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Purposeful and Jurisprudential Research Papers

The Authoritative Ruling on Commercial Insurance in Islamic Law

A Purposeful and Jurisprudential Study

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In the Name of Allāh, the Most Compassionate, the Most Merciful

Introduction

All praise is due to Allāh, who has established His *Sharīʿah* upon the principles of realizing benefits (*jalb al-maṣāliḥ*) and preventing harms (*dar' al-mafāsid*), and who has based His rulings upon justice and mercy. There is no ruling in His law except that it revolves around a general or predominant benefit that is to be sought, or a general or predominant harm that is to be prevented.

May peace and blessings be upon our master and Prophet Muḥammad (peace and blessings be upon him) — the one who conveyed to his people the rulings of the *Sharīʿah*, clarified its objectives (*maqāṣid*), and completed its message. He showed humankind that the *Sharīʿah* of Allāh is founded upon securing the welfare of His servants and advancing the flourishing of civilization. Through him, Allāh made the religious rulings clear, established proof through revealed guidance, perfected His favor, and completed the religion.

Undoubtedly, the issue of commercial insurance is among the most debated contemporary matters within both juristic (*fiqhī*) and economic circles. This is because it affects the lives of individuals and societies alike and is closely connected to a wide range of daily transactions and modern economic systems.

Since insurance is based on the principle of risk distribution, mitigation of its consequences, and compensation for loss, it has become a fundamental element of the global economy. Its

absence from the lives of individuals and societies would only lead to greater fragility and instability.

Hence, the importance of studying commercial insurance lies in approaching it with due regard to the Islamic intellectual heritage—comprising soundly transmitted evidence (*ṣaḥīḥ al-manqūl*) and clear rational judgment (*ṣarīḥ al-maʿqūl*)—and in light of the actual needs of individuals and communities.

The significance of this study arises from its engagement with intertwined issues—juristic, economic, social, and even political. Insurance is no longer a matter of economic luxury; rather, it has become a necessity and a way of life that touches multiple domains such as health, housing, investment, and education. Therefore, defining the *Sharīʿah* stance on this type of contracts is no longer a subsidiary issue but a foundational one for formulating an Islamic outlook on a contemporary economy capable of responding to modern developments and emerging occurrences.

Restricting ourselves to closing the doors and rejecting new occurrences under the pretext that they contradict subsidiaries of *Sharīʿah* does not build an alternative Islamic economy. The true alternative—if the notion of "alternative" is valid—lies in accommodating people's needs while regulating them according to *Sharīʿah* guidelines, balancing between textual evidence and people's welfare, and establishing a system that ensures justice and solidarity.

From this perspective, the study of insurance serves as evidence of the *Sharīʿah*'s ability to keep pace with the developments of the age without compromising its foundational principles.

One of the greatest challenges facing the progress of contemporary Islamic economic jurisprudence is the inclination

of some—or even many—to oppose everything that originates from the West under the claim of preserving Islamic identity. However, the *Sharīʿah* has not commanded us to reject things merely because of their foreign source but to weigh them with the scales of truth and justice. The very nation that adopted the *dīwān* system from the Persians, benefited from Greek sciences and research in astronomy, medicine, and logic, and employed the Roman model of professional armies, was never lacking in scholarly courage to discern between what contradicts foundational principles of religion and what fulfills genuine benefits to people.

As a result of this oppositional attitude, some strands of contemporary *fiqh al-iqtiṣād al-islāmī* (Islamic economic jurisprudence) have come to focus on "finding the solution" rather than "selling the lawful." That is, they produce superficial alternatives that drain contracts of their economic and market value without providing a true substitute that meets people's needs or competes in the global market. Practically, this leaves many Muslims compelled to deal with the Western system itself due to the absence of a viable and applicable Islamic alternative.

True Islamic economics does not lie in changing names or creating lifeless parallel contracts, but in presenting solid, practical solutions that govern reality by the values of the *Sharīʿah* and demonstrate to the world that Islam is not a religion of passive resistance, but one of construction, creativity, and comprehension. It distinguishes between what is prohibited by essence (*muḥarram li-dhātih*) and what is forbidden as a precaution (*mamnuʿ li-sadd adh-dharīʿah*), and it balances between benefits and harms with awareness and responsibility.

Some enthusiasts of the so-called "Islamic economy" raise the banner of replacing most existing contracts and transactions in

the global economy on the pretext that they contradict *Sharīʿah*. Such rejection is understandable—and even necessary—if a genuine *Sharīʿah* violation is proven. However, in reality, they often do not replace the essence but merely change the shallow label.

They prohibit a sale involving two transactions—one immediate and one deferred– yet permit installment sales at higher prices, even though the difference lies only in the time of payment and the delay of installments.

They forbid individual *tawarruq* (commodity-based financing)[1] yet permit organized *tawarruq* that achieves profit through mere formality.

They prohibit fixed-return investment certificates on the basis that they constitute interest, yet approve *ṣukūk* (Islamic bonds) with fixed or quasi-fixed returns tied to nominal contracts, while in practice their returns differ little from the former.

We have witnessed how, during the 1980s, some religious figures enthusiastically supported "investment companies" (*sharikāt tawẓīf al-amwāl*) that promised depositors up to 30% returns on their deposits under the guise of *muḍārabah* (profit-sharing) or partnership-based investment—though in reality, their practices did not differ from commercial banks. Ultimately, these ventures collapsed, and depositors' funds were lost due to mismanagement and speculative trading in global markets.

Thus, the reform project turned from genuinely improving the market to merely reproducing it under a new banner: *"We sell the lawful."*

[1] To buy something for a deferred price, then to sell it to someone other than the one who sold it for a lesser price paid in cash. This is done so that the person who buys and sells it gets the money in hand.

This phenomenon clearly applies to the stance of some toward commercial insurance. They reject it on the grounds that it is a Western product that originated in a non-Islamic environment and that it involves *gharar* (uncertainty), *maysir* (gambling), and *ribā* (usury). Yet, they endorse cooperative or social insurance, even though their economic structures are essentially identical—participants pay premiums, a fund manages the risks, and compensation is paid to the affected. The key difference, according to them, lies not in the outcomes but merely in the verbal formulation: "cooperative," "solidary," or "mutual."

Thus, the rejection of commercial insurance becomes a largely superficial stance that "sells the solution" instead of "the lawful," offering an alternative that loses the efficiency, coverage, and prompt compensation of the market system while retaining, for the most part, the cloak of a *Sharīʿah*-compliant label.

This phenomenon reveals the danger of being preoccupied with changing names instead of reforming content. True Islamic economics is not about changing terminologies or emptying contracts of their content, but about reconstructing transactions in a way that fulfills the *maqāṣid ash-sharīʿah* (objectives of the *Sharīʿah*) — justice, protection of rights, and the growth of wealth — while preserving the spirit of flexibility that the *Sharīʿah* brought forth, regardless of the origin of such contracts, whether Islamic or otherwise.

This is precisely the difference between the *fiqh al-iqtiṣād an-nabawī* (Prophetic economic jurisprudence), which is founded upon benefits (*maṣāliḥ*) and objectives (*maqāṣid*), and which retained many pre-Islamic (*Jāhilī*) contracts and transactions — even borrowing others from Abyssinia, Persia, and Rome and incorporating them into the *Sharīʿah* framework — and the literalist *fiqh* that sees only inherited forms, opposes others, and

lives in an intellectual isolation it imagines to be protective of religious essence, while in reality it conflicts with numerous natural laws imposed by the development of the social order and human welfare.

Insurance in its various forms, especially commercial insurance, has become so deeply embedded in people's lives that detachment from it is nearly impossible. It is no longer a limited financial contract; rather, it permeates multiple spheres, such as:

- **The social sphere:** preserving families from collapse during disasters and organizing their affairs in the absence of the breadwinner.
- **The health sphere:** ensuring medical care, reducing the burden on central governments, and helping maintain a healthy workforce.
- **The economic sphere:** protecting investments, encouraging projects, and managing risks.
- **The international sphere:** becoming a prerequisite in trade, transport, and cross-border investments.

This integration has yielded several important benefits for the key components of society:

- **For the individual:** it provides a degree of stability and alleviates anxiety about the future.
- **For the community:** it strengthens organized solidarity and prevents sudden social breakdowns.
- **For the state:** it relieves fiscal burdens, enables resource development, and redirects efforts toward growth rather than merely responding to emergencies.

For these reasons, it has become imperative to present a rigorous scholarly study that balances between the textual evidences of *Sharīʿah* and their underlying objectives, and between the needs and complexities of contemporary reality. Hence came this book, titled *The Authoritative Ruling on Commercial Insurance in Islamic Law*, to contribute to overcoming stagnation, hesitation, and fear, and to propel the course of Islamic economic jurisprudence into a living, dynamic discipline that combines fidelity to foundational principles with responsiveness to the demands of the age.

The subject of insurance has been addressed by *majāmiʿ fiqhiyyah* (Islamic Fiqh councils), scholarly bodies, and a number of contemporary researchers in various studies, most of which have inclined toward the prohibition of commercial insurance, with some voices permitting it either unconditionally or under specific conditions. However, despite their value, these works have not comprehensively encompassed the issue from all of its *uṣūlī* (foundational), *maqāṣidī* (objective-oriented), and practical dimensions. Thus, this book seeks to revisit the issue by uniting sound *uṣūl* (principles) with precise *fiqhī* (juristic) analysis, while also bringing the economic reality into consideration — in an attempt to present an integrated vision rooted in the objectives and fundamentals of *Sharīʿah*.

A number of leading scholars have written on the subject of commercial insurance, most notably the eminent scholar Muṣṭafā az-Zarqā, whose book may be regarded as the seed of the opinion permitting insurance. He deserves the credit of initial precedent, and his work represents a landmark in the intellectual development of modern Islamic economic jurisprudence. Yet it is important to note that his work was not originally conceived as a comprehensive book built on a systematic, gradual research

methodology. Rather, it began as two independent papers presented at Islamic conferences nearly twenty years apart, which az-Zarqā later reformulated into one combined volume. Nevertheless, it retained the nature of conference research papers more than that of a methodically structured book with progressive chapters and sections.

I have greatly benefited from the work the eminent scholar az-Zarqā in my study, but I have also sought to move beyond some of the limitations that may be observed in the work of our respected teacher — may Allāh have mercy on him.

What can be said about az-Zarqā's work also applies to other pioneering efforts, such as the research of the eminent scholar as-Sanhūrī in *al-Wasīṭ* (The Medium Commentary) and *Maṣādir al-Ḥaqq fī al-Fiqh al-Islāmī* (The Sources of Right in Islamic Jurisprudence), as well as the writings of Shaykh ʿAlī al-Khafīf, ʾAḥmad Faraj as-Sanhūrī, Dr. al-Bahī, and many others. While these are indeed precious efforts that paved the way for subsequent scholarship, they did not take the form of fully independent, comprehensive books. Rather, they remained as preparatory texts or research papers, some of which reflect the state of initial shock experienced by Islamic jurisprudence when first confronting modern economic phenomena, particularly under the shadow of Western colonialism.

From this standpoint, this book has come to take those early seeds and replant them within an integrated *fiqhī*, *uṣūlī*, and *maqāṣidī* framework—one that combines the strength of sound juristic foundations with extensive inductive analysis, while directly addressing instances of inconsistency between analogous cases or imbalance in evaluation. It may thus represent a progressive step in the course of research—an extension and development of the efforts of earlier pioneers—in an attempt to

present a complete and coherent view of the contract of *at-ta'mīn at-tijārī* (commercial insurance) in light of the *Sharī'ah*.

The *uṣūlī* (principle-oriented) methodology necessitated that the book be divided into an introduction and three chapters, followed by a set of concluding outcomes:

- **Introduction:** discusses the importance of the topic and its necessity in contemporary life, highlighting its *fiqhī* (juristic) challenges and its impact on the concept of the Islamic economy, along with references to some previous studies.
- **Chapter One:** is dedicated to examining the foundational principle governing contracts in the *Sharī'ah*, clarifying the extent of permissibility within them, and exploring the implications of prohibitive commands (*nahy*) and their effect on contractual validity.
- **Chapter Two:** investigates the concept of *gharar* (uncertainty) and its impact on transactions, explaining how its scope has sometimes been overly expanded—thus excluding many modern contracts from the realm of permissibility—and demonstrating that the majority scholars of the Islamic Ummah did not adopt such an approach, as they were more cautious in invalidating contracts on the grounds of *gharar* than what has been observed in recent centuries.
- **Chapter Three:** the longest of the three, presents a detailed discussion of the contract of insurance in light of *Sharī'ah*, its principles, and its objectives. It includes the views and evidences of those who prohibit it, as well as those who permit it, and concludes with a reasoned preference (*tarjīḥ*) supported by evidence.

- **The Concluding Benefits (*Fawā'id*):** include several significant discussions, such as the statements of Imām Ibn ʿĀbidīn (may Allāh have mercy on him), the maxim of equality among analogous cases (*musāwāh bayna an-naẓā'ir*), the numerous exceptions to general prohibitive rules, and other points relevant to the topic of insurance.

In this book, I have endeavored to combine *uṣūlī* precision in legal theorization with *fiqhī* flexibility and economic realism.

In sum, this work represents a serious attempt to address the issue of commercial insurance through the lenses of *uṣūl al-fiqh* (principles of jurisprudence) and *maqāṣid ash-sharīʿah* (objectives of Islamic law)—avoiding rigidity or blind imitation and staying close to the spirit of Islam, which rests upon the principle:

"Wherever there is benefit (*maṣlaḥah*), there is the law of Allāh."

We have been keen not to confine the discussion to theoretical debate alone but to apply the research to the lived realities of people—recognizing the significance of this issue in the lives of individuals, communities, and the Muslim diaspora in non-Muslim lands, as well as in the construction of an authentic Islamic economy that neither isolates itself nor dissolves into others.

What we present here is not claimed to be free of error or deficiency; rather, it is an effort placed before researchers and those interested in *fiqhī* and *uṣūlī* inquiry—hoping it will serve, along with other works, as a building block toward a contemporary Islamic economic jurisprudence that unites the authenticity of the texts with the flexibility of *ijtihād*, achieving the desired balance between constancy and renewal.

This introduction would have been limited if I had not have extended my sincere gratitude and appreciation to the dedicated team at the International Institute for Islamic Studies, who exerted commendable effort in review, verification, technical production, printing, and publication. They have my heartfelt thanks, and may Allāh reward them abundantly and grant them great recompense.

I ask Allāh to make this work beneficial, purely for His noble Face, free from ostentation and the pursuit of reputation, and to decree for it acceptance on earth and in heaven.

Dr. Khālid Naṣr
Boston, August
2025 A.D.
***Ṣafar* 1447 A.H.**

Chapter One

Contracts in *Sharīʿah* and Law

Section One: Definitions

Section Two: The Default Principle for Contracts in *Sharīʿah*

Section Three: The Default Principle for Contracts in Modern Laws

Section One
Definitions

First: Definition of the Contract (*al-ʿAqd*)

Linguistically, *al-ʿaqd* (contract) denotes binding, tightening, guaranteeing, or committing.

Al-Fayrūzābādī said: "He tied (*ʿaqada*) the rope, the sale, and the covenant — meaning he fastened it. *Al-ʿaqd* also means guarantee and covenant."[1]
Its plural forms are *ʿuqūd* and *ʾaʿqād*[2]. Allāh Almighty says: **"O you who have believed, fulfill [all] contracts."**[3]

Technical Definition in *Fiqh* (Islamic Jurisprudence)

The term *ʿaqd* in *fiqh* is used in two senses:

1. **General meaning:**

   Everything a person binds upon himself or upon another through a binding commitment — this includes *bayʿ* (sale), *nikāḥ* (marriage), and all other commutative contracts[4]. It also encompasses unilateral commitments such as *ḥalaf* (oath), *ʿahd* (pledge), and *nadhr* (vow)[5].

2. **Specific meaning:**

   A binding commitment arising from two wills, which necessarily involves *ʾījāb* (offer) and *qabūl* (acceptance)[6].

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[1] *Al-Qāmūs al-Muḥīṭ*, s.v. "*ʿaqada*," p. 300.
[2] *Maqāyīs al-Lughah*, s.v. "*ʿaqada*," 4/86.
[3] Al-Māʾidah 5:1.
[4] ʾAḥkām al-Qurʾān by al-Jaṣṣāṣ, 3/285.
[5] Ibid.
[6] Ownership and Contract Theory, p. 174.

Definition in Modern Law

In modern legal terminology, a contract (*ʿaqd*) is "the concurrence of two or more wills to create, transfer, modify, or terminate an obligation."
The contract intended in this study is one that produces a *Sharʿī* or legal effect. Hence, not every agreement is a contract: for instance, if two individuals agree to help each other in farming, trade, or transportation, this is not considered a contract in the Islamically technical or legal sense, but rather a nonbinding moral commitment that may or may not be fulfilled.

Second: Pillars of the Contract in *Fiqh*

Scholars have differed over identifying the *arkān al-ʿaqd* (pillars of the contract) when it arises from two wills [translator's note, *wills* here usually refer to two persons or more]:

The Ḥanafī School maintain that a contract has only one pillar, which is the *ʾījāb waʾl-qabūl* (offer and acceptance).

Al-Kāsānī stated: "As for the pillar of sale, it is the exchange of one desirable thing for another, and this may occur verbally or through action. The verbal form is what jurists call offer and acceptance."[1]

The majority of jurists (Mālikīs[2], Shāfiʿīs[3], and Ḥanbalīs[4]) hold that the contract has three pillars: The contracting parties (*al-ʿāqid*), the subject matter (*al-maʿqūd ʿalayh*), and the contract form (*ṣīghah*).

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[1] Badāʾiʿ al-Ṣanāʾiʿ (5/133). As for his statement "this may occur this action," it refers here to silent exchange sale as it does not involve verbal offer and acceptance.
[2] Bidāyat al-Mujtahid (3/187).
[3] Al-Majmūʿ (9/149).
[4] Kashāf al-Qināʿ by al-Bahūtī (3/146).

Ibn Juzayy al-Kalbī, of the Mālikī school, mentioned five pillars, saying: "They are five: the seller, the buyer, the price, the sold item, and the wording (or its equivalent in words or actions signifying offer and acceptance)."[1]

Shaykh al-Jazīrī recorded that, according to the majority, there are six pillars: "The form, the contracting parties, and the subject matter — each of which has two sides: the seller and buyer, the price and sold item, the offer and acceptance."[2]

The Ḥanafīs viewed the additional elements cited by the majority as derivatives of the offer and acceptance, since no offer exists without an offeror, no acceptance without an acceptor, and both must relate to a specific subject. Thus, all these are inherent consequences of the act of contracting itself.

Third: Pillars of the Contract in Modern Law

Dr. ʿAbd al-Razzāq al-Sanhūrī, in his *Encyclopedia of Civil Law*, stated that a contract in law consists of two pillars: mutual consent (*tarāḍī*), and cause (*sabab*).

He wrote: "The contract rests upon will — that is, the mutual consent of the contracting parties. This will must be directed toward a lawful objective, and that objective is the cause (*sabab*)."[3]

As for the subject matter (*maḥall al-taʿāqud*), it is not considered a pillar of the contract but rather a pillar of the resulting obligation.

Here, *tarāḍī* (mutual consent) means the conformity of the two wills[4], while *sabab* (cause) refers to the direct purpose the

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1 Al-Qawānīn al-Fiqhiyyah (Jurisprudential Laws) (p. 391).
2 Al-Fiqh ʿalā al-Madhāhib al-ʾArbaʿah (2/141).
3 Al-Wasīṭ by al-Sanhūrī (1/170).
4 Ibid. (1/172).

obligor seeks to achieve through his commitment — usually answering the question: *"Why am I obligated?"* — whereas the subject matter typically answers: *"To what am I obligated?"*[1]

Fourth: Types of Contracts in *Fiqh*

Jurisprudential analysis classifies contracts based on multiple considerations, which can ultimately be reduced to three principal types[2]:

1. **Commutative Contracts (*ʿUqūd al-Muʿāwaḍāt*):**

   These are contracts that involve compensation, such as contracts of *bayʿ* (sale), *ʾijārah* (lease or hire), *istiṣnāʿ* (manufacture contract), *ṣulḥ* (conciliation), *nikāḥ* (marriage), *khulʿ* (divorce by redemption), *muḍārabah* (profit-sharing partnership), *muzāraʿah* (sharecropping), *sharika* (partnership), and others.

2. **Contracts of Donation (*ʿUqūd al-Tabarruʿāt*):**

   These are contracts that do not involve any consideration, such as *hibah* (gift), *ʿāriyah* (loan for use), *wadīʿah* (deposit), *wakālah* (agency), *kafālah* (guarantee), *rahn* (pledge), *waṣiyyah* (will), and others.

3. **Mixed Contracts:**

   These are contracts that begin as acts of donation but end up as exchanges, such as *qarḍ* (loan) and *kafālah bi-ʾamr al-madīn* (guarantee at the debtor's request), where the act starts as a donation when the guarantor assumes liability, but later becomes compensatory when he seeks reimbursement.

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[1] Ibid. (1/414-415).

[2] Al-Mawsūʿah al-Fiqhiyyah al-Kiwaytiyyah (30/234-343).

In addition to these principal types, jurists have also classified contracts according to other considerations, including:

1. **Classification Based on Financial Nature:**

   Some contracts are considered *financial contracts* (*'uqūd māliyyah*) in *fiqh* when they involve tangible assets, whether the transfer of ownership occurs with or without compensation. The first case includes sale contracts, and the second includes gifts.
   Contracts that involve services or agreements rather than tangible assets are *non-financial contracts*, such as *wakālah* (agency), *waṣāyah* (guardianship), or treaties like *hudnah* (truces).
   However, certain contracts combine both financial and non-financial elements, such as *nikāḥ* (marriage), reconciliation for blood money (*ṣulḥ 'an al-dam*), and *jizyah* (tribute).

2. **Classification Based on Binding Force (*Luzūm*):**

   Binding refers to maintaining commitment to implementing the articles of the contract upon the contracting parties.
   A contract may be binding (*lāzim*) upon both parties—such as *bay'* (sale), *salam* (forward sale), and *'ijārah* (lease)—so that it cannot be revoked without mutual consent.

   It may also be non-binding (*jā'iz*) for both parties—such as *sharika* (partnership), *wakālah* (agency), *muḍārabah* (profit-sharing), and *'āriyah* (loan for use)—where either party may terminate it unilaterally.
   Some contracts begin as non-binding and later become binding, such as *hibah* (gift); or may be binding upon one

party and non-binding for the other, as in *ḍamān* (suretyship), *kafālah* (guarantee), and *amān* (security).

3. **Classification Based on Effectiveness (*Nafādh*):**

   Some contracts are subject to options, such as sale contracts which admit *khiyār al-sharṭ* (stipulated option) or *khiyār al-majlis* (option during session).
   Others are inherently effective and admit no option, such as *nikāḥ* (marriage), *khul'* (divorce by redemption), *rahn* (pledge), *muḍārabah* (profit-sharing), *sharikah* (partnership), and *ju'ālah* (reward contract).

4. **Classification Based on Delivery (*Qabḍ*):**

   Jurists divided contracts into two types based on the requirement of delivery:

   Contracts not requiring delivery at the time of conclusion, such as *nikāḥ* (marriage), *'ijārah* (lease), and *waṣiyyah* (will). For instance, a marriage contract is valid even if the dowry is not yet delivered.

   Contracts requiring delivery for validity, such as *qarḍ* (loan) and *hibah* (gift), which remain mere promises until delivery. If the object perishes before delivery, there is no liability.

5. **Classification Based on Duration (*Daymūmah*):**

   Some contracts admit limitation of duration, such as *'ijārah* (lease) because it is effective in exchange of a certain benefit and *musāqāh* (irrigation partnership) because it is inherently time-bound.
   Others do not admit limitation of duration, such as *nikāḥ* (marriage)—for limiting it would make it *mut'ah*

(temporary marriage), which is prohibited—and *bay'* (sale).

These are the principal types of contracts in Islamic jurisprudence. Jurists have built upon them detailed rulings specifying what is permissible or impermissible, and what validates or invalidates a given contract.

Fifth: Types of Contracts in Law

Modern legal systems also divide contracts based on multiple considerations—often influenced by Islamic jurisprudence. As al-Sanhūrī noted, "this division is closer to the work of jurists than that of legislators."[1] Below is a concise overview of the principal classifications in modern law:

1. **Consensual, Formal, and Real Contracts[2]:**
    - A consensual contract is concluded merely by the mutual consent of the contracting parties, through the concurrence of offer and acceptance. Most modern contracts, such as sale and lease, are of this type.
    - A formal contract requires, beyond mutual consent, adherence to a specific form prescribed by law, such as contracts of gift and pledge. The purpose of formality is to alert the contracting party to the legal consequences of the agreement; hence, the contract is not valid without fulfilling this requirement.
    - A real contract requires actual delivery of the subject matter for its completion, such as the gift of movable property in modern civil law. Likewise, in

[1] Al-Wasīṭ by al-Sanhūrī (1/150.
[2] Ibid. (1/150-155).

insurance, the insurance company stipulates that the insured must pay the first premium to complete the contract.

2. **Officially Named and Unnamed Contracts:**
    - A named contract (*'aqd musammā*) is one expressly designated by law under a specific name, whether it is related to ownership such as sale, gift, loan and partnership, or related to work such as lease, agency and insurance.
    - An unnamed contract (*'aqd ghayr musammā*) is one not specifically designated in law and is governed by the general principles applicable to contracts. Interestingly, some contracts now classified as named were previously unnamed[1].
3. **Simple and Mixed Contracts:**
    - A simple contract consists of a single legal relationship, as in most ordinary contracts.
    - A mixed contract combines multiple contracts within one framework, such as hotel or resort accommodation contracts, which combine lease (for lodging), sale (for meals), deposit (for baggage), and service (for amenities).
4. **Contracts in Terms of Binding:**

    Contracts are either bilaterally binding on both parties, as in sale contracts—where the seller must transfer ownership and the buyer must pay the price—or unilateral, binding on

[1] Look the examples suggested by al-Sanhūrī at his time which are names contracts now. Al-Wasīṭ by al-Sanhūrī (1/156).

only one party, turning one party in-debt and the other a debtor, such as contracts of deposit for no exchange.

5. **Contracts of Exchange, Donation, and Favor:**
    - A contract of exchange/a commutative contract (*ʿaqd muʿāwaḍah*) involves reciprocal consideration, such as sale.
    - A contract of donation (*ʿaqd tabarruʿ*) involves one party giving without compensation, such as a gift.
    - A contract of favor (*ʿaqd tafaḍḍul*) is a type of donation where the benefit, not ownership, is transferred—such as a loan for use (*ʿāriyah*).
6. **Commutative and Aleatory Contracts:**
    - A commutative contract (*ʿaqd muḥaddad*) is one where each party knows the exact extent of what they give and receive at the time of conclusion.
    - An aleatory contract (*ʿaqd ʾiḥtimālī*) involves uncertainty regarding the extent or duration of performance, determined only by future events. Examples include security contracts and both commercial and cooperative insurance. Aleatory elements may also appear in contracts of donation, such as the proceeds from a *waqf* (endowment).
7. **Instantaneous and Time-Based Contracts:**
    - Instantaneous contracts are performed immediately, even if execution is delayed, such as most sales—including installment sales.

- Time-based contracts depend essentially on duration for their effect, such as lease (*ʾijārah*) or employment for a fixed term.

8. **Negotiated, Adhesion, and Protective Contracts:**
   - A negotiated contract (*ʿaqd tafāwuḍī*) is concluded between parties of relatively equal bargaining power who negotiate the terms freely, as in most ordinary sales.
   - A contract of adhesion (*ʿaqd ʾidhʿān*) is imposed by one party, often an institution, upon another who must accept it as-is or abstain from contracting altogether. Examples include contracts with public utilities, airlines, telecommunications, shipping, other companies.
   - A protective contract (*ʿaqd ḥimāʾī*) restores fairness in situations where adhesion contracts might otherwise lead to exploitation—such as by imposing minimum wage laws, consumer protection regulations, or caps on bank interest rates.
     In reality, protective contracts are often sets of statutory rules designed to regulate both negotiated and adhesion contracts.

Section Two

The Default Principle in Contracts in *Sharīʿah*

The jurists differed regarding the default principle upon which contracts are based in *Sharīʿah*: is it *ʾibāḥah* (permissibility) — meaning that it is lawful to create any type of contract with any type of condition, and only those that are explicitly prohibited by the *Sharīʿah* are excluded from this general permissibility? Or is the default principle *ḥaẓr* (prohibition), such that no contract is permitted except what has been specifically sanctioned by *Sharīʿah*?

Upon reviewing the writings and statements of the *fuqahāʾ*, three major views emerge:

First Opinion: The Original Principle in Contracts is Permissibility:

According to this view, contracts are not prohibited unless the *Sharīʿah* explicitly declares them unlawful. Consequently, in matters of exchange (*muʿāwaḍah*), the burden of proof lies upon the one who claims prohibition; he must produce evidence to establish invalidity or corruption (*buṭlān* or *fasād*).

This is the opinion of the majority among the classical schools (*madhāhib*), including most of the Ḥanafīs[1]. Al-Ḥamawī, in his commentary on the legal maxim "The default principle regarding things is permissibility," cited by Ibn Nujaym in *al-ʾAshbāh wa al-Naẓāʾir*, reported that the majority of the Ḥanafīs adopts this view. He said: "The eminent scholar Qāsim ibn Quṭlūbughā mentioned in some of his commentaries that the preferred view is that the default principle is permissibility according to the

[1] ʾUṣūl by al-Jaṣṣāṣ (3/247) et seq, al-ʾashbāh wa al-naẓāʾir by Ibn Nujaym (56-57, and taysīr al-taḥrīr (2/168).

majority of our scholars."[1]

This view is also held by the Mālikīs, as al-Qarāfī mentioned: "The second maxim: the default principle concerning benefits (*manāfiʿ*) is permissibility, and concerning harms (*maḍārr*) is prohibition — by revelation (*samʿ*), not by reason — contrary to the Muʿtazilah."[2]

Ibn Rushd al-Jadd (the grandfather) also stated: "Sales are divided into three categories: lawful sales, prohibited sales, and disliked sales.
As for the lawful ones, they are those not prohibited by the *Sharīʿah* and for which there is no forbiddance. We say so because Allāh, Exalted is He, permitted sales to His servants with an unrestricted permission and general permissibility."[3]

Among the Shāfiʿīs, this is also the predominant opinion. Al-Fakhr al-Rāzī said: "The first issue concerning the ruling of actions: know that we have already established at the beginning of this book that there is no ruling before revelation and we have answered all counter claims. We now clarify that the default principle concerning benefits is permissibility, and concerning harms is prohibition, based on the evidences of *Sharīʿah*."[4]

The Ḥanbalīs also adhere to this principle. Ibn Qudāmah expressed it as follows: "In summary: every owned thing whose

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[1] Ghamz ʿUyūn al-Baṣāʾir (1/223).

[2] Al-Dhakhīrah (1/155). In *Sharḥ Tanqīḥ al-Fuṣūl*, p. 78, he said: "The evidence of permissible is Allāh's statement, "the One who created for you all what is on earth." [Al-Baqarah: 29] and Allāh's statement, "He who gave each thing its form and then guided [it]." This indicates that permission in all these cases was granted on the basis of these *Sharīʿah*-based considerations that signify permissibility prior to the advent of the revealed laws"

[3] Al-Muqaddimāt al-Mumahhidāt (2/61).

[4] Al-Maḥṣūl (6/97).

use is permitted, its sale is lawful, except what the *Sharīʿah* has excluded."[1]

Ibn Taymiyyah reinforced this foundation, saying: "The default principle is that nothing of the transactions that people need is prohibited unless the Qurʾān or Sunnah has shown it to be forbidden."[2]

Likewise, Ibn al-Qayyim stated: "Their fourth mistake lies in believing that the contracts, conditions, and dealings of Muslims are all void unless evidence of validity exists. Thus, if no evidence appears for the validity of a condition, a contract or a transaction, they presume it invalid — thereby corrupting many dealings of people without proof from Allāh. That is their principle in this regard.

The majority of jurists, however, hold the opposite view: that the default principle in contracts and conditions is validity unless invalidated or prohibited by the *Sharīʿah* — and this is the correct opinion."[3]

Ibn Rajab also mentioned that some scholars even reported consensus that, after the advent of the revelation, the default principle regarding things is permissibility. Commenting on the verse: "Why should you not eat of that upon which the name of Allāh has been mentioned, while He has explained in detail to you what He has forbidden you?"[4]

Ibn Rajab said: "He reproached them for refraining from what Allāh's name was mentioned upon, explaining that the prohibited items have already been made clear, and this is not among them

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[1] Al-Mughnī by Ibn Qudāmah (6/359).
[2] Majmūʿ al-Fatāwā (28/386).
[3] ʾIʿlām al-Muwaqiʿīn (3/107).
[4] [Al-ʾAnʿām: 119].

— which indicates that things are, by default, permissible."[1]

He further distinguished between the period before and after revelation: "After the revelation, these texts and their likes demonstrate that the ruling of that former default has ended, and that the default principle in things is permissibility, established by *Sharīʿah* proofs — and some have even reported consensus on this."[2]

The majority also supported their stance with numerous evidences from revelation (*samʿ*) and reason (*ʿaql*), some of which will be mentioned below.

First: Qurʾānic Evidences for the Principle that the Default Ruling in Contracts is Permissibility

1. Allāh Almighty says: "He it is Who created for you all that is on the earth."[3]

Al-Wāḥidī said in *al-Wajīz*: "(He is Who created for you) — meaning, for your sake; (all that is on the earth) — some for benefit and some for reflection."[4]

Al-Kiyā al-Harrāsī stated: "This indicates that things are originally permissible, except when evidence of prohibition exists."[5]

Al-Baghawī said: "It was said: that you may benefit therefrom."[6]

Al-Zamakhsharī noted: "It has been argued from His saying (He created for you) that things which can be beneficial and are not inherently prohibited by reason were originally created as

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1 Jāmiʿ al-ʿUlūm wa al-Ḥikam, p. 534.
2 Ibid.
3 [Al-Baqarah: 29].
4 Al-Wajīz fī Tafsīr al-Kitāb al-ʿAzīz, p. 98.
5 ʾAḥkām al-Qurʾān (1/8).
6 Maʿālim al-Tanzīl (1/78).

permissible, unrestrictedly — for everyone to use and enjoy."[1]

Al-Fakhr al-Rāzī commented: "The jurists — may Allāh have mercy on them — deduced from this verse that the default principle concerning benefits is permissibility."[2]

Al-Bayḍāwī said: "This implies the permissibility of all beneficial things."[3]

Al-Nasafī wrote: "Al-Karkhī, Abū Bakr al-Rāzī, and the Muʿtazilah used the verse (He created for you) as evidence that whatever can be benefited from was originally created as permissible."[4]

Ibn Juzayy al-Kalbī explained: "A proof for the permissibility of benefiting from what is on earth."[5]

Ibn ʿĀdil stated: "The jurists inferred from this verse that the default principle regarding benefits is permissibility."[6]

Al-Biqāʿī affirmed: "The verse proves that the default principle regarding things is permissibility, and nothing may be prohibited except with clear evidence."[7]
Al-Shawkānī added: "This is evidence that the default principle concerning all created things is permissibility, until evidence indicates otherwise. There is no difference between animals and other things from which benefit is derived without harm. The emphasis through His saying (all) strengthens this meaning."[8]

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[1] Tafsīr al-Kashshāf (1/250).
[2] Mafātīḥ al-Ghayb (2/379).
[3] ʾAnwār al-Tanzīl (1/66).
[4] Madārik al-Tanzīl (1/76).
[5] Al-Tashīl li-ʿUlūm al-Tanzīl (1/61).
[6] Al-Lubāb fī ʿUlūm al-Kitāb (1/487).
[7] Naẓm al-Durar (1/82).
[8] Fatḥ al-Qadīr (1/71-72).

Al-Ālūsī commented: "Many among the *Ahl al-Sunnah*, both Ḥanafīs and Shāfiʿīs, deduced from this verse the permissibility of beneficial things before revelation. Most of the Muʿtazilah held the same, and this was the choice of Imām [al-Rāzī] in *al-Maḥṣūl* and al-Bayḍāwī in *al-Minhāj*."[1]

Al-Marāghī concluded: "Hence we know that the default principle is the permissibility of benefiting from everything Allāh created on earth. Thus, no one has the right to prohibit what Allāh has permitted, except by His leave."[2]

2. Verses Commanding Fulfillment of Covenants and Contracts.

Among them are: "O you who believe! Fulfill your obligations."[3] "And fulfill every (legal) commitment."[4] "And fulfill the covenant of Allah when you have taken it."[5]

Imām al-Jaṣṣāṣ al-Rāzī said in his *ʾAḥkām al-Qurʾān* while interpreting the verse in *Al-Māʾidah*: "This verse also necessitates fulfilling the contracts of sales, leases, marriages, and all that falls under the term 'contracts.' Therefore, whenever there is disagreement regarding the validity or invalidity of a contract or a vow, the general wording of (Fulfill your contracts) can be used as evidence, since its generality includes guarantees, leases, sales, and the like."[6]

Ibn al-Faras also stated in his explanation of the same verse: "It is was said: it is general, so the verse should be applied to

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[1] Rūḥ al-Maʿānī (1/215).
[2] Tafsīr al-Marāghī (1/73).
[3] [Al-Māʾidah: 1].
[4] [Al-ʾIsrāʾ: 34].
[5] [Al-Nisāʾ: 33].
[6] ʾAḥkām al-Qurʾān by al-Jaṣṣāṣ (3/286).

everything to which the name ‘contract’ applies — such as vows, oaths, and other forms — except what the *Sharīʿah* has specifically excluded.”[1]

Al-Ālūsī wrote: “The apparent meaning of the verse encompasses every contract, except those whose non-fulfillment constitutes an act of devotion or is obligatory to break — so reflect and do not overlook.”[2]

Shaykh Rashīd Riḍā elaborated extensively on this verse, saying: “In our era, new kinds of transactions have emerged, followed by new types of contracts mentioned in modern civil codes. Some of these are approved by the jurists of the Islamic schools, while others are not — for failing to meet conditions they stipulated, such as requiring an explicit offer and acceptance. Thus, if two people wrote a contract, orally or in writing, without uttering offer and acceptance but signed or sealed it, some jurists would not regard it as valid.

However, the foundational principle of contracts established in Islam is embodied in this concise and comprehensive divine statement (Fulfill your contracts), which means that every believer must abide by what he has covenanted and committed to. None has the authority to restrict what Allāh has left unrestricted except with clear proof from Him.”[3]

3. Verses Limiting Prohibitions to Certain Categories.

Among them: “Say, ‘I do not find within what has been revealed to me anything forbidden to one who would eat it unless it be carrion, spilled blood, or the flesh of swine — for indeed, it is

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[1] ʾAḥkām al-Qurʾān by Ibn Fāris (2/297).
[2] Rūḥ al-Maʿānī (6/49).
[3] Tafsīr al-Manār (6/98-99).

impure."[1]

"Say, 'Come, I will recite what your Lord has prohibited to you…'"[2]

"And He has already explained to you what He has forbidden to you."[3]

"Say, 'My Lord has only forbidden open and secret indecencies, sinfulness, unjust aggression…'"[4]

Al-Juwaynī wrote in *Ghiyāth al-Umam*: "Whenever the schools of Islamic law are forgotten, whatever is not known to be prohibited remains upon the ruling of permissibility, because Allāh does not establish a ruling for the legally accountable without evidence. Thus, when proof of prohibition is absent, prohibition is impossible."[5]

He also said elsewhere: "We have already mentioned that what contains no harm and no restriction is limitless, while that which is limited and specified is what is prohibited. Therefore, when the people of later times become confused about the precise identities of the prohibited things — which are limited and known — it does not render the innumerable lawful things forbidden."[6]

4. The Generality of Allāh's Statement: "Allah has permitted *al-bayʿ* (trade) and forbidden *ribā* (usury)."[7]

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[1] [Al-ʾAnʿām: 145].
[2] [Al-ʾAnʿām: 151].
[3] [Al-ʾAnʿām: 119].
[4] [Al-ʾAʿrāf: 33].
[5] Ghiyāth al-ʿUmam, p. 490.
[6] Ibid. p. 500.
[7] [Al-Baqarah: 275].

Here, the term *"al-bayʿ"* (trade) is expressed with the definite article (*al*). The majority of Mālikīs, Shāfiʿīs, and Ḥanbalīs maintain that a singular noun introduced with *al* indicates generality when the context supports it[1].

Al-Zarkashī said regarding a generic noun prefixed with *al*: "It conveys comprehensiveness of the genus, as mentioned explicitly by al-Shāfiʿī in *al-Risālah* and al-Buwayṭī, and reported by his companions in his interpretation of the verse: (Allāh has permitted trade)."[2]

He also cited the scholars who held this view: "Ustādh Abū Manṣūr reported this view from the scholars of formulas. Al-Qāḍī ʿAbd al-Wahhāb said: it is the view of the majority of jurists and fundamentalists, and it was adopted by Abū ʿAbdullāh al-Jurjānī, who attributed it to the Ḥanafīs. Al-Qurṭubī reported it as the position of Mālik and others; al-Bājī said it is the correct view. Likewise, it was held by Shaykh Abū Isḥāq al-Shīrāzī, Ibn Burhān, Ibn al-Samʿānī, al-Jubbāʾī, ʿAbd al-Jabbār, al-Kiyā al-Ṭabarī, Ibn al-Ḥājib, al-Āmidī (quoting al-Shāfiʿī and the majority), and Fakhr al-Dīn al-Rāzī (quoting al-Mubarrad and the jurists)."[3]

Accordingly, the ruling of permissibility applies to all forms of sale unless a specific text restricts or prohibits a particular type. Anything not specified as forbidden remains permissible based on the default permissibility. This principle is supported by the contrasting clause in the same verse: "and forbidden *ribā*"[4] —

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[1] Refer to al-Burhān by al-Juwaynī (2/129) et seq, al-Mustaṣfā by al-Ghazālī (1/94), al-Maḥṣūl by al-Rāzī (2/360), and Rawḍat al-Nāẓir by Ibn Qudāmah (2/10) et seq.

[2] Al-Baḥr al-Muḥīṭ (3/98).

[3] Al-Baḥr al-Muḥīṭ (3/98).

[4] [Al-Baqarah: 275].

indicating that every *ribā* is prohibited, except when necessity provides an exemption, such as *ribā* in cases of dire compulsion.

Other Qurʾānic verses also reinforce this general principle, including: "Say, 'Lawful for you are [all] good things.'"[1] — the term *ṭayyibāt* (good things) here is general and encompasses both tangible and intangible benefits.

Allāh also says: "And [lawful to you are] all others beyond these."[2] — the word *mā* (all) is general and includes every woman not listed among the prohibited categories. It refers to numerous categories outside the scope of the prohibited ones.

Also, Allāh says: "and makes lawful for them what is good and forbids them from what is evil.'"[3] — the term *ṭayyibāt* (good) is a general category encompassing countless lawful items, tangible and intangible benefits, and their consequent actions.

Also, Allāh says: "All food was lawful to the Children of Israel."[4] — the word *all* here is among the words expressing generality, excluding only the limited items Yaʿqūb has forbidden upon himself and Allāh approved that for him. If the case is with the Children of Israel, it is more general with the people of Prophet Muḥammad (peace be upon him).

Also, Allāh says: "And He has subjected to you all that is in the heavens and all that is in the earth — all from Him."[5] — the act of subjection (*taskhīr*) itself indicates permissibility of use; otherwise, the reminder of divine favor would be meaningless.

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1 [Al-Māʾidah: 4].
2 [Al-Nisāʾ: 24].
3 [Al-ʾAʿrāf: 157].
4 [Aāl ʿImrān: 93].
5 [Al-Jāthiyah: 13].

Allāh also says: “Say, ‘Who has forbidden the adornment of [i.e., from] Allāh which He has produced for His servants and the good [lawful] things of provision?’”[1] — the verse condemns unauthorized prohibition without divine warrant, implying that the default state of creation is permissibility.

Also, Allāh says: “and He has already explained to you what He has forbidden to you.”[2] — the restriction of prohibition to specified things entails that everything else remains lawful. Otherwise, it would have been mentioned among the prohibited items. Things are either permissible or forbidden. Therefore, what is unforbidden is permissible. Since *ḥalāl* and *ḥarām* are mutually exclusive, what is not prohibited must be lawful. Permissibility and prohibition are opposites; they never come together nor leave together.

Second: The Prophetic Sunnah Evidences That the Default Principle on Contracts Is Permissibility

1. Among the evidences cited in this regard is the *ḥadīth* of ʿĀʾishah (may Allāh be pleased with her) that the Prophet (peace and blessings be upon him) heard some noises and said: “What is this sound?” They replied, “They are pollinating the date palms.” He said, “If they do not do it, perhaps it will still be fine.” So, they refrained from pollinating that year, and the crop turned out defective. They mentioned this to the Prophet (peace and blessings be upon him), and he said: “If it is something of your worldly affairs, then you know better about it; but if it is something of your religion, then refer it to me.”[3]

There is no doubt that most contracts among people belong to the

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[1] [Al-ʾAʿrāf: 32].

[2] [Al-ʾAnʿām: 119].

[3] Ṣaḥīḥ Muslim (141/2363), Musnad ʾAḥmad (24920), and Sunan Ibn Mājah (24710) in ʾAḥmad’s and Ibn Mājah’s wording.

domain of worldly affairs; therefore, they are subject to people's mutual consent, customs, and expertise. None of them are prohibited except those that the Prophet (peace and blessings be upon him) forbade for a specific reason—such as harm, uncertainty (*jahālah*), or exploitation.

2. Also, among the textual evidences on what is *ḥalāl* (lawful) and *ḥarām* (forbidden) are those that speak about matters left unaddressed by revelation being originally permissible.

Ibn ʿAbbās (may Allāh be pleased with him) said: "The people of *Jāhiliyyah* (pre-Islamic era) used to eat certain things and avoid others as a matter of self-imposed restriction. Then Allāh sent His Prophet, revealed His Book, permitted what He permitted, and forbade what He forbade. Whatever He permitted is *ḥalāl*, whatever He forbade is *ḥarām*, and whatever He was silent about is a concession." Then he recited the verse: 'Say, I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal, or blood spilled out, or the flesh of swine—for indeed, it is impure—or a [thing] dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], then indeed, your Lord is Forgiving and Merciful.'[1],[2]

Ibn al-Qayyim said: "Every condition, contract, or transaction about which the *Sharīʿah* is silent may not be declared unlawful."[3]

He also said: "Their fourth mistake was assuming that all contracts, stipulations, and dealings of Muslims are invalid

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[1] [Al-ʾAnʿām: 155].
[2] Sunan Abī Dawūd (3800) and al-Mustadrak by al-Ḥākim (7291).
[3] ʾIʿlām al-Muwaqqiʿīn (3/108).

unless proven otherwise. If they[1] find no evidence for validity of a certain condition, contract or transaction, they assume invalidity—thus invalidating many of people's transactions, contracts and conditions without any proof from Allāh based on this principle they assumed. The majority of jurists, however, hold the opposite view: that the default principle on contracts and conditions is validity, except for what the *Sharīʿah* has nullified or forbidden."[2]

3. Among the textual proofs are those discouraging excessive questioning about whether things are forbidden—out of fear that such questioning might lead to their prohibition as a form of severity. Al-Bukhārī narrated from Saʿd ibn Abī Waqqāṣ (may Allāh be pleased with him) that the Prophet (peace and blessings be upon him) said: "The worst offender among the Muslims is the one who asks about something that was not forbidden, but it becomes forbidden because of his question."[3]

Ibn Ḥajar said in his commentary: "This *ḥadīth* indicates that the default principle concerning things is permissibility until the *Sharīʿah* states otherwise."[4]

Ibn al-Mulaqqin said: "It implies that things are permissible until prohibited; and the view of suspension (*tawaqquf*) is an overreach, for it prevents people from acting, which is a form of harm."[5]

Similarly, Muslim narrated from Abū Hurayrah (may Allāh be pleased with him) that the Prophet (peace and blessings be upon

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[1] He refers to the Ẓāhirīs who adhere to the apparent meanings and deny *qiyās*.
[2] ʾIʿlām al-Muwaqqiʿīn (3/107).
[3] Al-Bukhārī (7289) and Muslim (2358).
[4] Fatḥ al-Bārī by Ibn Ḥajar (13/269).
[5] Al-Tawḍīḥ bi Sharḥ al-Jāmiʿ al-Ṣaḥīḥ (33/44).

him) said: “Leave me as I have left you. Those before you were destroyed only because of their excessive questioning and disagreements with their prophets. So, when I command you to do something, do of it as much as you can; and when I forbid you from something, then avoid it.”[1]

4. Also, among the evidences are *aḥādīth* permitting reconciliation (*ṣulḥ*) between Muslims on any terms that do not contradict the *Sharīʿah*—everything else remains upon the principle of permissibility.

Al-Tirmidhī and Ibn Mājah reported from ʿAmr ibn ʿAwf al-Muzanī while Abū Dāwūd reported from Abū Hurayrah that the Prophet (peace and blessings be upon him) said: “Reconciliation is permissible between Muslims except for a reconciliation that makes the unlawful lawful, or the lawful unlawful. And Muslims must abide by their conditions, except a condition that makes the lawful unlawful or the unlawful lawful.”[2]

The Prophet (peace and blessings be upon him) acted upon this general principle in his reconciliations between tribes, such as those of Banū ʿAmr ibn ʿAwf and the people of Qubāʾ. Thus, the default principle on such contracts is validity and effectiveness—except when the *Sharīʿah* itself rejects them, as in the case of the *ʿasīf* (hired worker) who committed fornication, and the Prophet (peace and blessings be upon him) annulled their agreement because it contravened the divine penalties[3].

5. Further evidence comes from the *aḥādīth* and practices of the Prophet (peace and blessings be upon him) and his Companions

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[1] Muslim (1337).

[2] Al-Tirmidhī (1352) and Abū Dawūd (3594). Also, ʾAḥmad narrated it in his Musnad from Abū Hurayrah (8784).

[3] Al-Bukhārī (2695) and Muslim (1696).

that affirm the general validity of stipulations (*shurūṭ*).

ʿUqbah ibn ʿĀmir (may Allāh be pleased with him) narrated that the Messenger of Allāh (peace and blessings be upon him) said: "The most deserving of conditions to be fulfilled are those by which you make the private parts lawful [i.e., marriage conditions]."[1]

ʿUmar ibn al-Khaṭṭāb (may Allāh be pleased with him) said: "Rights are settled by conditions, and you are bound by what you stipulated."[2]

The original story is that a man married a woman on the condition that she remain in her house; later he wanted to move her elsewhere. Her family brought the matter before ʿUmar, who ruled: "She has her condition."

In another narration by ʿAbd al-Raḥmān ibn Ghanm, he said: "I was sitting next to ʿUmar when a man came and said, 'O Commander of the Believers! I married this woman on the condition that she stays in her home, but now I wish to move to another land.' ʿUmar said, 'She has her condition.' The man said, 'Then men are doomed! Every woman will just divorce her husband when she wishes!' ʿUmar replied, 'Believers are bound by their conditions when rights are due.'"

The key point here is the general approval of contractual conditions. The Prophet's saying, "The most deserving of conditions to be fulfilled…" is a general statement encompassing all types of conditions unless a specific text excludes them. Likewise, ʿUmar's judgment—made in the presence of the Companions—shows that the woman's condition was not

[1] Al-Bukhārī (2721) and Muslim (63/1418).
[2] Al-Bukhārī (2720).

originally part of the *Sharī'ah*, yet he upheld it on the basis of the default principle of permissibility.

Third: Rational Evidences

1. The harmony with human social nature requires that permissibility, not prohibition, be the default principle. This facilitates the divine purpose of *istikhlāf* (vicegerency) and the construction of the earth (*'imārat al-arḍ*). Were prohibition the default principle, the process of building and developing the earth would become overly complicated — contradicting both *istikhlāf* and *'imārat al-arḍ*. For example, imagine placing a group of people on a remote island and instructing them to live and develop it using the means available — but under the condition that they cannot lift or place a single stone without prior permission. Would that serve the intended purpose or obstruct it?

2. The practical reality has proven that revealed texts are finite, while human needs are infinite. How, then, can what is finite dominate the infinite by way of prohibition, without resulting in stagnation and paralysis?

3. Claiming that permissibility is not the default principle contradicts one of the key objectives of the *Sharī'ah — removal of hardship (raf' al-ḥaraj)*. Allāh the Exalted says: **"**He has not placed upon you in the religion any difficulty."[1] And He says: "Allah intends for you ease and does not intend for you hardship."[2] And He says: "Allah does not burden a soul beyond its capacity."[3]

The removal of hardship cannot coexist with a presumption of

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[1] [Al-Ḥajj: 78].
[2] [Al-Baqarah: 185].
[3] [Al-Nisā': 28].

prohibition — just as ease cannot coexist with excessive restriction.

4. When we examine the Prophet's (peace and blessings be upon him) behavior in transactional matters, we find that he would only comment on his Companions' actions when they conflicted with *Sharīʿah*. This indicates that the default principle is permissibility; otherwise, he would have prohibited all actions until they consulted him. For example, in the field of sales, many reports state: "The Prophet forbade such-and-such." These reports represent exceptions to the default principle of permissibility in all sales. If prohibition were the default principle, there would have been no need to mention specific prohibitions; rather, specific permissions would have been stated instead.

5. An induction of the Companions' behavior shows that they did not understand the default principle for actions and speech to be prohibition, but permissibility. Examples include:

1. Abū Bakr al-Ṣiddīq's wager with the people of Makkah,

2. Taking payment for *ruqyah* (recitation for healing) using Sūrat al-Fātiḥah,

3. Adding supplementary *'adhkār* (remembrances) in prayer,

4. Adding extra wording in the *'adhān* (call to prayer),

5. Muʿādh's act of prostrating to greet the Prophet (peace and blessings be upon him),

6. Exchanging inferior dates for superior ones (*mubadalah al-tamr al-jamīʿ bi al-tamr al-janīb*),

7. Concluding the recitation of Qurʾān in every *rakʿah* with Sūrat al-Ikhlāṣ.

6. Holding that the default principle is prohibition or even suspension contradicts the very concept of *Sunnah taqrīriyyah* (the Prophet's tacit approvals). For if we insist that the default principle is prohibition, then any action by a Companion prior to a clear proof of permissibility would, by default, be prohibited. How, then, could the Prophet (peace and blessings be upon him) approve an act that is presumptively unlawful?

7. Logical reasoning and human sociology dictate that what is prohibited should be enumerated, not what is permissible — since enumeration is reserved for the few, not the many. Upon examining the *Sharīʿah*, we find that the majority of its rulings fall under permissibility, while only a minority are prohibited. Hence, revelation generally came to draw attention to the forbidden — implying that everything else remains permissible.

8. Asserting that the default principle is prohibition or suspension also undermines another *maqṣad* (objective) of the *Sharīʿah* — the principle of freedom. Such a view would turn the *Sharīʿah* into a kind of imprisonment, for prison by nature is a place of restriction: the inmate is forbidden from everything except what prison law explicitly permits. That is the essence of punishment. In contrast, the free person is allowed everything except what is explicitly forbidden. Thus, the only coherent conclusion is that permissibility must be the default principle.

9. The Prophet's (peace and blessings be upon him) prohibitions of certain types of sales also indicate that those practices were originally conducted under the assumption of permissibility. The subsequent prohibition came later due to specific causes such as uncertainty, potential harm, or unfairness. For instance, his prohibition of *muzābanah* (sale of uncertain produce) proves that it was a common practice which he later forbade. Likewise, his regulation of *salam* (forward sale) demonstrates that they initially

engaged in it under the presumption of permissibility. Hence, Ibn ʿAbd al-Barr stated: "The default principle in sales is that they are lawful when conducted by mutual consent, except for what Allāh — Mighty and Majestic — has prohibited through His Prophet (peace and blessings be upon him) explicitly or by analogy to such texts."[1] Similarly, al-Shāfiʿī said: "The default principle in all sales is permissibility when conducted by mutual consent… except what the Messenger of Allāh (peace and blessings be upon him) has forbidden."[2]

The Second View: That the Default Principle in Contracts Is Prohibition

According to this opinion, the default principle is that every contract is prohibited until there is evidence establishing its permissibility.

Foremost among those who adopt this view are the Ẓāhiriyyah (Literalists), as will be explained. It was also held by Abū Bakr al-ʾAbharī, who applied this principle in cases where two textual reports (*khabarān*) conflict irreconcilably — one indicating prohibition and the other indicating permissibility[3]. In such cases, he gave precedence to the report indicating prohibition.

Abū Yaʿlā al-Mawṣilī attributed this view to some of the Muʿtazilah, and also to his teacher al-Ḥasan ibn Ḥāmid[4].

Al-Shīrāzī likewise ascribed it to some of the Shāfiʿīs, saying: "Abū ʿAlī ibn Abī Hurayrah said: The rule is prohibition unless the *Sharīʿah* grants permission for it — and this is the doctrine of

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1 Al-Istidhkār (6/419).

2 Al-ʿUmm (3/3).

3 ʾIḥkām al-Fuṣūl fī ʾAḥkām al-ʾUṣūl by al-Bājī (p. 264). Al-Bājī reported from him absolute prohibition as he said: "Abū Bakr al-ʾAbharī said: 'Things are by default on prohibition.'" P. 687.

4 Al-ʿUddah fī ʾUṣūl al-Fiqh (4/1238-1240).

the Baghdadi Muʿtazilah."[1]

As for the Ẓāhiriyyah, Ibn Ḥazm elaborated on their opinion in his book *al-'Iḥkām*, dividing the issue into two categories:

First: The Ruling on Things According to Reason Before Revelation. In this regard, Ibn Ḥazm reports that the Ẓāhiriyyah suspend judgment (*tawaqquf*). He says: "Chapter Six: Are things, according to reason before the coming of revelation, subject to prohibition or permissibility? … Others — namely all of the Ẓāhiriyyah and some of the people of *qiyās* — said: Such things have no ruling in reason at all, neither prohibition nor permissibility; rather, all of that is suspended until the *Sharī'ah* provides a ruling. Abū Muhammad [Ibn Ḥazm] said: This is the truth, and anything else is impermissible to claim."[2]

Second: The Ruling on Things After Revelation. Here, he states that the default principle is prohibition, saying: "Chapter Twenty-Three: On Presumption of Continuity (*istiṣḥāb al-ḥāl*) and the invalidity of all contracts, covenants, and conditions except those established by the Qurʾān or by an authentic Sunnah from the Messenger of Allāh (peace and blessings be upon him)."[3]

Commenting on the *ḥadīth* 'Why do some people stipulate conditions not found in the Book of Allāh?', Ibn Ḥazm said: "These verses and this report are conclusive proofs nullifying every covenant, contract, promise, or condition that is not commanded in the Book of Allāh or explicitly permitted therein — for contracts, covenants, and promises all fall under the term *shurūṭ* (conditions)."[4]

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1 Al-Tabṣirah by al-Shīrāzī (532-533).
2 Al-ʾIḥkām (1/52).
3 Ibid (5/2).
4 Ibid (5/13).

To support their view of prohibition as the default principle, proponents cited evidences from the Qurʾān and Sunnah, including:

From the Qurʾān

1. Allāh the Exalted says: "This day I have perfected for you your religion and completed My favor upon you ."[1]

Ibn Taymiyyah explained their argument in *al-Qawāʿid al-Nūrāniyyah*: "They said: Conditions and contracts that were not legislated constitute a transgression of Allāh's limits and an addition to the religion."[2]
He also said: "As for those conditions which others invalidated, though the legal texts indicate their permissibility — whether by general or specific evidence — such people claimed that these were abrogated, as some of them argued regarding the Prophet's conditions with the polytheists at *al-Ḥudaybiyyah*. Others said that this verse is general or absolute, and that it must be restricted to the conditions established in the Book of Allāh."[3]

2. Allāh the Exalted says: "And whoever transgresses the limits set by Allāh — those are the wrongdoers."[4]

They said that claiming permissibility without explicit proof constitutes transgression of Allāh's limits.

Ibn al-Qayyim transmitted their argument from this verse, saying: "They said: These texts clearly invalidate every covenant, contract, promise, or condition that is not commanded in the Book of Allāh or explicitly permitted therein. They argued that

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[1] [Al-Māʾidah: 3].
[2] Al-Qawāʿid al-Nūrāniyyah, p. 260.
[3] Ibid. p. 260.
[4] [Al-Baqarah: 229].

every condition or contract not affirmed in the texts — either through obligation or permission — must fall under one of four categories: (1) Permitting what Allāh and His Messenger have forbidden; (2) Forbidding what they have permitted; (3) Abolishing what they have made obligatory; or (4) Making obligatory what they have not required. There is no fifth category beyond these. If you grant that those entering into such contracts or conditions have authority over all of these matters, you would have abandoned the religion altogether; and if you grant them authority over some but not others, you are inconsistent. We would then ask you: what distinguishes between what they are permitted to legislate and what they are not? You will find no coherent answer."[1]

3. Allāh the Exalted says: "And do not say about what your tongues assert of untruth, 'This is lawful and this is unlawful,' to invent falsehood about Allāh."[2]
The key point here lies in the fact that declaring something lawful (*taḥlīl*) without divine sanction is a right exclusive to Allāh.

4. Allāh the Exalted says: "Or have they partners [i.e., other deities] who have ordained for them a religion to which Allāh has not consented?"[3]

They also cited some evidences from the Sunnah

1. The story of Barīrah's emancipation, as narrated in full by Mālik from Hishām ibn ʿUrwah from his father ʿUrwah ibn al-Zubayr, from ʿĀ'ishah (may Allāh be pleased with her): Barīrah came to ʿĀ'ishah and said: "I have agreed with my masters to

[1] 'Iʿlām al-Muwaqqiʿīn (3/112-113).
[2] [Al-Naḥl: 116].
[3] [Al-Shūrā: 21].

pay them nine *uqiyyahs* of silver, one each year; help me to pay it." ʿĀʾishah replied: "If your masters are willing that I pay the full amount for you and that your *walā'* (allegiance) belongs to me, I will do so." Barīrah went back to her masters and told them, but they refused unless the *walā'* remained theirs. She came back while the Messenger of Allāh (peace and blessings be upon him) was sitting. She told ʿĀʾishah what had happened. The Prophet (peace and blessings be upon him) said: "Buy her and stipulate for them that the *walā'* will be theirs, for *walā'* belongs only to the one who sets free." So, ʿĀʾishah did so. Then the Messenger of Allāh (peace and blessings be upon him) stood and addressed the people, praising Allāh and glorifying Him, and said: "Why do some men stipulate conditions that are not in the Book of Allāh? Every condition not in the Book of Allāh is invalid, even if there are a hundred conditions. The decree of Allāh is truer, and the condition of Allāh is more binding. *Walā'* belongs only to the one who emancipates."[1]

According to the proponents of this view, the Prophet (peace and blessings be upon him) invalidated all conditions except those sanctioned by *Sharīʿah*, implying that the default principle is prohibition until a *Sharʿī* ruling is known, as indicated by his words: "not in the Book of Allāh."

2. They also cited the *ḥadīth* narrated by ʿĀʾishah (may Allāh be pleased with her), that the Prophet (peace and blessings be upon him) said: "Whoever performs an action not in accordance with our matter will have it rejected."[2]

They argued that this indicates the default principle is that every act is to be rejected until evidence establishes its validity — as

[1] Al-Bukhārī (2168) and Muslim (7/1504).
[2] Al-Bukhārī (2697) and Muslim (18/1718).

shown in his words: “not in accordance with our matter.” The *amr* (command) here refers to divine knowledge.

Similarly, he (peace and blessings be upon him) said: “Every newly invented matter is an innovation, and every innovation is misguidance.”[1]

Contracts, covenants, and conditions that fall outside the scope of his teachings are, therefore, considered innovations and are rejected according to the explicit meaning of this *ḥadīth*.

Their Rational Evidence

They also argued on rational grounds that matters fluctuate between permissibility and prohibition. Engaging in them before knowing the proof of permissibility entails abandoning caution and embracing uncertainty. They said: “It may be that a thing is permissible — and one would bear no sin for doing it; yet it may also be prohibited — in which case the person would be blameworthy and sinful. Since both possibilities exist, reason dictates abstention to avoid sin and danger, just as if a person were told: ‘This road is safe, and that road is perilous.’ Reason compels him to avoid the perilous one, and if he takes it, his choice is deemed irrational. Hence, caution requires abstention.”[2]

The Third View: That the Default Principle on Contracts Is *Tawaqquf* (Suspension)

According to this opinion, no ruling of permissibility or prohibition, nor of validity or invalidity, is issued for a contract unless there is evidence proving its validity or evidence proving its invalidity.

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[1] Musnad ʾAḥmad (17145), Sunan Abū Dawūd (4607), Sunan al-Nasāʾī (1577) and Sunan Ibn Mājah (46).

[2] Al-ʿUddah fī ʾUṣūl al-Fiqh (4/1244).

Ibn al-ʿArabī said, while interpreting the Almighty's statement: "And He it is Who created for you all that is on earth..."[1]:

"People differed concerning this verse into three opinions:

1. That all things are prohibited until a proof of permissibility is established.
2. That all things are permissible until a proof of prohibition is established.
3. That things have no ruling until evidence comes indicating whichever ruling is appropriate for them."[2]

Ibn al-Faras said: "A similar position was mentioned by ʿAbd al-Wahhāb — meaning al-Qāḍī ʿAbd al-Wahhāb — in this issue: if two pieces of evidence conflict before a mujtahid concerning prohibition and permissibility, and neither has preponderance, or between obligation and permissibility, or between prohibition and obligation — some scholars incline toward permissibility as we mentioned earlier, and others incline toward prohibition. It is also reported from Mālik in the case of *madar*[3] (a type of clay) that he forbade selling it. And some scholars suspend judgment (*tawaqquf*) until further evidence appears. The same can be conceived in all cases where such a threefold conflict occurs."[4]

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[1] [Al-Baqarah: 29].

[2] ʾAḥkām al-Qurʾān by Ibn al-ʿArabī.

[3] *Madar* with a *fatḥah* for *mīm* and *dāl* is cohesive sticky mud. Its singular form is *madarah*. The issue relates to the ruling on eating clay, a practice some people used to engage in as a form of treatment in earlier times, particularly pregnant women. The jurists differed on this: some prohibited it, some deemed it disliked, and some permitted it based on the principle of original permissibility—unless it leads to harm. Mālik's opinion is mentioned in Mawāhib al-Jalīl (4/266). Refer to Rawḍat al-Ṭālibīn (3/291), ʾAsnā al-Maṭālib (1/569), al-Fatāwā al-Hindiyyah (5/340-341), and al-Mughnī (13/350).

[4] ʾAḥkām al-Qurʾān by Ibn al-Faras (1/48).

