



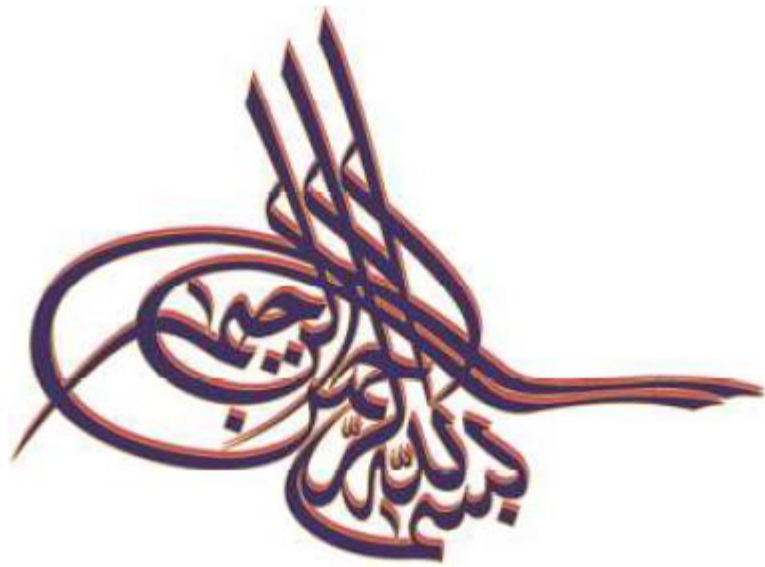
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Life Insurance and the Extent to which it is Permitted in a Case of Need

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"الأراء الفقهية في هذا البحث تعبر عن رأي الباحث و ليس بالضرورة عن رأي أمجا"

Fiqh opinions in this research is solely those of its author and do not represent AMJA



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Abstract

Life insurance is a specific type of insurance contract. A proper fiqh ruling requires that one analyzes how insurance works in general and how life insurance works specifically. After that analysis, if the conclusion is that life insurance is forbidden, one may then consider whether necessity or need may overrule its prohibition. This requires a proper understanding of the Islamic principles of necessity (dharoorah) and need (haajah). One then needs to analyze the different circumstances in which one may be in "need" of life insurance. These were the steps taken in this paper to try to render the proper conclusion concerning life insurance and the extent to which it is permitted in a case of need. And Allah alone knows best.

In the name of Allah, the Most Merciful, the Grantor of Mercy

Introduction: Fear of the Unknown

In the name of Allah, the Ever Compassionate, the Ever Merciful. All praises are to Allah alone. May the peace and blessings of Allah be upon his Noble Prophet Muhammad.

There are many qualities that all or most humans share, perhaps being part of their natural disposition. Fear of the unknown concerning one's economic well-being is one such great fear; for many, it is perhaps the greatest fear. Attempts to overcome such fears can lead to plausibly irrational behavior,¹ such as continually buying lottery tickets even when one can hardly afford to feed one's family.²

It is also natural for people to want to take care economically of themselves and also their families, even beyond their deaths. Such has been a natural desire for years, long before the presence of modern-day insurance. In fact, there is definite Islamic justification for this goal. For example, al-Bukhari and Muslim record on the authority of Saad ibn Abi Waqqaas that the Prophet (peace and blessings of Allah be upon him) stated,

إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّمُونَ النَّاسَ

“It is better for you to leave your heirs well-off than to have them dependent, begging from the people.”

1 The question of whether gambling is “rational economic behavior” has entertained secular economists for some time now. One of the earliest works on this question is Milton Friedman and L. J. Savage, “The Utility Analysis of Choices Involving Risk,” *Journal of Political Economy*, Vol. 56, No. 4 (Aug., 1948). Of course, depending on the model (needs and wants, present versus future discounting and expected outcome), almost any action can be made to seem “economically rational.”

2 Purchasing lottery tickets has been shown to be related to the level of dissatisfaction with one's current income. However, that is probably tied into future well-being as well. This drive to improve one's economic state leads to the “exploitation” of the poor in many ways. Brunk (p. 347) notes that “[I]ndividuals who desire to increase their socioeconomic level dramatically will take ‘unfair’ bets because by so doing they maximize their expected utility.” [Gregory Brunk, “A Test of the Friedman-Savage Gambling Model,” *The Quarterly Journal of Economics*, Vol. 96, No. 2 (May, 1981).] Sadly, it has been established that those who can perhaps least afford it are most inclined to try to improve their lot through lotteries. Those who purchase lottery ticket “are largely poor, largely minorities, and often addicts. The lottery preys on these people. Nationwide, people who make less than \$10,000 spend on average \$597 on lottery tickets — about 6 percent of their income. One in five Americans believe the lottery is the only way they can accumulate a significant amount of savings.” (<https://www.vox.com/identities/2016/1/13/10763268/lottery-poor-prey>.) A study found that “buying lottery tickets in fact exacerbates the very poverty that purchasers are hoping to escape.” (https://www.science20.com/news_releases/psychology_of_poverty_why_poor_people_buy_lottery_tickets.) Yet amazingly, “[t]he overwhelming majority of lottery winners don't believe they are better off for having won. One study finds that recent lottery winners have lower levels of happiness than do those who have recently become quadriplegic. (<https://www.cnn.com/2013/12/18/opinion/lottery-poor-just-opinion/index.html>.) Finally, in her Senior's Honor Thesis, Oster argues that the lotteries are still providing “utility,” an economist's term for some type of satisfaction, implying that they are not as exploitative as some suggest. She writes in her abstract, “This result [of her study] suggests that state-run lotteries are actually providing utility to consumers and concerns about exploitation are therefore less important.” (http://www.dartmouth.edu/~chance/chance_news/for_chance_news/ChanceNews13.02/OsterThesis.pdf.) However, the arguments found in Blalock, et al., demonstrate that it is more about desperation and not entertainment or some form of “utility” that drive the poor to buy lottery tickets. [Garrick Blalock, David R. Just and Daniel H. Simon, “Hitting the Jackpot or Hitting the Skids: Entertainment, Poverty, and the Demand for State Lotteries,” *American Journal of Economics and Sociology*, Vol. 66, No. 3 (July, 2007).]

The above realities could drive a Muslim to do an action that falls outside of the scope of the Shareeah. However, Muslims are not excused in the name of this temptation. Instead, Muslims must have good expectations of Allah's mercy and kindness while putting their trust and reliance in Allah who is the One who provides. At the same time, though, it is part of the completeness of one's faith to use every permissible means available to protect oneself and to support oneself and one's family. A Muslim, for example, puts on his seat belt because a seat belt is an established "worldly cause" (*sabab*) that could protect him from unforeseen harm. Such an act on the Muslim's part is not only consistent with his belief in putting his trust and reliance in Allah alone, it is consistent with the example of the Prophet Muhammad (peace and blessings of Allah be upon him) who used worldly means to protect himself and the Muslim community from harm, such as improving on the military skill of archery.

This is where life insurance comes into the picture. Life insurance has an attraction similar to the lottery. One pays some amount now and later one is "rewarded" with a payment that will take care of one's future needs (before one's death) or one's family's future needs (after one's death). Life insurance thus brings "peace of mind" that things will be alright in that uncertain world of the future. If life insurance is not permissible from a Shareeah perspective, resorting to it could be an example of resorting to forbidden means because one's fears. However, if life insurance is permissible, then, it could be argued, it is a reasonable way by which a Muslim is able to care for his family, either during or after his lifetime.

The Shareeah also takes into consideration special circumstances, such as "necessity" or "need." Thus, even if the default ruling concerning insurance were that it is forbidden, that does not absolutely close the door to it. (Of course, if the default ruling concerning life insurance is permissibility, then it will also be permissible in the face of "need" as well.)

In the light of the attractiveness of life insurance, especially for Muslims in the diaspora, this paper will discuss the definition and nature of insurance, the definition and types of life insurance in particular, the Shareeah ruling concerning insurance as a whole, the Shareeah ruling concerning life insurance, the nature of "need" (*haajah*) from a Shareeah perspective and "need" and its bearing on the ruling of life insurance.

The Definition and Nature of Insurance

Miller and Jentz define insurance as, "A contract in which, for a stipulated consideration, one party agrees to compensate the other for loss on a specific subject by a specified peril."³ Vaughan and Vaughan explore the matter differently and define insurance from both an individual's perspective and society's perspective. They write, "From an individual point of view, insurance is an economic device whereby the individual substitutes a small certain cost (the premium) for a large uncertain financial loss (the contingency insured against) that would exist if it were not for the insurance."⁴

What is clear from these definitions is that one party is clearly paying a value (the policy premium) but it is not clear if that party will receive any monetary countervalue. Arguments can be made that the policyholder, even if he does not receive any monetary countervalue, does receive, in the words of Vaughan and Vaughan, "something for the premium: the promise of indemnification if a loss had occurred."⁵ Such a contract is consistent with Western contract law but may not meet the standards of the stricter Islamic contract laws, as shall be noted later.

Vaughan and Vaughan offer a second definition of insurance but this time from a social perspective. They write, "We may now formulate a second definition of insurance: From the social point of view, insurance is an economic device for reducing and eliminating risk through the process of combining a sufficient number of homogeneous exposures into a group to make the losses predictable for the group as a whole."⁶ This concept needs to be commented upon later as well. Fiqh discussion are often very "micro" oriented and fail to take into consideration the "bigger picture," which could be very relevant to the final ruling on a matter.

³ Roger Miller and Gaylord Jentz, *Business Law Today* (Mason, OH: South-Western Cengage Learning, 2011), p. 925.

⁴ Emmet J. Vaughan and Therese M. Vaughan, *Fundamentals of Risk and Insurance* (Danvers, MA: John Wiley & Sons, 2014), p. 35.

⁵ *Ibid.*, p. 35.

⁶ *Ibid.*, p. 40.

The Fundamental Principles of the Insurance Industry

The insurance industry provides products that are different from many other industries. Many industries will know their costs before determining their final price. In addition, the actual product—what exactly the purchaser is getting in return—is known to the consumer at the time of purchase. In the case of the insurance industry, the purchaser pays first and then, in reality, does not know what he will get in return from the insurance company.

The unique nature of the insurance industry has led to the development of six fundamental principles that are standards for the insurance industry. Although not all of these principles apply to life insurance, understanding these principles will give one a better understanding of the nature of the industry as a whole. These principles are as follows:

(1) **Insurable Interest:** This means that there must be an acceptable relationship between the one seeking insurance and the matter that is being insured. For example, if a person is the owner of an object, he would have reason to ensure that object, in order to replace it if it were destroyed. Similarly, if someone borrows something, he would have an interest in insuring it so that if it is destroyed while under his control, he will be able to compensate the owner. As such, it is not permissible for someone to buy a life insurance on someone concerning whom he has no “insurable interest.” Thus, one can buy an insurance policy on one’s spouse but not on distant relatives, for example. It is this principle that allows the law to distinguish between an acceptable act of insurance and a mere wager. The policyholder must be at some risk of loss concerning the item or person that he is trying to insure. If there is no insurable interest, then, the contract is null and void.

(2) **Good Faith (uberrima fides):** This principle means that both the buyer and seller of insurance must be completely honest and open with the other party. In other words, there is no concept of caveat emptor (buyer beware) when it comes to insurance. If it were found that one of the parties did not disclose all of the relevant information pertaining to an object being insured (what are known as “material facts”), the other party will not be held liable to uphold the insurance contract. All relevant information must be volunteered in an accurate manner. For the most part, this burden is more on the purchaser. A person buying a life insurance policy while hiding from the insurance company that he has cancer would be an obvious example of failing to live up to this principle.

(3) **Principle of Indemnity:** The basic idea here is that the goal of the insurance policy will be to make the insured “whole again” by compensating him for the exact loss that he has endured. The goal is to return the insured to his state immediately before his loss. Thus, for example, auto insurance commonly will replace the value of a car but not provide the

policyholder a brand new car regardless of the state of the car that was actually insured. This principle is not truly relevant to life insurance as it is unthinkable to determine the exact value of a person's life or to replace that life.

(4) Subrogation: This principle is only related to cases of indemnity, and is therefore not truly relevant to life insurance policies. It basically refers to the concept of the insurer taking over the rights of the insured. It is a principle to make sure that the insured does not get more than he rightfully deserves by, for example, having more than one party repeatedly compensate him for one loss.

(5) Contribution: This principle is also related to cases of indemnity and not relevant to life insurance. If an object is insured by more than one insurer, each insurer has the right to demand that the other insurers bear the proper proportion of the payout for the insured item.

(6) Proximate Cause (*causa proxima*): In essence, this is related to finding the dominant cause that led to the destruction, damage or demise of the insured object. It need not be a single event but could actually be a chain of events. This is an important concept as the insurance contract should clearly specify under what causes the company will payout. For example—and for obvious reasons—life insurance policies will not cover suicide in the first years of a policy. If that is determined to be the proximate cause of a person's death, the insured's beneficiary will not receive the death benefits.

Types of Life Insurance and Related Issues

Life insurance is a specific type of insurance. As such, it meets the standard definition of insurance given above of paying for something at the present to possibly cover some future, unknown event. At the same time, though, life insurance is definitely a unique type of insurance. In fact, there are many types of policies to choose from, with the main two categories referred to as "term" or "permanent." If it is concluded that insurance is permissible, then each one of these has to be investigated separately to see if they have a component which is unacceptable, as the nuances do differ quite a bit. If it is concluded that insurance is impermissible, then most likely that ruling would cover all of these varieties. Even in that case, the question of what can be resorted to in the name of necessity or need may be affected by the different types of policies available.

The different types of policies available include the following:⁷

Term Life Insurance

Term life insurance is perhaps the most basic and common form of life insurance. With this type of life insurance, the individual chooses the length of time for the policy, such as ten, twenty, thirty or even more years. Once the term period comes to an end and the policyholder is still alive, the policyholder will receive nothing. Only if the policyholder dies during the term will he or she receive any benefits. There is no cash value build up with this type of policy, so if the policyholder gives up his policy, he will get no cash returned to him.⁸ This type of policy is often bought when a person has a specific goal in mind for which the payout would be used. For example, if someone has a twenty-year mortgage, he may get a twenty-year term life insurance policy so that if he dies during that period, his spouse, for example, will still have the funds to pay off the mortgage and will not risk losing the house due to his death.

This type of policy is generally good business for the life insurance company, as "[less than 1 percent of all term life insurance policies ever pay death benefit claims. It's not that insurers are scamming people or refusing to pay, it's that most people outlive their term policies.](#)"⁹

⁷ For more details, one may consult Jack Hungelmann, *Insurance for Dummies* (Hoboken, NJ: Wiley Publishing Inc., 2009), pp. 299-314; <https://www.goodfinancialcents.com/types-of-life-insurance-policies-explained/>. Note that in the United States there are various tax benefits related to life insurance policies as well as tax ramifications for various life insurance strategies. This author does not feel that those realities will affect the conclusion concerning the permissibility or impermissibility of life insurance. As such, they will be ignored. Additionally, numerous considerations are looked into to determine what type of policy is "best" for any particular individual. Again, that discussion is, for the most part, irrelevant here.

⁸ There can be exceptions to this, such as when the policy has a premium rider.

⁹ <https://www.bestlifequote.com/blog/cheap-term-life-insurance/>

One can also purchase term life insurance known as, “Decreasing and Increasing Term Life Insurance,” where the death benefit over time goes down or up respectively, although the premium usually remains the same.

Permanent Life Insurance

Permanent life insurance is not restricted to a certain time period. As long as the premium is paid, this type of life insurance will continue until the person’s death. Permanent life insurance policies have cash value components to them, that shall be discussed later.

There are different varieties of permanent life insurance policies, as explained below.

Whole Life Insurance Coverage

In the case of whole life insurance, the premium is completely fixed. None of the factors, such as mortality costs or the insurance company’s expenses, that would otherwise affect a premium will have any effect with such a coverage. The insurance company bears all of those risks. A whole life policy also pays a minimal but guaranteed rate of return, “usually from 2½ percent to 4 percent for life—so guaranteed, in fact, that the policy contains a page showing what the cash value will be for each year of the future.”¹⁰

Some whole life policies also pay out dividends. Those will be commented upon later.

Universal Life Insurance Coverage

Universal Life Insurance Coverage is another type of permanent coverage but one which provides more flexibility to the policyholder. It includes both the death benefits and the cash value component. The policyholder has some control over how much of his or her premium will go to the death benefits and how much will go to the cash value component.

This form was mostly developed in response to the increased interest rates and inflation in the 1980s. Due to their low fixed guaranteed rates of return, the insurance companies were losing customers. This policy introduced flexible rather than fixed interest rates on the cash value component.

Essentially, the flexibility has now shifted the risk to the consumer from the insurance company. With greater risk comes greater possible returns (or losses). There are, of course, some legal limits as well as a guaranteed minimum interest on the cash value component. Again, due to the flexibility, there are scenarios where the premium will have to be increased, possibly forcing the consumer to cancel the policy.¹¹

¹⁰ Hungelmann, p. 307.

¹¹ Hungelmann, p. 309.

Variable Life Insurance Coverage

This type of life insurance coverage affords the policyholder more investment options with respect to their cash value component. In fact, with this type of insurance, the policyholder can opt to have the cash value component invested in the stock market, with all the risks and potential for profits or losses that that entails. The possible down side is that any losses in the stock market may lead to increased premiums to keep the policy going. The norm is that the policyholder will not be investing the money directly into the stock market but, instead, the money will be put into a pool.

Variable Universal Life Insurance Coverage

This is similar to the above but allows the policyholder to invest in a basket of stock, bond and mutual funds.

Survivorship Life Insurance Coverage

Survivorship policies refers to those policies in which more than one person is covered. These can be designed in such a way that the payout will occur when the first person dies. They could also be designed such that the payout occurs after all the parties covered dies.

This type of coverage could be either term or permanent. People opt for them when, for example, the joint coverage is cheaper than two individual coverages.

Final Expense Life Insurance Coverage

This type of insurance is geared to meeting the costs that one faces due to the death of, for example, a relative. The amount of coverage is relatively small, such as ten to twenty thousand. This coverage could be either term or permanent.

Cash Value Component¹²

As noted above, all permanent life insurance policies contain a cash value component.¹³ Essentially, the premium payments are allocated among actual insurance costs, the insurance company's operating costs and profits, and, then, the remainder goes toward the policy's cash value component. The premiums the policyholder pays are usually fixed. However, the mortality

¹² Insurance policies having this component are sometimes referred to as "cash value life insurance." They are also sometimes referred to as "7702 Life Insurance," which simply means that they are compliant with Section 7702 of the Internal Revenue Code. Apparently, these are sometimes sold as "retirement plans," like a 401K. In reality, they are just a type of life insurance. See <https://blog.wealthfront.com/7702-retirement-plan/>.

¹³ Hungelmann, p. 305. For more details, see "The Power of Cash Value Life Insurance," <https://www.riversource.com/content/preview/291480.PDF>. Also see <https://www.valuepenguin.com/life-insurance/cash-value-life-insurance>.

cost, related to one's odds of dying in any year of his life, increases over time. Hence, in order to smooth out the payments, the policyholder actually overpays while younger and then underpays while older. The overpayments are actually set aside in a reserve fund and are called the cash value component. Due to company's costs, the cash value component will be relatively small in the first years of the policy. Additionally, though, the gains on these funds are not taxed in the United States unless they are withdrawn, allowing for greater growth. Some policies, over time, offer a minimum guaranteed rate of return on the cash value component.

Note that,

As the cash value of your policy grows, the amount that the insurance company needs to pay out as a pure death benefit decreases. That's because part of the policy payout upon your death comes from the cash value of the policy. The larger the cash value, the greater the percentage of the policy that can come from the cash value. In effect, to avoid increasing premiums as you get older, you're setting aside funds now to make up the difference.¹⁴

In other words, the beneficiary never receives the cash value component. It is kept by the insurer. It is equivalent to the amount that the policyholder would receive if he were to cancel or surrender his account.

At the same time, though, the cash value behaves like an investment, growing in different ways depending on the nature of the policy. The whole life policies have a fixed interest rate payment on the cash value. This rate is determined by the insurer. It is typically intended to reach the size of the death benefits by the expected time of the maturity of the policy. With universal life policies, the return is based on market interest rates.

In what is known as indexed universal life, the rate of return is tied to an established index, such as the S&P 500, with a guaranteed floor. With variable universal life, the policyholder chooses various investment strategies, similar to mutual funds. These range, with respect to risk, from conservative to aggressive. As is the norm, the greater the risk the policyholder is willing to take, the greater the potential for greater growth as well as greater losses. Thus, with variable universal life, one's principle is not protected from negative market performance. In other words, it is truly all put at risk.

The policyholder can actually have access to this account. In other words, the cash can be borrowed or withdrawn for any reason, such as paying off a debt or leisure activities. If a person wishes to cash in his life insurance policy, he is free to do so, after paying some fees. When borrowing from the cash value component, the policyholder will have to pay back the

¹⁴ <http://alexandriacapital.com/how-does-cash-value-in-a-life-insurance-policy-really-work/>

money into his account but with an interest payment. Any withdrawal or loan would mean a corresponding loss in death benefits. A person could even, for example, tap into the cash component to pay his premium. One has to be careful when borrowing this money, as when “the size of the loan exceeds your policy’s cash value, the life insurance policy will lapse, meaning you lose your coverage.”¹⁵

As stated earlier, if a person cancels his permanent life insurance policy, he is entitled to a portion of the overpayments he made, minus costs such as underwriting, medical exams, and agent commissions. If a permanent life insurance policy is cancelled for any reason, the policyholder has three options with respect to the cash value component. One option is to receive the amount as cash. A second option is to apply that money to a prepaid permanent insurance for life with reduced death benefits. A third option is to receive term life insurance for a specific time with the original death benefits.¹⁶

Individual Life Annuities

In general, one thinks of investing, for example in the stock market, as very different than buying an insurance policy. One is putting one’s money at risk in order for it to grow while the other is a “sure thing.” However, another product that life insurance companies offer is annuities, which could be termed “longevity insurance,” and which lies somewhere between investment and life insurance.

Since the 1980s, annuities have become a very popular product. In fact, currently, annuities considerations make up over half of the premium income of life insurance companies.¹⁷ With the change in demographics, it is expected that this product may become more and more popular.¹⁸ Creighton, et al, explain,

Today, however, with life expectancy over 80 years in many countries, we can be reasonably confident that we will still be living tomorrow. Retirements are longer as well: a working-class retirement of thirty years would have seemed fanciful in the late 19th century, yet it is not uncommon now. The risk of outliving one’s resources during retirement has become very real; and as longevity continues to improve, more likely. Meanwhile, governments have been exacerbating this problem by withdrawing or

15 <https://www.valuepenguin.com/life-insurance/cash-value-life-insurance>

16 Hungelmann, p. 308.

17 <https://www.investopedia.com/articles/personal-finance/102914/life-insurers-making-money-numbers-game.asp>.

