitutional and political bodies, whether by nomination or election. This would involve some kinds of contemporary alliances with other political powers; or by using available mechanisms, like demonstrations, riots, strike, civil disobedience, and forming lobby groups, etc.
- Expatriate Muslims’ participation in political work may involve some benefits mixed along with some corruptions or evils, as follows:
  - The beneficial interests are: The positive contribution in solving the problems of such countries from the Islamic perspective, and presenting the correct image about Islam as the true religion, and about Muslims as good citizens who make significant contributions in the realm of civilizations in all aspects of life, and maintaining expatriate Muslims’ rights, and supporting their just and fair causes within their home lands.
  - The corruptions or evils are: These meetings would involve witnessing falsehoods and some Shari’ah violations, and that would lead to dissections among Muslim groups and the eruption of temptations and disruptions or to compelling them to give up some concessions without any likely returns.
- Political work is one of the main subjects of Shari’ah policy whose rulings evolve around comparing or balancing between interests (benefits) and harms (corruptions), and it becomes legal if it has the good intent and the interests or benefits are explicit, and is not opposed by a likely corruption. It could reach the degree of being obligatory, if it is made clear that it is a means to realize some preferred interests or fending off some explicit corruptions. Also, it could be prohibited if its corruption is aggravated, and its harms outweigh its benefits. And if it leads to a corruption in faith or belief, then the Fatwa about it changes according to the changeability of time, place, and conditions, and this is because of the changeability of benefits and interests.
- It is OK for expatriate Muslims to hold political positions that would hopefully enable them to realize some good common benefits and interests and reduce as much as possible harms and corruptions, and setting up justice always and permanently, so that they would be advocates for the oppressed, and not deputies for the oppressors to assist them in executing their injustices.

- It is also permissible to support a non-Muslim candidate for such positions over another if his performance would be beneficial and involves goodness, and as long as it keeps pace with the Shari'ah policy rules.

Second: Controlling rules for Involvement in Political Work:

The basis is that political work must be tied to the Shari'ah rulings, and be controlled under its authority, and that it should be controlled by a host of Shari'ah doctors of Fiqh and experts. In order that the political participation is legal, fruitful and effective, there are some religious, moral and practical controlling rules. Also, permitting the Muslim woman to take part in such activities, that must be considered, like the following:

- Religious Controls: Political work must not involve supporting a rule that does not agree with What Allah the Almighty has not revealed, or that it involves strengthening others against Muslims or to take them as their superiors.
- Moral Controls: Those who are involved in political work must not lie, cheat, deceive or deliberately harm others.
- Practical Controls: Political work must not be a means to be insolent against others, or that distracts people from looking after their educational and Da'wah works, and that the Muslim's word must be unified to stand for their political demands, and they must agree upon an authority that represents Muslims and defends their rights.
- The Muslim woman, in the limits of the rules of the veil (Hejaab) and chastity, has the right to participate in Da'wah and social welfare works, like voting in the political process, in accordance with her nature, instinct, and circumstances, once she is qualified in such works in the light of the Muslim community's interest, and once the means and mechanisms that would prevent the corruptions or evils of such participation are guaranteed.

Third: Demonstrations and their Legality:

- Demonstrating is an announcement of an opinion, or an expression of feelings in the way of common marching. It is a modern means of expressing opinions and directing the political decisions in democratic societies.
- Demonstrating is protected in the Western societies by law, and its practice is organized by laws so as not to be transformed into a means of chaos or sabotaging of properties and public utilities.
- It could be a means in the way it is organized in the Western societies, of realizing social welfare and public goodness, especially if it is used in this context, with taking into consideration the necessity of reducing its harms as much as possible.

Fourth: Boycotting as a means of fending off aggression and preventing assailing:

- Boycotting is to stop having dealings or transactions with others, economically or socially, according to a predetermined communal system. It is a means of rationed resistance in our contemporary world.
- If the basis is the freedom of dealing in buying and selling in good items, whatever with whom the dealings are, whether they are kind or wicked, Muslims or non-Muslims, boycotting becomes a legal means of resistance, when it is used as a means of fending off an aggression or preventing assailing, or even it

becomes an inevitable obligation in this regard, as we have already stated earlier that means in the Shari'ah are treated as ends in permissibility and in prohibition.

- A decision should be taken about boycotting by the Shari'ah doctors of Fiqh and people of experience, so as to be effective and realizing its objectives.

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**A Decision on Charter Schools**

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA), in its 4<sup>th</sup> Annual Conference, which is convened in Cairo – Egypt, in the period July 29 – August 1, 2006, issues the following decision on “Charter Schools”:

- 1- Full-time Islamic School is the best choice which we would recommend to the American Muslims, because it provides their children with sound Islamic environment, and with the necessary knowledge about the Holy Quran and the Sunnah of their Prophet Muhammad, prayers and peace of Allah be upon him.
- 2- Muslim schools which have collected money for this basis are Islamic Waqfs (endowment) which means that they could never be transformed into other schools that do not realize the objective for which they was founded. And if this happens, it is considered as a violation of the conditions set by the endower, which must be respected according to the Shari’ah rulings, because Muslims are taken accountable for the conditions they set, and because the conditions set by the endower has the same force as the Shari’ah text.
- 3- In case it is not possible to get full-time Islamic schools, having schools under supervision of the Muslim community are far better than public schools, because they can control it and they provide Islamic studies to the afternoon classes, but it is not permissible to transform the full-time Islamic schools into this kind of schools. However, if there is a fund short with the full-time Islamic schools, we would recommend the Muslim community to cover that short by the subscriptions and donations of the rich Muslim people and by charity funds, because maintaining such schools is maintaining the future of Islam and Muslims in the United States. Spending from the Zakat (Islamic taxation system) is legally permissible, because it comes under the category of the outlet (for Allah’s path), which is stated in the Verse of Zakat outlets.
- 4- An endowment inspector must be appointed, who has general knowledge of endowment principals, and whose job is to maintain endowments from being misspent or misdirected and he has to follow up the applications of the endower’s set conditions and rules.

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### **A Statement on the Current Events in the Arab Region**

Praise be to Allah, prayers and peace be upon Prophet Muhammad, his family members, companions and followers until the Day of Judgment.

The Assembly of Muslim Jurists in America (AMJA), in its 4<sup>th</sup> Annual Conference, which is convened in Cairo – Egypt, in the period July 29 – August 1, 2006, issues the following statement on the occasion of the current events in the Arab Region:

- 1- The Assembly of Muslim Jurists of America (AMJA) strongly condemns the barbaric aggressions which the Israeli military machinery launches against the Palestinian and the Lebanese people, that resulted in killing innocent children, women and aged men, and in destroying their properties, possessions, and devastating the infrastructure in these two countries, especially the Qana massacre which targeted innocent children who have no connection with the war.
- 2- The Assembly demands the heads of the Arab and Islamic countries to quickly interfere to stop that savage aggression.
- 3- Also, the Assembly demands both the Islamic Conference Organization and the Arab League to take the necessary measures to stop these massacres against these two peoples.
- 4- The Assembly demands the civil and human rights organizations to condemn the inhumane crimes against these two peoples.
- 5- Also, the Assembly demands the Western media to be objective and neutral in handling the news related to these tragic events.

Finally, AMJA members and experts pray to Allah the Almighty to have mercy on the martyrs and the beloved ones, and to have cure and remedy on the injured and wounded people, and to make the stricken ones patient and perseverant, and to make a way out for the oppressed and coerced people – Amen!

Praise be to Allah the Lord of all creatures.