Ibn Nujaym also referred to this division but discussed it in relation to the state "before the coming of the *Sharīʿah.*" He said: "In *Sharḥ al-Manār* by the author[1]: the default principle regarding things is permissibility according to some of the Ḥanafīs, among them al-Karkhī[2]. Some of the *Aṣḥāb al-Ḥadīth* said the default principle is prohibition, while our companions said: the default principle is *tawaqquf*, meaning that every matter must have a ruling, yet we have not discovered it in fact."[3]

Ibn Nujaym then gave examples of issues that may be affected by this difference of opinion concerning the default principle on things. He mentioned among them: an animal whose status is uncertain, a plant whose toxicity is unknown, and a pigeon that strays into a dovecote not belonging to its owner.

They supported their view with the Almighty's saying: "Say, 'Have you seen what Allāh has sent down to you of provision of which you have made [some] lawful and [some] unlawful?' Say, 'Has Allāh permitted you [to do so], or do you invent [something] about Allāh?[4]'

Since Allāh forbade them from declaring things lawful or unlawful without knowledge, this indicates the necessity of *tawaqquf* (suspension) until it becomes clear which of the two rulings—prohibition or permissibility—prevails.

After presenting the various opinions found in the books of *fiqh*, *uṣūl al-fiqh*, *tafsīr*, and *sharḥ al-ḥadīth* regarding this issue, I

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[1] He refers to Imam Abū al-Barakāt ʿAbdullah ibn ʾAḥmad al-Nasafī (d. 710 AH), the author of Kashf al-ʾAsrār Sharḥ al-Muṣannif ʿalā al-Manār.

[2] He means before the advent of *Sharīʿah*. Otherwise, the majority of the Ḥanafīs hold that the default principle for things is permissibility after the advent of *Sharīʿah* as we previously mentioned.

[3] Al-ʾAshbāh wa al-Naẓāʾir, p. 57.

[4] [Yūnus: 59].

would like to comment with two preliminary premises and a conclusion:

Premise (1): Clarifying the Point of Disagreement:
Many of those who have written recently on the issue of "the default principle concerning things" (*al-aṣl fī al-ashyā'*) have conflated the discussions of the *fuqahā'* (jurists) and the *mutakallimūn* (theologians) in this topic, since they approached it from two distinct dimensions:

The first dimension:

The ruling on things before the coming of the *Sharīʿah*.
In this regard, their opinions diverged: some said the default principle is permissibility (*al-ḥill*), meaning rational permissibility (*al-ḥill al-ʿaqlī*); others said the default principle is prohibition (*al-ḥaẓr*); while the majority adopted the position of *tawaqquf* (suspension of judgment), because reason by itself has no authority in declaring things lawful or unlawful.

The second dimension:

The ruling on things after the coming of the *Sharīʿah* — that is, after the Prophet (peace and blessings be upon him) was sent and the revelation of legislation through the Qurʾān and Sunnah.

This second dimension is the actual focus of discussion, because the hypothetical debate about the period before revelation is purely philosophical. Some scholars who addressed this topic stated that such discourse is unnecessary, for the rulings of things have already been defined and settled by the *Sharīʿah*. Others argued that time has never been devoid of divine law, since Allāh the Almighty never leaves an age without a law to govern human action. For indeed, from the very beginning of creation, Allāh said to Adam and his wife: "Dwell, you and your wife, in

Paradise and eat therefrom in [ease and] abundance from wherever you will, but do not approach this tree."[1] Thus, He commanded and prohibited them immediately after creating them[2].

Accordingly, the scope of discussion remains confined to determining the ruling on things — including contracts — after the coming of the *Sharī'ah*, that is: based on the Qur'ān, the Sunnah, and the other sources of legislation — is the default principle on things of permissibility or prohibition?

Premise (2): Clarifying the Logical Scope of Possibilities in the Discussion

In reality, any human action or behavior can only fall under one of two categories: prohibition or permissibility, *ḥurmah* or *ḥill*, *man'* or *jawāz*.

Suspension (*tawaqquf*) only occurs in the case of a *muftī* who encounters an issue and refrains from issuing a ruling until further clarification is reached. But in terms of actual outcomes, there are only two possibilities: prohibition or permissibility.

Hence, the discussion should be limited to these two rulings only, because suspending judgment on an act (*tawaqquf fī al-ḥukm*) is in reality a kind of prohibition. And everything that is not prohibited is, by necessity, permissible.

This binary classification is confirmed by numerous texts,

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[1] [Al-Baqarah: 35].

[2] *Al-'Uddah fī 'Uṣūl al-Fiqh* (4/1250). This group also cited other verses as evidence, including His saying, the Exalted: "Does man think that he will be left neglected?" [al-Qiyāmah: 36], and His saying, the Exalted: "And We certainly sent into every nation a messenger." [al-Naḥl: 36], and His saying, the Exalted: "And there was no nation but that there had passed within it a warner." [Fāṭir: 24]. This indicates that no nation was ever devoid of legislation, commands, and prohibitions.

including the following Qur'ānic verses:

Allāh Almighty says: "O you who have believed, do not prohibit the good things which Allāh has made lawful to you."[1] — Here, Allāh contrasts the *ḥarām* (forbidden) with the *ḥalāl* (permitted).

Allāh Almighty says: "And do not say about what your tongues assert of untruth, "This is lawful and this is unlawful."[2] — Again, the *ḥalāl* is set against the *ḥarām*, showing the matter is between two possibilities only.

Allāh Almighty says: "Say, 'Have you seen what Allāh has sent down to you of provision of which you have made [some] lawful and [some] unlawful?"[3]

Allāh Almighty says: "Then eat of what Allāh has provided for you [which is] lawful and good. And be grateful for the favor of Allāh, if it is [indeed] Him that you worship. He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allāh. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit] - then indeed, Allāh is Forgiving and Merciful."[4]— In all these verses, the *ḥalāl* is mentioned opposite the *ḥarām.*

In the Sunnah, the same twofold division appears clearly:

In the *ḥadīth* of al-Nuʿmān ibn Bashīr, the Prophet (peace and blessings be upon him) said: "Indeed, what is lawful is clear and what is unlawful is clear."[5]
In the *ḥadīth* of Salman [al-Fārisī], the Prophet (peace and

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1 [Al-Mā'idah: 87].
2 [Al-Naḥl: 116].
3 [Yūnus: 59].
4 [Al-Naḥl: 114-115].
5 Al-Bukhārī (52) and Muslim (107/1599).

blessings be upon him said: "The lawful is that which Allāh has made lawful in His Book, and the unlawful is that which Allāh has made unlawful in His Book."[1]

Thus, the textual evidence indicates that all rulings return to these two categories: *ḥalāl* (permitted) and *ḥarām* (forbidden), with no third ruling in between.

Preponderant Opinion (*Tarjīḥ*):
Upon examining both the *Shar'ī* (legal) and *'Aqlī* (rational) perspectives, the most correct view is that the default principle regarding all things is permissibility and lawful benefit *(al-ibāḥah wa-jawāz al-intifā')*. This principle extends to all forms of benefits, contracts, covenants, and conditions. The rationale for this conclusion is as follows:

1. This represents the position of the majority of jurists (*fuqahā'*) and theologians (*mutakallimūn*), who based their opinion on the clear textual evidences from the Qur'ān and Sunnah, as detailed earlier. Their proofs are devoid of any valid opposing evidence, whether by way of *naskh* (abrogation) or *takhṣīṣ* (specification), that could be supported by sound reasoning.

2. The evidences presented by those who argued that the default principle is prohibition (*al-ḥaẓr*) or suspension (*at-tawaqquf*) are weak in their indication, and this can be clarified as follows:

Those who held that the default principle of contracts is prohibition cited the verse: "Today I have perfected your faith for you, completed My favor upon you, and chosen Islam as your

[1] Sunan al-Tirmidhī (1726) and Sunan Ibn Mājah (3367).

way."[1]

They interpreted this to mean that introducing new conditions or creating new contracts constitutes an encroachment upon the perfection and completion of the religion.

However, the correct understanding—both by the explicit wording (*manṭūq*) and the implicit indication (*mafḥūm*) of the verse—is that it does not support their claim that the default principle is prohibition. This is because the textual evidences of the Qur'ān and Sunnah contain numerous generalities, absolute statements, and open-ended formulations that continue to encompass new instances throughout time. These are not confined to the era of Prophethood. Thus, the verse "Do good."[2] is general in meaning—it includes every act of goodness in the Prophet's (peace and blessings be upon him) lifetime and any that may arise after him and after the cessation of revelation.

The explicit indication of "I have perfected" refers to an implied word (which is the word "laws") because religion is indivisible; it cannot be described as half or partial, but rather as a complete whole from its inception. The "perfection" here refers to the completion of the *Sharī'ah* and its rulings, meaning: I have perfected for you the laws of your religion. Among these laws is that the default principle of things is permissibility, established through evidences from the Qur'ān, Sunnah, and the practice of the Companions.

The implied words can also be interpreted as: I have perfected the dominance of your religion over others, since the verse was revealed after the conquest of Makkah. Thus, the notion of "perfection" here refers to the religion's manifest victory over

[1] [Al-Mā'idah: 3].
[2] [Al-Ḥajj: 77].

others.

As for the implicit indication (*mafḥūm*) of the verse—which might suggest that religion was incomplete prior to that day—it is not intended. The phrase "today" does not mean that the religion was deficient "yesterday," as evidenced by what follows in the verse: "and completed My favor upon you and chosen Islam as your way." It is inconceivable that Allāh would have approved of Islam "today" but not before that day.

Moreover, this verse was revealed during the Farewell Pilgrimage in the tenth year after Hijrah. Yet, the noble Companions never understood from it the restrictive meaning inferred by those who claim that the default principle is prohibition. On the contrary, they initiated many unprecedented practices—both in worship and in transactions—based on the general principle of default permissibility. Examples include: the compilation of the Qur'ān into a single volume, the introduction of the market call (*'adhān al-sūq*), the codification of the Qur'ānic recitations into specific modes, the printing and distribution of the *Muṣḥaf*, the inclusion of inheritance rights for the grandmother, the prohibition of dividing the lands of *as-sawād* (Iraq), and the exemption of *Banū Taghlib* from paying *jizyah*. These and other new conditions and contracts that did not exist during the lifetime of the Prophet Muḥammad (peace and blessings be upon him) were all undertaken under the presumption of permissibility.

Among the proofs cited by those who argue that the *'aṣl* (default principle) of things is prohibition is the statement of Allāh Almighty: "And whoever transgresses the limits of Allāh - it is those who are the wrongdoers [i.e., the unjust]."[1]

[1] [Al-Baqarah: 229].

However, this verse does not serve as valid evidence for their view. The limits (*ḥudūd Allāh*) mentioned here do not preclude the principle that the *'aṣl* of things is permissibility, because in order to consider something a limit set by Allāh, the issue itself must already have been decisively established by revelation. For instance, to declare temporary marriage (*nikāḥ al-mut'ah*) invalid, one must first prove its invalidity by clear evidence; only then does engaging in it constitute transgressing the limits of Allāh. Thus, one cannot use this verse as initial proof for the invalidity of *mut'ah* marriage, since the opposing party considers it a valid contract; consequently, they would not be regarded as transgressors.

Accordingly, this verse can be invoked as proof only in two situations:

1. Matters whose prohibition is known by necessity in religion—such as the prohibition of unlawfully taking a one's life.
2. Matters whose prohibition has been decisively established by clear evidence.

Apart from these two, the verse itself cannot independently serve as proof for prohibition, since that would involve circular reasoning (*dawr*)—one must first know the "limit" before declaring that someone has transgressed it.

They also cited the verse: "Or do they have partners [i.e., other deities] who have ordained for them a religion to which Allāh has not consented?"[1] They argue that the verse censures anyone who establishes a ruling or declares something lawful without divine authorization.

[1] [Al-Shūrā: 21].

In truth, however, this very verse also stands as evidence against their claim. The act of declaring something prohibited is itself a ruling. Their statements—"this contract is void," "this condition is void," or "this covenant is void"—constitute rulings, and thus fall under Allāh's words: "which Allāh has not consented..." The inclination toward prohibition by default is itself a form of declaring something unlawful, and every declaration of unlawfulness requires evidence. Allāh the Exalted said: "Say, 'Who has forbidden the adornment of [i.e., from] Allāh which He has produced for His servants and the good [lawful] things of provision?'"[1], meaning: without any proof.

Those who adopted the stance of suspension (*tawaqquf*) cited as evidence the verse: "Say, 'Tell me about what Allāh has sent down to you of provision: you have made some of it unlawful and some lawful.' Say, 'Has Allāh permitted you, or do you invent lies about Allāh?'"[2] They argued that the verse ties both permissibility and prohibition to divine authorization, implying that one must suspend judgment until explicit evidence is known in either case.

However, a sound understanding of the verse does not support this conclusion. The verse occurs within the context of the Prophet's (peace and blessings be upon him) debate with the polytheists of Makkah. Allāh describes their behavior in several verses, such as: "Say, 'Who provides for you from the heaven and the earth?'"[3]; "Say, 'Are there of your 'partners' any who begins creation and then repeats it?'"[4]; "Say, 'Are there of your

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1 [Al-ʾAʿrāf: 32].
2 [Yūnus: 59].
3 [Yūnus: 31].
4 [Yūnus: 34].

'partners' any who guides to the truth?'"[1]; "Say, 'Then bring forth a sūrah like it and call upon [for assistance] whomever you can …'"[2]; "And they say, 'When is [the fulfillment of] this promise, if you should be truthful?'"[3] ; "Say, 'Have you considered: if His punishment should come to you by night or by day?'"[4]; and "Say, 'Have you seen what Allāh has sent down to you of provision of which you have made [some] lawful and [some] unlawful?'"[5]

These verses depict how the idolaters took things that were originally lawful and divided them arbitrarily into *ḥalāl* and *ḥarām*. Even within the same category of things, they lacked consistency. The Qurʾān condemned their inconsistent and unjust division in *Sūrat al-ʾAnʿām*, where Allāh said: "And they [i.e., the polytheists] assign to Allāh from that which He created of crops and livestock a share and say, "This is for Allāh," by their claim, "and this is for our 'partners' [associated with Him]."[6] But what is for their "partners" does not reach Allāh, while what is for Allāh - this reaches their "partners."", which was a baseless and oppressive classification even by their own standards.

Furthermore, the Qurʾān records their inconsistency concerning a single matter, as in His saying: "They say, 'What is in the wombs of these animals is exclusively for our males and forbidden to our females'…"[7]

Thus, the context of these verses invalidates their unjust divisions and false claims. Indeed, the subsequent divine command

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1 [Yūnus: 35].
2 [Yūnus: 38].
3 [Yūnus: 48].
4 [Yūnus: 50].
5 [Yūnus: 59].
6 [Al-ʾAnʿām: 136].
7 [Al-ʾAnʿām: 139].

indicates that the *'aṣl* of things is permissibility, and that the prohibition and differentiation introduced by the polytheists were false innovations. Allāh says, quoting His Prophet (peace and blessings be upon him): "Say, 'I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure.'"[1]

This is precisely how the *mufassirūn* understood the verse.

Among the interpretations of the verse, Ibn Abī Ḥātim said: "A provision I have not forbidden to you, so do not forbid it to yourselves — from your wives and children."[2]

Imām al-Hudā explained that it refers to "what they forbade of the *baḥīrah*, *sā'ibah*, *waṣīlah*, and what was mentioned in *Sūrat al-'An'ām* and *al-Mā'idah*."[3]

Al-Jaṣṣāṣ al-Rāzī stated: "Some of the ignorant opponents of *qiyās* used this verse to invalidate analogical reasoning, claiming that the *mujtahid* by his analogy makes things lawful or unlawful. This is ignorance, for *qiyās* is a proof from Allāh, just as the intellect is a proof, and like the textual evidences and Sunnah — all are divine proofs. Thus, the one who performs *qiyās* only follows where the divine indication (*dalālah*) leads. It is, therefore, Allāh who permits and forbids through the authority of His evidence."[4]

Al-Samarqandī commented: "They declared something forbidden

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[1] [Al-'An'ām: 145].
[2] Tafsīr Ibn Abī Ḥātim (6/1960).
[3] Ta'wīlāt 'Ahl al-Sunnah (6/56).
[4] 'Aḥkām al-Qur'ān by al-Jaṣṣāṣ (4/375).

for women but lawful for men."[1]

Ibn ʿAṭiyyah said: "This verse is understood in light of the verse, "Say, 'Who has forbidden the adornment of [i.e., from] Allāh which He has produced for His servants.'" Al-Ṭabarī narrated this from Ibn ʿAbbās."[2] It refers to the transgression in prohibiting what Allāh declared lawful.

Ibn al-Jawzī explained: "The *mufassirūn* (commentators) said that this verse addresses the disbelievers of Quraysh, who would prohibit and permit whatever they desired."[3]

As for Allah's saying, "And do not say about what your tongues assert of untruth, "This is lawful and this is unlawful," to invent falsehood about Allāh,"[4] it also appears in the same context, following the enumeration of what Allāh has made forbidden: "He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allāh."[5] Allāh then addresses the pagans of Makkah and those like them, forbidding them from prohibiting what Allāh has made lawful or permitting what He has forbidden based on whims, lies, and fabrications.

This is the interpretation adopted by the *mufassirūn*. Muqātil said: "It refers to what they forbade for their idols — of crops and cattle — and what they permitted thereof."[6] The same understanding was reported by Ibn Abī Ḥātim[7], al-Samarqandī in

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[1] Baḥr al-ʿUlūm (2/122).
[2] Al-Muḥarrar al-Wajīz (3/127).
[3] Zād al-Masīr (2/336).
[4] [Al-Naḥl: 116].
[5] [Al-Naḥl: 115].
[6] Tafsīr Muqātil (2/491).
[7] Tafsīr Ibn Abī Ḥātim (7/2306).

Baḥr al-ʿUlūm[1], Ibn Abī Zamanīn[2], al-Thaʿlabī in *al-Kashf wa al-Bayān*[3], Makki ibn Abī Ṭālib[4], al-Ṭūsī in *al-Tibyān*[5], Ibn ʿAṭiyyah[6], al-Baghawī in *Maʿālim al-Tanzīl*[7], al-Fakhr al-Rāzī[8], and al-Qurṭubī[9].

What supports our interpretation — that the acts of declaring things lawful and unlawful were attributed to the disbelievers of Makkah — based on the detailed description found in *Sūrat al-ʾAnʿām* is the several variant Qurʾanic modes of recitation of the word ***"al-kadhib"*** (falsehood) in the verse:

1. *al-kadhiba* — with the *kāf fatḥah*, *dhāl kasrah*, and *bāʾ fatḥah*.
2. *al-kudhuba* — with the *kāf* and *dhāl* both *ḍammah*, and *bāʾ fatḥah*.
3. *al-kadhibi* — with the *kāf fatḥah*, and *dhāl* and *bāʾ* both *kasrah*.
4. *al-kudhubu* — with the *kāf*, *dhāl*, and *bāʾ* all *ḍammah*[10].

As for the **first reading**, it implies the omission of a preposition. The original sense would be: "for what your tongues describe of

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[1] Baḥr al-ʿUlūm (2/295).
[2] Tafsīr Ibn Abī Zimnīn (2/421).
[3] Al-Kashf wa al-Bayān (6/47).
[4] Al-Hidāyah ʾilā Bulūgh al-Nahāyah (6/4106).
[5] Al-Tibyān by al-Ṭūsī (6/431).
[6] Al-Muḥarrar al-Wajīz (3/429)
[7] Maʿālim al-Tanzīl (5/49).
[8] Mafātīḥ al-Ghayb (20/281).
[9] Al-Jāmiʿ li-ʾAḥkām al-Qurʾān (10/195).
[10] Refer to all these readings and their attributions in al-Baḥr al-Muḥīṭ by Abī Ḥayyān (5/527).

'*min*' falsehood."[1] Accordingly, the act of falsehood is intentional — like one who deliberately distorts speech and diverts it from its true meaning out of deceit and pretense.

The **second reading** implies the meaning: "Do not utter the false words."[2] This too supports the same interpretation of deliberate fabrication.

The **third reading** implies the meaning: "Do not speak according to what your tongues describe falsely, saying: this is lawful and this is unlawful."[3] Again, the meaning indicates either initiating or intending falsehood.

The **fourth reading** renders *"al-kudhubu"* as an adjectival form, similar to *ṣabūr* (patient) or *ṣabr* (patience)[4], meaning "lying tongues." Hence, it describes them as false in both delivering the news and report.

Although we have elaborated on the grammatical and recitational aspects of these modes of recitation, it is clear that all of them converge upon the same meaning we have directed the verse toward — the interpretation adopted by the majority of *mufassirūn*.

It remains to comment on the explanation of Imām al-Hudā, who said regarding the verse: "This verse indicates that it is not permissible for anyone to declare something lawful or unlawful except by permission from Allāh. Whoever claims that things are, by default, either permissible or prohibited, is fabricating a lie against Allāh, for He has not permitted him to say so, but has

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[1] Al-Jāmiʿ li-ʾAḥkām al-Qurʾān by al-Qurṭubī (10/196) and refer to other interpretations mentioned by al-Samīn al-Ḥalabī in al-Durr al-Maṣūn (7/297).
[2] Al-Kashshāf by al-Zamakhsharī (2/598).
[3] Al-Jāmiʿ li-ʾAḥkām al-Qurʾān (10/195).
[4] Al-Dur al-Maṣūn (7/298-299).

rather forbidden such speech, as we have mentioned."[1]

Imām al-Māturīdī's statement here must be understood in light of his original debate with Bishr al-Mārīsī[2] — a discussion that frequently appears throughout his *Ta'wīlāt 'Ahl al-Sunnah*. For instance, when interpreting Allāh's saying, "Say, 'I do not find within that which was revealed to me [anything] forbidden to one who would eat it…'"[3], Imām al-Hudā presented two possible interpretations[4]:

1. "I do not find, among what you forbid, anything prohibited in what has been revealed to me; but as for what you do not forbid, I do find it therein."

2. "I did not find it at one time, but later I did."

Al-Māturīdī then commented: "Whichever interpretation is adopted, it provides no proof of permissibility beyond what is mentioned explicitly in the verse — contrary to what Bishr claimed."[5]

And he added: "In either case, Bishr has no argument against us, for he claimed that everything is absolutely permissible by virtue of this verse."[6]

The point of contention here returns to two fundamental issues:

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[1] Ta'wīlāt 'Ahl al-Sunnah (6/587).
[2] Bishr ibn Ghiyāth ibn Abī Karīmah al-Marrīsī, one of the prominent leaders of the *Mu'tazilah*, was born in the year 140 AH and died in 218 AH. He began as a Ḥanafī and studied under Abū Yūsuf al-Qāḍī, then he devoted himself to *'ilm al-kalām* (speculative theology) until he became a leading figure in it. See his biography in *Siyar A'lām al-Nubalā'*, 10/199–202.
[3] [Al-'An'ām: 145].
[4] Ta'wīlāt 'Ahl al-Sunnah (4/293).
[5] Ibid.
[6] Ibid.

First: the distinction between *ʿaqlī* (rational) judgment and *Sharʿī* (legal) judgment.

Second: the distinction between the ruling pertaining to objects and that pertaining to actions.

As for the **first**, the theologians (*mutakallimūn*) discussed the meaning intended by the statement *"al-ʾaṣl fī al-ʾashyāʾ al-ʾibāḥah"* — "the default principle concerning things is permissibility." They asked whether this permissibility refers to rational permissibility — that is, a judgment of the intellect in its original sense, independent of revelation — or whether it refers to *Sharʿī* permissibility, that is, after the coming of divine commands and prohibitions.

As for the **second**, it concerns their disagreement and interpretive approaches regarding the ruling on material objects from which benefit is derived before revelation, and the ruling on human actions before the coming of the *Sharīʿah*. The detailed discussion of both matters can be found in the works of *uṣūl al-fiqh*[1].

Accordingly, what Imām al-Hudā denies in his statement is the authority of reason in declaring things lawful or unlawful. This is because, according to him, the actions of human beings have no ruling prior to revelation — they cannot be described as good (*ḥasan*), evil (*qabīḥ*), prohibited, or permissible before the *Sharīʿah*.

In contrast, Bishr and most of the Muʿtazilah held that the intellect is capable of independent judgment regarding actions. Thus, they maintain that justice is inherently good and oppression inherently evil, and so on.

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[1] Al-Baḥr al-Muḥīṭ by al-Zarkashī (1/152) et seq.

However, discussing this issue — that is, the ruling before the coming of revelation — is essentially a philosophical and historical research. It has little practical implication except in rare and exceptional cases. Among such cases, for example, is when a person exists in complete isolation on an island, having no contact with anyone who could convey revelation to him. Another example is when the natural state of things changes from what the *Sharī'ah* originally addressed — as when wild beasts become domesticated animals. For instance, the camel was originally a wild animal but gradually became domesticated over time. Or if snakes were to lose their venom and harmful nature, becoming harmless creatures.

In such rare circumstances, discussing the question might bear some practical importance; otherwise, it remains largely a philosophical debate.

Moreover, some scholars denied the very notion of there ever being a period devoid of divine law. They asserted that no time or nation was ever without a *Sharī'ah*. Ibn al-Najjār said in *Sharḥ al-Kawkab al-Munīr*: "The correct view is that there has never been a time without a divine law. This was stated by al-Qāḍī, and it is apparent in the words of Imām Aḥmad, for when Allāh first created Ādam, He said to him: "dwell, you and your wife, in Paradise and eat therefrom in [ease and] abundance from wherever you will. But do not approach this tree…"[1] He commanded and forbade them immediately after their creation — thus, every era was governed by divine instruction.

Al-Jazarī said: "No nation was ever devoid of a divine proof (*ḥujjah*)," and he cited Allāh's saying: "Does man think that he

[1] [Al-Baqarah: 35].

will be left *sudā* (neglected)?"[1], and *al-sudā* means "one who is neither commanded nor forbidden." He also cited Allāh's saying: "And We certainly sent into every nation a messenger,"[2] and His saying: "And there was no nation but that there had passed within it a warner."[3],[4]

Among the evidences cited by those who hold that the default principle is suspension (*tawaqquf*) is Allāh's saying: "They ask you, [O Muḥammad], what has been made lawful for them."[5]

They argue: "Had the matter been one of permissibility (*ibāḥah*), they would not have asked about what is lawful (*ḥalāl*), but would have sufficed with what was mentioned as unlawful (*ḥarām*)."

The response to this begins with understanding the reason for revelation (*sabab al-nuzūl*) of this verse.

It was reported that ʿAdiyy ibn Ḥātim al-Ṭāʾī said: "I asked the Messenger of Allāh (peace and blessings be upon him), 'We are a people who hunt with dogs and birds of prey. What is lawful for us from that?' He (peace and blessings be upon him) replied: 'Whatever you train of a dog or a bird of prey, and then you send it forth while mentioning the Name of Allāh over it — eat whatever it catches for you…' I said, 'What if other dogs mix with ours when we send them out?' He (peace and blessings be upon him) replied: 'Do not eat until you know that your dog caught it for you.' Then this verse was revealed."[6]

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1 [Al-Qiyāmah: 36].
2 [Al-Naḥl: 36].
3 [Fāṭir: 24].
4 Sharḥ al-Kawkab al-Munīr (1/323).
5 [Al-Māʾidah: 4].
6 Baḥr al-ʿUlūm by al-Samarqandī (1/370).

Maqātil ibn Sulaymān mentioned that the verse was revealed when Zayd al-Khayr and ʿAdiyy ibn Ḥātim al-Ṭāʾiyyān asked the Prophet (peace and blessings be upon him), saying: "O Messenger of Allāh, the dogs of Āl Dirʿ and Āl Ḥurayyah hunt gazelles, cattle, and donkeys. Some of them die before we can slaughter them, and Allāh has prohibited carrion. So, what is lawful for us?" Then Allāh revealed: "They ask you, [O Muḥammad], what has been made lawful for them."[1]

Others, including Ibn ʿAṭiyyah and Ibn al-ʿArabī, reported that the cause of revelation was that Jibrīl refused to enter the Prophet's house because a dog was present. The Prophet (peace and blessings be upon him) then ordered that dogs be killed, and this became widespread until few were left. The Companions then asked: "O Messenger of Allāh, what is lawful for us from among this species that you have commanded to be killed?" So, Allāh revealed this verse[2].

From these narrations, the question mentioned in the verse can be understood in two possible ways:

1. It was a question concerning a specific issue — namely, the ruling on hunting dogs — and thus does not indicate that the default principle is prohibition, but rather that they were seeking clarification on the details of a specific issue.

2. Since the verses preceding it mentioned prohibitions in Allāh's words *"ḥurrimat ʿalaykum…"* ("Forbidden to you are…"), it was fitting for them to ask thereafter about what is lawful, seeking guidance in the details of what is

[1] Tafsīr Muqātil ibn Sulaymān (1/454) and see Maʿālim al-Tanzīl li al-Baghawī (3/16).
[2] Al-Muḥarrar al-Wajīz by Ibn ʿAṭiyyah (2/156) and ʿAḥkām al-Qurān by Ibn al-ʿArabī (2/32).

permitted. The evidence for this is that they were answered in a general manner: "Say, 'Lawful for you are the wholesome things'", which encompasses all that is *ḥalāl* and wholesome.

Al-Jaṣṣāṣ al-Rāzī commented: "The apparent meaning of this verse serves as evidence that all pleasant things are lawful except what has been specified as prohibited by clear evidence."[1]

Al-Zamakhsharī likewise said: "Allāh has permitted for you the *ṭayyibāt* (wholesome things), meaning those that are not vile, that is, everything whose prohibition has not been established by the Book, the Sunnah, or by the reasoning of a qualified *mujtahid*."[2]

As for what has been cited from the Sunnah by those who claim that the default principle in things is prohibition, it also does not constitute valid proof.

They refer to the Prophet's (peace and blessings be upon him) saying: "Whoever performs an action that is not in accordance with our command, it is rejected."[3]

This requires clarification of the phrase "not in accordance with our command." Does affirming the principle of *default permissibility* fall under this restriction — or is it, in fact, an instance of acting upon what the *Sharī'ah* already presumes to be permissible?

When one considers the practice of the Companions and the Prophet's approvals, it becomes evident that what is meant by this *ḥadīth* is contradicting an established and known ruling, not acting upon the principle of permissibility. We have already seen

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1 'Aḥkām al-Qur'ān by al-Jaṣṣāṣ (2/393).
2 Al-Kashshāf (1/640).
3 Previously authenticated.

examples of this — such as Abū Bakr's taking a financial risk (*mukhāṭarah*) or the man who performed *ruqyah* (healing incantation) with *Sūrat al-Fātiḥah* — both of which were contracts or actions initiated without prior reference to the Prophet (peace and blessings be upon him). Since they had not heard from him any prohibition concerning them, they acted upon the principle of permissibility. When the Prophet (peace and blessings be upon him) later learned of these actions, he did not reject them or classify them under the ruling in the *ḥadīth* of ʿĀʾishah.

Furthermore, many scholars affirmed the principle of *istiṣlāḥ*[1] (consideration of public interest) in *Sharīʿah*, both in theory and practice, without considering it an innovation in religion. Numerous actions and contracts have been introduced on the basis of *maṣlaḥah* (public benefit) — such as minting currency, building prisons, burning extra copies of the *Muṣḥaf* during the caliphate of ʿUthmān, declaring espionage by Muslims punishable by death, documenting marriage contracts in writing, stipulating specific formulas for marriage, obligating parents to educate their children, and administering vaccinations — all of which are new practices but cannot be classified as rejected innovations (*radd*).

Moreover, among the pieces of evidence cited by those who argue that the default principle is prohibition—but which does not stand as valid proof—is the statement of the Prophet (peace and blessings be upon him) in the story of the emancipation of Barīrah: "What is the matter with people who stipulate conditions which are not in the Book of Allāh…?"[2]

They argued that his saying, "which are not in the Book of

[1] Also called *maṣāliḥ mursalah*.
[2] Previously authenticated.

Allāh," means that any condition not explicitly mentioned in the Qur'ān is invalid. However, this interpretation is inaccurate. The phrase "not in the Book of Allāh" actually means "contrary to the judgment of Allāh," because the Qur'ān mentions only general principles of contractual conditions—such as mutual consent and the prohibition of consuming wealth unjustly—while the detailed conditions are not explicitly stated in the Book of Allāh[1].

For instance, the requirement that the subject matter or price must have lawful monetary value (*māl mutaqawwim*) is among the recognized conditions for the validity of contracts, yet it is not mentioned explicitly in the Qur'ān. Similarly, the stipulation of offer and acceptance (*ījāb wa-qabūl*) as essential pillars of contracts is not textually stated in the Qur'ān. Nevertheless, no one claims about such matters by citing, "What is the matter with people who stipulate conditions not found in the Book of Allāh?"

The correct understanding is that the Qur'an and the Sunnah include both general and specific rulings, and whatever falls under the general rulings is indeed part of "the Book of Allāh." Thus, it is unnecessary for every specific instance to be textually mentioned, and nothing is excluded except that for which explicit evidence of exclusion exists.

Ibn al-Qayyim (may Allāh shower him with mercy) commented on this *ḥadīth* saying: "It is known that every condition which

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[1] Ibn al-Qayyim said, in explaining the expression *"Kitāb Allāh"* in the *ḥadīth*: "It is known that what is meant by it is certainly not the Qur'an, for most valid conditions are not stated in the Qur'an; rather, they are known from the Sunnah. Thus, it becomes clear that what is intended by *Kitāb Allāh* is His ruling, as in His saying, *'So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation'* [al-Nisā': 24], and in the saying of the Prophet Muhammad (peace and blessings be upon him): *'The ruling of Allah is retribution (qiṣāṣ).'*" *'I'lām al-Muwaqqi'īn* (3/113).

contradicts the judgment of Allāh is invalid, for it opposes His ruling and is thus void. When the Messenger of Allah (peace and blessings be upon him) judged that the *walā'* (right of allegiance) belongs to the emancipator, any condition contrary to that ruling is a condition opposing the judgment of Allāh. But where in this *ḥadīth* is there an indication that every contract or condition not explicitly prohibited is automatically invalid or unlawful? Rather, the very act of prohibiting such unrestricted contracts or conditions would itself be transgressing the limits of Allāh."[1]

From the above discussion, it becomes evident that the default principle in all things (*al-'aṣl fī al-'ashyā'*) is permissibility (*'ibāḥah*), except where a textual proof establishes prohibition. Similarly, the default in contracts is validity and effectiveness unless proven otherwise by *Sharīʿah* evidence. The default in material objects is purity unless proven to be impure. The default in tangible entities is permissibility of benefit unless the *Sharīʿah* forbids their use. The default in acts of worship is performance unless ceased by revelation. The default in conditions and stipulations is validity unless a specific text invalidates them.

Ibn Taymiyyah (may Allāh shower him with mercy) stated: "Know that the default principle regarding all existing entities—regardless of their types and characteristics—is that they are absolutely lawful for human use, and that they are pure, not forbidden to touch, handle, or make use of. This is a comprehensive statement, a general rule, and an outstanding maxim of immense benefit and abundant blessing, to which the scholars of *Sharīʿah* resort in countless matters and human occurrences."[2]

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[1] 'Iʿlām al-Muwaqqiʿīn (3/114).
[2] Majmūʿ al-Fatāwā (21/535).

He further said: “I am not aware of any disagreement among the early scholars that whatever lacks evidence of prohibition is unrestricted and not forbidden. Indeed, many of those who have written on the principles and branches of jurisprudence (*’uṣūl* and *furū' al-fiqh*) have explicitly stated this, and some of them have even reported consensus upon it, either with certainty or with a degree of conjecture approaching certainty.”[1]

It remains to be noted that most of those who claim that the default principle concerning benefits, actions, contracts, and conditions is prohibition, contradict this principle in their practical applications and detailed rulings. An example of this inconsistency can be found in the case of Ibn Ḥazm (may Allāh shower him with mercy).

Ibn Ḥazm explicitly states in several places throughout his works—both in *’uṣūl* and *furū'*—that this is his position. For example, he says in *al-Muḥallā*: “Whoever is certain of the prohibition of something through an explicit text from the Qur’ān or from the Messenger of Allāh (peace and blessings be upon him) must consider it forbidden and void forever. And whoever is certain of its permissibility by a text, as we have mentioned, must deem it permissible and valid forever. And whoever is certain of the obligation of something by a text must hold it obligatory forever. There is no fourth category in religion whatsoever. As for that whose ruling is not clear to him from the mentioned text, let him withhold from it and say as the angels said: “We have not knowledge except what You have taught us.” Anything beyond this is misguidance.”[2]

He also says: “It is not lawful to sell a commodity on the

[1] Ibid. (21/538).
[2] Al-Muḥallā (7/334, Issue 1448).

condition that payment be made in a specified place or that delivery of the commodity take place in a specified place, because that is a condition not found in the Book of Allāh, and it is therefore void."[1]

Ibn Ḥazm, moreover, validates only seven conditions in sale contracts, as he explicitly states, and considers any other condition void, rendering the contract itself invalid. He says: "Every condition that occurs in a sale—whether stipulated by both parties or by one of them with the consent of the other—if they make it either before or after the conclusion of the sale, and not at the moment of contract, then the sale is valid and complete, and the condition is void and not binding. However, if they mention that condition during the act of contracting, then the sale is null and void, and the condition too is void—except for seven specific conditions."[2]

Despite Ibn Ḥazm's attempts to remain consistent in applying his principle, we find that he departs from it in several issues. For example, he invalidates the contract of a coerced person (*al-mukrah*) based on explicit textual evidence but validates the contract of a person in distress (*al-muḍṭarr*), relying on a rational argument that is prone to objection. He says, after rejecting two weak reports prohibiting the sale by the distressed: "Since these two reports are not authentic, we must seek the ruling elsewhere. We find that everyone who buys food for himself and his family for eating or for clothing is undoubtedly in necessity (*iḍṭirār*) of that purchase. If the sale of such a distressed buyer were invalid,

[1] Ibid. (7/340-341, Issue 1456). The majority permitted it because it does not change the essence of the contract.

[2] Ibid. (7/319, Issue 1447). The majority of jurists argued for the permissibility of setting conditions in an absolute sense except for invalid conditions, no matter being the condition one of the seven specific conditions or not.

then the sale of everyone who does not produce his own food would be invalid, and that is false by consensus and by the necessity of transmission from all communities."[1]

The error in Ibn Ḥazm's reasoning stems from a false assumption: that everyone who does not produce his own sustenance is thereby in necessity or equivalent to one in necessity, and thus compelled to relinquish his wealth to the seller. This is incorrect, since many people who purchase goods do not perceive themselves as coerced or distressed; rather, they view the transaction as a fair exchange, wherein their money equals the effort they would have expended to produce their sustenance.

Here lies the contradiction: Ibn Ḥazm recognized the similarity between coercion and necessity, yet—since analogy (*qiyās*) was contrary to his methodology—he refrained from drawing an analogy between the two, while at the same time denying that the default principle of contracts is permissibility. Hence, he was compelled to justify his ruling in a way that exposed this inconsistency.

A similar contradiction appears in his discussion of adding a gift to a loan. He completely forbade such a condition, saying: "It is not lawful to stipulate that the debtor return more or less than what he borrowed… nor to stipulate anything better or inferior than what was taken… nor to stipulate a different type in exchange."[2]

He then says regarding gifts: "The gift given by a debtor to his creditor, or his hosting him, is lawful as long as none of it is

[1] Al-Muḥallā (7/511, Issue 1530).
[2] Al-Muḥallā (6/347, Issue 1193).

stipulated; but if it is based on a stipulation, then it is unlawful."[1]

However, when it comes to the issue of *ju'ālah* (a reward contract), Ibn Ḥazm rejects it in principle yet deems fulfilling the promised payment commendable. He writes: "It is not permissible to issue a binding judgment enforcing a *ju'l* upon anyone. So, if one says to another, 'If you bring me my runaway slave, you shall have a dinar,' or, 'If you do such and such, you shall have a dirham,' or the like—and the other does so—no judgment is rendered compelling payment. Yet it is recommended for the promisor to fulfill his promise."[2]

Here, we observe that he prohibited a transaction such as 'Lend me your money, and I will give you a gift in return,' regarding it as *ribā* (usury), but at the same time recommended fulfilling a reward promise—'Whoever brings me my runaway slave, I will give him such and such'—even though in both cases the payment is tied to a contract. The former, in his view, is *ribā*, while the latter involves *gharar* and *jahālah* (uncertainty).

He further says: "It is not lawful to sell an animal except for a benefit—either for eating, riding, hunting, or as medicine. If it serves no purpose for any of these, then its sale and ownership are unlawful, for that would be wasting the buyer's wealth and consuming the seller's wealth unjustly. And Allāh has permitted trade, and that does not include waste or injustice."[3]

Yet Ibn Ḥazm here fails to mention adornment (*zīnah*) as a legitimate benefit, even though it is explicitly stated in *Sūrat al-Naḥl*: "And [He created] the horses, mules and donkeys for you

[1] Ibid. (6/359, Issue 1208).
[2] Ibid. (7/33, Issue 1327).
[3] Ibid. (7/512, Issue 1531).

to ride and [as] adornment."[1] Furthermore, while he excluded buying animals for racing in this context, he explicitly permitted racing elsewhere, saying: "Racing with horses, mules, donkeys, and even on foot is fair."[2]

Thus, how can racing be considered lawful while the purchase of animals for such purposes is deemed impermissible simply because it does not fit within his four allowable categories?

[1] [Al-Naḥl: 9].
[2] Al-Muḥallā (5/424, Issue 971].

Section Three
The Default Principle Regarding Contracts in Modern Laws

The eminent jurist al-Sanhūrī discusses in *al-Wasīṭ* the development of contracts in terms of restriction, expansion, and permissibility. He reviews Roman law and the legal situation in the Middle Ages—when the Church held authority—then examines contracts during the era of economic progress and the dominance of capitalism, followed by the influence of socialism, until the concept of contracts ultimately stabilized in light of these successive factors[1].

Al-Sanhūrī also addresses the notion known as "the autonomy of will" (*Sulṭān al-'Irādah*), explaining that: "The proponents of this principle hold that the will possesses the supreme authority in forming the contract, in the effects that result from it, and even in all legal relationships, whether contractual or otherwise."[2] However, this principle of autonomy of will has been criticized for disturbing the balance between economic powers.

Stages of Development:

1. **Roman Law:** At no stage did Roman law recognize the doctrine of the autonomy of will in its full form, since the mere agreement of two wills did not constitute a contract nor generate a legal obligation[3].
2. **The Middle Ages:** Formalism[4] in contracting did not immediately disappear; the will did not gain independence

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1 Al-Wasīṭ (1/137) et seq.
2 Ibid. (1/141).
3 Ibid. (1/142).
4 The formulation of the words, sentences and conditions.

in forming contracts except gradually. This gradual shift was influenced by the authority of the Church, along with economic and political factors[1]—all of which contributed to strengthening the autonomy of the will.

3. **The Seventeenth and Eighteenth Centuries:** The principle of autonomy of will became firmly established in the seventeenth century and reached its peak in the eighteenth century, when economic, philosophical, and political theories—permeated with the spirit of individualism—spread widely, celebrating the idea of a natural law founded upon personal freedom and the independence of the individual's will[2].

The power of this principle became so pronounced that it formed the foundation upon which legal theories of obligations and their consequences were built.

Thus, the contracting parties were bound only by their mutual will[3]. Whatever obligation the promisor voluntarily undertook became a valid and enforceable debt upon him, since his commitment was founded upon his own will. Therefore, it was not permissible to restrict the legal effects of a contract on the grounds that one of the parties was disadvantaged, so long as he had willingly accepted such disadvantage. Likewise, the worker who enters into a contract with his employer is considered free and independent in his choice and must abide by the obligations he undertakes. It is not essential in a contract that there be equivalence between the two exchanged items; rather, what

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[1] Al-Wasīṭ (1/143).

[2] Al-Wasīṭ (1/144). Jean-Jacques Rousseau authored his *The Social Contract*, and on its basis came the Napoleonic Code, which prioritized individual freedom and respect for personal will.

[3] Al-Wasīṭ (1/144).

matters is the equality between the two contracting parties themselves, as long as each possesses his freedom and independent will[1].

Only exceptional cases were excluded—such as when a contracting party is a minor, insane, or deceived by fraud or manipulation. Beyond such cases, man is deemed free and independent in his will[2].

4. **When large-scale industries developed, major corporations were founded, and labor unions were organized**, this environment fostered the spread of socialist thought in response to individualism. As a result, the principle of the autonomy of will (*Sulṭān al-Irādah*) was significantly influenced. New legal doctrines began to emphasize social considerations between contracting parties, asserting that a contract is not merely a private arrangement but a social institution designed to achieve social solidarity and to direct individual will toward this collective purpose[3].

Hence, ownership itself was no longer viewed as an unrestricted expression of the owner's will; rather, this will become subject to numerous limitations stemming from the requirements of social solidarity[4].

5. **The stage of equilibrium and moderation** came next—a stage that sought to balance the autonomy of will with public law. Here, contracting was determined not solely by individual will but by the public interest. For instance,

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[1] Ibid. (1/145).
[2] Ibid.
[3] Ibid. (1/146).
[4] Al-Wasīṭ (1/147).

while a marriage contract is initiated by the consent of the parties, its consequences are regulated by law according to what serves the welfare of the family and society[1].

In light of this, the boundaries drawn by modern law regulate contractual relationships: they recognize the autonomy of will but confine it within reasonable limits where individual will, justice, and public welfare maintain equilibrium[2].

Thus, contracts in modern legal systems are based on a general foundational principle—that "the default principle regarding them is permissibility." Contracting and its effects are only restricted when prohibited by law or by the general customs approved by society. Accordingly, the law distinguishes between named and unnamed contracts (as discussed earlier). Notably, unnamed contracts are subject only to general conditions such as mutual consent, legal subject matter, legal cause, and adherence to public order. Apart from these, they remain permissible by default, and one may conclude any number or kind of them.

From the above discussion, the following conclusions can be drawn:

1. The term *ʿaqd* (contract) is a broad expression that includes what a person binds upon himself (such as vows), as well as what arises between two wills that create mutual obligations between the parties.
2. Contracts, in both *Sharīʿah* and civil law, are classified into various categories, and such divisions arise from specific legal considerations that justify them.
3. Civil law differs from *Sharīʿah* in distinguishing between

[1] Ibid. (1/148).
[2] Ibid. (1/149).

named and unnamed contracts; however, this does not imply that *Sharīʿah* rejects such classification. Rather, it leaves newly arising forms of contracts open for scholarly *ijtihād* (juristic reasoning) in every time and place.

4. The majority of jurists have stated that the default principle regarding contracts is permissibility, validity, and effectiveness. Others held that the default is prohibition, while some suspended judgment until clear evidence of either permissibility or prohibition appears.

5. Upon examining the evidences of each group, the view affirming permissibility, validity, and effectiveness as the default principle is preponderant—due to the strength and diversity of its proofs and its harmony with the general objectives (*maqāṣid*) and universal maxims (*qawāʿid kulliyyah*) of *Sharīʿah*.

6. The position asserting prohibition harms the *Sharīʿah*, obstructs the welfare of people—whose interests the divine laws were revealed to preserve—and imposes undue hardship, which *Sharīʿah* explicitly lifts.

7. Civil law has also adopted the stance that the default principle regarding contracts is permissibility, validity, and effectiveness, except where the law or public custom forbids otherwise.

8. The practical implications of this principle in the domain of contracts are as follows:

    - The permissibility of new types of contracts unless proven contrary to *Sharīʿah*.
    - The permissibility of contractual stipulations unless shown to violate *Sharīʿah*.

- No need to analogize a new contract with an already permitted one, since its default ruling is permissibility.
- The burden of proof lies upon the one who prohibits, not the one who permits. It should not be asked, “What is the evidence for permissibility?” Rather, the question should be directed to the objector: “What is the evidence for prohibition?”
- This principle ensures flexibility in financial and commercial legislation.

Chapter Two

Gharar (Uncertainty) and Its Impact on Contracts

Section One: Definition of *Gharar* and Evidence for Its Prohibition

Section Two: The Effect of Forbiddance on Contracts

Section Three: Types and Categories of *Gharar*

Section Four: Contracts Containing Probable *Gharar* over Which Jurists Differed

Section Five*:* *Contracts Containing Probable Gharar* Unanimously Permitted by Jurists

Section Six: Instances of *Gharar* within Contracts

Section One
Definition of *Gharar* and the Evidence for Its Prohibition

First: Definition of the Term in Language and Jurisprudence

Linguistically, *gharar* revolves around meanings such as risk, uncertainty, and hazard. It refers to anything surrounded by danger, whose outcome is unknown, or which appears contrary to its reality.

For instance, the Arabic expression *rajulun ghirr* (a naïve man) denotes one who lacks experience[1]. Similarly, *mirage* (*sarāb*) is called *gharar* because its appearance deceives the observer[2].

It is also said: *aghrartuhu bi shay'in*—"I deceived him or caused him to suffer harm or destruction." From this comes the term *bay' al-gharar* (a sale involving uncertainty), referring to any transaction characterized by uncertainty or risk.

Likewise, the adjective *ghurūr* (delusion) derives from this root, describing someone who is deceived by falsehood. From this meaning also stems the term *mukhāṭarah* (speculative risk)[3], which in *fiqh* refers to the uncertainty in contracts arising from the risk of unknown outcomes.

The word *gharar* appears in the historical report about Abū Bakr al-Ṣiddīq's wager with Ubayy ibn Khalaf over the victory of the Byzantines or Persians. Al-Māwardī states in *al-Nukat wa al-'Uyūn*: "Al-Naqqāsh reported that when Abū Bakr intended to migrate with the Prophet (peace and blessings be upon him),

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[1] Lisān al-'Arab, entry under "*gharar*" (11/30) et seq.
[2] Ibid.
[3] It is *murāhanah* (wagering).

Ubayy ibn Khalaf held him and said: 'Give me a guarantor for the wager (*kafīl bi-l-khaṭar*) if the Persians prevail.' So, he guaranteed him through his son ʿAbd al-Raḥmān."[1]

Second: Definition of *Gharar* in Islamic Jurisprudence

The *fuqahā'* (jurists) of various schools have offered differing definitions of *gharar*. Even within the same school, expressions vary between broad and narrow formulations. However, they all agree on the essential notion that *gharar* involves risk and uncertainty regarding the outcome.

According to the Ḥanafīs, al-Sarakhsī defined *gharar* as: "That whose outcome is hidden."[2]

He mentioned this while discussing al-Shāfiʿī's and the Ḥanafī positions on a person buying something unseen.

Al-Sarakhsī wrote: "If a man buys a leather bag full of oil, or wheat in a sack, without seeing its contents, then upon seeing it he has the option to confirm or annul the sale—according to us [referring to the Ḥanafī school].
Al-Shāfiʿī (may Allāh shower him with mercy) said: if the type of commodity is unknown to the buyer, the contract is invalid without dispute; but if the type is known, he has two opinions. He argued based on the Prophet's (peace and blessings be upon him) forbiddance of *bayʿ al-gharar* (the sale of uncertainty), and *gharar* means that whose outcome is hidden—something true in a sale involving unseen goods."[3]

Al-Kāsānī (Ḥanafī) defined *gharar* as: "A risk where existence and nonexistence are equally probable, akin to doubt."[4] He

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[1] Al-Nukat wa al-ʿUyūn (4/297).
[2] Al-Mabsūṭ (13/68).
[3] Ibid.
[4] Badāʾiʿ al-Ṣanāʾiʿ (5/163).

mentioned this definition while discussing the position of Shāfiʿīs regarding the same aforementioned issue.
He commented on the same issue, saying: "The *ḥadīth* may refer to *gharar* as risk, or it may derive from *ghurūr* (deception); thus, the *ḥadīth* cannot be conclusive with such ambiguity.
Alternatively, it may refer to uncertainty within the essence of the contract—such as a contract suspended upon a condition or future event—so we interpret it consistently with all indications."[1]

Among the Mālikīs, al-Qarāfī defined *gharar* as: "That whose occurrence is unknown—like a bird in the sky or a fish in the water."[2]

Al-Ābī defined it in *Jawāhir al-Iklīl* as: "Risk and fluctuation between what fulfills one's purpose and what does not."[3]

Among the Shāfiʿīs, al-Shīrāzī defined it as: "That whose condition is concealed and whose outcome is unknown."[4]

Al-Sharqāwī said: "*Bayʿ al-gharar* is a sale whose outcome is hidden, or one wavering between two possibilities—the more likely being loss; it includes what is unknown, unspecified, or unseen before contracting."[5]

Among the Ḥanbalīs, Ibn al-Qayyim defined *gharar* as: "That which cannot be delivered, whether it exists or not."[6] In *Zād al-Maʿād*, he wrote: "*Gharar* is that which fluctuates between realization and loss, or that whose reality is concealed and

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[1] Ibid.
[2] Al-Furūq (3/403).
[3] Jawāhir al-ʾIklīl (2/21).
[4] Al-Muhadhdhab by al-Shīrāzī (3/30).
[5] Ḥāshiyat al-Sharqāwī ʿalā Tuḥfat al-Ṭullāb (2/9).
[6] ʾIʿlām al-Muwaqqiʿīn (3/207).

identity unknown."[1] He also stated: "*Gharar* is uncertainty between existence and nonexistence."[2]

Among the Ẓāhirīs, Ibn Ḥazm defined *gharar* as: "A contract concluded while ignorant of the quantity or characteristics of the subject matter at the time of contracting,"[3] or as "a sale in which the buyer does not know what he is buying, or the seller does not know what he is selling."[4]

Ibn Taymiyyah summarized it succinctly: "*Gharar* is like gambling (*maysir*), for it involves an unknown outcome; thus, its sale is a form of *maysir*, which is *qimār* (betting)."[5]

From the previous exposition of *gharar* as defined by the various jurists and schools, we can develop an objective analysis of its definitions and their main components as follows:

First Analysis: *Gharar* in Terms of Content

1. Uncertainty regarding attributes, quantity, or the object itself: This appears in the definitions of al-Qarafī, Ibn al-Qayyim, and Ibn Hazm.
2. Uncertainty of the outcome or result: This is found in the definitions of al-Sarakhsī and al-Shirāzī.
3. Inability to deliver the subject matter: This appears in Ibn al-Qayyim's definition.
4. Reluctance between existence and non-existence: This is reflected in the definitions of al-Kāsānī, al-Sharqāwī, and Ibn al-Qayyim.

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[1] Zād al-Maʿād (5/822).
[2] Ibid. (5/824).
[3] Al-Muḥallā (7/287).
[4] Ibid. (7/358).
[5] Al-Qawāʿid al-Nūrāniyyah, p. 169.

5. Excessive risk-taking or speculation: This can be inferred implicitly in the definitions of al-Aby and al-Sharqāwī.
6. Unfair disadvantage or inequity (*ghubn*): This aspect is found in Ibn Hazm's definition.

Second Analysis: *Gharar* in Terms of Conceptualization

Jurists' perspectives on the concept of *gharar* varied, and the following patterns can be observed:

1. Some focused on the rational-probabilistic aspect, linking it to doubt and uncertainty about the existence of the subject matter or the realization of its purpose.
2. Others connected the technical meaning to its linguistic root, emphasizing concealment and obscurity, and assessing *gharar* based on the outcome of the contract rather than its state at the moment of conclusion.
3. Some jurists emphasized quantitative aspects, treating *gharar* as a form of excessive vagueness.
4. Others combined the definition with illustrative examples to render it more precise and practical.

Third Analysis: *Gharar* in Terms of Doctrinal Independence

Upon examining most of the definitions of *gharar* found in the *fiqh* manuals, we notice that they usually appear within discussions of specific rulings and not as independent topics. The definitions are typically embedded in the commentary on transmitted texts (*nuṣūṣ sam'iyyah*) or in applied juridical discussions.

Hence, we may conclude that most early definitions of *gharar* were not introduced as formal entries at the beginning of chapters, but rather evolved as explanatory comments derived

from examining the underlying causes of prohibition across various legal issues.

For instance, al-Kāsānī did not dedicate a specific chapter to *gharar*; he referred to it incidentally while discussing prohibited sales and the disagreement between the Ḥanafīs and the Shāfiʿīs. Similarly, Ibn Rushd in *al-Bayān wa al-Taḥṣīl* mentioned *gharar* while discussing sales of *maḍāmīn* (embryos of females), *malāqīh* (semen of males), and *muzābanah* (barter of fruits before ripeness).

Thus, the concept of *gharar* was not originally articulated as a distinct theoretical doctrine in early *fiqh* literature. Rather, it emerged gradually through the observation of legal reasoning in dispersed subsidiaries of jurisprudence, and was later systematized by later scholars into well-defined terminological expressions.

Second: The Transmitted Texts Used as Evidence in the Chapter of *Gharar*

When we examine the Qurʾān—the primary source of inference in Islamic law—we find that the term *gharar* itself does not appear explicitly in the sense used by jurists in their definitions. The only occurrences of the root (*gh-r-r*) in the Qurʾān appear in other contexts, generally carrying the linguistic sense of deception or delusion, such as in the verse: "And what is the life of this world except the enjoyment of delusion."[1] In another verse, Allāh Almighty says: "and be not deceived about Allāh by the Deceiver [i.e., Satan]."[2]

In the first instance, *ghurūr* denotes falsehood and deceit, while

[1] [Aāl ʿImrān: 185].
[2] [Luqmān: 33].

in the second it refers to Satan or carnal desire.

Nevertheless, jurists have inferred the ruling of *gharar* from a set of Qurʾānic texts that generally prohibit *bāṭil* (falsehood and injustice) in financial dealings. Among these are: "O you who have believed, do not consume one another's wealth unjustly."[1] They regarded *gharar* as a form of *bāṭil*, since it entails the unlawful consumption of another's property without due right. Similar indications are found in: "And [for] their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly,"[2] and in: "O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly."[3]

In these verses, *gharar* and *jahālah* (uncertainty) in contracts are treated as manifestations of *bāṭil*—that which the *Sharīʿah* forbids.

Al-Ṭabarī commented: "Their consuming one another's wealth unjustly refers to usury, gambling, fraudulent bidding (*najsh*), and oppression."[4]

As-Suddī said: "Their consuming one another's wealth unjustly refers to fornication, gambling, fraudulent bidding, and injustice."[5]

Al-Māwardī said: "It includes three interpretations. First, that it refers to fornication, gambling, underpayment, and oppression as stated by as-Suddī; second, that it denotes invalid contracts as attributed to Ibn ʿAbbās; and third, that it was initially a

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[1] [Al-Nisāʾ: 29].
[2] [Al-Nisāʾ: 161].
[3] [Al-Tawbah: 34].
[4] Tafsīr al-Ṭabarī (6/626).
[5] Tafsīr Ibn Abī Ḥātim (3/927).

prohibition on eating food offered in hospitality without purchase, later abrogated by the verse in *Sūrat an-Nūr*, "nor upon yourselves when you eat from your [own] houses," as attributed to al-Ḥasan and ʿIkrimah."[1]

Al-Baghawī wrote: "By unlawful gain such as usury, gambling, theft, robbery, treachery, and the like; it has also been said that it refers to invalid contracts."[2]

Ibn al-ʿArabī explained: "*Bāṭil* excludes every countervalue not sanctioned by the *Sharīʿah*—such as usury, *jahālah* (uncertainty), or corrupt consideration like wine, swine, or the forms of usury."[3]

Ibn al-Faras said: "God has forbidden the consumption of wealth through gambling, wine, and *ighrār* (deceptive or risky transactions) such as the proceeds of invalid sales."[4]

Al-Qurṭubī wrote: "Among the forms of unlawful consumption of wealth is the *bayʿ al-ʿurbān* (earnest money sale); this is invalid and impermissible according to the jurists of the major centers of learning in the Hijaz and Iraq, for it falls under gambling, *gharar*, and excessive risk."[5]

Ibn Kathīr said: "That is, through all forms of unlawful gain such as usury, gambling, and all other kinds of deceitful practices."[6]

In truth, the term *bāṭil* in these verses is general and inclusive, encompassing multiple individual and collective forms of injustice. The expression "and do not consume one another's wealth unjustly" is not in the same level of clarity of "Prohibited

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[1] Al-Nukat wa al-ʿUyūn (1/474).
[2] Maʿālim al-Tanzīl (2/199).
[3] ʾAḥkām al-Qurʾān by Ibn al-ʾArabī (1/521).
[4] ʾAḥkām al-Qurʾān by Ibn al-Faras (2/156).
[5] Al-Jāmiʿ li ʾAḥkām al-Qurʾān (5/150).
[6] Tafsīr al-Qurʾān al-ʿAẓīm (2/268).

to you are dead animals." The case of dead animals, for instance, is explicit and self-evident, whereas *bāṭil* is a general term whose specific applications depend on the *Sharīʿah*'s designation of what constitutes falsehood.

Accordingly, before invoking these verses as evidence for the prohibition of *gharar*, one must first establish a legal ruling equating *gharar* with *bāṭil*. Only then does it properly fall under the authority of the transmitted text. Otherwise, the argument becomes circular—deriving both definition and ruling from one another.

Therefore, if a separate, explicit text establishes the prohibition of *gharar*, these verses may be cited by way of corroboration (*ta'kīd*) rather than as primary evidence (*ta'sīs*).

If we turn to the Prophetic Sunnah, we find that its texts are far more explicit and illustrative concerning *gharar*—both in its definition and its ruling. Among the most significant *ahadīth* are the following:

1. As narrated by Muslim from Abū Hurayrah (may Allāh be pleased with him): "The Messenger of Allāh (peace and blessings be upon him) forbade the sale of pebbles and the sale involving *gharar*."[1]

2. In *Musnad Aḥmad*, it is reported from ʿAbdullāh ibn ʿUmar (may Allāh be pleased with him) that: "The Messenger of Allāh (peace and blessings be upon him) forbade the sale involving *gharar*. During the pre-Islamic period, they used to sell camels that were yet to give birth, and even what was in the womb of those unborn. The

[1] Ṣaḥīḥ Muslim (4/1513). In his Sunan, Al-Dāraquṭnī introduced *gharar* first then *bayʿ al-ḥaṣah* (Sunan al-Dāraquṭnī (2842).

Messenger of Allāh (peace and blessings be upon him) forbade such sales."[1]

3. There are several other narrations that do not explicitly mention the word *gharar*, yet prohibit transactions based on uncertainty and vagueness, the very causes of *gharar*.

   Among them is what al-Bukhārī narrated from ʿAbdullāh ibn ʿUmar (may Allāh be pleased with him): "The Messenger of Allāh (peace and blessings be upon him) forbade the sale of *ḥabal al-ḥabalah*. It was a form of sale practiced in the pre-Islamic period, wherein a man would purchase a she-camel until she gave birth, and then until what was in her womb gave birth."[2]

Also, al-Bukhārī narrated from Abū Saʿīd al-Khudrī (may Allāh be pleased with him): "The Prophet (peace and blessings be upon him) forbade *munābadhah*—throwing one's garment in sale to another before examining it—and forbade *mulāmasah*, which means touching the garment without seeing it."[3]

Similarly, al-Ṭabarānī in *al-Muʿjam al-Kabīr* and *al-Muʿjam al-Awsaṭ*, and ad-Dāraqutnī in *as-Sunan*, narrated from Ibn ʿAbbās (may Allāh be pleased with him): "The Messenger of Allāh (peace and blessings be upon him) forbade selling fruits before they ripen, wool on the back of the animal, and milk in the udder."[4]

Abū Dāwūd and others narrated from Ḥakīm ibn Ḥizām (may Allāh be pleased with him): "I said: O Messenger of Allāh, a man

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[1] Musnad ʾAḥmad (6437).
[2] Ṣaḥīḥ al-Bukhārī (2143).
[3] Ṣaḥīḥ al-Bukhārī (2144).
[4] Al-Muʿjam al-Kabīr (11935), al-Muʿjam al-ʾAwsaṭ (3708), and Sunan al-Dāraquṭnī (2835).

comes to me asking for something to buy, but I do not have it. Should I then buy it for him from the market (and resell it to him)? He said: 'Do not sell what you do not possess.'"[1]

From these prophetic reports, it is evident that the Sunnah provides detailed clarification—both by naming the prohibited act (*bayʿ al-gharar*) and by describing its various forms. Yet, it is worth noting that all the relevant *aḥādīth* employ a prohibitive form, either explicitly through the verb *"nahā"* (he forbade) or implicitly through expressions such as *"do not sell"*. None of these narrations explicitly discuss whether such contracts are invalid, void, or merely sinful, leaving room for scholarly interpretation regarding the scope of the forbiddance.

Indeed, not all forms of forbiddance in the Sunnah pertain to contract validity; some relate to moral objectives, preventive measures (*sadd adh-dharāʾiʿ*), or disciplinary ethics, while the contracts themselves remain formally valid according to their apparent conditions.

For example, the Prophet (peace and blessings be upon him) forbade "selling over the sale of one's brother", as in the *ḥadīth* of Ibn ʿUmar (may Allāh be pleased with him): "None of you should sell over the sale of his brother."[2]

Although the forbiddance is clear, the majority of scholars deem the second sale sinful but still legally valid. This view is held by the Ḥanafīs[3], Mālikīs[4], and Shāfiʿīs[5], and is also one of the

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[1] Sunan Abī Dawūd (11935). The same ḥadīth is also authenticated by ʾAḥmad in his Musnad (15311), al-Tirmidhī in his Sunan (1232), al-Nasāʾī in his Sunan (4627), and Ibn Mājah in his Sunan (2187).

[2] Authenticated by al-Bukhārī (2140) and Muslim (50/1412).

[3] Tabyīn al-Ḥaqāʾiq (4/47) and Ḥāshiyat Ibn ʿAbdī (5/101).

[4] Al-Tamhīd (13/317) and Bidāyat al-Mujtahid (3/183).

[5] Mughnī al-Muḥtāj (2/391).

reported opinions among the Ḥanbalīs[1].

An-Nawawī explained in *Sharḥ Ṣaḥīḥ Muslim*: "The scholars are in consensus that selling over one's brother's sale, buying over his purchase, and bidding over his offer are all forbidden. Yet, if one transgresses and concludes the sale, he is sinful but the sale itself is valid. This is the view of ash-Shāfiʿī, Abū Ḥanīfah, and others. Dāwūd (aẓ-Ẓāhirī) held that it is invalid, and there are two narrations from Mālik reflecting both positions."[2]

Among the examples that further illustrate this interpretive diversity is the difference of opinion regarding the sale of milk still in the udder.

The majority of jurists—including the Ḥanafīs[3], Shāfiʿīs[4], and Ḥanbalīs[5]—hold that such a sale is prohibited and invalid. However, some early scholars, such as Ṭāwūs and Mujāhid[6], considered it merely disliked *(makrūh)* without rendering the contract void. Imām Mālik and al-Layth ibn Saʿd permitted it by measure (*mukāyalah*)[7], provided the milk is quantified or its amount is reasonably estimable. Mālik even allowed a man to sell the milk of his numerous sheep for a month or two, on the condition that it is known their milk does not cease during that period[8].