18 See “NCPA: Baby Boom Retirement Could Cause Annuity Market Explosion,”

http://www.insurancenewsnet.com/article.asp?a=top_news&id=30974. Besides demographic changes, recent financial crises and the fallout from them also contribute to the growth of annuities. Cf., Nadine Gatzert and Hato Schmeiser, “New Life Insurance Financial Products,” in Georges Dionne, Editor, *Handbook of Insurance* (New York: Springer Science+Business Media, 2013), p. 1064.

curtailing government-sponsored retirement programs, and transferring longevity risk to individuals.¹⁹

The key feature of this product is that the payments are made during the life of the purchaser (also known as the annuitant). The purchaser pays either a lump sum or a series of payments over time and then, after the payments are completed, the purchaser begins to receive a stream of income that will continue until he dies (or for the term of a fixed-term annuity). (If there are other beneficiaries, the payment stream could possibly continue after his death.) Obviously, no one knows when they are going to die, so it is impossible to beforehand determine for how long the recipient will be receiving payments. Annuities offer a string of income throughout the remainder of one's life. This can be alluring to elderly people who have not bought insurance earlier. For example, a 70-year-old man could pay \$100,000 and then receive \$635 per month for the rest of his life. In general, women have to pay more to get the same monthly payment because their life expectancy is higher than that of men.²⁰

Note that annuities are not the same as hiring a stock broker or investment manager. Annuities are fixed contracts between the purchaser and the insurance company.

As with financial products in general, there are many varieties from which to choose. Fixed annuities earn interest at a fixed rate at the time of purchase. Variable annuities will have their rates tied to market trends which, obviously, could fluctuate up or down.

Finally, Maranjian notes,

One of the biggest drawbacks with an annuity is that once you buy it, you give up the principal for good (though with many annuities, you may be able to get some or much of your money back by paying a hefty "surrender" fee). It will no longer be growing in stocks and cannot easily be liquidated to meet some urgent need. It won't be left to be passed down to your heirs, either -- though some annuities allow beneficiaries to receive some payments if you should pass on before you've received a certain minimum amount (and, naturally, this feature comes at a price).²¹

Dividends

Some companies offer dividends for whole life insurance policyholders. Although dividends are not guaranteed, most companies who offer them have been regular in doing so. Whole life insurance policies that pay dividends are also known as "participating whole life

¹⁹ Adam Creighton, Henry Jin, John Piggott, and Emiliano A. Valdez, "Longevity Insurance: A Missing Market,"

http://www.docs.fce.unsw.edu.au/actuarial/research/papers/2006/Longevity%20Insurance%20-%20A%20Missing%20Market_28Aug_JP_Final.pdf

²⁰ Cf., <https://www.fool.com/investing/general/2015/11/08/how-does-an-annuity-work.aspx>

²¹ <https://www.fool.com/investing/general/2015/11/08/how-does-an-annuity-work.aspx>

insurance” because the policyholder actually participates in the company’s profits. In essence, these are actually returned policy payments; that is why they are tax free.

Mutual insurance companies are “owned” by their policyholders. Hence, they sometimes pay back some of their profits to policyholders in the forms of dividends.

The amount of the dividend will be determined by the cash value. The greater the cash value, the greater dividend.

Dividends can be redeposited to earn interest, can be received as cash, can be applied as payment toward the premium or can be used to purchase “paid-up additions” that increase the death benefits.

How Insurance Companies Make Money and Pay Claims

At first glance, it seems reasonable to expect that life insurance companies would be losing money. After all, they sometimes pay out hundreds of thousands of dollars after receiving only a year or two of premiums worth a thousand dollars. That definitely happens. However, for the most part that does not happen. The insurance companies have done an exemplary job of trying to determine what probably will happen and how they can cover their future costs when those they cover do die.

Insurance companies deal with future events and future possible payouts. Instead of relying on actual costs to price their products, they need to use probability and forecasts to try to predict what would be a price (the premium) to charge their customers to cover their own costs (both overhead and payouts). The theory of probability's "law of large numbers" is of extreme importance here.²² This theorem allows the insurance industry to attempt to predict mortality rates. Based on this, they can determine what their expected payouts are going to be. In other words,

Insurance relies on the law of large numbers to minimize the speculative element and reduce volatile fluctuations in year-to-year losses. The greater the number of exposures (lives insured) to a peril (cause of loss/death), the less the observed loss experience (actual results) will deviate from expected loss experience (probabilities). Uncertainty diminishes and predictability increases as the number of exposure units increases. It would be a gamble to insure one life, but insuring 500,000 similar persons will result in death rates that will vary little from the expected.²³

Underwriting is the process by which insurance companies determine what is an appropriate premium to cover their costs and payouts as well as make them a normal profit. Of course, there is competition in the industry, so they cannot simply gauge the consumer. When an insurance company is able to rake in more money through premiums than what they pay out in benefits (and other costs), it makes what is known as underwriting profits. If they suffer underwriting losses, they will have to turn to other sources of income, other than their premiums, to meet their costs.²⁴

²² The law of large numbers is related to probability and the law of averages. There is a weak law and strong law of numbers with the weak law allowing for the possibility of the result to fall outside of a margin with the strong law disallowing that. The theorem basically states that the "average" of the results of a large trial should be "close" to some expected value, with it getting closer and closer as the trial size gets larger and larger. The law or theorem has applications in a number of fields besides insurance. Cf., David Stirzaker, *Elementary Probability* (Cambridge, England: Cambridge University Press, 2003), pp. 187-199.

²³ <http://www2.theamericancollege.edu/assets/pdfs/fa257-class1.pdf>, p. 1.5.

²⁴ Probability is good and underwriting can be most accurate when the past, present and future are stable. Climate change has undoubtedly unsettled things and has possibly put the entire industry at some risk. Note, "One major reason why insurance providers don't earn

Investment Income

At any given time, even with the best underwriting, premiums will probably not equal payouts plus costs. Even over longer periods of time, there may be underwriting losses²⁵ (although that would probably indicate that the underwriting process needs to be adjusted). The insurance industry is well aware of that reality. It is also well aware of another important reality: the stream of payments they receive is not the same as the stream of payments they have to pay out. In other words, there is usually money available to the insurance company, known as “float.” This money can be put to “productive use.” As soon as the funds are received, they are floated, which can be very beneficial for insurance companies. Warren Buffet of Berkshire explains, “Insurers receive premiums upfront and pay claims later. ... This collect-now, pay-later model leaves us holding large sums -- money we call ‘float’ -- that will eventually go to others. Meanwhile, we get to invest this float for Berkshire's benefit. ... Our float has grown from \$16 million in 1967, when we entered the business, to \$62 billion at the end of 2009.”²⁶

Again, this “float” money is invested to make money for the insurance companies. Table 1 demonstrates how important and great a component investments are to the overall income of life insurance companies:

more in profit is because claim costs have risen dramatically in the last few decades. According to the Insurance Bureau of Canada, the worst year in Canada’s history for weather-related damage was in 2013, when severe flooding in southern Alberta created more than \$1.72 billion in insured losses, while an ice storm in Toronto left 300,000 households without power and cost an estimated \$109 million in claim damages and a severe rainstorm in the Greater Toronto Area caused \$65.2 million in water damage. In fact, since 1998, extreme weather, alone, has cost insurance providers almost \$10 billion in claims. To put this in perspective, the Royal Bank of Canada earned \$10 billion in profit in 2015, alone.” (<https://www.awinins.ca/blog/what-kind-of-profits-do-insurance-companies-make.>) More recently, again, “2017 – largest insured loss year ever: Hurricanes Harvey, Irma and Maria along with other natural catastrophes (Californian wildfires, Mexican earthquakes), cost the sector a record US\$135b+. At US\$330b+, overall losses (including uninsured losses) was second only to 2011 (US\$354b – inflation adjusted) and was almost double the 10-year, inflation-adjusted average of US\$170b. Consequently, most large global insurers posted large losses (e.g., Lloyd’s of London – first loss in six years; Berkshire Hathaway – first underwriting loss in 15 years).” ([https://www.ey.com/Publication/vwLUAssets/ey-global-insurance-trends-analysis-2018/\\$File/ey-global-insurance-trends-analysis-2018.pdf](https://www.ey.com/Publication/vwLUAssets/ey-global-insurance-trends-analysis-2018/$File/ey-global-insurance-trends-analysis-2018.pdf) p. 15). Those data are for all types of insurance and not only life insurance.

²⁵ Underwriting losses could be the result of both huge claims made against the company as well as disproportionate expenses on the part of the company.

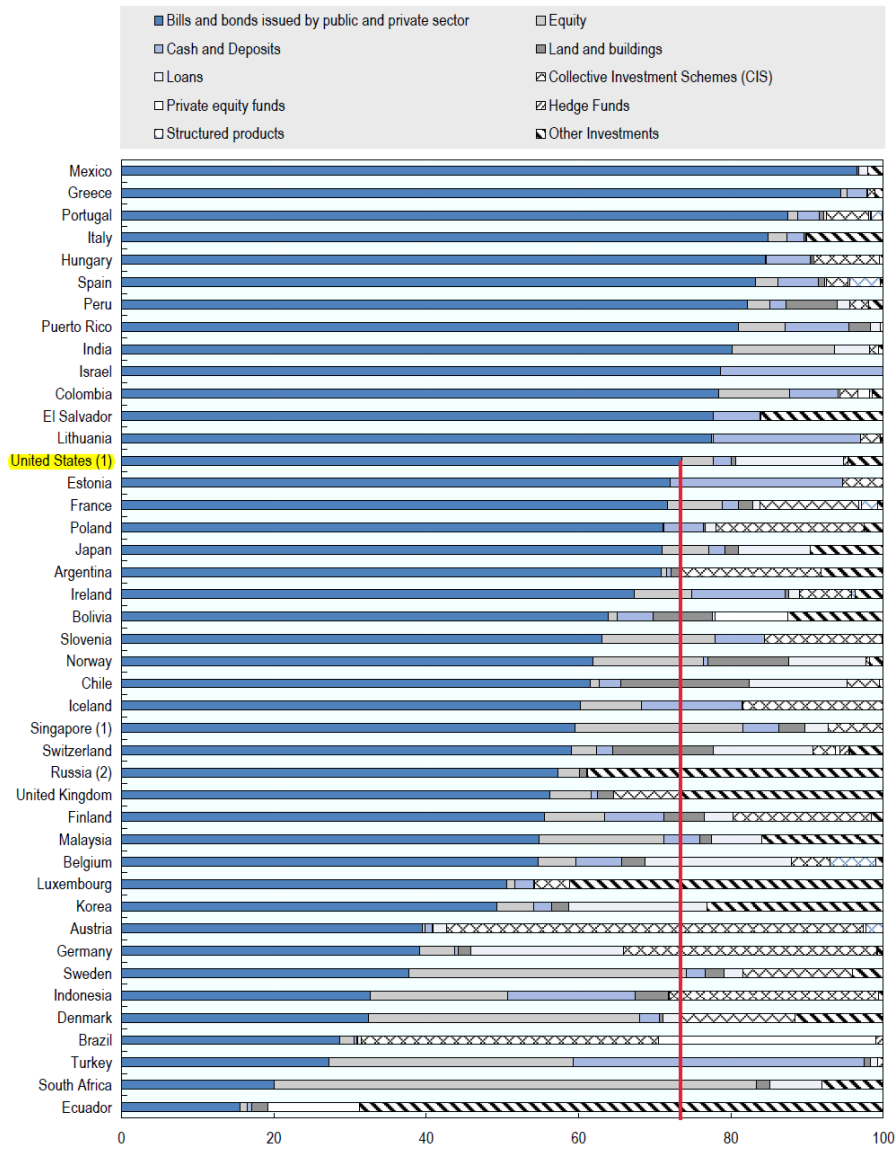
²⁶ https://www.npr.org/sections/money/2010/03/warren_buffett_explains_the_ge.html. One author commenting on Buffet stated, “In the movie *Other People’s Money*, Danny DeVito said, ‘I love money more than the things it can buy ... but what I love more than money is other people’s money.’ Warren Buffett loves other people’s money, too. He built Berkshire Hathaway (NYSE:BRK-A) (NYSE:BRK-B) into one of the world’s most valuable companies using it.” <https://www.fool.com/personal-finance/2006/12/05/insurance-industry-basics-float.aspx>.

Income of Life Insurers			
	Millions		
	2007	2016	2017
Net premiums and considerations			
Life insurance premiums	\$142,661	\$119,334	\$141,794
Annuity considerations ¹	314,225	326,795	294,861
Health insurance premiums	151,462	164,002	170,498
Total	608,348	610,131	607,152
Investment income	267,394	279,101	280,764
Other income²	74,624	96,614	85,522
Aggregate total	950,366	985,845	973,438

Table 1. Income of Life Insurers. (Source: American Council of Life Insurers, *Life Insurers Fact Book 2018*, p. 37.)

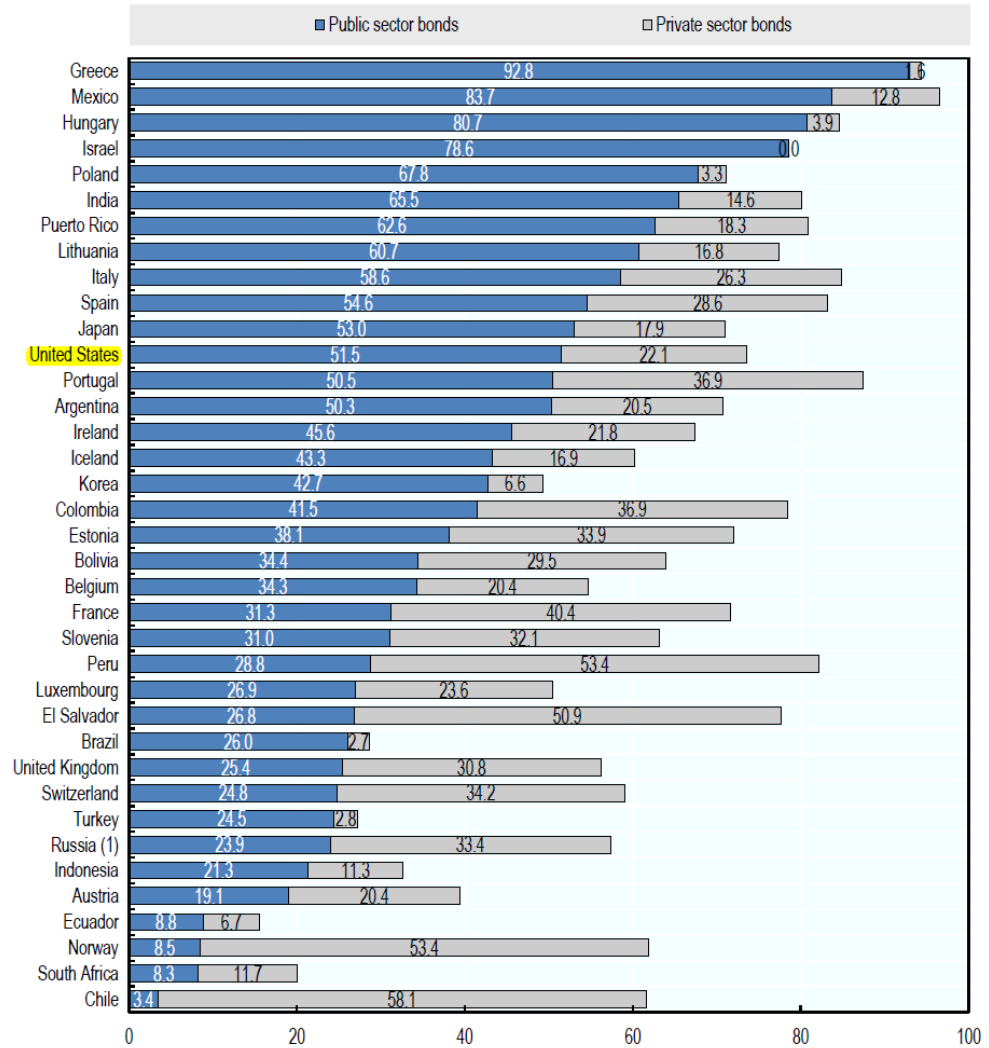
One can see from Table 1 that investment income constituted approximately 28% and 29% of life insurance companies' total income in 2016 and 2017, respectively. In 2017, investment income was equal to almost half of the net premiums and considerations.

The following tables (Table 2 and 3) display where they place their investment funds.



Notes: Data exclude assets linked to unit-linked products where risk is fully borne by policyholders. (1) The negative value that was reported for investments in structured products was excluded from the calculation of the asset allocation. (2) Data refer to domestic investments only.

Table 2. Investment portfolio allocation of domestic direct life insurers in selected countries, 2016 (As a percentage of total investment). (Source: OECD, Global Insurance Market Trends 2017, p. 18.)



Notes: Data exclude assets linked to unit-linked products where risk is fully borne by policyholders. (1) Data refer to domestic investments only.

Table 3. Direct investments to public and private-sector bonds by domestic direct life insurers in selected countries, 2016 (As a percentage of total investment). (Source: OECD, Global Insurance Market Trends 2017, p. 19.)

Life insurance companies invest the premiums they receive in stocks, bonds and other interest-bearing accounts. Obviously, they have a heavy trust on their shoulders as, in a sense, they are dealing with other people’s monies. Therefore, they have to be somewhat risk-averse.²⁷ This explains their great reliance on bonds, both public and private. Life insurance

²⁷ Recently, though, they have been expanding their portfolios and investment options, exposing the industry as a whole to much more risk, more akin to what the banking industry faces. In fact, Acharya and Richardson have argued that the insurance industry is also become systemically risky. See Viral v. Acharya and Matthew Richardson, “Is the Insurance Industry Systemically Risky,” in John H. Biggs and Matthew P.

companies in particular have longer term liabilities, so they invest more heavily than property and casualty insurance in products such as high-grade corporate bonds with 30-year maturity.

As a result of bonds being low risk and lower return, the high percentage of investment in bonds does not translate into the same high percentage when it comes to percentage of revenues from investment source, as shown in Table 4, where net investment income from bonds amounts to only 52% of net investment income.

	Millions			Average annual percent change	
	2007	2016	2017	2007/2017	2016/2017
Net Investment Income					
Gross investment income					
Bonds	\$142,436	\$144,323	\$146,532	0.3	1.5
Preferred stock	4,244	628	632	-17.3	0.7
Common stock	67,898	78,318	70,694	0.4	-9.7
Mortgage loans	21,437	22,067	22,997	0.7	4.2
Real estate	4,702	5,126	5,001	0.6	-2.4
Contract loans	7,515	8,029	8,093	0.7	0.8
Cash/Short-term investments	6,421	1,094	1,729	-12.3	58.0
Other invested assets	11,733	15,105	17,259	3.9	14.3
Derivative instruments	463	3,730	7,662	32.4	105.4
Other write-ins	545	681	166	-11.2	-75.7
Total	267,394	279,101	280,764	0.5	0.6
Expenses, taxes, and deductions	16,008	13,183	14,246	-1.2	8.1
Net investment income	251,387	265,918	266,518	0.6	0.2

Table 4. Net Investment Income of Life Insurers. (Source: American Council of Life Insurers, *Life Insurers Fact Book 2018*, p. 40.)

Bonds are clearly a haram source of income, as they are directly riba-bearing. There are a few other items in Table 4 that are also clearly forbidden from a Shareeah perspective, such as mortgage loans, derivative instruments and preferred stock. There are others that are questionable at the very least, such as common stock (wherein it is not expected that the life insurance companies are upholding the Islamic standards of stock investment). (Collective investment schemes, more common in the European market, are also heavily tied to bonds.)

An important point is that without this "float" (freed up premiums money to invest in bonds and other investments) earning money that can be used to later make payouts, the

Richardson, *Modernizing Insurance Regulation* (Hoboken, New Jersey: John Wiley & Sons, 2014), pp. 151-178. The problem of systemic risk and the possibility of the industry collapsing has been a major concern for the insurance industry since the recent financial crises. This is related to the "too big to fail" concerns of what have become essential industries that are heavily involved in risk. Cf., Paola Bongini, Laura Nieri, Matteo Pelagatti, and Andrea Piccini, "Curbing Systemic Risk in the Insurance Sector: A Mission Impossible?" *The British Accounting Review* (Vol. XXX, 2016), pp. 1-18.

insurance industry could possibly not survive. According to Warren, “Let me emphasize again that cost-free float is not a result to be expected for the P/C industry²⁸ as a whole: In most years, premiums have been inadequate to cover claims plus expenses.”²⁹ The article in Wikipedia on insurance states,

In the United States, the underwriting loss of property and casualty insurance companies was \$142.3 billion in the five years ending 2003. But overall profit for the same period was \$68.4 billion, as the result of float. Some insurance industry insiders, most notably Hank Greenberg, do not believe that it is forever possible to sustain a profit from float without an underwriting profit as well, but this opinion is not universally held.³⁰

Annuities

The shift toward more annuities has also been beneficial for the bottom line of life insurance companies. As Kurt explains,

From a profit perspective, the growth of annuities over the past few decades has been a boon to insurers for a couple of reasons. For one, they opened up a new revenue stream besides life insurance. In addition, these insurance contracts provide a high profit margin compared to other insurance products. More sophisticated varieties – for example, “indexed annuities” that tie payouts to stock market performance – often charge substantial surrender fees and limit policyholder returns, thus padding the insurer’s bottom line.³¹

Cash Value Payouts

Cash value payouts are another way that insurance companies make profits. This is related to the allure of the cash value component found in whole life plans. Berger elaborates,

Additionally, as it pertains to whole life plans, cash values built up through dividends are very enticing to people who don’t manage money well. Therefore, when they glance at their statement and see thousands of dollars just sitting there teasing them, they can’t resist cancelling the policy and buying that big screen TV or new car.

²⁸ Property and Casualty Insurance.

²⁹ https://www.npr.org/sections/money/2010/03/warren_buffett_explains_the_ge.html.

³⁰ <https://en.wikipedia.org/wiki/Insurance#Claims>. Last accessed Jan. 9, 2019.

³¹ Daniel Kurt, “For Life Insurers, Making Money is a Numbers Game,” <https://www.investopedia.com/articles/personal-finance/102914/life-insurers-making-money-numbers-game.asp>.