Ibn al-Mundhir summarized the spectrum of opinions as follows: "The scholars differed concerning the sale of milk in the udders

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1 Al-ʾInṣāf by al-Mardāwī (4/331).
2 Sharḥ Ṣaḥīḥ Muslim (10/159).
3 Al-Hidāyah by al-Mīrghinānī (3/44).
4 Al-Majmūʿ by al-Nawawī (9/326).
5 Kashshāf al-Qināʿ (3/166).
6 Al-Mughnī by Ibn Qudāmah (6/300).
7 Mukhtaṣar Ikhtilāf al-ʿUlamāʾ by al-Ṭaḥāwī (3/73).
8 Al-Mudawwanah (3/318) and Ḥāshiyat al-Dusūqī (3/152).

of livestock and the sale of wool on their backs. We are informed that among those who forbade it are Ibn ʿAbbās, and Abū Hurayrah forbade buying milk in the udders of sheep. Mujāhid and Ṭāwūs disliked it. Al-Shāfiʿī said: it is impermissible. ʾAḥmad, ʾIsḥāq, Abū Thawr, and the Scholars of Opinion (Ḥanafī jurists) adhered to the *ḥadīth* of Ibn ʿAbbās (on its prohibition). Ṭāwūs permitted its sale when measured, while Saʿīd ibn Jubayr said: there is no harm in selling milk in the udder and wool on the back. Al-Ḥasan al-Baṣrī said: there is no harm in purchasing the milk of a particular sheep for a month, provided it has milk at the time; and this was also the view of Mālik and Muḥammad ibn Maslamah."[1]

This diversity of opinion among the scholars naturally leads us to examine the jurisprudential maxim: "Forbiddance (*nahy*) necessarily entails invalidity (*fasād*)."

[1] Al-ʾIshrāf ʿalā Madhāhib al-ʿUlamāʾ (6/18-19).

Section Two

The Effect of *Nahy* (Forbiddance) on Contracts

This issue is one of the central and most debated topics in *uṣūl al-fiqh* (principles of jurisprudence) and *fiqh* (jurisprudence). It has been described by more than one scholar as a question that perplexed even some of the most meticulous investigators[1].

Due to its significance, hardly any book on *uṣūl al-fiqh* or *qawā'id fiqhiyyah* (jurisprudential maxims) is devoid of a discussion on this matter. It is also frequently addressed in many works of substantive jurisprudence. Some scholars even dedicated independent treatises to this issue, such as Imām Ṣalāḥ al-Dīn al-ʿAlā'ī (d. 761 AH) in his book *Taḥqīq al-Murād fī al-Nahy Yaqtaḍī al-Fasād* "Realizing the Intended Meaning: That Forbiddance Implies Invalidity."[2]

1. From the Perspective of Formulation

Upon reviewing the major works of *uṣūl al-fiqh* and jurisprudential maxims, one finds that the expressions used to describe the effect of *nahy* (forbiddance) vary considerably. While some scholars discussed it in terms of its effect on *'aḥkām waḍ'iyyah* (correlative rulings) such as validity, invalidity, and

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[1] Al-'Ashbāh wa al-Naẓā'ir by al-Subkī (2/118) and Al-Baḥr al-Muḥīṭ by al-Ẓarkashī (2/439).

[2] There is a disagreement regarding the attribution of the *book*. Some scholars held that it belongs to al-ʿAlā'ī, while others held that it belongs to his student Shihāb al-Dīn Aḥmad ibn Muḥammad al-Khalīlī, as stated by the author of *Kashf al-Ẓunūn* 1/378. Others held that the two of them each authored a separate work: one titled *al-Nahy Yaqtaḍī al-Fasād* by al-ʿAlā'ī, and the other titled *al-Ra'y Yaqtaḍī al-Fasād* by his student, as recorded in *Muʿjam al-Mu'allifīn* 2/127. The same view was adopted by the editor of *Taḥqīq al-Murād*, Dr. Ibrāhīm Muḥammad al-Salqīnī, in the introduction to his critical edition.

nullity, others addressed it from the perspective of *ʾaḥkām taklīfiyyah* (charging rulings), i.e., whether the act is unlawful (*ḥarām*) or disliked (*makrūh*).

Abū al-Ḥusayn al-Baṣrī titled his discussion: "A Chapter on the Indication of Forbiddance for Invalidity."[1]

Abū Yaʿlā al-Mawṣilī said: "Issue: The Unrestricted Forbiddance Implies Invalidity."[2]
Al-Juwaynī stated: "The investigators hold that the absolute form of forbiddance entails the invalidity of the forbidden act."[3]

Al-Āmidī said: "Issue One: The scholars differed on whether a forbiddance of legal transactions and contracts that normally produce legal effects — such as sale and marriage — implies their invalidity or not."[4]

Al-Qarāfī stated: "Distinction Seventy: Between the maxim that forbiddance implies invalidity in the essence of the act, and the maxim that forbiddance implies invalidity due to an external matter."[5]

Ibn al-Mulaqqin wrote: "A Note: If the forbiddance relates to an external matter, it does not indicate invalidity; but if it relates to the essence of the act itself, it does."[6]

Al-Ḥuṣnī entitled his discussion: "A Maxim on Whether Forbiddance of an Act Entails Its Invalidity."[7]

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[1] Al-Muʿtamad fī ʾUṣūl al-Fiqh (2/410).
[2] Al-ʿUddah fī ʾUṣūl al-Fiqh (2/432).
[3] Al-Burhān fī ʾUṣūl al-Fiqh (1/96).
[4] Al-ʾIḥkām fī ʾUṣūl al-ʾAḥkām by al-ʾAāmidī (2/188).
[5] Al-Furūq (2/151).
[6] Al-ʾAshbāh wa al-NaẓāʾI by Ibn al-Mulaqqin (1/523).
[7] Al-Qawāʿid by al-Ḥuṣnī (3/52).

All of these scholars, therefore, linked *nahy* (forbiddance) directly to *fasād* (invalidity).

However, others expressed the same concept through the language of non-legitimacy rather than invalidity.

Al-Sarakhsī said: "The scholars differed concerning this type of contracts and acts of worship. Our scholars (the Ḥanafīs) held that the implication of absolute forbiddance therein is the affirmation of what is legally prescribed, while considering the performance of the servant in such a case invalid, unless proven otherwise by evidence."[1]

Al-Bazdawī stated: "The implication of forbiddance is the obligation to abstain from performing the forbidden act, for it is the opposite of command."[2]

Al-Zaylaʿī explained: "Forbiddance regarding *Sharīʿah-based* acts affirms their legitimacy according to us, unlike forbiddance regarding physical acts."[3]

Al-Bābartī remarked: "Forbiddance affirms legitimacy according to us, since it necessitates the conceptualization (*taṣawwur*) of the act."[4]

Nāẓirzādah likewise said: "Forbiddance affirms legitimacy according to us."[5]

Here we observe a clear connection between *nahy* (forbiddance) and *ʿadam al-mashrūʿiyyah* (non-legitimacy).
The question arises: **Is there a difference between linking**

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[1] ʾUṣūl al-Sarakhsī (1/82).
[2] Kashf al-ʾAsrār (1/256).
[3] Tabyīn al-Ḥaqāʾiq (4/63).
[4] Al-ʿInāyah Sharḥ al-Hidāyah (6/392).
[5] Tartīb al-Laʾālī fī Silk al-ʾAmālī (2/1120).

forbiddance to invalidity and linking it to non-legitimacy?

The answer is that there is indeed a difference, which becomes evident when considering three aspects: validity (*ṣiḥḥah*), effectiveness (*nafādh*), and legitimacy (*mashrūʿiyyah*).

Those who hold that *nahy* implies invalidity (*al-nahy yaqtaḍī al-fasād*) declare the forbidden act null and void in all respects, nullifying any legal effect. However, those who use the phrase *ʿadam al-mashrūʿiyyah* (non-legitimacy) adopt a broader and more flexible stance: they deem the act unauthorized by the *Sharīʿah*, yet this does not necessarily entail nullity or invalidity. Instead, it results in sin and culpability, while some legal effects may still follow.

Upon examining the statements of most jurists who addressed this issue, we find that they often distinguish between different types of forbiddances, even though they agree on the essential meaning and purpose of forbiddance —namely, abstaining from the forbidden act. Accordingly, expressing the matter as "non-legitimacy" (*ʿadam al-mashrūʿiyyah*) offers a more nuanced representation of the juristic disagreement.

2. From the Perspective of Application

When we examine forbidden matters (*manhiyyāt*) in general, we find that the rationale for forbiddance can be traced back to several causes:

- **Inherent vice in the act itself:** when the act is intrinsically evil or corrupt, such as deceit, fraud, or lying.
- **A specific quality or condition of the act:** as in sexual intercourse during menstruation or engaging in a usurious sale. The acts of intercourse and sale are not inherently evil, but they become evil when performed in a forbidden manner.

- **An external factor related to the act:** such as engaging in trade during the Friday call to prayer, which distracts from an obligatory duty, or artificially inflating bids (*najsh*), which may cause enmity and unjust financial loss.

These causes of forbiddance may occur in both acts of worship (*ʿibādāt*) and transactions (*muʿāmalāt*).

Because of this overlap in the reasons and domains of forbiddance, the jurists differed in their understanding of the implications of *nahy* and formulated multiple opinions—sixteen in total, as mentioned by al-ʿAlāʾī in his work. These ultimately reduce to three principal positions, each branching into sub-views:

First Opinion: That *nahy* implies invalidity (*al-nahy yaqtaḍī al-fasād*) absolutely and without exception.

Second Opinion: That *nahy* does not imply invalidity unless supported by additional evidence.

Third Opinion: That the implication of invalidity depends on the nature of the case—i.e., *tafṣīl* (differentiation). In some cases, forbiddance implies invalidity; in others, it does not.

Those who adopt this *tafṣīl* position differ in identifying which types of forbiddance lead to invalidity and which do not. Some distinguish between physical acts (*ʾafʿāl ḥissiyyah*), such as fornication, theft, or drinking wine, and non-physical acts (*ʾafʿāl ghayr ḥissiyyah*) whose validity depends on *Sharīʿah* authorization, such as performing prayer on usurped land or selling during the Friday call to prayer, or engaging in usurious transactions.

They also differ regarding whether the forbiddance pertains to an inherent attribute (*waṣf lāzim*), such as fasting on ʿĪd day or

usurious sales; or an external, non-essential attribute (*waṣf mujāwir*), such as praying during disliked times, praying on usurped land, or divorcing during menstruation.

Another factor that broadened the scope of disagreement is the jurists' divergent understanding of the terms *fasād* (corruption) and *buṭlān* (nullity): Are they synonymous—both opposed to *ṣiḥḥah* (validity), as the majority hold—or distinct, as maintained by the Ḥanafīs?

According to the Ḥanafī school, *bāṭil* refers to what is invalid in its essence, such as selling wine, pork, or a free person—contracts that never come into existence at all. *Fāsid*, on the other hand, denotes what is valid in its essence but defective in description, such as a usurious transaction (*ʿaqd ribawī*). Such a contract is lawful in its general form as a sale, yet forbidden due to the accidental attribute of *ribā*—an extraneous and incidental quality.

Given the vast divergence of opinions and the abundance of discussions and debates in the books of *Usūl al-Fiqh* (principles of jurisprudence), I will summarize the major views of scholars on this issue as follows:

The First View:

The forbiddance (*nahy*) necessitates invalidity (*fasād*) in all cases—whether it pertains to the very essence of the forbidden act or to one of its attributes, and whether it occurs in acts of worship (*ʿibādāt*) or in transactions (*muʿāmalāt*). This is the view chosen by Imām ʾAḥmad, as mentioned by Abū Yaʿlā[1], and it is also the position of the Ẓāhirī school[2].

[1] Al-ʿUddah (2/432-433).
[2] Al-ʾIḥkām fī ʾUṣūl al-ʾAḥkām by Ibn Ḥazm (4/86).

The Second View:

Forbiddance entails invalidity if the act forbidden is among physical (*ḥissī*) matters such as fornication, theft, and similar acts, or if the forbiddance pertains to the essence of the act—such as marrying one's mother or daughter, eating carrion, or selling it. However, if the forbiddance concerns a quality or attribute of the act, it does not necessitate invalidity. This is the view of the Ḥanafī school[1].

The Third View:

If the forbiddance pertains to the very essence of the forbidden act or to an inseparable attribute within it, it entails invalidity. But if it pertains to something external to it, it does not entail invalidity. This applies to acts of worship, transactions, physical acts, and *Sharī'ah*-based acts. This view is held by some of the Shāfiʿī scholars[2]; some have attributed it as one of al-Shāfiʿī's own opinions[3], and Ibn al-ʿArabī considered it the correct position within the Mālikī school[4].

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[1] Al-Mabsūṭ by al-Sarakhsī (13/23) et seq, and ʾUṣūl al-Fiqh by al-Khuḍarī (200-201).

[2] Sharḥ al-Lumaʿ by al-Shīrāzī (1/297).

[3] Al-Baḥr al-Muḥīṭ by al-Zarkashī (3/383). Ibn Burhān said: "And some transmitters have related from al-Shāfiʿī (peace and blessings be upon him) that he said: *If the forbiddance* (al-nahy) *of something is due to a cause inherent in the act itself, it indicates its invalidity; but if it is due to a cause external to it—such as the forbiddance of selling during the call to prayer—it does not indicate its invalidity*." *Al-Wuṣūl ilā al-Uṣūl* 1/187.

He then returned and refuted attributing this statement to him, saying: "This has not been firmly established from al-Shāfiʿī (peace and blessings be upon him); rather, what is authentically reported from him is that *whenever the forbiddance* (al-nahy) *pertains to the act itself, it removes it from being legally valid*." 1/195.

[4] Ibn al-ʿArabī said in *al-Maḥṣūl*: "(The scholars of *uṣūl* among the Mālikīs were ignorant of the school of Mālik (peace and blessings be upon him)… The

The Fourth View:

Forbiddance does not, by itself, necessitate invalidity; rather, additional evidence is required to establish invalidity. This is the view of most *mutakallimūn* (theologians), including Abū ʿAlī al-Jubbāʾī, Abū Hāshim al-Jubbāʾī, and Abū ʿAbd Allāh al-Baṣrī. Among the Shāfiʿīs, this was also the view of al-Qaffāl al-Shāshī, and among the Ḥanafīs, Abū al-Ḥasan al-Karkhī[1].

The Fifth View:

Forbiddance entails invalidity in acts of worship but not in transactions. This view was adopted by Abū al-Ḥusayn al-Baṣrī[2] and by al-Rāzī in *al-Maḥṣūl*[3]. Al-Ghazālī also agreed that forbiddance does not necessitate invalidity in contracts and legal dispositions[4].

The Sixth View:

If the forbiddance relates to the right of Allāh (*ḥaqq Allāh*), it necessitates invalidity; but if it relates to the right of human beings (*ḥaqq al-ʿibād*), it does not. This was the view preferred by al-Tilimsānī in *Miftāḥ al-Wuṣūl*[5].

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correct view in his school is that forbiddance is of two types: a forbiddance due to a meaning inherent in the prohibited act itself, and a forbiddance due to a meaning external to it. If it is due to a meaning inherent in the prohibited act, then it indicates its invalidity; but if it is due to a meaning external to the prohibited act, then that varies, although the predominant case is that it does not indicate invalidity)." *al-Maḥṣūl*, p. 71.

[1] Qawāṭiʿ al-ʾAdillah fī al-ʾUṣūl (1/140), and Rawḍat al-Nāẓir wa Jannah al-Manāẓir by Ibn Qudāmah (1/604).

[2] Al-Muʿtamad fī ʾUṣūl al-Fiqh, p. 178-179.

[3] Al-Maḥṣūl (2/291).

[4] Al-Mustaṣfā, p. 221.

[5] Miftāḥ al-Wuṣūl ʿilā Bināʾ al-Furūʿ ʿalā al-ʾUṣūl, p. 421 – 423.

These represent the major opinions and interpretations on the matter, though, as noted earlier, other opinions and subdivisions also exist. It is appropriate here to elaborate on two of the aforementioned positions: the first representing the majority of the Ḥanafī scholars, and the second representing the majority of the Shāfiʿīs.

Detailed Examination of the Ḥanafī Position

The Ḥanafīs divided *nahy* (forbiddance) according to its direction into two main categories:

1. Forbiddance Related to Physical Acts (*ʾafʿāl ḥissiyyah*)[1]

What is meant by physical acts are those perceptible through the senses, whose existence does not depend on *Sharīʿah* recognition—such as fornication (*zinā*), theft, unlawful killing, and drinking wine.

These actions are inherently evil, discernible by sound human reason, and have always been so even before the advent of *Sharīʿah*.

Because these acts are intrinsically reprehensible through sound senses, forbiddance here entails invalidity; they have no legal effect in *Sharīʿah*.

Thus, if a person "buys" wine, the contract is void because it pertains to something that is not *māl mutaqawwam* (legally recognized property). It is null and of no value. Likewise, whoever steals property never acquires ownership of it; therefore, no *zakāh* is due on such property, and if it were paid, it would not be accepted since ownership is absent.

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[1] ʾUṣūl al-Sarakhsī (1/86) et seq, al-Kāfī Sharḥ ʾUṣūl al-Bazdawī (2/598), and al-Taqrīr wa al-Taḥbīr by Ibn ʾAmīr Ḥāj (1/330).

2. Forbiddance Related to *Sharīʿah*-Based Acts (*ʾafʿāl sharʿiyyah*)[1]

These are actions whose validity depends on the Sharīʿah—such as prayer, fasting, divorce, manumission, agency, and *muḍārabah*.
Such acts were neither devotional nor legally recognized before the advent of *Sharīʿah*.

The acts forbidden in this category are not inherently evil; the forbiddance pertains to an external factor. For example, the forbiddance of praying on usurped land is to safeguard others' rights and prevent transgression. Similarly, the forbiddance of usurious sales aims to prevent exploitation and injustice.

The Ḥanafīs further subdivided *manhiyy ʿanhu li-ghayrih* (that which is forbidden for an external reason) into two types:

(a) Forbidden Due to an Inseparable Attribute (*waṣf lāzim*)

An inseparable attribute is one inherently attached to the act and cannot be detached from it.

For instance, in *ribā*-based sales, the essence of sale (*bayʿ*) is not forbidden, but once *ribā*—which destroys equality between commensurate goods—is introduced, the transaction becomes evil. Thus, the usurious element is an inseparable quality of the sale and renders it corrupt (*fāsid*).

A parallel case in worship is fasting on ʿĪd day. Fasting is in itself a valid act of worship, but doing so during ʿĪd is evil because that time is designated for joy, celebration, and lawful feasting—acts that cannot coexist with fasting. Since fasting cannot be detached from its timing, it becomes corrupt in this circumstance.

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[1] Taqwīm al-ʾAdillah, p. 52, al-Kāfī fī Sharḥ ʾUṣul al-Bazdawī (2/598-599), and Kashf al-ʾAsrār Sharḥ ʾUṣūl al-Bazdawī (1/257).

(b) Forbidden Due to an Adjacent Attribute (*waṣf mujāwir*)

An adjacent attribute, on the other hand, is one that can be separated from the act. For instance, selling goods during the Friday call to prayer—the sale itself is lawful, but performing it at that time distracts from the congregational obligation; hence, it is forbidden. Here, the act of attending prayer is an external, adjacent factor.

An example in worship is performing prayer on usurped land. The prayer itself is legitimate, but performing it in a place obtained unlawfully adds an adjacent, external defect unrelated to the act's essence.

The Ḥanafī scholars concluded that the first case (*waṣf lāzim*), the act is valid in its essence but invalid in its attribute; thus, the invalidity applies to the attribute, not the act itself. Once the invalid attribute is removed, the act becomes legitimate. In the second case (*waṣf mujāwir*), the act remains valid but disliked (*makrūh*).

Detailed Explanation of the Shāfiʿī's Position

The Shāfiʿīs divided *nahy* into three categories[1]:

1. **Forbiddance Returning to the Essence of the Act:** Such as the forbiddance of selling wine or pork. This renders the subject matter itself is invalid, resulting in no legal effects
2. **Forbiddance Returning to an Attribute in the Act:** Such as selling *ḥabal al-ḥabalah* (the unborn offspring in the womb of an unborn animal). Here, the sale is lawful in principle but invalid by the attribute of uncertainty (*jahālah*), which invalidates the subject matter, resulting in no legal effects.

[1] Sharḥ al-Lumaʿ by al-Shīrāzī (1/297) and al-ʾIbhāj by al-Subkī (4/1158).

3. **Forbiddance Returning to an External Factor:** Such as engaging in *najsh* (artificial bidding). Since *najsh* is external to the contract's essence and conditions, it does not invalidate the sale, though it incurs sin.

In truth, the view that forbiddance always and absolutely implies invalidity (*al-nahy yaqtaḍī al-fasād muṭlaqan*) is weak. The forbidden matters are not of one kind, nor confined to a single domain. Moreover, the degrees of forbiddance differ, and the indications of *nahy* vary: some express absolute obligation, some denote restriction to specific circumstances, while others function as guidance or moral counsel. Thus, it is unsound to treat all forms of forbiddance under one universal rule.

For example, the Prophet (peace and blessings be upon him) said: "Do not exaggerate in praising me as the Christians exaggerated in praising the son of Mary. I am only His servant, so say: the servant of Allāh and His messenger."[1]

Here, the explicit utterance of forbiddance does not imply the invalidity of praise in general; rather, it targets a specific form—the type of praise that attributes divinity (such as claiming that Jesus is son of God), which is indeed false and void. Other forms of praise remain subject to further examination—some are permissible, others impermissible.

This is further clarified by what Al-Bukhārī narrated in his *Ṣaḥīḥ* from al-Rubayyiʿ bint Muʿawwidh, who said: "The Prophet (peace and blessings be upon him) entered upon me on my wedding morning and sat on my bed as you are sitting beside me, and some young girls were beating their tambourines and singing about those of our fathers who were martyred at Badr. One of the girls said, 'Among us is a prophet who knows what will happen

[1] Authenticated by al-Bukhārī (3445) from ʿUmar ibn al-Khaṭṭāb.

tomorrow.' The Prophet (peace and blessings be upon him) said, 'Do not say this, but say what you were saying before.'"[1]

Here, the forbiddance concerns excessive flattery implying knowledge of the unseen—an attribute exclusive to Allāh (Glory be to Him, the Exalted).

The Qur'ān itself praises the Prophet (peace and blessings be upon him) by highlighting his noble qualities and exalted rank, commanding to us to elevate his status over anyone else: "Do not make [your] calling of the Messenger among yourselves as the call of one of you to another."[2] Also, Allāh Almighty said: "That you [people] may believe in Allāh and His Messenger and honor him and respect him."[3] Allāh Almighty also said: "O you who have believed, do not raise your voices above the voice of the Prophet or be loud to him in speech like the loudness of some of you to others."[4]

Hence, the forbiddance in the *ḥadīth* does not entail the invalidity of flattery altogether—nor even the nullity of all the Christians' praise of ʿĪsā ibn Maryam—but only of a specific type of excessive flattery. What lies beyond that remains open to evaluation.

In conclusion, we hold that the formulation of the rule as "forbiddance implies invalidity" (*al-nahy yaqtaḍī al-fasād*) is too rigid and fails in many instances—indeed, in most.

The more accurate expression should be: "Forbiddance may imply invalidity" (*al-nahy qad yaqtaḍī al-fasād*), acknowledging the diversity of contexts, degrees, purposes, and indications of

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1 Al-Bukhārī (4001).
2 [Al-Nūr: 63].
3 [Al-Fatḥ: 9].
4 [Al-Ḥujurāt: 2].

nahy.

As for its effects on contracts, the stronger view is that a forbiddance concerning a specific contract does not necessarily entail the nullity of that contract, given the multiplicity of possible causes behind the forbiddance.

Section Three

Types and Categories of *Gharar* (Uncertainty)

First: The Types of *Gharar*

As previously stated in the definitions, *gharar* refers to risk or uncertainty. It is well known that risk varies in degree, and that hardly any sale or transaction is entirely free from some element of it. Therefore, the jurists discussed *gharar* extensively, dividing it into levels and categories. Here, we will outline these divisions briefly.

By examining the examples and classifications mentioned by the jurists, *gharar* may be categorized according to several considerations as follows:

1. In Terms of Degree

Gharar can be divided into three levels according to its magnitude and impact on the transaction:

A. Minor *Gharar*:

This refers to the kind of uncertainty that contracts cannot usually be free from. For example, purchasing meat that may contain some fat or bone; buying a house without knowing the exact number of doors or windows; or buying prepackaged goods by weight without knowing the weight of the packaging itself.

B. Excessive *Gharar*:

This is when the uncertainty is extreme or the risk is high to the extent that the purpose of the transaction cannot be fulfilled. Such *gharar* usually leads to disputes. It occurs when the uncertainty affects an essential element of the contract, such as the subject matter or price, or when the object of sale is unknown

in existence, description, or is impossible to deliver.
Examples given by jurists include selling a bird in the sky, a fish in water, the fetus in its mother's womb on its own, a plot of land without specifying its location or size, or selling an unspecified portion of goods collectively.

C. Moderate *Gharar*:

This lies between the two extremes — it is not minor, yet not excessive. Its classification depends on custom (*'urf*), necessity, or contextual clues. Examples include selling a fetus together with its mother — it is not minor because the fetus's attributes are unknown, but not excessive since it is included with its mother and therefore deemed existent by estimation. Another example is selling fruit before ripening but after being harvested, such as bananas, or selling crops hidden in the soil when their sprouts are visible.

Ibn Rushd referred to this type implicitly, without naming it "moderate *gharar*," saying: "The disagreement among scholars regarding the invalidity of certain contracts arises from their differing views on whether the *gharar* involved is of the excessive type or the minor, tolerable kind permitted in sales."[1]

Al-Qarāfī said: "*Gharar* and vagueness are of three kinds: major, which is unanimously prohibited, like selling birds in the sky; minor, which is unanimously permitted, like selling the foundation of a house or the cotton inside a padded garment; and moderate, over which scholars differ — whether it should be likened to the first or the second."[2]

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[1] Al-Muqaddimāt al-Mumahhidāt (2/73).

[2] Al-Furūq by al-Qarāfī (3/404).

The Rulings on the Three Types

From the statement of al-Qarāfī above, it is clear that there is consensus (*'ijmā'*) that minor *gharar* in contracts does not affect validity and entails neither corruption nor sin. Several jurists have transmitted this consensus.

Al-Nawawī said: "As for what necessity calls for and cannot be avoided — such as the foundation of a house, buying a pregnant animal with the uncertainty of whether the fetus is one or more, male or female, or complete or defective, or buying a sheep with milk in its udder — all such sales are valid by consensus. Likewise, consensus on matters involving insignificant *gharar* has been reported."[1]

Al-Qāḍī ʿAbd al-Wahhāb reported the consensus on this issue, declining any disagreement on it: "There is no disagreement that minor *gharar* does not invalidate a sale."[2] Ibn ʿAbd al-Barr also said: "No sale is entirely free from a small degree of *gharar*."[3] Consensus was likewise transmitted by Ibn al-ʿArabī[4] and Ibn Rushd al-Hafīd[5].

As for excessive *gharar*, some have reported consensus on its prohibition, as al-Qarāfī mentioned. Al-Khurashī confirmed this in his *Sharḥ Mukhtaṣar Khalīl*, saying: "*Gharar* is of three kinds: that which is unanimously prohibited, such as birds in the air and fish in the water…"[6]

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[1] Al-Majmūʿ by al-Nawawī (9/258) and he has another similar statement in Sharḥ Muslim (10/156).
[2] Al-Maʿūnah ʿalā Madhhab ʿAālim al-Madīnah (2/1032).
[3] Al-Istidhkār (7/409).
[4] Al-Qabas fī Sharḥ al-Muwaṭṭaʾ (2/814).
[5] Bidāyat al-Mujtahid (3/173).
[6] Sharḥ Mukhtaṣar Khalīl (5/69) and he repeated the same words in (5/75).

However, this claim of consensus is open to question. It has been narrated that Ibn Sīrīn permitted the sale of *gharar*. Ibn Abī Shaybah reported: "Ibn ʿUlayyah narrated from Ibn ʿAwn, from Ibn Sīrīn, who said: 'I do not see any harm in the sales involving *gharar*.'"[1]

Ibn Ḥajar elaborated on this: "Al-Ṭabarī reported from Ibn Sīrīn, with an authentic chain, that he said: 'I do not see any harm in the sales involving *gharar*.' Ibn Baṭṭāl said: perhaps the forbiddance had not reached him; otherwise, every sale where the item may or may not exist is invalid — as is one that mostly does not exist. But if it usually exists, like fruit at the beginning of ripening, or if it is sold as an incidental inclusion, like a fetus with its mother, then the sale is valid due to the minor *gharar*. This might be what Ibn Sīrīn meant. But Ibn al-Mundhir narrated from him that he said: 'There is no harm in selling a runaway slave if both parties have the same knowledge about it,' which shows he allowed *gharar* sales when safety of property was ensured."[2]

It also stands against the claim of consensus what is narrated from al-Qāḍī Shurayḥ ibn al-Ḥārith al-Kindī that he permitted such sales, as reported by Ibn Abī Shaybah[3].

Similarly, Ibn Ḥazm allowed the sale of a runaway slave — whether his location was known or not — as well as the sale of an escaped animal or bird, if ownership was previously established. He argued that inability to deliver the sold item does not constitute *gharar*[4].

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1 Muṣannaf Ibn Abī Shaybah (20893).
2 Fatḥ al-Bārī (4/344).
3 Muṣannaf Ibn Abī Shaybah (20897).
4 Al-Muḥallā (7/285, Issue 1423).

As for the moderate *gharar*, it lies between the minor *gharar*—which people commonly encounter and overlook due to its inevitability—and the excessive *gharar* previously discussed. Since its boundaries are not decisively defined, it remains a matter of interpretive judgment: some scholars liken it to the minor, tolerable type, while others classify it alongside the excessive, prohibited type.

Al-Nawawī said: "Scholars have differed in certain issues such as the sale of an absent item (*al-'ayn al-ghā'ibah*) or the sale of wheat still in its husk. Their disagreement is based on this very principle — some view the *gharar* as minor and thus inconsequential, while others consider it significant enough to affect validity."[1]

Al-Qarāfī explained: "*Gharar* and vagueness are of three kinds: major, which is unanimously prohibited, like selling birds in the sky; minor, which is unanimously permitted, like selling the foundation of a house or the cotton inside a padded garment; and moderate, over which scholars differ — whether it should be likened to the first or the second. Because it exceeds the minor degree, some attach it to the excessive; and because it falls short of the excessive, others attach it to the minor. This is the cause of disagreement among scholars in many subsidiaries involving *gharar* and *jahālah*."[2]

Al-Bājī likewise stated: "Scholars differ regarding the invalidity of certain contracts due to their disagreement about the degree of *gharar* involved — whether it falls under the excessive type that prevents validity or the minor type that does not."[3]

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[1] Al-Majmūʿ by al-Nawawī (9/311).
[2] Al-Furūq by al-Qarāfī (3/404).
[3] Al-Muntaqā Sharḥ al-Muwaṭṭaʾ (5/41).

As for Ibn Taymiyyah, he offered a practical example of this category and noted the scholarly disagreement about it. He said: "As for a specific item whose type and quantity are known but whose exact kind or description is unknown — such as saying, 'I sell you the garment in my sleeve,' or 'the slave that I own,' and so forth — there is a well-known difference of opinion. This issue is called 'the sale of absent items.' From ʾAḥmad (ibn Ḥanbal), there are three narrations: (1) It is invalid in all cases, similar to al-Shāfiʿī's view in his later opinion; (2) It is valid even without description, with the buyer having the option upon seeing it, like the opinion of Abū Ḥanīfah; (3) The more famous narration — that it is valid with a description but invalid without it, similar to a sale of an unspecified item owed in one's liability, which is the view of Mālik."[1]

Ibn Taymiyyah summarized the approaches of the four schools regarding this moderate level of *gharar* in *al-Qawāʿid al-Nūrāniyyah*, saying: "As for *gharar*, the strictest of scholars regarding it are Abū Ḥanīfah and al-Shāfiʿī. Al-Shāfiʿī, in particular, includes under this term types of transactions that no other jurist includes."[2]

He added: "As for Mālik, his view in this matter is the best among the schools — he permits the sale of such items and all transactions where there is need or where the uncertainty is slight and tolerable in contracts. ʾAḥmad is close to him in this regard."[3]

While presenting the juristic methodologies concerning *gharar*, especially the moderate and overlapping forms between

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1 Al-Qawāʿid al-Nūrāniyyah, p. 171.
2 Ibid. p. 176.
3 Al-Qawāʿid al-Nūrāniyyah, p. 178.

excessiveness and minority, Ibn Taymiyyah mentioned several examples of disagreement:

- The sale of grain or fruit in its husk — prohibited by al-Shāfiʿī, permitted by the majority.
- The requirement of specification in the wages of a laborer, as in other sales, according to al-Shāfiʿī.
- The requirement of specification in the ransom of *khulʿ* divorce, according to al-Shāfiʿī.
- The requirement of specification in the *jizyah* from the People of the Book, according to al-Shāfiʿī.
- Prohibition of *musāqāh* (sharecropping on trees) by the Ḥanafīs[1], while the majority permit it.
- Prohibition of *muzāraʿah* (crop-sharing) by the Ḥanafīs[2], while the majority permit it.
- Prohibition of *shirkah al-mufāwaḍah* (full partnership) by the Shāfiʿīs, while the majority allow it.
- Prohibition of selling vegetable gardens such as cucumbers or melons before harvest by some scholars.
- Prohibition of selling items hidden underground — the majority's view.
- Prohibition of vagueness in the dowry (*mahr*) by the Shāfiʿīs and some Ḥanbalīs.
- Sale of moist dates (*ruṭab*) on trees without cutting —

[1] Abū Yūsuf and Muḥammad opposed the opinion of Imam Abū Ḥanīfah, permitting *musāqāh*. Sharḥ Mukhtaṣar al-Ṭaḥāwī (3/380).

[2] Abū Yūsuf and Muḥammad permitted some cases of *muzāraʿah* and forbade others. Sharḥ Mukhtaṣar al-Ṭaḥāwī (3/415).

forbidden by the majority, permitted by the Mālikīs.

- Sale of *ʾarāyā* (exchange of fresh dates for dried ones) — with differing views: some permit absolutely, some prohibit, and others allow it conditionally.
- Sale of an orchard when the fruit of one tree of its kind has ripened — permitted by the majority among the Mālikīs, Shāfiʿīs, and Ḥanbalīs.
- Sale of fruit that ripens progressively, such as tomatoes and bananas — permitted by some Ḥanafīs, Mālikīs, and some Ḥanbalīs.

Ibn Taymiyyah ultimately considered this category to fall under minor *gharar* that does not invalidate contracts merely due to suspicion of uncertainty. He said: "This opinion — which is supported by the principles of Mālik and ʾAḥmad and partly by others — is the soundest of all. It reflects the dominant practice of the early generations (*salaf*), and people's livelihood cannot function without it. Whoever extends the scope of prohibition by labeling things as *gharar* inevitably ends up compelled to permit what he initially forbade — either abandoning his school's view or resorting to legal trickery. We have observed some people[1] whose reports were transmitted to us, and we have not found anyone who could consistently stick to his school's view forbidding these matters."[2]

He also said in another place regarding the principles of *Sharīʿah*: "When benefit and harm conflict, the greater of the two is given precedence. The forbiddance of *gharar* sales exists

[1] Ibn Taymiyyah refers to some *muqallid* (non-specialist) individuals who need permissibility for their livelihood, as they are compelled to adopt duality so that application opposes theorization.
[2] Al-Qawāʿid al-Nūrāniyyah, p. 188.

because of the risk that harms one of the parties. Yet prohibiting sales that people need causes a greater harm. Thus, one does not repel a minor harm by imposing a greater one; rather, the greater harm is avoided by tolerating the lesser. Hence, when the Prophet (peace and blessings be upon him) forbade *muzābanah* (exchange of uncertain fruit on trees) due to its element of *ribā* and risk, he allowed *ʿarāyā* sales out of necessity — since the harm of prohibition there would have been more severe."[1]

Dr. al-Ṣiddīq al-Ḍarīr sought to disentangle the overlap between moderate and excessive *gharar*. He proposed defining only the latter precisely and considering anything below it as inconsequential in contracts[2] — a view in harmony with Ibn Taymiyyah's reasoning and the applied methodology of the Mālikīs and those who share their approach.

He preferred what al-Bājī said regarding the criterion of "excessive *gharar*": that it is what predominates in a contract to the extent that the contract becomes characterized by it[3].

2. In Terms of Effect

The jurists divided *gharar*—from the perspective of its legal impact—into two categories:

A. Gharar That Affects Contract Validity

This refers to *gharar* that renders a contract invalid or void. This occurs either because the uncertainty is excessive and substantial, or because it exists in the very subject matter of the contract—

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[1] Mujmūʿ al-Fatāwā (20/538-539).

[2] Al-Gharar wa ʾAtharuhū fī al-ʿUqūd, p. 592-593.

[3] Al-Bājī said in *al-Muntaqā*: "*The meaning of a bayʿ al-gharar (sale involving gharar—excessive uncertainty), and Allah knows best, is that in which the gharar becomes abundant and predominant to the extent that the sale itself is described as a sale of gharar.*" *al-Muntaqā* (5/41).

being its primary object—or because it is an element independently intended within the contract. Such *gharar* is typically avoidable and is not justified by need.

Examples include the sale of *ḥaṣāt* (pebble-casting sale), *mulāmasah*, *munābadhah*, the sale of *ḥabl al-ḥabala*, the sale of *muḍāmin* and *mulāqiḥ*, *muzābanah*, *muḥāqalah*, selling what one does not possess, and selling fruit before its initial appearance. These examples all appear explicitly in the Sunnah.

We have previously discussed the meaning of excessive *gharar*. As for our statement: "because it is in the locus of the contract", this means that *gharar* exists in the essential subject of the transaction itself. An example is selling a tree's fruit alone before its ripening; in such a case, the contracted item is *gharar* in essence, which renders the contract invalid. However, when the tree itself is sold—along with its fruit as a secondary attachment—the primary contracted item is the tree, and the sale is therefore valid.

Our phrase "that it is intended by itself" means that the object of the contract is itself unknown or risky. Examples include selling fish in open water or birds in open air; the transaction does not pertain to a specific fish or specific bird as a known, deliverable item.

B. Gharar That Does Not Affect Contract Validity

This is because the uncertainty is either minimal, secondary, or unavoidable.

Examples include the padding inside a cloak, the foundation of a house, the fee for entering a bathhouse, paying a water-carrier for measured sips, renting a house by the month despite months differing in number, selling a pregnant animal along with its

unborn, or purchasing a sack of wheat without inspecting every grain. The same applies to buying oil in a barrel, or meat that inevitably contains traces of blood or fat, and similar cases.

Ruling on This Type of *Gharar*

The jurists unanimously agreed that non-impactful *gharar* does not invalidate the contract nor does it incur liability, because such *gharar* is either trivial, unavoidable, or merely a secondary element that is legally overlooked. They stated: "That which is tolerated in secondary matters is not tolerated in primary matters."[1]

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[1] The textual expressions of legal maxims conveying this meaning have taken various forms. Among them, for example:

- *"What may be established implicitly may not be established intentionally." Tartīb al-Laʾālī* (2/889).
- *"The principle is that something may be established incidentally and in ruling, even if it is invalid when intended." Uṣūl al-Karkhī* (p. 166).
- *"What is not established independently may be established as a subsidiary matter." al-Ashbāh wa-al-Naẓāʾir* by Ibn al-Wakīl (p. 378).
- *"What is permissible as a subsidiary may be impermissible when independent." al-Qawāʿid* by al-Maqarrī (2/432).
- *"Every object that is intended in itself: ignorance of it invalidates the sale; unlike what is not intended." al-Kulliyyāt al-Fiqhiyyah* by al-Maqarrī (p. 296), Universal Rule no. 275.
- *"What is tolerated in subsidiary matters is not tolerated when it is the main object." al-Manthūr fī al-Qawāʿid al-Fiqhiyyah* by Badr al-Dīn al-Zarkashī (3/376).
- *"What is not established independently may be established as a subsidiary." Taqrīr al-Qawāʿid* by Ibn Rajab (3/15), Rules 133 and 164.
- *"Concessions are granted in subsidiary matters that are not granted elsewhere." al-Ashbāh wa-al-Naẓāʾir* by al-Suyūṭī (1/120).

The author of *al-Farāʾid al-Bahiyyah* expressed this meaning in verse form in his *Nazhmu al-Qawāʿid al-Fiqhiyyah*:

"In the subsidiary matters of things they have permitted
That which, in other than them, would not be permitted."

As for impactful *gharar*, they set specific conditions for it to affect the contract with nullity or corruption:

Conditions for Impactful *Gharar*

1. It must be excessive, as explained earlier.

2. It must exist in the primary subject matter of the contract. For example, selling unripe fruit—the very item sold is inherently subject to risk, as it may mature or it may spoil.

3. The *gharar* must be intended in itself, such as selling fish in open water or birds in open air.

4. The contract must not be justified by need. If avoiding the contract imposes no hardship and the uncertainty can be prevented, then *gharar* is not tolerated.

5. It must occur within commutative contracts, because gratuitous contracts (donations, gifts) are treated more leniently.

Ibn Rushd states: "The reason for their disagreement over whether this constitutes impactful *gharar* in sales returns to their consensus that *gharar* is divided into these two categories. Non-impactful *gharar* is that which is minimal, necessary, or combines both elements."[1]

Ibn al-Humām says: "Their statement that *gharar* is lesser in spot-*salam* contracts compared to deferred ones is of no benefit after what we have clarified—that its permissibility aims to fulfill the need of one who requires immediate funds but cannot provide the commodity at once. Thus, a degree of *gharar* may be

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Matn al-Farāʾid al-Bahiyyah (p. 66), "The Chapter: The Subsidiary Follows the Principal."

[1] Bidāyat al-Mujtahid (3/176).

tolerated due to such need."[1]

Al-Nawawī states: "The default principle (*al-'aṣl*) is that the sale of *gharar* is invalid due to this *ḥadīth*[2]. The intended meaning is the type of manifest *gharar* that can be avoided. As for cases driven by need and in which avoidance is difficult—such as a building's foundation or purchasing a pregnant animal—these are valid by consensus."[3]

He summarizes the ruling elsewhere: "The pivot of invalidity due to *gharar* versus validity despite its presence depends on what has been explained: if need calls for tolerating the *gharar* and avoidance is difficult, or the *gharar* is insignificant, the sale is permitted; otherwise it is not."[4]

Ibn Taymiyyah says: "The harm caused by *gharar* is less than that caused by *ribā*; therefore, it is permitted when needed."[5] He also says: "When people needed the sale of *'arāyā*, it was permitted based on estimation."[6]

3. In Terms of Subject Matter

We noted earlier that contracts fall into three categories: Purely commutative contracts, such as sales, purely gratuitous contracts, such as gifts; and hybrid contracts combining both elements, such as loans.

In commutative contracts, there are two components: the sold item and the price. In gratuitous contracts, the price is absent, leaving only the transferred property. As for hybrid contracts,

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1 Fatḥ al-Qadīr (7/86).
2 The *ḥadīth* forbidding sales that involve *gharar*.
3 Al-Majmūʿ by al-Nawawī (9/311).
4 Ibid.
5 Al-Qawāʿid al-Nūrāniyyah, p. 172.
6 Ibid.

they begin as a gratuitous act and end with compensation.

Jurists agreed that *gharar* may affect any contract that involves consideration (*ʿiwaḍ*). However, they differed about whether *gharar* affects gratuitous contracts.

Al-Qarāfī discussed this issue in *al-Furūq* under the chapter: "The maxim regarding the transactions affected by vagueness and *gharar*, and the maxim regarding which are not affected by them."[1]

The summary of al-Qarāfī's position is as follows: Some jurists held that *gharar* affects every type of contract—commutative or gratuitous—and he attributed this view to al-Shāfiʿī. Others distinguished between the two, holding that *gharar* affects commutative contracts but not gratuitous ones; this was the view of Mālik. When a contract contains both aspects—such as marriage, which combines generosity with exchange—Mālik allowed minor *gharar* but not excessive *gharar*[2].

My Commentary on al-Qarāfī's Introduction

1. Attributing absolute prohibition of *gharar* in gratuitous contracts to the Shāfiʿīs is overstated. The Shāfiʿīs permitted certain forms of uncertainty in gratuitous acts. For example, they allowed a bequest involving an unknown item, such as bequeathing "some of his books," or fruit from his garden, or "a sheep" from his flock without specifying which one.

Ibn Taymiyyah said: "If a person makes a bequest to someone conditional upon an action, or makes a bequest of something described in general terms, both types of bequests are valid according to the consensus of the considerable Imams. They do

[1] Al-Furūq by al-Qarāfī (1/347).
[2] Ibid. (1/348-349).

not dispute the permissibility of bequests involving unknown items."[1]

This is because they compared bequests to inheritance, and inheritance is not invalidated by uncertainty[2].

2. The view that *gharar* affects gratuitous contracts was not exclusive to the Shāfiʿīs. It also appears in positions within the Ḥanafī and Ḥanbalī schools. Examples include:

The Issue of Gifting an Unknown Item

Most scholars—including the Ḥanafīs, Shāfiʿīs, Ḥanbalīs, and Ẓāhirīs—prohibited it.

Al-ʿAlāʾ al-Samarqandī said: "If a man gifts to another what is in the womb of his slave girl or his livestock, or what is in their udders, or he gifts butter before it is churned, oil before the sesame is pressed, or flour in the wheat, or allows him to take a handful at birth or extraction, such a gift is invalid. This is because some of these things are nonexistent at the time of contract, or cannot be delivered due to their nature, or they are unknown—making them unsuitable for sale. Therefore, the contract is invalid, not suspended."[3]

Al-Nawawī said in *al-Rawḍah*: "The gift of an unknown item, a runaway slave, or a lost animal does not validly transfer."[4]

The Ḥanbalīs also prohibited it when the unknown can reasonably be known—such as saying, "I gift you one of my

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[1] Al-Fatāwā al-Kubrā (4/378).

[2] Al-Baḥr al-Rāʾiq (8/511), al-Majmūʿ by al-Nawawī (15/418), and al-Mughnī by Ibn Qudāmah (8/216). Look the statements of the Shāfiʿīs in al-Ḥāwī by al-Māwardī (7/538) and al-Wasīṭ by al-Ghazālī (4/416).

[3] Tuḥfat al-Fuqahāʾ (3/163). Look Ḥāshiyat Ibn ʿAbdī (8/440).

[4] Rawḍat al-Ṭālibīn (5/373). Look al-Ḥāwī (5/273).

sheep"—but permitted it when the unknown cannot realistically be identified, such as when the *māl al-siʿāyah* (earning of livestock zakāh) or one's oil becomes mixed before measurement[1].

Ibn Ḥazm wrote: "No gift is valid except for an existing, known item whose amount, qualities, and value are specified. Otherwise, it is void and rejected."[2]

The Issue of Gifting Undivided Joint Property (*al-Mushāʿ*) That Can Be Divided

Most jurists—including the Shāfiʿīs—permitted it. The Ḥanafīs prohibited it.

Al-ʿAlāʾ al-Samarqandī said: "One of the conditions for a valid gift is that the item be divided if it is capable of division. If it is indivisible[3], the gift is valid whether the recipient is a co-owner or a stranger.

Al-Shāfiʿī stated: The gift of an undivided property is valid .. the evidence for this is what was related to us that the Companions held that "a gift is only permitted when delivered and possessed," and possession here involves division by consensus."[4]

Ibn Qudāmah said: "The gift of an undivided share is valid. This was the view of Mālik and al-Shāfiʿī. Al-Shāfiʿī held that it is valid whether it can be divided or not. The Ḥanafīs held that

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[1] Al-Mughnī by Ibn Qudāmah (8/249), and al-ʿInṣāf by al-Mardāwī (7/132).

[2] Al-Muḥallā (8/56).

[3] Its example is the main gate of the house, for instance, or the well without the water, for the water itself is subject to *muhāyah* (alternating use) according to those who permit it.

[4] Tuḥfat al-Fuqahāʾ (3/161-162).

gifting a divisible undivided property is invalid."[1]

Ibn Ḥazm stated: "The gifting of a specified share—such as a third or a quarter—of joint property is valid for both co-owner and non-co-owner, for rich and poor alike, whether the item is divisible or not. This is the view of ʿUthmān al-Battī, Maʿmar, Mālik, al-Shāfiʿī, ʾAḥmad, ʾIsḥāq, Abū Thawr, Abū Sulaymān, and their companions, as well as ʾIbrāhīm al-Nakhaʿī. Abū Ḥanīfah, however, said: The gift of a joint property is not permissible when the property is divisible."[2]

The Issue of an Ambiguous *Waqf* (Endowment)

This occurs when a person owns multiple identifiable properties and says: "I endow one of my houses." This contains uncertainty because *waqf* requires the property to be legally restricted for its designated use, and ambiguity prevents that.

Most scholars—including the Ḥanafīs[3], Shāfiʿīs[4], Ḥanbalīs[5], and Ẓāhirīs—prohibited it. The Mālikīs[6] permitted it, along with some Shāfiʿīs[7]. Ibn Taymiyyah and some Ḥanbalīs[8] also preferred its permissibility.

Thus, we may say that the view that *gharar* influences gratuitous contracts is the position of the majority of jurists, although they differed regarding the types of *gharar* that affect them and the cases in which *gharar* is overlooked—details that are only established through comprehensive survey.

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1 Al-Mughnī by Ibn Qudāmah (8/247).
2 Al-Muḥallā (8/106).
3 Al-Baḥr al-Rāʾiq (5/203), and Ḥāshiyat Ibn ʿAbdī (4/343).
4 Mughnī al-Muḥtāj (2/378). Look al-Ḥāwī by al-Māwardī (7/518).
5 Kashshāf al-Qināʿ (4/244).
6 Al-Bahjah fī Sharḥ al-Tuḥfa by al-Tusūlī (2/397) et seq.
7 Rawḍāt al-Ṭālibīn (5/315).
8 Al-ʾInṣāf by al-Mardāwī (7/9).

These are the most significant classifications of *gharar*. Other sub-classifications exist, built upon the main categories—for example, dividing *gharar* into apparent and hidden forms, into essential and incidental forms, or distinguishing between present and future uncertainty, or *gharar* in tangible property versus *gharar* in debt. The correct view is that all such subdivisions ultimately reduce to the principal categories we have already discussed.

Second: Categories of *Gharar* (Uncertainty)

The jurists mentioned *gharar* in several principal chapters within commercial transactions, and we will mention them here briefly:

A) Two sales in one sale

This is based on the *ḥadīth* of the Prophet Muḥammad (peace and blessings be upon him), narrated by Abu Hurayrah: "The Messenger of Allāh (peace and blessings be upon him) forbade two sales in one sale."[1]

The jurists offered various interpretations of the meaning of "two sales in one sale," the most important of which are:

- That a single item is sold for two different prices—one for immediate payment and one for deferred payment—without the two parties separating upon a known price.
- That one sells a commodity and stipulates in the contract that the buyer sell him another commodity; for example: "I sell you my house on the condition that you sell me your land."
- That one sells a commodity while stipulating an exchange transaction at a rate he determines, such as: "I sell you this house provided that I take from you the dinar for such-and-

[1] Musnad ʾAḥmad (9584), al-Tirmidhī (1231), and al-Nasāʾī (4646).

such," where the sale is one contract and the exchange is another.

Other interpretations also appear in the jurisprudential works, most of which revolve around either the possibility of *gharar* or the possibility of *ribā*[1].

B) Selling by throwing pebbles (*Bayʿ al-Ḥaṣāh*)

This is based on the *ḥadīth* of Abu Hurayrah in *Ṣaḥīḥ Muslim*: "The Messenger of Allāh (peace and blessings be upon him) forbade the sale by throwing pebbles and the sale involving *gharar*."[2]

The forms of *Bayʿ al-Ḥaṣāh* were mentioned by Ibn Ḥajar in *Fatḥ al-Bārī*, where he said: "Scholars differed in interpreting the sale by pebbles. It was said: it is when one says, 'I sell you whichever of these garments the pebble lands on,' and then he throws a pebble; or: 'I sell you from this land up to the point where the pebble lands.' It was also said: it is when the buyer has the option until the pebble is thrown. The third: that the act of throwing itself constitutes the sale."[3]

Al-Nawawī said in his commentary on *Ṣaḥīḥ Muslim*: "As for the sale by pebbles, it has three interpretations:

First: to say, 'I sell you whichever of these garments the pebble I throw lands upon,' or 'I sell you from this land up to where this pebble reaches.'

Second: to say, 'I sell you on the condition that you have the option until I throw this pebble.'

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[1] Nayl al-ʾAwṭār by al-Shawkānī (5/180) et seq.
[2] Muslim (1543).
[3] Fatḥ al-Bārī (4/360).

Third: that the throwing itself constitutes the sale; for example: 'If I hit this garment with the pebble, it becomes sold to you for such-and-such.'"[1]

The Ḥanafis gave it two forms:

First: The two parties negotiate the price, then when the buyer places a pebble upon it, the sale becomes binding[2].

Second: That he throws a pebble upon a group of garments; whichever garment it lands on becomes the sold item without prior viewing or deliberation, and without any option afterward, provided that they had agreed beforehand on the price[3].

Similar positions are reported from the Mālikīs[4] and Ḥanbalīs[5].

The predominant reasoning among the jurists is the presence of *gharar*, *jahālah*, and risk arising from non-specification.

C) Other similar sales

This includes the *ḥadīth* of ʾAnas ibn Mālik: "The Prophet (peace and blessings be upon him) forbade *muḥāqalah*, *mukhāḍarah*, *mulāmasah*, *munābadhah*, and *muzābanah*."[6]

Muḥāqalah: selling grain still in its ears for a measured amount of threshed grain.

Mukhāḍarah: selling crops while they are still green, before their goodness becomes apparent.

Mulāmasah: buying a garment from a group of garments without

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1 Sharḥ Muslim by al-Nawawī (10/121).
2 Kashshāf Iṣṭilāḥāt al-Funūn (1/355).
3 Fatḥ al-Qadīr (6/416-417).
4 Bidāyat al-Mujtahid (3/167).
5 Al-Mughnī by Ibn Qudāmah (6/298).
6 Ṣaḥīḥ al-Bukhārī (2207).

seeing it, merely by touching it, after agreeing on the price.

Munābadhah: the buyer says to the seller, "Whichever garment you throw to me, I will take it for such-and-such," without knowing what will be thrown.

Muzābanah: selling fruit on the tree in exchange for its estimated weight after harvest.

The *gharar* and *jahālah* in all these types are evident.

D) Selling the non-existent (*Bayʿ al-Maʿdūm*)

This is based on the *ḥadīth* of Jābir ibn ʿAbdullāh in *Ṣaḥīḥ Muslim*: "The Messenger of Allāh (peace and blessings be upon him) forbade *muḥāqalah*, *muzābanah*, *muʿāwamah*, and *mukhābarah*. One of them said: 'The sale of years (*bayʿ al-sinīn*) is *muʿāwamah*.' And he forbade *thunyā* and permitted *ʿarāyā*."[1]

Sale of years (*muʿāwamah*): selling the fruit of a tree for two, three, or more years[2]. This fruit is non-existent at the time of contract, and it is unknown whether it will come to exist, making it more severely uncertain than selling the absent or the unknown. The absent or unknown item has some form of existence, whereas the non-existent has none.

Al-Nawawī reported consensus on the prohibition of selling the completely non-existent[3].

E) *Bayʿ Ḥabl al-Ḥabalah*

This is based on the *ḥadīth* of ʿAbdullāh ibn ʿUmar in *Ṣaḥīḥ al-Bukhārī* and *Muslim*: "The Messenger of Allāh (peace and

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[1] Ṣaḥīḥ Muslim (1536).

[2] Sharḥ al-Nawawī ʿalā Muslim (10/193) and Maʿālim al-Sunan by al-Khaṭṭābī (3/97).

[3] Al-Majmūʿ by al-Nawawī (9/258).

blessings be upon him) forbade *Ḥabl al-Ḥabalah*."[1]

Ḥabl al-Ḥabalah linguistically refers to the unborn offspring of a pregnant animal. The first is called *ḥabalah* because it is female, and when it gives birth, its offspring is *ḥabl*, used for camels and other animals[2].

The jurists differed in interpreting "*Ḥabl al-Ḥabalah*," though the reason for forbiddance in all interpretations is *gharar* and *jahālah*.

The Mālikīs and Shāfiʿīs interpreted it as selling something for a deferred price until the she-camel gives birth and her offspring also gives birth[3].

The Ḥanafīs and Ḥanbalīs interpreted it as selling the produced item of a production—that is, selling what the camel or animal will give birth to before it even exists[4].

Ibn ʿAbd al-Barr[5], Ibn Rushd[6], Ibn al-Mundhir[7], and al-Nawawī[8] all transmitted consensus on its prohibition.

F) Sale of *Maḍāmīn* (embryos of females), *Malāqīh* (semen of males)

Maḍāmīn refers to what is in the wombs of female animals, and *Malāqīḥ* refers to what is in the loins of male animals.

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1 Al-Bukhārī (2143) in his wording, and Muslim (1514).
2 Tahdhīb al-Lughah (5/53) and al-Ṣiḥāḥ (4/1665).
3 Al-Tāj wa al-Iklīl by al-Mawwāq (6/226) and al-Majmūʿ by al-Nawawī (9/341).
4 Tabyīn al-Ḥaqāʾiq (4/46) and Kashshāf al-Qināʿ (3/166).
5 Al-Istidhkār (6/421).
6 Bidāyat al-Mujtahid (3/168).
7 Al-ʾIjmāʿ, p. 103, Issue 473.
8 Al-Majmūʿ by al-Nawawī (9/341).

This is based on the *ḥadīth* of Abu Hurayrah: "The Prophet (peace and blessings be upon him) forbade the sale of *maḍāmīn* and *malāqīḥ*."[1]

The *gharar* here is clear, for it is not known whether birth will occur or not, and if the offspring is born, in what condition it will be—healthy or sick, male or female—all of which affect its value.

Consensus on its prohibition has been transmitted. Ibn al-Mundhir said: "They unanimously agreed that the sale of *maḍāmīn* and *malāqīḥ* is not permissible."[2]
Ibn ʿAbd al-Barr said: "The scholars unanimously agreed that the sale of what is in the wombs of females is not permissible, because it involves *gharar*, risk, and vagueness."[3]

G) Sale of fruits before their ripeness, while leaving them on the tree

This is based on the *ḥadīth* of ʾAnas in *Ṣaḥīḥ al-Bukhārī* and *Muslim*: "The Messenger of Allāh (peace and blessings be upon him) forbade selling fruit until it shows signs of ripeness. They asked, 'What is ripeness?' He said: 'That it turns red.' Then he said: 'If Allāh prevents the fruit (from maturing), how can you lawfully take your brother's wealth?'"[4]

The prohibition of selling fruit before its ripeness while leaving it

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[1] It was narrated by al-Marwazī in *Kitāb al-Sunnah*, no. (210), and Ibn Ḥajar attributed it in *Bulūgh al-Marām* (827) to al-Bazzār. Its chain contains some discussion, yet it is supported by authentic reports found in similar narrations. Mālik also narrated it in *al-Muwaṭṭa'* (1334), in the narration of Yaḥyā, from Sa'īd ibn al-Musayyib.
[2] Al-ʾIshrāf 6/17, and al-ʾIjmāʿ, p. 103, Issue 474.
[3] Al-Istidhkār (6/456).
[4] Al-Bukhārī (2208), and Muslim (1555) in his wording.

on the tree is the position of the four madhhabs[1]. Ibn al-ʿArabī reported consensus when he said: "As for selling it with the condition of leaving it (unharvested), it is invalid by consensus, based on the principle of *gharar* and *jahālah*."[2]

Ibn Qudāmah said: "If he purchases it with the condition that it be left (on the tree), then the sale is invalid by consensus."[3]

Al-Nawawī said: "If he sells it with the condition of leaving it (on the tree), the sale is invalid by consensus."[4]

Ibn Taymiyyah said: "Selling crops with the condition of leaving them (unharvested) is not permissible by agreement of the scholars."[5]

However, the correct view is that this reflects the view of the majority or the dominant number of scholars, for permission was transmitted from Abū al-Ḥasan al-Lakhmī of the Mālikīs[6] and Yazīd ibn Abī Ḥabīb from the generation of the early successors[7].

Conclusion

These are the most important contracts and sales upon which the jurists concurred in prohibiting, with the reason for prohibition returning to *gharar* (uncertainty), *jahālah* (vagueness), and *mukhāṭarah* (risk), and consequently the likelihood of dispute. We have reported consensus in most of them, if not all, and even where there is disagreement, it is considered an anomalous position.

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1 Al-Mabsūṭ by al-Sarakhsī (12/195), Ḥāshiyat al-Dusūqī ʿalā al-Sharḥ al-Kabīr (3/176), Rawḍat al-Ṭālibīn (3/559) and al-ʾInṣāf by al-Mardāwī (5/65).
2 Al-Masālik fī Sharḥ Muwaṭṭaʾ Mālik (6/73).
3 Al-Mughnī (6/148).
4 Sharḥ al-Nawawī ʿalā Muslim (10/181).
5 Majmūʿ al-Fatāwā (29/477).
6 Bidāyat al-Mujtahid (3/168).
7 Fatḥ al-Bārī (4/394).

Nevertheless, this does not mean that the jurists unanimously invalidated every contract containing noticeable or considerable *gharar*. Many transactions that involve some degree of *gharar* were permitted by certain jurists due to various considerations, which we will discuss in the following section.

Section Four
Contracts Containing Possible *Gharar* over Which the Jurists Differed

We previously referred to what Ibn Taymiyyah established regarding the effect of *gharar* on contracts, and how this resulted in a divergence in the methodologies of the jurists. Ibn Taymiyyah stated that the Shāfiʿīs were the most restrictive and prohibitive under the pretext of *gharar*, whereas the Mālikīs were characterized by greater facilitation, and the Ḥanafīs and Ḥanbalīs took a middle position—though the Ḥanbalīs tended toward facilitation just as the Mālikīs did.

In this section, we present practical examples showing how this methodological divergence affected the rulings on some contracts that involve *gharar*.

Sale Suspended Upon a Condition

What we mean here by "condition" is a condition not prohibited by the *sharīʿah*—i.e., conditions that are permissible in their essence. An example is to say: "I sell this to you if my son succeeds (in his exams)" or "if my father agrees."

This type of sale is invalid according to the majority, though they differ regarding the specific conditions. The Ḥanafīs, for example, distinguish between a condition introduced with *"in"* (if), which renders the sale void, and a condition introduced with *"ʿalā"* (on condition that), which they permit if it harmonizes with the contract.

Al-Zaylaʿī said: "Suspending (the contract) upon a condition is not permissible at all if the condition is introduced with *'in'*, as when one says: 'I sold (it) to you if such-and-such occurs.' The

sale becomes void thereby, whether the condition is beneficial or harmful."[1]

He excepted one scenario: suspending upon the approval of a third party, because that constitutes assigning an option to an external person, which is permissible[2].

Regarding the condition introduced with *"'alā"*, he said: "If the condition is introduced with *'alā'*, and the condition is something that the contract requires, or is in harmony with it, or is customary—such as stipulating delivery of the sold item, or the price, or a delay, or an option—then the sale is not invalidated and the condition is permissible; likewise, if he buys a sandal on condition that the seller stitches it.

But if the condition is neither required by the contract, nor in harmony with it, nor customary—then if it contains a benefit for those entitled (to the contract), the sale is corrupt; otherwise, it is not."[3]

As for Ibn Rushd of the Mālikī school, he said: "Chapter Four: On conditional sales and *thunyā*… The corruption occurring in these sales is due to corruption arising from *gharar*."[4]

The Mālikīs provided detailed distinctions regarding conditions, summarized as follows[5]:

1. A condition concerning something after the transfer of ownership—such as selling a slave while stipulating that his *walā'* (loyalty) return to the seller if he is freed. The

[1] Tabyīn al-Ḥaqā'iq (4/131).
[2] Ibid. (4/131).
[3] Tabyīn al-Ḥaqā'iq (4/131).
[4] Bidāyat al-Mujtahid (3/177).
[5] Ibid. (3/179). Also, look Mawāhib al-Jalīl (3/246), Sharḥ al-Kharshī ʿalā Mukhtaṣar Khalīl (5/80) and Sharḥ al-Zurqānī ʿalā Khalīl (5/8).

Mālikīs held: the contract is valid but the condition is void.

2. A condition concerning the period of ownership—such as selling a house while stipulating that the seller may reside in it for a month or two. The Mālikīs allowed this based on the well-known report of Jābir.

3. A condition prohibiting a general or specific form of disposal—such as selling a car while stipulating that the buyer may not ride it or resell it. They deemed this invalid.

4. A condition of repurchase—such as selling an item while saying: "Whenever I bring you the price, you must return the item to me for the same price." The Mālikīs ruled this invalid as well, because the transaction oscillates between being a sale and a loan.

The Shāfiʿīs rejected such suspended sales outright. Al-Nawawī said: "It is not permissible to suspend a sale upon a future condition—such as saying: 'If it rains, I sell it to you,' or 'when the pilgrims arrive,' or 'when Zayd arrives,' or 'when the sun sets,' and the like. This contract is void."[1]

Al-Baghawī said: "If he sells his house and stipulates the approval of the neighbors or of a particular person, then it is corrupt because it involves *gharar*—he does not know whether that person will approve or not."[2]

As for the Ḥanbalīs, they narrated two positions. Ibn Mufliḥ said: "The second category of conditions: a corrupt condition whose stipulation is prohibited—such as suspending a sale upon a condition: 'I sold to you if you bring me such-and-such,' or 'if Zayd approves.' Both are invalid. Yet another report from

[1] Al-Majmūʿ by al-Nawawī (9/341).
[2] Sharḥ al-Sunnah (8/148).

(ʾAḥmad) indicates their validity."[1]

Those who prohibited such sales argued that the condition constitutes *gharar*: it may occur or may not occur, and the sale hinges upon its fulfillment or non-fulfillment, which is a form of vagueness.

The second view holds that a sale suspended upon a condition is valid, enforceable, and sound. The Mālikīs held this view in the context of *ʾiqālah* (mutual rescission). For example, if someone purchases merchandise, livestock, or property, and then the seller requests *ʾiqālah*, and the buyer fears the seller may sell it to someone else, so the seller says: "If (or when) I sell it to someone else, it shall be yours for the first price or for the price I sell it for." If the buyer accepts and the seller later sells it to someone else—within a short period (like a day or so)—then the buyer has priority[2].

A second report from Imam ʾAḥmad[3] also indicates permissibility, and this was the choice of Ibn Taymiyyah and Ibn al-Qayyim.

Ibn Taymiyyah said: "If the seller says, 'I sold it to you if you bring me such-and-such,' or 'if Zayd approves,' then the sale and the condition are valid. This is one of the two reports from ʾAḥmad… If he sells a female slave and stipulates upon the buyer that if he sells her, then the seller has greater right to her for the same price, the sale and the condition are valid. About twenty texts from Ibn Masʿūd and from ʾAḥmad have been

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[1] Al-Furūʿ and Taṣḥīḥ al-Furūʿ by Ibn Mufliḥ (6/190).
[2] Sharḥ al-Zurqānī ʿalā Khalīl (5/8).
[3] Al-Furūʿ and Taṣḥīḥ al-Furūʿ by Ibn Mufliḥ (6/190), and al-ʾInṣāf by al-Mardāwī (4/356).

transmitted affirming the validity of conditions."[1]

He refuted those who claimed that this type of contract is void due to *gharar* by arguing that *gharar* relates to the sold item, not the sale contract itself. He said: "As for the sale itself, it is not *gharar*; rather, it is an effective contract and is not called *gharar*—whether it is immediate or suspended upon a condition. A vow suspended upon a condition is not called *gharar*, nor is the manumission of a slave suspended upon a condition called *gharar*."[2]

There are practical examples of contracts suspended upon a future condition, such as:

- A sales contract suspended on obtaining approval from an official authority: for example, it may state, "This sale is concluded on the condition that the buyer obtains approval from the City Authority."
- An employment contract suspended on passing an examination or a security screening

Selling an item whose type (*naw'*) is unknown

Jurists distinguish between three kinds of vagueness (*jahl*) in the object of sale: unknown genus (*jins*), unknown type (*naw'*), and unknown attribute (*ṣifah*).

Genus (*jins*) is the general name that applies to many individuals differing in legal rulings[3].

Type (*naw'*) is the general name that applies to many individuals

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1 Al-Fatāwā al-Kubrā (5/389).
2 Naẓariyyat al-ʿAqd, p. 227.
3 Al-Baḥr al-Rāʾiq (3/176).

sharing the same legal rulings[1].

Attribute (*ṣifah*) is a necessary quality of the described object which it is recognized by[2].

Thus, "animal" is a genus; "lion" is a type within that broad genus; and "predatory" is an attribute of the type, as in the phrase: "The lion is a predatory animal."

Vagueness may occur in any of these levels. A person may say, "I sell you something," without specifying the essence of the item — this involves vagueness of the genus, the type, and the attribute.

Or he may say, "I sell you an animal," specifying the genus but not the type or attribute. Or he may say, "I sell you a cow," but without specifying its characteristics — large or small, healthy or sick, fat or lean.

The four madhhabs agree that selling an item with an unknown genus is invalid, such as saying: "I sell you something for ten," because this is excessive vagueness[3].

As for selling an item of unknown type, jurists differed regarding its validity:

First opinion: Preventing the sale of an item whose type is unknown.
This is the view of some Mālikīs[4], some Shāfiʿīs[1], and a reported

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[1] Ibid. (3/177).
[2] Al-Taʿrīfāt by al-Jurjānī, p. 133.
[3] Fatḥ al-Qadīr by Ibn al-Humām (6/334), Ḥāshiyat Ibn ʿAbdīn (7/297), al-Qawānīn al-Fiqhiyyah by Ibn Juzay al-Kalbī, p. 405, al-Majmūʿ by al-Nawawī (9/353), al-Mubdiʿ Sharḥ al-Muqniʿ (4/24), and al-Muhadhdhab by al-Shīrāzī (3/34).
[4] Al-Muqaddimāt al-Mumahhidāt (2/556). The Mālikīs stipulated for its validity the occurrence of previous viewing.

view among the Ḥanbalīs[2]. They consider such a sale a form of *gharar*.

Al-Buhūtī said: "The sale is not valid if he says: 'I sold you this mule,' then it turns out to be a horse, and the like."[3]

Al-Ruḥaybānī said: "The sale is not valid if he says: 'I sold you this mule,' then it turns out to be a horse; or he says: 'I sold you this oil,' then it turns out to be sesame oil; or he says: 'I sold you this cotton garment,' then it turns out to be linen."[4]

Second opinion:

The sale of an item with unknown type is valid, but the buyer is given the option of rescission (*khiyār*).

This is the view of the Ḥanafīs[5], some Mālikīs[6], and some Shāfiʿīs[7].

Ibn al-Humām said: "The general wording of the law indicates the permissibility of the sale, whether the genus of the object sold is specified or not, and whether he points to its location or to the item itself—whether present and uncovered or not. In fact, most of the scholars stated that the general response implies permissibility according to him."[8]

In *al-Fatāwā al-Hindiyyah* it is stated: "As for a man saying: 'I sold to you what is in my sleeve,' or: 'what is in my hand of something,' is this sale valid? It is not mentioned in *al-Mabsūṭ*.

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1 Al-Majmūʿ by al-Nawawī (9/286-287).
2 Al-Fatāwā al-Kubrā by Ibn Taymiyyah (4/18).
3 Sharḥ Muntā al-ʾIrādāt by al-Buhūtī (2/12).
4 Maṭālib ʾUlī al-Nuhā (3/27).
5 Fatḥ al-Qadīr (6/334), and Ḥāshiyat Ibn ʿAbdīn (7/297).
6 Jawāhir al-ʾIklīl (2/9).
7 Al-Majmūʿ by al-Nawawī (9/254).
8 Fatḥ al-Qadīr (6/334).

Most of our scholars said: the general response indicates that it is valid according to us."[1]

Someone might say: These jurists allow the buyer the recission of inspection (*khiyār al-ru'yah*), which reduces *gharar* and vagueness.

I respond: This is true in its result, but it does not change the fact that they still considered the contract valid at the moment of formation despite the existence of *gharar*. The vagueness is present at the initiation of the contract. This is one point.

The second point is that the recission of inspection removes the vagueness for the buyer, but does not remove it for the seller, because the item may be rejected — leaving the seller exposed to risk.

A similar disagreement to that regarding selling an item of unknown type also occurred concerning the sale of an item with unknown attributes.
The Mālikīs, Shāfiʿīs, and Ḥanbalīs prohibited it, while the Ḥanafīs, some Mālikīs, some Shāfiʿīs, and a narration in the Ḥanbalī school permitted it — again with the condition of establishing the recission of inspection[2].

There are practical examples of this type of sale, such as:

- Selling sealed boxes of clothing in auctions.
- Selling a set of agricultural or industrial tools as a bulk lot.

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[1] Al-Fatāwā al-Hindiyyah (3/57).
[2] Refer to Badāʾiʿ al-Ṣanāʾiʿ (5/207), Jawāhir al-ʾIklīl (2/9), al-Majmūʿ by al-Nawawī (9/354), al-Mughnī by Ibn Qudāmah (6/301-302), Ḥāshiyat Ibn ʿAbdīn (77/297-299), al-Baḥr al-Rāʾiq (5/297), and al-Muqaddimāt al-Mumahhidāt (2/551).

Selling the "Stud-Service" of a Male Animal (ʿ*Asb al-Faḥl*)

The term *ʿasb* is pronounced with an open *ʿayn* and a silent *sīn*, and *faḥl* is pronounced with an open *fā'* and a silent *ḥā'*. It is a genitive construction. *Faḥl* refers to the male of any species of animal[1].

The expression *ʿasb al-faḥl* refers to the male's semen intended for impregnating the female — it is a figurative reference to the mating process itself.

Jurists differed regarding the permissibility of charging a fee for this act. The reason for disagreement is that it is an act that is non-quantifiable, unknown, and not fully deliverable[2].

There are several *'aḥādīth* on this subject whose apparent meaning indicates forbiddance, including:

- The narration recorded by al-Bukhārī and others from ʿAbdullāh ibn ʿUmar (may Allāh be pleased with them both), that: "The Prophet (peace and blessings be upon him) forbade the price of the stud-service of a male animal."[3]
- The narration recorded by Muslim from Jābir ibn ʿAbdullāh (may Allāh be pleased with them both), that: "The Messenger of Allāh (peace and blessings be upon him) forbade the selling of the mating of the camel."[4]

The *gharar* in this matter arises from several factors:

- The process depends on the desire of the male, which is a

[1] Nayl al-ʾAwṭār (5/174). Look Tahdhīb al-Lughah (2/68) and al-Miṣbāḥ al-Munīr under entry "*ʿasab*".
[2] Nayl al-ʾAwṭār (5/174).
[3] Al-Bukhārī (2284).
[4] Muslim (1565).

psychological matter and unknown.

- It depends on the ability of the male, which varies from case to case.
- The true objective is the fertilizing semen that produces offspring — and this is entirely unknown.

First Opinion: The majority view which states that selling *'asb al-faḥl* is forbidden. This is the position of the Ḥanafīs[1], the Shāfiʿīs[2], and the Ḥanbalīs[3].
They cite the explicit texts of forbiddance and the nature of *gharar* involved.

Second Opinion: It is permissible to hire the male animal for a specific duration or for a specified number of services. This is the view of the Mālikīs[4], and al-Shawkānī attributed it also to some Shāfiʿīs and Ḥanbalīs as a secondary view, as well as to al-Ḥasan al-Baṣrī and Ibn Sīrīn[5].

In *al-Mudawwanah* it states: "If he hires (the male animal) to cover the female for a known number of years for such-and-such amount, it is permissible; and if he hires it for a month for such-and-such amount, it is permissible; but if he hires it until the mare becomes pregnant, this is invalid and not permissible."[6] Al-Dardīr said in *al-Sharḥ al-Kabīr*:
"It is permissible for a specified period (such as a day or two) or a specified number of times (such as twice or thrice) for a set

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1 Sharḥ Mukhtaṣar al-Ṭaḥāwī (3/97).
2 Rawḍat al-Ṭālibīn (3/398).
3 Kashshāf al-Qināʿ (3/166).
4 Rawḍat al-Ṭālibīn (3/398).
5 Kashshāf al-Qināʾ (3/166).
6 Al-Tāj wa al-ʾIklīl by al-Mawwāq (6/227).

fee."[1]

The Shāfiʿīs and others also allowed it when it is included implicitly within a broader rental agreement, i.e., when the male animal is rented for general benefit. In that case, its use for mating is incidental rather than the primary purpose. Ibn Ḥajar al-Haytamī said: "The owner of the female may rent the male animal for a fixed payment and a specified time — even for an hour — to benefit from it as he wishes. This rental is valid according to the principles of the jurists in this chapter, and he may utilize all its benefits, including mating it with his female animal. For what cannot be rented for independently may be permitted as a secondary purpose."[2]

The Ḥanafīs and Ḥanbalīs also permitted accepting an unconditional gift or honorarium for allowing the mating without a formal rental contract.
Al-Buhūtī said: "If someone allows his male animal to mate without a rental contract or condition, and he is then given a gift or shown generosity because of it, there is no harm, for he has shown kindness and may be rewarded for it."[3]

If we consider the matter from the perspective of those who permitted the contract of *ʿasb al-faḥl* for a specified duration—such as the Mālikīs and others—we find that the benefit is also unknown, since it is conditioned on a future event and is subject to factors outside the essence of the contract. There is, therefore, a measure of vagueness (*jahālah*). Nevertheless, the Mālikī view

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[1] Nayl al-ʾAwṭār (5/174).
[2] Al-Zawājir ʿan Iqtirāf al-Kabāʾir (1/382). al-Shabrāmlisī stipulated that the lease must be for the general benefit; so if it is specified for plowing, for example, then using it for breeding becomes forbidden. Look Ḥāshiyat Nihāyat al-Muḥtāj (3/447).
[3] Kashshāf al-Qināʿ (3/563).

aligns with real-life practice, for people may withhold their male animals out of fear for them, thus causing a disruption in breeding—so the need here is clear.

Selling Milk While Still in the Udder[1]

Selling milk that remains in the udder of an animal involves several issues:

1. It is the sale of something that forms gradually over time and appears successively.
2. It is unknown in its attribute — it might come out pure or might come out mixed and turbid.
3. It is unknown in quantity — the exact amount in each udder, its richness, and its milk content are all unknown.

Despite this, the majority — the Ḥanafīs, Shāfiʿīs, and Ḥanbalīs — prohibited it. The Mālikīs, al-Layth ibn Saʿd, Ṭāwūs (who permitted it by measure), and al-Ḥasan al-Baṣrī (who permitted it for a set time such as a week or a month) allowed it, and Saʿīd ibn Jubayr permitted it unconditionally[2].

There are practical applications of selling milk in the udder, such as:

- Selling the milk output of a dairy farm (cows or buffalo) to cheese and butter factories.
- Purchasing milk from shepherds by the month, to be delivered day by day.

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[1] We have mentioned the scholars' views on this issue in the section on the evidences from the Sunnah that discussed *gharar* (uncertainty). See p. 84 of this book.

[2] Ibn al-Mundhir collected all the opinions in al-ʾIshrāf ʿalā Madhāhib al-ʿUlamāʾ (6/18-19).

Selling Crops Hidden Beneath the Soil

The term "crops hidden beneath the soil" refers to produce that grows, develops, and ripens underground, such as onions, garlic, radishes, carrots, turnips, and taro, and similar produce.

Since these crops cannot be seen, and their signs of ripeness are not observable — unlike produce that grows above ground — jurists differed over the permissibility of selling them while hidden, especially since such items spoil quickly once harvested.

Ibn Taymiyyah mentioned two opinions in this matter, saying: "As for selling what is planted in the ground whose leaves appear above it — such as turnips, carrots, taro, radishes, garlic, onions, and similar items — scholars have two opinions. One: that it is not permissible, which is the well-known position of the companions of al-Shāfiʿī and ʾAḥmad among others. They said: These are unseen objects, neither viewed nor described, so their sale is impermissible like any unseen property, and this falls under the Prophet's (peace and blessings be upon him) forbiddance of selling *gharar*.

The second: that such a sale is permissible, as stated by some of the Mālikīs and others, and it is a view within the Ḥanbalī school as well."[1]

Ibn Qudāmah said: "It is not permissible to sell what is intended for use while still hidden underground — such as carrots, radishes, onions, and garlic — until it is dug up and viewed. This is the view of al-Shāfiʿī, Ibn al-Mundhir, and the Proponents of Opinion (i.e., the Ḥanafīs). Mālik, al-ʾAwzāʿī, and ʾIsḥāq permitted it, as the need calls for it, and it resembles selling produce that has not yet ripened when sold together with what

[1] Majmūʿ al-Fatāwā (29/487-488).

has ripened. Our evidence is that it is an unknown item neither seen nor described, similar to selling a fetus in the womb; and because the Prophet (peace and blessings be upon him) forbade selling *gharar* — and this is *gharar*."[1]

What Ibn Qudāmah attributed to the Ḥanafīs — absolute prohibition — contradicts their actual view. They permitted selling subterranean crops but gave the buyer *khiyār* (the option to cancel) after extraction.
Al-Kāsānī said: "According to this same disagreement, if someone purchases something hidden underground — such as carrots, onions, radishes, or similar — it is permissible according to us… and the buyer is entitled to *khiyār* once it is extracted."[2]
However, the Ḥanafīs restricted permissibility to cases where the existence of the crop is known at the time of sale — as when its foliage is visible above ground[3].

Accordingly, there are several opinions on this issue:

A) Permissibility of selling subterranean produce — the view of the Mālikīs[4], al-ʾAwzāʿī, ʾIsḥāq, and preferred by Ibn Taymiyyah, who said: "This view is the correct one."[5]

B) Permissibility with conditions — allowed by the Ḥanafīs, provided the crop's existence is indicated by outward signs such as partial appearance of the plant of some of its leaves, and that the buyer retains an option upon extraction.

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[1] Al-Mughnī by Ibn Qudāmah (6/161).
[2] Badāʾiʿ al-Ṣanāʾiʿ (5/164). Look al-Baḥr al-Rāʾiq (5/326).
[3] Ḥāshiyāt Ibn ʿAbdīn (5/52).
[4] Provided that it is secured in aggregate — that is, by the *qīrāṭ* or the *faddān*, not item by item. See *Bidāyat al-Mujtahid* (3/175).
[5] Majmūʿ al-Fatāwā (29/488).

C) Prohibition — the view of the Shāfiʿīs and the majority of Ḥanbalīs.

Selling Items with a Natural Shell or Husk Covering Them

This includes items such as watermelon, pomegranates, walnuts, almonds, pistachios, and broad beans — items purchased for what is inside them, not for their outer shell.

Jurists also differed here, but the majority allowed it. Ibn Qudāmah said: "It is permissible to sell walnuts, almonds, and fresh broad beans in their shells, whether cut from the tree or still on it. The same applies to selling grains that have hardened in their ears, and selling palm spadices before they split open — whether on the ground or still attached. This is also the view of Abū Ḥanīfah and Mālik. Al-Shāfiʿī said: It is not permissible until the outer shell is removed — except in one of his two opinions regarding palm spadices and grain ears."[1]

He explained the permissibility: "Because such an item is covered by a natural shell that is part of its original creation, its sale is therefore valid — just like pomegranates, eggs, and inner husks. Also, broad beans are sold in the markets of Muslims without objection, and such widespread practice constitutes consensus."[2]

Ibn Taymiyyah said: "As for al-Shāfiʿī, he applies this ruling[3] to types that other jurists do not — such as grain and dates in their green outer coverings, and grain in its ear; for according to his later opinion, such sales are not permissible."[4]

Ibn al-Mundhir, as quoted by Ibn Taymiyyah, stated:

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1 Al-Mughnī (6/161-162).
2 Ibid.
3 *Gharar*.
4 Al-Qawāʿid al-Nūrāniyyah, p. 176.

"Permissibility is the view of Mālik, the people of Madinah, ʿUbaydullāh ibn al-Ḥasan, the people of Baṣrah, the scholars of *ḥadīth*, and the Ḥanafīs. Al-Shāfiʿī once said: It is impermissible. But when the *ḥadīth* of Ibn ʿUmar reached him, he retracted his view and permitted it."[1]

Selling Fruits That Ripen Gradually in Bulk

This refers to produce that does not ripen all at once. Rather, part of the plant or tree ripens first, and then ripening gradually moves to the remaining parts.

The jurists differed regarding the ruling on selling such produce. Ibn Taymiyyah said: "Similar to this is selling the cultivated patches (*al-maqāthī),* such as patches of watermelon, cucumbers, *quththā'* (snake cucumber), and others. Some scholars from the Shāfiʿīs, Ḥanbalīs, and others said: It is not permissible to sell them except piece by piece. Many scholars from the Mālikīs, Ḥanbalīs, and others said: It is permissible to sell them unrestrictedly in the customary manner, and this is the correct view."[2]

The basis for permissibility is the opinion of the Mālikīs[3], and Ibn Nujaym transmitted it from some Ḥanafīs, stating: "Likewise in selling eggplants and watermelons… Al-Ḥalwānī issued *fatwā* permitting it in all cases and claimed this is transmitted from our scholars. The same was narrated from Imām al-Faḍlī, who would

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[1] Ibid. p. 177. the Ibn ʿUmar ḥadīth referred to is what Muslim narrated from him: "That the Messenger of Allah (peace and blessings be upon him) forbade the sale of date-palms until their fruit ripens, and of ears of grain until they whiten and are safe from blight — he forbade both the seller and the buyer." Muslim, ḥadīth (1535).

[2] Majmūʿ al-Fatāwā (29/489).

[3] Al-Tāj wa al-ʾIklīl by al-Mawwāq (6/453) and al-ʾIshrāf ʿalā Nukat Masāʾil al-Khilāf (2/544).

say: Whatever exists at the time of the contract is the principal, and whatever develops after that follows it. This was transmitted from him by *Shams al-ʾAʾimmah* [al-Ḥalawānī] without restricting it to cases where what exists at the time of contract is more. Rather, he said: Consider what exists at the time of contract as the principal, and what develops afterward follows it. This was preferred because of people's customary practice, as people commonly sell vineyard produce in this manner, and preventing them from their customs entails hardship. I saw a similar narration from Muḥammad regarding the sale of roses on their trees, for roses grow successively."[1]

Some Ḥanbalīs[2] also permitted it, and we have already cited Ibn Taymiyyah's statement: "And this is the correct view." His student Ibn al-Qayyim agreed, saying: "Those who permitted it — such as the people of Madinah and some of the companions of ʾAḥmad — their view is more correct, for it cannot be sold except in this manner."[3]

The Contract of *Muzāraʿah* (Sharecropping) and What Resembles It[4]

This is a contract whereby cultivating the land is undertaken in return for a portion of what the land produces.

The element of *gharar* and *jahālah* here lies in the fact that the wage is unknown and not guaranteed. We do not know for certain how much the land will produce, nor whether it will remain safe or be afflicted by blight or disaster. Thus, the farmer's compensation is unguaranteed and exposed to risk.

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1 Al-Baḥr al-Rāʾiq (5/325).
2 Al-ʾInṣāf by al-Mardāwī (5/68).
3 ʾIʿlām al-Muwaqqiʿīn (3/211-212).
4 Such as the contracts of *mukhābarah*, *musāqāh*, and *mughārasah*.

It is narrated that al-Bukhārī and Muslim transmitted from ʿAbdullāh ibn ʿUmar (may Allāh be pleased with him) that: "The Messenger of Allāh (peace and blessings be upon him) gave Khaybar to the Jews to work and cultivate it, and that they would have half of what it produced."[1]

There are also narrations containing forbiddance, among them the *ḥadīth* of Thābit ibn al-Ḍaḥḥāk in Muslim: "The Messenger of Allāh (peace and blessings be upon him) forbade *muzāraʿah* and commanded leasing (*muʾājarah*), and said: 'There is no harm in it.'"[2]

The jurists differed regarding the permissibility of this contract. The majority permitted it — the Mālikīs, who developed several acceptable forms, many of which they considered a type of partnership[3].

The Ḥanbalīs[4] also permitted it. From the Ḥanafīs, the two Imams — Abū Yūsuf Yaʿqūb and Muḥammad ibn al-Ḥasan al-Shaybānī — permitted it in certain cases and prohibited it in others. They permitted it under the following conditions:

1. The land is provided by the owner, and the labor and tools and seeds are provided by the farmer.
2. The land, tools, and seeds are provided by the owner, and the labor by the farmer.
3. The land and seeds are provided by the owner, and the labor and tools by the farmer.

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[1] Al-Bukhārī (2499) in his wording and Muslim (1551).
[2] Muslim (1549).
[3] Al-Kāfī by Ibn ʿAbd al-Barr (2/763), Mawāhib al-Jalīl by al-Ḥaṭṭāb (5/176), and Sharḥ al-Zurqānī ʿalā Khalīl (6/119).
[4] Kashshāf al-Qināʿ (3/542) and Sharḥ Muntahā al-ʾIrādāt (2/238-240).

They prohibited it in the case where the land and tools are provided by the owner, and the seeds by the farmer.

Their principle is that they look to the provider of the seeds and consider him entitled to the produce. The other party, depending on what he contributes, is then considered either a lessor of his land or of his labor[1].

Imam al-Zaylaʿī commented after discussing the disagreement among the Ḥanafīs regarding the ruling on *muzāraʿah*: "They said: Today the *fatwā* follows the view of Abū Yūsuf and Muḥammad — contrary to the Imam [Abū Ḥanīfah] — due to people's need for it and their customary practice. Analogy (*qiyās*) may be set aside due to custom and necessity, as in *al-istiṣnāʿ*."[2]

It was also permitted by some of the Shāfiʿīs, such as Ibn Surrīj and al-Khaṭṭābī, and supported by al-Nawawī[3].

Ibn al-Mundhir transmitted the permissibility from a number of the Companions and *Tābiʿīn*, saying: "The scholars differed regarding a man who gives his white land or his land and palms to be cultivated for half, a third, a quarter, or a known portion of its produce. It was narrated from a group of the Companions of the Messenger of Allāh (peace and blessings be upon him) that they permitted it, among them Ibn Masʿūd and Saʿd ibn Mālik (may Allāh be pleased with them). It was also narrated from ʿAlī ibn Abī Ṭālib and Muʿādh (may Allāh be pleased with them). This was the view of Saʿīd ibn al-Musayyib, Muḥammad ibn Sirīn, Ṭāwūs, ʿAbd al-Raḥmān ibn al-ʾAswad, Mūsā ibn Ṭalḥa, ʿUmar ibn ʿAbd al-ʿAzīz, al-Zuhrī, ʿAbd al-Raḥmān ibn Abī

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[1] Sharḥ Mukhtaṣar al-Ṭaḥāwī by al-Jaṣṣāṣ (3/434-435).

[2] Tabyīn al-Ḥaqāʾiq (5/279). Also, look al-Hidāyah (4/337) and al-Lubāb by la-Mīdānī (2/229).

[3] Rawḍat al-Ṭālibīn (5/168).

Laylā."[1]

Ibn Ḥazm permitted it, saying: "Either he gives his land to someone who cultivates it with his seed, animals, assistants, and tools in return for a portion, and the owner of the land receives from what Allāh produces from it a known share — half, a third, a quarter, or something similar, more or less. Nothing is required of the landowner whatsoever. The remainder belongs to the farmer, whether it is little or much; if nothing comes from it, he neither receives nor owes anything. These methods are all permissible."[2]

Ibn Taymiyyah also permitted it and considered it the correct view: "*Muzāraʿah* is permissible according to the most correct opinion of the scholars. It was practiced by Muslims during the time of the Prophet (peace and blessings be upon him) and the era of the Rightly Guided Caliphs, and by the families of Abū Bakr, ʿUmar, ʿUthmān, and ʿAlī, and others among the emigrants' households. It is the view of the eminent Companions such as Ibn Masʿūd, and it is the school of the jurists of *ḥadīth*."[3]

On the other hand, some jurists prohibited *muzāraʿah*, due to the potential *gharar* and *jahālah* in the compensation. They also cited apparent texts from the Sunnah to support this view, including Imām Abū Ḥanīfah[4] (may Allāh be pleased with him).

The majority of the Shāfiʿīs also prohibited it. Al-Nawawī said in *al-Rawḍah*: *"Al-Mukhābarah* and *muzāraʿah* are invalid. Ibn Surrīj said: *Muzāraʿah* is permissible. I say: Some of our eminent scholars also said *muzāraʿah and al-mukhābarah* are

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1 Al-ʾIshrāf ʿalā Madhāhib al-ʿUlamāʾ (6/260-261).
2 Al-Muḥallā (7/44).
3 Majmūʿ al-Fatāwā (28/82-83).
4 Sharḥ Mukhtaṣar al-Ṭaḥāwī by al-Jaṣṣāṣ (3/415) et seq.

permissible, including Ibn Khuzaymah, Ibn al-Mundhir, and al-Khaṭṭābī."[1]

What we have stated regarding *muzāraʿah* also applies to several other contracts in Islamic jurisprudence, where there is a well-known disagreement between those who permit and those who prohibit. These include:

ʿAqd al-Masāqah: A contract for irrigation and tending, between the owner of the trees and a worker who performs the task in return for a portion of the produce.

ʿAqd al-Mughārasah: A contract between the landowner and someone who plants trees in the land, to receive a share of the land or the trees after the fruit appears[2].

ʿAqd al-Mukhābarah: According to those who distinguish it from *muzāraʿah*, where the compensation is determined from a specific portion of land or produce.

ʿAqd Qafīz al-Ṭaḥḥān: Where the owner gives someone something to grind, in return for a portion of the ground produce[3].

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[1] Rawḍat al-Ṭālibīn (5/168).

[2] The difference between *mughārasah* and *muzāraʿah* is that *muzāraʿah* is for a fixed term, whereas trees involve long-term use of the land. They also differ in the compensation: in *muzāraʿah* it is from the produce, while in *mughārasah* it is from the land or from the trees.

[3] Among its examples is pressing sesame for someone in return for a portion of the oil, or spinning wool for him in return for a portion of the spun yarn.

Section Five
Contracts Involving Potential *Gharar* that the Jurists Permitted by Consensus

The *Salam* Contract

Salam—with an open *sīn* and *lām*—is equivalent in form and meaning to *salaf* (advance payment). The verb *'aslafa* or *'aslama* may be used, while the root *s-l-f* also appears in the sense of a loan.

In juristic terminology, *salam* is a forward sale of a fungible item described in the liability (*dhimmah*) in exchange for an upfront, fully paid price. Its form is that the buyer prepays the price in advance while the item sold is deferred. He says: "I advance to you (*'aslamtu 'ilayka*) one thousand dinars in return for one thousand pounds of your dates of such-and-such description," and the seller receives the price with the obligation to deliver the specified goods at the appointed time.

Thus, it is a contract for a described item in liability, deferred in delivery, with its price paid in full at the session of contract. This structure yields the following elements:

- **The buyer**, called *al-muslim* (with *kasrah* on the *lām*), or the owner of the *salam*.
- **The seller**, called *al-muslam 'ilayh* (with *fatḥah* on the lām).
- **The price**, called *ra's māl al-salam*.
- **The sold item**, called *al-muslam fīh* (the subject of *salam*) or the *salam* debt.

Given this structure, *salam* inherently carries elements of

potential *gharar*:

- The sold item is not present at the time of contract.
- Fulfillment depends on future conditions.
- The possibility of non-delivery exists.

Yet several sound *ʾaḥadīth* establish its permissibility. Among them: the report narrated by al-Bukhārī and Muslim from Ibn ʿAbbās, who said:
"The Prophet Muḥammad (peace and blessings be upon him) came to Madinah and found them engaging in *salam* in dates for one or two years. He said: 'Whoever conducts *salam*, let it be in a known measure, a known weight, and a known term.'"[1]

The jurists transmitted a consensus on the permissibility of the *salam* contract. Ibn al-Mundhir stated: "Everyone from the scholars whose views we preserve agreed that *salam* is permissible when a man advances payment to another for a known type of food from the general produce of the land—of the sort not typically failing—by a known measure or weight, to a specified term, with dinars or dirhams fully paid before the session ends, and with the delivery location defined. When these conditions are met and both parties have capacity, the *salam* is valid. I know of no scholar who rejects it."[2]

Al-Nawawī said: "The Muslims have unanimously agreed on the permissibility of *salam*."[3]

Al-Qarāfī wrote: "A concession was granted in *salam*, and the

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[1] Al-Bukhārī (2240) and Muslim (1604).
[2] Al-ʾIshrāf ʿalā Madhāhib al-ʿUlamāʾ (6/101-102).
[3] Sharḥ Ṣaḥīḥ Muslim by al-Nawawī (11/41).

ʾummah agreed upon permitting it."[1]

Al-Zaylaʿī noted: "It is narrated that the Prophet Muḥammad (peace and blessings be upon him) forbade selling what one does not possess, and yet he allowed *salam*. It is legislated by the Qurʾān, the Sunnah, and the consensus of the *ʾummah*."[2]

The "consensus" here refers to agreement on its permissibility in principle, even though jurists differed over some subsidiary rulings regarding its conditions.

The claim that Saʿīd ibn al-Musayyab rejected its permissibility—which Ibn Ḥajar reported in *Fatḥ al-Bārī*[3] and al-ʿAynī in *al-ʿUmdah*[4]—does not undermine the consensus. Many scholars dismissed that attribution as anomalous.

Al-Māwardī responded: "The consensus of the Companions is established by the report of Ibn Abī Awfā. No one opposed this consensus except for Ibn al-Musayyab. It was reported from an irregular narration prohibiting *salam*. If authentic, it is refuted by the consensus deduced from the wordings of previously mentioned scholars, along with the explicit texts and relevant indications."[5]

The Sale of Bulk Goods (*al-Juzāf*) and the Sale of Heaped Commodities (*al-Ṣubrah*)

Al-Juzāf (with *jīm* either *kasrah* or *ḍammah*)[6] refers to selling

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1 Al-Dhakhīrah (5/224).
2 Tabyīn al-Ḥaqāʿiq (4/110).
3 Fatḥ al-Bārī (4/415).
4 ʿUmdat al-Qārī (12/61).
5 Al-Ḥāwī al-Kabīr (5/390).
6 Pronouncing *jīm* with *kasrah* is regular as in *qātala qitāl*, *ḥāsaba ḥisāb* and *jāzafa jizāf*. For pronouncing it with *ḍammah*, it is based on transmitted usage. Look Lisān al-ʿArab under entry "*jazafa*" and al-Miṣbāḥ al-Munīr under entry "*jazafa*."

items that are normally measured, weighed, or counted as a whole, without measurement, weight, or count[1].

Some jurists documented consensus on its permissibility. Ibn ʿAbd al-Barr said: "The sale of food in bulk (*juzāf*) from a heap or similar form is unanimously permitted, and I know of no disagreement in this."[2]

Ibn al-ʿArabī wrote: "As for measured or weighed food, there is no disagreement among the scholars regarding its permissibility when sold in bulk."[3]

Ibn Taymiyyah stated: "The sale of tangible goods in bulk is permissible by the Sunnah and consensus."[4]

Despite the presence of potential vagueness in attribute and weight—as the sale is concluded without weighing and in bulk without inspection—this type of sale was allowed because of people's need and the prevalence of customary practice.

Similarly, *al-ṣubrah* (with *ḍammah* on *ṣād* and *sukūn* on *bā'*) refers to a mound or pile of grain or produce gathered in one place, such as a sackful or crate. It may be sold by weight, e.g., "I sell you this pile for the price of every ten kilograms," or as a whole, e.g., "I sell you this entire mound for such-and-such."

Both cases contain degrees of *gharar* and *jahālah*. In the first, weight and type may be known while exact attribute is not. In the second, type is known while attribute and weight are not.

Ibn Qudāmah transmitted consensus on permissibility: "One who purchases a heap (*ṣubrah*) of grain should not sell it until he

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[1] Mawāhib al-Jalīl by al-Ḥaṭṭāb (4/285).
[2] Al-Tamhīd (13/340).
[3] Al-Qabas (2/822).
[4] Majmūʿ al-Fatāwā (30/307).

moves it. This entails two rulings: first, the permissibility of selling a heap in bulk despite the buyer and seller not knowing its exact measure. Abū Ḥanīfah and al-Shafiʿī said the same, and we know of no disagreement. Imam ʾAḥmad explicitly permitted it."[1]

They supported this with the *ḥadīth* of Ibn ʿUmar: "We used to buy food from caravans in bulk (*juzāf*), and the Prophet Muḥammad (peace and blessings be upon him) forbade us to sell it in the same place until we moved it."[2] And another wording: "They would be disciplined[3] in the time of the Prophet Muḥammad (peace and blessings be upon him) when they purchased food in bulk if they sold it before moving it."[4]

The *Jaʿālah* Contract Concerning a Runaway Slave

Jaʿālah—with the *jīm* pronounced with *fatḥah*—comes from *al-juʿl*, meaning "wage" or "payment." *Jaʿālah* is what a person assigns as compensation for someone else to perform a certain task[5].

As for *al-ʾābiq*, it refers to a slave who escapes from his masters. *ʾAbaqa*—with the *bāʾ* either with *fatḥah* or *kasrah*—means "to flee."[6]

The *jaʾālah* in this context is when someone announces: "Whoever returns my runaway slave to me shall have such-and-such."

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1 Al-Mughnī by Ibn Qudāmah (6/201).
2 Ṣaḥīḥ Muslim (1526).
3 In order to discipline and rebuke them.
4 Ṣaḥīḥ Muslim (1527).
5 Maqāyīs al-Lughah by Ibn Fāris (1/460) and Tāj al-ʿArūs by al-Zabīdī under entry "*jaʿala*."
6 Sharḥ Ṣaḥīḥ Muslim by al-Nawawī (2/245).

This arrangement involves vagueness regarding the amount of work required and is conditional upon the unseen: a person may exert significant effort yet fail to find the runaway slave, thus receiving nothing; and he may find him instantly, receiving the payment with no effort. It also lacks specification of the worker, and the worker is not obliged to accept.

The scholars differed on *ja'ālah* in matters other than the runaway slave. The majority—Mālikīs[1], Shāfiʿīs[2], and Ḥanbalīs[3]—permitted it. The Ḥanafīs prohibited it, regarding it as involving *gharar* and gambling. Al-Sarakhsī said: "This involves making entitlement to money dependent on risk, and this is gambling, which is forbidden in our *Sharīʿah*."[4] Ibn Ḥazm also prohibited it except in the form of hiring for a known time and known wage, in agreement with the Ḥanafīs[5].

Despite their disagreement over general *ja'ālah*, all scholars agreed on the permissibility of taking compensation for returning a runaway slave—whether by contractual entitlement or by way of kindness. Even the Ḥanafīs exempted this case from the general prohibition.

Al-Sarakhsī, commenting on a narration in which Ibn Masʿūd approved taking compensation for returning a runaway slave[6], wrote: "In this *ḥadīth* is evidence that the one who returns him is rewarded, for Ibn Masʿūd did not object to their saying that he

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[1] Bidāyat al-Mujtahid (4/20) and Sharḥ Ḥudūd Ibn ʿArafah (2/529).
[2] Mughnī al-Muḥtāj (3/617).
[3] Kashf al-Qināʿ (4/203).
[4] Al-Mabsūṭ (11/18). Look Badā'iʿ al-Ṣanā'iʿ (6/203).
[5] Al-Muḥallā (7/33), Issue 1327.
[6] This *ḥadīth* is authenticated by al-Bayhaqī in al-Sunan al-Kubrā (12125). He said: This is the most ideal narration in this chapter. It is also authenticated by Ibn Abi Shaybah in al-Muṣannaf (6/541, 22371) and ʿAbd al-Razzāq in al-Muṣannaf (14911). Look Naṣb al-Rāyah (3/308).

has earned a wage. It also proves that he deserves the *ju'l* from his master. This is *'istiḥsān* (juristic discretion) adopted by our scholars (may Allāh show mercy to them). According to strict analogy, there would be no *ju'l*… but we have left this analogy due to the agreement of the Companions, for they unanimously approved the *ja'ālah*. Ibn Mas'ūd said what he said publicly, and this must have become known, and none of his peers objected. Silence after the appearance of his statement is not permissible for one who disagrees. For this reason the consensus is established."[1]

As for Ibn Ḥazm, although he did not consider the contract binding—meaning no judge could obligate either party—he validated it in the sense that: "It is recommended that he fulfill his promise."[2]

Thus, the view of the majority—Mālikīs, Shāfi'īs, and Ḥanbalīs, who permit *ja'ālah* for any task—coincides with the view of the Ḥanafīs and Ẓāhirīs concerning the validity and lawfulness of the compensation in this case, while all acknowledge that it involves a degree of risk and uncertainty in the subject matter. The work is not specific and may be extensive or minimal, and the worker need not be known or specified in advance, since this is a contract of permission rather than direct obligation. The expected result may occur—or may not.

The *Muḍārabah* (Profit-sharing partnership) Contract

Muḍārabah comes from *ḍarb*, meaning "to travel through the land." Allāh the Most High says: "…and others travel throughout

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[1] Al-Mabsūṭ by al-Sarakhsī (11/17). Look Badā'i' al-Ṣanā'i' (6/203) and Fatḥ al-Qadīr (4/520).

[2] Al-Muḥallā (7/33, Issue 1327).

the land seeking Allāh's favor…"[1] It refers to trade.

Muḍārabah is also called *al-qirāḍ*, pronounced with the *qāf kasrah*. Some said they are two names for the same arrangement.

Al-Māwardī stated: "Know that *al-qirāḍ* and *al-muḍārabah* are two names for one meaning. *Al-qirāḍ* is the term of the people of Hijāz, and *al-muḍārabah* is the term of the people of Iraq."[2]

Muḍārabah is a type of partnership in which one party provides capital and the other engages in trade or investment with it. Any profit generated is shared between them according to their prior agreement. Any loss is borne entirely by the capital provider.

It is clear that the contract in this form contains elements of *jahālah* and *gharar*: vagueness regarding the nature or amount of work; vagueness regarding the wage, as it is conditional on profit; if there is no profit, there is no compensation; and uncertainty in the duration of the *muḍārabah*, since it is a permissible non-binding contract that the sleeping partner may leave the work and the capital provider may withdraw their money.

Nevertheless, consensus was established on the permissibility of the *muḍārabah* contract. This consensus was transmitted by numerous scholars, including Ibn al-Mundhir[3], Ibn Ḥazm[4], Ibn ʿAbd al-Barr[5], al-Sarakhsī[6], Ibn Rushd[7], Ibn Qudāmah[8], and al-

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1 [Al-Muzammil: 20].
2 Al-Ḥāwī al-Kabīr (7/305).
3 Al-ʾAwsaṭ fī al-Sunan wa al-ʾIjmāʿ (10/561).
4 Marātib al-ʾIjmāʿ, p. 93.
5 Al-Istidhkār (7/4).
6 Al-Mabsūṭ (22/17).
7 Bidyāt al-Mujtahid (4/21).
8 Al-Mughnī by Ibn Qudāmah (7/136).

Nawawī[1].

The *Istiṣnāʿ* Contract

Istiṣnāʿ—a verbal noun in the form *istifʿāl* from *ṣanʿah* (craftsmanship)—means "requesting the manufacture of something." Technically, it is a contract for a sale of something described in the liability (*dhimmah*), with the condition of workmanship[2].

This contract necessarily includes several elements:

- **The Manufacturer (*al-ṣāniʿ*):** the one from whom the product is requested.
- **The One Who Commissions the Work (*al-mustaṣniʿ*)**—with the *nūn* pronounced *kasrah*: the customer.
- **The Product (*al-mustaṣnaʿ*)**—with the *nūn* pronounced *fatḥah*: the manufactured item or the object sold.
- **The Price (*al-thaman*):** the amount paid, covering the materials and the workmanship.

By analyzing the nature of *istiṣnāʿ*, it appears to be a composite of two contracts: a *salam* contract and a hiring (*ʾijārah*) contract.

The jurists differed in theory over the permissibility of *istiṣnāʿ*, but they unanimously agreed on its permissibility in practice, as stated by al-Kāsānī in *Badāʾiʿ*[3], and al-Zaylaʿī in *Tabyīn al-Ḥaqāʾiq*[4]. The majority permitted *istiṣnāʿ* according to the conditions of the *salam* contract, namely the Mālikīs[5], Shāfiʿīs[6],

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[1] Rawḍat al-Ṭālibīn (5/117).
[2] Badāʾiʿ al-Ṣanāʾiʿ (5/2) and Tuḥfat al-Fuqahāʾ (2/362).
[3] Badāʾiʿ al-Ṣanāʾiʿ (5/2).
[4] Tabyīn al-Ḥaqāʾiq (4/123).
[5] Al-Mudawwanah (3/-68-69) and al-Sharḥ al-Kabīr (3/217).
[6] Al-ʾUmm (3/130), al-Ḥāwī al-Kabīr (5/406) and Rawḍat al-Ṭālibīn (4/27-28).

and Ḥanbalīs[1]. This was also the view of Zufar ibn al-Hudhayl from the Ḥanafīs[2].

Meanwhile, the Ḥanafī[3] school as a whole permitted it unconditionally, and some Ḥanbalīs also permitted it as reported by al-Mardāwī[4].

Comparing *salam* and *istiṣnāʿ* shows that they agree in most respects: both are contracts for something described in liability—i.e., non-existent at the time of sale—and both require specification of genus, type, quantity, and attribute. Both require that neither the price nor the object of sale fall under *ribā al-nasīʾah* (delay usury).

They differ in that the price in *istiṣnāʿ* may be deferred, while *salam* requires the price to be paid at the time of the contract. Also, *istiṣnāʿ* involves actual manufacturing, whereas *salam* may relate to manufactured, cultivated, or traded goods. Furthermore, *istiṣnāʿ* allows delivery in installments, whereas *salam* requires full delivery unless staggered delivery is mutually agreed upon.

Regarding *istiṣnāʿ*, it contains the same elements of vagueness and risk found in *salam*, such as:

- *Gharar* in the object of the contract, since it does not yet exist.
- Vagueness of precise specifications and details, which only appear after manufacturing.

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[1] Al-Mughnī by Ibn Qudāmah (6/397) and al-ʾInṣāf by al-Mardāwī (4/300).

[2] Al-Baḥr al-Rāʾiq (6/185).

[3] Mukhtaṣar Ikhtilāf al-ʿUlamāʾ by al-Jaṣṣāṣ (3/36), al-Mabsūṭ (12/138) and Ḥāshiyat Ibn ʿAbdīn (5/223).

[4] Al-ʾInṣāf by al-Mardāwī (4/300).

- Dependence on future conditions, which cannot be fully predicted.

Despite this, *istiṣnāʿ* has been permitted historically and in modern practice. It has become a major avenue of investment and a foundation for numerous international commercial transactions—such as state purchases of weaponry, aircraft, and ships that require long manufacturing periods. It is also central in real estate development, construction, infrastructure, and public-sector procurement through tender-based building and development projects.

Hiring a Wet Nurse (*Istiʾjār al-Ẓiʾr*)

Al-Ẓiʿr refers to a woman who breastfeeds a child not her own. Ibn Manẓūr states: it is "the one who shows maternal compassion to a child not her own by nursing him, whether human or animal, and whether male or female."[1]

Allāh the Exalted says: "And if they breastfeed for you, then give them their payment."[2]

From the Sunnah is what ʾAnas ibn Mālik narrated: "Ibrāhīm[3] had a wet nurse in the upper areas of Madinah. The Prophet (peace and blessings be upon him) would visit him, and we would go with him. He would enter the house while it was filled with smoke[4], for his wet nurse was a blacksmith. He would take him and kiss him, then return."[5]

Likewise, the Prophet (peace and blessings be upon him) himself

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[1] Lisān al-ʿArab under entry "*ẓaʾara*."
[2] [Al-Ṭalāq: 6].
[3] He refers to our master ʾIbrāhīm, the son of the Prophet (peace and blessings be upon him), when hen was a baby before his death.
[4] Because the wet nurse's husband was a blacksmith.
[5] Ṣaḥīḥ Muslim (2316).

was breastfed for payment by Ḥalīmah al-Saʿdiyyah—though this occurred before Islam, he did not annul it afterward.

Numerous scholars have transmitted consensus on the permissibility of hiring a wet nurse. Among them is Ibn al-Mundhir, who said: "They unanimously agreed that hiring a wet nurse is permissible."[1] Ibn Qudāmah also confirmed the same[2]. Al-Zaylaʿī stated: "Hiring a wet nurse with a known wage is valid… and the *'ummah* has reached consensus on this."[3] Al-Mawwāq also confirmed the same[4]. Ibn Taymiyyah stated: "Hiring a wet nurse is permisble according to the Qurʾān, Sunnah and consensus."[5]

It is clear that hiring a wet nurse involves potential *gharar*: the employer cannot know the amount of milk she has, its sufficiency, her future health, or how many daily feedings the infant will require and in what quantity.

Nevertheless, it is permitted due to the compelling necessity and the overriding public interest of preserving the life of the child, which takes precedence over the potential risks involved.

Selling What Contains *Gharar* as a Subsidiary Part of Something Else

This refers to cases such as selling milk in an animal's udder as part of the sale of the animal; or selling fruits before ripening as part of selling the tree; or selling an animal while its fetus is in the womb. The form of this is that a person sells an animal he owns while its fetus or milk—of unknown quantity—is part of it,

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1 Al-ʾIjmāʿ, p. 106.
2 Al-Mughnī by Ibn Qudāmah (8/68).
3 Tabyīn al-Ḥaqāʾiq (5/127).
4 Al-Tāj wa al-ʾIklīl (7/527).
5 Majmūʿ al-Fatāwā (30/243).

and he does not stipulate or mention these separately. Likewise, the fruit on the tree is included when selling the tree, although its outcome is unknown.

All of this is permissible by consensus because the uncertainty is subsidiary rather than independent.

Al-Nawawī stated: "The Muslims have unanimously agreed on the permissibility of selling an animal while its udder contains milk, even though the milk is unknown."[1]

This was also affirmed by the Mālikīs[2], Ḥanafīs[3], Ḥanbalīs[4], Ibn Ḥazm[5], and Ibn Taymiyyah[6].

This applies to everything included as a non-essential attachment—such as the pit inside a date, the wool on a sheep, or the furniture included with a house—because these are sold with their principal item. Since they are not independently intended in the sale, the uncertainty is overlooked. Ibn Qudāmah said: "In what is subsidiary, a degree of *gharar* is permitted that would not be permitted in what is primary."[7]

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1 Al-Majmūʿ (9/396).
2 Al-Mudawwanah (3/318), al-Tāj wa al-ʾIklīl (7/545) and al-Sharḥ al-Kabīr (4/20-21).
3 Badāʾiʿ al-Ṣanāʾiʿ (5/164) and Tabyīn al-Ḥaqāʾiq (4/46).
4 Maṭālib ʾUlī al-Nuhā (3/29).
5 Al-Muḥallā (7/222).
6 Al-Fatāwā al-Kubrā (4/45).
7 Al-Mughnī by Ibn Qudāmah (6/141). Look Kashshāf al-Qināʿ (3/166) and Maṭālib ʾUlī al-Nuhā (3/29).

Section Six

Areas Where *Gharar* Occurs in Contracts

The jurists expressed various views regarding the areas in a contract where *gharar* may arise: whether it pertains to the contract itself, the subject matter of the contract, or the conditions attached to it.

First Opinion: *Gharar* Exists in the Subject Matter of the Contract

This view is represented by Ibn Taymiyyah, his student Ibn al-Qayyim, and is followed by many in matters of practical application.

Ibn Taymiyyah states in his discussion of contract theory: "Some jurists assume that *gharar* is a quality of the sale itself, and that the Prophet (peace and blessings be upon him) forbade a sale that is *gharar*.
But this is not the case. Rather, he forbade selling an object that is *gharar*.
The object of sale itself is the *gharar*, such as selling fruit before its ripeness becomes apparent."[1]

He also says: "As for saying: 'This is *gharar*,' it should be said: the Prophet (peace and blessings be upon him) forbade the object that is *gharar* from being sold, and forbade selling what is *gharar*, such as selling years in advance (*bay' al-sinin*), or *ḥabal al-ḥabalah*, or selling fruit before ripeness. He explained that the reason is the risk involved, which leads to consuming wealth unlawfully."[2]

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[1] Naẓariyyat al-ʾAqd, p. 224.
[2] Ibid. p. 227.

Ibn Taymiyyah adds elsewhere: "The sale itself is not *gharar*. Rather, it is a binding transaction and is not called *gharar* whether concluded immediately or suspended upon a condition…

For this is a contract tied to a specific description, which does not include anything else. If that description materializes, the contract materializes; otherwise, there is no contract. This is not deception. Deception occurs when a contract is concluded whereby one party takes another's wealth while leaving the compensation sought dependent upon risk."[1]

He continues: "If it is asked: 'Is it valid to sell what does not exist, or what is unknown, or what one is unable to deliver?' it is answered:
If any of these sales involves consuming wealth unlawfully, then it is invalid. Otherwise, it is permissible. Whenever it includes an element of gambling, then it involves consuming wealth unlawfully. If one party obtains wealth with certainty while the other obtains it with risk of gain or loss, then he is gambling."[2]

Ibn al-Qayyim says: "*Bayʿ al-gharar* is an instance where the verbal noun is added to its object—as in *bayʿ malaqīḥ* and *maḍāmin*. The *gharar* is the object sold itself; it is a verbal noun used in the sense of the passive participle, meaning 'that which one is deceived by,' similar to *qabḍ* (seizing) and *salb* (taking) meaning 'that which is seized or taken.'"[3]

Al-Ṣanʿānī stated similarly: "*Bayʿ al-gharar*—with the *ghayn* in *fatḥah* and doubled *rā'*—means 'that which is deceived with,' i.e., the meaning of the passive participle. The addition of the verbal noun to it is the addition of the action to the object.

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[1] Ibid. p. 227-228.
[2] Ibid. p. 229.
[3] Zād al-Maʿād (5/818).

Another interpretation is also possible."[1] Ibn Qāsim in *al-'Iḥkām* mentioned the same[2].

Al-Maghribī also said: "'The forbiddance of *bay' al-gharar*…' It may mean 'that which one is deceived with,' i.e., the passive participle, or it may be used in the sense of the verbal noun, with the sale being attributed to it due to association: meaning 'the sale accompanied by *gharar*.'"[3]

According to this group, the pillar of the contract is the offer and acceptance—acts that do not admit *gharar*. Statements such as "I sell to you," "I accept," "Sell this to me," "I sell to you"—these form the contract itself, which does not contain *gharar*. Rather, *gharar* occurs in the subject matter of the contract, being the object upon which the contract focuses. Thus, all sales invalidated or prohibited due to *gharar* ultimately return to a deficiency in the subject matter, such as: *Bay' al-ḥaṣāh* (sale by throwing a pebble): because the object of sale is not specifically identified; *bay' al-mulāmasah* (sale by touching): because the characteristics of the item are not identified; and so on.

Second Opinion: *Gharar* Exists in the Contract Itself as Well as in Its Subject Matter

Among those who stated this view is al-Bājī, who identified three areas where *gharar* may be located. He said: "*Gharar* relates to the sold item from three aspects: from the contract itself, from the compensation, and from the deferment."[4]

He continues: "As for *gharar* in the contract itself: such as two sales in one sale, where it is unknown which of the two

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1 Subul al-Salām (3/15).
2 Al-'Iḥkām Sharḥ 'Uṣūl al-'Aḥkām (3/106).
3 Al-Badr al-Tamām Sharḥ Bulūgh al-Marām (6/66-67).
4 Al-Muntaqā (5/41).

compensations has been bought or sold; or *bay' al-ḥaṣāh* from the sales of *Jāhiliyyah*, in which the seller throws a pebble: when it falls, the sale becomes binding; or *bay' al-'urbān* (earnest money sale)."[1]

Ibn Rushd al-Jadd (Abū al-Walīd) followed al-Bājī's classification, stating: "The excessive *gharar* that invalidates a contract occurs in three things: the contract itself, either one of the two compensations—the price or the object sold—or both, or the deferment in either or both of them."[2] He gave the same examples of *gharar* in the contract itself and added: selling something measured (*mukayyil*) together with something sold in bulk (*juzāf*) in a single transaction—such as combining the sale of grain by bulk with cloth measured by length in a single contract.

Ibn Rushd al-Ḥafīd (the grandson) continued this classification, saying: "*Gharar* in sales arises through vagueness in several forms: either through vagueness of the identification of the subject matter of the contract, or of the contract itself, or through vagueness of the description of the price or of the object sold, or of its amount, or of its term if there is a term, or through vagueness of its existence or of the ability to deliver it—which returns to inability of delivery, or through vagueness of its soundness."[3]

Dr. al-Ṣiddīq al-Ḍarīr discussed this issue and responded to the statements of Ibn Taymiyyah and Ibn al-Qayyim, saying: "What I hold is that the genitive construction[4] here is either of the type

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[1] Ibid. (5/42).
[2] Al-Muqaddimāt al-Mumahhidāt (2/73).
[3] Bidyāt al-Mujtahid (3/166).
[4] He refers to the genitive construction's phrase "*bay' al-gharar*" mentioned in the *ḥadīth* "The Prophet (peace and blessings be upon him) forbade *bay' al-*

where the described is annexed to its attribute, or of the type where the verbal noun is annexed to its kind. It is not valid to consider it an annexation of the verbal noun to its object—as Ibn Taymiyyah says—because this would entail restricting *gharar* only to the subject-matter of the contract. But this is not the case, for among the forms of *gharar* forbidden by agreement of the jurists is that which relates to the form in which the contract is concluded, such as *bay' al-ḥaṣah* (the sale of pebbling). However, if we consider the annexation as belonging to the type where the verbal noun is annexed to its kind, or the described to its attribute, then the forbiddance encompasses all forms of sales involving *gharar*, whether the *gharar* is in the subject-matter of the contract or in its formulation."[1]

What al-Ṣiddīq al-Ḍarīr mentioned follows the position of the Kūfan grammarians who allow annexing the described to its attribute, such as their expression: "*masjid al-jāmi'*," and "*ṣalāt al-'ūlā*," whose original forms are: "*al-masjid al-jāmi'*," and "*al-ṣalāt al-'ūlā*."

The grammarians differed on this matter. The majority, including the Baṣran grammarian, prohibited it because they do not allow annexing a thing to itself or to its attribute. This is because such annexation does not yield specification or definiteness, since a thing is not defined by itself. They interpreted all examples cited by the Kūfan grammarians as cases involving an omitted head-term. Ibn al-Anbārī said in *al-'Inṣāf*: "As for the expressions cited by the Kūfan grammarians, there is no proof for them in these examples, because all of them are interpreted as involving the omission of the head-term while its attribute is put in its place. For example, regarding the Almighty's saying: "And

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gharar."

[1] Al-Gharar wa 'Atharu fī al-'Uqūd, p. 62-63.

indeed, it is the truth of certainty.,"[1] the estimate is: 'the true affair of certainty,' similar to His saying: "And that is the religion of uprightness,"[2] meaning: 'the religion of the upright creed'… As for their expression '*ṣalāt al-ʾūlā*,' the estimate is: 'the prayer of the first hour.' And as for '*masjid al-jāmiʿ*,' the estimate is: 'the mosque of the gathering-place.'"[3]

According to the Baṣrī interpretation, the meaning of "*bayʿ al-gharar*" is: "the sale of a thing that is *gharar*," meaning that the word *gharar* is the attribute of an omitted head-term, and not an attribute of the sale itself. This is precisely what Ibn Taymiyyah intended.

When we consider the actual cases of sales that have been classified as sales of *gharar*, we find that the *gharar* falls upon the subject-matter of the contract—whether the sold item or the price. Upon this rests the meaning intended by Ibn Taymiyyah.

The benefit of knowing this disagreement is as follows: According to the first view, *gharar* does not enter the very structure of the contract—namely, the offer and acceptance. These cannot contain *gharar*. Thus, the contract is not void or defective except due to something relating to the subject-matter or the conditions. Accordingly, the subject-matter determines whether the sale is valid or invalid, and if the *gharar* in the subject-matter is removed, the invalidity or defect is lifted.

But according to the second view, the invalidity or defect is not lifted, because the very structure of the contract itself is *gharar*.

From all that we have presented, we may conclude the following:

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[1] [Al-Ḥāqqah: 51].
[2] [Al-Bayyinah: 5].
[3] Al-ʾInṣāf fī Masāʾil al-Khilāf (2/438). Look Sharḥ al-Taṣrīḥ ʿalā al-Tawḍīḥ, p. 690.

First: The jurists did not agree on a single definition of *gharar*. Their definitions are diverse, each reflecting the jurist's methodological school or the context in which the term was mentioned.
Still, we may identify the main elements they considered forms of *gharar*: vagueness of outcome, inability to deliver, uncertainty between existence and non-existence, high-risk speculation, or clear inequity.

Second: The Qur'ān does not explicitly address *gharar* or its impact on transactions. The forbiddance is found in the Sunnah—both in general form and in detailed reports that clarify the general.

Third: To assert categorically that forbiddance implies invalidity is an overstatement. The more accurate approach is to say that forbiddance may imply invalidity, because forbiddance may occur while the contract remains valid—though blame or sin may still apply. Forbiddance in the realm of contracts does not necessarily entail nullity; the contract may be valid while being disliked or prohibited.

Fourth: Classifying *gharar* into types and degrees is well-established in the books of *fiqh*. The basis of such classification varies: some examined its degree, some its impact, and some its subject-matter, distinguishing between commutative and gratuitous contracts.

Fifth: Most scholarly examples of *gharar* concern *gharar* in the subject-matter of the contract (the sold item or the price). Only a few examples relate to the contract's structure itself.

Sixth: There are sales on which the jurists unanimously agreed regarding their prohibition—and even invalidity—due to *gharar* and vagueness. At the same time, there are other contracts

containing similar elements in which they differed: some permitted and others prohibited, even though all acknowledge that *gharar* is present. The permissibility granted by some was due to need or because the level of *gharar* was within tolerable limits.

Seventh: Some contracts containing *gharar* and vagueness were permitted by unanimous agreement, such as the *salam* contract, the *istiṣnāʿ* contract (in practical outcome), the sale by bulk (*al-juzāf*), the *muḍārabah* partnership, and the *ʾijārah* contract, among others.

Eighth: Many jurists, in their explanations and definitions, explicitly identified what constitutes *gharar*, in order to prevent people from being excessive in declaring contracts forbidden or invalid. Some even cited examples so that later scholars would understand their intent, saying, for example: "like selling fish in water," or "a bird in the air."

Ninth: By surveying the statements of the scholars, we can identify the type of *gharar* that invalidates or corrupts a contract. This occurs when:

1. It predominates the contract to the point that the contract becomes characterized by it. For example, in the sale of pebbling (*bayʿ al-ḥaṣāh*), the subject-matter is dominated by uncertainty, with nothing defined or specified.
2. It leads to dispute, hostility, and conflict.
3. There is no need for it, meaning that alternatives exist which are free from *gharar*.

Tenth: Some scholars distinguished between *gharar* in gratuitous contracts and *gharar* in commutative contracts. They held that prohibition and the possibility of invalidity apply specifically to

gharar in commutative contracts, because such contracts are built upon exchange, whereas gratuitous contracts are based on benevolence. Others, however, did not make this distinction and held that all contracts are susceptible to *gharar* and subject to its legal consequences.

Eleventh: A survey of the juristic literature confirms the conclusion highlighted by Ibn Taymiyyah—namely, that the Mālikīs are the most lenient of all juristic schools regarding the forbiddance of *gharar*. Their legal precedents show that they validated many contracts even when they contained some level of *gharar*. The Shāfiʿīs, on the other hand, are the strictest in this regard. The Ḥanafīs and Ḥanbalīs occupy a middle position, sometimes permitting and sometimes prohibiting, depending on their legal principles.

Twelfth: Imam Ibn Taymiyyah and his student Ibn al-Qayyim were among the scholars most inclined to validate contracts and conditions. Their principles only prohibit severely excessive *gharar* that dominates the contract, or conditions explicitly invalidated by textual evidence. Everything else remains permissible in their view.

Thirteenth: Dividing *gharar* into two types—major (*gharar kathīr*) and minor (*gharar yasīr*)—is incomplete, because jurists recognized a third, intermediate type. This middle category was the source of much scholarly disagreement, with some permitting and others prohibiting such contracts.

Fourteenth: Analogical reasoning (*qiyās*) based on the examples of forbiddance mentioned in the Sunnah must match them in all relevant aspects, not merely in the presence of *gharar*. Otherwise, most contracts would fall under prohibition, since many transactions involve some degree of *gharar*. One may not

say: “This is forbidden analogically based on such-and-such sale,” unless it resembles it in form and outcome.

Fifteenth: Jurists were more lenient regarding subsidiary *gharar* (*gharar al-tābiʿ*) than they were with principal *gharar* (*gharar al-ʾaṣl*), even when the subsidiary *gharar* was considerable. This leniency stems from their desire to validate contracts rather than invalidate them. Otherwise, they could have been strict here as well—for example, by prohibiting the sale of animals while pregnant.

Sixteenth: Expanding the scope of prohibition and invalidation under the pretext of *gharar* is contrary to the way of the believers. Contracts form the backbone of transactions, and implementation is the essence of contracts. If *gharar* becomes a tool for widespread prohibition and invalidation, this contradicts the objectives of transactional law. For this reason Ibn Taymiyyah considered *gharar* less severe than usury and easier to tolerate. People often need transactions involving some degree of vagueness or risk, and such transactions may be permitted as long as they do not involve a significant or outweighing harm.

Seventeenth: Most jurists did not distinguish between uncertainty (*gharar*) and vagueness (*jahālah*); rather, they treated them as synonymous or overlapping, since both revolve around unpredictability and lack of certainty. Some attempted to differentiate by saying that *gharar* relates to “unknown occurrence” while *jahālah* relates to “unknown attributes,” but the practical usage of *fiqh* literature does not consistently maintain this distinction.

Chapter Three
The Commercial Insurance Contract

Section One: Introductions

Section Two: The Relationship Between Insurance and *Gharar*

Section Three: The Ruling on Commercial Insurance in Islamic Jurisprudence

Section Four: Life Insurance

Section One
Introductions

First: The Definition of Insurance in Language and Terminology

The word *ta'mīn* (insurance) comes in the *taf'īl* form of the trilateral verb *'amina*—meaning: to feel secure or for fear to disappear[1].

It is said: *'amina–'amnan, 'amānan, 'amnah.*

As for *ta'mīn* (insurance), it is the verbal noun of *'ammana* (with *tashdīd*), just as in *'akkada–ta'kīdan* (to confirm–confirmation) and *dabbara–tadbīran* (to manage–management). From this comes: *"'ammana fulānan"*—meaning: he granted him safety or removed his fear.

As for the technical (juristic) definition:

There is no single agreed-upon definition for insurance in Islamic jurisprudence, given that the contract itself is relatively modern, and because its juristic definition was influenced by the preceding legal definition found in civil law. In addition, insurance originated in a non-Islamic environment and then entered Muslim lands after it had already diversified and branched out.

The most well-known definition in Arab countries is the one stated in Egyptian law and cited by Dr. al-Sanhūrī in *al-Wasīṭ*. It states: "Insurance is a contract whereby the insurer undertakes to pay the insured, or the beneficiary for whom the insurance is stipulated, a sum of money, a periodic income, or any other

[1] Maqāyīs al-Lughah (1/133) under entry "*'amina*," Lisān al-ʿArab (13/21) under entry "*'amina*," al-Qāmūs al-Muḥīṭ, p. 1176, under entry "*'amina*."

financial compensation upon the occurrence of the event or realization of the risk specified in the contract, in return for a premium or any other monetary payment made by the insured to the insurer."[1]

The Arabic Language Academy in Cairo defined it as: "A contract in which one of the two parties—the insurer—undertakes, before the other party—the insured—to provide the agreed-upon compensation upon the fulfillment of a condition or arrival of a due date, in return for a known monetary consideration."[2]

Albert Mowbray defined it in his book *Insurance: Its Theory and Practice in the United States* as: "A contract between the insurer and the policyholder that specifies the claims the insurer is legally obligated to pay, and in return for an initial payment known as the premium, the insurer undertakes to pay compensation for losses arising from the risks covered by the policy."[3]

From the totality of these definitions, we may classify the essential elements of the insurance contract as follows:

1. **The insured (*al-mustā'min*):** The party who requests the contract of security and must pay the agreed installments or premiums, depending on the type of contract.
2. **The insurer (*al-mu'ammim*):** The party who grants the contract of security, collects the premiums from the insured, and is obligated to compensate upon the

[1] Al-Wasīṭ (7/1085. Syrian, Lebanon, Iraqi, Jordian, Kuwaiti and other laws acted upon the summary of this definition.
[2] Al-Muʿjam al-Wasīṭ (1/28).
[3] *Insurance: Its Theory and Application in the United States*, p. (48), fifth edition — available through the HeinOnline website.

occurrence of the risk or the objective of the contract.

3. **Premiums:** The payments required throughout the duration of the insurance contract, paid by the insured to the insurance provider.
4. **Compensation:** The financial consideration owed by the insurer when the risk occurs or when the objective of the contract materializes.
5. **The beneficiary:** The designated party entitled to receive the compensation in case of danger or the occurrence of the contract's objective. The beneficiary may be the insured himself or another person named by him.
6. **The subject matter of insurance:** The risk or purpose for which insurance is sought, as well as the insured entity—whether a person or an object.
7. **Time:** The duration of the contract, upon which the obligations of each party depend.