Et voila! The liability ends for the insurance company; they keep all the premiums paid, pay out some of the interest, and pocket the rest.³²

Lapsed Coverage

A very important source of profits for life insurance companies is lapsed policies. It seems that most individuals either allow their policies to lapse (stop paying the premium, perhaps because they can no longer afford it as they get older) or they opt for a cash value payout. In 2008, for example, “about 1.1 million life insurance policies of all types - universal, variable, whole, and term life - controlled by Americans over the age of 65 were allowed to lapse, according to a report from Life Health Pro.”³³ Page wrote,

How do life insurance companies make money? When I ask this question of my friends, I get a variety of interesting answers -- aside from a bunch of odd looks. One mathematically inclined acquaintance said insurance companies use complex actuarial tables which enable them to predict, very accurately, how long people will live and the insurers figure that, over time, they will collect more money than they pay out. To this answer, I nod in slight agreement. The latter part is true but not because of any actuarial brilliance. Insurance companies make money because a massive amount of all life insurance coverage lapses.³⁴

Amazingly, this has greatly affected seniors over the age of 65.³⁵ Bayston wrote in 2015,

The number and amount of lapsed life insurance policies by U.S. seniors over age 65 is astounding: more than 250,000 policies with a combined face value of more than \$57 billion are lapsed and surrendered back to life carriers each year. The average face value of those policies is approximately \$225,000.

And that only includes universal and variable life policies that most people think are best-suited for life settlements. If term life is added, which often includes policies that are also attractive for life settlements, and ordinary life policies, the total exceeds \$112 billion.

32 <https://www.doughroller.net/insurance/life-insurance/shouldnt-life-insurance-companies-all-be-bankrupt/>.

33 <http://lewisellis.com/industry-insights/article/40044757-many-seniors-still-see-life-insurance-policies-lapse>.

34 Wm. Scott Page, “The Life Insurance Industry’s Big Secret,” https://www.huffpost.com/entry/the-life-insurance-indust_b_1937246.

35 In 2010, the National Council of Life Insurance Legislators adopted the Life Insurance Consumer Disclosure Model Act which requires insurance companies to notify by writing alternatives policyholders have to lapse or surrender of life insurance policies, specifically those policyholders who are over 60 and the insurance company knows that they are terminally or chronically ill. (<http://ncoil.org/wp-content/uploads/2016/04/11232010LifeDisclosureModel.pdf>.) However, as the quote above from Bayston in 2015 demonstrates, it did not seem to put much of a dent into this phenomenon. It should also be noted that insurance is regulated by state law and not federal law. Hence, it is actually up to the states to be proactive on such issues. Insurance companies are very powerful—some are even “too big to fail”—and, as such, one should not expect too much to be done to help the seniors on this issue.

These amounts are based on publicly available information as of 2010. The number and amount of face value of policies today is certainly greater.³⁶

In essence, life insurance is much like gambling and one should never bet against the house. The insurance industry knows well that this model works for them as this income is not related to any real economic output at all.

In Sum: Risk-Sharing, Premiums, Interest-Based Income and Lapsed Policies

In addition to the law of large numbers, a key aspect of the insurance industry is risk sharing combined with risk pooling.³⁷ Essentially what insurance companies do is that they spread risk across many assets, such as all of their policyholders. In the same way that banks act as financial intermediaries, insurance companies act as “risk intermediaries,” spreading risk throughout a group of people such that no one individual is hit too hard by any loss. This definitely can be looked upon as a benefit for society (or, at least, to its individual policyholders).

Any way one looks at it though, the insurance industry is about manipulating “risk” in order to profit. “An insurance contract must have an element of contingency—that is, the event insured against must be possible but not certain to occur in a given period of time and must be substantially beyond the control of either insured or insurer.”³⁸ Indeed, contract law considers insurance an aleatory³⁹ promise. Calamari and Perillo describe this in the following words,

36 Darwin Bayston, “Lapsed Life Insurance Policies: An Astounding Number,” <https://www.lisa.org/life-policy-owners/consumer-blog/blog/2015/02/25/lapsed-life-insurance-policies-an-astounding-number>. Part of the issue here is ignorance on the part of the consumer. Bayston writes, “Meanwhile, a survey by the Insurance Studies Institute reported that less than 50% of seniors are aware about the option to consider selling their life policy. Further, 90% of seniors who had lapsed a policy would have considered selling it if they had known a life settlement was an option.”

37 “Risk pooling” is a measure to reduce risk in which one merges uncorrelated risks. For example, insurance companies sell policies that are independent and uncorrelated to each other, with each holding their own independent risk. This is sometimes referred to as “the insurance principle.” However, as Bodie, et al., explain this is not sufficient. If a gambler continues to go to the roulette table, he may think that the odds are in his favor that at one time he is bound to win. However, by continually betting he has also increased the amount of money at stake or his “risky budget.” Thus, pooling alone does not actually reduce risk. Similarly, as an insurance company sells more policies, the overall risk of its portfolio rises, as with each policy it needs to set aside more capital to cover potential losses. Bodie, et al., note (p. 231), “[T]o equate the declining probability of loss to reduction in total risk is erroneous; the latter is measured by overall standard deviation, which increases with risk pooling. (Again, think about the gambler in Las Vegas. As he returns over and over again to the roulette table, the probability that he will lose becomes ever more certain, but the magnitude of potential dollar gains or losses becomes ever greater.) Thus risk pooling allows neither investors nor insurance companies to shed risk. However, the increase in risk can be overcome when risk pooling is augmented by risk sharing.” “Risk sharing” implies selling shares in a risky portfolio in order to limit risk while at the same time retaining the profitability of the final, larger portfolio position. Whenever new risky assets are added to one’s portfolio, a portion of the investment in the pool is sold off in order to keep the total funds invested unchanged. This reduces the “risky weight.” Bodie, et al., (p. 232) explain, “True diversification means spreading a portfolio of fixed size across many assets, not merely adding more risky bets to an ever-growing risky portfolio.” See Zvi Bodie, Alex Kane and Alan J. Marcus, *Investments* (New York, NY: McGraw-Hill Education, 2011), pp. 230-234.

38 The Encarta® Desk Encyclopedia Copyright ©1998 Microsoft Corporation.

39 Aleatory means “1. Dependent on chance, luck, or an uncertain outcome: an aleatory contract between an oil prospector and a landowner. 2. Of or characterized by gambling: aleatory contests.” Excerpted from *The American Heritage Dictionary of the English Language*,

An aleatory promise is conditional on the happening of a fortuitous event, or an event supposed by the parties to be fortuitous. Thus, an insurance company's promise to pay a sum of money in the event of fire or other casualty supplies consideration for the insured's payment of a premium even if no casualty occurs... [T]he promise is aleatory; it constitutes consideration because it is conditional on a fortuitous event not within the total control of the promisor.⁴⁰

In addition, non-mutual insurance companies are profit driven—seeking profits for their shareholders. Hence, they have an incentive to shift risk as much as possible away from themselves while still trying to reap the benefits of receiving premiums to cover risk. One of the ways they do this is via reinsurance. This is where an insurance company buys insurance from another (probably) larger insurance company to once again share the risk. In other words, insurance companies enter into similar risk-contracts with other insurance companies to cover for potential losses.⁴¹

In sum, the life insurance industry is about risk—doing a good job of underwriting to cover expected losses, investing the funds one receives in mostly riba-bearing investments, banking on the reality that most accounts are going to lapse and resorting to insurance again to once again share some of the risks.

A Final Word on the Workings of the Life Insurance Industry

In recent years, life insurance companies have also provided policies where the insured bears more of the risk. One of the recent innovations in the life insurance industries is the introduction of unit-linked insurance policies⁴², widely available in India. The insurance company receives premiums plus some administrative charges but the insured is at complete risk concerning the investment portion, that the insured has more control over. The benefit of this from the insurance company is that they have been paid while shifting risk directly to the

Third Edition Copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from Lernout & Hauspie Speech Products N.V. Comair-Obeid (p. 55) further noted, "Aleatory contracts form a subdivision of financial compensatory contracts, ones where the benefit for one of the parties depends on some uncertain happening making it impossible to know in advance whether there will be loss or gain."

40 John D. Calamari and Joseph M. Perillo, *The Law of Contracts* (St. Paul, MN: West Group, 1998), p. 209.

41 Often insurance companies will resort to reinsurance to protect against catastrophic loss. This is particularly important if one insurance company covers a lot of people in a specific locale. If, for example, a massive fire burned down a number of houses all insured by one and the same company, that may be too much for the insurance company to financially handle. Hence, by itself paying a premium to another insurance company, they have other insurance companies bear a portion of that risk.

42 Gatzert and Schmeiser argue, "Against this background [of various financial crises and low interest rates], new life insurance financial products will likely be unit- or equity-linked type, thus transferring at least part of the market risk to the policyholders and providing a higher degree of transparency and individuality as compared to traditional products." Nadine Gatzert and Hato Schmeiser, "New Life Insurance Financial Products," in Georges Dionne, ed., *Handbook of Insurance* (New York, NY: Springer, 2012), p. 1065.

consumer. Another product that has garnered a lot of interest is equity indexed universal life insurance. This allows the policyholder to place the cash value into an account that pays interest based on a market index with a benefit floor but which is actually not invested in the market. Several accounts tied to different indices are often available to the consumer. Upon death, the insurance company will only pay the death penalty and will keep all remaining cash for itself, as is the case with all universal life policies.⁴³ The point here being that any fatwaa on various life insurance products must be abreast of all of the most recent developments and how they differ or agree with the original or default models of life insurance. As they change and innovate, the fiqh ruling may also change, perhaps, as they become more equity-based and akin to *takaful* ("Shariah-compliant insurance") products, going from forbidden to disliked, for example. Hence, the detailed analysis of exactly how an industry works is crucial.

⁴³ A detailed discussion of a German version of equity indexed life insurance, known as Select Products, is Maria Alexandrova, Alexander Bohnert, Nadine Gatzert and Jochen Russ, "Equity-linked life insurance based on traditional products: the case of Select Products," European Actuarial Journal (August 2017).

A Fiqh Discussion of Commercial Insurance in General

Now that some of the details of insurance in general and of life insurance in specific have been given, now is the time for a fiqh analysis.⁴⁴ In this researcher's view, the beginning point in the fiqh analysis of insurance is to clearly conceptualize the nature of insurance and to identify what type of contract an insurance contract is. Indeed, it has been the lack of clarity on this point that has led to much confusion concerning the legality of insurance. In fact, Abu al-Basl noted that the entire difference of opinion concerning insurance revolves around the question concerning the nature of the insurance contract and industry. Explicitly he stated, "[The jurists differ concerning the description and make-up of the insurance contract. The difference in description and make-up leads, obviously, to the difference in the ruling.](#)"⁴⁵

Insurance is a relatively modern phenomenon (at least on a widespread scale).⁴⁶ For this reason, it is not directly dealt with in the texts of the Quran or Sunnah. Since there are no

44 This author has previously presented a paper for AMJA at the 2003 AMJA Conference in Copenhagen, Denmark. That paper was entitled, "The Question of Insurance Outside of the 'Lands of Islam.'" For this section, the author has borrowed freely from his earlier paper. Note that the discussion here will be about what is termed "commercial insurance," which will be referred to simply as "insurance." The concepts of "mutual insurance," "cooperative insurance," "social insurance" "charitable insurance" or "Islamic insurance (takaful)" will not be discussed here. Actually, for the most part, such a discussion does not have a great deal of relevance to the situation in the United States.

45 Ali Abu al-Basl, *Diraasaat fi al-Fiqh al-Muqaarin* (Dubai: Daar al-Qalam, 2001), p. 213. He continues by saying, "The one who describes insurance as a type of cooperation for what is good, rule that it is permissible. And the one who describes it as a type of gambling, riba and aleatory contract, rule that it is forbidden."

46 Al-Suwailem noted that concept similar to insurance was discussed several centuries ago under the topic *muaawadhah ala al-dhamaan* (compensation for a surety). He quotes the early Maliki scholar Ashhab as saying,

It is not acceptable that a person says to another: guarantee (or insure) this good for me to a certain date, and I pay you so and so. This is because ... it is gambling and gharar. If the insurer knows that the good will be damaged or spoiled, he would not have accepted to insure it even for twice as much as he is paid. And if the insured knows that the good will be safe, he would have not accepted to insure it for even a dirham. Don't you see that if the good is not damaged the insurer would get the insured's money for nothing, while if it is damaged, he becomes liable for its value for no ownership nor benefits he obtains?

Al-Suwailem further quotes ibn Rushd as saying that there is a consensus that a payment cannot be made for a guaranty. See Sami Al-Suwailem, "Towards an Objective Measure of Gharar in Exchange," *Islamic Economic Studies* (Vol. 7, Nos. 1 & 2, October 1999-April 2000), pp. 82-83.

Many authors are of the opinion that ibn Abideen, the famous Hanafi scholar of greater Syria who died in 1252 A.H./1836 C.E., was the first to discuss a version of the modern form of insurance, concluding that it is not permissible. For ibn Abideen, see Muhammad Ameen ibn Abideen, *Radd al-Muhtaar ala al-Durr al-Mukhtaar Sharh Tanweer al-Absaar* (Beirut: Daar al-Kutub al-Ilmiyyah, 1994), Vol. 6, pp. 281-282. A summary of ibn Abideen's discussion may be found in Mohammad Muslehuddin, *Insurance and Islamic Law* (Lahore: Islamic Publications, Ltd., 1978), pp. 148; Aly Khorshid, *Islamic Insurance: A Modern Approach to Islamic Banking* (London, England: Routledge, 2004), pp. 12-15. The question arose due to foreign traders coming to the Muslim lands and demanding some form of guarantee. In one passage, ibn Abideen described the issue in this manner,

It was customary that if traders wanted to hire a boat from a non-Muslim owner, they made their payment of rent to that man, as well as depositing a certain amount of money with another non-Muslim agent who lived elsewhere on Islamic territory. They used to call that deposit the 'sowkra' which was proposed against all kinds of risks that might occur to the boat or its contents during the journey, such as fire, sinking or piracy, etc. The agent was paid for his services as a warrantor and his appointed proxy, who lived in the coastal area of Islamic territory, collected the Sawkara from the traders, with permission from the Sultan, and accordingly repaid them the equivalent of the damage done to their goods at sea, if any... It seems to me that the traders have no right for any money to be returned to them in lieu of their perished goods, as that would be a commitment to offer something non-committable. (Quoted from Khorshid, p. 13.)

direct texts concerning it, insurance is a matter of *ijtihad* (juristic reasoning). Hence, it is expected that there may be some differences of opinion on this issue.⁴⁷ However, like other issues of this nature, there is plenty of guidance in the Quran or Sunnah to guide one to a substantiated position on insurance, concerning which the Muslim will feel truly at rest with what he has found.⁴⁸

Khorshid has summarized the various fiqh opinions concerning insurance:

- 1 A group that prohibits all kinds of insurance without exception.
- 2 A group that only approves of commercial insurance organized on a mutual or cooperative basis.
- 3 A group that approves all kinds of insurance.
- 4 A group that prohibits only life insurance with a commercial or mutual contract.
- 5 A group that stresses that insurance per se is unlawful, although necessity makes it permissible...
- 6 A group that allows only some indemnity insurance, such as motor insurance.⁴⁹

Saalim Madani has done an excellent job of presenting the evidence that each group of scholars offers and how each respond to the arguments of the opposing scholars.⁵⁰ Madani divided the arguments of both groups into three categories: (1) The fundamental arguments concerning which it is difficult for the opposing scholars to refute; (2) Supporting arguments not quite as strong as the first category; and (3) weak arguments that are easy to refute. Madani concludes that the two sides are equal from the point of view of the strength of their arguments and the stature of the scholars of each view. He then asks, "Shall we not then conclude like on many other disputed issues that there are two [acceptable] views on this question."⁵¹ However, simply because two opinions are deserving of respect does not mean that one of them is not clearly the stronger opinion that one is mandated to follow, due to the strength of the evidence behind it. In fact, Madani himself made some very important points.

47 At least one author has claimed that the difference of opinion concerning the legality of insurance is simply one of semantics. Muhammad Shauqi al-Fanjari argues that both sides agree on the permissibility of the essence of insurance and they only differ concerning some of the exploitative conditions that are found in some commercial insurance contracts. Indeed, one can almost get that feeling from al-Zarqa himself, a leading proponent for insurance, who stresses that the insurance contract must be purged of its Shareeah-unacceptable aspects. Saadi Abu Jaib, however, has refuted this view and demonstrated that there is a true difference of opinion concerning the permissibility of commercial insurance. See Saadi Abu Jaib, *Al-Tameen bain al-Hadhr wa al-Ibaahah* (Beirut: Daar al-Fikr al-Muaasir, 1989), pp. 71-74.

48 For a review of the causes for the differences of opinion concerning the legality of insurance, see Muhammad Mustafa Abuhu al-Shanqeeti, *Diraasah Shariyyah li-Ahamm al-Uqood al-Maaliyyah al-Mustahdathah* (Madinah: Maktabah al-Uloom wa al-Hikm, 2001), vol. 2, pp. 500-501.

49 Khorshid, p. 60. As Khorshid noted, there can be some overlap in these views.

50 Saalim Madani, "Diraasah Fiqhiyyah li-Adillah Maanee wa Mujawwizi al-Tameen al-Tijaari," *Al-Hijaz International Refereed Journal for Islamic & Arabic Studies* (No. 5, November 2013), pp. 1-77.

51 Madani, p. 71.

While referring to the bases of the two opinions, he stated that those who permit insurance base their view on analogies between insurance and some transactions that have been derived and approved by some scholars while those who prohibit insurance base their views on clear texts of the Shareeah and fundamental legal maxims that are agreed upon by all the scholars. He further states that those who permit insurance base their view on legal causes and interpretation while those who forbid insurance base their views on Shareeah texts whose meanings are inclusive of aspects of insurance, such as *riba*, *gharar*, gambling and so on. Madani himself states that there is a big difference between interpretations that hover over doubt of prohibition and those views invoking clear, definitive texts that are not open to debate.⁵²

Does Insurance Fit into Any of the Standard Contract Models?

In the books of fiqh, one can find rules for up to thirty specific types of contracts.⁵³ These include the following basic and essential nominate contracts: sale, rent, commissioned manufacture, gift, loan, endowment, guarantee, partnership and so on. Note that these contracts may be also be divided into mutually onerous contracts, contracts of charity or gratuitous benefits, contracts of investment and so on. The default and most important type of contract is that of “the sale” or *al-bai*, in whose light many of the rules of other types of contracts are judged.⁵⁴ This *bai* or “sale transaction” is defined in the *Mejelle* as “to exchange wealth for wealth.”⁵⁵

Earlier a couple of definitions were given for insurance. Miller and Jentz define insurance as, “A contract in which, for a stipulated consideration, one party agrees to compensate the other for loss on a specific subject by a specified peril.”⁵⁶ One of Vaughan and Vaughan’s

52 Madani, pp. 40-41.

53 Cf., Nayla Comair-Obeid, *The Law of Business Contracts in the Arab Middle East* (London: Kluwer Law International, 1996), p. 4.

54 See Mustafa Ahmad al-Zarqa, *Al-Madkhal al-Fiqhi al-Aam: al-Fiqh al-Islaami fi Thaubihi al-Jadeed* (Daar al-Fikr, 1967), vol. 1, pp. 539.

55 Cf., C.R. Tyser, et al., *The Mejelle: Being an English Translation of Majallah el-Ahkam-l-Adliyah and a Complete Code of Islamic Civil Law* (Kuala Lumpur, Malaysia: The Other Press, n.d.), p. 16. Their translation actually reads, “to change property for property,” but the translation provided in the text above is, in this author’s view, a more accurate translation. Other definitions as found in the English literature include: “Where right of ownership passes for consideration (*Tamleek al-ayn bi-Iwaadh*)” [S. E. Rayner, *The Theory of Contracts in Islamic Law* (London: Graham & Trotman, 1991), p. 101]. “Sale of definite goods or property with the free consent of parties for a definite price. It involves proposal (*ijab*) and acceptance (*qabul*). It has many [sub]types” [Muhammad Akram Khan, *Glossary of Islamic Economics* (London: Mansell Islamic Studies, 1990), p. 13]. Frank Vogel gives the following definition, “The transfer of ownership of some lawful (*mutaqawwam*), specific, known property for a fixed price (which may be money or other known property), both countervalues present and delivered immediately. Variations from this pattern, such as delay in payment of a countervalue, are handled as special cases. Titles to both countervalues transfer immediately at the time of sale, even if actual payment or delivery is delayed by stipulation or otherwise” [Frank Vogel and Samuel Hayes III, *Islamic Law and Finance: Religion, Risk, and Return* (The Hague: Kluwer Law International, 1998), p. 103].

56 Roger Miller and Gaylord Jentz, *Business Law Today* (Mason, OH: South-Western Cengage Learning, 2011), p. 925.

definition was, "From an individual point of view, insurance is an economic device whereby the individual substitutes a small certain cost (the premium) for a large uncertain financial loss (the contingency insured against) that would exist if it were not for the insurance."⁵⁷

From these definitions, one can seek to answer the question: What type of contract is an insurance contract? This question is very important because different types of contracts have different rulings for them. For example, if a Muslim wanted to exchange money with the intention of a business transaction or profit, that exchange must be done on the spot, with the exchange of monies taking place immediately. This immediate exchange is a condition for this type of transaction (money exchange, whether the money be of the same or different type). However, if a Muslim wants to give another Muslim some money as a loan, with the intention of helping him out, the condition of a spot exchanged is now dropped (as the debtor is allowed to pay the money back later). This condition is dropped because this is considered a "contract" of a charitable nature. Hence, the rules it is subjected to differs from the rules for money exchange, sales and so forth.

Therefore, again, it is important to discuss the nature of the insurance contract in order to determine its ruling. For example, can it be considered simply a modern and new type of transaction subject to its own rules? Can it be considered a contract of charity from a "mutual institution"? Or is it simply another type of "sale transaction," wherein one commodity is exchanged for another, the default case concerning mutually onerous financial transactions?

Is Commercial Insurance to be Considered Mutual Support and a Contract of a Charitable Nature?

Among those scholars who argue for the legality of commercial insurance in Islam, there are some who argue that commercial insurance is a new type of contract, being a mixture of a charitable contract and a business contract while others argue that it is purely a charitable type of contract. This is actually a fairly common conceptualization among Muslim writers. Ma'sum Billah wrote, for example, "The primary objective of insurance is to create mutual co-operation between two parties."⁵⁸ Since this argument is somewhat widespread and may even be convincing to some, it is important to discuss it in detail. Furthermore, this view may greatly affect the contract category in which one will place the insurance contract.