Second: Humanity's Early Awareness of Risk and Its Management

Human societies have known since the dawn of history that life does not move in a single steady pattern. It is exposed to fluctuations and sudden events—natural disasters, destructive wars, or unexpected economic losses.

All these factors pushed humans to seek means that would enable them to face the future with a degree of reassurance and balance. In their primitive form, these means took two shapes: prior preparedness and risk-sharing.

Preparedness in ancient civilizations was not limited to material measures; it also included social and cooperative structures

aimed at bearing losses collectively. Islam came and affirmed this meaning, making it of the praiseworthy forms of cooperation—and even made it obligatory in some matters, such as the principle of *al-ʿāqilah*.

In the civilization of Mesopotamia, the *Code of Hammurabi* included provisions regulating the responsibility of trade caravans, obligating caravan owners to compensate one another if one of them suffered a loss due to theft or disappearance.

Similarly, in Pharaonic Egypt, agricultural communities had a customary system for sharing losses in cases of flooding or drought; crops and resources were redistributed among families, and funds were collected to cover burial expenses.

In ancient Greece, early forms of cooperation appeared against the dangers of maritime transport. Traders would conclude agreements requiring the payment of a certain amount as compensation if a ship failed to return or if goods were lost. This was managed through collective funding pools.

The Romans further developed this idea through the *Collegia*—professional or social associations whose essential functions included collecting member contributions to cover expenses related to illness, death, and burial.

When we look into the Islamic heritage, we find that the Qurʾān and the Sunnah point to real examples that represent the idea of prior preparedness for calamities or risk distribution. Among these examples are:

1. The Story of Prophet Yūsuf in the Qurʾān

In the story of Prophet Yūsuf (peace be upon him) and the king's dream, Yūsuf advised them with a plan that combined two concepts: nationalization (*taʾmīm*) and insurance (*taʾmīn*).

He instructed them to nationalize the crop of the seven fertile years—except for the small amount necessary for basic survival—and to use this stored harvest collectively during the seven years of drought. This constituted a form of insurance from widespread famine, where everyone contributed regardless of the productivity of their individual lands or regions.

He also instructed them to leave the grain in its ears, so that it would remain usable and protected from pests—this, too, is a form of insurance.

Al-Māwardī said in his *tafsīr* of the verse: "The statement *'so leave it in its ear'* is a command, while *'you shall sow'* is information. And since he was a prophet, it was permissible for him to command what leads to public benefit."[1]

Here, Prophet Yūsuf employed the authority of the state represented in nationalization (*ta'mīm*) for the purpose of securing the future, obligating everyone to participate.

2. The Story of Dhul-Qarnayn

In the story of Dhul-Qarnayn, the people asked him to build a barrier that would protect them from their enemies. They offered him money and compensation for this—a form of *istiṣnāʿ* contract, intended to insure themselves against future calamity.

Dhul-Qarnayn directed them toward collective participation in constructing the barrier: he asked them all to contribute iron pieces, even though they differed in amount—some possessing more than others.

3. The Story of Yūnus (peace be upon him) and the Casting of Lots

In the story of Yunus (peace be upon him), during a moment of

[1] Al-Nukat wa al-ʿUyūn (3/44).

danger[1] at sea, the passengers distributed the risk equally among themselves by drawing lots, so that the remainder might be saved. This was a form of cooperation in facing danger, where the risk was shared collectively, with equal chances of survival or sacrifice to protect the group as a whole.

4. The Sunnah: The Example of the ʾAshʿarīs

The Sunnah offers similar models—most famously the story of the ʾAshʿarīs[2]. Al-Bukhārī and others narrated from Abū Mūsā al-ʾAshʿarī that the Prophet Muḥammad (peace and blessings be upon him) praised them, saying: "The ʾAshʿarīs—when they run short of food during military campaigns, or their families' food in Madinah becomes insufficient—they gather what they have in a single cloth and then divide it equally among themselves in one container. They are of me, and I am of them."[3]

This narration highlights the value of collective participation and mutual support, and also reflects an element of insurance: each person donates what he has—whether little or much—and the total is redistributed equally. Thus, a participant may receive more or less than what he originally contributed.

5. The System of *al-ʿĀqilah*

The system of *al-ʿāqilah* requires that *diyyah* (blood money) in

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[1] The commentators' views varied regarding the type of danger. It was said that a large fish confronted them, so they wished to distract it with one of them. It was also said that the load exceeded what the ship could bear, and when they faced a strong wind they sought to lighten the burden by casting one of them overboard. And it was said that the ship came to a halt, so they said, "There is a runaway slave here," and they drew lots to determine who he was.

[2] A Yemeni tribe, the most of which travelled to Madina including the Companion Abū Mūsā al-ʾAshʿarī.

[3] Al-Bukhārī (2486) and Muslim (2500).

cases of accidental killing or quasi-deliberate killing[1] be borne not by the perpetrator alone, but by his *ʿāqilah*—his agnatic relatives, whether close or distant, present or absent—as long as they are adult males who possess sufficient means.

Anyone who examines the system of *al-ʿāqilah* will clearly notice its two main purposes: risk distribution, and protecting the rights of the victim, ensuring they are not lost due to the offender's financial incapacity.

Third: The Emergence of Contractual Insurance

With the development of commercial activity in Europe and the rise of large population centers in the Middle Ages and afterward, the concept of risk distribution began to take on a more organized and professional form. It evolved from informal communal solidarity into a legal contractual relationship between two parties: one seeking protection or risk coverage, and the other providing it in return for a fixed premium.

Among the earliest forms of this development was marine insurance in major Italian cities like Genoa and Venice during the 14th century CE. Written contracts were concluded between merchants and insurers, where the insurer undertook to compensate the merchant if the ship was lost or goods damaged, in return for a payment made in advance.

This system spread to England, the Netherlands, and France, taking on further developed forms. By the 17th century, Lloyd's of London became an advanced model for pooling risks and

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[1] Accidental killing (*al-qatl al-khaṭa'*) means that the act leads to death while the perpetrator does not intend it in any way. As for quasi-deliberate killing (*al-qatl shibh al-ʿamd*), it means that one intends to commit an assault with something that does not normally kill, such as striking with a stick — for a stick is not ordinarily a killing instrument.

organizing various insurance contracts—marine, land, personal, and property insurance.

This behavior differed from earlier forms of communal solidarity in several ways:

1. Clear identification of the two contracting parties and the nature of the contract, with a written document clarifying the relationship.
2. Mutual exchange of benefits, where one party pays fixed premiums and the other is obligated to compensate for loss.
3. Profit motivation, as insurance companies do not seek solidarity alone, but profit from the surplus of collected premiums over paid compensations, and by investing these funds.
4. Use of actuarial calculations[1] to estimate probabilities, losses, and financial balance.

We may say that the 17th century CE was a major turning point in the history of insurance—the birth century of organized commercial insurance. The motives behind the emergence of commercial insurance largely stemmed from social factors and the evolution of human life, especially the shift from agricultural societies to industrial ones, along with expanded trade and transportation.

These motives may be summarized as follows:

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[1] Actuarial science: It is the application of mathematical and statistical methods to assess the management of financial risks. It is most commonly used in the fields of insurance and retirement to estimate future financial obligations. The origin of the word is taken from *Actuarial Science*, meaning the science of insurance statistics. See, in this regard, the website "Be an Actuary."

1. Weakening of natural support networks, such as family and clan structures.
2. Transition from village life and small communities to large urban centers, where individualism is more pronounced, prompting people to seek protection outside the family structure.
3. Increasing economic and social disparities, making insurance a means of protecting the poor and middle class against future uncertainties.
4. Desire to expand commercial and industrial systems, with a protective framework ensuring continuity in the market despite major losses.
5. Rise in risk levels due to urbanization—for example, in the Great Fire of London, nearly 80% of homes were consumed due to their close proximity and uniform layout, unlike rural homes.
6. The emergence of the modern state, based on known legal relationships—whether through constitutions or laws regulating social relations.

Accordingly, insurance did not arise merely from financial considerations; rather, it emerged as a response to social needs consistent with the evolution of human life. Human beings need to reduce anxiety, fill the vacuum left by the absence of traditional communal support, and create balance in societies where risk and individualism increase.

The expansion of the concept of insurance occurred not only in the sphere of commercial insurance, but also through the development and regulation of social insurance, where social protection—expressed in the form of insurance—became a

shared responsibility among the individual, the state, and the private sector.

Fourth: Types of Insurance Contracts

Insurance contracts can be classified according to several criteria such as the nature of the risk, the parties to the contract, or their *shar'ī* characterization. However, the most important categories relevant to both theoretical and practical contexts may be summarized as follows:

First Classification: Types of Insurance Based on the Subject Matter "the Insured Object"

When examining the insured object, we can observe three primary types of insurance, each encompassing several sub-contracts:

1. Personal Insurance

Its purpose is to insure against harm or risk faced by individuals, whether wholly or partially. Under this category fall several contracts:

- Life insurance or death insurance
- Personal accident insurance
- Total or partial disability insurance
- Health insurance
- Travel insurance

2. Property Insurance

Its purpose is to cover damage that affects material objects, including:

- Fire insurance

- Theft insurance
- Transport insurance
- Insurance on homes and facilities
- Aviation and marine insurance

3. Liability Insurance

Its purpose is to cover what the insured becomes liable for toward third parties when he causes them harm. Included within it are:

- Civil liability insurance
- Professional liability insurance—for example, for doctors, lawyers, and others
- Workplace accident insurance for employees and workers
- Insurance for public figures who speak on public matters—such as imams in Western countries—against legal pursuit related to sermons or public statements

Second Classification: Types of Insurance Based on the Legal Nature of the Relationship

Here we can identify three principal forms:

1. Cooperative or Takaful Insurance

This is based on mutual cooperation and donation among participants, and is usually administered by a non-profit entity or companies that do not seek profit from premium differentials.

2. Commercial Insurance

This is a profit-based contractual relationship between insurer and insured, and is the predominant meaning of the term

“insurance” when used unqualifiedly.

3. Social Insurance

This type is supervised by the state, often involves an element of compulsion, and is funded by deducting a portion of individuals’ income—with the state sometimes contributing. Its forms include:

- Employment (or pension) insurance
- Unemployment insurance
- Disability insurance
- Old-age insurance

Third Classification: Types of Insurance Based on Legal Mandatory Status

According to this criterion, insurance is divided into two categories:

1. Optional Insurance

The insured decides it voluntarily without compulsion—such as travel insurance.

2. Compulsory Insurance

This is imposed by the state or employer for purposes of public safety or social justice, such as compulsory car insurance in some countries or mandatory social insurance.

Fourth Classification: Based on Duration

Here, the classification contains two possibilities: permanence and temporariness.

1. Permanent Insurance

Its purpose is continuity as long as the insured purpose continues—such as life insurance or insurance on a project until its completion.

2. Temporary Insurance

This covers a defined period and either ends upon completion or is renewed—such as insurance on devices.

Despite the wide variety of insurance contracts—based on goals, methods, and executing parties—they all share a core purpose: transferring risk from the individual to the collective, whether through compulsory payment as in commercial and social insurance, or through donation as in cooperative (takaful) insurance.

Due to the nature of the subject of this research, our focus will be on examining the insurance contract from the perspective of its legal (*shar'ī*) nature.

Second Section

The Relationship Between Insurance and *Gharar*

First: Commercial Insurance

As previously discussed, we have defined insurance in general. Here, we define commercial insurance as: "A contract whereby the insurer undertakes toward the insured to provide financial compensation upon the occurrence of a specified risk, in exchange for the insured's obligation to pay predetermined premiums."

Looking at the nature of the commercial insurance contract, we observe the following:

1. It is a contract of financial exchange (*muʿāwaḍah*): Each party provides a consideration to the other—premiums in exchange for compensation.
2. It is a conditional/probabilistic contract: A probabilistic contract is one in which neither party—or at least one of them—can know at the time of contracting the exact amount they will give or receive, because the subject matter depends on a future event.
3. It is a consensual contract (*raḍāʾī*): It relies on the mutual consent of both parties, insurer and insured, through offer and acceptance.

Despite this, due to state oversight and legal regulation of insurance contracts—because of their economic impact—some formality has been introduced into commercial insurance contracts.

4. **It is often a contract of adhesion (*ʾidhʿān*):** The insurer

prepares the contract in advance, leaving the client only the option to accept or reject.

Nevertheless, due to the prevalence of insurance contracts, their economic impact, and the emergence of consumer protection associations, commercial insurance contracts have a degree of protection: the insurance company cannot excessively impose terms outside the framework set by the state and legislation. Laws also prevent monopolistic or exploitative practices, making the contract a mix of adhesion and protective regulation.

5. **It is a time-bound contract:** The contract extends over a period during which the insured risk may occur.
6. **It is based on good faith (*ḥusn al-niyyah*):** Each party must disclose essential information to the other; otherwise, the contract may be null or voidable.

The Relationship Between Commercial Insurance and *Gharar* and Vagueness

By its nature, the commercial insurance contract contains elements of *gharar* (excessive uncertainty) and vagueness in several aspects:

1. The occurrence or non-occurrence of the risk.
2. The timing of the risk's occurrence, which may be immediately after signing the contract or after months or years.
3. The amount of compensation, which is determined according to the type and magnitude of the risk.
4. The amount paid by the insured, because premiums are usually paid periodically, renewing over time as the contract continues.

However, there are aspects of commercial insurance that do not involve *gharar* or vagueness:

1. **The parties to the contract:** the insurer and the insured are clearly identified by name or legal status.
2. **The subject matter of the contract:** the insured risk is defined in the contract (such as illness, accident, fire, theft, death, etc.). Insurance requires a specified or at least known type of risk; indefinite insurance would amount to gambling.
3. **The premium amount:** agreed upon in advance by both parties and fixed, changing only at renewal, so there is no *gharar* or vagueness in the premium.
4. **The duration of insurance:** usually annual contracts that renew automatically or by new agreement.
5. **The compensation ceiling in some types of insurance:** sometimes predetermined, so the insured knows what they will receive in specific events (like death or house fire), or based on market value, which is also a form of certainty.

Regarding insurance companies, as mentioned, they use actuarial analysis, a probabilistic statistical science for estimating the likelihood of risks such as illness, death, and accidents. This involves calculating the average cost of compensation and linking it to an appropriate premium for each segment. These calculations rely on massive datasets spanning decades, including millions of cases, and only fail in the event of unexpected catastrophes such as pandemics, large fires, or major earthquakes.

Second: Cooperative Insurance

Cooperative insurance is a contractual system whereby a group

of individuals agrees to contribute premiums or subscriptions on a voluntary basis, which are pooled into a common fund used to compensate anyone who suffers a loss or adverse event, according to a predetermined system, without any intent of profit by the organizing entity.

Looking at the cooperative insurance contract, we observe that it is:

1. **A donation-based contract:** Contributions are made with the intention of cooperation and solidarity, not financial exchange.
2. **Non-profit:** The organizing body (company or association) does not aim to make a profit, and any surplus is used to reduce premiums.
3. **Consensual (*raḍā'ī*):** The contract is formed once an individual accepts joining the cooperative insurance system according to the rules; no formalities are required for validity unless local law specifies otherwise.
4. **Time-bound:** Risk coverage continues for a specified period, and contributions are made periodically. The risk may occur at any time, so contract effects (coverage, compensation, premiums) are spread over time, making it a temporal contract rather than an instantaneous one.
5. **Probabilistic:** The risk, which motivates the insurance, depends on a future condition and is not known with certainty; however, its impact is mitigated by the voluntary nature of contributions.
6. **Adhesion-based in modern institutions:** Rules are set in the internal regulations governing the cooperative entity, and the participant can only accept or reject. Changes to

the rules require a general vote. With modern legal regulations, the contract becomes closer to a protective framework.

The Relationship of Cooperative Insurance with *Gharar* and Vagueness

Considering the nature of cooperative insurance, its operational method, and the types of risks covered—such as death, illness, accidents, and disasters—we find that *gharar* and vagueness are present in the contract, specifically in:

1. The occurrence or non-occurrence of the risk.
2. The timing of the risk, which may be shorter or longer than expected.
3. The ratio between compensation and contributions, because the risk cannot be fairly distributed in advance.

However, the effect of vagueness is mitigated because contributions are voluntary.

A crucial point concerns the contractual structure of cooperative insurance:

- In practice, participants often pay expecting compensation if a risk occurs, so treating participation purely as donation involves an element of risk.
- Despite this, cooperative insurance remains non-commercial, as the individual's intent alone does not define the type of contract; rather, the legal nature of the relationship, the form of obligation, and the contractual structure determine it.
- With legally organized cooperative insurance today, participants acquire legally enforceable rights, including

claims and litigation, making it resemble organized exchange more than pure donation.

Thus, differences between cooperative and commercial insurance regarding *gharar* and vagueness diminish as cooperative insurance becomes legally structured and professionally governed.

Third: Social Insurance

Social insurance is a state-sponsored financial protection system that aims to cover society's working classes, especially vulnerable groups, against risks such as disability, old age, workplace injuries, unemployment, and death.

Funding comes from contributions deducted from workers' salaries, employer contributions, and sometimes state support.

Looking at the social insurance contract, we note that it is closer to commercial insurance than cooperative insurance in its operative provisions, though it contains an element of solidarity:

1. It is a compensatory contract with a cooperative outcome.
2. Formal contract—it does not depend on the worker's consent.
3. Adhesion-based—negotiation by the insured is not allowed.
4. Temporal contract—benefits depend on future conditions and the occurrence of risks.
5. Probabilistic—often, risks such as injury may not occur.

The Relationship of Social Insurance with *Gharar* and Vagueness

Gharar and vagueness appear in several aspects:

1. **Occurrence of risk:** The insured event may or may not happen during the coverage period.
2. **Benefit allocation:** The insured cannot know in advance whether they will receive the pension or if it will pass to heirs, and who will be alive to benefit.
3. **Compensation amount:** The total benefit cannot be known with certainty; premiums may be paid for years without receiving full compensation.
4. **Length of participation:** Some schemes extend over decades (e.g., forty years), during which inflation and currency changes may occur, potentially reducing the real value of compensation relative to contributions.

Section Three
The Ruling on Commercial Insurance in Islamic Jurisprudence

Since the beginning of the last century, and with the direct contact between colonial Europe and the Islamic world, numerous jurisprudential issues emerged that occupied scholars and jurists in both the areas of study and legislative ruling. The driving force behind this was the transformation in certain patterns of economic, political, and social life. Examples include:

1. The introduction of new legal systems derived from European positive law, which required jurists to compare and balance them with the rulings of the *Sharīʿah*.
2. The emergence of modern institutions that had no precedent in traditional Islamic jurisprudence, such as banks, central banks, commercial insurance companies, pension and retirement institutions, among others. These, in turn, necessitated religious theorization that took into account Islamic heritage and the emerging developments.
3. The growing need to codify *Sharīʿah* rulings in a manner compatible with modern judicial institutions, which required jurists and legal scholars to engage in the process of legal formulation, including codifying the chapter on transactions.

From these and other developments, numerous efforts began—often individual and sometimes institutional—addressing various types of transactions, with writers producing works and jurists exercising ijtihad. Among these topics was the issue of insurance in general, and commercial insurance in particular.

It is useful to mention some of these efforts:

1. *ʾAḥkām al-Sikūrtāh* by the scholar Sheikh Muḥammad Bakhīt al-Muṭīʿī, former Grand Mufti of Egypt. The book was published in the early twentieth century and is considered one of the first Arabic works addressing the topic of insurance from a jurisprudential perspective. It aimed to present the Mufti's view following the spread of Western insurance companies at that time in Islamic countries[1].

2. *The Ruling on Insurance in Islamic Law* by Dr. Al-Ṣiddīq Al-Ḍarīr. Dr. Al-Dārir wrote this research as part of the Islamic Jurisprudence Week and the Ibn Taymiyyah Festival held in Damascus in Shawwal 1380 AH / April 1961 CE. He also wrote a chapter on the ruling of commercial insurance in his doctoral dissertation entitled *Al-Gharar wa ʾAtharuhu fi al-ʾUqud* "Uncertainty and Its Effect in Contracts", which was examined and approved in Shawwal 1386 AH / January 1967 CE at the Faculty of Law, Cairo University[2].

3. *Insurance System and Its Ruling in Islamic Law* by the scholar Muṣṭafā ʾAḥmad al-Zarqā. The original book was a research paper presented at the aforementioned Islamic Jurisprudence Week on insurance and explaining the position of *Sharīʾah* on its three forms (liability, life, and property). Sheikh al-Zarqā later added a second research paper on the ruling of insurance written for the First

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[1] *ʾAḥkām al-Sukurtāh*, by Muḥammad Najīb al-Muṭīʿī, al-Nīl Press, Cairo, 1424 AH / 2006 CE, included within two treatises — one on insurance and the other on photography.

[2] The book was printed several times, including, for example, the Dār al-Jīl edition — Beirut, 1410 AH / 1990 CE.

International Conference on Islamic Economics, held at King Abdulaziz University in Jeddah in 1396 AH / 1976 CE. He combined both papers, revised them, and published them as a book entitled *Insurance System*[1].

4. *The Ruling on Insurance* by the scholar Sheikh ʿAlī al-Khafīf, member of the Supreme Council of Al-Azhar, member of the Islamic Research Academy, and the Arabic Language Academy in Cairo, and Professor of Sharia at the Faculty of Law, Cairo University, who passed away in 1398 AH / 1978 CE. His research was presented as part of the Second Conference of the Forum for Islamic Research held in Cairo in 1385 AH / 1961 CE.

5. Works by the scholar Dr. Al-Sanhūrī in his encyclopedia *Al-Wasīṭ fi Sharḥ al-Qanūn al-Madanī* (The Medium in the Explanation of Civil Law), volume two, which addressed contracts involving *gharar*, gambling and wagering, lifelong annuities, and insurance[2].

6. *Insurance and the Position of Sharīʿah on It* by our teacher Dr. Muḥammad al-Sayyid al-Dusuqī[3]. The book was published by the Supreme Council for Islamic Affairs in 1387 AH / 1967 CE as part of the Expert Committee publications. The book originated as a master's thesis submitted to the Department of Sharia, Faculty of Dar al-Ulum, through which the researcher obtained his master's degree in 1966 CE. The thesis was examined by Dr.

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[1] The book was published in 1404 AH / 1984 CE, and it was issued by Mu'assasat al-Risālah, Beirut.

[2] Dār Iḥyā' al-Turāth al-ʿArabī — Beirut — edition of 1964 CE.

[3] His Excellency Dr. al-Dasūqī was one of my supervisors in the doctoral dissertation at the Faculty of Dār al-ʿUlūm, Cairo University, together with His Excellency Professor Dr. Shaʿbān Ṣalāḥ Ḥusayn.

Muṣṭafā Zaid, Sheikh ʾAlī al-Khafīf, and Dr. ʿAbdul ʿAzīz Ḥijāzī.

7. *Insurance Between Permissibility and Prohibition* by Dr. ʿIsā ʿAbdū ʾIbrāhīm, Professor of Islamic Economics at the Faculty of Sharia and Law, Al-Azhar University, who passed away in 1980 CE. The book was first published in 1398 AH / 1978 CE. The work lacks deep jurisprudential discussion and is largely written in an essayistic style.

8. *Insurance System in Light of Islamic Rulings and the Necessities of Contemporary Society* by Dr. Muḥammad al-Bahī, member of the Islamic Research Academy and former Minister of Awqaf, who passed away in 1402 AH / 1982 CE[1].

9. *Insurance in Sharīʿah and Law* by Dr. Shawkat Muḥammad ʿAliyān[2].

10. *The Ruling of Islamic Law on Insurance Contracts* by Dr. Ḥussein Ḥāmed Ḥassan[3]. The book originated as a research paper submitted to the First International Conference in Mecca in 1396 AH, then later published separately by the author.

11. *Insurance Contracts from the Perspective of Islamic Jurisprudence* by our teacher Dr. Muḥammad Beltājī, former Dean of the Faculty of Dar al-Ulum and well-known jurist[4]. The author indicated that the book was

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[1] The book was issued in its first edition by Maktabat Wahbah in 1385 AH.

[2] The book has several editions, including the 1398 AH / 1978 CE edition, and the Dār al-Rashīd edition in Riyadh, 1401 AH.

[3] It was published by Dār al-Iʿtiṣām in Cairo in 1398 AH / 1978 CE.

[4] I had the honor of being his student in the fourth year of the Faculty of Dār al-ʿUlūm, in the *sharīʿah* course, during 1994–1995.

originally a research paper submitted to the Islamic Jurisprudence Conference held in Riyadh in Dhu al-Qiʿdah 1396 AH / October 1976 CE[1].

These are only some of the books authored on the topic of insurance, but the issue of insurance has also been discussed in international jurisprudential conferences held in Egypt, Saudi Arabia, Syria, and other Islamic countries. It has also been part of broader studies on Islamic transactions, such as *Mawsūʿat al-Muʿāmalāt al-Māliyyah: ʾAṣalah wa Muʿāṣarah* (Encyclopedia of Financial Transactions: Originality and Modernity) by Mr. Dubayān bin Muḥammad al-Dubayān[2], and *Al-Muʿamalāt al-Māliyyah al-Muʿāṣirah* (Contemporary Financial Transactions) by Dr. ʿAlī ʾAḥmad al-Sālūs[3]. Additionally, it is addressed in *Mawsūʿat Fiqh al-Nawāzil* (Encyclopedia of Contemporary Fiqh Issues) by Dr. Muḥammad Ḥasan al-Jizānī, which compiles all decisions issued by contemporary *fiqh* councils[4].

What has been mentioned is not exhaustive of what has been written on insurance; the intention is not to catalogue all works but to provide a survey reflecting the extent of interest in discussing the issue since the spread of various forms of insurance in Islamic countries.

Despite the abundance of publications and jurisprudential councils, contemporary jurists have not reached a single ruling on commercial insurance. However, by reviewing their writings,

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[1] The book was printed by Dār al-Salām for Printing and Publishing in Cairo.

[2] The encyclopedia consists of 13 volumes, and it was printed by Maktabat al-Rashīd in Riyadh.

[3] The book was printed several times: the first in Kuwait in 1986 CE, the second in Cairo in 1987 CE, and a special Egyptian edition in 1992 CE.

[4] The book was printed by Dār Ibn al-Jawzī for Publishing and Distribution, and its first edition appeared in 1426 AH / 2005 CE.

the opinions can be summarized as follows:

The First Opinion:
Proponents of this view hold that commercial insurance, in its commonly practiced forms and types, is prohibited in *Sharīʿah* because it involves several violations that invalidate the contract according to Islamic law. These violations include:

1. That it is a contract involving excessive uncertainty (*gharar*) and vagueness.
2. That it is an exchange of money for money, which involves usury (*ribā*).
3. That it is based on future risk, and therefore falls under the category of gambling (*maysir*).

In addition to these, there are some objective considerations, such as the domination of insurance companies over the economy, which affects decision-making and contradicts the *Sharīʿah* objective of justice in contracts, resulting in reprehensible financial exploitation. Commercial insurance also weakens the principle of individual responsibility established in Islam: "Every soul, for what it has earned, will be retained,"[1] among other factors, which will be discussed in detail.

The ruling of prohibition has been attributed to the scholar Muḥammad ʾAmīn, famously known as Ibn ʿAābidīn, who passed away in 1252 AH / 1836 CE[2].

Several muftis in the Egyptian Dar al-Iftaʾ in the early twentieth century also adopted the view of prohibition, including:

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[1] [Al-Muddathir: 38].

[2] We will discuss what is mentioned in the *Ḥāshiyah* of Ibn ʿĀbidīn to see whether his statements indicate prohibition or if they refer to commercial insurance in the section discussing profits.

Sheikh Bakrī al-Ṣadfī[1]: He was asked about a person who contracted with an insurance company for life insurance benefiting his three children. After the contract, a fourth child was born. The question was whether the compensation should be divided among the four children and the new wife or only among those mentioned in the policy. His response was: "According to the *Sharīʿah* ruling, the contract in question is not among the valid *Sharīʿah* transactions; therefore, the amount should be considered part of the inheritance and distributed among the heirs according to the prescribed shares."[2]

However, the mufti allowed that the money could be divided among the heirs up to the amount paid by the subscriber. Any excess would require the company's permission; if granted, it would be considered part of the inheritance as a donation from the company. If the company and heirs agreed to divide it according to the *Sharīʿah*-prescribed shares, it would also be permissible, independent of the contract, and would be treated as an initial donation, which *Sharīʿah* does not forbid[3].

Sheikh Muḥammad Bakhīt al-Mutīʿī[4]: He was asked about fire insurance concerning buildings and properties belonging to a waqf. He replied: "We have reviewed this question and inform

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[1] He was born in the town of Ṣadfā in the Asyūṭ Governorate. He was one of the scholars of al-Azhar and assumed the office of *Dar al-Iftā'* after the death of Imam Muḥammad ʿAbduh. During his tenure, he issued 1,180 fatāwā. He passed away in 1919 CE.

[2] Mawsūʿat al-Fatāwā al-Miṣriyyah by Dār al-ʾIftāʾ al-Miṣriyyah, p. 1399-1400.

[3] Mawsūʿat al-Fatāwā al-Miṣriyyah by Dār al-ʾIftāʾ al-Miṣriyyah, p. 1400.

[4] The Shaykh was born in al-Muṭayʿah (formerly called al-Qaṭīʿah with a Qāf, which the Shaykh changed) in the Asyūṭ region. He was one of the scholars of al-Azhar and a leading jurist among the Ḥanafīs. He assumed the office of *Dar al-Iftā'* in 1915 CE, following Shaykh al-Ṣudafī, and passed away in 1935 CE.

that the work of insurance companies in the manner mentioned in the question does not comply with the provisions of Islamic *Sharīʿah*, and it is not permissible for anyone, whether a waqf supervisor or otherwise."[1]

He concluded his *fatwā* by saying: "It is not permissible for the waqf supervisor to undertake this work under any circumstances because it is contingent upon a risk that may or may not affect the insured property. Therefore, this work is a form of gambling in its meaning, and it is prohibited to engage in it according to *Sharīʿah*."[2]

Sheikh ʿAbdul Raḥmān Qarāʿah[3]: He was asked about the permissibility of insuring seven waqf buildings belonging to one of the daughters of Muḥammad ʿAlī Pasha, the former ruler of Egypt, under what is called property insurance. He issued a *fatwā* prohibiting it, considering it a commitment that is not required by *Sharīʿah*, due to the absence of a reason obliging the insurance company to provide coverage. He also considered that paying part of the profit in exchange for coverage constitutes a misuse of the waqf's money and is outside the conditions of the waqf[4].

His Eminence, the Grand Imam Sheikh Jād al-Ḥaqq ʿAlī Jād al-Ḥaqq[5], who was asked about fire insurance. He issued a *fatwā*

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[1] Mawsūʿat Fatāwā Dār al-ʾIftāʾ al-Miṣriyyah, 1401-1402.
[2] Ibid. p. 1403.
[3] He was born in Asyūṭ, and his father was the judge of Asyūṭ. He was one of the scholars of al-Azhar and a transmitter of ḥadīth with a high chain of narration. He assumed the position of *Dar al-Iftāʾ* in Egypt in 1921 CE, and during his tenure he issued around 3,065 fatāwā. He passed away in 1939 CE.
[4] Mawsūʿat Fatāwā Dār al-ʾIftāʾ al-Miṣriyyah, 1405.
[5] He was born in the Talakhā district of al-Daqahliyah. He graduated from the Faculty of *Sharīʿah* and worked as a Shari'ah judge before being appointed Muftī of the Republic in 1398 AH / 1978 CE. He issued around 1,328 fatāwā.

declaring the commercial insurance contract unlawful, stating: "In the insurance contract there is *gharar* (uncertainty) and actual harm to one of the parties, because all the company does is collect premiums from those who contract with it and uses these premiums as a large capital invested in usurious loans and other means. Then, from its excessive profits, it pays what the insurance contract obliges it to pay in compensation for losses to the insured property, although the company has no role in causing these losses, neither directly nor indirectly. Therefore, its obligation to compensate for the loss has no legal basis in *Sharīʿah*, and the premiums collected from the owners of the wealth under the insurance contract also have no *Sharʿī* basis. Everything the insurance contract contains of stipulations and obligations is invalid, and a contract that contains an invalid stipulation is itself invalid."[1]

Additionally, the Fatwa Committee at Al-Azhar issued a fatwa in 1968, chaired by Sheikh Muḥammad ʿAbd al-Laṭīf al-Subkī[2], declaring all types of commercial insurance unlawful.

Among those who ruled commercial insurance prohibited were the Ḥanafī scholar Sheikh ʾAḥmad Bek ʾIbrāhīm[3], in an article

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In 1402 AH / 1982 CE, he was appointed Shaykh of al-Azhar. He passed away in 1416 AH / 1996 CE.

[1] Mawsūʿat Dār al-ʾIftāʾ al-Miṣriyyah, p. 3447-3448.

[2] He was born in the al-Bājūr district of al-Munūfīyah, graduated from al-Azhar, and became a member of the Council of Senior Scholars and head of the Fatwā Committee at al-Azhar. He passed away in 1389 AH / 1969 CE. His fatwā was cited by Dr. ʿAlī Muḥyī al-Dīn al-Qurrā Dāghī in his book *al-Taʾmin al-Islāmī: Dirāsah Taʾsīlīyah*, published by Dār al-Bashāʾir, Beirut, 1462 AH edition, p. 151.

[3] A Ḥanafī jurist and *Sharīʿah* professor, he graduated from the Faculty of Dār al-ʿUlūm, taught there and at the Faculty of Law, and was a member of the Language Academy. A book is dedicated to him under the title: *Aḥmad*

published in *Majallat al-Shabāb al-Muslimīn* in 1941 CE[1], and also in *Majallat al-Muḥāmāh*[2].

Sheikh Muḥammad Abū Zahra[3] also held the same view, in an article published in *Al-'Ahram Al-Iqtiṣādī* magazine[4].

Sheikh ʿAbdul Raḥmān Tāj[5] wrote a research paper titled *Insurance Companies from the Perspective of Islamic Sharīʿah*, presented at the Seventh Conference of the Islamic Research Academy at Al-Azhar, in which he concluded that commercial insurance is prohibited.

Other fatwas and jurisprudential councils have also ruled commercial insurance unlawful, including:

The First International Conference on Islamic Economics in Makkah, 1396 AH, which concluded that: "Commercial insurance practiced by insurance companies in this era does not meet the *Sharīʿah* conditions for cooperation and solidarity

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Ibrāhīm: Faqīh al-ʿAṣr wa Mujaddid Thawb al-Fiqh fī Miṣr by Muḥammad ʿUthmān Shubayr. He passed away in 1364 AH / 1945 CE.

1 Majallat al-Shubān al-Muslimīn, Issue Three, Year 13.

2 Majjalat al-Muḥāmāh, Year 7, p. 937.

3 Muḥammad Aḥmad Muṣṭafā, known as Abū Zahrah, was born in al-Maḥallah al-Kubrā, graduated from the Faculty of Dār al-ʿUlūm and the Shari'ah Judiciary School, and studied at the Faculty of Law. He was appointed a member of the Islamic Research Academy and authored many important works. He passed away in 1974 CE.

4 *Al-Ahrām al-Iqtiṣādī*, Issue 126, issued 15 February 1961, p. 61.

5 ʿAbd al-Raḥmān Ḥusayn ʿAlī Tāj was born in Asyūṭ, with roots in the Fayyūm Governorate. He studied at al-Azhar and joined the Shari'ah Judiciary Department, was appointed a member of the Fatwā Committee for the Ḥanafī madhhab, and earned a PhD from the Sorbonne in Philosophy and History of Religions. He became a member of the Council of Senior Scholars, a member of the Arabic Language Academy, and the Islamic Research Academy. He assumed the position of Shaykh of al-Azhar in 1954 CE and passed away in Cairo in 1395 AH / 1975 CE.

because the *Sharīʿah* conditions that necessitate its permissibility are not fulfilled."[1]

The Council of Senior Scholars in Saudi Arabia issued a *fatwā* dated 4/4/1397 AH, declaring commercial insurance unlawful because it involves excessive *gharar*, constitutes a form of gambling due to its risk, includes *ribā* of both surplus and deferment, and is thus a prohibited wager[2].

The Islamic Fiqh Council, in its session held in Shaʿban 1398 AH in Makkah at the headquarters of the Muslim World League, ruled that all types of commercial insurance are prohibited, whether on life, goods, or other matters[3].

The Islamic Fiqh Council affiliated with the Organization of the Islamic Conference, in its second session in Jeddah in Rabiʿ al-Akhir 1406 AH / December 1985 CE, concluded that fixed-premium commercial insurance contracts, as practiced by insurance companies, contain excessive *gharar* invalidating the contract and are therefore unlawful in *Sharīʿah*[4].

As for books and studies specifically dedicated to examining insurance from various angles and concluding that commercial insurance is prohibited, there are many. Among them:

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[1] *Fiqh al-Nawāzil: Dirāsah Taʾsīlīyah Taṭbīqīyah* (3/267), Document no. 188.
[2] Ibid. (2/268-274). Document no. 189.
[3] *Fiqh al-Nawāzil: Dirāsah Taʾsīlīyah Taṭbīqīyah* (3/275–280), Document no. 190. The decision explicitly stated that Dr. Muṣṭafā al-Zarqā disagreed with the outcome of the decision, although he was one of the participants.
[4] *Fiqh al-Nawāzil: Dirāsah Taʾsīlīyah Taṭbīqīyah* (3/286–287), Document no. 191. Among those who adopted the Academy's view and wrote a study in the conference proceedings was Dr. Wahbah al-Zuḥaylī, who ruled the prohibition of all types of commercial insurance. See the full text of the study in *Majallat Majmaʿ al-Fiqh al-Islāmī*, 2nd cycle (547–554), as well as Shaykh Rajab Bayyūḍ al-Tamīmī and his study in the same journal (555–558).

The chapter written by Dr. Al-Ṣiddīq al-Ḍarīr in his book *Al-Gharar wa ʾAtharuh fī al-ʿUqud fī al-Fiqh al-Islamī* (*Uncertainty and Its Effect on Contracts in Islamic Fiqh*), which, as mentioned, was originally submitted as a doctoral dissertation to the Faculty of Law at Cairo University in 1967 CE.

He dedicated the fourth section of his study to examining contracts involving *gharar* and their ruling in *Sharīʿah*, including gambling, wagering, life annuities, and insurance contracts.

Regarding commercial insurance, Al-Ḍarīr concluded that it is prohibited, stating: "Therefore, I believe that the need for fixed-premium insurance in its present form, although widespread, is not essential. Accordingly, the principles of Islamic jurisprudence dictate its prohibition, because it is a compensatory contract containing excessive *gharar* without necessity."[1]

Our teacher, Dr. Muḥammad al-Sayyid al-Dusoukī, dedicated his master's thesis to studying the subject of insurance. He concluded that the commercial insurance contract involves excessive *gharar* (uncertainty) that invalidates the contract, that it cannot be compared to Islamic contracts such as *muḍārabah* or *kafālah bi-juʿl* or *ʿaqilah*, and that it contains elements of gambling and is not free from *ribā*. He stated: "Commercial insurance is not permissible in Islamic *Sharīʿah* due to its commercial nature, which renders it tainted with *ribā*, gambling, *gharar*, and vagueness."[2]

In 1979 CE, Dr. Ḥusayn Ḥāmid Ḥassan[3] published a book

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[1] Al-Gharar wa ʾAtharu fī al-ʿUqūd, p. 663.

[2] *Al-Taʾmin wa Mawqif al-Sharīʿah al-Islāmiyyah Minhu*, p. 147.

[3] Ḥusayn Ḥāmid Ḥassān, born in 1932 CE, studied Law and *Sharīʿah*, and earned a PhD in Fiqh and Uṣūl from the Faculty of *Sharīʿah*, al-Azhar University, in 1965 CE. He specialized in Islamic economics and participated in establishing the International Islamic University in Islamabad (1979 CE) and

entitled *The Ruling of Islamic Sharīʿah on Insurance Contracts*, in which he ruled commercial insurance unlawful because:

- It is a compensatory financial contract that contains excessive *gharar*[1]. The author states: "*Gharar* in the insurance contract pertains to the very subject of the exchange, not to a secondary unintended matter; it relates to the existence, amount, and timing of the subject of the exchange."[2]
- The insurance contract involves wagering and gambling[3].

Among those who devoted a specific book to insurance, even if originally a research paper, is our teacher Dr. Muḥammad Baltajī, former Dean of the Faculty of Dar al-Ulum and a well-known scholar[4]. In his book, he ruled commercial insurance unlawful, stating after explaining his scholarly methodology in studying the subject: "Based on this, I reviewed the opinions of the jurists on insurance, examined the evidence of each opinion carefully, traced each one to its source, and weighed them with utmost diligence. I thus reached the following conclusion, consisting of two parts:
1- Commercial insurance contracts include elements that render them unlawful, and it is not permissible to equate these contracts with legitimate contracts and systems in Islamic jurisprudence,

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the Nur Sultan Mubārak Islamic University in Kazakhstan. He authored many works on Islamic economics and passed away in 1442 AH / 2020 CE.

[1] *Ḥukm al-Sharīʿah al-Islāmiyyah fī ʿUqūd al-Taʾmin*, p. 53.

[2] Ibid. p, 80-81.

[3] Ibid. p, 82 et seq.

[4] Muḥammad Bultājī Ḥasan, born in 1938 in Kafr al-Sheikh Governorate, graduated from the Faculty of Dār al-ʿUlūm, became its dean, and was a member of both the Islamic Research Academy and the Arabic Language Academy. He authored numerous works in all areas of *Sharīʿah* and passed away in 1425 AH / 2004 CE.

nor to justify them by Islamic legal principles.

2- Cooperative insurance is fundamentally consistent with *Sharīʿah* texts and principles, and these texts and principles must be observed in its implementation."[1]

These are only some examples of those who have written on commercial insurance and ruled it impermissible. Others have also authored scholarly papers, books, and articles in Islamic and economic journals, many of which resemble each other to the point of direct overlap.

Evidence of those who declare prohibition:
The prohibitionists rely on various types of evidence, including textual evidence (*dalīl samʿī*) and others. Here is a summarized presentation to avoid excessive length and repetition:

1. The commercial insurance contract involves excessive *gharar*. The Prophet (peace and blessings be upon him) forbade the sale of uncertain items, as narrated by Abu Hurayrah: "The Messenger of Allāh (peace and blessings be upon him) forbade the sale of pebbling and the sale of *gharar*."[2] The *gharar* in commercial insurance is excessive because it affects the three essential elements of the contract: existence, amount, and timing.

- Existence: The insured risk may or may not occur during the contract period.
- Amount: The insured does not know how much premium they will pay until the risk occurs, and the company does not know in many cases the amount of compensation, which is tied to the extent of the loss.

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[1] *ʿUqūd al-Taʾmin min Wajhat al-Fiqh al-Islāmī*, p. 53.
[2] Previously authenticated.

- Timing: Most insurance contracts tie the exchange to the occurrence of the risk, which is an unknown period, within Allāh's knowledge, and conditional on the future.

2. Commercial insurance involves gambling and prohibited wagering, because the compensation is contingent upon the occurrence of a risk that is uncertain and potentially realized. The insured pays regular premiums without knowing whether they will be compensated or not. The insurance company may collect a single premium but pay a large compensation if the risk occurs immediately. Neither party knows at the time of the contract who will gain and who will lose; each monitors the risk, one to compensate, the other to protect, so the gain of one is the loss of the other—this is precisely gambling.

3. Commercial insurance, as practiced by insurance companies, involves *ribā al-faḍl* and *ribā al-nasī'ah*. The insured pays monetary premiums in exchange for the company's commitment to compensate in cash upon occurrence of the risk. Both exchanges are cash of the same type: present money for future money. If the exchange is immediate with an excess in the compensation over the premium, it constitutes *ribā al-faḍl*. If it is deferred with inequality, it constitutes *ribā al-nasī'ah*.

4. Commercial insurance may lead to unlawful consumption of people's wealth, which is prohibited by the Qur'ān and Sunnah, because the insured may pay premiums and the risk does not occur, leaving the insurance company in possession of the money without providing a counterpart. Conversely, the insured may receive a large sum as compensation from the insurance company and then leave it for others.

5. The insurance contract involves assuming an obligation that is not required by *Sharīʿah*, because the insured has not yet incurred a loss that necessitates compensation. This falls under guaranteeing what is not obligatory.

   Likewise, it falls under the category of guaranteeing for a fee, which the scholars forbade, because it is considered an act of *birr* (virtue and benevolence).

6. The commercial insurance contract involves selling a debt for a debt, which is prohibited. The Prophet (peace and blessings be upon him) forbade the sale of one debt for another where both the price and the commodity are deferred. In insurance, the premiums that the insured will pay are a debt in their obligation, and the amount the company will pay as insurance is a debt in the company's obligation.

7. Commercial insurance companies pose a societal risk for the following reasons:

- They represent a form of capital concentration that influences political decisions and serves a small elite within society.
- Many of these companies operate overseas, leading to economic strain and a bleed of wealth outside the countries and communities benefiting from the service.
- The widespread adoption of insurance in this form undermines individual responsibility and prudence, encouraging the wrongful destruction of wealth.
- It creates incentives for lying, fraudulent claims, and sometimes even criminal acts to obtain compensation—for example, a beneficiary might kill the insured to collect the

payout.

- The insurance system promotes social stratification, protecting the wealth and persons of the affluent, while the poor, who cannot afford the premiums, remain uncompensated.

These are the main evidences relied upon by those who declare commercial insurance prohibited.

Second Opinion:
Some contemporary scholars consider the insurance contract valid in principle and deem commercial insurance lawful.

Among them is the renowned jurist Al-Sanhūrī[1] in his encyclopedia *Al-Wasīṭ*. He studied the subject of insurance from all angles and commented on the prohibition of some by stating: "Focusing on only one aspect of the insurance contract—the relationship between the insurer and the insured themselves—without considering the other aspect, which is the relationship between the insurer and the collective group of insureds, where the insurer acts only as an intermediary organizing their mutual cooperation to face the risks affecting a few of them, led many who issued fatwas on the permissibility of insurance in Islamic jurisprudence to declare it impermissible... But the other side of the insurance contract—which must be considered as it establishes and defines the nature of the contract—reveals insurance in its true form. It demonstrates that it is nothing but a carefully organized cooperation among a large number of people

[1] ʿAbd al-Razzāq al-Sanhūrī was one of the leading figures in fiqh and law in the Islamic world. He was born in Alexandria in 1895 CE, studied Law, and earned a doctorate in France. He served as Dean of the Faculty of Law and Minister of Education, contributed to drafting the constitutions of several Arab countries, and is considered the "father of laws" in most Arab states. He authored numerous encyclopedic works and passed away in 1971 CE.

all exposed to the same risk… Insurance, therefore, is commendable cooperation, cooperation for virtue and piety, by which participants assist one another and protect themselves collectively from the harm of risks. How, then, can it be said to be impermissible?"[1]

Also among them is the scholar Dr. Muṣṭafā al-Zarqā[2], who authored a book compiling several of his research papers on insurance, titled *The Insurance System: Its Reality and the Legal Opinion Therein*. In this book, Al-Zarqā examined insurance from multiple perspectives, presenting the views of those prohibiting, permitting, and suspending judgment. After reviewing all the evidence, he concluded that commercial insurance is permissible, stating: "My research has led me to conclude that it is permissible under *Sharīʿah* without any objection."[3]

Dr. Muḥammad Yūsuf Mūsā[4] also ruled commercial insurance lawful. In an article published in *Al-ʾAhram Al-Iqtiṣādī*, he wrote: "Insurance in all its forms is a type of cooperation that benefits

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[1] Al-Wasīṭ (7/1087), note 1; see also Maṣādir al-Ḥaqq (3/32-33).

[2] Muṣṭafā Aḥmad al-Zarqā, born in Aleppo in 1904 CE. His father was a renowned Syrian jurist, as was his grandfather, and the family were Ḥanafī scholars in the Levant. He studied at the Faculties of Arts and Law, earned a diploma in *Sharīʿah* from the Faculty of Law at Fu'ād I University (Cairo), worked as an expert for the Kuwaiti *Mawsūʿah al-Fiqhiyyah*, taught in several *Sharīʿah* faculties in the Arab world, and held the Ministries of Justice and Awqāf in Syria. He authored many works on *Sharīʿah* issues and passed away in 1999 CE.

[3] Niẓām al-Taʾmīn, p. 13.

[4] Born in Zagazīq in 1317 AH / 1899 CE, he studied at al-Azhar until he earned the *ʿĀlim* degree, was appointed a lecturer at the Faculty of Uṣūl al-Dīn during Shaykh al-Marāghī's tenure, and later traveled to France, obtaining a doctorate from the Sorbonne. He authored many works in fiqh and philosophy, and passed away in 1963 CE.

society. Life insurance benefits both the insured and the company providing the insurance. I consider it permissible under *Sharīʿah* if it is free from *ribā*; that is, if the insured survives the term specified in the insurance contract, they recover only what they paid without increase. If they do not survive the term, their heirs are entitled to the insurance payout (i.e., compensation), and this is lawful."[1]

Sheikh ʿAbdul-Wahhāb Khallāf[2] also allowed life insurance, considering it closest in nature to *muḍārabah* contracts under *Sharīʿah*[3].

Among those permitting insurance on property is Professor Muḥammad bin al-Ḥasan al-Hajawī[4], who commented on the prohibitionists: "In our time, contrary to expansion, some issued fatwas forbidding guarantees called *sikritah* on property, then differed: some based the prohibition on *gharar*, others on gambling, and others said it was a guarantee by *juʿl*. Here I clarify the flaws in all three fatwas."[5]

Al-Hajawī considered that the *gharar* in the insurance contract is manageable and does not invalidate the contract. He also viewed

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[1] Niẓām al-Taʾmīn, p. 28.

[2] Born in al-Gharbīyah Governorate in 1888 CE, he studied at al-Azhar in the Shariʿah Judiciary School, became a judge, then a lecturer at the Faculty of Law, and a professor of the *Sharīʿah* chair. He was elected a member of the Arabic Language Academy and authored works on uṣūl, personal status, waqf, inheritance, and Islamic politics. He passed away in 1956 CE.

[3] *Al-Taʾmin wa Mawqif al-Sharīʿah Minhu*, p. 78, citing the Islamic Council symposium held in November 1955 CE.

[4] Born in Fās in 1291 AH / 1874 CE, he studied at the University of al-Qarawiyyīn, became a Mālikī jurist, held several official positions, authored around 96 works, and wrote *Al-Fikr al-Sāmī fī Tārīkh al-Fiqh al-Islāmī*. He passed away in 1956 CE.

[5] Al-Fikr al-Sāmī fī Tārīkh al-Fiqh al-ʾIslāmī (2/563).

premiums as a form of voluntary contribution, justified by necessity and benefiting those affected by risk.

Also, among those who permitted insurance is Sheikh ʿAlī al-Khafīf[1], in a paper he submitted to the Second Conference of the Islamic Research Academy held in Cairo in Muharram 1385 AH / 1965 CE.

Sheikh al-Khafīf relied on several principles, including the general permissibility of contracts, customary practice (*ʿurf*), analogy to the general rules of obligations and the requirement to fulfill them, among others[2]. He even considered that its permissibility under Sharīʿah should not be a matter of dispute[3].

Also supporting permissibility is Professor ʿAbdul-Raḥmān ʿIsā[4], in his book *Modern Financial Transactions*[5].

Other proponents include Dr. Muḥammad Sallām Madkūr[6], in an article published in *Al-Arabi* magazine, issue no. 192.

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[1] ʿAlī Muḥammad al-Khafīf, scholar and judge, one of the leading researchers in Egypt and the Islamic world, was born in al-Munūfīyah in 1309 AH / 1891 CE, graduated from the Shari'ah Judiciary School, became a lecturer there, also studied at the Faculty of Law, Cairo University, and was appointed a member of the Islamic Research Academy and the Supreme Council of al-Azhar. He authored *Asbāb Ikhtilāf al-Fuqahā'* and passed away in 1398 AH / 1978 CE.

[2] Al-Taʾmīn wa Mawqif al-Sharīʿah Minh, p. 121-122.

[3] ʿUqūd al-Taʾmīn Min Wijhat al-Fiqh al-ʾIslāmī, p. 51, note 1.

[4] He was an Islamic researcher and served as Director of Inspection for Religious and Arabic Sciences at al-Azhar.

[5] ʿUqūd al-Taʾmīn min Wijhat al-Fiqh al-ʾIslāmī, p. 40; □nd □l-Taʾmīn wa Mawqif al-Sharīʿah Minh, p. 99.

[6] An Egyptian scholar of *Sharīʿah* and Law, he headed the Department of *Sharīʿah* at the Faculty of Law, Cairo University, taught at Kuwait University, and authored several works including *Mabāḥith al-Ḥukm ʿInda al-Uṣūlīyīn*, *Manāhij al-Ijtihād fī al-Islām*, and *Naẓariyat al-Ibāḥah ʿInda al-Uṣūlīyīn*, among others.

Professor ʾAḥmad Ṭaha al-Sanūsī also supported permissibility in a paper published in *Al-Azhar* magazine in 1373 AH, in two issues[1], where he analogized insurance to the contract of *mawālāh* (a type of succession contract) known in Islamic inheritance *Sharīʿah*.

Sheikh ʿIsawī ʾAḥmad ʿIsawī[2] also argued for permissibility in an article published in the *Journal of Legal and Economic Sciences* at Ain Shams University in July 1962 CE[3].

Dr. Muḥammad al-Bahī[4] in his book *The Insurance System in Light of Islamic Rulings and the Necessities of Contemporary Society* argued for the permissibility of all types of insurance and even encouraged the state to make it mandatory.

Permissibility was also supported by Sheikh Al-Ṭayeb al-Najjār[5]

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1 Niẓām al-Taʾmīn, p. 28.

2 Professor of *Sharīʿah* at the Faculty of Law, Ain Shams University. He married the daughter of Shaykh ʿAbd al-Raḥmān Tāj, former Shaykh of al-Azhar, and authored several works including *Al-Madkhal*, *Naẓariyat al-ʿUqūd wal-Madāyīn*, and *Aḥkām al-Mawārīth*, among others.

3 *Majallat Majmaʿ al-Fiqh al-Islāmī*, p. 584.

4 Muḥammad Muḥammad ʿĀmir al-Bahī, born in al-Buḥayrah Governorate in 1323 AH / 1905 CE, studied at al-Azhar, obtained a doctorate from the University of Hamburg, Germany, in 1936 CE, taught at the Faculties of Uṣūl al-Dīn and Arabic Language at al-Azhar, also taught at universities in Morocco, Algeria, Qatar, and the UAE, was appointed a member of the Islamic Research Academy, served as President of al-Azhar University, and as Minister of Awqāf and Affairs of al-Azhar. He passed away in 1402 AH / 1982 CE.

5 Muḥammad al-Ṭayyib al-Najjār, former President of al-Azhar University, was born in al-Sharqīyah Governorate in 1334 AH / 1916 CE, obtained the *Ijāzah ʿĀliyah* and PhD from the Faculty of Uṣūl al-Dīn, was appointed a member of the Islamic Research Academy, a member of the Arabic Language Academy, and a member of the Shari‘ah Supervisory Board of Faisal Islamic Bank. He authored numerous works in *Sharīʿah* and passed away in 1411 AH / 1991 CE.

and Dr. ʿAbdul-Munʿim al-Nimr[1] in his book *Al-Ijtihād*[2]. After reviewing the history of insurance studies since Imam Ibn ʿAbidīn, he concluded: "From my studies and readings over many years, and from what I heard from insurance professionals in the sessions we held with them, I reached the following opinion:

First: The insurance contract is permissible in principle under *Sharīʿah*, and the prohibitive obstacles cited by the opponents do not apply."[3]

Evidences cited by those permitting insurance:

The proponents relied on many sources, including transmitted reports (*samaʿī*), and much of it by analogy to contracts that *Sharīʿah* either permitted directly or that were accepted by some legal schools:

1. **Presumption of original permissibility:** The majority of jurists hold that the default ruling for contracts is permissibility and validity. Therefore, the insurance contract is valid by default, and the burden is on the opponent to provide evidence for prohibition.
2. **Analogy to guarantee of the unknown (*ḍamān al-majhūl*),** permitted by the majority of jurists. Ibn Taymiyyah said: "The market guarantee, whereby the guarantor ensures whatever the trader owes in debts and

[1] Born in Kafr al-Sheikh Governorate in 1913 CE, graduated from the Faculty of Uṣūl al-Dīn, obtained a PhD, taught at the Faculty of Arabic Language at al-Azhar, also taught in India, Kuwait, and the UAE, issued the *Al-Waʿy al-Islāmī* magazine in Kuwait and *Mināra al-Islām* in the UAE, focused on works on ijtihād, served as Deputy of al-Azhar and Minister of Awqāf, and passed away in 1991 CE.

[2] Al-Ijtihād, p. 264 et seq.

[3] Ibid. p, 270.

whatever he has collected in goods, is a valid guarantee. This is a guarantee of what is not obligatory or a guarantee of the unknown, and it is permissible according to the majority of scholars such as Mālik, Abū Ḥanīfah, and ʾAḥmad ibn Ḥanbal."[1]

The common factor between insurance and this type of guarantee is the commitment of liability for something unknown, as is the case with the insurer covering the risk.

3. **Analogy to the guarantee of travel risk,** according to the Ḥanafīs. Its form is: one person tells another, "Take this route; it is safe, and if your wealth is taken, I am liable." The jurists considered that if the wealth is taken, the guarantor is responsible[2].

   The similarity lies in the guarantor assuming liability for an unknown risk contingent on the future, just as the insurance company covers part of the insured's risk.

4. **Analogy to the contract of *mawālāh* (allegation contract):** This contract entails one person pledging that if the other dies, their inheritance passes to the first[3], or if they profit, the first collects a fee. Several Companions permitted this contract, including ʿUmar ibn al-Khaṭṭāb, ʿAlī ibn Abī Ṭālib, and Ibn Masʿūd, and among the Followers (*Tābiʿūn*), ʾIbrāhīm Al-Nakhaʿī and Ḥammād ibn Abī Sulaymān, which is the Ḥanafī position[4].

Some also permitted it if the *muwālī* (the pledged person) converted to Islam under the authority of their pledgee, according

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[1] Majmūʿ al-Fatāwā (29/549).
[2] Ḥāshiyat Ibn ʿAbdīn (4/170).
[3] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah (45/128).
[4] Ibid.

to the Mālikī school, and scholars ʾAḥmad, ʾIsḥāq ibn Rahwayh, ʿAṭāʾ, and ʿUmar ibn ʿAbd al-ʿAzīz[1].

The point of similarity between the *mawālāh* contract and the insurance contract is that the insured corresponds to the *maʿqūl ʿanhu* (the one whose liability is guaranteed), and the insurance company corresponds to the *mawlā* in the *mawālāh*. The compensation in the insurance risk corresponds to the value of the *ʾarsh* (fee) or *diyyah* (blood money), and the insurance premiums correspond to the inheritance of the *mawlā* that he pledges upon himself.

5. **Analogy to the contract of custody (*ḥirāsa*):** In this contract, the custodian receives a wage from the contracting party to protect against risk or loss, which is contingent on the future. The risk may occur the next day, after a significant period, or not at all. Accordingly, the contracting party is effectively entering into an agreement on an uncertain event, which is similar to the commercial insurance contract, where the insured pays premiums to the insurance company that monitors the risk, and if it occurs, compensates for it, although the risk may or may not happen during the contract term; it could occur immediately, or it could be delayed.

6. **Analogy to the *ʿāqilah* system:** This is the kinship group responsible for paying the *diyyah* in cases of accidental or semi-intentional killing. The *ʿāqilah* divides the blood money among themselves and pays it to the victim's heirs on behalf of the perpetrator, thus providing restitution and guaranteeing the liability. The similarity to commercial insurance is that the group of insured individuals

[1] Ibid. (45/130).

cooperates to compensate for a risk they did not cause, providing restitution for the effect of the risk on both the perpetrator and those affected by it. Thus, the outcome of the *ʿāqilah* system is similar to that of insurance.

7. **Analogy to cooperative and social insurance systems**, which are generally accepted by scholars, based on their classification as contracts of donation (*tabarruʿ*). Both types of contracts involve paying premiums with the promise of compensation in case of a risk or upon reaching a specified age. In both cases, the parties do not know the exact amount they will pay or receive, nor the timing or duration of benefits. These uncertainties were cited by opponents as reasons for prohibition; however, the principle of law does not differentiate between such analogous cases.

8. **Tolerance of *Sharīʿah* regarding contracts containing minor uncertainty (*gharar*):** Certain contracts, such as *muḍārabah*, conditional sales, sales of unknown types, and the sale of unproven stallions, are permitted despite containing some *gharar*. The *gharar* in the insurance contract is of this type; with predetermined premiums, compensation, and contract duration, alongside laws obliging the company to fulfill its commitments, the uncertainty regarding future risk is mitigated.

9. **Reliance on the principle of public interest (*istislāḥ* or *masālih mursalah*):** This entails preserving the *Sharīʿah*'s objective of preventing harm and promoting benefit for people. Insurance, in practice, disperses risks, mitigates the effects of potential losses, and involves organized collective solidarity, which constitutes a valid *Sharīʿah* interest.

Additionally, proponents cite subsidiary arguments, including the economic benefits of insurance, its effect on judicial systems, and other considerations under wisdom and *maqāṣid* (objectives of *Sharīʿah*).

These are the two primary views regarding the ruling on commercial insurance. Other opinions branch from these two, such as:

- Differentiating between types of insurance, permitting some forms (like health insurance) and prohibiting others.
- Issuing rulings based on necessity, permitting what is needed and prohibiting what is unnecessary.
- Distinguishing between commercial, cooperative, and social insurance, permitting the latter two but forbidding the first.

Ultimately, discussion returns to the two main positions mentioned, and any alternative view essentially borrows from one or the other. Therefore, our focus in weighing the evidence will be on these two opinions.

***Tarjīḥ* (Preponderant View)**

Before delving into the details of what this research has concluded, it must be stated that commercial insurance has become one of the most prominent contemporary issues that has stirred wide debate among scholars and *fiqh* councils. This is because it has come to represent a fundamental pillar in modern economic and social systems.

Despite the objections raised concerning uncertainty (*gharar*), vagueness (*jahālah*), and *ribā*, a significant and reputable scholarly trend has emerged which views commercial insurance, in its institutional and regulated form, as falling within the

category of lawful exchanges (*muʿāwaḍāt*) in Islamic law. Indeed, it aligns with the objectives of the *Sharīʿah*—particularly those related to preserving life and wealth, achieving solidarity, and reducing harm through organized mechanisms.

Accordingly, this research adopts the view that commercial insurance, in its well-established and regulated form, is permissible. Insurance in its various types—including commercial insurance—contributes to societal development by mitigating disasters and crises or reducing their effects, encouraging investment, and protecting individuals and institutions from unexpected events and risks. Thus, it realizes the principle of averting harm and procuring benefit, and strengthens the functions of the modern state in caring for its citizens and securing their living stability through contractual mechanisms.

This research also re-examines the position that rejects commercial insurance and favors the opinion of permissibility, in light of the *fiqh* of transactions (*fiqh al-muʿāmalāt*) and a precise understanding of the consequences of contracts, based on the higher objectives of the *Sharīʿah*, without adhering rigidly to traditional forms that the modern transactional market has long surpassed.

To make this easier for the reader, I will divide the *tarjīḥ* into several parts:

Part One: Identifying the Point of Disagreement with the Opponents

To establish a correct legal ruling, a precise understanding of the point of contention is essential, as well as clarifying the operative factor of the dispute so that foundational principles are not confused with subsidiary issues, nor the scope of prohibition

expanded beyond what is warranted.

In the issue of insurance, the dispute between those who permit it and those who prohibit it revolves around a specific form of contracting—namely, insurance in which a fixed, known premium is paid in exchange for the insurance company's commitment to compensate the insured in the event of a known harm, risk, or specified event.

What must first be clarified is that the disagreement does not concern the very concept of insurance itself. Nearly everyone agrees that insurance is permissible in principle when it is based on donation and mutual support, as in cooperative insurance. Rather, the dispute concerns the form of commercial insurance, which is based on financial exchange between two parties: an organized, profit-seeking company, and an individual or institution seeking protection from risk.

The opponents of commercial insurance have relied on several assumptions:

- That it is a contract involving excessive uncertainty (*gharar*) and vagueness (*jahālah*).
- That it resembles gambling or wagering.
- That it involves *ribā* in both its deferment (*nasī'ah*) and surplus (*faḍl*) forms.
- That it leads to wrongful consumption of wealth by either party.

However, the true point of contention—upon closer examination—is not the essence of these objections but rather the following:

- Whether these underlying issues actually materialize in

regulated, institutional commercial insurance as it is practiced today; whether its uncertainty constitutes the type of excessive or impactful uncertainty prohibited in *Sharī'ah*.

- Distinguishing commercial insurance from gambling and games of chance in terms of legal structure, objectives, and outcomes, rather than relying solely on superficial similarities in gain and loss.
- Understanding the relationship of insurance contracts to the principle that the default ruling for contracts is validity and enforceability.

Thus, if these criticisms can be refuted and the default principle of permissibility applied—along with the overarching *Sharī'ah* principles that allow risk-based or benefit-driven contracts—then the view that commercial insurance is permissible becomes consistent with the foundations of *fiqh* reasoning.

Part Two: Evidences for Permissibility

First Evidence

The first and primary evidence in all matters of transactions is that the default ruling in things is permissibility, and in contracts validity and enforceability.

The explanation is that the majority of jurists and *uṣūl* scholars affirm that the original ruling concerning things is permissibility—this principle applies to consumption, use of benefits, and disposal of property.

Similarly, the default in contracts and transactions is validity and enforceability, as explained in detail in the first chapter in an extended discussion. Therefore, any contract for which no specific text establishes prohibition is, by its very existence,

deemed valid and permissible. The burden of proof does not lie upon the one asserting permissibility, but rather the burden of negation lies upon the one claiming prohibition; otherwise, the default in things would be prohibition, not permissibility.

Thus, asking someone who permits a contract to provide evidence for its permissibility is methodologically incorrect in discussions of transactions. Rather, the question must be directed to the one prohibiting it to provide evidence for the prohibition.

This principle is of immense value in resolving many issues of disagreement and preserves significant time and effort in *fiqh* debates on subsidiary matters.

The objections raised by opponents—who believe certain factors shift insurance from the default permissibility to prohibition—do not overturn this foundational principle because these factors themselves are subject to criticism, debate, and refutation, and none of them constitutes definitive proof of prohibition. Their basis is interpretation and analogy. Scholars who affirm the default permissibility have refuted these claims, leaving the original principle intact—namely, that contracts are valid and enforceable unless sound, uncontested evidence proves otherwise.