First, it must be realized and clear that a contract being "beneficial" to both parties does not imply that it is a charitable contract or one of mutual support. In fact, it is expected that

57 Emmet J. Vaughan and Therese M. Vaughan, *Fundamentals of Risk and Insurance* (Danvers, MA: John Wiley & Sons, 2014), p. 35.

58 Mohd. Ma'sum Billah, *Islamic and Modern Insurance: Principles and Practices* (Selangor, Malaysia: Ilmiah Publishers, 2003), p. 22.

See also Mustafa Ahmad al-Zarqa, *Nidhaam al-Tameen: Haqeeqatuhu wa al-Rai al-Shari fihi* (Beirut: Muassasah al-Risaalah, 1994), p. 21.

virtually every business transaction will bring about some benefit to both parties. That is why they both enter into that contract “freely and with approval.” Hence, that is not the standard by which a transaction is to be judged. If that were the case, even deposits with interests in commercial banks would be considered permissible, as the deposit helps the bank and the interest the bank pays helps the depositor. But if the contract violates the principles of the Shareeah, it would be considered forbidden even if the two parties to it may believe or think that it is mutually beneficial.

Second, it is not true that insurance companies or buying insurance policies implies any kind of mutual work, assistance or support. In reality, as al-Shaadhili noted, the real motive behind such policies is simply to avoid the possibility of future harm and to reduce one’s risk. These goals, in themselves, may be acceptable goals but they must be met within the limits of what is permissible.⁵⁹

It is well-known that the insured person puts forth wealth (money) in the form of premiums. It is inconceivable that any insurance company would ever give anyone any form of payment without receiving a signed contract and payment from them first.⁶⁰ Therefore, the Board of Leading Scholars of Saudi Arabia stated that the insurance contract is “a mutually onerous contract in which each party receives something in exchange for what it has given... Hence, the attributes of being a charitable contract are negated in the insurance contract.”⁶¹ Indeed, Blanchard mentioned in his classic work on insurance, “The insurer is not operating a charitable institution.”⁶²

In fact, most insurance companies do not make small profits off of their individual and small clients. Instead, they make large profits, to the point that some textbooks recommend not taking insurance unless one truly fears he cannot bear the cost of a loss. Beatty and Samuelson wrote, “If you can afford the loss yourself, it is better not to purchase insurance. About half of every dollar that consumers spend on insurance is paid back in claims; the other half goes to the company’s profits and overhead.”⁶³ (This can explain how is it that some insurance companies are very large and very profitable.) In addition, as noted earlier about life

59 Abdul-Raouf al-Shaadhili, “*Al-Tameenaat al-Muaasirah fi Dhau al-Shareeah al-Islaamiyyah*,” *Adhwa al-Shareeah* (No. 13, 1402 A.H.), p. 305.

60 In reality, even if the person pays his insurance premiums, the insurance companies are always trying to find reasons for which they are not liable to pay their clients. Many times people have to go to court to get their insurance to pay what their policies should have covered. Beatty and Samuelson give the example of an insurance company that recognized that it was liable under a policy but still fought the case in court for sixteen years. [Jeffrey Beatty and Susan Samuelson, *Business Law for a New Century* (Cincinnati, OH: West Legal Studies in Business, 2001), p. 1149.] This is all further evidence that the insurance companies are not some kind of mutual assistance societies. They are for profit only.

61 Haiah Kubaar al-Ulamaa bi-l-Mamlakat al-Arabiyyah al-Saudiyyah, *Abhaath Haiah Kibaar al-Ulamaa* (Riyadh: Daar al-Qaasim, 2001), vol. 4, p. 58.

62 Ralph Blanchard, *Introduction to Risk and Insurance* (Washington, D.C.: Beard Books, 2001), p. 20.

63 Beatty and Samuelson, p. 1156. In addition, they also recommend that one selects as high a deductible as one can afford.

insurance policies, the insurance company is obviously content with the customer allowing a policy to lapse or to buy out their cash value. The insured ends up getting nothing or little and the company—supposedly the insured’s “mutual friend”—makes a nice profit.

Thus, in reality, the insurance industry is a commercial industry whose goal is to make profits. Instead of considering them a charitable or mutual institution, as some Muslim authors have stated, they could actually be seen as an industry that is taking advantage of humans’ greatest weaknesses and fears. (These types of fears and weaknesses are even greater for those people who do not have a strong belief in God and the Hereafter.) Insurance companies realize this fact and exploit this fundamental weakness of their fellow humans. Mishkin and Eakins explain this process well,

Insurance companies make a profit by charging premiums that are sufficient to pay the expected claims on the company plus a profit. Why do people pay for insurance when they know that over the lifetime of their policy, they will probably pay more in premiums than the expected amount of any loss they will suffer? Because most people are risk averse: They would rather pay a certainty equivalent (the insurance premium) than accept the gamble that they will lose their house or their car.⁶⁴

Furthermore, insurance companies use their large advertising budgets to convince humans that they are greatly in need of such insurance and that peace of mind will truly come to them if they are properly and completely insured. In reality, they are taking advantage of people’s fears to further their own agendas and gain profits.⁶⁵ This is actually a blameworthy practice much more than it could ever be considered a praiseworthy practice.

Finally, while doing research for his Ph.D. dissertation on insurance, Thunayaan interviewed a number of Western authorities in the U.S.A., England and Germany. He found that none of them shared the concept that insurance companies are some kind of charitable institutions or mutual societies. He concluded that this view of insurance companies is not much more than the imagination of some Muslim scholars who have been convinced that insurance is good.⁶⁶ Al-Dhareer further states that most people who deal with insurance companies today feel that they are exploitative companies whose goal is only profit by taking advantage of the needs of the people.⁶⁷

⁶⁴ Frederic Mishkin and Stanley Eakins, *Financial Markets and Institutions* (Reading, Massachusetts: Addison-Wesley, 2000), p. 547.

⁶⁵ Larger insurance companies in the West form something of an oligopoly, with limited competition, and can greatly control the prices for their services. They exploit this market position for their own advantage, as is common in a capitalist economy.

⁶⁶ Cf., Sulaimaan Thunayaan, *Al-Tameen wa Ahkaamuhu* (Beirut: Daar ibn Hazm, 2003/1424), pp. 210-211.

⁶⁷ Al-Sideeq Muhammad al-Ameen al-Dhareer, *al-Gharar wa Atharuhu fi al-Uqood fi al-Fiqh al-Islami: Diraasah Muraaranah* (Beirut: Daar al-Jeel, 1990), p. 663.

There is yet another point that this author has not seen emphasized. This concerns the insured. In general, it can be argued that the insured himself is also not entering the insurance contract on a mutual or charitable basis. Instead his goal, unless he feels he is forced to have the insurance, is simply to shift the burden of future expenses from himself to someone else. He is actually trying to shift his risk to somebody else while keeping any gain for himself, as insurance companies do not share in any gains but only in losses.⁶⁸ Furthermore, he does not necessarily care how the insurance company is doing, as long as it is able to pay his claim. He also does not care how the other policyholders of his insurance company are faring. His hope may also be to make money off of the insurance company or at least save money by dealing with them instead of financing his own burdens. (One can even question why a Muslim would not want to face his own burdens himself rather than thrusting them on the shoulders of others.)

In conclusion, not only is the insurance contract not a type of charitable contract but, in reality, it has nothing in common with a charitable contract. Hence, it is neither a charitable contract nor a new type of contract that has some aspects of charity in it. One can still argue that it is a new type of contract unprecedented in the history of Islam. However, as the Board of the Leading Scholars of Saudi Arabia pointed out, it still can be fitted under the general principles of contracts and the overall goals of the Shareeah with respect to business transactions. Thus, the insurance contract has little in common with any form of contract in Islam except the mutual onerous contracts and the principles of sales and, hence, it has to meet the general criteria of such contracts.⁶⁹

Conditions for the Validity of Mutually Onerous Contracts

Al-Zarqa, one of the leading proponents of the legality of insurance, stated, “[The fact that insurance is a new contract outside of the realm of the old contracts does not prevent it from being permissible if it does not contain anything that contradicts the general shareeah conditions of the system of contracts.](#)”⁷⁰

According to many scholars, the basic ruling concerning any new type of contract is that of permissibility. However, this only means that if there is no sign that the contract should be considered void, then it should be considered permissible. Hence, in Islamic contract theory,

⁶⁸ This is one of the fundamental differences between hedging and insuring. In the words of Bodie, et al., “When you hedge, you eliminate the risk of loss by giving up the potential for gain. When you insure, you pay a premium to eliminate the risk of loss and *retain* the potential for gain.” Zvi Bodie, Robert C. Merton and David L. Cleeton, *Financial Economics* (Upper Saddle River, New Jersey: Pearson Prentice-Hall, 2009), p. 304.

⁶⁹ Cf., Haiah, *Abhaath*, vol. 4, pp. 305-306.

⁷⁰ Al-Zarqa, *Nidhaam al-Tameen*, p. 91, emphasis added.

there is a detailed discussion of what the contract must consist of as well as what the contract must avoid. The matters that should be avoided include *jahaalah* (unspecified qualities or quantities), *gharar* (excessive risk), *riba* (interest), and *qimaar* (gambling). If any one of these factors is found in a contract, the contract, depending on the extent to which they are present, may be rendered null, void and impermissible.

It is these four concepts of *jahaalah*, *gharar*, *riba* and *qimaar* in particular that have led the majority of Muslim scholars to declare modern commercial insurance impermissible. Due to space limitations, only *gharar* and *riba*, perhaps the two most important concepts, will be discussed here. Before proceeding, however, it is important to note that the goal of the Shareeah concerning such monetary contracts seems to be clear: there must be a proper balance between the two contracting parties and an elimination of uncertainties that can give lead to illicit gains by either party. This is the true justice in business dealings according to the divinely inspired Shareeah.

The Aspect of Gharar (غرر)

Imam Muslim records in his *Sahih*:

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْغَرَرِ

“On the authority of Abu Hurairah who said that the Messenger of Allah (peace and blessings of Allah be upon him) forbade ‘sales of speculative nature’ (*bai al-gharar*).” [Al-Bukhari and Muslim record,](#)

عَنْ ابْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلاَحُهَا نَهَى الْبَائِعِ وَالْمُبْتَاعِ

“On the authority of ibn Umar who said that ‘the Messenger of Allah (peace and blessings of Allah be upon him) prohibited the sale of fruits until their ripeness and freedom from disease were apparent. He prohibited both the seller and the buyer.’” Commenting on a hadith with similar meaning, al-Nawawi explained why the prohibition was for both the seller and the buyer. He wrote, “As for the seller, it is because he is wanting to devour wealth wrongfully. As for the buyer, it is because he is being complicit with the seller on this forbidden act and because he is [possibly] wasting his wealth while wasting wealth has been prohibited.”⁷¹

From these hadith and others, there is a consensus among jurists that an overwhelming presence of *gharar* or uncertainty renders a business contract null and void. Such transactions

71 Yahya al-Nawawi, *al-Minhaaj Sharh Saheeh Muslim ibn a-Hajjaaj* (Beirut: Daar al-Marifah, 1999), vol. 10, p. 424.

are ones in which the probability of one or both of the parties being wronged is great. Concerning the meaning of this concept of *gharar*, Rayner states,

The Shari'a determined that in the interests of fair, ethical dealing in commutative contracts, unjustified enrichment should be prohibited. This policy precludes any element of uncertainty or risk (*Gharar*).⁷² In a general context, the unanimous proposition of the jurists held that in any transaction, by failing or neglecting to define any of the essential pillars of contract relating to the consideration or the object, the parties undertake a risk which is not indispensable for them. This kind of risk was deemed unacceptable and tantamount to speculation due to its inherent uncertainty. Speculative transactions with these characteristics are therefore prohibited...⁷³

Although such contracts are prohibited by the Shareeah, due to their speculative or risky nature and hence the possibility of making gains from such transactions, they can be very alluring to individuals.⁷⁴ Thus, ibn al-Atheer, going back to the lexical meaning of the term, says, "*Al-Gharar* is that concerning which its apparent component is preferable but its non-apparent component is disliked to the person. Hence, its apparent component entices the buyer while its non-apparent component is unknown."⁷⁵

According to ibn Juzay, examples of *gharar* transactions include:

- (1) "Ignorance of the price and uncertainty about the existence of the object."⁷⁶
- (2) "Uncertainty about the price of the object and about its characteristics, as in the example of the sale of cloth in a shop without any specification about its quality or price."⁷⁷
- (3) "Uncertainty related to difficulties of delivery."⁷⁸
- (4) "Uncertainty about the existence of the object, as in the case of a sickly animal."⁷⁹

Concerning the issue of insurance, there does not seem to be too much difference of opinion concerning the presence of *gharar* ("risk, uncertainty") in insurance contracts. Indeed,

72 The statement, "any element of uncertainty or risk," is not quite correct. The Muslim jurists have long recognized that amounts of "uncertainty" or "risk" exist in many legal contracts. The true question, as much of Rayner's quote itself further shows, is the predominance or the effect of such "uncertainty" or "risk" on the essence of the contract.

73 Rayner, p. 289.

74 Both parties must enter into contracts out of free will. However, that does not mean that every contract in which parties are willing to enter is permissible.

75 Mubarak ibn al-Atheer, *Jaami al-Usool fi Ahaadeeth al-Rasool* (Maktaba al-Hilwaani. 1971), vol. 1, pp. 527-528.

76 Comair-Obeid, p. 58.

77 Ibid., p. 58.

78 Ibid., p. 58.

79 Ibid., p. 58.

by definition, it is a contract concerning objective, pure, financial and diversifiable risk⁸⁰ and how to remove the harms of future risks. The buyer (policyholder) pays premiums, yet he is completely in the dark as to whether he will have to resort to this policy in the future and receive any money or reimbursement from his insurance company. In the case of a safe driver, for example, he may pay premiums for years and years and never once file a claim. If his car does get damaged one day, he does not know how the insurance company will value his car or its damages and what amount they will pay him.

Even the insurance company itself has no certainty with respect to any individual contract it enters into. It is true that they apply statistics and the law of large numbers to supposedly “ensure” that the premiums they receive⁸¹ will almost certainly cover any future claims made against them. Hence, they greatly reduce their own risk on a large scale. However, that does not deny the fact that the individual contract also contains risk for the insurance company. There is no principle in Islamic law that this author is aware of that states that *gharar* is overlooked in a single contract if numerous such contracts greatly reduce the presence of such risk. (If such a principle existed, then even the gambling industry would have to be allowed. The gambling industry—much better than the insurance industry—can “guarantee” that the house will get a certain percentage of the stakes and even makes sure that the players get a certain percentage of winnings to make sure they are enticed to come and play.)

In fact, insurance companies are well aware of the possibility of them not being able to pay out all of the claims against them. That is why insurance companies obtain reinsurance, as the risk that they face is still great due to possibility of unforeseen circumstances (such as the breakout of certain diseases, extremely harsh weather leading to a very large number of car accidents and so forth).⁸² Furthermore, the “law of large numbers” does not protect against

80 There are various types of risk: Objective vis-à-vis subjective (objective is measurable via data while subjective is that of a person’s opinion, which cannot be measured); pure risk vis-à-vis speculative risk (pure risk has only two outcomes, loss or no loss, while speculative risk has three possible outcomes, loss, no loss, or gain); financial risk vis-à-vis non-financial risk (financial risk can be measured by money while non-financial cannot); diversifiable risk vis-à-vis non-diversifiable risk (diversifiable risks are non-correlated and can be spread out while non-diversifiable risks refer to risks that strike a large number within one set, such as the results of an earthquake). Cf., Haizhi Tong, “An Investigation of the Insurance Sector’s Contribution to Economic Growth,” (Ph.D. Dissertation, University of Nebraska, 2008), pp. 1-3.

81 And the money they make from investing those premiums.

82 Of course, insurance companies always have the goal of profits, so they will not cover the results of major catastrophes and do not cover anything that is subject to simultaneous destruction. Major catastrophes are usually covered by some government institutions. Larger policies, which cannot all fall under the law of large numbers, need to be reinsured. Note that it is the reinsurance companies that usually run the greatest risk. Thus, Madura writes, “the estimated number of companies willing to offer reinsurance has declined significantly because of generous court awards and the difficulty in assessing the amount of potential claims. For example, Centennial Insurance Company experienced losses of more than \$200 million in the reinsurance business as a result of underestimating the amount of potential claims... If the desire to offer reinsurance continues to decline, the primary insurers will be less able to ‘sell off’ a portion of the risk they assume when writing policies. Consequently, they will be pressured to more closely evaluate the risk of the policies they write.” Jeff Madura, *Financial Markets and Institutions* (Cincinnati, OH: South-Western College Publishing, 2001), p. 662.

great losses if each individual statistic is a large investment, say in the millions.⁸³ (This is the fact that the reinsurance companies have to deal with.)

With respect to life insurance, Masum Billah makes an argument that no *gharar* is present. He wrote,

Life insurance does not involve the element of *gharar* (uncertainty). This is because the idea of a *gharar* transaction is that the subject matter of the contract is unknown. On the other hand, the subject matter of life insurance is the death of the assured or depositor and it is not unknown, as everybody knows that one day everyone will die sooner or later in accordance with the will of Allah.⁸⁴

His argument definitely does not hold true for term life insurance, as the reality is that no one knows if they are going to die during the term of the term life insurance. Furthermore, it is not simply a question of the event occurring but when the event will occur. Depending on when one dies (which he will admit no one knows) and how long one has been paying for premiums, the insurance policy may or may not be a big win for the insured (or the insurer). That is how *gharar* still enters the picture.

Thus, the presence of *gharar* in the insurance contract cannot be rationally denied. However, the debate could be over the extent of its presence. The jurists have divided *gharar* into three categories: (1) that risk which is minimal, impossible to avoid in almost any type of contract and not affecting the validity of a contract; (2) that risk which is great and therefore unacceptable, voiding the contract; (3) that risk which is of an intermediate nature—leading some scholars to categorize it under (1) above and others to categorize it under (2) above.⁸⁵ The Jurists state that *gharar* is to be overlooked when it is a small amount, it is not intended and there is a necessity to engage in it.⁸⁶

In his contemporary analysis of the concept of *gharar*, al-Suwailem has tried to narrow down the definition of unacceptable *gharar* even further. He puts two conditions: the likelihood measure and the zero-sum measure. The likelihood measure is related to the chance that the risk will be successful while the zero-sum measure relates to the outcome being one party

⁸³ For the fallacious understanding of the law of large numbers and how it works with respect to insurance, see Zvi Bodie, Alex Kane and Alan J. Marcus, *Investments* (Boston: Irwin/McGraw Hill, 1999), pp. 243-245.

⁸⁴ Mohd. Masum Billah, "Life Insurance? An Islamic View," *Arab Law Quarterly* (Vol. 8, No. 4, 1993), p. 317.

⁸⁵ There is some possible benefit to this "gray area." Some contracts may contain *gharar* but lead to great good in some environments, thus leading to their permissibility. The same contract may lead to great harm in other environments, leading to their prohibition. This is part of the great flexibility of Islamic law.

⁸⁶ Cf., al-Shanqeeti, vol. 2, pp. 526-527. Note that whether or not such *gharar* leads to disputes is irrelevant to this ruling. The problem is the great probability of at least one of the contracting parties being harmed. This is an important point because "not leading to disputes" is one of the common arguments heard for overlooking the *gharar* of the insurance contract.

winning at the expense of the other party. With respect to insurance, he presents a simple payout scenario that demonstrates that insurance is similar to a zero-sum game.⁸⁷ When a company insures an item for the value of \$1000 with a premium of \$50, if the item is damaged, the insured will receive a net of \$950 and the insurance company will be out \$950. If the item is not damaged, the company is out \$50 and the insurance company makes \$50. The payoffs are shown in the following schematic:

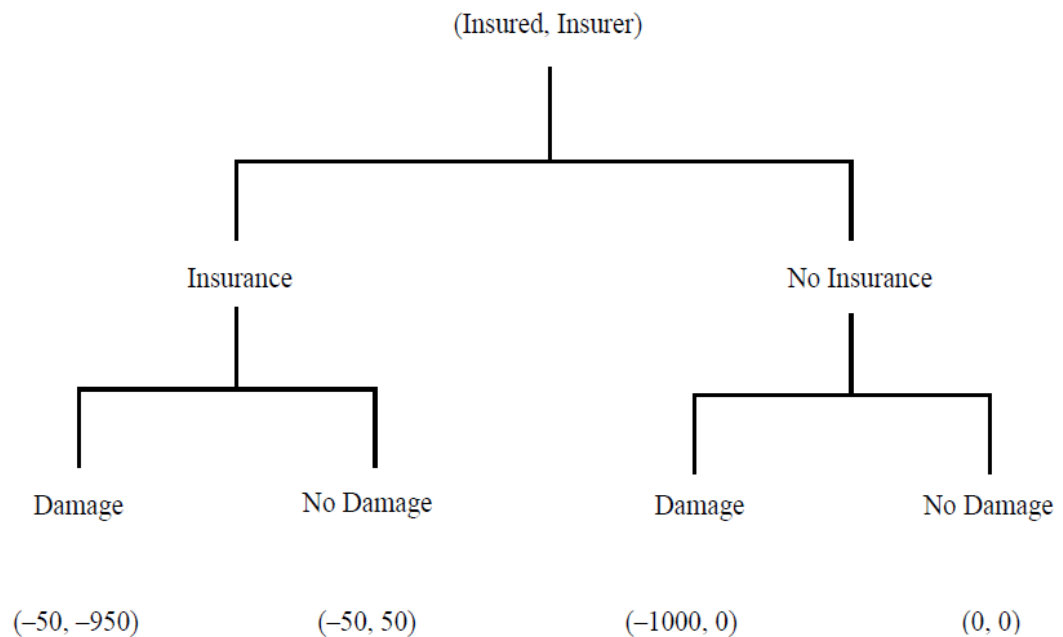


Figure 1. Possible Payoffs from Insuring an Item for the Value of \$1000 with a Premium of \$50.
(Source: Al-Suwailem, p. 81.)