This approach accords not only with *Sharīʿah* principles but also with clear rationality. A general governing rule must exist; otherwise, rulings become chaotic, as most issues involve disagreement. Without a stable foundational principle, no sale or contract could ever be concluded—especially in evaluative matters involving uncertainty, where assessments vary between legal schools, individual jurists, times, and places. Herein lies the importance of the aforesaid principle.

In summary: commercial insurance is a newly developed contract

for which no specific evidence exists establishing its prohibition. It is based on mutual consent and the realization of benefits. Thus, the *Sharīʿah* principle dictates its permissibility based on the legal maxim: "The default in transactions is permissibility, and in contracts validity and enforceability."

Second Evidence

Those who permit commercial insurance have argued by drawing upon many contracts and transactions deemed lawful in the *Sharīʿah* even though they contain uncertainty (*gharar*) or vagueness (*jahālah*), and share many characteristics with the insurance contract, such as: the contract of protection (*ʿaqd al-ḥirāsah*), the contract of alliance (*ʿaqd al-muwālāt*), the contract of *juʿālah*, the system of *ʿāqilah*, the contract of guaranteeing road risk, and others that we mentioned in their respective places.

However, the opponents have rejected all such analogies with a single claim: that analogy (*qiyās*) is invalid here because the legal cause (*ʿillah uṣūliyyah*) underlying these contracts is not the same as the one underlying commercial insurance. They argue that insurance is a financial, risk-based contract founded on exchange (*muʿāwaḍah*), whereas those other contracts have a different nature. They said, for example:

- Analogy between commercial insurance and a binding promise is invalid, as it is analogy with a material difference. Among the differences is that a promise to lend, to give an item in usufruct, or to bear a loss, for example, falls under pure benevolence (*maʿrūf*), making its fulfillment obligatory or a matter of noble character. Commercial insurance contracts, in contrast, are commercial exchanges motivated by financial profit; thus, they do not tolerate the vagueness (*jahālah*) or uncertainty

(*gharar*) that may be tolerated in charitable contracts.

- Analogy between commercial insurance and guaranteeing the unknown does not hold, because it is analogy with a difference. A guarantee is a form of voluntary benevolence intended as an act of kindness, whereas insurance is a contract of exchange.
- Analogy between insurance and guaranteeing road risk does not hold, for the same reason, and shares the same issues as with the guarantee.
- Analogy between insurance and the system of *'āqilah* is also invalid, for the same previously mentioned reasons.
- Analogy between insurance and a protection contract (*'aqd al-ḥirāsah*) is invalid, because safety is not the object of contract in both cases. Rather, the object in a protection contract is the work performed by the guard and the payment he receives for it, whereas in insurance the object is the compensation and premiums.

This is how the opponents dealt with most of the evidences presented by those who permit insurance. One can see that they focused on three matters:

1. The type of obligation.
2. The intention of the contracting parties.
3. The subject matter of the contract.

The truth is that this represents the core of the disagreement between two schools: the traditional *uṣūlī* school, and the *maqāṣid*-based school.

The traditional school recognizes the *maqāṣid* theoretically but

restricts their application in practice. It leans toward analogy and deductive reasoning, but places *maqāṣid* and wisdom (*ḥikmah*) in a secondary position after explicit texts and tightly defined legal causes (*ʿilal munḍabiṭah*). It adheres more to partial causes than to overarching objectives, giving precedence to the technical *ʿillah* over the *ḥikmah*, even though the *ḥikmah* is what originally gave rise to the *ʿillah*.

The correct position is that analogy between issues must consider—alongside the well-defined *ʿillah*—several factors, including[1]:

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[1] Scholars discussed what is called *"nafī al-fāriq"* (negation of the difference), and jurists (*fuqahā'*) and uṣūl scholars differed on whether it should be considered a type of *qiyās* (analogy). Some argued that it is not considered *qiyās*, because it contradicts the true nature of *qiyās*, which requires the existence of a comprehensive and precise cause (*ʿillah*).
The majority of uṣūl scholars, however, considered it a type of *qiyās*, in contrast to the *qiyās* of the union of the cause.
The difference between the two types is that in *qiyās bi-nafī al-fāriq*, the cause is not explicitly stated.
Ibn Taymiyyah said: "Correct *qiyās* is of two types: one of them is when it is known that there is no difference between the branch and the original except a difference that has no effect in the law…" (*Majmūʿ al-Fatāwā*, 19/285).
Ibn al-Qayyim said: "Correct *qiyās* is, for example, when the cause on which the ruling is based in the original exists in the branch without any opposing factor in the branch that prevents its ruling, and such *qiyās* is never contradicted by the *Sharīʿah*. Similarly is *qiyās* by negation of the difference (*nafī al-fāriq*)." (*Iʿlām al-Muwaqqiʿīn*, 3/166).
An example is the analogy of *ʿUmrah* to *Ḥajj* regarding the ruling of *iḥṣār* (restriction), which is a *qiyās bi-nafī al-fāriq*, as Ibn Ḥajar mentioned in *al-Fatḥ* (4/8).
Another example is analogizing apple wine (*khamr al-tuffāḥ*) to grape wine (*khamr al-ʿinab*), which was unknown to the Arabs, due to the absence of a relevant difference. Similarly, the analogy of traveling in a snowstorm to sailing at sea after rough waves, which is prohibited in the ḥadīth, is based on the absence of a difference and the presence of the significant factor — exposing

1. Unity of objective (*waḥdat al-maqṣid*).
2. Similarity in effect and meaning (*taqārub al-athar wa al-maʿnā*).
3. Practical resemblance (*al-shabah al-ʿamalī*).

For instance, the protection contract (*ʿaqd al-ḥirāsah*) is an agreement between two parties: one undertakes to protect the property or person of the other from potential risks, and the other undertakes to pay a recurring fee for a known or open term. This may occur in the form of:

- Private security companies.
- A person committing to guard a facility or warehouse.
- Escorts who accompany individuals to protect them and ward off harm.

If we compare the protection contract with commercial insurance, we find the following:

1. **Objective of the contract:** protection from danger in the protection contract and protection and compensation from danger in insurance.
2. **Obligation:** The guard's obligation to avert harm in the protection contract; and the insurance company's obligation to compensate in the insurance contract.

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oneself to likely death by choice and knowledge. Here, the connection is made to negate the difference, not due to a precise cause established by text or deduced from an independent proof.
For more detailed discussion, see: *al-Baḥr al-Muḥīṭ* by al-Zarkashī (5/50), *al-Mustasfā* by al-Ghazālī (p. 307), *al-Iḥkām* by al-Āmidī (4/4), *al-Taqrīr wal-Taḥbīr* by Ibn Amīr Ḥāj (1/287).

3. **Subject matter:** Protection from unenumerated risks in the protection contract; and coverage of various risks in the insurance contract.
4. **Financial consideration:** A fixed wage paid to the guard whether danger occurs or not; and a fixed premium paid to the insurance company whether danger occurs or not.
5. **Presence of uncertainty (*gharar*):** The risk is unknown in the protection contract; and the risk is also unknown in the insurance contract.
6. **Actual benefit:** The benefit of the guard does not materialize except when danger occurs; and the benefit of insurance is only realized when danger occurs.

Thus, we can observe that in both contracts, the first party seeks protection from a potential danger, and the second party sells this protection for a known amount—whether this protection takes the form of preventing the harm in the protection contract or compensating for the harm in the insurance contract. The underlying wisdom is shared and can legitimately be considered in analogy.

The objection made by the opponents—that the uncertainty in insurance is of a different nature because it lies at the core of an exchange contract, whereas in the protection contract it is tolerated because the wage is for work—does not hold. This distinction is formal, not real, for the following reasons:

1. No one pays a guard merely for his time, but rather for the actual protection and risk prevention. The time devoted is merely a necessary component of this protection. If the employer believed he was paying solely for the guard's time, he would not hire him under such a contract. This is

similar to many contracts that involve an expected future benefit. We do not pay a surgeon merely for spending hours in the operating room; rather, we pay because we consider him a cause for achieving recovery. This is why people seek the most skilled physicians—to minimize risk.

2. The protection contract inherently involves risk, for the danger may occur after a single day—during which the guard intervenes—and he receives only the wage of that day. Or he may work for years with no danger occurring while receiving full wages. This is precisely analogous to insurance.

   The benefit in both cases is estimative and probabilistic.

How, then, can it be said—after all these similarities—that this is analogy with a difference? And is complete identity required in analogy? If so, the two matters would be identical, and the ruling of the original would simply apply without analogy.

Another example is the contract of *muwālāt*. The similarities between it and the insurance contract are clear:

The insured risk in insurance corresponds to the offense for which the *mawlā* in *al-muwālāt* assumes liability.

The insurance premium received by the company corresponds to the wealth inherited by the *mawlā* in *al-muwālāt* if the client dies.

The amount of compensation in insurance is equivalent to the *diyyah* borne by the *mawlā* in *al-muwālāt*.

Security and guarantee (*'amān* and *ḍamān*) are the motivating factors in both contracts.

Both contracts contain *gharar* and *jahālah*.

In insurance, one does not know with certainty when the risk will occur nor how much either party will ultimately pay.

In the *muwālāt* contract, *gharar* appears in several matters, including the set-off between inheritance and liability (*al-ʿarsh* or *al-diyyah*), resulting in profit for one and loss for the other; the uncertainty over who will die first and, therefore, who will be entitled to compensation; the unknown amount of property that the client will leave for the *mawlā* in *al-muwālāt*, as the contract concerns inheritance in general; the unknown question of whether the client will commit an offense requiring liability or not; and many other uncertainties.

The objection of the opponents—that this contract is permissible because it is based on donation and mutual support—does not stand.

The contract of *muwālāt* is in reality a contract of exchange (*muʿāwaḍah*) containing the meaning of mutual assistance (*takāful*), and the insurance contract carries the same meaning.

Thus, if we examine most of the examples cited by those who permit insurance, we find many similarities between them and the insurance contract, and we find that the *ḥikmah* which allowed those contracts is the very *ḥikmah* that should allow this one.

Third Evidence: Public Interest (*al-Maṣlaḥah al-ʿĀmmah*)

It is established in the principles of Islamic law that the divine legislation as a whole was revealed in order to realize benefits (*maṣāliḥ*) and ward off harms (*mafāsid*), and that rulings and legal dispositions were originally instituted to secure the welfare of creation in this world and the next.

Indeed, some have considered this meaning to be the most

comprehensive principle in the field of legislation. Ibn al-Qayyim said: "*The Sharīʿah* is founded upon wisdom and the welfare of creation in this life and the next. It is wholly justice, wholly mercy, wholly benefit, and wholly wisdom."[1]

Ibn Taymiyyah said: "The Messengers (peace be upon them) were sent to achieve benefits and complete them, and to eliminate harms and reduce them as much as possible."[2]

Imām al-Shāṭibī even included—among the matters the *Sharīʿah* came to procure—those below the level of necessities, namely the needs (*ḥājiyyāt*) and enhancements (*taḥsīniyyāt*). He said: "The legal obligations of the *Sharīʿah* aim to preserve its objectives for creation, and these objectives fall into three categories: the first: necessities; the second: needs; and the third: enhancements."[3]

The importance of considering the interests of the legally responsible individual (*al-mukallaf*) is reinforced through several juristic maxims that govern many subsidiary rulings, such as:

"The default in benefits is permission, and the default in harms is prohibition."[4]

"Legal verdicts revolve with benefit wherever it may be."[5]

"The ruler's actions regarding the subjects are tied to the realization of benefit."[6]

"Need is treated as necessity, whether general or specific."[7]

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1 ʾIʿlām al-Muwaqqiʿīn (1/41).
2 Majmūʿ al-Fatāwā (8/94).
3 Al-Muwāfaqāt (2/17).
4 Al-Baḥr al-Muḥīṭ by al-Zarkashī (6/12).
5 ʾIḥyāʾ ʿUlūm al-Dīn (2/110).
6 Al-ʾAshbāh wa al-Naẓāʾir by al-Siyūṭī, p. 121.
7 Ibid. p. 88.

Given the importance of upholding the welfare of people, the *Sharīʿah* has permitted contracts that go against strict analogy when there exists a preponderant public interest. Examples include:

1. The *Salam* Contract

Salam is a sale of a described item to be delivered later, while its price is paid immediately. It clearly contains *jahālah*, since the commodity is nonexistent at the time of contract, cannot be seen, and there is risk regarding the ability to deliver.

Although the Prophet (peace and blessings be upon him) set conditions for it when he said: "Whoever pays in advance for something must do so for a known measure, a known weight, and a known term,"[1] the knowledge intended is not actual sensory knowledge (*ʿilm al-shahādah*), for the product does not exist, but rather documentary knowledge (*ʿilm al-ishhād*), meaning agreement upon these elements. This removes the likelihood of dispute but does not eliminate risk.

Analogy would render this sale impermissible, since it involves uncertainty and selling what does not yet exist. But it was permitted due to people's need—both the seller and the buyer—and indeed the entire community benefits: farmers and producers need immediate funds, wealthy individuals benefit from lower prices, society benefits from the availability of goods, and many people benefit indirectly.

2. The *Muzāraʿah* Contract

Muzāraʿah is a form of leasing in which the worker cultivates the land in return for a share of the harvest. The worker provides deferred labor for a deferred wage contingent upon the crop. It

[1] Al-Bukhārī (2240) and Muslim (1604).

may or may not be produced; it may be abundant, scarce, or damaged by a blight. If abundant, its quality may vary, and its usefulness may differ. Here, there is *gharar* in the occurrence, the quantity, and the type.

Analogy would prohibit *muzāraʿah* due to the significant uncertainty involved. Yet the majority of jurists permitted it due to the approving text, widespread practice, and the shared and societal benefit:

- The landowner may not be able to farm but possesses land;
- The worker lacks land but needs to farm for income;
- Society needs produce, which provides food and commerce.

Thus, the *Sharīʿah* permitted it contrary to strict analogy.

3. The *ʿArāyā* Contract

This is when a person purchases fresh dates still on the palm with dry dates measured and delivered on the spot, due to his family's need for fresh dates.

The elements of *gharar* here are many: the fruit on the tree cannot be weighed except through estimation (*kharṣ*), which may differ from reality, and its continued soundness is not guaranteed, as it may be affected by blight near harvest.

Yet the text exempted it, as found in the ḥadīth: "The Messenger of Allāh (peace and blessings be upon him) forbade selling dates for dates, and allowed *ʿarāyā* to be sold according to estimation so that their owners may eat them fresh."[1]

The wording of the *ḥadīth* indicates that a prohibited matter was

[1] Al-Bukhārī (2191) and Muslim (1540).

allowed by way of concession due to necessity, even though the reason for prohibition remained present—such as the risk of *gharar* and *jahālah*, and the possibility of falling into *ribā al-faḍl*.

4. The Contract of Hiring a Wet Nurse (*ʿAqd Istiʾjār al-Ẓiʾr*)

A wet nurse (*al-ẓiʾr*) is a woman who breastfeeds a child other than her own. Jurists have transmitted a consensus on the permissibility of hiring a wet nurse, despite the elements of *gharar* (uncertainty) and *jahl* (vagueness) involved. The amount of milk the nurse will produce throughout the duration of the contract is unknown, and the amount of milk the child will require in each feeding and in total is likewise unknown. Thus, the child may receive more than what corresponds to the wage, or less; and the same applies to the wet nurse.

Despite this, the contract was deemed permissible contrary to strict analogy *(khilāf al-qiyās)* because people are in need of it, and because of the clear public and individual welfare it achieves.

5. The Contract of *Juʿālah* (Reward Contract)

Juʿālah is a contract in which the offeror (*al-jāʿil*) commits to a specified compensation for whoever achieves a specified target within an unspecified time frame.

In its standard form, *juʿālah* entails elements of *gharar* and *jahl* in several respects:

1. Uncertainty regarding the worker: Anyone who hears about the reward may perform the work.
2. Uncertainty regarding the duration: The desired result may

be achieved with no effort, or the worker may exert great effort and obtain nothing.

3. Uncertainty regarding the achievement of the result itself: The worker may succeed or may fail.
4. Uncertainty regarding the effort required: It may require travel, expenses, or assistance—matters that are indefinite and unpredictable.

By analogy, such forms of hire should not be permissible. Yet the contract is allowed due to the shared need of all parties involved: the offeror, the worker, and the beneficiary (such as in the retrieval of lost property). For this reason, the majority of jurists permitted *ju'ālah* in all cases, while the Ḥanafīs and Ẓāhirīs allowed it specifically in the case of a runaway slave.

6. The Contract of *Muḍārabah* (Profit-sharing partnership)

Muḍārabah is a partnership contract in which one party provides capital and the other provides labor, with profit shared between them according to an agreed-upon ratio, and loss borne solely by the capital provider.

This contract also involves *gharar* for several reasons:

- The worker's share cannot be known until profit actually occurs.
- Profit may or may not materialize, and no fixed duration can be set for the return—since the compensation is contingent upon profit, which itself is contingent upon risk.
- Any loss falls solely upon the capital owner, even though it is caused by the worker's actions, whether intentional or

accidental.

By analogy, such a contract should not be permissible, since the compensation is unknown in amount, time, and occurrence, and there is no guaranteed liability. Nevertheless, the *Sharīʿah* permitted *muḍārabah* by consensus due to the significant welfare it provides to individuals and society:

- The capital provider benefits when lacking the time or expertise to invest.
- The worker benefits despite lacking capital, gaining access to opportunities he otherwise could not attain.
- The market benefits from increased investment capital and job opportunities.

Similarly, the contract of *istiṣnāʿ*—a manufacturing order—was permitted and has become foundational in many real estate and industrial projects.

The Welfare-Based Justification for Insurance

When examining insurance contracts—including commercial insurance—we find that they contain *the same types of welfare (maṣāliḥ)* present in the above contracts, and even more. Among these benefits are:

1. Reducing the impact of disasters and unforeseen risks, which aligns with the *Sharīʿah* objectives of relief and mutual support.
2. Transferring the burden of harm from a vulnerable individual to a capable institution—an organized form of cooperation.
3. Achieving economic and social stability for individuals

and companies, which serves the objectives of preserving life and property.

4. Providing communal security, especially when insurance is compulsory.
5. Reducing disputes and conflicts, since insurance companies often resolve claims without negotiation or litigation.
6. Supporting economic growth through investment of premium surpluses and compensation funds, generating employment opportunities.
7. Lessening pressure on other social welfare systems such as zakāh and charity, thereby expanding their reach.
8. Promoting responsibility through strict commercial insurance laws that link liability to risk; the higher one's risk, the higher the premium, which encourages caution.
9. Relieving the state from direct responsibility in these domains, allowing it to focus on development and production instead of falling into administrative overload.

These and other substantial public benefits make commercial insurance more deserving of permissibility than many contracts that the *Sharīʿah* permitted—whether by consensus or majority opinion—for the sake of welfare and contrary to strict analogy, even when the benefit was limited to individual cases.

Fourth Evidence: The Invalidity of Distinguishing Between Similar Issues

Distinguishing between issues (*al-tafrīq bayna al-masāʾil*) refers to giving two seemingly similar cases different rulings based on a *Sharīʿah*-recognized distinction that alters the legal outcome.

Such a distinction may relate to:

- A difference in the effective cause (*'illah*) on which the ruling depends,
- A change in objectives or consequences, or
- A shift in context, custom, or time and place.

When examining the arguments of those who prohibit commercial insurance, one finds inconsistency, as the basis of their distinction is weak and does not withstand proper scrutiny. We offer the following practical examples.

First Example:

Opponents of commercial insurance permit an alternative system they call cooperative insurance. Their reason for differentiating is that commercial insurance is based on exchange and profit, whereas cooperative insurance is based on solidarity and donation.

In reality, this distinction is unfounded, and what unites the two types of insurance is far greater than what separates them. This becomes clear upon analysis:

1. Both types of insurance share the same essential elements: the insured, who pays the premiums; the insurer, who provides compensation; the compensation amount, which is only paid when the insured risk materializes; fixed premiums paid in return; and a risk anticipated in the future. These essential components make the two systems nearly identical.

   Nor does renaming premiums as "donations" in cooperative insurance change their reality. A donation, by definition, must be voluntary—not compulsory. Otherwise,

it becomes something else entirely, such as a tax, an obligatory subscription, or another non-charitable obligation.

Thus, the legal consideration lies in purposes and meanings, not in terms and labels.

If someone leaves a valuable item with another after borrowing from him or buying something on deferred payment, that item is in reality a pledge (rahn), even if he claims it is a "trust" (*'amānah*). It is judged according to the rules of pledges, not trusts.

2. The claim that participants in cooperative insurance intend charity and benevolence is unrealistic and does not correspond with actual practice. Every participant knows that he pays a premium and expects compensation in return.

   If he knew that he would never be compensated, he would not join—or he would certainly stop paying.

   Evidence for this is that no one joins these schemes unless he has something he fears may be exposed to risk; and it is exceedingly rare—almost nonexistent—to find someone who obligates himself to premiums with nothing to insure.

   Thus, the claim of donation collapses. The relationship is one of exchange based on cooperation, which is precisely the nature of commercial insurance.

3. The large number of regulations governing cooperative insurance contracts has effectively transformed cooperative insurance into a model identical to commercial insurance. For example, one who refrains from paying the premiums is denied compensation, and whatever he had

previously paid is lost under the claim that he had donated it or that it had been used to assist others. Additionally, the participant has a fixed coverage limit that cannot be exceeded, or is entitled to compensation for only a specific number of risks during the insurance term. All of this and more resembles what exists in commercial insurance. This regulatory precision—although perfectly correct from an administrative standpoint to prevent chaos—also makes the model of *kafālah* identical to what its proponents claim is different, and this is a contradiction.

4. Those who claim that commercial insurance entails *ribā al-faḍl* and *ribā al-nasī'ah*, as previously explained, must recognize that cooperative insurance follows the very same pattern. The participant pays a sum of money and receives money in exchange; the counter-value may be delayed, and may even be received in excess, which constitutes *ribā al-nasī'ah*, exactly as the opponents argued concerning commercial insurance. This description cannot be refuted by claiming that the subscription in cooperative insurance is structured as a charitable donation, because we have already shown that its true nature is a compensated contribution, not a donation. Thus, the ruling for one applies to the other.

5. Both contracts involve uncertainty (*jahālah*) in the subject matter of the contract, because the risk is unknown, and consequently the consideration is unknown, and the total accumulated premiums are unknown. In other words, the loss on the part of the participant is certain, while the gain is only potential. This is equally true in both types of insurance. Again, the claim of donation does not negate this, and we have already invalidated that argument.

6. The primary objective in both contracts is to provide a form of safety and social security. This objective is achieved in commercial insurance in a manner even more evident than in cooperative insurance due to the greater regulatory precision and its development into a structured body of knowledge. Therefore, if providing security can be treated as a commodity and a legitimate objective in cooperative insurance, it must also be accepted in commercial insurance.

   This cannot be refuted on the grounds that the security offered in commercial insurance is provided for profit, because profit in exchange for security or guarantee is not prohibited in itself.

From all of the above, it becomes clear that the distinction made between the two types of insurance is invalid, and that issuing two different rulings for matters that are analogous—without a valid reason or operative cause—is an unjustifiable differentiation.

Second Example: Social Insurance Contracts

This refers to contracts established by states, governments, or corporations under state supervision to secure the rights of employees against certain risks such as death, accidents, illness, disability, and similar contingencies. The benefits extend from the employee to some members of his family who meet the eligibility conditions. This system resembles commercial insurance in every respect, and this can be summarized as follows:

1. Both are based on prepaid contributions.
2. Both include the same essential elements of insurance

discussed earlier.

3. Both involve *gharar* and *jahālah* regarding the amount, timing, and nature of the return.
4. In both, compensation is linked to the occurrence of the risk or to the insured person.
5. Both are susceptible to the allegations made by opponents concerning the possibility of *ribā al-faḍl* and *ribā al-nasī'ah*.
6. Both are regulated by laws that remove them from the realm of charitable donation and place them squarely within the realm of contractual exchange (*mu'āwaḍah*).

It is extremely strange that some individuals or institutions claim that social insurance constitutes a form of social *kafālah* extended by the state, and therefore is classified as a charitable contract. This claim contradicts the legal reality of the social insurance contract.

Thus, the invalidity of distinguishing between the two issues becomes clear, given the near-complete similarity between the two forms.

Fifth Evidence: Insurance Has Departed from the Simple Model of Exchange

One of the hallmarks of Islamic jurisprudence—with its various tools such as overarching objectives (*maqāṣid*), universal legal maxims, and interpretive evidences capable of adaptation—is its ability to accommodate the complexity of real-world circumstances and evolving customs, especially in the domain of transactions (*mu'āmalāt*).

Many contracts mentioned in the *Sharī'ah* in their simple, initial

forms have evolved in the modern world into fundamental pillars of economic and social development, without departing from the spirit or objectives of the *Sharīʿah*.

A prominent example is the contract of *istiṣnāʿ*, which in its traditional form involved requesting the manufacture of a described object in the liability (*dhimmah*) in exchange for a price—essentially a sale of a non-existent item to be manufactured later.

This contract was theoretically problematic for the majority of jurists because it contradicted the maxim "Do not sell what you do not possess," and they therefore subsumed it under the rules of *salam*. Yet, the departure of *istiṣnāʿ* from its simple form—where one orders a garment or a ring—to the modern, meticulously regulated form has led all jurists to permit it, even without the well-known conditions of *salam*. The *istiṣnāʿ* contract now supports national economies in many countries. Among its practical examples are:

1. Weapons and equipment purchased by armies and governments, for which payment is made and delivery occurs years later.
2. Cities and buildings constructed by companies based on advance booking, whether paid in full or in installments, with delivery occurring after several years.
3. Funds paid for long-term research projects requiring years of data collection, analysis, and compilation.
4. Cultural and artistic productions commissioned from producers, with the final product not received until the completion of the project.

These and other examples are now regulated under modern

governmental and legal frameworks. Although they inherently contain elements of *gharar* and *jahālah*, their departure from the simple two-party model to a highly regulated contractual framework that preserves rights—at least with strong probability—makes them more aligned with the objectives of the Islamic *Sharīʿah*.

Another example is the contract of *muzāraʿah* or *musāqāh*, which has evolved from its simple customary form into a framework supporting the economies of states and institutions. Among these modern manifestations are:

1. Oil exploration contracts in which compensation is based on a share of the extracted product—contracts that have formed the backbone of the petroleum industry in many countries, particularly Muslim countries such as the Gulf states, Iran, and others. The essence of these contracts mirrors the simple model in which one party provides the land and the other provides labor and equipment, with the resulting yield shared proportionally.
2. Highway construction contracts, in which governments provide the land and investment companies provide the capital and labor; in return, the companies hold exclusive rights to collect tolls for several years before returning the road to the original owner.
3. BOT (Build–Operate–Transfer) contracts, where a company or state constructs an airport or power station in another country at its own expense, operates it for a set number of years to recover costs and gain profit through usage fees, then transfers it back to the state.
4. Mineral extraction contracts, such as those for gold, phosphate, or iron, where compensation is a percentage of

the extracted material.

All of these contracts realize the principle of *al-ghunm bi al-ghurm*—"gain is justified only by bearing liability"—and they resemble contracts permitted in the *Sharī'ah*, even if in a more regulated form. All such contracts inherently contain *gharar* and *jahālah*, because the price is deferred and not guaranteed; however, since they are founded upon extensive feasibility studies, the degree of *gharar* present becomes the type tolerated in contracts.

This is precisely the case with commercial insurance: it passed through primitive stages until it reached a codified, regulated form in which the responsibilities of each party are defined and the avenues of dispute arising from uncertainty are significantly reduced.

Just as the contracts of *muzāra'ah*, *musāqāh*, or land-development evolved into modern forms such as BOT, the insurance contract likewise evolved. Both rely on financial risk-taking to provide a future service and operate under organized laws and effective regulations that mitigate the impact of *gharar*.

Indeed, we find that commercial insurance is less prone to excessive uncertainty than exploration contracts—contracts which some have classified as valid Islamic agreements—despite the fact that many companies obtained exploration rights, expended funds and effort, and either found nothing or discovered only minimal quantities.

Thus, it is unreasonable for a jurist to remain confined to a simplistic conception of a contract whose structure has fundamentally changed and whose elements have been precisely regulated, under the pretext that it still contains this or that form of uncertainty—uncertainty long surpassed by time and actual

practice.

What we have argued here is not limited to insurance alone; it extends to numerous contracts that have evolved from their simple forms into composite or codified models. The scope here does not permit enumerating them.

Part Three: Refuting the Arguments of Those Who Prohibit Commercial Insurance

Much has been written in contemporary jurisprudence declaring commercial insurance forbidden. The arguments of the prohibiting camp revolve around claims that insurance contains *gharar*, *jahālah*, *ribā*, and gambling. Their approaches vary from strict formalism to caution against potential harms.

What is striking is that much of the literature advocating prohibition merely repeats earlier statements, recycling objections without critical examination. The result is that prohibition has come to be treated almost as an unquestionable axiom or decisive ruling, rather than a speculative juristic opinion open to reassessment.

A juristic perspective that balances sound textual evidence, clear reasoning, and the overarching *maqāṣid* of the *Sharīʿah* makes it evident that absolute prohibition rests on partial perceptions, unstable analogies, and inconsistent distinctions between contracts—marked by clear double standards and surprising selectivity. This becomes especially apparent in the fact that some jurists permit contracts containing the very forms of *gharar* or *jahālah* for which they prohibit commercial insurance, and in those permitted contracts the uncertainty is often even greater. Their justifications rely on overtly literal reasoning, such as claiming a textual exception, dire need, tolerated uncertainty, or prevailing custom.

How often muftis distinct between similarities!

Such reasoning is false and baseless.

In what follows, we will analyze the objections raised by the opponents, clarify their weaknesses and inconsistencies, compare them with rulings in parallel areas of *muʿāmalāt*, and outline the relevant *Sharīʿah* objectives.

First Objection: That Commercial Insurance Involves Prohibited *Gharar*

Opponents argue that commercial insurance is impermissible because it contains excessive *gharar*: one party pays a known amount of money in exchange for a contingent obligation from the other party to compensate for loss, while the amount of compensation, its timing, or even its occurrence is unknown.

This is the primary and most frequently cited argument, based on the *ḥadīth* prohibiting sales involving *gharar*, mentioned earlier in the chapter on *gharar*.

I will address this objection methodically:

First Response: The Jurisprudence of the *Ḥadīth*

The *ḥadīth* is narrated from Abū Hurayrah: "The Messenger of Allāh (peace and blessings be upon him) forbade the sale of *gharar*."[1]

As previously discussed, the term *gharar* is a broad expression encompassing several meanings, such as:

- Uncertainty regarding attributes, quantity, or the object itself

[1] Muslim (1513), Abū Dāwūd (3376), al-Tirmidhī (1230), al-Nasāʾī (4518), Ibn Mājah (2194), and Musnad ʾAḥmad (7411).

- Uncertainty concerning outcome or consequence
- Inability to deliver the subject-matter
- What fluctuates between existence and non-existence
- Any transaction involving substantial risk
- Deception or inequitable loss

Thus, the term *gharar* in this ḥadīth is abstract (*mujmal*) and requires clarification, as is the case for every abstract term in Islamic jurisprudence.

Moreover, it is a general term that could technically apply to innumerable forms of transactions. Juristic analysis therefore requires explaining the ambiguity, and determining the scope of generality and specificity; otherwise the text becomes a sweeping instrument of prohibition triggered by even the slightest uncertainty.

Clarifying the abstractness occurred through two means:

1. Other types of sales that the Prophet (peace and blessings be upon him) explicitly forbade and which relate to *gharar*, such as the sale of pebbles, *mulāmasah*, *munābadah*, the sale of the non-existent, and others. These function as clarifications of the general term.
2. The juristic efforts of scholars to define the type of *gharar* intended and the cases to which the prohibition applies—a matter over which significant disagreement exists, as previously outlined.

The conclusion, which few would dispute, is that the *ḥadīth* in its wording alone does not define the concept of *gharar*. Because the term is abstract, it requires juristic effort to determine its

limits. Therefore, the *ḥadīth* cannot serve as direct evidence to prohibit a specific contract unless the type of *gharar* addressed by the text is shown to apply to that contract.

Consequently, it is necessary to establish that insurance constitutes a sale involving *gharar* in the sense prohibited by the *ḥadīth* before invoking the *ḥadīth*; one cannot use the *ḥadīth* itself as proof that the contract is one of *gharar*, as this would be circular reasoning.

Furthermore, *gharar* in the literature of jurisprudence and legal theory is not an abstract general term. Its legal meaning must consider:

- Its linguistic and contextual sense
- Its treatment in relevant texts
- Its boundaries as set by the jurists
- Its suitability for practical application to contemporary contracts

Without this, the abstractness becomes a weapon that could invalidate most forms of transactions—an ineffective and blunt tool in the hands of those who prohibit.

As for the principle of generality: it is not reasonable in juristic method for such a text to be treated as universally applicable; such a reading would lead to prohibiting countless transactions that involve any uncertainty, and would contradict other established texts that permit contracts containing significant *gharar*.

What aligns with sound juristic reasoning is that the statement, "The Prophet forbade the sale of *gharar*," is a case of a general expression intended to apply to specific instances (*ʿāmm urīda*

bihi al-khuṣūṣ), which differs from *ʿāmm makhṣūṣ* (a general term subsequently restricted by evidence).

The *ʿāmm* subject to *takhṣīṣ* (specification) is the term that is intended to general in principle but is specified by another evidence. This means that generality and encompassment of its individuals are still applicable in wording but in in essence.

As for *ʿāmm urīda bihi al-khuṣūṣ*, its encompassment of its individuals is not intended in principle, neither in terms of the wording nor the essence. However, it is a word encompassing individuals that is limited to one or some of them. A clear example is the phrase "*al-nās*" (the people) in the verse: "Those to whom people [i.e., hypocrites] said, 'Indeed, the people have gathered against you.'"[1] Although "the people" is a general term in both mentions, it refers to a specific individual in the first instance and a specific group in the second. Here, the rhetorical generality serves stylistic purposes, not legal universality.

The *gharar* mentioned in the *ḥadīth* cannot be general, as we have stated, because the transmitted textual evidence demonstrates the permissibility and lawfulness of many sales that contain elements of *gharar*, as we illustrated in Chapter Two. Therefore, the only remaining possibility is that this refers to a specific type of *gharar*, even though it appears in a general form. Determining this specific type is left to juristic reasoning (*ijtihād*) due to the absence of any definitive designation.

Not only this:

The wording of the *ḥadīth* — "He forbade the sale of *gharar*" — appears in a genitive construction (*iḍāfah*), in which *gharar* (a verbal noun that may function adjectivally) is added to "sale"

[1] [Aāl ʿImrān: 173].

(*bayʿ*), which is also a verbal noun. Thus, is this an instance of annexing the verbal noun to its own adjective (meaning: "the sale described by *gharar*"), or is it an annexation of the verbal noun to its direct object (meaning: "the object of sale that is *gharar*")?

In the first case, the focus is on the contract; in the second, the focus is on the subject matter of the contract. This very ambiguity was a cause of differing interpretations among the jurists, as we noted earlier in Chapter Two of this study.

Based on all the above, we may conclude that the *ḥadīth* forbidding the sale of *gharar* is a text that is abstract in meaning, general in form yet intended for specific cases, and constructed in a manner open to multiple interpretations. Thus, it cannot be used as proof for prohibiting every type of transaction involving probability or uncertainty — including the commercial insurance contract — nor can it be regarded as a decisive, unequivocal text of prohibition. Although its chain of transmission is sound, its indication is probabilistic. Therefore, relying solely on the forbiddance of *gharar* to forbid commercial insurance is unsound from a methodological juristic–*uṣūlī* perspective.

Second Response: Concerning the One Who Reported the Prohibition

The *ḥadīth*, as we mentioned, "The Messenger of Allāh (peace and blessings be upon him) forbade the sale of *gharar*," is narrated by Abū Hurayrah (may Allāh show mercy to him). The manner of narration does not explicitly indicate a prophetic statement; rather, it is a report.

The question, therefore, arises: Is this a direct statement of the Prophet (peace and blessings be upon him)?

Or is it Abū Hurayrah's own inference based on other teachings

he heard from the Prophet (peace and blessings be upon him)?

In Chapter Two, we listed several types of forbidden sales in which the specific designation appears explicitly — such as the prohibition of the sale of the unborn offspring (*ḥabl al-ḥabalah*). These are textual designations, whether expressed as a command ("I forbid you…") or as a report ("He forbade…"), because the terms used refer to clearly defined transactional forms.

However, in the case of Abū Hurayrah's report, the prohibited matter is abstract and general.

The more likely explanation is that this narration represents the interpretive understanding of the Companion (may Allāh show mercy to him). This is to safeguard the prophetic office from contradiction — for if the Prophet (peace and blessings be upon him) had categorically forbidden "the sale of *gharar*," how could he simultaneously approve many transactions that contain elements of uncertainty or probability?

Further evidence of this is that Abū Hurayrah's narration also mentions the sale of the pebble (*bayʿ al-ḥaṣāh*) in conjunction with *gharar*, as though giving an example of what he understood *gharar* to be. The narration thus appears to follow a pattern of "specifying the general" or "expanding the specific," depending on variant transmissions.

Accordingly, the forbiddance of *gharar* reflects Abū Hurayrah's understanding of the underlying cause present in the various specific forbiddances that the Prophet (peace and blessings be upon him) issued — many of which involve forms of *gharar*.

In this case, we are not comparing one textual proof to another; rather, we are comparing a text to a Companion's understanding. And the latter carries only probabilistic indication.

Someone may argue: “Why can it not be a direct prophetic statement transmitted by Abū Hurayrah in meaning, as many *ʾaḥadīth* were?”

The answer:

It is possible. But what counters this possibility is that the Prophet (peace and blessings be upon him) approved contracts that none dispute contain elements of *gharar* — such as *salam*, *ʿarāyā*, and *juʿālah*, among others. Transactions in his time routinely involved *gharar* — such as the sale of houses, garments, manufactured goods, and similar items for which certainty is unavailable except through apparent inspection.

So how could the Prophet (peace and blessings be upon him) issue a general prohibition concerning a matter that, by nature, cannot bear generalization — as the wording of the narration seems to imply?

Third Response: Is There *Gharar* in the Insurance Contract?

Those who prohibit commercial insurance assert that it contains *gharar* in four respects:

1. Uncertainty in existence:

   The compensation in insurance is tied to the occurrence of the risk — which may or may not exist — similar to paying a price for a stray camel, which is invalid due to uncertainty in existence.

2. Uncertainty in attainment:

   The insured does not know whether he will ever receive the compensation for which he paid premiums — likened to buying fish in the water or birds in the air.

3. Uncertainty in amount:

   Neither party knows the amount each will receive until the risk materializes.

4. Uncertainty in time:

   The compensation is contingent upon a future risk, whose timing is unknown.

The resolution issued by the International Islamic Fiqh Academy, convened in Makkah in Shaʿbān 1398 AH, states: "Commercial insurance is one of the compensated financial contracts that involve excessive *gharar*, because the insured cannot know at the time of contract how much he will give or receive. He may pay one or two premiums and then the catastrophe occurs, entitling him to the full amount committed by the insurer. Or the catastrophe may never occur, and he pays all the premiums without receiving anything. Likewise, the insurer cannot determine precisely what he will give or take regarding each individual contract. And the Prophet (peace and blessings be upon him) forbade the sale of *gharar*."[1]

Before addressing this claim, it is essential to note something extremely important:

Whoever examines the chapters of transactions (*muʿāmalāt*) in Islamic jurisprudence with a discerning eye realizes that finding a contract entirely free of risk, probability, or uncertainty is nearly impossible — indeed, it would be akin to a supernatural event. Elements of risk, in their various degrees, exist in most compensated transactions among people.

If the principle of absolute certainty or complete elimination of

[1] Fiqh al-Nawāzil (3/276).

risk were imposed upon contracts, or if excessive juristic caution were adopted — leaving no room for probability — the whole domain of transactions would collapse. Sales, contracts, partnerships, lease agreements, and even marriage would be invalidated, since all contain potential risks: sales may involve hidden defects, leases may involve uncertainty of benefit, partnerships involve fluctuation, and marriages may involve changes of circumstances or failed compatibility.

Thus, the *Sharīʿah* adopts a method of balance — between removing harm and facilitating transactions; between prohibiting *gharar* and recognizing need and custom. The prohibited *gharar* is only that which is excessive and leads to dispute — not every conceivable uncertainty.

The *Sharīʿah* deals with *gharar* in a flexible manner consistent with the nature of human behavior, the nature of wealth, and the nature of knowledge that unfolds over time.

This is the understanding of the jurists, including Ibn Taymiyyah (may Allāh be pleased with him), who sought to refine this subject and prevent it from becoming a pretext for unwarranted prohibitions.

Ibn Taymiyyah said: "The harm of *gharar* is less than that of *ribā*; therefore, it is permitted in matters where there is need for it."[1]
He also said: "The Lawgiver does not prohibit the types of sales that people need merely because of a degree of *gharar*."[2]

Ibn al-Qayyim said concerning the sale of hidden items (*bayʿ al-mughayyabāt*): "And even if it is assumed that there is *gharar* in

[1] Al-Qawāʿid al-Nūrāniyyah, p. 172.
[2] Majmūʿ al-Fatāwā (29/227).

it, it is a slight *gharar* that is overlooked in view of the public interest which people cannot do without. Such *gharar* does not necessitate prohibition. For the leasing of an animal, a house, or a shop for a deferred period[1] is not devoid of *gharar*, because the animal may die, or the house may collapse. Similarly, entering a public bath, or drinking from the water carrier's vessel is not precisely measured, as people differ in usage. Likewise, *salam* transactions, the sale of a large heap whose measure is unknown, and the sale of eggs, pomegranates, melons, walnuts, almonds, pistachios, and similar items that are never free of *gharar*—all of this is tolerated. Not every *gharar* is a cause for prohibition."[2]

Ibn al-ʿArabī said: "*Ghabn* (excessive inequity in price) is unanimously prohibited, for it is a form of deceit which is unlawful. But slight *ghabn* is unavoidable and therefore tolerated in sales; for if we were to invalidate sales because of it, no sale would ever be concluded."[3]

Al-Khaṭṭābī said: "As for selling walnuts in their shells, indeed it involves *gharar*, but it is excused due to necessity. For if the kernel were removed from its shell, it would quickly spoil and become moldy."[4]

Al-Shāṭibī stated clearly that it is impossible to eliminate every form of *gharar*, for doing so would lead to shutting the door of sales entirely[5]. Al-Bājī mentioned the same point[1].

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[1] *Al-Musānāh*, *al-Muṣāna'ah*, *al-Mudārāh*, and *sānāhu musānāh*: to hire him for the year. Among its uses: *wa ʿāmalahu musānāh wa ista'jarahu musānāh* — "He employed him with *musānāh* and hired him with *musānāh*." (*Lisān al-ʿArab*, 14/405, entry: *sanuw*).

[2] Zād al-Maʿād (5/727).

[3] ʾAḥkām al-Qurʾān (4/261).

[4] Maʿālim al-Sunan (3/84).

[5] Al-Muwāfaqāt (2/26).

Al-Nawawī said: "If there is a need to engage in a transaction that involves *gharar*, and it cannot be avoided except with hardship, or if the *gharar* is insignificant, the sale is permissible."[2]

Dr. al-Ṣiddīq al-Ḍarīr states: "For *gharar* to affect the validity of a contract, it must be in a contract that people are not in need of. But if there is a need for the contract, then *gharar* does not affect it, regardless of the nature of the *gharar* or the contract. For all contracts were legislated due to people's need for them."[3]

We now return to discussing *gharar* in the commercial insurance contract.
The opponents claim that *gharar* in commercial insurance lies in the occurrence of the insured event, the compensation, and the term.

To refute this claim, we will address these elements in order:

1. The Claim of *Gharar* in Occurrence (the Realization of the Subject-Matter of the Contract)

They say that the policyholder may pay premiums and the risk may never occur; or he may pay only one premium and the risk occurs, receiving compensation far exceeding what he paid.

I respond:

a. Anyone who examines the contracts permitted by the *Sharī'ah* finds that some involve subject-matter that is certain in occurrence, while others involve subject-matter that is merely probable.

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[1] Al-Muntaqā Sharḥ al-Muwaṭṭa' (5/41).
[2] Al-Majmū' by al-Nawawī (9/311).
[3] Al-Gharar wa 'Atharuh fī al-'Uqūd, p. 599.

From the first category:

Selling a present item, or contracting for a known benefit in exchange for a known price—these involve certainty of occurrence.

From the second category: contracts that involve probability of occurrence, such as the contract of *ju'ālah*.

When the offeror says, "Whoever finds my lost property will receive one hundred dirhams," the worker exerts effort, time, and money for something uncertain, which may or may not occur.

This is a contract based on a probable future event.

Whoever distinguishes between it and insurance contracts based on risk creates a contradiction, for both are contracts over a potential future compensation in exchange for a present obligation.

Similarly, *muzāra'ah* and *musāqāh*: there is no compensation at the time of contracting, nor any guarantee of yield after the work is done. This applies to all future-oriented contracts.

Also, the share of the *mujāhid* in the path of Allāh is uncertain: he may live and receive his portion of the spoils, or he may die and receive nothing despite contributing to victory. The army as a whole may or may not obtain spoils. Yet no scholar has ever described the contract of spoils as *gharar*.

Someone may say: "Yes, these contracts involve uncertainty, but they were permitted as exceptions to the general rule of analogical reasoning due to need and benefit."

Even though we reject the characterization of these as exceptions, we still respond:
The same need and the same public benefit exist in commercial

insurance—indeed, they are stronger. Commercial insurance is regulated by governing laws, actuarial calculations, and widespread social and economic need. Thus, it shares the same reasoning of permissibility.

b. The opponents' portrayal of commercial insurance as involving *gharar* in the occurrence of the subject-matter is an inaccurate depiction.

Their claim arises from examining only one aspect—the possibility of the insured risk occurring—while ignoring the central benefit of the contract:

The benefit of security, psychological assurance, and social protection.

The insured person does not only purchase future compensation. He purchases present tranquility regarding potential future risks—a recognized benefit in *Sharī'ah*.

Contracts such as agency with remuneration, suretyship for a fee, security services, and others are based on similar benefits.

In modern human life, contracting for *security* has become a fundamental necessity.

Here are practical examples:

1. Antivirus subscriptions:

   The subscriber pays an annual fee against a potential threat—an *ijārah* for a probable benefit.

2. Maintenance contracts:

   Large companies sign with maintenance firms to repair or service equipment for a monthly fee—an *ijārah* based on an unknown, probabilistic benefit.

3. Home security and alarm systems:

   A monthly payment for electronic monitoring against potential risk—identical in structure to insurance.

4. Roadside Assistance services:

   An annual or monthly fee for help if a contingent road hazard occurs.

5. Shipping-subscription services (e.g., Amazon Prime):

   Paying a fixed yearly or monthly amount in exchange for potential exemption from shipping costs.

In all these examples, and countless others, the benefit is uncertain, and the compensation is prepaid—yet the contracts are valid and dominate modern economic life.

Should proponents of prohibition declare all these contracts unlawful and thereby cripple people's livelihoods?

If these contracts are not invalid due to gharar—despite uncertainty—then commercial insurance cannot be invalidated merely because compensation depends on the occurrence of risk.

The criterion is realization of benefit, not realization of risk.

c. Regarding the effect of probabilistic occurrence on the insurer:

The probability in insurance is not a flaw in the contract; it is its very foundation. Insurance companies operate by aggregating individual risks within a cooperative statistical system. By means of actuarial data and probability models, they know—with dominant statistical certainty—that only a limited number of policyholders will experience the insured event. Premiums are calculated based on these probabilities.

If we consider the impact of the probability of collection upon

insurance companies, we find that it appears in three dimensions:

1. Financial risk:

An insurer may at times be required to pay a very large compensation to a single policyholder in return for a relatively small premium. Yet this possibility is distributed across the collective—similar to cooperative insurance, or Islamic banks when absorbing investment risks, or sharecropping contracts in cases of weather-related risks, or shipping companies in cases of damage. All such risks only fully materialize in rare circumstances and do not override what is normative in custom.

2. Profit and loss:

Insurance companies do not profit from each individual policy in isolation. Rather, they profit from the aggregate difference between collected premiums and compensation payouts. Every company manages risk through reserves, reinsurance, repricing, and investment activity.

3. Commutative fairness:

Some policyholders may receive more in compensation than what they paid in premiums. However, this occurs in any cooperative or participatory system and lies at the heart of commerce itself. No merchant sells goods at the exact price he bought them, for that would be barter rather than sale. This differential exists in every form of insurance—cooperative and social—and has never been treated as a cause for prohibition.

Accordingly, the issue of *gharar* (uncertainty) in collection does not invalidate the contract unless the uncertainty is inherently dispute-generating by its nature—such as a level of vagueness that leads to contention—or involves excessive unfairness resembling the sale of non-existent goods. If both parties consent

to it and it is established by prevailing custom, it does not corrupt the agreement.

2. The Claim of *Gharar* in the Compensation

The prohibitionists argue that the insurance contract involves *gharar* in the compensation: the policyholder pays a fixed, known premium, while the compensation he may receive is unknown. Thus, it would be a commutative financial exchange between a known payment and an unknown return—an excessive *gharar* that invalidates the contract.

I respond:

A. Certain types of insurance must first be excluded from this objection—namely those in which the compensation amount is specified in advance such that its uncertainty is eliminated. Examples include life-insurance policies in which the payout upon death is fixed; endowment-type policies where the insurer returns the total premiums paid if the policyholder survives to a specified date; elements of accident insurance that stipulate a predetermined payout in cases of death, loss of limbs, or partial or total disability; homeowner's insurance in cases of total loss (*Total Damage*), where the compensation is fixed at a pre-agreed amount.

In all these and their analogues, the compensation is known in amount; only the condition for collection remains uncertain. Therefore, such cases lie outside the scope of dispute regarding this particular objection.

B. As for the remaining forms of insurance in which the compensation is determined by evaluating the nature and extent of the risk, the objection still does not hold for the following reasons:

1. Commercial insurance contracts set an upper limit for the compensation that may be paid for the covered risk.

For example, in health insurance, a yearly cap for medical procedures, pharmaceuticals, and administrative costs is established. Even if the policyholder does not always reach this ceiling, the maximum compensation remains contractually linked to it.

2. These contracts also employ the criterion of market value—a principle of fairness and equilibrium. Market value is the worth of the insured property at the time the risk occurs. Because market values fluctuate, specifying a fixed compensation regardless of market changes may harm one party.

Relying on market value achieves:

- Fair valuation: determination of compensation by neutral, standardized measures reflecting depreciation, aging, market conditions, and actual damage;
- Prevention of unfairness: neither party independently dictates the valuation, thus minimizing uncertainty;
- Commutative justice: the insurer neither wrongs nor is wronged, and the policyholder receives precisely what is due.

This principle appears in several areas of Islamic jurisprudence, including the chapter of guarantees (*ḍamānāt*), and even in expiations for violations during pilgrimage, such as the expiation for killing game: "as judged by two just men among you as an offering [to Allāh] delivered to the Kaʿbah, or an expiation: the feeding of needy people or the equivalent of that."[1]

[1] [Al-Māʾidah: 95].

3. Insurance companies also specify the attribute of compensation in detail, thereby eliminating uncertainty in its nature. For example, accident insurance differentiates between compensation for medical treatment, vehicle repair, or reconstruction of property.

Thus, the compensation in insurance is not unknown in its nature or contractual commitment—even if its exact amount varies in some cases.

C. Islamic *Sharīʿah* has permitted contracts in which neither party can predetermine, with fixed certainty, the exact amount exchanged by both sides. A prime example is the *muwālāh* contract mentioned earlier, in which:

- neither party knows in advance the precise amount he will give or receive, for liability for restitution and blood-money arises only when injury occurs, and inheritance occurs only upon death, and no one knows the exact estate the deceased will leave;
- either party may end up giving without receiving.

Since the *Sharīʿah* did not prohibit *muwālāh* despite containing vagueness and uncertainty—because it is customary and achieves mutual aid and public benefit—commercial insurance, which is far more regulated, transparent, and contractually defined, is even more deserving of permissibility from this perspective.

3. The claim of *gharar* (uncertainty) in the term (duration):
The prohibitionists say: The insurance contract contains *gharar* in its term because the time of the occurrence of the risk is unknown and part of the unseen. One does not know when an accident, illness, or death will occur. Since entitlement to indemnity is contingent on that term, the time at which indemnity

becomes due is therefore unknown.

I respond:

I begin with a subtle jurisprudential point from the field of acts of worship. The Prophet (peace and blessings be upon him) used to fast the day of ʿĀshūrāʾ. In the year of his passing (peace and blessings be upon him), it was said to him that the Jews and Christians venerate that day. So, he (peace and blessings be upon him) said: "If I remain alive until next year—God willing—we will fast the ninth day as well." Ibn ʿAbbās said: "But the next year did not come before the Messenger of Allāh (peace and blessings be upon him) passed away."[1]

The majority of scholars considered fasting the ninth and tenth to be recommended; some even held that this is the Sunnah. Yet the Prophet (peace and blessings be upon him) tied the act to remaining alive until a term that was unknown in occurrence.

The act, therefore, was contingent upon an unknown term and dependent upon an uncertain condition. Despite that, the vagueness of the term and the conditional nature of the act did not invalidate it nor prevent its legal effect. Some scholars even considered the very intention of the Prophet (peace and blessings be upon him) to constitute a Sunnah for whoever reaches that term.

In jurisprudence—especially in the chapter of binding obligations—there are many parallel examples. Most vows (*nudhūr*) relate to events with unknown timing, yet these vows are legally valid. Shall we then nullify every vow whose term is not fixed to a specific day or hour?

As for the discussion with those who prohibit insurance, it is

[1] Ṣaḥīḥ Muslim (1134).

quite simple. The subject matter of the contract is not the term but the risk itself. The term is not the object of the contract; rather, it is a condition for entitlement—just as delivery is a condition for entitlement to maintenance in marriage according to the majority, although delivery has no fixed term.

Islamic *Sharīʿah* has permitted compensation even when tied to an undefined term, such as:

1. The contract of *juʿālah* (reward):

The time of the reward becoming due is unknown, for it depends on fulfilling a condition.

2. The *muwālāh* contract:

Neither of the two compensations is known beforehand because both depend on an event whose occurrence is unknown at the time of contracting.

3. The binding promise according to the Mālikīs and others:

This may involve a promise to bear a future loss whose term is unknown, and fulfillment becomes obligatory—according to those who hold this view—when the promisor is capable. This is a position among the Mālikīs and one view among the Ḥanbalīs. The Ḥanafīs obligated such a promise when linked to a future occurrence.

Al-Hamawī said: "His statement—meaning the author—that a promise is not binding unless it is made contingent [upon a future event]. Some scholars explained: This is because when it is contingent, it indicates a form of commitment, such as saying: If I recover, I will perform Ḥajj—then he recovers, so it becomes

binding."[1]

Al-Qarāfī said: "Sahnūn held that what becomes binding from promises are statements such as: Demolish your house and I will lend you what you rebuild it with, or Go to Ḥajj and I will lend you, or Buy such-and-such, or Marry a woman and I will lend you, because you admitted him into that matter by your promise."[2]

All the cases Sahnūn obligates involve unknown terms. If the person returns a year later and says: "I am going to perform Ḥajj," then fulfillment is obligatory for them so long as the promise was not time-limited.

4. Deferring the dowry with an open-ended term:

If the husband stipulates deferring the dower without specifying a fixed date, the majority deemed the contract valid. They differed as to when the dower becomes due: some Ḥanafīs, Mālikīs, and Ḥanbalīs[3] held that it is due only at death or separation—this was the view preferred by Ibn Taymiyyah[4].

The apparent position of the Ḥanafīs is that she may demand it immediately[5].

Yet in all cases, the vagueness of the term does not invalidate the marriage contract, which is undoubtedly one of the most consequential commutative contracts, as it permits intimate relations that are otherwise prohibited.

From all the above, I say:

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1 Ghamz ʿUyūn al-Baṣāʾir (3/237).
2 Al-Furūq by al-Qarāfī (4/47).
3 Badāʾiʿ al-Ṣanāʾiʿ (2/288), Minaḥ al-Jalīl (3/422), and al-ʾInṣāf (8/244).
4 Majmūʿ al-Fatāwā (32/196).
5 Badāʾiʿ al-Ṣanāʾiʿ (2/288).

The claim that commercial insurance is invalid due to the presence of *gharar* in the term, in the entitlement, or in the compensation is an imprecise claim.

Rational analysis refutes it, analogy dismantles it, empirical reality contradicts it, and the permissibility of many analogous contracts in jurisprudence undermines it—contracts in which such characteristics are tolerated.

Commercial insurance is a contract with well-defined conditions, documented clauses, consistent with rational custom, achieving valid interests, and preventing actual harms. Thus, it cannot be prohibited merely due to elements of *gharar* whose equivalents are overlooked in other contracts. Indeed, it is more deserving of permissibility because of its clarity, regulation, and public and private benefit.

I conclude this point by noting that those who prohibit commercial insurance have overlooked these elements when they approved cooperative or social insurance—even though these contain the same triad of uncertainties—while being less regulated than commercial insurance, as they rely on customary agreements among organizers rather than state legislation.

Their attempt to differentiate on the grounds that cooperative insurance is based on donation, and therefore can tolerate such *gharar*, is unconvincing for two reasons:

First: The majority of jurists do not differentiate between the legal effect of *gharar* in gratuitous contracts and commutative contracts; they give it the same ruling, as noted in the second chapter.

Second: The claim that cooperative insurance is based on donation is invalid—we have already discussed this. It is in

reality a commutative financial contract; only its administrative structure differs.

Fourth Response: The possibility of *gharar* in commercial insurance does not normally lead to dispute.

When examining the impact of *gharar* in contracts, it is essential to distinguish between uncertainty that is inherently defective (*ʿayb dhātī*) and uncertainty that leads to conflict (*ʿayb mufḍī*). This distinction has direct implications for the juristic ruling on contracts.

1. The Intrinsic Defect (forbiddance for the object itself):

It is that which is a prohibited attribute in and of itself — such as intoxication in beverages, impurity in foodstuffs, or harm in actions. These are essential qualities inherent to the object, leading to prohibition absolutely, whether harm actually occurs or not. For instance, someone may drink an intoxicant without reaching the level of drunkenness, or eat something impure without being harmed. The mere inherent attribute is sufficient to invalidate or forbid the contract.

2. The Consequential Defect (forbiddance due to outcome):

This refers to an attribute that is prohibited because of what it may lead to, such as *ribā* (usury). *Ribā* is an increase that can resemble sale in appearance, yet it is prohibited because it leads to exploitation and to consuming wealth unjustly.

Gharar is not an intrinsic defect, because complete knowledge and certainty are not inherent to transactions and worldly objects. *Gharar* is an attribute commonly present in most sales — sometimes leading to harm, and sometimes not.

For this reason, *gharar* was permitted by many jurists in various

matters, such as:

- Contracts of donation, like gifts.
- *Gharar* in what is subordinate, such as selling fruit with its palm tree, or a fetus with its mother.
- Situations where the contract is not a pure financial exchange — such as the marriage contract — because it is founded upon other considerations more important than mere exchange.

When we examine the outcomes of *gharar* that make it prohibited, they manifest in two matters:

1. The possibility of dispute, which leads to corruption of social order.
2. Consuming people's wealth unjustly, which leads to oppression.

All the reasons mentioned by jurists and scholars of *maqāṣid* for prohibiting *gharar*, despite their varied expressions, ultimately return to these two foundational principles.

When we apply these two principles — dispute that leads to corruption, and unjust consumption of wealth that leads to oppression — to commercial insurance in its modern form, we do not find a valid point of entry for either one of them. This is due to several considerations:

- Insurance contracts today are documented, written, and detailed in their conditions.
- The policy precisely defines the nature of the risk, and the conditions and limits of compensation.
- Companies are bound by mandatory laws and supervisory

authorities, preventing fraud and manipulation.

- Mutual consent between the parties is established, based on knowledge and clarity, not on illusion or concealment.
- The compensation — i.e., the premiums — is paid in exchange for a real coverage of risk, which is a service recognized both rationally and legally.
- The compensation fund is distributed across a large number of contributors, preventing the possibility of gambling between two individual financial liabilities.

Someone might say: These safeguards did not prevent some disputes from arising, sometimes escalating to litigation.

I reply:

Insurance is a type of sale and a contract of financial exchange — even though it contains an element of mutual support. Its situation is similar to many exchange contracts that allow for the possibility of dispute. However, disputes in commercial insurance most often arise from incidental factors, not from the nature of the contract itself, such as:

- Weak drafting in some policies.
- Poor damage assessment by experts.
- Delay by the company in paying compensation.
- The policyholder's unawareness of certain conditions.
- The policyholder lying in some of the information provided.
- Fabrication of the risk.

All of these are external factors unrelated to the pillars of the

contract — offer, acceptance, and compensation. They are incidental issues that occur in every type of contract: sales, leasing, contracting, *muḍārabah*, sharecropping, and others. No jurist invalidates a contract because of such incidental issues; rather, they are matters resolvable through arbitration or law.

Fifth Response: The Danger of Overextending Forbiddance on the Basis of *Gharar*

Invalidating commercial insurance on the grounds of *gharar*, while it is a documented, organized contract widely used among rational people and serves major interests, opens the door to prohibiting numerous contemporary contracts that involve elements of uncertainty, probability, or future estimation — many of which are deeply embedded in people's daily lives. Among them:

1. Maintenance contracts for devices (individual or corporate), where a subscription is paid in return for guaranteed repair, despite uncertainty about whether the risk will occur.
2. Subscriptions to preventive security services, such as antivirus protection or cybersecurity — an industry that now underpins nearly all aspects of human life: power plants, transportation systems, telecommunications, emergency services, police operations, etc. These too involve subscriptions paid for potential future risks and threats not yet realized.
3. Venture capital contracts, which are built on the possibility of success or failure, and whose returns are unknown until a future time.
4. Contracts for expected municipal or public services, such

as garbage collection. These involve uncertainty concerning service quantity and timing, since people vary in how much waste they produce, and circumstances such as travel, weather, or equipment malfunction affect service delivery. Likewise, snow-removal contracts in regions with unpredictable snowfall, which are essential for hospitals, schools, emergency services, fire departments, and individual households. The *gharar* in these contracts may be in occurrence, amount, or timing, yet it is unreasonable to expect societies to rely solely on spontaneous individual ability when risks materialize.

5. Agricultural protection contracts, undertaken by large companies on behalf of farms or even entire countries, involving control of harmful pests — a highly uncertain matter in occurrence, amount, and timing, yet vital for protecting national agricultural output.

6. Open-service subscriptions, such as fixed monthly fees for car-parking services or car-washing services. These are based on a fixed payment in exchange for an open, user-determined service: one may use the parking spot multiple times daily or not at all, and the client does not own that specific spot in any sense. The benefit sold is a shared, non-specific utility.

7. Open-buffet restaurants, where the customer pays a fixed amount in advance for unrestricted access to food and drink, with no determined quantity or time of consumption.

These contracts, and many others like them, all contain degrees of *gharar*, *jahālah*, and probability. Yet people depend on them in their livelihoods, and life cannot function without them. In fact,

many are tied to major public interests. Declaring them forbidden or invalid because of *gharar* or *jahālah* contradicts the spirit of the *Sharīʿah*, its objectives of ease and removal of hardship, the preservation of wealth, life, and honor, and its aim of facilitating the development of the earth and stabilizing human civilization.

Assuming the existence of complete certainty in financial transactions is a type of impossibility — like grasping a handful of northern wind. Demanding that modern contracts, including commercial insurance, be free from any possibility of *gharar* or *jahālah* is an idealistic, imaginary claim that exists only in abstract theorization. We must affirm that predominant probability (*al-ẓann al-ghālib*) in transactions stands in the place of certainty in worship.

Absolute or near-absolute certainty is neither realistic nor a required objective of the *Sharīʿah*. What is intended is the regulation of *gharar* and restricting its effect so that it does not lead to dispute or oppression — not eliminating it entirely, for such elimination is impossible, does not occur, and is not required in the first place.

If those who prohibit every contract containing *gharar* in its outcome were consistent, they would be obliged to forbid doctors' fees, since doctors cannot guarantee healing — which is the objective of the contract, not merely their time. They would also have to forbid the marriage contract, because both counter-values and their necessary consequences involve uncertainty: the benefit of intimacy is uncertain, and the fulfillment of financial maintenance is uncertain.

Sixth Response: The Participatory Nature of the Insurance Contract

When we examine financial contracts based on exchange, we

find that they fall into three categories:

1. Pure financial exchange, such as most sales and leases.
2. Financial exchange for the purpose of facilitation, such as loans.
3. Participatory financial exchange, such as sharecropping (*muzāraʿah*), irrigation partnerships (*musāqāh*), profit-sharing partnerships (*muḍārabah*), and all forms of profit-sharing contracts.

Equalizing these types in terms of their requirements contradicts the nature of the *Sharīʿah* and its objectives, and is not what the Lawgiver intended.

For this reason, the Lawgiver differentiated between the conditions of immediate exchange contracts — such as selling a garment for money, or dates for something else — and those of exchanging a present item for a deferred one, such as in *salam*, due to the participatory nature involved in the latter.

Considering the difference between pure exchange and participatory exchange is not limited to cases where a debt is exchanged for a tangible object, or a tangible for a tangible, or a debt for a debt. It is also considered in matters of labor done for compensation. Ibn Taymiyyah classified such labor into three types[1]:

1. Work that is intended, known, and able to be delivered — this is the binding lease.
2. Work that is intended but unknown or involves *gharar* — this is *juʿālah* (contingent reward).

[1] Majmūʿ al-Fatāwā (20/506) et seq.

3. Work not intended for financial compensation — this is *muḍārabah* (profit-sharing partnership).

Ibn Taymiyyah distinguished between the first type and the other two, saying: "Those who said that *muḍārabah*, *musāqāh*, and *muzāraʿah* contradict analogy assumed that these contracts are of the same type as leasing, for they involve labor in exchange for compensation. In leasing, both the compensation and the work must be known. When they saw that the work in these contracts is unknown, and that the profit is unknown, they said these contracts contradict analogy. This is their error. For these contracts belong to the category of partnerships, not the category of specific exchanges in which knowledge of both counter-values is required. Partnerships are a different category from exchange, even if they share some qualities, and profit-sharing is a different category from specific exchanges, even if it shares some characteristics — which led some jurists to think it is a sale requiring the specific conditions of sale."[1]

Ibn Taymiyyah also provided a practical example of what may be considered a pure financial exchange or what may be treated as participatory exchange. He said: "From this type is when a reward is given to a doctor for the healing of the patient — this is permitted. As when the companions of the Prophet (peace and blessings be upon him) were given a flock in return for healing the leader of the tribe, and one of them performed *ruqyah* until he was cured, so they took the flock. The reward was for the healing, not for the recitation. But if a doctor were hired through a binding lease for the healing itself, it would not be permitted, because healing is not in his power — Allāh may cause healing

[1] Ibid. (20/506).

or may not."[1]

As for contracts based on participatory exchange, the *Sharīʿah* has shown greater leniency because the risk is distributed. It thus tolerated the uncertainty and vagueness involved.