Furthermore, for the purchaser of insurance, by definition, the probability for each individual is that they are not going to have to resort to using the insurance, meaning the probability of payoff, is low. (If that were not the case, the insurance industry would not be able to survive.) The zero-sum measure relates to the idea that either the insured or the insurer is going to win the game between them. In other words, either there is a payoff to the insured which will most likely be greater than what he paid in premiums (meaning he wins) or there will never be such a great payoff and the insurance company will keep the premiums paid (meaning

⁸⁷ See Sami Al-Suwailem, "Towards an Objective Measure of *Gharar* in Exchange," *Islamic Economic Studies* (Vol. 7, Nos. 1 & 2, October 1999-April 2000), pp. 80-81. Earlier in his paper (p. 74), Al-Suwailem argued that insurance contains more risk than the well-known *gharar* contract of selling a lost camel. When a camel is lost (like a stolen vehicle), the owner may be willing to sell it at a small price because he does not know if he will ever see the camel again. The buyer will be able to risk a little bit of money with the hopes of large gains if he is able to find the missing, valuable camel.

the insurance companies win). It is somewhat inconceivable that both parties are going to win, and that is the essence of a zero-sum game. One can see this aspect in the insurance clearly when one thinks of term life insurance. If the person dies within the term, he “wins,” although he is now dead. If he does not die, then the insurance company wins as all his premiums were for naught. At the individual consumer’s level, no one can doubt that insurance meets al-Suwailem’s criteria for *gharar*.

Thus, the Board of the Leading Scholars of Saudi Arabia stated,

The *gharar* of insurance is definitely not minimal. It is either of a great or intermediate nature. The weightier view is that it is great. This is because one of the essential components of the insurance contract, without which it cannot exist, is risk. Risk is the possible event that does not depend on the wills of either party. Insurance is not permissible except on a future possibility that is not definite to occur. Hence, *gharar* is a necessary component of the insurance industry and one of its specific characteristics by which it is distinguished. This places it among the *gharar* that is prohibited.⁸⁸

Commenting on the hadith quoted above prohibiting *gharar* sales, Al-Baaji stated, “The meaning of ‘sale of a speculative nature’ –and Allah knows best—is what has a lot of *gharar* in it and predominates it, to the point that the sale becomes described as a sale of a speculative nature. This is the type concerning which there is no difference that it is prohibited.”⁸⁹ Al-Baaji’s statement applies to insurance contract because, by definition, such predominant *gharar* must be present. “An insurance contract must have an element of contingency—that is, the event insured against must be possible but not certain to occur in a given period of time and must be substantially beyond the control of either insured or insurer.”⁹⁰ Indeed, contract law considers insurance an aleatory⁹¹ promise. Calamari and Perillo describe this in the following words,

An aleatory promise is conditional on the happening of a fortuitous event, or an event supposed by the parties to be fortuitous. Thus an insurance company’s promise to pay a sum of money in the event of fire or other casualty supplies consideration for the insured’s payment of a premium even if no casualty occurs... [T]he promise is aleatory;

88 Haiah, p. 101. See also al-Dhareer, *Al-Gharar*, pp. 655-656.

89 Quoted in Abu Jaib, p. 25.

90 *The Encarta® Desk Encyclopedia* Copyright ©1998 Microsoft Corporation.

91 Aleatory means “1. Dependent on chance, luck, or an uncertain outcome: an aleatory contract between an oil prospector and a landowner. 2. Of or characterized by gambling: *aleatory contests*.” Excerpted from *The American Heritage Dictionary of the English Language, Third Edition* Copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from Lernout & Hauspie Speech Products N.V. Comair-Obeid (p. 55) further noted, “Aleatory contracts form a subdivision of financial compensatory contracts, ones where the benefit for one of the parties depends on some uncertain happening making it impossible to know in advance whether there will be loss or gain.”

it constitutes consideration because it is conditional on a fortuitous event not within the total control of the promisor.⁹²

As can be seen in Comair-Obeid's discussion, *gharar* (speculation, risk, uncertainty) is one of the most prominent aspects in many aleatory contracts.⁹³

This point alone may be sufficient to consider insurance forbidden under Islamic law.

The Aspect of Riba (ربا)

One of the well-known great sins is the taking or paying of *riba* (interest).⁹⁴ Indeed, any Muslim familiar with the numerous texts censuring *riba* would undoubtedly do his best to avoid any trace of *riba*. For example, Allah has said in the Quran,

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ
مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ
فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ يَمْحَقُ اللَّهُ الرِّبَا وَيُرْبِي الصَّدَقَاتِ وَاللَّهُ لَا يُحِبُّ كُلَّ كَفَّارٍ أَثِيمٍ إِنَّ الَّذِينَ
ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَأَقَامُوا الصَّلَاةَ وَءَاتَوْا الزَّكَاةَ لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ يَا أَيُّهَا
الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ وَإِنْ تُبْتُمْ
فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

"Those who devour interest will not stand [on the Day of Judgment] save as he arises whom the devil has deranged by (his) touch. That is because they say, 'Trade is just like interest,' whereas Allah has permitted trading and has forbidden interest. He unto whom an admonition from his Lord comes, and (he) refrains (in obedience thereto), shall keep [the money of] that which is past, and his affair (henceforth) is with Allah. As for him who returns (to interest), such are rightful owners of the Fire. They will abide therein forever. Allah destroys interest and gives an increase for charity. Allah loves not every disbelieving, sinner. Truly, [as for] those who believe, perform righteous deeds, establish the prayer and pay the zakat, their

92 John D. Calamari and Joseph M. Perillo, *The Law of Contracts* (St. Paul, MN: West Group, 1998), p. 209.

93 Cf., Comair-Obeid, pp. 55-59.

94 The word *riba* is sometimes very poorly and improperly translated into English as "usury." "Usury" implies an exorbitant amount of interest, above and beyond what is permissible by law. In Islamic law, any increase above the principle is forbidden. Hence, any positive rate of interest, no matter how low, is both interest and usury in Islamic law. Hence, the word interest is a much better translation for the word *riba*.

reward is with their Lord. No fear shall come upon them neither shall they grieve. O you who believe! Observe your duty to Allah, and give up what remains (due to you) in interest, if you are (in truth) believers. And if you do not, then be informed of a war from Allah and His messenger. But if you repent, then you have your principal [without interest]. Do not wrong [others] and you shall not be wronged" (*al-Baqarah* 275-279).

Among the other numerous Quranic and hadith texts concerning interest is the following:

عَنْ جَابِرٍ قَالَ لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ آكِلَ الرِّبَا وَمُؤَكِّلَهُ وَكَاتِبَهُ وَشَاهِدَيْهِ وَقَالَ هُمْ سَوَاءٌ

Jaabir stated, "The Messenger of Allah (peace and blessings of Allah be upon him) cursed the taker of interest, its giver, its recorder and its two witnesses. They are all alike." (Recorded by Muslim.) In this important hadith of the Prophet (peace and blessings of Allah be upon him) one sees that the giver and the receiver as well as those who assisted in this forbidden contract are all equally sinful and have all been cursed by the Prophet (peace and blessings of Allah be upon him).

Numerous scholars have argued that the insurance contract contains a clear element of *riba*. To understand this argument fully, one must consider what is the "object" of the insurance contract (محل عقد التأمين أو المعقود عليه). In a mutually onerous transaction, one person gives up some form of wealth in exchange for something that is also of value. The policyholder pays premiums, that is the form of wealth that he is giving up. What, though, is the object of the contract that he is getting in exchange for his payment of money? Many who consider insurance legal argue that he is paying money in exchange for "security and peace of mind." Two questions then arise: Is that a valid "object of contract" in Islamic law? And, if that is not valid, what then must be seen as the "object of contract" in insurance?

There are certain conditions that a possible "object" must meet in order for the transaction to be considered a valid and binding transaction. These conditions include the following: (1) legality, (2) existence, (3) the property of being deliverable and (4) precise determination.⁹⁵

Can "security and peace of mind" possibly meet these criteria for a valid object of a financial contract? Undoubtedly, this very subjective object does not meet the criteria for the object of a financial contract. Al-Dhareer wrote,

⁹⁵ See Rayner, pp. 131-141; Comair-Obeid, pp. 22-28; Muhammad Salaamah, *Nadhariyyah al-Aqd fi al-Fiqh al-Islaami min Khilaal Aqd al-Bai* (Morocco: Wizaarah al-Auqaaf wa al-Shuoon al-Islaamiyyah, 1994/1414), p. 54.

[Al-Zarqa⁹⁶ argues that] what is exchanged for the premiums is security. That is, the object of the contract in insurance is security. This argument is supported by neither fiqh nor law. As is obvious, security is the motivating factor behind the insurance contract. But the object of the contract is what each of the insured and the insurer pays or it is what one of them pays. If we were to say that security is the object of the contract, then the insurance contract would be void from both a legal and a fiqh perspective. It is from the accepted premises in both [secular] law and fiqh that the object of the contract must be something possibly deliverable. If the object is not so possible, the contract is void. It is self-evident that security in an insurance contract is not something possibly bound to.⁹⁷

Indeed, “security” is not something that passes from one of the contracting parties to the other nor is it a usufruct or effort that one is exerting and deserving a wage for.⁹⁸

If peace of mind were truly the object of the contract, when the insured files a claim, the insurance company could respond, “We have already given you peace of mind and now you want money on top of it?” In other words, even the insured is not interested in the supposed “peace of mind.” The insured is interested in being compensated. That is the object of the contract. In addition, suppose someone had a life insurance policy for years and then comes to the insurance company and says, “I have been paying my premiums for years but I have not really felt peace of mind, so I want to be refunded for all of my premiums.” Clearly, the insurance company would tell him, “Your psychological peace of mind is not actually what you have been paying for, so we cannot refund you.” In other words, under no legal reasoning could “peace of mind” be considered the object of the contract.

From a contract and business perspective, what one truly gets in return for premium payments is simply money and nothing else.⁹⁹ Fabozzi, et al., probably said it best when they began their discussion of insurance companies by saying, “Insurance companies are *financial intermediaries* that, for a price, will make a payment if a certain event occurs.”¹⁰⁰

96 Al-Zarqa, *Nidhaam al-Tameen*, (p. 166) states that this view has been wrongly ascribed to him by al-Dhareer and others. However, his alternative explanation does not seem very clear.

97 al-Dhareer, *al-Gharar*, p. 651.

98 Cf., al-Shanqeeti, vol. 2, p. 522.

99 This is extremely obvious in the case of life insurance. This is also true for auto insurance. If a person’s car is damaged or totaled, the policyholder receives money from the insurance company. In fact, in the case of a damaged vehicle, in the United States at least, the person receives money for the damages and is not required to repair his car with that money. With medical insurance, again, the individual indirectly receives money—but that money has already been spent and hence goes, in most cases, to the medical businesses directly. However, the insurance company paying the medical personnel directly is simply for the sake of convenience.

100 Frank Fabozzi, Franco Modigliani and Michael Ferri, *Foundations of Financial Markets and Institutions* (Upper Saddle River, New Jersey: Prentice-Hall, 1994), p. 123 (emphasis added).

This is problematic, to say the least. This means that the insurance contract is nothing more than an exchange of money for money,¹⁰¹ which an element of chance and risk being present. Islamic law strictly regulates the exchange of money for money. Ubaadah ibn al-Saamit narrated that the Prophet (peace and blessings of Allah be upon him) said,

الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلِ سِوَاءٍ بِسِوَاءٍ
يَدًا بِيَدٍ فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَيَبْعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ

“Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt [must be] the same amount for the same amount, equal for equal, hand to hand. If these genus differ, you may trade them as you wish if they are hand to hand.” (Recorded by Muslim.) This hadith makes it clear that money exchanges must be done hand to hand and, if the money is of the same genus, the amounts must be equal. If this condition is not met, one has fallen into *riba*. In fact, in insurance contracts, it is possible for someone to fall into both *riba al-fadhl* (interest via an increased payment) and *riba al-nasee`a* (interest via a delay in a payment that is required to be hand-to-hand). The amount that one receives (directly or indirectly) from the insurance company, if one ever does receive something from them, will be equal to, less than or greater than the premium payments that the policyholder has paid over time to the insurance company. If the policyholder receives more money than he has paid the insurance company, this is *riba al-fadhl*. In the very unlikely scenario of the two amounts being equal, the exchange of money was not hand to hand and hence the two parties have been involved in *riba al-nasee`a*.

Again, in the case of insurance, with respect to the commodity that is actually exchanged, one is truly only exchanging money for money at a later date depending on some unpredictable event. This author cannot see how such an exchange cannot be envisioned as anything other than one involving interest.

Al-Qari takes a different approach. He argues that those who have written about insurance have failed to recognize its true object. After agreeing that insurance is a mutually onerous contract, he argues that the object of the insurance contract is “liability to compensate” and not the compensation payments that are received. The insured, therefore, pays a fixed payment in exchange for this liability or obligation to be compensated in the case of specific types of harm. Thus, the object of the contract exists whether or not the insurance

¹⁰¹ In the words of Arrow, insurance is an “exchange of money for money, not money for something which directly meets needs.” Quoted in al-Suwailem, p. 80.

company ever has to compensate the insured. And since the insurance company is relying on “the law of large numbers,” there is virtually no speculation on its part either. He later states that in this way it is therefore similar to *al-kifaalah* or *al-dhamaan* (contract of guaranty or surety).¹⁰² In fact, what he has described is nothing but a contract of guaranty.

However, the scholars have noted that insurance cannot be considered analogous to the contract of guaranty for a number of reasons.¹⁰³ One of the reasons is that the guarantor cannot take any form of payment for the guaranty. If such payment is stipulated, the contract is voided. Secondly, the guarantor is considered secondary to the one who receives such a guaranty. In other words, in case of a debt, the creditor seeks his money first from the debtor and only when the debtor cannot pay will the creditor turn to the guarantor for payment.

In fact, logically speaking, when one takes into consideration what is *al-dhamaan* (financial surety), it has to be a charitable type of contract. Otherwise, one is paying money for money, which is interest. Secondly, one is paying for a surety concerning something that may or may not happen. This is nothing but *gharar* and *jahaalah* again. Hence, the only way such a contract could be within the limits prescribed by the Shareeah—given that the Shareeah would not allow a mutually onerous contract that clearly violates the principles of mutually onerous contracts—is if it were moved to the category of charitable contracts, wherein it is not paid for and the aspects of *gharar* and *jahaalah* can be overlooked. Thus, the “liability to compensate” is not an acceptable object of a mutually onerous contract—and al-Qari agrees that the insurance contract is a mutually onerous contract.

The Secondary Involvement of Riba

There is another important issue that is related to the practices of the contemporary commercial insurance companies. This concerns how they invest their money and where they get part of their funds to pay off any claims. It is true, as al-Zarqa and many others have argued, that this point has nothing in essence to do with the insurance contract per se.¹⁰⁴ In other words, an insurance company that is void of this criticism can easily be envisioned. However, at times, when discussing a particular contemporary topic, one has to move from a theoretical level to the practical reality, so that the reader knows what actually applies to the situation that he is facing. This is especially true if one is discussing the ruling of insurance in a non-Islamic country such as the United States or other countries of the West.

Earlier there was a discussion of how life insurance companies invest their funds in order to supplement the premiums they receive. It was found that the bulk of what they invest in is

¹⁰² Muhammad al-Ali al-Qari, “*Al-Tameen Sihhi*,” *Majallat Majma al-Fiqh al-Islaami* (No. 13, 2001), vol. 3, pp. 559-560

¹⁰³ See Haiah, *Abhaath*, vol. 4, pp. 189-190 and 292-293.

¹⁰⁴ Cf., al-Zarqa, *Nidhaam al-Tameen*, p. 134.

bonds, which are clearly *riba*-based and forbidden. In general, the insurance industry as a whole is dominated by investments that are forbidden. For example, for the years 2013, 2014 and 2015, bonds made up 62%, 61% and 62%, respectively, of the investment portfolios of property and casualty insurance companies.¹⁰⁵ (This is the bond proportion only. Other aspects of their portfolios are also forbidden or questionable, such as their investments in the money market, which is categorized as “common stock.”)

As this author recognized above, this criticism has nothing to do with the insurance contract *per se* and hypothetically this problem could be avoided. However, the truth of the situation is that a Muslim who buys insurance from Western commercial insurance companies is, in reality, giving his money to a company and asking that company to return that money (and, most likely, more) if certain events occur. The Muslim should realize that that company is going to invest that money in ways that are Islamically unacceptable. It is partially through those unacceptable means that the policyholder will be receiving his money back. In other words, instead of the Muslim investing the money himself in forbidden ways, he simply gives it to another person (“a financial intermediary,” the insurance company) and allows that other party to do those forbidden acts with his own money, with the intention that he will benefit from it when the necessary time comes. It does not seem that a Muslim should be pleased with this arrangement, as there is no substantial degree of separation between the Muslim as the policyholder and his benefiting from these forbidden investments. If, as the above hadith states, the witness and the recorder of the interest transaction are accursed, what must be the case of the person who knowingly gives money to another to invest in interest bearing accounts virtually on his behalf? It is almost akin to the case of selling grapes to an individual when the seller knows that the buyer is going to make alcohol out of those grapes. Regardless of the legal ruling concerning that case as stated by many of the scholars, no individual Muslim should feel innocent in front of Allah when he has contributed to the performance of a forbidden act. Allah says,

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

“Help one another in righteousness and piety—and do not help one another in sin and transgression. And fear Allah for verily Allah is severe in punishment” (*al-Maaidah* 2).

Other Problematic Matters

Gharar and *riba* are two aspects that are unavoidable in contemporary commercial insurance. By themselves, they should be enough to render the judgment that such contracts

¹⁰⁵ Insurance Information Institute, *2017 Insurance Fact Book* (https://www.iii.org/sites/default/files/docs/pdf/insurance_factbook_2017.pdf), p. 56.

are impermissible in Islamic law. However, there are yet other matters that are problematic with the insurance contract which would render it void in an Islamic contract. These include gambling, wagering, unknown quantity, taking on responsibility that is not sanctioned by the Shareeah and so on. Space limitations here do not allow this author to discuss those aspects in detail but they provide further support for the opinion that commercial insurance is forbidden.

Do the Need and the Benefits Override the Prohibited Aspects?

Even given all of the unacceptable aspects of the commercial insurance contract, one could argue that the general need and overriding benefits of such a contract make it permissible. Although he did not discuss insurance in particular, Abu Sulaimaan argues that the true fiqh of business contracts are based on need and necessity. Abu Sulaimaan writes, “[Most of the financial contracts in the Hanafi school are based on necessity. They are permitted in contradiction to analogy.](#)”¹⁰⁶ (Although it is not possible to discuss this topic here in detail, it is important to note that such a view about these business transactions cannot be considered the strongest view. Ibn Taimiyyah, in particular, has refuted this view in detail. He stated, for example, “[It is not a condition for a sound, balanced analogy that its soundness be known to all. If someone sees something of the Shareeah that differs from analogy, it actually only differs from the analogy that he has structured in his own mind. At the same time, though, it is not contradicting confirmed, sound analogy.](#)”¹⁰⁷)

In any case, though, often relying on the views of early Hanafi scholars, some contemporary scholars, such as al-Sanhooori and al-Zarqa, have argued that even though insurance involves *gharar*, the overriding need for insurance makes such a contract permissible.¹⁰⁸ They argue that insurance developed and continues to be resorted to because it fulfills a general need and is part of the public interest. Due to this overriding benefit, insurance must be considered permissible even if it is argued that it violates some of the principles of a business contract. They argue that without resorting to this type of business contract, Muslims will be forced into a situation of hardship and difficulty. This need makes it similar to a necessity that is considered permissible according to Islamic law.¹⁰⁹ Al-Zarqa argues that the

¹⁰⁶ Abdul-Wahaab Abu Sulaimaan, *Fiqh al-Dharaarah wa Tatbeeqaatuha al-Muaasirah: Afaaq wa Abaad* (Jeddah: al-Mahad al-Islaami li-l-Buhooth wa al-Tadreeb, 1993), p. 139.

¹⁰⁷ Ibn Taimiyyah and ibn al-Qayyim, *al-Qiyaas fi al-Shari al-Islaami* (Beirut: Daar al-Afaaq al-Jadeedah, 1975), p. 11.

¹⁰⁸ Al-Sanhooori is quoted in al-Dhareer, *al-Gharar*, p. 653. Also see al-Zarqa, *Nidhaam al-Tameen*, pp. 168-169. Al-Zarqa (p. 172) quotes ibn Taimiyyah who said, “If the evil of a speculative transaction is that it leads to hatred, enmity and devouring wealth wrongfully, it is known that if that evil is outweighed by some benefit, the benefit will take precedence. Such is the case with competing in horseracing, archery and camel racing. Since there is a Shareeah utility to it, it is permissible even with payment, although other such transactions are not allowed with payments.” It is generally understood that those exceptions are matters that strengthen the Muslim nation’s ability in jihad and are not simply for personal, economic benefit.

¹⁰⁹ For a review of this argument, see al-Shanqeeti, vol. 2, pp. 585-587.

early respected scholars, taking into consideration the broader, magnanimous principles of the Shareeah, stated that the droppings of livestock was not to be treated as impure for the people of the village and Bedouins, since there was no way for them to avoid such droppings without undue hardship. Al-Zarqa rhetorically asks about what those scholars would say if they would today see the great need for insurance and the hardships found in avoiding it.¹¹⁰

Al-Misri argues that those who consider insurance permissible are those that consider the economic benefits of insurance while those who consider it forbidden fail to consider those important benefits.¹¹¹

Although there are such possible benefits to insurance, one has to weigh the costs too. Simply finding something beneficial does not render an action permissible. Hence, Allah has stated about wine and gambling,

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعَةٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا^{١٢}

“They ask you about wine and gambling. Say, ‘In both is great sin, and (some) benefits for mankind; but the sin of them is greater than their benefits’” (*al-Baqarah* 219). The verse clearly states that there is some benefit to both wine and gambling. However, the mere presence of some beneficial aspect is not the overriding issue. The question is whether its harm or sin is greater than its benefit or vice-versa. Thus, the important point is that the overriding benefit (as seen in the light of Islamic goals and directives) outweighs the harm involved.

Furthermore, the ends cannot justify the means. In other words, even if the overall benefits or goals of investment are aspects respected or consistent with the Shareeah, the steps that one takes to fulfill those otherwise permissible goals must be first determined to be legal—unless one is in a constrained case of necessity or need, which shall be discussed later.¹¹²

From a theoretical perspective and practical speaking there are many ways by which insurance could be beneficial to an economy. Some of these benefits from insurance could include:¹¹³

(1) The preponderance and popularity of insurance companies has led to a great concentration of wealth in the hands of the insurance companies. These insurance companies are profit driven. They become “institutional investors” by investing that money for profit. In

110 Al-Zarqa, *Nidhaam al-Tameen*, p. 98. Actually, there is no strong evidence to prove that such droppings were impure in the first place—leading some schools of fiqh to say that they are not impure. In the absence of any such evidence and the demands of need or necessity, one could agree with al-Zarqa’s argument. But in the face of *gharar* and *riba* being clearly prohibited, al-Zarqa’s argument loses its strength.

111 Rafeeq Yunus al-Misri, *al-Khatir wa al-Tameen: Hal al-Tameen al-Tijaari Jaaz Sharan* (Damascus: Daar al-Qalam, 2001), p. 58.

112 Cf., al-Shaadhili, p. 304.

113 Cf., Thunayaan, pp. 121-124. Also see Muhammad Nejatullah Siddiqi, *Insurance in an Islamic Economy* (Leicester, UK: The Islamic Foundation, 1985), p. 25.

other words, it is a way of tapping savings and making sure that those savings do not sit idle but are indeed invested for the betterment of society.

(2) Since people are risk averse, it is difficult to get many of them to invest in large projects, risking a great deal of their money. If they were protected against loss, it will be easier to encourage them to invest in larger projects. Without such a protection, those large projects may not be undertaken. Especially in contemporary times and, in particular, in developing countries, the need for larger and massive investments is great. Without contemporary forms of insurance, many of these types of investments would not be undertaken. Hence some writers even claim that modern civilization as it is known today cannot come about save through modern forms of insurance. Siddiqi wrote, "The present system of wealth-creation and the present level of civilization is simply inconceivable without recourse to insurance. The absence of insurance is bound to lead to a lowering of the level of wealth-creation and to the decline of civilization."¹¹⁴

(3) The willingness for individuals to invest together will also be increased if they feel that their investments are somehow guaranteed against loss. This is where investment can once again increase the propensity to invest.

(4) "Because insurance is available and affordable, banks can make loans with the assurance that the loan's *collateral* (property that can be taken as payment if a loan goes unpaid) is covered against damage. This increased availability of credit helps people buy homes and cars. Insurance also provides the capital that communities need to quickly rebuild and recover economically from natural disasters, such as tornadoes or hurricanes."¹¹⁵

(5) It is also argued that insurance contributes to "boosting financial stability, facilitating trade and commerce, supporting to reduce or mitigate losses, and fostering a more efficient allocation of domestic capital."¹¹⁶

As far as back as 1964, UNCTAD declared that "a sound national insurance and reinsurance market is an essential characteristic of economic growth."¹¹⁷

The theoretical positive contributions of insurance are clear. Empirically testing the theory is always challenging when it comes to the social sciences, even given all of the advancements in econometrics. Numerous studies have been done to try to capture the effects of insurance on economic growth and GDP. First, it is difficult to distinguish the influence of the roles insurance plays and the effects of the industry itself, with its multiplier effects throughout

114 Siddiqi, p. 25.

115 Microsoft ® Encarta ® Reference Library 2004. © 1993-2003 Microsoft Corporation.

116 Zuzana Richterová and Petr Korab, "Impact of Insurance Sector Activity on Economic Growth—A Meta-Analysis," *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis* (Vol. 61, No. 7, 2013), p. 2677.

117 United Nations, *Proceedings of the United Nations Conference on Trade and Development* (New York: United Nations, 1964), p. 55.

the economy.¹¹⁸ Second, causal relations are difficult to pin down, especially since a robust insurance industry benefits from a developed financial sector and vice-versa. Third, with respect to the correlation between insurance and economic growth, it is difficult to distinguish the demand side (increase in the demand for insurance products) and the supply side (where the insurance industry is partially driving or contributing to the growth.) Fourth, the choice of the proxy for insurance (insurance density, insurance premiums or insurance penetration) seems to influence the results of the tests. Additionally, some of the contributions to economic growth may be tainted from an Islamic perspective. (That is, one of “positive effects” of the insurance industry is redirecting savings into bonds and interest-bearing accounts, as that is the investment choice for insurance companies.) In any case, the empirical studies have been somewhat mixed (especially for life insurance, in particular), with the majority of them demonstrating a positive effect of insurance on economic growth.¹¹⁹ For example, Ching, et al., found a significant long-run relationship between life insurance and economic growth for Malaysia¹²⁰ while Kjosevski found a significant positive effect of non-life insurance and a negative effect for life insurance on economic growth for Macedonia.¹²¹ Omoke noted no relationship between insurance and economic growth in Nigeria, while noting that Nigerians have not yet fully embraced the concept of the insurance industry,¹²² yet Madukwe and Anyanwaakoro found a positive and significant causal effect of insurance on economic growth for Nigeria.¹²³ Verma and Bala concluded that life insurance significantly affected India’s economic growth.¹²⁴ In Tong’s study of four countries, he found that in two of them life insurance promoted economic growth while the other two demonstrated the opposite result.¹²⁵

118 See, for example, “The Beneficial Role of Insurance Industry in State of Illinois” (<https://business.illinoisstate.edu/katie/industry/Beneficial%20Role%20of%20Insurance%20Industry%20in%20Illinois.pdf>), which speaks about the insurance industry as an employer, contributor to state tax revenues and other beneficial roles.

119 The interested reader may consult the following review article and an article that reviews the other studies well: J. Francois Outreville, “The Relationship between Insurance and Economic Development: 85 Empirical Papers for a Review of the Literature,” *Risk Management and Insurance Review*, (2012, Vol. 00, No. 0, 1-52); Sajid Mohy Ul Din, Arpah Abu-Bakar and Angappan Regupathi, “Does insurance promote economic growth: A comparative study of developed and emerging/developing economies,” *Cogent Economics & Finance* (2017, 5: 1390029).

120 Kok Sook Ching, Mori Kogid, and Fumitaka Furuoka, “Causal Relation between Life Insurance Funds and Economic Growth: Evidence from Malaysia,” *ASEAN Economic Bulletin* (Vol. 27, No. 2, 2010), pp. 185-199.

121 Jordan Kjosevski, “Impact of Insurance on Economic Growth: The Case of Republic of Macedonia,” *European Journal of Business and Economics* (Vol. 4, 2011), pp. 34-39.

122 Philip Chimobi Omoke, “Insurance Market Activity and Economic Growth: Evidence from Nigeria,” *Acta Universitatis DAanubius* (Vol. 8, No. 2, 2012), pp. 34-47.

123 Obinna Darlington Madukwe and Mike Anyanwaakoro, “The Causal Relationship between Life Insurance Business and Economic Growth in Nigeria,” *International Journal of Innovation and Scientific Research* (Vol. 4, No. 2, July 2014), pp. 100-109.

124 Anju Verma and Renu Bala, “The Relationship between Life Insurance and Economic Growth: Evidence from India,” *Global Journal of Management and Business Studies* (Vol. 3, No. 4, 2013), pp. 413-422.

125 Haizhi Tong, “An Investigation of the Insurance Sector’s Contribution to Economic Growth,” (Ph.D. Dissertation, University of Nebraska, 2008).

And, as a finally example from the numerous studies on this topic, Alhassan found that life insurance has a more profound effect on economic growth than non-life insurance.¹²⁶

At the same time, there are definitely some harmful aspects to the insurance industry. These include:¹²⁷

(1) It is argued that the insurance industry leads to a greater concentration of income in the hands of the rich. This, in itself, strikes at one of the overall goals of the Islamic society and economic system, as is derived from Allah's words:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“What Allah has bestowed on His Messenger (and taken away) from the people of the townships, belongs to Allah, to His Messenger and to kindred and orphans, the needy and the wayfarer; in order that it may not (merely) make a circuit between the wealthy among you” (Al-Hashr 7).

According to Maulawi, insurance leads to a greater maldistribution of wealth in a number of ways.¹²⁸ First, insurance, in general, is a very profitable industry and those who own the companies benefit from that profit. Second, the richer a person is, the less need he has for insurance but the more insurance he can afford to cover virtually any possible loss to his wealth. Hence, the rich are able to hedge against any loss. The poor, who many times cannot afford such insurance, face unrecoverable losses and can become even poorer. (This reality is part of what led to the Affordable Care Act in the United States. Millions of the middle class, especially self-employed, had no health insurance because they simply could not afford it, as rates have skyrocketed for health insurance. These people are often forced to pay for their own health care, which is also expensive and keeps them in a cycle of semi-poverty. Those in the upper class do not face this difficulty.) Third, as corporations become larger and larger, it becomes more and more difficult for smaller companies to compete. Some of the heavy costs facing any company are the various insurance costs, some of them required by law. Over time, the smaller companies simply cannot compete and are driven out of business due to the great costs, especially insurance costs, of doing business.

(2) Most of the Muslim countries in the world form part of the lesser developed world. With respect to these countries, the insurance industry has led to a financial drain from those economies. The larger insurance companies and reinsurance companies are mostly from the

126 Abdul Latif Alhassan and N. Biekpe, “Insurance Market Development and Economic Growth: Exploring Causality in 8 Selected African Countries,” *International Journal of Social Economics* (Vol. 43, No. 3, 2016), pp. 321-339.

127 Cf., Thunayaan, pp. 121-137.

128 Cf., Faisal Maulawi, *Nidhaam al-Tameen wa Mauqif al-Shareeah Minhu* (Beirut: Daar al-Rishaad al-Islaamiyyah, 1988), pp. 107f.

more advanced countries. They take the payments that they receive from the lesser developed countries and invest them in the more advanced countries. Hence, there is a transplant of needed capital from the poorer countries to the richer countries.

(3) Attitudinal hazard is a well-known issue and cost with respect to insurance.¹²⁹ This refers to a situation wherein people may be willing to take more risks or be more careless because their possessions are insured. This, in the long-run, will lead to more incidents than without insurance, increasing the average costs of risks for everyone sharing the risks and also increasing the cost of insurance.¹³⁰

(4) Moral hazard is yet another issue with respect to insurance. This essentially refers to the possible dishonesty of policyholders.¹³¹ People often try to fraud insurance companies by getting the company to pay for more than what the policyholder is deserving or by even intentionally destroying insured items in order to get money from the insurance companies.¹³² (Some justify by it by arguing that they have been paying premiums for years without getting anything in return while others feel that the insurance companies are big and rich enough to handle these payments.) With respect to life insurance, people have faked their own deaths while others have resorted to murder in order to collect insurance money.¹³³

Interestingly, in preparing his Ph.D. dissertation on insurance, Thunayaan interviewed a number of insurance experts and researchers in Egypt, Germany, United States and England. He found that about 55% of those interviewed were of the opinion that the evils of insurance outweigh their good. Another 25% stated that insurance is evil, not containing any good. 15%

129 Moral hazard and morale hazard are two commonly discussed issues with respect to insurance. Different authors have presented them in different ways. Although it is not the most common approach, for this paper Rejda and McNamara's presentation is being followed. Cf., George E. Rejda and Michael J. McNamara, *Principles of Risk Management and Insurance* (Harlow, England: Pearson, 2017), pp. 23-25. (These authors and others use to use the term "morale hazard" but now use "attitudinal hazard," as they feel this term is easier for students to understand. Furthermore, earlier theorists, such as Kenneth Arrow, would have included this behavior under "moral hazard.")

130 Information asymmetry occurs here leading to inefficiency. If insurance companies could know the exact behavior of their premium holders, they would deny or increase the premiums for those who have riskier behavior. Again, the irony here is that if these individuals did not have insurance, they would not behave in that reckless manner.

131 Rejda and McNamara, p. 23.

132 Perhaps the most famous widespread case of this nature is related to the San Francisco earthquake and fire of 1906. After the fires broke out, some residents realized that they had fire insurance but no earthquake insurance. Hence, they snuck back to their houses and set them on fire in order to get insurance payments on their houses that were actually damaged by the earthquake. Cf., <http://www.sfmuseum.org/1906.2/arson.html>.

133 Attitudinal hazard, moral hazard and adverse selection (where the insurance companies were simply mistaken in their expectations of costs) are all costs that the insurance companies must incorporate into the premiums that consumers pay. In other words, people's premiums are not simply the average (risk-shared) costs of probable future events plus a normal profit. There is an additional component that is passed along as a cost to the consumer due to the lack of perfect information. These factors are what also make the insurance industry inefficient in shifting risks.

said that insurance's good is equal to its evil. Amazingly, only 5% stated that insurance's good outweigh its evil.¹³⁴

The more objectionable aspects that a contract has to it, the stronger will the evidence have to be to show that it is needed and that its objectionable aspects are to be overlooked. Ibn Taimiyyah once noted that the harm of *riba* is greater than that of *gharar* and that is why *gharar* is sometimes overlooked if there is a strong need for its related transaction.¹³⁵ However, in the case of insurance, there is the problem of *riba*, *gharar*, *jahaalah* and other aspects (some of them not discussed in detail here). Obviously, the issue of *riba*, for example, is not a light matter. Hence, to override it—if such a concept is possibly acceptable—one would have to present a very strong, definitive case.

It is accepted that there are definitely some benefits to the commercial insurance industry as it currently exists. The same, though, can be said about the banking industry. Banks are financial intermediaries that are beneficial in many ways, and, similarly, the insurance industry spreads risk and can promote, thereby, economic growth. This neither means that the banking industry, with its clear *riba*, nor the insurance industry, with its issues, need to be considered permissible. It may indicate that Muslim societies should develop their own unique alternatives to provide some of the same needed services.

In sum, in this author's view, there does not seem to be enough evidence to prove that the industry's benefits so outweigh its harms that although it contradicts many of the aspects of a sound contract, it must still be considered acceptable due to overriding need. Nor is there evidence to show that the same goals cannot be accomplished by means which do not violate the Shariah. And Allah alone knows best.

Conclusion on the Legality of Commercial Insurance

The conclusion here is that commercial insurance as it presently exists is definitely forbidden. From this author's reading on this topic, this is also the conclusion of the vast majority of the scholars who have discussed this issue in some detail. For example, it is the conclusion of the Islamic Fiqh Council of the OIC,¹³⁶ the Board of the Leading Scholars of Saudi Arabia,¹³⁷ the Fiqh Council of Makkah under the auspices of the Muslim World League,¹³⁸ al-

134 Thunayaan, p. 142.

135 Ibn Taimiyyah was quoted in Haiah, *Abhaath*, vol. 4, p. 256.

136 See their resolution in *Majallah Majma al-Fiqh al-Islaami*, No. 2, vol. 2, 1986, p. 731.

137 See their resolution in *Abhaath Haiah*, vol. 4, pp. 307-315.

138 The text of their resolution may be found in *Majallah Majma al-Fiqh al-Islaami*, No. 2, vol. 2, 1986, pp. 643-651.

Sideeq al-Dhareer,¹³⁹ Wahba al-Zuhaili,¹⁴⁰ Muhammad Mustafa al-Shanqeeti,¹⁴¹ Salaah al-Saawi with Abdullah al-Muslih,¹⁴² Sulaimaan Thunayaan,¹⁴³ Ali Abu al-Basl,¹⁴⁴ Abdul-Raooof al-Shaadhili,¹⁴⁵ Faisal Maulawi,¹⁴⁶ Mohammad Muslehuiddin,¹⁴⁷ Afzalur Rahman,¹⁴⁸ and numerous other respected scholars and jurists.¹⁴⁹

It is beyond the scope of this brief paper to review and critique the views of those who consider insurance permissible. The strongest supporters of commercial insurance, void of its forbidden aspects such as investing monies it received in forbidden means (a condition that virtually makes the discussion a moot point practically speaking), include Mustafa al-Zarqa, Ali al-Khafeef, Muhammad al-Bahi and Rafeeq al-Misri. Al-Zarqa's views were first presented in 1961 and his earlier writings and some later writings were published as recently as 1994. In one of the few books that deals with this topic in English, Vogel summarized a couple of al-Zarqa's arguments and then wrote, "[Despite its persuasiveness, this line of argument did not vanquish opposition to insurance.](#)"¹⁵⁰ In this author's view, al-Zarqa's arguments were not so persuasive and have been refuted by many scholars since their first appearance—to the point that one would have expected al-Zarqa over time to drop some of his weaker arguments in support of insurance, something he never did in his published works. Rafeeq al-Misri's book, *al-Khatar wa al-Tameen: Hal al-Tameen al-Tijaari Jaaiz Sharan*, is, in this author's view, a much stronger argument for the acceptance of commercial insurance. In that work, al-Misri, referring to some of al-Zarqa's and others' arguments, stated "[I have no doubt that many of those who consider commercial insurance permissible use weak evidence to support it. I also have no doubt that some of them want to make it permissible by forced arguments at any price, built on a preconceived conclusion.](#)"¹⁵¹

This is not to deny that from society's perspective and for the economy as a whole there may be numerous benefits to risk-sharing, in a manner similar to how financial intermediaries (banks) can be beneficial for economic growth. However, as earlier stated, this simply indicates

139 Al-Dhareer, *al-Gharar*, p. 646-663.

140 Wahbah al-Zuhaili, *al-Muaamalaat al-Maaliyyah al-Muaasirah* (Beirut: Daar al-Fikr al-Muaasir, 2002), pp. 263-294.

141 Al-Shanqeeti, vol. 2, pp. 592-596.

142 Abdullah al-Muslih and Salaah al-Saawi, *Maa La Yasau al-Taajir Jahlahu* (Riyadh: Daar al-Muslim, 1422), pp. 227-228.

143 Thunayaan, *passim*.

144 Abu al-Basl, p. 221.

145 Al-Shaadhili, p. 322.

146 Maulawi, pp. 101-126.

147 Muslehuiddin, pp. 166-178.

148 Afzalur Rahman, *Economic Doctrines of Islam: Banking and Insurance* (London: The Muslim Schools Trust, 1979), pp. 88-216.

149 For a more detailed summary of many views, see Muslehuiddin, pp. 148-165. For a table summarizing rulings both in favor and against insurance, see Masum Billah, pp. xxv-xxvii.

150 Vogel, p. 151.

151 Al-Misri, p. 101.

that Islamic alternatives should be sought after, especially for Muslim economies. Much work has already been done in this field, in what is known as the takaful industry, but a detailed discussion of that effort is beyond the scope of this paper.

At the same time, it must be recognized that insurance has blossomed under a very individualistic, market-oriented, capitalistic culture. The Islamic social system has both mandatory and voluntary mechanisms that act as safety nets by which some insurance, specifically life insurance, may not be called for. These mechanisms include the mandatory zakat (which is partially meant to make people whole after facing disasters), the obligations that family members have toward each other (including financial obligations), and, finally, the encouragement to give voluntarily in charity to various categories of people in need.¹⁵²

¹⁵² Interestingly, Abdul-Lateef Janaahi stated, "We can never differ that insurance is a necessity of the necessities of life." [Abdul-Lateef Janaahi, "Discussion," *Majallah Majma al-Fiqh al-Islaami* (No. 2, 1986), vol. 2, pp. 709-710.] At the same time, he states that statistics from ten countries show that if zakat was paid in the way that it is supposed to be paid, it would be sufficient to cover the societal needs and would make insurance unneeded. Thus, all that is really needed is that the Muslim governments apply zakat properly. (Janaahi, vol. 2, p. 711.) Note that this contradicts his statement that insurance is a necessity of life.

A Fiqh Discussion of Commercial Life Insurance in Specific

The above discussion has concluded that the default ruling for insurance is that of prohibition. It is expected that life insurance, simply being a subset of insurance as a while, will possibly have the same ruling. In any case, the following further comments may be made concerning life insurance.

The idea of leaving something behind for one's family, to make sure that they are taken care of, certainly is sanctioned in the Shareeah. As quoted earlier, the Prophet (peace and blessings of Allah be upon him) told Saad ibn Abi Waqqaas,

إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ

"No doubt, it is better to leave your children rich than to leave them poor, reduced to begging from others." (Recorded by al-Bukhari and Muslim.) Similarly, taking care of widows and orphans is in itself a virtuous act. Al-Bukhari records:

عَنْ سَهْلِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا وَكَافِلُ الْيَتِيمِ فِي الْجَنَّةِ هَكَذَا وَأَشَارَ بِالسَّبَّابَةِ وَالْوُسْطَى وَقَرَّجَ بَيْنَهُمَا شَيْئًا

Sahl [narrated that] the Messenger of Allah (peace and blessings of Allah be upon him) said, "I and the one who looks after an orphan will be like this in Paradise," showing his middle and index fingers and separating them somewhat. Al-Bukhari also recorded that the Prophet (peace and blessings of Allah be upon him) said,

السَّاعِي عَلَى الْأَرْمَلَةِ وَالْمَسْكِينِ كَالْمُجَاهِدِ فِي سَبِيلِ اللَّهِ أَوْ الْقَائِمِ اللَّيْلَ الصَّائِمِ النَّهَارَ

"The one who looks after and works on behalf of a widow and on behalf a poor person is like a warrior fighting for Allah's Cause or like a person who fasts during the day and prays all the night." What better way to look after one's family, orphans or widows than to make sure that they are taken care of financially. This is essentially what life insurance is all about.

However, whether it is taking care of one's own needs or taking care of somebody else's needs, the steps that one follows must be permissible. Winning a lottery, for example, could be another way to virtually ensure that one's family is set for life. Perhaps all scholars would agree that that noble goal does not justify playing the lottery every week as it is established that gambling is forbidden. Similarly, the steps that one takes to support one's family while alive or after one's death must first be established as permissible before one should engage in them.

It should be noted here that there is an argument that is often made by scholars against life insurance that simply does not seem to make any sense. This is the argument that by getting life insurance one is somehow going against the Islamic belief of putting one's trust and reliance in Allah. Somehow, it is inferring that by getting life insurance a person is putting his

trust in the life insurance policy to sustain his family rather than Allah. If this argument is to be taken to its logical limit, any type of saving should be forbidden as it somehow implies that the person is putting his trust in his savings rather than Allah. That is definitely not a sound argument and it is contradicted by the Prophet's own practice. Al-Bukhari records from Umar that,

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ يَبِيعُ نَخْلَ بَنِي النَّضِيرِ وَيَحْبِسُ لِأَهْلِهِ قُوتَ سَنَتِهِمْ.

"The Prophet (peace and blessings of Allah be upon him) used to sell the dates of the garden of Bani An-Nadir and store for his family so much food as would cover their needs for a whole year." In doing so, the Prophet (peace and blessings of Allah be upon him) was simply following the financial and worldly means available to him. Obviously, after that, he would put his trust in Allah, as the Prophet (peace and blessings of Allah be upon him) told the Bedouin when asked if he should tie his camel and put his trust in Allah or simply put his trust in Allah without tying his camel and the Prophet (peace and blessings of Allah be upon him) replied,

اعْقِلْهَا وَتَوَكَّلْ

"Tie [your camel] down and trust [in Allah]." (Recorded by al-Tirmidhi and ibn Hibbaan; graded *hasan* by al-Albaani.¹⁵³) Thus, by following worldly means one is not violating the obligation of putting one's trust and reliance in Allah. The bigger question is whether the means that one's follow is permissible or not.