In a *muzāraʿah* contract, risk is shared between the landowner and the worker.
In a *muḍārabah* partnership, risk is shared between the capital owner and the worker.

Ibn Taymiyyah even regarded risk-sharing in partnership contracts as the height of justice. He said: "Whoever reflects properly will know that *muzāraʿah* is farther from oppression and gambling than leasing for a fixed, guaranteed rent. For the tenant seeks the benefit of the crop that may or may not grow. If he is obligated to pay rent while the crop — which is the very benefit he seeks — may not grow, then one party gains his objective while the other does not. But in *muzāraʿah*, if the crop grows, both share it, and if nothing grows, both share the loss. Thus, neither party obtains his full benefit while the other does not. This is closer to justice and farther from oppression than leasing."[2]

Applying this to insurance generally — including commercial insurance — we find that it is definitively a participatory exchange contract, not a pure exchange. An insurance contract essentially gathers resources from a group of subscribers to face potential risks that may affect some of them. Each subscriber contributes his share to a collective pool, and compensations are then paid to those affected according to agreed-upon conditions.

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[1] Majmūʿ al-Fatāwā (20/507).
[2] Majmūʿ al-Fatāwā (20/509-510).

This structure makes insurance closer in nature to partnership contracts recognized in Islamic jurisprudence — such as *muḍārabah* and *muzāraʿah* — than to pure exchange contracts like sale or lease.

The *gharar* involved in participatory contracts — whether related to the amount of yield or the occurrence of risk — is tolerated because it is inherent to the cooperative nature of the contract and not intended for its own sake. For this reason, the *gharar* in commercial insurance is not suitable as evidence for invalidating it, nor is it a corrupting form of *gharar*. Rather, it is secondary *gharar* within a participatory transaction based on cooperation and sharing of profit and loss — something Islamic jurisprudence has affirmed in analogous situations.

Seventh Response: Risk in the Insurance Contract Is Equally Distributed

This is an important distinction between contracts containing *gharar* and *jahālah* that are permitted and those that are not. For example, the sale of fish in water is not allowed because the risk there is unequal. While the buyer provides payment immediately, the item sold is unknown, and its existence is conditional upon risk; this constitutes consuming people's wealth unjustly and invites dispute.

In contrast, in *muzāraʿah*, risk is evenly distributed between the landowner and the worker. This is the same in insurance: the premium corresponds to the compensation, security corresponds to gain, and risk rests upon both parties.

Likewise, in *muḍārabah*: labor corresponds to profit, capital corresponds to loss, and risk is shared between both parties.

Inequality of risk is one of the main reasons for prohibition in

gharar-based sales: one contracting party enters the agreement with a high likelihood of gain, while the other enters a gamble with greater likelihood of loss. This imbalance opens the door to oppression and consuming wealth unjustly.

In conclusion, I say: declaring commercial insurance prohibited due to the possibility of *gharar* or *jahālah* is a claim involving legal overreach — a claim not free from refutation both legally and rationally. It creates unjustified distinctions between analogous cases, without evidence, and is based on conjecture. The *gharar* present in insurance is neutralized by regulation and clarity, and it is similar to that which the *Sharīʿah* has permitted in comparable cases.

Basing prohibition upon such a possibility undermines recognized objectives and outweighing public interests, and restricts what the *Sharīʿah* has expanded regarding means of preserving wealth, life, and property. It contradicts the spirit of the *Sharīʿah* and its universal principles in the domain of transactions.

Second Objection: That the insurance contract includes prohibited gambling

Some of those who prohibit commercial insurance argue that the insurance contract contains a form of gambling and wagering. They say that both parties to the contract—the policyholder and the insurer—stand before an event whose occurrence is unknown. If the event occurs, one party profits while the other loses; and if it does not occur, the opposite happens: the second party profits while the first loses. They claim that this is the very essence of *maysir* (gambling), which the *Shariʿah* has forbidden, for it is based on risking both parties' wealth on a future uncertain matter, with one party taking the full gain if the

condition is met, and the other losing what he paid without compensation. This, they assert, is the reality of commercial insurance: one party only profits by the loss of the other, and the contract establishes an obligation suspended on an unknown risk.

The truth is: although those who prohibit commercial insurance agree that it includes forbidden *gharar* (uncertainty), they do not all agree that it includes gambling. Dr. Al-Ṣiddīq al-Ḍarīr, for example, affirms the presence of *gharar* but denies that insurance constitutes gambling, saying: "I believe that the reality of insurance differs from the reality of gambling in both *Sharī'ah* and law, even though both contain *gharar*."[1]

The truth is that anyone who examines the insurance contract—as defined by legal statutes and its regulatory principles—will know the difference between insurance and gambling. I will mention here the most important differences recognized by practitioners:

1. Difference in purpose and function

Insurance, according to the governing law, is a contract based on cooperation among policyholders, by distributing risks over the collective pool of participants.

Thus, functionally, it is a participatory contract. And in terms of purpose, it is cooperative. As for gambling, it differs both in function and purpose. In function, it is a contract of play and risk-taking. In purpose, it is a contract meant for profit.

2. Nature of the risk

The insured risk in commercial insurance differs fundamentally from the risk in gambling. In gambling, the risk is created by the

[1] Al-Gharar wa 'Atharuh fī al-'Uqūd, p. 648.

gamblers; they intentionally bring it into existence. In insurance, it is a decreed future risk, not sought by any party. The policyholder does not seek illness, death, car accidents, the destruction of his house, or any other insured danger; nor does the insurance company.

But in gambling, each party strives to *create* the risk.

3. Absence of adversarial competition

In gambling, the risk is unequal and adversarial: each party hopes for complete profit at the expense of the other, with no ongoing exchange of benefits.

In insurance, the risk is distributed equally among all parties. The policyholder pays the premium for the insurer's commitment to cover risk. The company pays compensation but receives the premiums.

4. Existence of legitimate consideration

Gambling is based on pure risk with no service, effort, or item of value offered. Insurance, however, offers real services, including security and peace of mind (as previously discussed and its importance in modern times), management of premiums, bearing financial liability when the risk occurs, technical support and legal representation, and other services explicitly stated in the insurance policy.

For example, in health insurance, the insurer verifies invoices, evaluates the treatment, and determines the proper cost and medication. In home and property accidents, the insurer provides temporary housing and protects belongings. In the case of death, the company contacts the heirs and executes the policy. All these are functions outside the risk itself.

5. Legal regulation

Gambling agreements are typically informal arrangements outside legal frameworks, lacking structured regulation. They are also criminalized in many regions.

Insurance contracts, however, because they provide a genuine service and economic benefit, are subject to strict legal and technical regulations that define obligations and compensation mechanisms. This prevents the injustice and disputes inherent in gambling—disputes the Qur'ān refers to as producing "enmity and hatred." Although this is a wisdom and not a juristic cause, it does not apply to insurance.

6. Those who prohibit commercial insurance permit cooperative and social insurance despite containing the same alleged "gambling element"

Those who prohibit commercial insurance but permit cooperative or social insurance imply—according to their logic—that gambling is forbidden in exchange contracts but permitted in donation-based contracts. This is incorrect for several reasons:

A. Donation does not change the nature of probability

The probabilistic nature and the exchange of non-guaranteed benefits exists in both types. Donation does not change the fact that compensation is being paid in exchange for premiums; otherwise, it would be available even to non-members.

If merely phrasing the contract as a "donation" were enough to remove the suspicion of gambling, then commercial insurance could simply be drafted as a donation contract—yet they still forbid it.

B. The "donation" in cooperative insurance is not a pure donation

As previously explained, it is closer in contemporary practice to probabilistic exchange than to absolute charity.

C. The effective cause by which they deemed commercial insurance gambling exists in cooperative insurance as well

In both, a party may take more than what he contributed without work.

D. Profit is not a condition of gambling

Mere profit does not create gambling. Evidence: the issue of entering a third horse in a race between two horses[1]. The profit must occur for one of the three.

ʿAwn al-Maʿbūd explains: "In *Sharḥ al-Sunnah*: In horse races, if the prize comes from the ruler or a third party, it is permissible. If it is between the two competitors, it is only permissible. If one of the horsemen wins, they deserve the prize. If the prize is made by one of the two horsemen and one said to the other: if you win, you will have such and such from me, and if I win, I will have nothing from you, it is also permissible. If the other wins, they deserve the stipulated subject matter. However, if the money is introduced by both parties and each one of them said to the other: if you win, you will have such and such from me, and if I win, I

[1] The *ḥadīth* was narrated by Aḥmad (10557), Abū Dāwūd (2579), Ibn Mājah (2876), and others, from Abū Hurayrah, who said that the Prophet (peace and blessings be upon him) said: *"Whoever enters a horse between two horses while he is not certain it will win is not engaging in gambling. But whoever enters a horse between two horses while he is certain it will win, then that is gambling."* The meaning of the *ḥadīth* is that gambling is nullified if a third party enters the competition without contributing a share to the risk, even if the possibilities of winning exist.

will have such and such from you, then it is not permissible except with a '*muḥallil'* (third competitor). The *muḥallil* enters between them. The *muḥallil* then takes the offered items if wins, and is not obligated to give anything if loses.

It is named *muḥallil* because it validates the taking of money by the winner. This role casts the contract outside the scope of gambling because the latter involves a reluctance between gain and loss, which is removed by the participation of a third-party.

Then, if the *muḥallil* arrives first, followed by the two competitors together or one after the other, the *muḥallil* takes both stakes. But if the two competitors arrive together first, then the *muḥallil* arrives afterward, no one receives anything. And if one of the two competitors arrives first, then the *muḥallil* and the second competitor arrive—whether together or one after the other—the first competitor secures his own stake and takes the stake of the second competitor.

And if the *muḥallil* and one of the two competitors arrive together, followed by the second competitor arriving later as a "*muṣallī*" (i.e., following behind), then the two who arrived together take their respective stakes."[1]

The objection raised by those who prohibit commercial insurance on the grounds that the company makes a profit has no connection to the essence of gambling. This is because gambling may occur between two parties without a neutral third party (*muḥallil*), in which one of them wins, and in that case it is unlawful. And it may occur between two parties with a neutral third party, and one of them wins, and in that case it is lawful. Thus, profit itself is not the issue; rather, the manner of earning it is what matters.

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[1] ʿAwn al-Maʿbūd (7/176).

7. The *Sharīʿah* forbade gambling not merely for financial reasons but for moral and social reasons

These include creating enmity and hatred, distracting from remembrance of Allāh. These are inherent in gambling but absent in commercial insurance. The policyholder does not hate the insurer if no loss occurs, nor does the insurer hate the policyholder for receiving compensation. It is a service process benefiting both sides.

For this reason, Abū ʿUbayd refuted the claim that estimation of produce (*al-kharṣ*) is gambling, saying: "How can these be equated? Estimation aims at righteousness and placing rights where they belong. Gambling aims at transgression and consuming wealth unlawfully. How can falsehood be equated with guidance—especially when the One who forbade gambling permitted *al-kharṣ*?"[1]

Similarly, Al-Ṣiddīq al-Ḍarīr said: "I see no reason to analogize insurance to gambling. Insurance is seriousness, gambling is play. Insurance is based on scientific principles, gambling is based on luck. Insurance avoids risks and ensures safety for the policyholder. Gambling creates risks and removes safety. How could they be equal?"[2]

Summary

The *Sharīʿah* permitted buying, selling, leasing, partnerships, and other transactions, all involving profit and loss: one party profits and the other loses. If mere gain and loss were considered gambling, then all sales and most financial transactions would be forbidden.

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[1] Al-ʾAmwāl, p. 593, Issue 1472.
[2] Al-Gharar wa ʾAtharuh fī al-ʿUqūd, p. 649-650.

For a financial transaction to be gambling, the following must all be present:

- pure financial risk with no real service,
- profit and loss tied to a random event unrelated to work,
- neither party wins except by the other's loss,
- risk created by the participants,
- no real benefit to the losing party,
- the act being a tool of diversion and play.

None of these conditions exist in commercial insurance.

These characteristics are fundamental to a gambling contract. This is why, once certain elements differ, the ruling also differs. For example, some forms of competitive reward-based contests are permitted—including those in which competitors stake something—according to those who allow them. The details are as follows:

1. Competitions with a prize in camel-racing, horse-racing, and archery[1], when the prize comes from a non-participant. This is when an external body or individual provides the reward. Consensus has been transmitted regarding its permissibility, as there is no semblance of gambling in it[2].
2. Competitions in camel-racing, horse-racing, and archery where the prize comes from only one of the two

[1] The Shāfiʿīs included this category all weapons of war, such as spears, slings, and catapults. See *Rawḍat al-Ṭālibīn* (10/350–351). Some also included modern weapons such as rifles, airplanes, and others. See *Al-Sharḥ al-Mumtiʿ* (10/99).

[2] Al-Bināyah by al-ʿAynī (2/254), al-Muqaddimāt al-Mumahhidāt (3/475), Sharḥ Muslim by al-Nawawī (13/14), and Majmūʿ al-Fatāwā (28/22).

participants.
The one who wins keeps his stake, and if he loses, his opponent receives it. Consensus has also been reported regarding its permissibility[1].

3. Competitions where both participants contribute an equal stake.
This type is prohibited by the majority of the four schools[2]. However, Ibn Taymiyyah[3] and Ibn al-Qayyim[4] allowed it, and it is narrated from several Companions such as Abū Bakr and Abū ʿUbaydah ibn al-Jarrāḥ. The permissive view relies on evidence that the benefit outweighs the harm; the benefit lies in training for combat skills, in which the potential harm of gambling becomes negligible[5].
A textual exemption appears in the Prophet's (peace and blessings be upon him) statement—narrated by Abū Hurayrah: "There is no prize except in camel-racing, horse-racing, or archery."[6]
Here, "prize" refers to the money received by the winner. Since the Prophet (peace and blessings be upon him) gave a general allowance, all kinds of contest arrangements fall under it, including those that resemble mutual staking[7].

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[1] Al-Muqaddimāt al-Mumahhidāt (3/475), Tafsīr al-Qurṭubī (9/147), Mughnī al-Muḥtāj (6/169), and al-Mughnī by Ibn Qudāmah (13/406).
[2] Al-Bināyah by al-ʿAynī (12/245), al-Durr al-Mukhtār (6/403), al-Tāj wa al-ʾIklīl by al-Mawwāq (4/610-611), Tawḍat al-Ṭālibīn (10/354), and Sharḥ Muntahā al-ʾIrādāt (2/279).
[3] Majmūʿ al-Fatāwā (18/63).
[4] ʾIʿlām al-Muwaqqiʿīn (5/421).
[5] Al-Sharḥ al-Mumtiʿ (10/100-101).
[6] Abū Dāwūd (2574), al-Tirmidhī (1700), al-Nasāʾī (3585) and Ibn Ḥibbān who rendered it *Ṣaḥīḥ* (4690).
[7] Maʿālim al-Sunan by al-Khaṭṭābī (2/255).

4. Competitions with a third participant (the *muḥallil*). The *muḥallil* is a third contestant placed between two who stake their money. He earns the prize if he wins but loses nothing if he loses. This removes the resemblance to gambling. The majority—including the Ḥanafīs[1], Shāfiʿīs[2], Ḥanbalīs[3], and one narration from the Mālikīs[4]—permit this arrangement.

5. Footraces with stakes, under similar conditions. The Ḥanafīs[5] allow them, as do opinions within the Shāfiʿī[6] and Ḥanbalī[7] schools, and Ibn Taymiyyah and Ibn al-Qayyim also permitted them—even when the prize is effectively a wager between the competitors[8].
   Just as horse-racing and camel-racing build martial skill and courage, footraces achieve the same benefit.

6. Wrestling competitions with stakes. Some scholars from the Shāfiʿī[9] and Ḥanbalī[10] schools allowed this, and it was chosen by Ibn Taymiyyah[11] and Ibn al-Qayyim[12].

   Ibn Taymiyyah justified this by saying: "Wrestling, foot-racing, and similar activities are acts of obedience when

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1 Al-Bināyah by al-ʿAynī (12/254).
2 Rawḍat al-Ṭālibīn (10/354).
3 Sharḥ Muntahā al-ʾIrādāt (2/279).
4 Ḥāshiyat al-Dusūqī (2/210).
5 Tabyīn al-Ḥaqāʾiq (6/227).
6 Fatḥ al-ʿAzīz by al-Rāfiʿī (20/460).
7 Al-Furūʿ by Ibn Mufliḥ (7/190).
8 Al-Fatāwā al-Kubrā (5/415) and al-Furūsiyyah by Ibn al-Qayyim, p. 301 et seq.
9 ʾAsnā al-Maṭālib (4/229).
10 Al-ʾInṣāf by al-Mardāwī (6/90-91).
11 Al-Fatāwā al-Kubrā (5/415).
12 Al-Furūsiyyah by Ibn al-Qayyim, p. 301 et seq.

the intention is to support Islam. Taking the prize for them is rightful compensation, similar to Abū Bakr's wager."[1]

Similar reasoning applies to competitions in swimming and weight-lifting. Ibn Taymiyyah and Ibn al-Qayyim expanded the principle, permitting wagers in any activity that strengthens Muslims and serves a valid public interest.

In all these examples, explicit wagering is present: one person's gain comes only through another's loss. Victory and defeat are uncertain; outcomes depend on numerous variables. Yet these arrangements are allowed—according to those who permit them—because of the higher purposes they serve.

These very purposes exist in insurance—and to an even greater degree. Commercial insurance protects the property of Muslims by distributing risks among millions of policyholders so that each bears only a small, manageable share. It prevents individuals from becoming destitute if a calamity strikes their home[2], factory, vehicle, or even their own lives.

What is astonishing is that some who prohibit commercial insurance—despite its clear elements of mutual support—reject analogical reasoning between it and competitive contests, claiming that the purposes behind competitions do not exist in

[1] Al-Fatāwā al-Kubrā (5/415).

[2] While I was writing these lines, news reached us of the house and car of one of the well-known imams in the United States having caught fire. He adhered to the view of the forbiddance of commercial insurance, and thus his house and car were lost within hours. He is now in need of approximately half a million dollars to rebuild the house, in addition to the costs of accommodation for himself and his family during the period of reconstruction, as well as his inability to work throughout this period. He could have been spared all of this had he insured his house and car against accidents. The alternative now is for Muslims to raise funds to help their brother, which diverts charitable donations away from other disasters—such as supporting our brothers in Palestine.

insurance. This is an extraordinary claim, for safeguarding a Muslim's life, home, and wealth is more fundamental than the benefits of athletic training. The Prophet (peace and blessings be upon him) said: "Whoever wakes up secure in his home, healthy in his body, and possessing his day's provision—it is as if the whole world were gathered for him."[1] If personal safety and financial stability are equivalent to owning the world, how can athletic contests—with explicit wagering—be considered more deserving of permissibility than financial protection that preserves the dignified existence of Muslims?

The benefits of risk-sharing and financial protection are at least equivalent to the benefits of training in archery, equestrian skill, and racing—which also include entertainment. Both parties benefit: the insured gains protection or compensation, while the insurance company receives premiums and the margin between premiums and payouts. This mirrors competitions where the winner receives the prize but the loser benefits from training.

Islam does not prohibit probabilistic contracts outright; it prohibits pure financial contestation devoid of substantive benefit. Since contests were permitted despite their resemblance to gambling—due to their purposes and mutual benefits—then insurance, with its higher objective of financial security and equitable risk distribution, is even more deserving of permissibility by analogy.

Ibn Taymiyyah (may Allāh show mercy to him) noted the wisdom behind prohibiting gambling by comparing it to the prohibition of usury: "The prohibition of usury is more severe

[1] Al-Tirmidhī (2346) and Ibn Mājah (4141) from ʿUbayd Allāh ibn Miḥṣan. Ibn Ḥibbān (671) and Abū Nuʿaym in al-Ḥilyah (5/249) from Abū al-Dardāʾ. Considering all the transmissions, the *ḥadīth* is *ḥasan* (fair).

than that of gambling because usury is definite injustice… As for gambling, each party may defeat the other. It is consuming wealth unjustly, so Allāh forbade it, but it does not involve the same harm of exploiting the needy. Undoubtedly, harming the needy is more severe than harming others."[1]

This rationale does not apply to commercial insurance, for its benefit is shared by all parties.

From all of the above, it becomes clear—upon examination and analysis—that the argument equating commercial insurance with prohibited gambling lacks sound basis. Uncertainty in transactions is not itself a cause of prohibition unless accompanied by pure contestation or clear injustice, neither of which applies to insurance. The uncertainty involved is tolerated, the risk is distributed, the purpose is legitimate, the benefit is mutual, and the analogy with permissible contracts stands firm. And since the opponents themselves permit cooperative and social insurance—though they contain the very same attributes they cite as reasons for prohibition—their analogy collapses at its foundation. Commercial insurance remains a regulated cooperative contract, not a game of chance.

Third Objection: That a Commercial Insurance Contract Contains Both Types of *Ribā*

Those who prohibit commercial insurance argue that it involves the two prohibited types of *ribā*:

1. *Ribā al-Faḍl*: because the *mustā'min* (insured) may receive more than he paid immediately, making it an exchange of money for money with an increase.
2. *Ribā al-Nasī'ah*: because the *mustā'min* may pay

[1] Majmūʿ al-Fatāwā (20/347).

premiums over various future periods, then receive compensation with an increase after time passes; thus, the form resembles someone who gives present money for deferred money with an increase.

But is there truly any suspicion of *ribā* in insurance contracts?

Before answering, we must state a crucial principle in *ijtihād* and *iftā'*: "Ruling on something follows from correctly conceptualizing it."[1] This "conceptualization" is not merely what occurs in one's mind—for that may be false—but a precise legal and scholarly conceptualization. This accurate conception protects thought from error and ensures methodological clarity regarding the essence and nature of the issue.

Allāh the Exalted says: "And how can you have patience for what you do not encompass in knowledge?"[2]

Among the implications of this principle is the forbiddance for a judge to pass judgment while angry, as the Prophet (peace and blessings be upon him) said[3], because anger prevents the judge from fully and correctly grasping the case.

Ribā al-Faḍl—in the simplest terms—is an increase in one of the two counter-values when exchanging *ribāwī* items of the same kind immediately, such as gold for gold, silver for silver, dates for dates.
This requires that the sale is immediate and the items exchanged are of the same genus

Ribā al-Nasī'ah is similar, but with delayed possession of one of

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[1] Al-Baḥr al-Rā'iq (1/232), Ghamz ʿUyūn al-Baṣā'ir (2/314), Mughnī al-Muḥtāj (3/498), and Majmūʿ al-Fatāwā (6/295).
[2] [Al-Kahf: 68].
[3] Ṣaḥīḥ al-Bukhārī (7158) and Muslim (1717).

the two counter-values, or the sale of one *ribāwī* item for another with deferred possession.

Thus, the common element between both forms is an exchange of money for money directly, with no intermediary. If something intervenes between the two—whether a commodity or a service—then the transaction becomes a sale, not a *ribā* exchange. From this comes the juristic maxim: "If a commodity intervenes, *ribā* is removed." This means that disparity in the counter-values becomes permissible, whether by *murābaḥah* (selling the item for more than its purchase price) or by *ḥaṭīṭah* (selling the item for less).

The intermediary may be: a commodity, which is present, or a service, which arises over time (in reality an *'ijārah*).

This premise helps refute the claim that *ribā* exists in commercial insurance. The mistake of those who prohibit lies in their mischaracterization of insurance as "an exchange of money for money," whether immediate or deferred. This is an incorrect conceptualization.

A commercial insurance contract is a contract of guaranteeing a defined risk, with the method of compensation specified in the contract. We do not go to an insurance company to give them money in exchange for equivalent money plus an increase. That would be a pure *ṣarf* (currency exchange) contract, which is unrelated to most forms of insurance. Treating insurance as a form of *ṣarf* is a misclassification with no supporting evidence.

The clarification is as follows:

1. In insurance, compensation is conditional upon the occurrence of the insured risk. Such as accident, illness, death, fire, etc.

This condition does not exist in money-for-money exchanges, whether involving *faḍl* or *nasī'ah*.

2. Insurance compensates through a benefit or its value. For example, repairing a car after an accident, repairing a house after a fire and covering medical treatment costs Thus, the insurance company does not pay money in exchange for money.
Rather, it provides **a** benefit in exchange for premiums. Whether this benefit is paid directly to the service provider or to the policyholder, it is legally registered as compensation for a loss—not as money-for-money exchange.

3. In *ribā*-based exchanges, the purpose is the increase. Without the increase, the exchange would have no purpose. But in insurance there is no *ribā*-oriented purpose, even if the compensation amount exceeds the premiums paid, because the increase does not arise from the nature of the money itself, but from an external event (the occurrence of the insured risk).

4. Prohibitionists focus on numerical equality, not value equality. Their argument assumes numerical equality (one thousand for one thousand), not value equivalence. This equality is not found in any of the insurance types permitted by the prohibitors such as cooperative and social insurances[1].

[1] We have already invalidated the claim that these contracts are *tabarru'āt* (donative contracts), because the participant is in fact anticipating compensation, and he would not enter into the contract unless compensation is guaranteed for him. Thus, these are *mu'āwaḍah* (commutative) financial contracts whose objective is cooperation; cooperation is a *result* of the contract, not the contract itself.

But value equivalence is essential, as Allāh says: "But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged."[1] If someone gives Zayd one thousand and receives back one thousand after a year, has he truly "received his capital" in real value?

Anyone familiar with market conditions knows that natural or accidental inflation reduces the real value of money. Thus, the giver incurs loss—contrary to the Qurʾānic principle of removing harm and injustice.

5. Prohibitionists ignore the purpose and objective of insurance. Insurance did not originate—or develop—as a system for exchanging money, but rather to repair damages caused by unforeseen events, and distribute risk cooperatively among a group. Thus, insurance is not between one insurer and one insured; rather, each insured becomes, by participating, both a contributor and a beneficiary. This is fundamentally different from *ribā*, which is built on exploitation.

If appearances alone determined rulings, then loans should also be prohibited, since they involve an exchange of two monies, one immediate and one deferred, of the same genus—exactly the form of *ribā al-nasīʾah*. Yet loans are permitted due to their noble purpose.

6. Even *ṣarf* (currency exchange) itself, which prohibitors insurance to it[2], does not require difference of genus. What

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[1] [Al-Baqarah: 279].

[2] Our teacher Dr. Baltājī says: "What is clear in insurance contracts is that they go beyond being *ṣarf* (currency-exchange) contracts discussed by the earlier jurists, for they are a sale of one form of currency for another..." *ʿUqūd al-Taʾmīn*, p. 79.

matters is difference of type to achieve increase or disparity in any of the exchanging items. Imām al-Nawawī states in *al-Majmūʿ*: "The application of this section[1] in exchanging currency for other than its own kind is clear. But does it apply to exchanging one kind within itself when there is a valid purpose?

This can be imagined when the attributes differ, such as selling Moroccan dinars for Eastern dinars, or soft dirhams for rough dirhams. I have not found this transmitted explicitly, but the apparent view is permissibility."[2]

Al-Nawawī here affirms that differing qualities or the existence of a valid purpose makes disparity permissible even within the same genus. That means the *Sharīʿah* does not look only at the outward financial form, but at the underlying purpose and benefit.

Thus, one traveling from East to West benefits more from possessing currency familiar to the people of that region, even if the weight and purity are the same. Market perception differs, and market perception affects value.

Hence, wherever the exchange of money for money serves a valid, recognized purpose, the effective *ribā*-based rationale is nullified or weakened.

In commercial insurance—even in the type of life insurance—the objective is not the exchange of money for money, but rather obtaining a service of guarantee and risk coverage. This is a sound, valid purpose, similar to the difference in qualities that allowed the Shāfiʿīs to permit

[1] i.e., disparity.
[2] Al-Majmūʿ by al-Nawawī (10/105).

exchanging currency for its own type with disparity when its attributes differ.

7. The *Sharīʿah* did not forbid all forms of exchanging money for money with an increment. It permitted this in several cases, among them:

a. *Hibatu al-Thawāb* (a gift given with the expectation of return): It is when a person gives another something while hoping for a return, which may be greater than what he offered. Some scholars even called this "permissible *ribā*." Regarding his *tafsīr* of the verse "And whatever you give for interest [i.e., advantage] to increase within the wealth of people will not increase with Allāh,"[1] Al-Qurṭubī said: "ʿIkrimah said: *Ribā* is of two types: permissible *ribā* and prohibited *ribā*. The permissible *ribā* is when a person offers a gift seeking something better in return. Al-Ḍaḥḥāk said regarding this verse: It refers to the permissible *ribā*—when a person gives a gift seeking a better return, and it is neither for him nor against him. Ibn ʿAbbās said about: "And whatever you give for interest," He means a man's gift by which he hopes to be rewarded with something better... Ibn ʿAbbās, Ibn Jubayr, Ṭāwūs, and Mujāhid said: This verse was revealed about *Hibatu al-Thawāb*."[2]

Among what came in the Sunnah is the narration by ʿĀʾishah (may Allāh be pleased with her): "The Messenger of Allāh (peace and blessings be upon him) used to accept gifts and reward for them."[3]

In this *ḥadīth*, ʿĀʾishah indicates that the Prophet (peace and blessings be upon him) would accept a gift from the giver, but he

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1 [Al-Rūm: 39].
2 Tafsīr al-Qurṭubī (14/36).
3 Ṣaḥīḥ al-Bukhārī (2585).

would recompense it with its like or something better, as a form of returning kindness with equal or superior kindness.

The jurists differed regarding the legal characterization of *Hibatu al-Thawāb*:

- The Mālikīs, the Shāfiʿīs (in their sound position), the Ḥanbalīs (in the official madhhab)[1], and Zufar of the Ḥanafīs[2] considered that a gift conditioned upon compensation is a sale like other sales.
- The Ḥanafīs in their madhhab, and one narration from the Ḥanbalīs, held that it is a gift initially but a sale in the end[3].
- A second view among the Shāfiʿīs and a narration among the Ḥanbalīs held that a gift conditioned upon compensation remains a gift and not a sale[4].

This is when the compensation is expressly stipulated.

But if the gift is given without stipulating compensation, the jurists again differed regarding whether compensation becomes obligatory:

- The majority—the Ḥanafīs, Shāfiʿīs, and Ḥanbalīs—held that the recipient is not obliged to compensate in an unconditional gift[5].
- The Mālikīs and a view among the Ḥanbalīs held that compensation is binding even in an unconditional gift, and

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[1] Al-Tāj wa al-ʾIklīl by al-Mawwāq (8/29), Mughnī al-Muḥtāj (3/573) and al-ʾInṣāf by al-Mardāwī (7/116-117).
[2] Al-Mabsūṭ by al-Sarakhsī (12/79) and Badāʾiʿ al-Ṣanāʾiʿ (6/132).
[3] Al-Mabsūṭ by al-Sarakhsī (12/79 and al-ʾInṣāf by al-Mardāwī (7/116).
[4] Rawḍat al-Ṭālibīn (5/386) and al-Hidāyah by al-Khaṭṭāb, p. 339.
[5] Al-Mabsūṭ by al-Sarakhsī (12/75), al-ʾIqnāʿ by al-Shirbīnī (2/369) and al-Mughnī by Ibn Qudāmah (8/280).

a similar view is chosen by the Shāfiʿīs when the gift is from someone of lower status to someone of higher rank or wealth[1].

In the absence of an explicit condition, determining compensation (according to those who obligate it) took several forms:

1. **The first opinion:** That the recipient compensates the giver until he is satisfied, even if the compensation exceeds the value of the original gift. This is a narration among the Mālikīs[2], a view among the Shāfiʿīs[3], and the sound opinion among the Ḥanbalīs[4].

2. **The second opinion:** That he compensates according to customary practice. This is a second view among the Shāfiʿīs[5] and Ḥanbalīs[6].

3. **The third opinion:** That he may give the least thing of monetary value. This is a third opinion among the Shāfiʿīs[7].

4. **The fourth opinion:** That he compensates with the exact value of the gift—no more and no less. This is the well-known narration among the Mālikīs, who stated that the gift should be valued according to its market value on the day it was received[8]. It is also the fourth view among the

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[1] Al-Muqaddimāt al-Mumahhidāt (2/441), al-ʾInṣāf by al-Mardāwī (7/116), and Nihāyat al-Maṭlab (8/433-434).
[2] Al-Muqaddimāt al-Mumahhidāt (2/444).
[3] Al-Ḥāwī by al-Māwardī (7/550).
[4] Al-ʾInṣāf by al-Mardāwī (7/117).
[5] Al-Ḥāwī by al-Māwardī (7/551).
[6] Al-ʾInṣāf by al-Mardāwī (7/117).
[7] Nihāyat al-Maṭlab (8/435).
[8] Al-Dhakhīrah by al-Qarāfī (6/237).

Shāfiʿīs, and they considered it the soundest opinion, though they differed whether the valuation should be at the time of receipt or return[1]. A similar view exists among the Ḥanbalīs in one narration[2].

Although we have lengthened our discussion of the juristic views on this subject, our intention was to present a real case studied by the jurists—one that involves the exchange of money for money—where significant differences arose in various aspects.

Comparison of *Hibatu al-Thawāb* with Commercial Insurance

When comparing *Hibatu al-Thawāb* with commercial insurance concerning premiums and compensation, we find:

1. Any increase in compensation is not considered prohibited *ribā*. This is because the essence and purpose of the contract is not the exchange of money for money, as in currency exchange. Rather, it is a contract of benevolence that transitions into compensation according to those who obligate return. Thus, it falls outside the realm of usurious transactions.
This is precisely the case in commercial insurance: neither party intends an exchange of money for money, nor does the insured intend a loan through his premiums. Any increase that occurs is merely the result of contractual obligation—just like in *Hibatu al-Thawāb*.

2. Valuation according to market value is recognized in the matter of returning gifts. We saw how the Shāfiʿīs (in one view) and the Mālikīs (in one view) ruled that returning the gift should be according to its market value on the day it was given. This

[1] Rawḍat al-Ṭālibīn (5/385).
[2] Al-ʾInṣāf by al-Mardāwī (7/117).

value might be higher than the original.
Yet this increase was deemed permissible and not ribā; otherwise, it would have been forbidden.

Similarly, commercial insurance compensates according to current value in most forms of insurance—sometimes more, sometimes less.
Just as it was permitted there, it is permitted here.

Thus, I say:

There is a significant resemblance between insurance and *Hibatu al-Thawāb*—according to those who require compensation—in several ways:

- Both involve compensation that is uncertain or unknown at the outset.
- Both achieve mutual benefit for the parties: the giver receives a return (even if greater than his gift), and the insured receives coverage (even if greater than his premiums).
- In both, the ignorance regarding the compensation does not invalidate the contract's permissibility.
- Neither contract is intended as currency exchange; rather, both embody cooperation and mutual support.

Someone might object: "What you cited is outside the point of dispute, because although it appears to be an exchange of money for money, it is done as a voluntary act of kindness. In that domain, increases are acceptable because they are increases in generosity—not in exchange for money."

I reply:

This is rejected for two reasons:

First: The scholars did not unanimously consider *Hibatu al-Thawāb* a pure act of generosity. Some regarded it as a sale; others said it is generosity at the beginning and a sale at the end—similar to a loan. Thus, it falls under the laws of transactions.

Second: We saw that bargaining occurred in it. This appears in the narration of Ibn ʿAbbās in the *Musnad*: "A Bedouin gave a gift to the Prophet (peace and blessings be upon him), and he rewarded him. The Bedouin said: 'I am not pleased.' So, the Prophet increased it. He still said: 'I am not pleased.' So, he increased it…"

Had it been purely an act of gratuitous charity, the Prophet (peace and blessings be upon him) would have returned it to him or compensated him with its like. Yet he accepted the bargaining. Indeed, one narration states that the Prophet gave him six she-camels in exchange for his she-camel[1]; in another narration from al-Ḥumaydī, he gave him nine[2].

This indicates that the gift does call for compensation even when not stipulated, for the Prophet (peace and blessings be upon him) compensated him until he was satisfied[3]—and the increase is not *ribā*.

b. Selling manufactured gold for cash on deferment, and selling it for its own kind without requiring equality:

The explanation is that this is *māl* for *māl*, because the monetary function (*thamaniyyah*) of gold is an established reality agreed upon by all people—Muslims and non-Muslims alike. Despite this, a number of the Companions and Successors permitted

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1 Ṣaḥīḥ al-Tirmidhī (3945) from Abū Hurayrah.
2 ʾItḥāf al-Khīrat al-Maharah (7/330, 6978).
3 Al-Dhakhīrah by al-Qarāfī (6/275).

selling manufactured gold for cash on deferred terms (although it is unanimously forbidden in the case of raw gold). Among those who held this view are: Muʿāwiyah ibn Abī Sufyān, al-Ḥasan al-Baṣrī, ʾIbrāhīm al-Nakhaʿī, and al-Shaʿbī. It is also an opinion within the Ḥanbalī school, and al-Mardāwī stated that this is the position upon which practical application rests. It was also the preference of Ibn Taymiyyah and his student Ibn al-Qayyim.

In *al-Ikhtiyārāt al-Fiqhiyyah*, it states: "Ibn Mufliḥ said: Our Shaykh permitted selling permissible manufactured gold for its value when paid immediately, and likewise on deferment, so long as it is not intended as currency. Rather, it exits the ruling of foodstuffs due to the act of craftsmanship."[1]

Al-Baʿlī said: "It is permissible to sell manufactured gold and silver for their own kind without requiring equality, and the excess is considered in exchange for craftsmanship—whether the sale is immediate or deferred—so long as it is not intended as currency."[2]

This is, without doubt, *māl* for *māl*. However, when we observe the difference that results from the artisan's craftsmanship—something for which the artisan would be compensated if he performed it as a wage-based service—it becomes clear why those who permitted this considered that a valid reason for allowing disparity.

The common factor between selling jewelry with disparity and commercial insurance is that jewelry, due to craftsmanship, is no longer purely a *ribawī* asset. It becomes a manufactured

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[1] Al-Ikhtiyārāt al-Fiqhiyyah (1/468). For further details, see al-Majmūʿ by al-Nawawī (10/83), al-Istidhkār by Ibn ʿAbd al-Barr (6/347), al-Fatāwā al-Kubrā (5/391), and ʾIʿlām al-Muwaqqiʿīn (3/409-410).

[2] Al-ʾKhbār al-ʿIlmiyyah min al-Khtiyārāt al-Fiqhiyyah, p. 183.

commodity with an added industrial value, and thus is treated as a commodity even if it is made of gold or silver. Likewise, insurance has become a service that is bought and sold; the consideration exchanged within it is part of the service for which premiums were paid. Since it is a service, it becomes a commodity, and it is incorrect to describe it as *māl* for *māl*.

In sum, I say: one who equates commercial insurance with loans or *ribawī* currency-exchange merely because the counter-value involves money is like one who equates a surgical operation with intentional murder simply because both involve bodily incision and may result in death. Similarity in outward form does not negate the vast difference in purpose, essence, and outcome.

Insurance aims at preserving wealth and life from the impacts of risk, whereas *ribawī* exchange with disparity or the usurious loan aims at exploiting need for the increase of the beneficiary's wealth.

Thus, analogizing insurance to currency exchange is a faulty analogy, for it lacks the primary condition: shared underlying cause and rationale.

What remains is to address another point: some have prohibited commercial insurance on the grounds of *ribā* from another angle—claiming that insurance companies utilize premiums and the difference between premiums and payouts in usurious transactions, such as lending with interest, and that dealing with them therefore constitutes a form of assisting in the prohibited[1].

In truth, this claim is among the weakest arguments presented for prohibiting commercial insurance when compared with the other objections, for the following reasons:

[1] Al-Taʾmīn fī al-Sharīʿah wa al-Qānūn, p. 158.

1. The default jurisprudential principle is that contracts are judged based on their own essence, not on what may occur outside the contract's scope.
2. The *Sharīʿah* distinguished between engaging directly in a prohibited act and dealing in something permissible that may be exploited for a prohibited act. There is no ruling in the *Sharīʿah* that invalidates a contract in its very essence merely because its outcomes could be lawful or unlawful.
3. If this overly precautionary mindset were used to judge contracts, then most types of contracts would become prohibited.
   For example, prohibiting the sale of grapes to non-Muslims because they may likely use them for wine. Prohibiting leasing utilities or property to non-Muslims due to the possibility that they may commit shirk therein.

   Withholding inheritance from a sinful heir because he may use it in the prohibited.

   Preventing Muslim states from manufacturing or selling weapons because they might be used for killing or aggression.

Hence, where would such an endless chain of precaution lead?

It is therefore appropriate to briefly discuss the principle relied on by those objecting here: the principle of *sadd al-dharāʾiʿ* "blocking the means [to evil]."

Definition of sadd al-dharāʾiʿ:
Al-sadd means closure or prevention, and *al-dharīʿah* is the means or conduit to something. Thus, blocking the means, in juristic terminology, is: the prevention of avenues leading to corruption as a measure of protection. Whenever an act that is

itself free of harm becomes a means to harm, we prevent that act[1]. Thus, matters are not judged by the doer's intention but rather by their outcomes. Shaykh Abū Zuhrah expressed this concept by saying: "The default principle of blocking the means does not consider intention as the core determinant for permissibility or prohibition; rather, it looks to outcomes and consequences."[2]

The ruling on applying *sadd al-dharā'i'*:

The jurists differed on considering this principle as a basis for prohibition. Most of their disagreement was not over applying its implications, but over recognizing it as an independent source of legislation alongside the Qur'ān, Sunnah, consensus, and analogy.

The Mālikīs and Ḥanbalīs considered it authoritative like the other sources of legislation and held that things may be prohibited or disliked based on it.

The majority—Ḥanafīs, Shāfi'īs, and Ẓāhirīs—did not consider blocking the means an independent source of legislation, though they differed in practical application: the Ḥanafīs and Shāfi'īs applied it for preference in some matters and rejected it in others, while Ibn Ḥazm rejected it entirely[3].

Ibn Ḥazm said: "Anyone who rules based on suspicion, or caution about something whose reality is not certain, or on account of fearing that it may become a means (*dharī'ah*) to something that has not yet occurred—has ruled by conjecture. And whoever rules by conjecture has ruled by falsehood and lies,

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[1] Al-Furūq by al-Qarāfī (2/61).
[2] Mālik Ḥayātuhu wa 'Aṣruhu by Abū Zuhrah, p. 435.
[3] Refer to 'Uṣūl al-Fiqh al-'Islāmī by al-Zuḥaylī, p. 888 et seq.

and this is not permissible."[1] He also said: "If someone forbids what is lawful out of fear that it may lead to the unlawful, then let him imprison men out of fear that they may commit fornication; and let him kill people out of fear that they may commit disbelief; and let him destroy grapevines out of fear that they may be used to produce wine. In short, this methodology is the most corrupt methodology on earth, because it leads to nullifying all realities."[2]

Regulations for applying the principle of blocking the means (*sadd al-dharā'i'*) according to those who uphold it:

Without delving into the lengthy discussions of the scholars who wrote extensively on this subject, we concede that the principle of blocking the means is a valid principle in legislation, and it cannot be ignored. The apparent meaning of the evidences indicates its consideration. However, acting upon it must fall within certain regulations established by the scholars so that it does not become an easy avenue for forbiddance due to the slightest doubt. These are its most important regulations:

1. The strength of the suspicion that what is lawful may serve as a means to what is forbidden. That is, there must be a definitive harm in the act for us to use it as grounds for forbiddance. An example is digging a well behind the door of a house or in a dark place—even if on one's own property—since the likelihood of someone falling into it, being harmed, or even dying is very high.

But if the suspicion is weak and merely possible, it is not suitable grounds for forbidding what is permissible, because there is no permissible matter except that someone may claim some suspicion concerning it. For example, it is not allowed to use the

[1] Al-ʾIḥkām (6/13).
[2] Ibid.

possible harm of seclusion (*khalwah*) between a man and a woman as grounds for forbidding women from working with men, because the suspicion is weak: workplaces typically have safeguards against corruption, such as the presence of others, surveillance cameras, or the constant movement of clients.

2. The application of blocking the means must not contradict a recognized interest. A recognized interest—such as the preservation of life, wealth, or intellect—is an interest affirmed by the *Sharīʿah* through explicit texts, whereas blocking the means is based on juristic reasoning. Juristic reasoning cannot override explicit texts.

An example is attempting to equalize men and women in inheritance under the claim of preventing the accusation that Islam favors men. This is a corrupt application of *sadd al-dharāʾiʿ* in opposition to explicit textual rulings.

3. Blocking the means must not conflict with a significant need of the people. For example, forbidding loans based on the suspicion of people's dishonesty, or canceling the concept of trust (*amānah*) because betrayal has appeared. Using the principle here would block many avenues of goodness that people are still in need of.

4. Blocking the means must not negate an equal or greater interest. This is a crucial regulation, because bringing about benefit is among the objectives of the *Sharīʿah*. If a Muslim is faced with bringing about a clear benefit while there is only a speculative harm or possible corruption, the benefit is given precedence.

Examples include looking at a woman one intends to propose to, or a woman traveling with someone if she fears for her safety—as occurred in the story of the noble lady and Ṣafwān ibn al-

Muʿaṭṭal; and likewise emigrating from the land of disbelief, as happened with Umm Kulthūm bint ʿUqbah, Subayʿah al-ʾAslamiyyah, and ʾUmaymah bint Bishr—regarding whom the verse was revealed: "O you who have believed, when the believing women come to you as emigrants."[1]

5. The absence of strong indicators of excessive paranoia or forced suspicion. This would constitute extremism, and extremism is forbidden in the *Sharīʿah*[2]. When the possibility of falling into the prohibited is weak, far-fetched, or only imaginable through contrivance—or when the perceived harm is illusory—it is not permissible to use it as grounds for blocking the means.

Examples include forbidding many types of clothing under the claim of resembling non-Muslims, such as forbidding the necktie; or forbidding girls from attending university due to the mere possibility of improper mixing; or, as occurred in some Muslim countries, forbidding women from driving cars on that basis. All of this is unwarranted extremism.

The fundamentalists recognized the danger of misusing the principle of blocking the means and therefore balanced it with governing principles, such as:

- "What is forbidden as a means becomes permissible when outweighed by a stronger interest."[3]
- "What is excused in the means is not excused in the

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[1] [Al-Mumtaḥanah: 10].

[2] Muslim narrated with his chain from ʿAbd Allāh ibn Masʿūd that the Prophet (peace and blessings be upon him) said: *'Indeed, the overly-strict ones have perished…'* three times. Ḥadīth no. (2670).

[3] ʾIʿlām al-Muwaqqiʿīn (3/408), Zād al-Maʿād (3/427) and Majmūʿ al-Fatāwā (22/298).

ends."[1]

- "When two harms conflict, the greater harm is avoided by committing the lesser."[2]
- "Matters are judged by their objectives."[3]
- "Ignoring secondary consequences does not invalidate the original contract."[4]
- "Harm is removed to the greatest extent possible."[5]
- "What is established implicitly may not be established explicitly."
- "When a hardship becomes widespread, its legal ruling is lightened."

These and other principles help moderate the application of blocking the means so it does not become a personal or subjective standard, leading each jurist to forbid based on whatever he perceives as a possible means. Otherwise, rulings would be obstructed and civilization delayed.

The Question:

Do the funds of insurance companies actually involve prohibited *ribā* such that commercial insurance should be forbidden on the basis of blocking the means to *ribā*?

By reviewing the insurance system and how insurance companies invest, we find that the funds collected by insurance companies

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[1] Al-Qawāʿid al-Fiqhiyyah wa Taṭbīqātihā (2/687).
[2] Tartīb al-Laʾālī fī Silk al-ʾAmālī (2/287).
[3] Al-Manthūr by al-Zarkashī (3/284) and al-ʾAshbāh wa al-Naẓāʾir by Ibn Nujaym, p. 23.
[4] Tartīb al-Laʾālī fī Silk al-ʾAmālī (2/754).
[5] Ibid. (2/810).

are divided into two categories:

First: The General Account.

In this account, insurance premiums are pooled, and a percentage close to the expected needs is retained to cover claims, operational expenses, and certain fixed administrative costs.

Second: The Investment Portion.

Insurance companies typically invest in low-risk instruments, including government bonds, real estate, long-term equities, and a range of alternative investments such as private equity and hedge funds.

Insurance companies generally prioritize safe, highly rated, and liquid investments to ensure they can meet their financial obligations while generating stable returns. They also employ risk-management strategies such as diversification, hedging, and asset-liability management to address the complexities of investment markets.

Accordingly, the claim that all the funds of insurance companies are ribā-based funds contradicts the actual and expected financial obligations of these companies as determined by studies and actuarial calculations. It is unreasonable for a company to suspend fulfilling its obligations while waiting for the returns of *ribā*-based investments—returns that require time before yielding benefit. This is the nature of service-based companies: they cannot lock up a large portion of their assets due to the constant possibility of emerging needs. This requires two things:

- High liquidity.
- Investment instruments that can be liquidated quickly and without major losses.

In addition to this, regulatory authorities in most countries impose what are known as solvency tests, which determine the required proportion of liquid or near-liquid assets in an investment portfolio. These tests impose restrictions on insurance companies that limit their ability to invest in long-term or high-risk instruments.

All of this makes the funds of insurance companies mixed funds, predominantly consisting of continuously renewed policyholder premiums, which are lawful in essence. The claim that insurance companies use these funds for lending or for *ribā*-based transactions is contradicted by the reality of how they operate and is further limited by the regulatory frameworks governing insurance companies.

Fourth Objection: Commercial insurance involves consuming people's wealth unlawfully

They argue that if the insured-against risk does not occur, the premiums paid by the policyholder become the exclusive right of the insurer, acquired without any return—thus, it is unlawful consumption of wealth. Likewise, if the policyholder receives more than what he paid due to the size of the indemnity.

This characterization oversimplifies the insurance contract and overlooks its most essential commitments: guarantee and risk-sharing. We have explained this repeatedly.

Some of those who prohibited commercial insurance noticed the weakness of using the forbiddance of "unlawfully consuming people's wealth" as a proof for its prohibition. They rejected using this evidence—including Dr. al-Ṣiddīq al-Ḍarīr, who said: "It may be said that the insurance contract involves unlawful consumption of others' wealth, thus falling under the forbiddance in the verse: "O you who have believed, do not consume each

other's wealth among yourselves unlawfully."[1] I say: this verse alone is insufficient as proof for prohibiting insurance, because the opponent disputes that insurance constitutes unlawful consumption of wealth. Whoever claims that must establish it with additional evidence."[2]

What Dr. al-Ṣiddīq stated is precisely correct, because claiming that commercial insurance is prohibited due to involving unlawful consumption of wealth leads to circular reasoning: its being "unlawful" cannot be established except after ruling that it is prohibited—thus the proof becomes identical to the conclusion. This is the well-known *uṣūlī* circular reasoning[3].

Nevertheless, we say:

The concept of obtaining benefit in return for assuming liability (*ḍamān*) is well-established in the *Sharīʿah* in several issues, which we briefly mention:

1. *Sharikat al-Wujūh* (Partnership of Goodwill)

This is when two individuals—without providing any capital—jointly purchase something on deferred payment terms using the strength of their reputations, then sell it, and the profit is shared between them according to their agreement[4]. Losses are borne by each according to his share in the partnership.

Most jurists permitted *Sharikat al-Wujūh*: the Ḥanafīs[5], the

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[1] [Al-Nisāʾ: 29].
[2] Al-Gharar wa ʾAtharuh fī al-ʿUqūd, p. 647.
[3] We discussed in the first chapter this very issue when citing the same verse as evidence for the forbiddance of *gharar* (excessive uncertainty). We stated that the word *al-bāṭil* ('falsehood') is ambiguous and requires clarification from outside the verse.
[4] Mukhtaṣar al-Qudūrī, p. 111, and al-ʾIqnāʿ by al-Ḥijāwī (2/270).
[5] Badāʾiʿ al-Ṣanāʾiʿ (6/57).

Ḥanbalīs[1], and a group of the successors and jurists such as al-Thawrī, ʾIsḥāq, and Abū Thawr[2].

This is a contract based on profit in exchange for liability, with no capital provided. Not only this—the Ḥanbalīs even allowed unequal profit-sharing because one partner may be more trusted by traders than the other. Therefore, he may stipulate additional profit in exchange for the increased trust in his liability[3].

2. The Sale of *ʿArbūn* (Earnest-Money Sale)

This is when a buyer pays the seller a sum of money: if he completes the purchase, it becomes part of the price; if he does not, the seller keeps it[4].

A group of Companions permitted this sale, including ʿUmar ibn al-Khaṭṭāb and his son, as well as Muḥammad ibn Sīrīn, Saʿīd ibn al-Musayyib, and Mujāhid[5]. It is the position of the Ḥanbalīs[6], and it was approved by the Islamic Fiqh Academy in its eighth session held in Brunei in 1414 AH.

It is clear that the earnest-money payment corresponds only to the seller's holding of the item and guaranteeing it for the buyer if he chooses to finalize the purchase.

3. Issues Based on the Principle *Al-Kharāj bi-l-Ḍamān* "Profit Follows Liability"

a. Trading with Deposited Property Without Permission

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1 Al-ʾInṣāf by al-Mardāwī (5/458-459).
2 Al-ʾAwsaṭ by Ibn al-Mundhir (10/513).
3 Maṭālib ʾUlī al-Nuhā (3/545).
4 Al-Mughnī by Ibn Qudāmah (6/331).
5 Al-Muṣannaf by Ibn Abi Shaybah (7/305) and al-Mughnī by Ibn Qudāmah (6/331).
6 Al-ʾInṣāf by al-Mardāwī (4/358).

The Mālikīs[1] held that if the custodian (the one holding the deposited property) trades with the deposited item without permission from its owner, he is entitled to the profit but is liable for any loss, because "profit follows liability."[2]

Whoever bears liability deserves the profit: "He receives the gain because upon him is the risk."

b. Separated Increase Occurring in Lost-and-Found Property (*Luqṭah*)

According to the Shāfiʿīs[3] and Ḥanbalīs[4], any separated increase (such as offspring or yields) that occurs in a lost-and-found item after one year becomes the property of the finder. The rationale is that the finder becomes liable for any deficiency after one year, so he is entitled to the increase if it occurs, because "profit follows liability."

Even though the lost-and-found item does not belong to the finder and he must return it if the owner appears, liability grants him benefit from another's property.

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[1] Al-Tāj wa al-ʾIklīl by al-Mawwāq (7/275).

[2] Its basis is what has been narrated from Lady ʿĀ'ishah (may Allah be pleased with her) regarding the dispute between a man who bought a slave and made use of him, then found a defect in him and wanted to return him. The owner of the slave said, "My slave has been used," meaning that he wanted to take the earnings resulting from his labor. So the Prophet (peace and blessings be upon him) said: "The profit follows liability (*al-kharāj bi-l-ḍamān*)." That is, had something happened to the slave while in his possession, he would not have been able to return him; the sale would have been binding, and he would have been responsible for the slave's maintenance. The *ḥadīth* was narrated by Aḥmad (24224), Abū Dāwūd (3508), al-Tirmidhī (285), and al-Nasā'ī (4490). Al-Tirmidhī said: *ḥasan ṣaḥīḥ*.

[3] Mughnī al-Muḥtāj (3/592).

[4] Sharḥ Muntahā al-ʾIrādāt (2/384).

c. Taking Payment for Assuming Liability

Some jurists permitted taking compensation for providing a guarantee (*ḍamān*), such as ʾIsḥāq ibn Rāhawayh[1]. Al-Kawsaj al-Marwazī transmitted in *Masā'il ʾAḥmad wa ʾIsḥāq* the discussion between them regarding payment for guarantees. Sufyān said: "If a man says to another: 'Guarantee this for me and you will receive one thousand dirhams,' the guarantee is valid; should he then return to him the thousand?"
ʾAḥmad said: "I do not see that he may rightfully take anything."
ʾIsḥāq said: "Whatever he gives him is good."[2]

This view was adopted by Shaykh ʿAlī al-Khafīf[3] and Shaykh ʿAbd al-Ḥamīd al-Sāʾiḥ[4], as cited by Dr. Muḥammad Shubayr[5], and also by Dr. Zakariyyā al-Barrī[6] in his study *Khiṭāb al-Ḍamān*[7], as well as by some contemporary scholars[8].

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1 Al-Ḥāwī by al-Māwardī (6/443).

2 Masāʾil ʾAḥmad wa ʾIsḥāq (6/3055).

3 A study on insurance published in *Majallat al-Azhar*, year 37, p. 269.

4 Born in Nablus (1907), he graduated from al-Azhar al-Sharīf, worked as a Sharīʿah judge in al-Quds al-Sharīf and as Minister of Awqāf in Jordan, and died in 2001.

5 *Al-Muʿāmalāt al-Māliyya al-Muʿāṣirah*, p. 299.

6 Born in al-Buḥayrah in 1921, he graduated from the College of *Sharīʿah*, obtained his PhD from the College of Arabic Language at al-Azhar, and was appointed Professor of Islamic Studies at the Faculty of Law in Cairo and Minister of Awqāf in Egypt. He authored works in uṣūl, inheritance law, and human rights, and died in 1991.

7 Published in *Majallat Majmaʿ al-Fiqh al-Islāmī*, second session (2/1101).

8 See: *A Study on Letters of Guarantee* by Dr. Ḥasan ʿAbd Allāh al-Amīn, published in *Majallat Majmaʿ al-Fiqh al-Islāmī* (2/1053); *Letter of Guarantee* by Dr. Rafīq al-Miṣrī, published in *Majallat Majmaʿ al-Fiqh al-Islāmī* (2/1117) and thereafter; *Letter of Guarantee* by Dr. Sāmī Ḥammūd, published in *Majallat Majmaʿ al-Fiqh al-Islāmī* (2/1121) and thereafter.

d. The Price of Influence (*Thaman al-Jāh*)

This refers to when a person offers his influence or social standing to help another obtain his right in return for a fee.

This was permitted by the majority of jurists from among the Shāfiʿīs, the Hanbalīs, the Ẓāhirīs, and some Mālikīs[1].

In reality, the fee here is for the guarantee and intercession undertaken by the person of influence.

These and similar issues fall under the legal maxim, *al-kharāj bi-al-ḍamān* (gain follows liability). In such cases, the fee is earned in return for a specific undertaking, not for a financial exchange.

Returning to the insurance company: it may collect premiums even when the risk does not occur; however, it nonetheless provides a guarantee — a defined and documented guarantee for which it deserves a fee. What it receives is therefore not considered consuming wealth unjustly.

As for the insured party, there is no unjust consumption either, because contracts of exchange do not require the consideration to be equal, otherwise we would only sell an item for the exact same value. The compensation offered by the company is a contractual undertaking in return for premiums. And in probabilistic contracts — such as *muḍārabah*, for example — the worker may receive a large return not due to his action but due to the nature of the investment capital. Nevertheless, we do not say he consumed wealth unjustly simply because his return is not equivalent to his labor.

The premiums in an insurance contract are not the price of the

[1] Al-Ḥāwī by al-Māwardī (14/128), al-ʾInṣāf by al-Mardāwī (5/134), al-Muḥallā (8/118), and Ḥāshiyat al-Dusūqī (3/224).

compensation itself but the price of the company's commitment to bear the risk throughout the coverage period.

Accordingly, the claim that commercial insurance is prohibited because it constitutes unjust consumption of wealth is invalid. It is unsupported by sound reasoning — which leads to circularity — and is incorrect in its application, because the funds of insurance are exchanged for service and guarantee. We have already listed examples that the *Sharīʿah* has permitted where a fee is deserved on the basis of an undertaking.

Someone may argue: The guarantees you mentioned are obligatory because the parties are expected to carry out the action themselves; thus, they bear what results from their action — as in the case of trading with the property of a deposit, where the trustee himself acted and is therefore liable, or as in the case of the buyer backing out after paying earnest money, which is his own action. But in insurance, the company guarantees what it did not cause — it is either the act of the insured or an external event. This is therefore a commitment to what is not obligatory by *Sharīʿah*.

I respond:

Financial liability in the *Sharīʿah* does not need to arise from an act attributable to the liable party; rather, it may arise from the contract of obligation itself, provided the contract is valid.

Islamic jurisprudence affirms the guarantee of something even when the guarantor did not cause the damage nor has a direct connection to the risk.

I will present here brief examples — some previously mentioned and some new:

1. The Contract of *al-ʿĀqilah*

We discussed this earlier in sufficient detail. Liability in this contract arises from the act and wrongdoing of another person. According to the reasoning of those who say that insurance is a commitment to what is not obligatory, this contract is its twin and parallel, for the *ʿāqilah* bears the consequences of another's offense.

2. The Contract of *Walāʾ*

In this contract, the patron (*walī al-muwālāt*) undertakes to bear the blood-money and compensation for the offense, despite not causing it. We have explained this earlier.

3. Guarantee of Defect (*Ḍamān al-Dark*)

This is a guarantee in favor of the buyer if the purchased item is later found defective or deficient after the price has been paid. Here, the guarantor undertakes what is in the seller's liability.

This was permitted by the majority of scholars from the four madhhabs[1] because there is a need to transact with a non-local seller, and there is fear that the item may not match the description or that its ownership is disputed — both being risky scenarios mitigated by the guarantor's undertaking. The guarantee here concerns a risk not created by the guarantor nor by his action.

4. Guarantee of Borrowed Items (*ʿĀriyah*)

The default principle in a loaned item is that it is a trust in the hands of the borrower — whether he borrows a book from a library, a tool from a friend, a car for transport, or anything similar. It is a gratuitous contract, whether it grants usufruct or

[1] *Badāʾiʿ al-Ṣanāʾiʿ* (9/6); *al-Mudawwanah* of Sahnūn (4/110); *Rawḍat al-Ṭālibīn* (4/246); *Kashshāf al-Qināʿ* (3/369).

merely allows it, since it is without payment and therefore does not become a lease.

The borrowed item may be damaged or exposed to risk while with the borrower; repairs or replacement may then be necessary. Who bears that liability?

The jurists agreed that if the borrower destroys the item intentionally, he must compensate for it. But in cases of no negligence or causation, the Shāfiʿīs[1] and Ḥanbalīs[2] held that the borrower is liable for any cause of damage even without negligence. The Mālikīs agreed concerning items considered "hidden wealth" (*māl khafī*) such as jewelry, clothes, vessels, weapons, goods, money, and food — all of these are guaranteed due to the difficulty of proving non-negligence and the predominance of risk[3].

Texts and reasoning both support the guarantee of borrowed items. In the narration regarding Prophet Muḥammad (peace and blessings be upon him) borrowing weapons from Ṣafwān ibn ʾUmayyah on the day of Ḥunayn, Ṣafwān said, "Is it by force, O Muḥammad?" He replied, "No — rather, it is a guaranteed loan."[4]

Also, Samurah ibn Jundub narrated that Prophet Muḥammad (peace and blessings be upon him) said: "The hand is liable for what it takes until it returns it."[5]

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[1] *Mughnī al-Muḥtāj* (3/313).
[2] *al-Mubdiʿ fī Sharḥ al-Muqniʿ* (5/12).
[3] *al-Kāfī* by Ibn ʿAbd al-Barr (2/808).
[4] Narrated by Abū Dāwūd in the *Sunan*, ḥadīt□no. (3562); n□rr□ted by Ibn Ḥazm in *al-Muḥallā* (8/140–141); □nd □l-Bayhaqī, ḥadīth no. (11478).
[5] *al-Muḥallā* (8/144); Abū Dāwūd, ḥadīt□no. (3561); □l-Tirmidhī, ḥadīth no. (1266); □nd Ibn Māj□□, *ḥadīth* no. (2400).

5. Guarantee of the Marketplace (*Ḍamān al-Sūq*)

This refers to guaranteeing what a merchant owes in debts and what he receives in goods — a guarantee involving the unknown.

Ibn Taymiyyah said: "It is a valid guarantee — even though it involves guaranteeing what has not yet become due and guaranteeing the unknown — and this is permitted by the majority of scholars such as Mālik, Abū Ḥanīfah, and ʾAḥmad ibn Ḥanbal. Al-Shāfiʿī invalidates it, yet the scribe and witness may write and attest to it even if they do not hold it permissible, since it is an issue of juristic discretion."[1]

6. Guarantee Against Road Risk:

This is like someone saying to another: "Take this route, and if your property is taken, I will guarantee it."

The Ḥanafī scholars held that he is liable even if the risk did not occur through his action, because he subjected the other party to risk through his statement. We mentioned this earlier, and therefore need not repeat it here.

Thus, these contracts and many others in the *Sharīʿah* create an obligation to guarantee wealth or benefit upon the occurrence of risk — even if the party providing the guarantee did not cause that risk.

The insurer in commercial insurance is akin to the guarantor in these examples. Therefore, the claim of those who prohibit commercial insurance — that it is "a commitment to what is not obligatory"[2] — holds no weight. These contracts demonstrate

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[1] *Majmūʿ al-Fatāwā* (29/549).

[2] Many writers here were influenced by Ibn ʿĀbidīn's discussion of the issue of "al-Sukurtāh," as well as Shaykh al-Muṭīʿī's comments, considering this to be a basis for undermining permissibility.

that the *Sharīʿah* permits — and at times obligates — assuming liability merely through mutual consent or entry into a contract, even when there is no causation.

Fifth Objection: They argue that the insurance contract entails selling a debt for a debt (*bayʿ al-dayn bi-al-dayn*), which is forbidden by consensus, as some have narrated.

Ibn al-Qaṭṭān said: "All scholars whose opinions are preserved agreed that selling a debt for a debt is not permissible."[1] Ibn Qudāmah said: "Ibn al-Mundhir stated that the scholars unanimously prohibited selling a debt for a debt, and ʾAḥmad said: It is consensus."[2]

The objectors say: The premiums paid by the insured are a debt upon him, and the compensation the insurer may have to pay is a debt upon it — thus it is a debt for a debt.

As we noted earlier, properly understanding the structure of a transaction is essential to judging it. Depicting the insurance contract this way is incorrect for the following reasons:

1. Insurance premiums are not pre-existing debts.

Rather, they are obligations that renew over time. Evidence for this is that the insured has the right to stop paying premiums at any time and thereby terminate the contract, and the insurer has no right to demand the remaining premiums. This is unlike a debt, which must be paid whether immediately or later.

2. Compensation is not an existing debt at the time of contract.

It is a promise and obligation suspended upon the condition of

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[1] *al-Iqnāʿ fī Masāʾil al-Ijmāʿ* (2/234).
[2] *al-Mughnī* (6/106).

the insured risk occurring. Even in life insurance, where the compensation is a sum of money, it is not a binding debt; rather, it is conditional on the occurrence of the risk.

Thus, there are no two existing deferred debts for the transaction to constitute selling debt for debt.

Moreover, Islamic jurisprudence recognizes contracts wherein entitlements arise at set times without being considered *bay' al-dayn bi-al-dayn*.
For example, in the *istiṣnā'* contract, both the item and the price may be deferred, and payment may be in installments. In the *'ijārah* contract (lease), rent is often paid in installments, and the usufruct is delivered in parts.