Term Life Insurance

Term-life insurance seems to be a very clear example of a *gharar* (zero-sum game) transaction. It is a transaction that the purchaser probably hopes he (or his beneficiary) will actually not be successful on. In addition, it is a pure money-for-money transaction, as premiums are paid in exchange for a larger sum of money in case of death. Thus, there is no question that it is also interest (*riba*) based. In addition, the funds used to pay off the insured come, to some extent, from investments that are impermissible from a Shareeah perspective. It is difficult for this author to see how the default ruling for this type of insurance is anything other than prohibition.

Permanent Life Insurance

Permanent life insurance refers to those forms of life insurance that contain a cash value component with them. In this case, the policyholder will have an option to cash out, which is

153 Muhammad Naasir al-Deen al-Albaani, *Takhreej Ahaadeeth Mushkilah al-Faqr* (Beirut, Lebanon: al-Maktab al-Islaami, 1984), p. 23.

basically the acceptance of the interest income that has accrued via his policy. In doing so, there is a hardly a degree of separation between the policyholder and the riba-based income that they would receive in such a case. (Of course, as such accounts become less guaranteed-based and more equity-based, shifting more risk to the policyholder, they will be less objectionable.¹⁵⁴ Other problems, such as what stocks are held, will have to be addressed in that case.)

If the policyholder does not cash out and does not lapse on his or her payments, upon dying his or her beneficiary will receive the death benefits. These benefits will be, most likely, more than the premiums that the individual has paid. Hence, it is clearly an exchange of money for money in a manner that is considered riba.

Annuities

For the most part, annuities are very much akin to interest-bearing savings accounts or certificates of deposits. The features of riba and gharar are as much present in these as they are in the life insurance products. However, if a fixed return is guaranteed, it is difficult to argue that this product is anything more than simple riba. Even if the return is not fixed but there is a bottom guarantee, it would still be considered riba.

From the Company's Perspective

Any life insurance company is participating in business transaction which, as described earlier, contain riba and *gharar* on their payout side. Furthermore, much of their source of income from their investments are riba-based. In addition, the recognition that the entire edifice may not be sustainable leads them to shift some of their risk to larger insurance companies in the form of reinsurance. In other words, they enter into the same type of riba and *gharar* contracts with other companies that their policyholders have with them. There seems to be little doubt that these commercial life industry companies are not "Shariah-compliant."

The Law of Necessity and the Demand for Life Insurance

The conclusion that commercial life insurance is forbidden definitely does not end the necessary discussion. The next logical point is to discuss whether the law of necessity or the principle of need may be invoked concerning life insurance.

¹⁵⁴ There has been some movement within the industry towards products that are more akin to Islamic insurance or Takaful products. Gatzert and Schmeiser (pp. 1065-66) state, "Against this background, new life insurance financial products will likely be unit- or equity-linked type, thus transferring at least part of the market risk to the policyholders and providing a higher degree of transparency and individuality as compared to traditional products. In this context, different financial guarantee concepts as well as products that combine traditional and unit-linked designs will become increasingly important, enabling policyholders to participate in positive market developments and at the same time having downside protection by means of a guarantee, which is priced and secured by the insurer."

The Law of Necessity¹⁵⁵

In his study on the law of necessity, Mubaarak defined necessity (الضرورة) as, "Fear of destruction or great harm to one of the necessities of life¹⁵⁶ for either oneself or another, with definitive or probable expectation, unless one does what can repel that destruction or great harm."¹⁵⁷ It is very important to note that necessity is very different from "meeting one's needs." For example, being very hungry does not usually lead to starvation but one is in need to eat. In such a case, one is not permitted to eat something usually forbidden simply because he is very hungry. However, if that state should continue to the point that the person fears some harm to himself or possibly death due to his state of hunger, that need then becomes a necessity.¹⁵⁸ Unfortunately, as Mubaarak discusses at length, too many scholars are very quick to invoke the law of necessity even when the conditions for it do not apply.¹⁵⁹

There are many important principles related to the law of necessity.¹⁶⁰ Some of the more relevant for this article are the following:

(1) The invoking of the law of necessity must be in accord with the principles of the Shareeah: In other words, the goal or purpose for which the law is invoked must be sanctioned or supported by the Shareeah. This is an important principle with respect to insurance. There is no question, for example, that the preservation of wealth is one of the goals of the Shareeah. However, is there any sanction in the Shareeah to engage in forbidden financial transactions in order to supposedly "preserve" the value of one's wealth or "guarantee" against the loss of wealth? Note that there is a big difference between taking steps to protect one's property (such as locking one's car and closing one's garage) and protecting the value of one's property. In the latter case, if the property is destroyed, the property is actually lost and there is only a transfer of funds from one group or individual to another. Whenever necessity is considered, there are usually two contradicting factors at work and one has to determine which is the more important. In this case, one has a transaction which is forbidden by the Shareeah, which implies that it must be something harmful for society as a whole, versus the risk of the

¹⁵⁵ For the section on necessity, the author has borrowed freely from Zarabozo, "Insurance."

¹⁵⁶ This is in reference to the "five necessities" supported and assisted by the Shareeah, which are, in order of importance, religion, life, ability to reason, familial relations and wealth.

¹⁵⁷ Jameel Mubaarak, *Nadhariyyah al-Dharoorah al-Shariyyah: Hudooduhaa wa Dhawaabituhaa* (Al-Mansoorah, Egypt: Daar al-Wafaa, 1988), p. 28.

¹⁵⁸ Mubaarak, p. 29.

¹⁵⁹ Cf., Mubaarak, pp. 289-304.

¹⁶⁰ For more on the principles of necessity, see Mubaarak, pp. 287-348; Mahmood al-Zaini, *Al-Dharoorah fi al-Shareeah al-Islaamiyyah wa al-Qanoon al-Wadha'ee* (Alexandria, Egypt: Muassasah al-Thaqafiyyah al-Jamiyyah, n.d.), pp. 29-62; Wahbah al-Zuhaili, *Nadhariyyah al-Dharoorah al-Shariyyah* (Damascus: Daar al-Fikr, 1997), pp. 182-262.

possibility of a future loss. Obviously, there is a difference between a true necessity or need and simply trying to preserve what one possesses. Not every loss to one's possession can be considered a case of necessity or great need. Unfortunately, to date, this author has not found any scholar commenting on this point.

(2) The expected and feared harm must be either definite to occur or most probable: In other words, the threat to one's well-being cannot be simply imaginary or not very probable. One must have a real reason to expect some harm or one must actually be enduring such harm. If the probability of such a harm is only minimal or not likely, one is then not allowed to invoke the law of necessity. Of course, insurance companies are masters at the use of probability but one does not find the question discussed from this angle by the scholars. For example, if there is a 1% probability of a house burning down in a particular neighborhood, given past experiences, would that 1% probability render the invoking of the law of necessity by a homeowner permissible?

(3) The law of necessity may only be invoked if one cannot find a permissible alternative that would alleviate one's situation. If a "legal alternative" is available, one must take advantage of that legal alternative and avoid any forbidden means.

(4) Only the minimum necessary of what is normally forbidden may be resorted to. Furthermore, once the situation is change and the harm alleviated, the law of necessity cannot no longer be resorted to. Not only that, a Muslim should try to remove oneself from the case of necessity, based on the Islamic maxim, "Harm is to be removed."

(5) Lesser of two harms or not resorting to a greater evil is another accepted principle. The Muslim must weigh the different aspects of engaging in a forbidden transaction with a possible harm that may come to him. Obviously, not all, possible future harms would be considered strong enough to resort to the law of necessity. For example, an individual may own a boat that he uses for reasons of pleasure. That boat may be very expensive and he may not be pleased at losing such a valuable item. But such an event is simply from the vicissitudes of life that a Muslim should learn to live with and be patient with. More importantly, the loss of said boat cannot truly put an individual into a state of necessity. The boat is more of a luxury. In such a case, the lesser of the two harms would be to risk losing the boat in order to avoid a forbidden type of transaction.

(6) The necessity has to be direct and constraining.

Invoking the Law of Necessity in the Discussion of Insurance

There is quite a bit of difference of opinion among the scholars on the question of invoking the law of necessity to allow insurance.

The Board of the Leading Scholars of Saudi Arabia explicitly stated that law of necessity cannot be invoked with respect to insurance because

the means that Allah has permitted to earn the good things are many times more than what has been forbidden. Thus, there is no recognized, Shareeah necessity driving one to what the Shareeah has forbidden concerning insurance. It [insurance] is just something that many of the people have grown accustomed to since they have been taking part in those contracts for a long time now. What they must do is simply remove themselves from them [those types of contracts] and cut themselves off from them and, instead, choose another permissible mean that can be a substitute for it, such as mutual societies...¹⁶¹

Abu Zahrah explicitly states that to say that commercial insurance is permissible out of necessity means that there must be no alternative. However, he says that such alternative exists. He points to the example of a cooperative insurance venture in Khartoum.¹⁶² He also strongly qualifies the permissibility of reinsuring with commercial insurance companies.¹⁶³ Al-Furfooor states that he does not accept the claim of necessity, as the Muslim world should be able to replace the exploitative system of commercial insurance with a system that is consistent with Islam. He states that such would not be a hardship if the people truly wanted to implement the law of their Lord.¹⁶⁴ Abdullah al-Bassaam strongly warns against simply accepting some practice because it is widespread and a common practice. If such an approach is taken by the Muslim scholars, all of Islam will be destroyed.¹⁶⁵

Similarly, al-Dhareer argues that the *gharar* in insurance is not to be overlooked because the need for it is not specific and there is another way to solve this problem.¹⁶⁶ Al-Zarqa explicitly asks what al-Dhareer would say if there was no such Islamic alternative, which is the situation, he says, today. Thus, he says that commercial insurance must be specifically resorted to in order to meet the needs of the people. Al-Zarqa further notes that ibn Rushd stated that *gharar* can be overlooked due to necessity, meaning a strong need as al-Dhareer explained it. He further notes that even the Shareeah Supervisory Board of the Faisal Islamic

¹⁶¹ Haihah, *Abhaath*, vol. 4, p. 301. The first half of this statement is also found in their final resolution on p. 311.

¹⁶² Abu Zahrah is quoted in al-Zarqa, *Nidhaam al-Tameen*, pp. 83-84.

¹⁶³ Wahbah al-Zuhaili, "Discussion," *Majallah Majma al-Fiqh al-Islaami* (No. 2, 1986), vol. 2, p. 707.

¹⁶⁴ Abdul-Lateef al-Furfooor, "Uqood al-Tameen fi al-Fiqh Islaami: Diraastah Muqaaranah bi-l-Fiqh al-Gharbi," *Majallah Majma al-Fiqh al-Islaami* (No. 2, 1986), vol. 2, pp. 598-599.

¹⁶⁵ Abdullah Al-Bassaam, "Discussion" *Majallah Majma al-Fiqh al-Islaami* (No. 2, 1986), vol. 2, p. 708. This brings up a very interesting conceptual issue. Can Muslims be sinful if they resort to what is forbidden in the name of necessity when it was the Muslims as a whole failure to act and seek permissible means that put them into that situation of necessity? Like when one sees evil from a ruler, perhaps the one who was or is working for change will be sinless while the one who willfully accepts the status quo may be sinful. Allah knows best.

¹⁶⁶ Al-Dhareer, *al-Gharar*, pp. 662-663. Also see the quote from him in *Abhaath*, vol. 4, p. 245.

Bank of Sudan, headed by al-Dhareer himself, says that it is allowed for the mutual insurance company run by said bank to reinsure its policies with an international commercial insurance company, since there is no proper Islamic reinsurance company in that country.¹⁶⁷

Al-Zuhaili says that, presently, there is no excuse to resort to insurance, since the need for it is not specific, meaning its goals can be met through permissible means such as Islamic insurance companies. However, he then states that if “we accept the proposition that the need is specific, insurance is permissible to the extent that is needed only.”¹⁶⁸ He also discussed the numerous conditions that must be applied even in that case of “need” or “necessity.”¹⁶⁹

After concluding that commercial insurance is forbidden, Maulawi is one of the few who takes up the question of resorting to commercial insurance in the absence of an Islamically acceptable alternative. He says that if the insurance is optional—not required by the state—yet in a Muslim’s particular case he may be facing difficulties that he would not be able to bear, he then can resort to insurance under the law of necessity. He cautions that this is not a general ruling for Muslims but that each individual case needs to be looked at to see if necessity truly exists, as in some cases the possible harm may not be great or the person would be able to bear it.¹⁷⁰

Ahmad al-Sharbasi also said that insurance is unlawful due to its *riba* aspect. But, “In case it is not possible to get rid of this system of interest immediately, it may be treated as a necessity and be acted upon for the present while we endeavor to get rid of it.”¹⁷¹

It is perhaps of great interest to note the opinions of some of the scholars of India, since they live in a non-Muslim environment somewhat similar to those who live in the West. Ubaydulla Rahmani of India says similarly that insurance is permissible “when the conditions are such that there is no safety of life and property.”¹⁷² Abd al-Salam Nadwi noted the communal riots in India as a cause for the necessity of insurance.¹⁷³ A committee of the Nadwat al-Ulamaa in Lucknow, India concluded in 1965 that,

Taking into consideration the importance of insurance which has penetrated deep into human life, the difficulties involved in conducting business without it and especially the need to protect life and property, it seems that Islamic law provides for insurance in case of emergency. NOTE: Emergency implies the danger of unbearable loss to one’s

¹⁶⁷ Al-Zarqa, *Nidhaam al-Tameen*, pp. 169-170.

¹⁶⁸ Wahbah al-Zuhaili, “*Al-Tameen wa Iaadah al-Tameen*” *Majallah Majma al-Fiqh al-Islami* (No. 2, 1986), vol. 2, p. 552. Also see Wahbah al-Zuhaili, *Al-Muaamalaat al-Maaliyyah al-Muaasirah*, p. 266.

¹⁶⁹ See Al-Zuhaili, *Al-Muaamalaat al-Maaliyyah al-Muaasirah*, pp. 289-292.

¹⁷⁰ Maulawi, p. 138.

¹⁷¹ Quoted in Muslehuddin, p. 152; al-Furfoor, vol. 2, p. 585.

¹⁷² Cited in Muslehuddin, p. 157.

¹⁷³ Cited in Muslehuddin, p. 158.

life, property and dependents. The decision whether such emergency has arisen or not depends upon the opinion of the person in danger, which is to be formed after consultation with '*Ulama* [scholars] and in full realisation of one's own responsibility before God.¹⁷⁴

Life Insurance and the Law of Necessity

As with the case with all noble goals, the means to achieve them must be permissible and proper. It would not be acceptable for someone to put money in a savings account, taking interest, and arguing that he is saving that money for his children's well-being after his death. Similarly, he cannot go out and steal a few thousand dollars and save it for his children and so forth. One tries to achieve this proper goal through the proper means. Thus, Islam put definite restrictions on behavior even when the goal is praiseworthy.

In particular with respect to life insurance, there seems to be no room for invoking the law of necessity. Life insurance does not meet the rather stringent conditions of the law of necessity.

Maulawi, for example, concludes that there is no room for invoking the law of necessity when it comes to life insurance. One point that he mentions is that the goal of life insurance is to accumulate wealth (for oneself or one's family) and not to remove any harm that has occurred. It is for this reason that some scholars who otherwise approve of insurance consider life insurance in particular to be forbidden.¹⁷⁵

174 Quoted in Muslehuddin, pp. 164-165.

175 Maulawi, p. 139.

The Principle of Need and the Demand for Life Insurance

Allah says in the Quran,

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ

“Allah intends for you ease and does not intend for you hardship” (al-Baqarah 185).

Allah also says,

يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا

“And Allah wants to lighten for you [your difficulties]; and mankind was created weak” (an-Nisaa 28). Based on these verses and other evidence, scholars have recognized the principle of “need” in addition to the principle of “necessity.”

The bar is set very high to meet the requirements of necessity. The principle of “need” (الحاجة) differs in a number of ways from the principle of necessity. Unfortunately, the topic of “need” is much less discussed than that of necessity and, as such, its principles are much less standardized and objectified.¹⁷⁶ Even though it is not a well-defined and well-studied topic, it has been invoked in many fatwaas in the process of making permissible what would otherwise be considered impermissible. Sadly, the reality is that some of the basic maxims related to need are often misunderstood or misapplied.¹⁷⁷

Scholars divide wants/needs into three categories: necessities, needs and amenities. The essence of “need”¹⁷⁸ in this tripartite division is that “whose absence creates an environment of difficulty or hardship.” Hence, unlike necessity, when one is in “need” of something in this sense, one’s life, health or ultimate well-being are not directly at risk. At the same time, though, the difficulty or hardship that is faced is more than the regular toil and difficulties of life that one is expected to bear by the Shareeah.

Furthermore, from a legal instrument perspective, what is meant by “need” here is that which causes abnormal hardship while the possible resolution for it contradicts some Shareeah evidence or principle.¹⁷⁹ Sometimes the Shareeah texts settles the issue with some form of

176 In fact, as al-Rasheed notes, many scholars do not even offer a technical definition of “need” (*haajah*) and are content with simply presenting examples. Cf., Ahmad al-Rasheed, *al-Haajah wa Atharaha fi al-Ahkaam* (Riyadh, Saudi Arabia: Daar Kunooz Ishbeeliyaa, 2008), vol. 1, pp. 50-51. Ahmad Kaafi also comments on how the topic has not received the treatment it deserves or requires. Ahmad Kaafi, *al-Haajah al-Shariyyah: Hudooduhaa wa Qawaaiduhaa* (Beirut, Lebanon: Daar al-Kutub al-Ilmiyyah, 2004), p. 202.

177 Waleed al-Zeer, “*Dhawaabit al-Haajah allatee Tanzil Manzilah al-Dharoorah wa Tatbeeqaatuhaa ala al-Ijtihadaat al-Muaasirah*,” *Majallah Jaamia Dimashq li-I-Uloom al-Iqtisaadiyyah wa al-Qaanooniyyah* (Vol. 26, No. 1, 2010), p. 676.

178 What sometimes causes confusion is that all three categories are types of “needs.” Thus, even what is clearly a necessity is referred to simply with the more general word of “need,” such as the statement, “One is allowed to consume carrion due to need.” Cf., Kaafi, p. 38.

179 Al-Rasheed (vol. 1, pp. 192-193) is of the opinion that including “Shareeah texts” here is not quite proper.

exemption, such as the permissibility of breaking one's fast while traveling. That is not controversial and does not require the invoking of the principle of "need."¹⁸⁰

In other words, even though "need" (*haajah*) is not at the same level of intense need as necessity, this level of need also invokes exemptions in the Shareeah. However, one of the main differences between "necessity" and "need" is that "need" is weaker in its effect on softening rulings. The situation of need affects only the status of a subset of what is forbidden. Forbidden deeds can be categorized into those which are forbidden due to their essential nature of being evil or harmful. They are forbidden in and of themselves. However, other actions are forbidden not so much because they are so evil but because they are clearly the means to that which is evil in and of itself. In the case of necessity, the forbidden rulings for both types of forbidden acts may be lifted due to the pressing and strong necessity. The state of need (*al-haajah*) will only overrule those acts which are forbidden because they are clearly means to greater evils.¹⁸¹ Thus, for example, alcohol will only be permissible in a state of necessity while men wearing silk, not considered an essentially evil act, could be permissible due to need.¹⁸²

Need and necessity differ in a number of other important ways as well. Necessity is more of a temporary ruling related to very specific circumstances which are not expected to be continuous. However, need is of two types. One is similar to that described for necessity. The second is more of a permanent nature describing a situation of hardship or difficulty for which there is no expected or clear near remedy in sight. Additionally, necessity is something that must be verified for every particular individual before it can be invoked. Here again need is divided into two categories. The first is the same as what was just described for necessity. The second relates to a general or societal need, wherein it is not necessary to verify it for each individual that he or she is in a state of need.¹⁸³

Need, of course, is not the same as what a person "wants." There are some clear conditions that must be met before something would be considered a "need" from the Shareeah perspective.¹⁸⁴ First, the need has to be something that is taken into consideration by the Shareeah and not overruled by a stronger Shareeah principle or Shareeah necessity. Second,

180 Cf., al-Zeer, pp. 678-679.

181 Al-Rasheed, vol. 2, p. 810; al-Zeer, p. 681; Noor al-Deen al-Khaadimi, *al-Haajah al-Shariyyah: Haqeeqatuhaa, Adillatuhaa, Dhawaabituhaa* (http://www.riyadhalelm.com/researches/4/191_hajah_khdmi.pdf) p. 8.

182 Al-Zeer, p. 681.

183 Al-Rasheed, vol. 2, p. 810; al-Khaadimi, p. 8; al-Zeer, p. 681. The need which is more akin to necessity is called *al-haajah al-khaasah* (specific need) while the other category is referred to as *al-haajah al-aammah* (general need). For example, some types of business contracts, such as selling something that is not yet in existence, are considered permissible due to the overall need of society for them. Hence, a particular individual does not have to verify that he or she is in "need" of that transaction and that he or she would face hardship without resorting to it. The permissibility due to need is considered general and everyone may take advantage of it.

184 As stated earlier, "need" is not discussed as in-depth as the concept of "necessity." Thus, al-Rasheed, who discusses the conditions in detail, states (vol. 1, p. 181) states that none before him explicitly stated these conditions, although they were alluded to.

the hardship created must be beyond what is normal or expected of life. For example, praying five times a day or fasting one month causes “hardship” and “difficulties.” However, the Shareeah demonstrates that that level of hardship or difficulty should be within the ability of humans to withstand or face. Third, the need must be something that actually exists, not something that is simply hypothesized. The knowledge that it exists could be either definitive or it could be suspected with good reason. Ibn Hajar al-Haitami states that it is sufficient that it is reasonably expected.¹⁸⁵ Fourth, the need has to be something specific and cannot be satisfied without resorting to the principle of “need.” In other words, if one can satisfy the need via means which are clearly permissible, there is no call for or excuse to invoke the principle of need.¹⁸⁶

There are also some principles that must be abided by when applying the principle of need.¹⁸⁷ Al-Rasheed first mentions that the people of knowledge must be consulted before the principle of need can be invoked. The individual must also do his best not to fall into situations of necessity or need, as those situations force them into an act that is otherwise not acceptable. Resorting to the principle of need must also be restricted by the “need of the need.” In other words, one fulfills what was needed and does not go beyond that.

One maxim related to need that is often misapplied is the maxim that states, “Need takes the same position as necessity, whether it be on a widescale or particular situation.”¹⁸⁸ This maxim is not to be understood in its broad literal sense, as in that case there would be no difference between need and necessity. Al-Zarqaa has explained this maxim by saying, “The exceptional Shareeah reliefs are not only in the case of a pressing necessity. The needs of the community as a whole¹⁸⁹, less than necessity, also require exceptional reliefs.”¹⁹⁰ In fact, al-Rasheed notes that the wording should actually be, “Need could take the same position as necessity,” or, “It is possible for need to take the same position as necessity.”¹⁹¹ Al-Rasheed emphasizes that only necessity can make the forbidden permissible. This point was stated by Imam al-Shafiee who said, “Something forbidden does not become permissible due to need

185 Ibn Hajar al-Haitami is quoted in al-Zeer, p. 682.

186 Cf., al-Rasheed, vol. 1, pp. 181-196.

187 Cf., al-Rasheed, vol. 1, pp. 196-202.

188 This maxim (الْحَاجَةُ تَنْزِلُ مَنزِلَةَ الْعُضْرَةِ عَامَّةً كَانَتْ أَوْ خَاصَّةً) can be found in virtually all the main references on Islamic legal maxims (*qawaa'id*). See, for example, Jalaal al-Deen al-Suyooti, *al-Ashbaahu wa al-Nadhaair* (Beirut, Lebanon: Daar al-Kutub al-Ilmiyyah, 1990), pp. 88-89; Zain al-Deen ibn Nujaim, *al-Ashbaahu wa al-Nadhaair* (Beirut, Lebanon: Daar al-Kutub al-Ilmiyyah, 1999), pp. 78-79. Al-Zeer (pp. 676f) discusses the origin and history of this legal maxim.

189 In other words, what is known as *al-haajah al-aammah*.

190 Quoted in Jauzaa al-Utaibi, “*Athar al-Haajah fi al-Muamalaat al-Maaliyyah*,” (Ph.D. Dissertation, King Saud University, Riyadh, Saudi Arabia, 1432/1433 A.H.), p. 72.

191 Al-Rasheed, vol. 2,

except what are necessities, such as fearing one's death."¹⁹² However, under certain circumstances, specific need for society as a whole individuals can reach a level that they become, essentially, necessities and will then have a similar ruling.¹⁹³

Of special interest here is that both al-Rasheed¹⁹⁴ and al-Zeer¹⁹⁵ discuss the question of resorting to interest (*riba*) under the principle of need. Al-Rasheed discusses the views of Shaikh Mahmood Shaloot (concerning borrowing with interest) while Al-Zeer discusses Shaloot, Muhammad al-Shahaat al-Jandi (concerning investment certificates), Sayid Tantaawi, Muhammad Yoosuf Moosa and the European Council for Fatwa and Research (concerning buying a house in the West via an interest-based mortgage¹⁹⁶). Shaloot argues that there is a general need for people to resort to interest and, hence, he permitted it. In response, al-Rasheed states that the conditions for the principle of need are not met in this case. He argues that resorting to interest, first, is not going to solve the need. Second, he quotes Abu Zahrah who asked whether the society had sought all other possible means before resorting to interest, implying that one of the conditions for the principle of need was not met. Al-Rasheed states that there have been many who could have needed interest loans but instead they found purely permissible means to meet their needs, thus demonstrating that *riba* cannot be invoked under the principle of need as alternatives are always available. Al-Zeer argues that such calls for *riba* interactions are incorrect with respect to the principles of either need or necessity. He says that the claimed need is nothing but an imaginary need, not a true need. He argues that there is no hardship in avoiding *riba* and that actually engaging in *riba* brings about hardship.¹⁹⁷ Additionally, it is known, al-Zeer notes, that *riba* is prohibited in a very definitive sense from the texts of the Quran and Sunnah while the benefits are imaginary. Thus, there is no room to invoke the principle of need to allow *riba*.

192 Muhammad ibn Idrees al-Shaafiee, *Kitaab al-Umm* (Beirut, Lebanon: Daar al-Marifah, 1990), vol. 3, p. 28.

193 Cf., Al-Rasheed, vol. 2, pp. 527-545.

194 Al-Rasheed, vol. 1, pp. 188-190.

195 Al-Zeer, pp. 683-687. Al-Zeer (p. 694) also discusses invoking the principle of need for the permissibility of insurance. He states that that is a misuse of the principle of need. However, his discussion is very brief.

196 Al-Rasheed, vol. 2, pp. 729-735 discusses this issue as well. Al-Rasheed also concludes that one cannot override the prohibition of *riba* based on this need.

197 Anyone familiar with the household debt crisis in the United States and the burdens that it has created would probably agree with al-Zeer's point here.

Who Needs and Who Does not Need Life Insurance?

The demand for life insurance products has increased “driven by deterioration of social security systems and the resulting increasing demand for annuities and pension products.”¹⁹⁸ In a study back in 1986, Beenstock, et al., found the same result that social security reduces the demand for life insurance.¹⁹⁹ Kjosevski, quoting other researches, states, “If government provide [sic] indemnification for property losses, disability, retirement and health care, individuals will have less incentives to purchase insurance... that was especially emphasised during the communist era in Eastern Europe.”²⁰⁰ This demonstrates that life insurance is not a “civilizational need.” In contemporary times, many societies have become more individualistic, family structures are not as strong as they once were, extended families have greatly disappeared and the sense of community is interrupted by globalization and mobility. On top of that, there is a common right-wing belief that many of the poor are poor due to their own doing and, hence, are not entitled to entitlements.²⁰¹ Governments sometimes use that belief as a political tool to cut back on entitlements. It would be hoped that a truly Islamic society would not reach a state like this. From the obligatory zakat to other moral teachings, the bonds should be such that there should be no great demand for life insurance products, especially if they are not Shareeah-compliant. Unfortunately, though, the reality is that most, if not all, Muslim societies are facing the same afflictions as the Western industrialized countries and, therefore, Muslims may feel the need to secure their financial futures via products like life insurance.

Another important reality is that most people do not prepare well for retirement—and this at a time when people are living, on average, much longer. Table 5 shows that a large number of retirees have very little savings—in 2015 35% of them responded by saying that they have less than \$1,000 in savings. 49% of those surveyed, practically half, had less than \$25,000 saved.

198 Nadine Gatzert and Hato Schmeiser, p. 1063.

199 Michael Beenstock, Gerry Dickinson, and Sajay Khajuria, “The Determination of Life Premiums: An International Cross-Section Analysis 1970-1981,” *Insurance, Mathematics and Economics* (Vol. 5, No. 4, 1986), pp. 268-269.

200 Kjosevski, p. 36.

201 Cf., Matt Bruenig, “Two Theories of Poverty” (<https://www.demos.org/blog/7/28/14/two-theories-poverty>); he compares the theory that poverty is individual versus structural and concludes that it is structural. An interesting paper on how the views on this issue have changed over the years in Europe is Wim van Oorschot and Loek Halman, “Blame or Fate, Individual or Social? An International Comparison of Popular Explanations of Poverty,” *European Societies* (Vol. 2, No. 1, 2000), *passim*.

	2004	2010	2011	2012	2013	2014	2015	2015 Have Plan*	2015 No Plan
Less than \$1,000		27%	28%	28%	31%	29%	35%	12%	61%
\$1,000-\$9,999	49%	15	14	19	16	17	11	10	13
\$10,000-\$24,999		14	12	8	8	12	7	9	5
\$25,000-\$49,999	13	11	6	9	9	8	8	11	5
\$50,000-\$99,999	7	6	11	8	9	7	10	14	5
\$100,000-\$249,999	17	15	12	12	10	11	10	15	5
\$250,000 or More	15	12	17	15	17	17	19	30	6

*Have retirement plan defined as respondent or spouse having at least one of the following IRA, defined contribution plan or defined benefit plan.

Table 5. Total Savings and Investments Reported by Retirees in a Survey (Source: George E. Rejda and Michael J. McNamara, *Principles of Risk Management and Insurance* (Harlow, England: Pearson, 2017), p. 27.)

In the light of the above, it is not surprising that life insurance is a multi-billion-dollar industry. The issues of old age are real. The concern is definitely society-wide. This is starting to sound like the “general need” (*al-haajah al-aammah*) that legal theorists speak of when treating a need as if it were a necessity. However, there are still other issues to consider.

In many of the “secular” books on insurance there are typically discussions of who “needs” life insurance, how much life insurance one should buy, what type life of insurance should one buy and so forth. Although those books are not written from an Islamic perspective, for the sake of discussion, it will be useful to discuss the different cases of who does and who does not need insurance and see how they fit with the Shareeah principle of need (*haajah*).²⁰² (For the sake of simplicity, the discussion will assume that the hypothetical individuals are Muslims living in the United States.)

A “Secular” Discussion of Who Does not “Need” Life Insurance

The “secular”²⁰³ view on life insurance states that not everyone needs life insurance. Life insurance is essentially about one thing: obtaining money. That money, of course, comes at a cost—insurance companies have expenses and need to make profits. If someone has saved up enough money and/or has a future stream of sufficient income established, there is no need for him or her to get life insurance. The extra money that they would be getting for the family in this case is nothing but a luxury and definitely not a need. Hence, the secular view is that life

202 Examples will be taken from Hungelmann, pp. 300-301; Rejda and McNamara, pp. 222-223.

203 The term is being used here to represent a discussion that is not based on Islamic or faith-driven premises.

insurance is not needed in this case and may not be economically wise either. It should go without saying that in such a case there would be no excuse to invoke the Islamic principle of “specific need” here either. Under such circumstances, it would be prudent for every Muslim to stay away from a clearly *riba*- and *gharar*-based transaction as insurance.

The secular view also states that those whose death will not cause a financial hardship to others need not have life insurance policies. Hungelmann gives a couple of examples to illustrate this case. One is, “if you and your spouse have no children, and you each earn a high enough income to easily support yourselves if the other one dies, you don’t need life insurance.”²⁰⁴ In general (but not without possible exceptions), those without dependents—that is, there is no one financially depending on this individual—do not truly need life insurance from a secular perspective. From a Shareeah perspective, in such a case the individual has entered into a contract to make more money in an un-Islamic manner without any true necessity or need driving them to do that. Obviously, that is forbidden.

A “Secular” Discussion of Who Does “Need” Life Insurance

Rejda and McNamara preface their discussion by saying,

The purchase of life insurance is economically justified if the insured has earned income, and others are dependent on those earnings for part or all of their financial support. If a family head dies prematurely with dependents to support and outstanding financial obligations, the surviving family members are exposed to great economic insecurity. Life insurance can be used to restore the family’s share of the deceased breadwinner’s earnings.²⁰⁵

There are numerous intriguing cases deserving of attention here.

One is the case of a single parent whose children are dependent on him or her. The number of single parents is on the rise. Premature death of the parent and breadwinner could spell very tough times ahead for the children, especially if the parent does not have any family members who may come to support the child. This could greatly affect the child’s quality of life perhaps, for example, keeping the child from affording a good education. Of course, as Rejda and McNamara point out, many such single parents live below the poverty line and cannot afford life insurance.²⁰⁶ (That is a paradox with all forms of insurance: the rich who can possibly go without it can afford it while the poor who could really use it cannot afford it.) If one wanted to hypothetically argue that this meets the Islamic criteria of a specific need or necessity, it

²⁰⁴ Hungelmann, p. 300.

²⁰⁵ Rejda and McNamara, p. 222.

²⁰⁶ Rejda and McNamara, p. 222.

would still only justify term life insurance, only covering the ages of the children when they are very young or still in school. Once they get older, it is their obligation to support themselves and not live off of income from a forbidden source.

Another case is that of a two-income family with young children wherein each spouse's income is vital for the well-being of the family. If the family cannot survive off of just one of the incomes, then, again, a premature death of one of the spouses could cause the surviving spouse and children great difficulty.²⁰⁷ As in the previous case, from an Islamic need or necessity perspective, the concern would mostly be when the children are younger and not able to support themselves, although there could be a scenario where the surviving spouse may still face difficulties.

A third case is traditional families, where one spouse works and the other remains home to take care of the house and/or children. This is very common in Muslim households, with the husband working and the wife remaining at home, perhaps rarely if ever entering the workforce. The secular view is that the breadwinner definitely needs to have insurance as his or her death could prove disastrous for the family.

In that case, even the non-working spouse may need life insurance. If the non-working spouse is providing a "service" (such as childcare) that the other will have to pay for after the death of that spouse, a payment that the other spouse may not be able to afford, then the non-working spouse also needs to have life insurance to make sure that no harm results afterwards.²⁰⁸

From a secular viewpoint, sandwiched families also need life insurance. A sandwiched family is one where a son or daughter has a family of his or her own but at the same time is supporting his or her parents. Here, the loss of the breadwinner could be devastating to both the parents of the deceased and the children of the deceased.

Final expenses life insurance coverage could also be considered a need if the family does not have much liquidity available. In that case, they could be harmed by converting some of their wealth into funds to pay for the funeral expenses or by extending their debt to pay for the expenses. However, from a Shareeah perspective, insurance cannot be resorted to simply to make life easier, as a luxury.²⁰⁹

207 Of course, such difficulties are usually compounded by living in a state of debt, where there are going to be house payments, car payments, credit card payments and so forth. The less ongoing debt, the less stress when one spouse dies, although instead of house payments one could be facing rent payments. Muslims should be in a better state than non-Muslims on this point.

208 Hungelmann, p. 301; Rejda and McNamara, p. 323.

209 With respect to funeral expenses, it would be good for Muslim communities to collect donations, *sadaqah* not *zakah*, specifically for this purpose. Muslim funerals are generally cheaper than non-Muslim funerals in the United States. The average funeral expenses for Muslims in the Sacramento is around \$3,000. It would relieve part of the hardship a family faces if they are supported by the community covering this expense for them, even if they were not at a level that they were deserving of zakat.

These are the main scenarios in which life insurance is a need from a secular perspective.

Comments on the "Secular" View

The difference between the "secular" view and the Islamic view is that the "secular" view is more about the calculus of economic well-being given that insurance is a socially acceptable institution. The secular view would probably be quite different if it were dealing with insurance as legally prohibited. In that case, the writers would probably say that it is not worth the risk of violating the law in order to benefit from insurance. Of course, that is not a perfect analogy with what a Muslim must consider but it is close: The default is that insurance is forbidden and the question is whether or not an exemption may be present for life insurance due to some pressing need or necessity.

The parameters with respect to the costs are also different. The secular view will only consider the economic costs of insurance. The Islamic ruling must consider whether the hardship that one would face in the absence of insurance is a "normal" or "abnormal" hardship. Historically speaking, it was not considered acceptable to turn to something like *riba* simply because one is facing economic hardship. In fact, Bakr Abu Zaid has stated that *riba* is never permissible, even in a state of necessity, saying that no scholar in the past had permitted it.²¹⁰ According to al-Raazi, al-Qaffaal stated that after their partial defeat at Uhud, the Muslims consider increasing their wealth by engaging in interest and it was at that that Allah revealed,

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُّضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ

"O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful" (Ali-'Imran 130).²¹¹ If that were the case with respect to the survival of the entire young Muslim community, *riba* must clearly be prohibited simply for the sake of economic betterment.

In addition, putting people to trials to see if they will respond in a permissible manner is part of the way of Allah with respect to this creation. Allah has said,

تَبَرَّكَ الَّذِي بِيَدِهِ الْمُلْكُ وَهُوَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا وَهُوَ الْعَزِيزُ الْعَفُورُ

"Blessed is He in whose hand is dominion, and He is over all things competent [He] who created death and life to test you [as to] which of you is best in deed - and He is the Exalted in

²¹⁰ Bakr Abu Zaid, *Mujam al-Munaahi al-Lafdhiyyah* (Riyadh, Saudi Arabia: Daar al-Aasimah, 1996), p. 272. In the past, the scholars did not face the kinds of *riba*-based transactions that one could be virtually forced to engage in today.

²¹¹ Fakhar Al-Deen al-Raazi, *Tafseer al-Raazi: Mafateeh al-Ghaib* (Beirut, Lebanon: Daar al-Kubut al-Ilmiyyah, 2000), vol. 3, p. 9.

Might, the Forgiving" (Al-Mulk 1-2). It is through these trials—and avoiding what is forbidden during those trials—that one develops the patience, perseverance and resilience that is pleasing to Allah.

Perhaps the biggest issue with the concept of insurance is that the law of necessity or need is being invoked concerning an event that may never actually take place and there will never truly be a "need" or "necessity" for the insurance. This makes it very difficult to invoke these laws. When a catastrophe strikes, there may be other avenues, either via the Muslim community or the state, that may come to the aid of a person or family, such that they never truly need insurance in the first place.

Fiqh Conclusion

The clear prohibited nature of insurance—its violation of the major prohibition of *riba* as well as *gharar* and other factors—prevents this author from concluding life insurance is permissible under the different scenarios described above. However, this author does realize that under close inspection some of the cases seem borderline for selected individuals—where the need almost merges into necessity. In the American environment, it is very easy to fall between the cracks and end up homeless, for example. Being homeless is difficult enough in general but it is probably extremely difficult to retain an Islamic life and faith while being homeless in the United States, as the Muslim community is not very well equipped to handle that situation. That situation can definitely put one's life, health and religion at risk. Concerning Muslim women, Spinner writes,

for Muslim women without a place to live, particularly those who have been battered or are immigrants, being homeless can test their faith [...] When Muslim women are sent to shelters that serve the general population, they are often exposed to lifestyles that challenge their faith, such as drinking, abusing drugs, eating pork and undressing or bathing in front of others.²¹²

If, out of fear of these ever-present realities, a Muslim resorts to a life insurance policy, it is hoped that Allah will shower His mercy and forgiveness upon them.

Even in this light, there are a couple of other points that further strengthen the stance that life insurance is prohibited and that the principle of need cannot be invoked concerning it.

212 Jackie Spinner, "Muslim Women Who Become Homeless Have Limited Options," *Washington Post* (<http://www.washingtonpost.com/wp-dyn/content/article/2007/12/28/AR2007122802493.html>). Immigrants in particular are known to face great difficulties. "Due to language, culture, religion, and ethnicity, immigrants 'often face discrimination from service systems and providers who are unfamiliar with their unique cultural/ethnic/racial backgrounds.' As a result, immigrants experience unique challenges once they become homeless." Jodilyn Gilleland, Kaya Lurie, and Sara Rankin, "A Broken Dream: Homelessness & Immigrants," Seattle University School of Law Digital Commons (<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1009&context=hrap>), p. 13.

Life insurance is definitely no panacea for future catastrophes. The vast majority of life insurance policies lapse or are cashed out, meaning that the insured does not end up with the death benefits they expect. Especially for people who are already not that well off, it is easy to imagine that they may sometimes have to choose between paying for immediate needs or paying their life insurance premium. Hence, even as a worldly means to fend off the harms of a future disaster, it is not necessarily an excellent means.

Although it is not completely analogous—the taking of a child’s life is not the same as *riba*—Allah prohibiting people from killing their children out of fear of poverty can be taken as a sign of not resorting to forbidden means out of fear of poverty as well. Allah has said,

وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِمَّنْ إِمْلَقِي تَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ

“Do not kill your children out of poverty; We will provide for you and them” (al-Anaam 151), And,

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ تَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنْ قَتَلْتُمْ كَانَتْ حِطَّةً كَبِيرًا

“And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin” (al-Israa 31). These verses do not imply that there are not going to be trials, tribulations, difficulties and possibly even death. What they do imply is that the believer must accept them all as part of Allah’s decree and wisdom with respect to this creation. Resorting to forbidden means is not going to allow an individual to escape the nature of such humanly trials in this world.

Regardless of the decision that an individual makes concerning life insurance, a Muslim should always have good expectations of Allah and realize that Allah is merciful to His believers and will take care of their needs. Allah has stated, as al-Bukhari and Muslim record in a *qudsi* hadith,

أَنَا عِنْدَ ظَنِّ عَبْدِي بِي، وَأَنَا مَعَهُ حِينَ يَذْكُرُنِي، إِنْ ذَكَرَنِي فِي نَفْسِهِ، ذَكَرْتُهُ فِي نَفْسِي، وَإِنْ ذَكَرَنِي فِي مَالٍ، ذَكَرْتُهُ فِي مَالِي

هُمُ خَيْرٌ مِنْهُمْ، وَإِنْ تَقَرَّبَ مِنِّي شِبْرًا، تَقَرَّبْتُ إِلَيْهِ ذِرَاعًا، وَإِنْ تَقَرَّبَ إِلَيَّ ذِرَاعًا، تَقَرَّبْتُ مِنْهُ بَاعًا، وَإِنْ أَتَانِي يَمْشِي أَتَيْتُهُ هَرْوَلَةً

“I am just as My slave thinks I am [that is, I am able to do for him what he thinks I can do for him] and I am with him if He remembers Me. If he remembers Me in himself, I too, remember him in Myself; and if he remembers Me in a group of people, I remember him in a group that is better than they; and if he comes one span nearer to Me, I go one cubit nearer to him; and if he comes one cubit nearer to Me, I go a distance of two outstretched arms nearer to him; and if he comes to Me walking, I go to him running.” This attitude does not contradict

with following the worldly causes but it makes one realize that it may simply not be justified to have such expectations of Allah and then turn to worldly means that are questionable at best.

Concluding Remarks

When this author was a college student, a fellow Muslim student stated that he drank just enough beer to avoid getting kidney stones. This led to a barrage of questions: How could he know he would get kidney stones otherwise? Isn't there some other way to avoid kidney stones? How could he possibly know how much beer he needs in order to restrict his intake to that amount? Is it really worth the risk of consuming something that is clearly haram to avoid something that is usually not more than a painful nuisance²¹³? Needless to say, his responses were not convincing and none of the other Muslim students were convinced by his approach.

The question of life insurance has reminded this author of that incident. Although a minority of scholars say that insurance is permitted, it is this author's belief that a detailed understanding of how the life insurance industry operates makes it very clear that life insurance is prohibited. The question of need or necessity is similar to those questions that were asked of the beer drinking Muslim student who feared kidney stones. To some extent, the responses to similar questions for the justification of life insurance are also, in the long-run, not convincing.

And Allah alone knows best.

²¹³ Kidney stones are usually painful but not dangerous. However, they can be dangerous when they cause an obstruction.