In summary:
These are the most significant arguments used by those who prohibit commercial insurance. What remains are auxiliary objections, mere rhetorical accumulation, such as: claims about insurance influencing the behavior of policyholders, insurance companies harming the national economy, or the dominance of foreign companies in the field.

These have no real-world basis, have nothing to do with validity or invalidity, and apply equally to other sectors. Reality shows that the insurance system more often fosters social stability, reduces disputes and litigation, relieves the state of burdens that hinder development, injects capital into the local market, supports investment, creates jobs, and more.

Reviewing the objections of the prohibitionists — whether based on claims of *vagueness*, gambling, usury, consuming people's wealth unjustly, assuming what is not obligatory, or selling debt for debt — it becomes clear that these objections are weak and refuted. Either they do not correctly apply to commercial

insurance in its actual practical form, or they have already been deemed permissible in other contracts recognized by the *Sharī'ah* due to the absence of the relevant cause or fulfillment of a valid purpose.

Insurance, in essence, is based on sharing risk and protecting rights. It is closer to cooperative and mutual-aid contracts, the permissibility of which has continued in practice. It also provides economic and social benefits in preserving wealth and life, supporting families, and contributing to overall stability.

Therefore, declaring commercial insurance prohibited based on flawed analogies, unsubstantiated precautions, or weak pretexts obstructs a significant public benefit, contradicts the purposes of the *Sharī'ah* in preserving wealth and life, and opposes well-established fundamental maxims— among them, that the default principle in contracts is permissibility, and that transactions are valid and effective unless a clear and sound text explicitly prohibit them.

Section Four
Life Insurance

Life insurance is a category of commercial insurance (*al-ta'mīn al-tijārī*) that covers the risk of death associated with a specific individual.

A life insurance policy is a contract between the insurance company and the policyholder (*al-musta'min*) in which the company agrees to pay a specified sum to a designated beneficiary or beneficiaries upon the death of the policyholder during the insurance period, in exchange for premiums paid by the policyholder to the insurance company.

First: Forms of Life Insurance in Commercial Insurance Companies

1. Term Life Insurance

This type is characterized by the following:

- Coverage is provided for a fixed period (such as 10 or 20 years).
- The benefit is paid only if the policyholder dies during the contractual period.
- There is no savings or refund component if the term expires without death occurring.
- Premiums are relatively low because the policy covers a single type of risk.

2. Whole Life Insurance

- Coverage continues for the lifetime of the policyholder as long as premiums are paid.

- The benefit is paid upon death, regardless of when it occurs.
- Includes a savings or investment component that grows over time.
- Premiums are higher than those of term life insurance.

3. Convertible or Renewable Term Insurance

- The policy may be renewed for additional periods without a new medical examination.
- It may also be converted from term insurance into whole life insurance without medical conditions.

4. Group Life Insurance

- A single contract that covers a group of individuals, such as company employees or members of a union.
- Premiums are lower because the policy covers a larger number of people.
- Employers typically pay all or part of the premiums.

5. Endowment Life Insurance

- The payout is made either at death or when the policyholder reaches a specified age while alive.
- It combines insurance with time-bound savings.

6. Investment-Linked Insurance

- Among its forms is **Universal Life Insurance**, which offers flexibility in premium amounts and coverage, along with a savings account that accrues fixed or variable interest.

- **Variable Life Insurance**, in which part of the premium is invested in financial markets; returns fluctuate according to investment performance, and the insurance benefit varies accordingly.

7. Riders (Additional Benefits)

- Supplemental coverage added to the core contract for an extra premium.
- These may include: accidental death, total or partial disability, critical illness, repatriation of the deceased's body, and risks or disabilities resulting from police or military operations, provided there is no active participation (passive war risk).

8. Passenger Life Insurance

- A group policy provided by the airline as part of the passenger's ticket.
- The company pays a specified sum in the event of the passenger's death or severe injury during the flight.
- Passengers do not pay premiums for this coverage.

By examining these forms of life insurance, several points become evident:

1. Some types are purely insurance-based, where the contract revolves solely around covering the risk, or the risk combined with a set insurance benefit at death.
2. Some combine two contracts: an insurance contract and an investment contract resembling *muḍārabah* (profit-sharing) or *mushārakah* (partnership)—outwardly—through investing part of the premiums in financial

instruments.

3. Some combine an insurance contract with a safekeeping contract (*amānah*), i.e., capital preservation.
4. In some types, the core contract is life insurance, to which an independent secondary contract pertaining to another benefit is added.

Since life insurance falls under personal insurance rather than indemnity insurance, it differs from the latter in several key aspects:

1. The insurance amount is stated in the policy without consideration of the actual extent of damage, whether equal to the loss or not.
2. It is permissible to combine the life-insurance payout with compensation for damages.
3. The insurer (the insurance company) does not assume the policyholder's right to pursue the party responsible for the harm—as in accidents—because personal insurance concerns the human being's life, body, and health, and is therefore not a compensation-based contract like indemnity insurance.
4. Personal insurance does not require actual harm to occur; the contractual benefit becomes due merely upon the policy's stipulated event or maturity.
5. Health condition and age are key considerations in life insurance.
6. Life insurance may be taken out on one's own life or on the life of another person, such as minor children.

Second: The Opinions of Contemporary Scholars on the Ruling of Life Insurance

Contemporary jurists have differed regarding the ruling on life insurance, and their divergence stems from their positions on the fundamental issue, namely the ruling of commercial insurance. It is not conceivable to discuss life insurance independently of one's stance on commercial insurance in all its forms.

Thus, those who deem commercial insurance permissible generally allow, by extension, life insurance as well—whether it is purely for protection or combined with saving or investment. However, they stipulate that composite contracts must be free from any other *Sharʿī* objections, such as *ribā* in the form of interest, or the fixing of the *muḍārabah* ratio according to those who prohibit such specification.

As for those who prohibit commercial insurance absolutely, they include life insurance among its impermissible forms. They hold that the same objections raised against commercial insurance—such as *gharar*, gambling, *ribā*, and other issues—apply to life insurance even more strongly. Some of them have even argued that the specific nature of life insurance increases its problematic aspects, since a human being does not possess ownership of his life or his appointed term (*ajal*), and therefore cannot make them the subject of a contract. They also argue that it contradicts *tawakkul* upon Allāh.

Accordingly, the study of life insurance requires first establishing a definitive position on the ruling of commercial insurance, then clarifying the additional issues and particularities specific to life insurance.

Following this methodology, we first addressed commercial insurance in terms of its definition, its forms, and the most

significant evidences concerning it, together with a comprehensive presentation of the juristic opinions and a discussion of the proofs used by both the permissive and the prohibitive positions. We then concluded with the preponderant opinion on its ruling, with which we ended the previous section.

This has spared us time and effort in revisiting some of the repeated evidences in this subject—whether those of the permissive camp or the prohibitive one—since they have already been presented and examined. Therefore, in this section we shall merely allude to them, focusing instead on the issues and evidentiary considerations unique to life insurance.

First Topic: The Evidences of Those Who Permit It

Those who permit life insurance rely on the very same evidences they used for declaring commercial insurance permissible, including:

1. That the default principle concerning things is permissibility, and the default principle in contracts is validity and enforceability[1].
2. Analogy between the insurance contract and several other contracts permitted in *Shar'ī* law despite their involving elements of *gharar* or uncertainty, such as the binding promise, indemnity for road hazards, guarantees of the unknown, *al-'āqilah*, *al-muwālāh*, the contract of custodianship, and many others[2].
3. The realization of public and private interests. As for public interest, we have discussed it previously. As for private interest, it lies in achieving financial security for

[1] See p. 63 of this book.
[2] See p. 200 of this book.

individuals and families when death or disability occurs, situations which lead to the loss of the breadwinner's income, accumulation of debts, or the burdens of living expenses[1].

Life insurance provides an immediate financial amount that helps heirs or beneficiaries bear urgent living expenses, secure essential needs such as housing, medication, food, and clothing, and may also assist in continuing the education of children and prevent falling into hardship or forced borrowing.

When the private interest is achieved, it may extend to society as a whole, since life insurance alleviates pressure on *zakāh* funds and social security, and contributes to economic stability—particularly when associated savings are invested through lawful means that grow wealth and create job opportunities.

4. Those who permit life insurance view it as a type of future responsibility encouraged in Sharʿī law, since it reflects the insured's concern to leave his children and heirs in sufficiency, following what appears in the well-known *ḥadīth* of Saʿd ibn Abī Waqqāṣ, in which the Prophet (peace and blessings be upon him) said: "Indeed, that you leave your heirs wealthy is better than leaving them poor and begging from people…"[2]

The point of relevance is that the Prophet (peace and blessings be upon him) prevented the Companion from giving away all or most of his wealth—even though such an act appears to be obedience and virtue—because it would harm his heirs and leave them needy. Thus, the Prophet (peace and blessings be upon him) restricted his disposal of his own wealth out of consideration for

[1] See p. 213 of this book.
[2] Ṣaḥīḥ al-Bukhārī, ḥadīth no. (5668).

their future rights, making the preservation of their interest a priority over his absolute disposal of his wealth during his lifetime.

This meaning supports the permissibility of life insurance, for it is a transaction intended to safeguard the rights of one's heirs and ensure their support. In essence, it is an act of benevolence that serves the *maqāṣid al-Sharī'ah* in preserving wealth, life, and lineage.

5. The invalidity of distinguishing between life insurance and social insurance, which grants benefits to certain heirs. Both are based on contributions or premiums paid now for future benefits, except that in social insurance the contributions are obligatory[1].

Second Topic: The Evidences of Those Who Prohibit Life Insurance

Those who prohibit life insurance cite the same evidences they used to prohibit commercial insurance, including:

1. *Gharar fāḥish* (excessive uncertainty)[2].
2. Gambling[3].
3. *Ribā*[4].
4. Consuming people's wealth unjustly[5].
5. That the contract involves the sale of a debt for a debt[6].

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[1] We will discuss this in detail in the fourth benefit.
[2] See p. 192 of this book.
[3] See p. 193 of this book.
[4] See p. 193 of this book.
[5] See p. 194 of this book.
[6] See p. 194 of this book.

They also add the following:

1. That life insurance contradicts the recommended *tawakkul* (reliance) upon Allāh.
2. That life insurance entails contracting over something we do not own.

Their Clarification Is as Follows:

1. Life insurance contradicts *tawakkul* (reliance upon Allāh).
It is stated on the IslamWeb website: "As for liability arrangements that resemble commercial insurance, they are impermissible in principle. Entering into prohibited contracts without necessity conflicts with reliance upon Allāh and with certainty, and it blemishes one's faith in Allāh—the Generous Provider—Who has commanded His servants to fear Him and promised that whoever fears Him, He will ease his affairs and provide for him from where he does not expect."[1]

2. Life insurance is a contract over something one does not own.
In a *fatwā* by Shaykh al-'Albānī[2] he says: "Insurance is a form of gambling, like a lottery, which they have named 'life insurance.' *Subḥān Allāh*—who is it that can insure a person's life when the entire matter is in the hand of Allāh, Exalted and Blessed?"

Those who prohibit life insurance base their argument on the claim that the subject-matter of the contract is a human life. In their view, life is not considered property that can be legally valued, and thus it is not permissible to make it the subject of a financial exchange.

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[1] IslamWeb, fatwa no. (461647), dated 17 Jumādā 1444 / 9 January 2023.
[2] The fatwa is audio and published on many audio platforms such as YouTube.

Preponderant View

What we deem preponderant is that life insurance, like indemnity insurance (*ta'mīn 'alā al-aḍrār*), is originally permissible, and that there is no difference between the two types. "Life insurance is simply an agreement to provide defined assistance that compensates, to some extent, those who are affected by the policyholder's death. There is therefore no essential difference between it and the other two types—namely, insurance on property and liability insurance."[1]

The evidences upon which we base the permissibility of life insurance are the very same evidences by which we previously gave preference to the permissibility of commercial insurance[2]; hence they need not be repeated here. We add, however, that the *Sharī'ah* has permitted contracts that are contingent upon life and death—matters known only to Allāh. Among these are:

1. The Contract of *'Umrā*

'Umrā—with *ḍammah* on the *'ayn*, *sukūn* on the *mīm*, *fatḥah* on the *rā'*, followed by a final alif—is when the owner grants another person ownership of something for the lifetime of either of them. It is derived from *'umr* (life).

Its form is that a person says to another: "I grant you this house for your lifetime," or "It is yours as long as I live," or "It is yours for the duration of your life," and similar expressions relating to life and death[3].

'Umrā is permissible according to the four madhhabs[4], and

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[1] *Niẓām al-Taʾmīn* by al-Zarqā (p. 140).
[2] See p. 204 of this book.
[3] *al-Mughnī* by Ibn Qudāmah (8/282).
[4] *al-Bināyah* by al-ʿAynī (10/213); al-Zurqānī's commentary on *Mukhtaṣar Khalīl* (7/187); *Rawḍat al-Ṭālibīn* (5/371); *Sharḥ Muntahā al-Irādāt* (2/434).

consensus has even been reported regarding its permissibility[1].

Those who permit it rely upon prophetic reports, including:

- The narration of Jābir b. ʿAbd Allāh, who said: The Messenger of Allah (peace and blessings be upon him) said: "*ʿUmrā* belongs to the one to whom it is granted."[2]
- The *ḥadīth*: "Keep hold of your wealth and do not waste it, for whoever grants an *ʿumrā*, it belongs to the one to whom it was granted—during his life and after his death—and to his descendants."[3]
- The narration of Ibn ʿAbbās, who said: The Messenger of Allāh (peace and blessings be upon him) said: "*ʿUmrā* is valid for the one to whom it is granted."[4]

This is a contract involving financial rights that are contingent on the life of the grantor or the beneficiary. The condition was validated by a group of scholars. Dr. Muḥammad Naʿīm Sāʿī states: "Most of the scholars whose opinions we have come across—those who hold the permissibility of *ʿumrā*—maintain that if the grantor stipulates that the property shall return to him upon the beneficiary's death, then the contract is valid and the condition is valid. Thus, when the beneficiary dies, the property returns to the grantor. This was the view of al-Qāsim b. Muḥammad, Zayd b. Qusayṭ, al-Zuhrī, Abū Salamah b. ʿAbd al-Raḥmān, Ibn Abī Dhʾīb, Mālik, Abū Thawr, Dāwūd, al-Shāfiʿī in

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[1] *Mawāhib al-Jalīl* by al-Ḥaṭṭāb al-Ruʿaynī (6/62), attributed to Ibn Juzayy al-Kalbī.

[2] Ṣaḥīḥ al-Bukhārī, ḥadīth no. (2625); and Muslim, ḥadīth no. (1625).

[3] Muslim, in one of his wordings, ḥadīth no. (1625).

[4] Musnad Aḥmad, ḥadīth no. (2251); al-Nasāʾī, no. (3710); and al-Shawkānī authenticated its chain in *al-Sayl al-Jarrār* (3/307).

his earlier opinion, and ʾAḥmad in one narration."[1]

Although this contract is one of gifting and benefit, the purpose of the argument is that it contains a condition based on an unseen, unknown matter—namely, the death of one of the parties. Yet this did not prevent its permissibility nor the enforcement of its condition.

Indeed, this type of contract existed in the pre-Islamic era, and Islam affirmed it due to the good and benefit it contains.

2. The Contract of *Ruqbā*

Ruqbā—with *ḍammah* on the *rā'*, *sukūn* on the *qāf*, *fatḥah* on the *bā'*, followed by a final alif—is when a person says to another: "I grant you this house as *ruqbā*; if you die before me, it returns to me, and if I die before you, it is yours and your descendants'." It is named *ruqbā* because each of the two parties "waits" and watches for the other's death[2].

Thus, it is the transfer of a benefit or an asset contingent upon life. A number of scholars held this form of *ruqbā* to be valid, though they differed concerning the condition. The Shāfiʿīs, Ḥanbalīs, Abū Yūsuf of the Ḥanafīs, Ibn Ḥazm, al-Ṣanʿānī, and al-Shawkānī held the contract valid but cancelled the condition[3].

Some Shāfiʿīs, and a narration from ʾAḥmad—preferred by Ibn Taymiyyah—held both the contract and the condition valid, so that the property returns to its owner[4].

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1 *Mawsūʿat Masāʾil al-Jumhūr* (p. 600).
2 *al-Mughnī* by Ibn Qudāmah (8/282).
3 *Rawḍat al-Ṭālibīn* (5/370); *al-Inṣāf* by al-M□rdāwī (7/134); *Tabyīn al-Ḥaqāʾiq* by al-Zaylaʿī (5/104); *al-Muḥallā* (8/130); *Subul al-Salām* (3/91); *Nayl al-Awṭār* (6/20).
4 *al-Jāmiʿ li-Aḥkām al-Waqf wa-al-Hibāt wa-al-Waṣāyā* (5/48).

The issue of *ruqbā* resembles that of *ʾumrā*: the benefit is tied to a lifespan whose end is unknown. The jurists permitted this contract despite the fact that the duration depends on a human lifespan—something neither owned nor known—and they did not consider this an impediment to its validity.

The similarity between these contracts and life insurance lies in the fact that both attach a financial consequence to the occurrence of life or death. Nevertheless, the majority of jurists permitted these contracts and established legal rulings upon them.

3. The Contract of *Diyyah* in Accidental Killing

The *diyyah* is the monetary compensation given to the victim or to his guardians or heirs due to the injury, and it is also called *al-ʾaql*.
It is among the matters upon which the jurists have unanimously agreed to be obligatory[1].

The *diyyah* for accidental killing (*al-qatl al-khaṭaʾ*) and quasi-intentional killing (*shibh al-ʾamd*) is borne by the killer's *ʾāqilah* (the male agnatic relatives), and it is paid to the family of the victim over the course of three years, each year a third of the *diyyah*, whether it is the *diyyah* of a life or the *ʾarsh* of an injury[2].

This is also a contract founded upon compensation that is suspended upon life and death, and the *Sharīʾah* has stipulated financial rulings that relate to compensating for death.

4. The Contract of the Obligatory Bequest (*al-waṣiyyah al-wājibah*)

Egyptian law, in Articles (76, 77, 78, 79), has mandated what is

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[1] *al-Mughnī* by Ibn Qudāmah (12/5).
[2] *al-Arsh*: the blood money for injuries. *Al-ʿAyn* by al-Khalīl b. Aḥmd (6/284); see *al-Majmūʿ* by al-Nawawī (19/146–147).

known as the "obligatory bequest," whereby a bequest is due to the first tier of the descendants of daughters, and to the descendants of sons (*'awlād al-ẓuḥūr*), even if their generational tiers descend, in an amount equivalent to what their father would have inherited from his father's estate had he been alive at the death of the grandfather—provided it does not exceed one-third of the grandfather's estate, that this grandchild is not an heir, and that the grandfather had not already granted him, without compensation through another legal disposition, the amount he is entitled to[1].

The legislature based this on the views of a group of scholars who held that a bequest is obligatory for anyone who leaves behind wealth. Among them are: ʿAṭāʾ, al-Zuhrī, Abū Majlaz, Ṭalḥah ibn Muṣarrif, Saʿīd ibn al-Musayyib, al-Ḥasan al-Baṣrī, Ṭāwūs; al-Bayhaqī reported it from al-Shāfiʿī in his earlier opinion; and it was also narrated from ʾIsḥāq, Dāwūd ibn ʿAlī, Abū ʿAwānah, and Ibn Jarīr al-Ṭabarī, and chosen by Ibn Ḥazm[2].

Thus, this is wealth that becomes obligatory due to the death of the provider, in order to protect and preserve his children from loss, poverty, and need, even though they do not have a direct line of inheritance to the deceased (since the intermediary parent has passed away). It is, therefore, a contract suspended upon life or death.

As for the objections raised by those who prohibit life insurance, in addition to what they have already mentioned regarding commercial insurance, I say:

1. Regarding their statement that the contract contradicts true

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[1] *Sharḥ Qānūn al-Waṣiyyah* by Abū Zahrah (p. 288).

[2] *al-Muḥallā* (8/349); *al-Mughnī* by Ibn Q□dāmah (8/391); *Nayl al-Awṭār* (6/39).

reliance (*tawakkul*) upon Allāh, it is refuted from several angles, among them:

– Reliance upon Allāh does not contradict taking the means.

The Prophet (peace and blessings be upon him) established this principle when he said to the Companion: "Tie it, and then rely (on Allāh)."[1]
Although reliance upon Allāh is among the highest ranks of faith— "and upon Allāh, the dependents shall all depend"[2]—and among the greatest causes of attaining Allāh's love— "Indeed, Allāh loves the dependents"[3]—and among the causes of provision and sufficiency— "and whoever depends on Allah, He will be his sufficiency"[4]— the Messenger of Allāh (peace and blessings be upon him) nevertheless set a standard: taking the means, lest reliance (*tawakkul*) turn into negligence (*tawākul*).

To explain: a person's actions relate to two matters—an internal, spiritual aspect whose domain is reliance, and an external, physical aspect whose domain is taking the means. If one of these replaces the other, the person's conduct becomes corrupt—in terms of religion or worldly aspects of life.

Accordingly, every effort a person exerts to protect himself or those he supports falls under this principle.

The evidence for this is what came in the *ḥadīth* of Saʿd ibn Abī Waqqāṣ, which we referenced earlier. The Prophet (peace and blessings be upon him) instructed him not to bequeath more than one-third, so that something substantial remains for his heirs after

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[1] From the narration of ʿAmr b. Umayyah, recorded by Ibn Ḥibbān in his *Ṣaḥīḥ*, no. (4475); see also al-ʿIrāqī's *Takhrīj al-Iḥyāʾ* (2/1131).
[2] [Āl ʿImrān: 122].
[3] [Āl ʿImrān: 159].
[4] [al-Ṭalāq: 3].

him. This is despite the fact that Saʿd had no child at that time except one daughter, as mentioned in al-Bukhārī's narration. Later, Allāh blessed him with offspring—seventeen sons and eighteen daughters[1].

The question is: Why did the Prophet (peace and blessings be upon him) not agree with him and leave the matter of his children to Allāh, purely out of reliance and trust?

This *ḥadīth* of Saʿd has become a foundational jurisprudential basis upon which many rulings of bequest were built, and no one considers it contrary to reliance upon Allāh. Rather, it is taking the means and safeguarding future rights, as indicated by the *ḥadīth*: "It is sufficient sin for a man to neglect those he maintains."[2]

Moreover, the prohibitionists do not consider this supposed contradiction in the case of state-mandated social insurance, and they deem it permissible, even though it contains the same rationale. Likewise, with what they propose under the name of cooperative insurance—do they also forbid these because they contradict the spirit of *tawakkul*?

– The *Sharīʿah* has affirmed means of preventing potential harm before it occurs.

Among these are the prohibition against entering a land where plague has broken out; and the prohibition of anything that compromises safety in public roads. Ibn Ḥajar al-Haytamī said: "Benefiting from the road is conditioned on safety of outcome."[3]

Shaykh Zādeh said: "Movement in the Muslims' road is

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1 *al-Ṭabaqāt al-Kubrā* by Ibn Saʿd (3/137).
2 Abū Dāwūd, ḥadīth no. (1692).
3 *Tuḥfat al-Muḥtāj* (9/205).

permitted with the condition of safety, just like walking, because the right over the road is a shared right; one exercises his right in one aspect, and the right of others in another."[1]

Among such measures is the *Sharīʿah*'s approval of restricting the assets of an insolvent debtor in order to protect the rights of creditors, as held by the majority of Mālikīs, Shāfiʿīs, Ḥanbalīs, and the two companions of Abū Ḥanīfah[2].

Also included is restricting certain financial transactions of a person in their death-illness to preserve the rights of the heirs[3].

Also among them is the approval of quarantine in cases of contagious disease, as in the *ḥadīth* narrated by Farwah ibn Musayk al-Murādī: he said, "O Messenger of Allāh, there is a land of ours called Abyan; it is our land of cultivation and sustenance, but it is plagued." The Prophet (peace and blessings be upon him) replied: "Leave it, for exposure (*qaraf*) leads to destruction (*talaf*)."[4]

Likewise in the *ḥadīth* of ʿAmr ibn al-Sharīd: a leper came with the delegation of Thaqīf to pledge allegiance, so the Prophet (peace and blessings be upon him) sent word to him: "Return, for we have already accepted your pledge."[5] And in the *ḥadīth* of Abū Hurayrah: "The sick should not be brought near the healthy."[6]

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1 *Majmaʿ al-Anhur* (2/659).

2 *al-Sharḥ al-Ṣaghīr* (3/352); *Mughnī al-Muḥtāj* (3/130); *Kashshāf al-Qināʿ* (3/416).

3 *al-Fiqh al-Islāmī wa-Adillatuhu* (6/4504).

4 Sunan Abī Dāwūd (3923); Musnd Aḥmd (15742); *al-qarf*—with an open qāf—means mixing with something disliked, i.e., contagion or death.

5 Muslim (2231).

6 al-Bukhārī (5771); Muslim (2221).

No one can claim that such measures contradict reliance upon God, nor that one must leave the matter entirely to divine decree operating on everyone.

Therefore, life insurance is merely taking permissible means, similar to what has been sanctioned in comparable situations. It is an application of: "Tie it, and then rely." Indeed, it is acting upon the Prophet's (peace and blessings be upon him) counsel: "That you leave your children wealthy is better than leaving them poor, begging from people."

2. As for their claim that it is an insurance on something one does not own:

I say:

- The opponents have erred in conceptualizing the issue, and thus erred in their ruling. They assume that the subject - matter (*maḥall al-ʿaqd*) in life insurance[1] is life itself, or the human person, and these—according to them—cannot be the subject of a contract.

The correct view is that the true nature of the contract is an agreement concerning the risk of death. Death is an event that may occur and impact a person or others—just like an accident, a fire, a collapse, an illness, or any other incident. It is a natural contingency just like any other.

The contract concerns the effects of that contingency. There is no form of life insurance that claims that the insurer guarantees the insured's continued life.

[1] The scholar Muṣṭafā al-Zarqā disliked this designation and considered it misleading, saying: "In reality, the subject of life insurance has been greatly wronged by this bad name that suggests the opposite of its true nature." *Niẓām al-Taʾmīn* (p. 140).

Thus, the subject of the contract here is the *compensation*, which is something valid to contract over and valid to own.

In this sense it resembles *diyyah* (blood money) and the obligatory bequest (*al-waṣiyyah al-wājibah*) and other matters that the *Sharīʿah* permits and suspends upon death.

- The *Sharīʿah* has permitted what is far more serious and more closely tied to the human being than merely arranging a financial consequence upon death. It permitted—during the eras in which slavery existed—the sale of male and female slaves as an actual sale that encompassed both soul and body[1], wherein the human being was the very subject of the contract with respect to benefiting from his labor and services. He was also considered property of pecuniary value (*māl mutaqawwim*)[2] from which the owner benefited and which passed via inheritance.

So, if the *Sharīʿah*, under specific historical conditions[3], affirmed the sale of human beings and deriving benefit from them, then how could it prohibit a life-insurance contract which does not entail selling the person nor granting ownership over him, but merely a financial commitment in consideration of the occurrence of death?

Conclusion

Rejecting life insurance on the grounds that it is a contract over

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[1] This is because the sale of the body alone is of the nature of hiring (*ijārah*).

[2] I sincerely apologize to the reader for using these expressions, which I consider contrary to human rights, but we report them here as they appear in the heritage sources.

[3] Islam retained slavery for only one reason: the principle of reciprocity with enemies. Unfortunately, the actual historical practice expanded far beyond what the *sharīʿah* approves.

something one does not own, or that it constitutes gambling or usury, or that it contradicts reliance upon Allāh (*tawakkul*), does not stand on any sound textual or analogical basis. Life insurance does not sell life or death, nor does it relate to the soul in any real sense. It merely assigns a financial right upon the occurrence of death—just like valid *Sharī'ah* contracts such as *diyyah*, bequests, *'umrā*, *ruqbā*, and other established precedents.

It is a contract of guarantee (*ḍamān*) whose analogues are approved in the *Sharī'ah*, wherein equivalence between the two countervalues is not required, and the disparity between premiums and compensation is not considered usury or gambling. Furthermore, the risk is distributed across a collective pool of policyholders, unlike gambling, which is based on risk-taking between two parties.

The objectives of the *Sharī'ah* pertaining to the preservation of life, wealth, and progeny—along with the foundational jurisprudential maxims affirming permissibility in transactions—all support its legitimacy, especially given its essential similarity to cooperative takaful schemes and social security systems, which the opponents themselves deem permissible.

Accordingly, the opinion that life insurance is permissible is the view closest to the texts and spirit of the *Sharī'ah*, and most consistent with people's interests in their worldly and religious affairs.

Important Benefits

First Benefit: A Commentary on the Fatwa of Ibn ʿĀbidīn

Second Benefit: A Commentary on the Claim of Consensus in Fiqh Councils

Third Benefit: A Commentary on the Abundant Exceptions to the Principle of Prohibition

Fourth Benefit: The Corruption of Differentiating Between Analogous Cases in Rulings

Fifth Benefit: The Claim of Exploitation by Commercial Insurance Companies

First Benefit

A Commentary on the Fatwā of Ibn ʿĀbidīn

There is no doubt that Ibn ʿĀbidīn was among the encyclopedic, insightful scholars who combined jurisprudence with wisdom, cumulative knowledge with methodological legal craftsmanship. He is truly a towering figure in Ḥanafī jurisprudence and in Islamic jurisprudence more broadly in the later centuries. Indeed, in the breadth of his learning, he stands alongside many of the early Imams of the Ḥanafīs and others.

A question was posed to the Imam concerning a practice performed by some merchants in his time. He lived in al-Shām, which was frequented by merchants from Italy and other places, and at that time al-Shām was under the Ottoman Empire.

The Imam said in his *Ḥāshiyah*, under "The Chapter on the *Musta'man* — Section on Granting *'Amān* to a Non-Muslim": "An important inquiry regarding what merchants do when paying what is called '*sukrah*,' and making the *ḥarbī* (an enemy person) liable for what is lost on the ship.

Based on what we have established, the answer becomes clear to what is asked frequently in our time. The common practice is that when merchants rent a ship from a *ḥarbī*, they pay him its rental fee, and they also pay a set amount of money to another *ḥarbī* residing in his own land. This payment is called '*sukrah*,' on the basis that whatever of their wealth on the ship perishes—through burning, sinking, looting, or otherwise—this man guarantees it in return for what he receives from them. He has an agent, a *musta'man* living in our territory, residing in the Islamic coastal cities with the Sultan's permission, who collects the *sukrah* from the merchants. If anything of their wealth is lost at sea, this

musta'man pays its full replacement to the merchants.

What appears to me is that it is not permissible for the merchant to take the replacement for the loss of his property, because this is a commitment to what is not obligatory.

If you say: A depositary becomes liable if he takes payment for safeguarding the deposit—then I say: Our case is not of this type, because the wealth is not in the hand of the one who receives the *sukrah*, but in the hand of the ship owner. If the ship owner is himself the *sukrah*-holder, then he is a hired worker who received payment both for preservation and for transport. Both the depositary and the hired worker do not guarantee losses that cannot be prevented, such as death, sinking, and the like.

If you say: It will be mentioned before the chapter on the Guarantee of a Man that if someone tells another: 'Take this route; it is safe,' and he takes it and his money is taken, he is not liable. But if he says: 'If it is dangerous and your wealth is seized, I guarantee it,' then he is liable. The commentator explains this by saying that the deceiver guaranteed the attribute of safety to the deceived explicitly.

This differs from the first case, for he did not explicitly state 'I guarantee' in it. In *Jāmi' al-Fuṣūlayn*: The default principle is that the deceived returns to the deceiver only when the deception occurs within a transaction, or the deceiver explicitly guarantees safety to the deceived. An example is the miller who tells the grain owner: 'Put it in the bucket.' He does so, and it falls through a hole into the water, and the miller knew of the hole—he must compensate, for he deceived him within the contract, which entails safety.

I say: In cases of deception, the deceiver must know of the danger, as the miller example shows, and the deceived must be

unaware. There is no doubt that if the grain owner knew of the hole in the bucket, he would be destroying his own wealth by choice. The term ‘deceived’ indicates this linguistically, for in *al-Qāmūs*: ‘He deceived him: he misled him and enticed him with falsehood so he became deceived.’

It is clear that the *sukrah*-holder does not intend to deceive the merchants, nor does he know whether sinking will occur or not. As for the danger posed by thieves or bandits, this is known to both parties; they only pay the *sukrah* under intense fear in hope of receiving compensation. Thus, our case does not fall under this category either.

Yes, it may be that a merchant has a *ḥarbī* partner in the Land of War, and his partner enters into this contract with the *sukrah*-holder there, receives the compensation, and sends it to the merchant. The apparent ruling is that it is permissible for the merchant to take it, because the invalid contract occurred between two *ḥarbīs* in the Land of War, and what reaches him is their wealth taken with their consent—there is no impediment to taking it.

And it may be that the merchant himself is in their lands, enters into the contract with them there, and receives the compensation in our lands—or vice versa. There is no doubt that in the first case, if a dispute arises between them in our lands, we do not rule in favor of the merchant. But if no dispute arises and the *musta’man* agent pays him the compensation, it is permissible for him to take it, because the contract concluded in their land has no legal effect, and thus he has taken *ḥarbī* wealth with their consent.

As for the opposite case—where the contract was concluded in our lands and the compensation is received in theirs—the

apparent ruling is that it is not permissible to take it, even with the *ḥarbī*'s consent, because it is founded on an invalid contract concluded in the lands of Islam, and its legal ruling stands."[1]

What we conclude from the foregoing text is as follows:

1. The Imām is speaking about a form of marine insurance that had begun to spread in his time.
2. The Imām used the Latin-derived term that meant "insurance."
3. He issued a *fatwā* prohibiting this transaction, considering its compensation to be "a commitment to what is not legally required" due to the absence of causation.
4. He rejected analogizing it to the liability for the danger of the road because there is no causation nor any act of deceiving.
5. He rejected analogizing it to liability for a deposited item (*wadīʿah*) because the insured item is not in the hand of the insurer.
6. He permitted taking compensation in certain cases—such as when the contract, the merchant, and the insurer are all in *Dār al-Kufr*—because, according to the Ḥanafī school, it is permissible to take money through a corrupt contract in non-Muslim lands.
   He also permitted it if the Muslim merchant's partner in *Dār al-Kufr* takes the compensation there.

   He also permitted it when the contract is concluded in *Dār al-Kufr* and the compensation is received in *Dār al-Islām*, so long as no dispute occurs between the parties, because

[1] *Ḥāshiyat Ibn ʿĀbidīn* (4/170).

the payment is made willingly.
But if a dispute arises in Muslim lands, the claim for compensation is not heard.

7. He prohibited taking compensation if the contract was concluded in *Dār al-Islām*, even if the receipt occurs in *Dār al-Kufr*.

Our Observations

1. Ibn ʿĀbidīn (may Allāh have mercy on him) treated this issue as a question in the chapter of guarantees (*ḍamānāt*), not as an independent contractual study nor as a sale-type transaction of exchange.

2. Ibn ʿĀbidīn provided no operative cause (*ʿillah*) for prohibition other than it being "a commitment to what is not required," and he did not treat it as an issue of *gharar*, gambling, usury, or anything of that sort, because he did not see it as a contract of sale but as a liability matter.

3. Ibn ʿĀbidīn's response indicates that some jurists of his time tried to permit this type of liability by analogizing it to other forms of guarantee, such as liability for road dangers, liability over a deposit, or the miller's liability—each belonging to the juristic domain of guarantees.

4. Ibn ʿĀbidīn observed that the practical benefit of permitting the contract would, in most cases, accrue to the *ḥarbī* whose role resembles that of the insurer.

5. He differentiated between contracts concluded in *Dār al-Islām* and *Dār al-Kufr*—permitting it in *Dār al-Kufr* based on Ḥanafī principles, and prohibiting it in *Dār al-Islām*.

6. When we examine Ibn ʿĀbidīn's expressions, we do not

find the decisive tone usually present in Ḥanafī writings. Instead, he uses phrases such as "what appears to me" (*yaẓhar lī*), "the apparent ruling is" (*fa-ẓāhir anna hādhā yaḥill*), and "the apparent ruling is that it is not permissible" (f*a-ẓāhir annahu lā yaḥill*).

These expressions do not indicate categorical prohibition, unlike the firm language he uses elsewhere in his *Ḥāshiyah*.

Those who have studied the Ḥanafī school recognize the specific implications of these terms, for example:

- **"What appears to me" (*yaẓhar lī*):** indicates a personal juristic inference based on analogy or school principles, while acknowledging the possibility of disagreement.
- **"The apparent ruling is" (*fa-ẓāhir anna*):** a stronger inclination than "appears to me," expressing predominant probability but not certainty.
- **"The closer view" (*al-ʾaqrab*):** a recognized preference in the school based on strong evidence or alignment with foundational principles.
- **"The chosen view" (*al-mukhtār*):** a preference adopted by him or by a group of *mujtahid* jurists, based on strong argumentation and school considerations.
- **"It is the school's authoritative view/it is the most correct view" (*huwa al-madhhab/huwa al-ʾaṣaḥ*):** decisive affirmation that this is the authoritative position for *fatwā*.

- **"Prohibited/impermissible" (*yaḥrum/lā yajūz*):** explicit and binding statements of prohibition.

What we observe is that Ibn ʿĀbidīn, in discussing *sukrah* insurance, halted at the level of *al-ẓāhir* (the apparent) because he was dealing with a contract for which he had no clear precedent in the school, and because he did not perceive a strong element of suspicion that would push him toward using stronger evaluative terms such as "it is forbidden," "it is impermissible," or "it is invalid."

7. Ibn ʿĀbidīn connected the discussion of *sukrah* with what he had previously mentioned in the chapter of "*al-Musta'man*," where he investigated the rights and obligations tied to a *ḥarbī* entering Muslim lands with security guarantees, or a Muslim entering non-Muslim lands with security guarantees, and the legal consequences for contracts, financial exchanges, and transactions between the parties.

What is noticeable is that the identity of the parties and the location of the contract affect the legal ruling in this case, even if the contractual form is similar.

This represents the most important elements of the *fatwā* of Imām Ibn ʿĀbidīn (may Allāh have mercy on him).

The question now arises: Does this place Imām Ibn ʿĀbidīn among those who prohibit or invalidate commercial insurance contracts?

What I see is that counting Ibn ʿĀbidīn among those who prohibited and invalidated insurance involves a degree of scholarly and methodological overreach, for the following reasons:

1. Imām Muḥammad ʾAmīn, known as Ibn ʿĀbidīn, was born in the Levant in 1198 AH / 1784 CE and lived there until he passed away in 1252 AH / 1836 CE. This period was extremely early in the history of commercial interaction between East and West after a long era of wars and hostilities in which the default principle for acquiring financial resources was conquest and military campaigns. The last of these was Napoleon's invasion of Egypt and the Levant and the atrocities committed by the French armies against Egyptians, Palestinians, Turks, and North Africans—events that undoubtedly reached the Imām, who lived close to the unfolding of these circumstances.
   This strongly influenced the language of his *fatwā*, as he approached the transaction solely through the lens of security covenants, the status of non-Muslim belligerents, and the legal consequences that follow from that.

2. Insurance during this period was still in its infancy. Its legal structures were still evolving, gradually moving from individual arrangements to organized collective frameworks. The form that the Imām referred to in his discussion was a transaction between a single insurer, merchants, and an agent of the insurer in the Levant. There was no state involvement and no regulation through international agreements.
   Comparing the case discussed by Ibn ʻĀbidīn with modern, regulated forms of insurance overlooks major developments in the nature of the contract and the structure of guarantees—factors that significantly affect the legal characterization of the issue and thus the ruling derived.

3. The form described by Ibn ʿĀbidīn was an individual arrangement: a single insurer with a single insured, with

absolutely no mention of collective models that transform insurance from a gambling-like setup into a cooperative, mutual-based system in which compensation arises from the pooled contributions of all participants in a structured exchange.

4. What appears in Ibn ʿĀbidīn's text regarding *sukrah* is the simplest form of marine insurance, lacking organized financial institutions. At that time, there was no comprehensive concept of social or cooperative insurance across multiple domains—only basic guarantees for maritime goods.
   Today, insurance covers all aspects of life. Just as it occurs between Muslims and non-Muslims, it also occurs among Muslims under a legal system that defines the obligations of both parties. By contrast, *sukrah* was merely a liability agreement with a non-Muslim belligerent outside the authority of the *Sharīʿah*. This context undeniably shaped his ruling.

5. Ibn ʿĀbidīn did not develop a general theory or overarching maxim regarding commercial insurance; rather, he addressed a specific incident. Thus, equating his words with the statements of later scholars—who studied the issue after its forms became fully developed—and placing him among the forbidders, though they possessed elements unavailable in his era, amounts to an imprecise and ungrounded generalization, especially without clarifying the differences.

At this point, I would like to elaborate slightly on the use of classical juristic statements and the attempt to apply them directly to modern, highly developed cases, forcing new realities into old constraints even though the new scenario diverges

significantly from the old. For example:

1. Prayer in Means of Transportation

In a *fatwā* by Shaykh Ibn ʿUthaymīn[1] on the ruling of facing the *qiblah* when praying an obligatory prayer in an airplane, he said—after mentioning the leniency regarding voluntary prayers: "As for the obligatory prayer, one must face the *qiblah*, and one must bow and prostrate if possible. He must ask the flight attendants about the direction of the *qiblah* if the aircraft does not have a *qiblah* indicator. If he does not do so, then his prayer is invalid."[2]

The Shaykh (may Allāh have mercy on him) based this on the Prophet's (peace and blessings be upon him) prayer on his riding animal and built his ruling on foundational principles that cannot realistically be applied to aircraft due to modern safety requirements for oneself and others. In reality, analogizing prayer on an airplane to prayer on a riding animal involves several problematic assumptions:

1. The difficulty of movement in an airplane—standing, bowing, and prostrating—due to limited space and safety regulations that restrict such movements. In many cases, performing these acts is either impossible or dangerous, even if theoretically possible.
2. The difficulty of determining and continuously maintaining the direction of the *qiblah* while the aircraft

[1] Muḥammad ibn Ṣāliḥ al-ʿUthaymīn: He was born in ʿUnayzah in the year 1347 AH. He studied ḥadīth, fiqh, and language. He studied in ʿUnayzah at the Institute of Knowledge, worked as a professor at Muḥammad ibn Saʿūd University in the College of *Sharīʿah*, taught in the Prophet's Mosque, and authored many diverse works. He passed away in 1421 AH.

[2] *Majallat al-Daʿwah*, issue no. (1757), p. 45.

changes direction due to weather or air traffic adjustments, making adherence to a fixed direction a cause of significant hardship.

Thus, it is not sound to take an example rooted in a specific historical environment and apply it to a radically different environment that shares only the underlying intention but not the practical reality.

2. The Penal System as an Example

Modern legal systems, both international and national, have transformed imprisonment into an institution with administrative structures and codified criminal procedures. Some jurists of the past dealt with imprisonment in a very limited, rudimentary form—such as tying a prisoner to a pillar in the Prophet's Mosque, as happened with some captives during the time of the Prophet (peace and blessings be upon him).
Yet, proper jurisprudence requires exercising *ijtihād* regarding the issue in its modern form, rather than reducing it to an earlier conception that belonged to the context and capacities of its own time.

3. **Prohibiting Taking Payment for What Contains the Meaning of Worship**

Such as teaching, *da'wah*, Qur'ān memorization, and *imāmah*—according to the position of the early Ḥanafī scholars. Here I will cite the words of Ibn ʿĀbidīn himself as he relates how the ruling developed from prohibition to permissibility due to changes in circumstances and conditions.

Ibn ʿĀbidīn says: "It is stated in *al-Hidāyah*: Some of our *mashāyikh*—may Allāh Most High have mercy on them—considered it preferable in our time to allow hiring for teaching

the Qur'ān, due to the evident neglect in religious matters; and refraining from doing so would lead to the loss of the preservation of the Qur'ān. Upon this is the *fatwā* (*wa ʿalayh al-fatwā*).

The text of *al-Kanz*, *Mawāhib al-Raḥmān*, and many other books restricted the exception to teaching the Qur'ān. *Mukhtaṣar al-Wiqāyah* and *al-'Iṣlāḥ* added the teaching of *fiqh*; *al-Majmaʿ* added *imāmah*, and the same appears in *al-Multaqā* and *Durar al-Biḥār*. Some added the *adhān*, *iqāmah*, and exhortation (*waʿẓ*). The author cited most of them, but what appears in most books is limiting the exception to what is in *al-Hidāyah*.

This is the collection of what our later *mashāyikh*—the Balkhīs—have stated, though they differ on some aspects of it, in opposition to what the Imām (Abū Ḥanīfah) and his two companions held. Their statements in all commentaries and *fatwās* agree that the justification is necessity, namely the fear of the Qur'ān being lost, as in *al-Hidāyah*."[1]

Thus, Ibn ʿĀbidīn himself reports the original prohibition—due to the act being one of worship and devotional closeness—and he also conveys permissibility due to necessity, need, and the change of times, and all of this from the same scholars of the madhhab and upon the very same foundational principles.

If not for fear of excessive length and straying from the intended purpose, we would mention parallels in which the *fatwā* was shaped by local circumstances and temporal assumptions, which cannot rightly serve as a universal principle to be applied unreservedly to anything that merely resembles it in outward form while differing in its essence.

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[1] *Ḥāshiyat Ibn ʿĀbidīn* (6/55–56).

There is no doubt that the camel and the airplane are both means of travel; yet travel in the desert is not like travel in the air, and the laws of machinery differ from the laws of living creatures.

Likewise, teaching the Qur'ān at a time when most people—especially jurists and teachers—received regular stipends from the *Bayt al-Māl* does not resemble the situation of later eras, in which livelihoods depend on work, craft, or trade, along with obligations to pay taxes to a central state. Thus, although teaching may be similar in outward form, the method and context differ—and therefore the ruling must differ.

This is precisely the case with insurance. It no longer maintains the simple form of a *ḍamān* agreement involving a guarantor, a guaranteed party, and a guaranteed matter. Rather, it has become an organized commercial practice, a regulated industry that establishes obligations upon each party, while being at the same time a cooperative, participatory undertaking.

Second Benefit
A Comment on the Claim of Consensus in *Fiqh* Councils

There is no doubt that the emergence of *Fiqh* Councils in the last century was a pioneering development and an important gateway for juristic *ijtihād*. Since the establishment of the Islamic Research Academy at al-Azhar al-Sharīf, followed by other bodies and councils such as the Islamic Fiqh Council of the Muslim World League and the International Islamic Fiqh Academy of the Organization of Islamic Cooperation—in addition to national juristic bodies represented by the Dār al-Iftāʾ institutions and the scientific research departments in Muslim countries—I say: since the founding of these councils and bodies, the study of certain contemporary issues has become a collective enterprise after individual or madhhab-based *ijtihād* used to be the norm.

The topic of commercial insurance has indeed been examined by several councils, some of which were referenced throughout this book[1].

Some writers on the subject of commercial insurance—especially those who prohibit it—have attempted to give the impression of an "*ijmāʿ*," or at least unanimous agreement in a particular council or across several councils. They do this by using broad and vague statements, such as: "The ruling of prohibition is what the *fiqh* councils have unanimously agreed upon," or: "The Fiqh Council … concluded that commercial insurance is forbidden."

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[1] See, for example, *Majallat Majmaʿ al-Fiqh al-Islāmī al-Duwalī*, second session, vol. 2, p. 545 and onwards; *Fiqh al-Nawāzil: Dirāsah Taʾṣīliyyah*, which contains all resolutions issued by fiqh academies regarding contemporary issues, p. 266 et seq.

In truth, this matter requires clarification and precise treatment from several angles:

First: *Ijmāʿ* in the *ʾuṣūlī* sense is the agreement of all the *mujtahid* scholars of the *ʾummah*, in a given era after the death of the Prophet (peace and blessings be upon him), on a particular religious matter. Thus, *ijmāʿ* requires the absence of dissent among the *mujtahid*s[1], and it must apply to scholars of the very era in which the issue arose; whoever attains the rank of *ijtihād* after the occurrence of the issue is not counted among the scholars of that era[2].

For *ijmāʿ* in its *ʾuṣūlī* definition to be realized, six conditions must be met:

1. It must occur after the death of the Prophet (peace and blessings be upon him).
2. It must be formed by Muslim scholars.
3. Those scholars must have reached the rank of *ijtihād*.
4. They must belong to a single historical era.
5. They must all agree on the ruling.
6. The issue must be a religious matter.

Given the importance of fulfilling these conditions, Ibn Taymiyyah (may Allāh have mercy on him) rejected many claims of consensus, saying: "The meaning of *ijmāʿ* is that the scholars of the Muslims gather upon a ruling. If the *ijmāʿ* of the *ʾummah* upon a ruling is established, no one may oppose it, for the *ʾummah* does not agree upon misguidance. But many matters are thought by some people to be *ijmāʿ*, while that is not the case;

[1] *Al-Baḥr al-Muḥīṭ* by al-Zarkashī (4/436).
[2] Ibid. (4/437).

rather, the opposing view is stronger in the Book and the Sunnah."[1]

If we apply this definition and these conditions to the issue of insurance and compare it with what has been issued by *Fiqh* Councils, we find no *ijmāʿ* in the *ʾuṣūlī* sense—nor even near-consensus. At best, some conclusions represent institutional collective *ijtihād*.

For example, in the decision of the Council of Senior Scholars in Saudi Arabia (1397 AH), the resolution stated: "After discussion and exchange of views, the Council resolved by majority vote that commercial insurance is prohibited …."[2]

Likewise, in the decision of the Islamic Fiqh Council in Makkah (1398 AH), it states: "After thorough study and deliberation, the Council resolved by majority the prohibition of insurance in all its forms …."[3]

Second: Opposite these councils that adopted prohibition by majority vote, there are other reputable councils which did not adopt prohibition at all; rather, they stated that the matter requires further *ijtihād* considering multiple factors. Among these is the Islamic Research Academy in Cairo. In its second conference (1385 AH), the Academy stated in its resolutions: "As for the types of insurance undertaken by companies—whatever their nature—such as liability insurance, insurance for harm incurred by the policyholder from others, insurance for accidents with no liable party, life insurance and its equivalents: the conference resolved to continue studying them by means of a committee combining scholars of *Sharīʿah* with economic, legal, and social

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[1] *Majmūʿ al-Fatāwā* (20/10).
[2] *Fiqh al-Nawāzil* (p. 269).
[3] Ibid. (p. 275).

experts, and to review—before giving an opinion—the views of Muslim scholars across the Islamic world as far as possible."[1]

Third: Anyone who follows the proceedings of many *Fiqh* Councils will find that the terms "consensus," or even "agreement," are far removed from the *'uṣūlī* conception of *ijmāʿ* or *ittifāq*, for several reasons, including:

- The small number of attendees compared to those invited. For example, in the session of the Islamic Fiqh Council convened in Shaʿbān 1398 AH at the headquarters of the Muslim World League in Makkah to study insurance and issue a ruling, more than half the members were absent. Dr. Muṣṭafā al-Zarqā stated in his remarks: "I would like to add that in this first session of this blessed Fiqh Council—where only half of its members have gathered, and the rest were absent or excused due to personal circumstances—it is not appropriate to issue a decision with such speed …"[2]
- Most attendees do not contribute research or written opinions, but attend as listeners to others. This makes the sessions resemble lectures or debates, and the result may be that some participants have not fully reviewed the issue in all its details.

For example, at one of the conferences of the International Islamic Fiqh Academy that discussed the topic of insurance, the participants who contributed written works on the subject included Dr. Wahbah al-Zuḥaylī, Sheikh Rajab al-Tamimī, Sheikh ʿAbdullāh bin Zayd ʿAāl Maḥmūd, Dr. Muṣṭafā al-Zarqā, Sheikh ʿAlī al-Taskhīrī, and Dr. Muḥammad ʿAbdel-Laṭīf al-Farfūr. The majority of attendees, however—including prominent

[1] Fiqh al-Nawāzil (p. 266).
[2] Ibid. (p. 284).

scholars such as Sheikh ʿAbdullāh bin Ḥumayd, Sheikh Ibn Bāz, Sheikh ʿAbdul Quddūs al-Hāshimī al-Nadwī, Sheikh Muḥammad Maḥmūd al-Ṣawwāf, Sheikh Muḥammad Rāshid Qabbānī, and others—did not submit written contributions.

The absence of research papers from most participants makes the discussion closer to oral interventions, which do not allow for properly weighing the evidence or elaborating on discussions in a manner suitable for complex issues like commercial insurance.

Fourth: With all due respect for council-based jurisprudence (*fiqh al-majmaʿī*)[1] and its role in fostering *ijtihād* and clarifying legal issues, I believe that, in its current form, it does not represent jurisprudential consensus in the precise methodological sense. Rather, it resembles voting processes on draft laws, where proposals are presented and a majority opinion is adopted, without necessarily achieving a scholarly agreement based on comprehensive and in-depth study. This is not the nature of *fiqh* research, which relies on clarifying the point of dispute, surveying opinions, detailing evidence, and rigorous discussion at the level of proofs, derivations, and rulings. I would further argue that Islamic jurisprudence, with its heritage and diversity, has historically not been built on collective voting mechanisms; rather, it has developed through the individual efforts of jurists, who may coincide in some rules and principles or differ, but whose contributions collectively constitute a deeply rich and flexible body of law.

Therefore, while *fiqh* academies/councils can serve as supportive and organized frameworks, they do not replace individual *ijtihād*, nor can their pronouncements be considered binding consensus

[1] Incidentally, I myself have been a member of *fiqh* council, and remain in some of them.

(*ijmāʿ*) or authoritative rulings.

Fifth: Disagreement with the majority opinion on a matter does not necessarily indicate that the dissenting opinion is weak, invalid, or inapplicable. Many issues were initially adopted by a single madhhab or scholar, and later became widely followed.

Thus, the decisive factor is the strength of the evidence and the soundness of reasoning, not the number of supporters. *Fiqh* and *ʾuṣūl* texts are filled with examples of issues initially held by a single school or scholar, which later gained wider acceptance due to the strength of evidence, until they became the standard practice. This applies to matters of marriage, divorce, transactions, and even acts of worship. Indeed, some positions now considered established or dominant were originally minority or isolated opinions that later prevailed due to compelling evidence, strong argumentation, or changing circumstances.

From this, the existence of opinions contrary to those of some *Fiqh* councils—or even the majority opinion—on matters of commercial insurance does not, by itself, undermine their scholarly value or invalidate the permissibility argument. We have seen practically how the opinions of jurists on insurance have evolved from the time of Sheikh al-Muṭayʿī and Sheikh Qarāʿah to the present, to the point that advocating permissibility has become equivalent to advocating prohibition. Indeed, those who opposed insurance were compelled by the strength of public interest to allow exceptions, leaving very few types of insurance as clearly prohibited.

If we give practical examples of issues where *fatwā*s and judicial practice shifted to a minority or previously less-favored opinion, we find:

1. The Ḥanafī position on the validity of marriage contracts

without a guardian versus the majority view declaring them invalid: Most countries adopted the Ḥanafī approach in law to validate the contracts of Muslims, avoiding disputes and complications that could arise from the majority opinion and preventing potential disruption of the marriage system.

2. Purification from impurities (*najāsah*) using any pure liquid such as vinegar, rosewater, or other cleansing agents not called "water" (Sanitizer): The Ḥanafīs permitted this while the majority initially prohibited it. Today, this approach is widely practiced, and most people remove impurities such as blood with disinfectants or ointments.

3. Prayers while traveling (*ṣalah al-safar*) and the differing views on the minimum travel distance and duration for shortening prayers: While the four madhhabs linked prayer shortening to specific distances[1] (with variations recorded in *fiqh* texts) and set a maximum duration, scholars such as Ibn Taymiyya, Ibn Ḥazm, and al-Shawkānī permitted shortening for any travel, long or short, as commonly understood. Many contemporary *fatwā* bodies and muftis have leaned toward Ibn Ḥazm and Ibn Taymiyya's opinion because it aligns with the *Sharīʿah*'s objective of ease and facilitation.

4. *Ṭawāf* (circumambulation) of the House (Kaʿbah) by a menstruating woman during Ḥajj, ʿUmrah, or otherwise: All four madhhabs agreed on the prohibition of *ṭawāf* by a woman in menstruation (or a *junub*) if there is no excuse. However, jurists disagreed regarding *ṭawāf al-ifāḍah*

[1] Ibn Ḥajar mentioned that opinions on determining the travel distance reached twenty different views. See: *Fatḥ al-Bārī* (2/566).

(during Ḥajj):

- The majority (Mālikīs, Shāfiʿīs, and Ḥanbalīs) held that a menstruating woman cannot perform *ṭawāf* and must remain in Mecca until she is pure, or if she travels, she must return to complete it.
- The Ḥanafīs allowed a woman in this situation to perform the tawaf of the pillar while menstruating; if she purifies while still in Mecca, she repeats the tawaf, otherwise her tawaf is valid but requires a female camel (*badanah*).
- Ibn Taymiyya held that the *ṭawāf* is valid if she cannot remain until she purifies, and if performed in a state of necessity, it counts, and she exits ihram without penalty.

Many contemporary *fatwā* authorities have adopted Ibn Taymiyya's approach due to its alignment with public interest, considering the complexity of Ḥajj procedures and the multiple obligations involved.

5. The Ruling on Oaths Involving Divorce

The four juristic schools hold that a divorce suspended upon the occurrence of a specified condition (*ṭalāq muʿallaq*) takes effect decisively once that condition is fulfilled. They also hold that this type of oath is not nullified by *kaffārat yamīn*; rather, the individual must either uphold his oath, or else violate it, in which case the divorce takes place in the manner he swore upon. His intention is of no legal consequence—whether he intended actual divorce, threat, or otherwise.

Ibn Taymiyyah, however, held that the matter is determined by the intention of the one swearing by divorce. If he intended

divorce, then it is treated as divorce; but if he intended an oath (*yamīn*), then it is treated as an oath. Thus, either what he swore upon occurs, or he violates it, in which case *kaffārat yamīn* becomes due, and divorce does not take effect if his intention was that of an oath.

Many contemporary *muftīs* and several *Fiqh* Councils inclined toward the view of Ibn Taymiyyah, due to the widespread prevalence of corruption, the carelessness of people in this matter, and the common use of divorce as a form of oath—an unsound social practice among many.

6. Likewise, is the view held by Abū Thawr, followed by Ibn Taymiyyah, regarding the permissibility of selling olives for olive oil, selling sesame seeds for sesame oil, selling grape juice for grapes, and selling milk for clarified butter. Their reasoning is that all these items, through processing, lose the characteristic of being a "staple food" (*qūt*), and thus *tafāḍul* (disparity) becomes permissible, meaning the two are no longer treated as one usurious (*ribawī*) category.

The Ḥanafīs agreed only when the excess amount in the exchange was oil, and they considered the difference as compensation for the *thajīr* (the olive residue).

Meanwhile, the majority prohibited this type of transaction, considering it a form of *ribā*, arguing that processing does not eliminate the underlying cause of prohibition.

Yet many contemporary *muftīs* leaned toward the position of Abū Thawr and Ibn Taymiyyah because of its benefit to the market and its facilitation of commercial transactions.

A similar example is the disagreement regarding the sale of crafted gold for cash on a deferred basis, or the sale of crafted

gold for gold with disparity, on the grounds that craftsmanship removes it from the category of "currency" (*thamaniyyah*). We previously discussed the various juristic views on this issue.

This view has also become more widely adopted in *fatwā*, despite being contrary to the positions of the four schools, which maintained that such items remain within the category of *ribawī* goods.

These examples—and many others that we have refrained from mentioning to avoid undue length and tedium—demonstrate what we stated at the outset: that disagreeing with the majority view, when such disagreement exists, does not necessarily imply that the opposing opinion is weak or anomalous. Indeed, circumstances may change such that what was previously the less-preferred view becomes the stronger one in practice and in *fatwā*.

Third Benefit

A Commentary on the Excessive Number of Exceptions to the Principle of Prohibition

The default principle for establishing rulings in the *Sharīʿah* is that the legal maxim should come in a general, stable form that applies comprehensively to all cases and particulars of the issue, such that nothing is excluded from it except what is supported by valid evidence that rises to the level of compelling necessity, or a dire need that takes the ruling of necessity.

However, when exceptions proliferate across multiple sub-issues of the same topic, and their scope expands to the point that they cover a large portion of the principle's applications, this becomes an indication that the default principle was not built upon a solid foundation, and that the maxim itself requires re-articulation or re-formulation. This is because the abundance of exceptions weakens the universality of the default principle and exposes its shortcomings.

For this reason, the *uṣūlī* scholars have established that resorting to exceptions is only permissible in the narrowest limits, and that when exceptions become numerous, this indicates that the default principle is in need of methodological reassessment.

Even in the field of verbal exceptions, linguistic convention does not permit absolute or nonsensical exceptions. For example, it is invalid to say: "I gave you ten dirhams—except ten dirhams."

Al-ʾĀmidī, al-Zarkashī, and others related consensus on the invalidity of a total exception—meaning an exception that removes all members of the category from which the exception is

made—considering this a type of absurdity that cannot be attributed to rational speech.

Thus, if someone were to say, "My wives are divorced—except four," then all of them would be deemed divorced and the exception would carry no weight.

And if someone said, "I owe one thousand dirhams—except one thousand dirhams," he would still be liable for the full amount[1].

Some scholars even invalidated an exception when it equals or exceeds what remains[2].

Al-Zajjāj said: "Exception occurs only when the excluded is little relative to the much." And Ibn Jinnī said: "If someone were to say, 'This is one hundred—except ninety,' he would not be speaking proper Arabic, and his speech would be considered defective and corrupt."[3]

Qāḍī Abū Yaʿlā said: "It is not valid to except most of the amount. Al-Khiraqī mentioned this in the *Book of Acknowledgments*, and related it from Ibn Durustawayh the grammarian; al-Bāqillānī supported this in his *al-Taqrīb fī Uṣūl al-Fiqh*."[4]

Al-Khiraqī stated in his *Mukhtaṣar*: "Whoever acknowledges something and then excepts most of it—meaning more than half—shall be held to the entirety, and his exception is invalid."[5]

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[1] *Uṣūl al-Fiqh alladhī Lā yasa' al-Faqīh Jahluh* (p. 331).

[2] Some scholars restricted the disagreement to the issue of exception from a number. As for exception by formula, they allowed variance—such as one saying, "Give to the people in the house except the wealthy," and if the wealthy are the majority, the exception is still valid.

[3] *Al-ʿUddah fī Uṣūl al-Fiqh* (2/667).

[4] Ibid. (2/666).

[5] *Mukhtaṣar al-Khiraqī* (p. 76).

Ibn Qutaybah al-Dīnawarī said: "It is permissible for someone to say, 'I fasted the entire month—except one day,' but it is not permissible for him to say, 'I fasted the entire month—except twenty-nine days.'"[1]

If this is the case in linguistic convention—which is naturally flexible and admits multiple interpretive possibilities—then what should be said about *Sharī'ah* principles, in which stability and consistency are required so that jurisprudence may be built upon them and rulings may depend on them?

Indeed, the excessive number of exceptions to a *Sharī'ah* principle, or to a ruling established upon *ḥurmah* (prohibition), leads to undermining the principle and to removing from it the very description of being an "original rule."

Uṣūlī scholars discussed whether specifying a general (*'āmm*) expression may reduce it to the smallest possible number, and whether doing so is permissible for most of its members. Āl Taymiyyah[2] said in *al-Musawwadah*: "It is permissible, according to our scholars, to specify a general expression until only one instance remains. Abū Bakr al-Qaffāl and Abū Bakr al-Rāzī prohibited this, saying: It is not permissible to reduce it below the minimum level of plurality except by means that would also allow abrogation; and this is, in my view, more correct. Al-Jūwaynī stated that what we have chosen is the position of the majority, saying: The majority of jurists have held that plural expressions are explicit in denoting plurality and do not admit reinterpretation."[3]

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[1] *Al-'Uddah fī Uṣūl al-Fiqh* (2/668).

[2] We said: "Āl Taymiyyah" because the grandfather, the father, and the grandson all contributed to its authorship.

[3] *Al-Musawwadah* (pp. 116–117).

He continued: "Qāḍī Abū Yaʿlā stated in *al-Kifāyah* that it is not permissible to specify all instances of a general expression unless a 'large number' remains… I say: This is the position chosen by Abū al-Ḥusayn al-Baṣrī and the author of *al-Maḥṣūl*, and it is correct for one who understands it. Ibn Burhān related from al-Qaffāl the same as the first view, and said: It is the supported position. Most Muʿtazilites said: It is not permissible to specify it down to one instance; rather, a significant number must remain, though its exact quantity is not fixed but known through contextual indicators. Al-Ghazālī chose the view of al-Rāzī."[1]

Abū al-Ḥusayn al-Baṣrī stated regarding excepting "most": "The stronger view is to prohibit this in all expressions of generality, and to require that they refer to a significant number—even if the precise quantity is unknown."[2]

Imām Abū Yaʿlā explained the rationale for prohibiting the excepting or specifying of "most," saying: "For if it were permissible to except most, it would be permissible to except all. Do you not see that since specification is permissible for most of a general expression, it would then be permissible for all of it—which would amount to abrogation? Since total specification is impermissible, specification of most is likewise impermissible, because the majority resembles the whole."[3]

What is noteworthy regarding the issue of commercial insurance is that when those who prohibit it confronted the practical difficulties of real-world application, and the hardship, loss of rights, and extensive disagreement that follow from declaring it *ḥarām*, they resorted to making exceptions to the original

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[1] Ibid. (p. 117).
[2] *Al-Muʿtamad* (1/236).
[3] *Al-ʿUddah fī Uṣūl al-Fiqh* (2/668).

forbiddance, permitting numerous forms of commercial insurance and other related contracts—until the exceptions came to outweigh the principle itself.

They permitted cooperative insurance (*al-taʾmīn al-taʿāwunī*) despite its containing *muʿāwaḍah* (exchange/consideration).

And they permitted social insurance (*al-taʾmīn al-ijtimāʿī*) despite its involving *muʿāwaḍah* and compulsion.

And they permitted automobile and vehicle insurance on the grounds that it is mandated by the state and imposed by governmental authority.
And they permitted health insurance due to its pressing public interest and its general need, which takes the ruling of necessity.

And they permitted insurance connected to a primary contract—even when it contains the same *gharar* (uncertainty) found in the original—such as insurance on electrical appliances, telephones, and maintenance contracts tied to the purchase of an item, claiming that what is tolerated in the subsidiary is not tolerated in the principal, and by analogy to the permissibility of selling fruit as a subsidiary to the tree despite *gharar* and vagueness.
And some among them permitted life insurance if granted by the company or by one's employer as a form of gratuity, considering it a category of donation (*tabarruʿ*).

Thus, the exceptions soon multiplied and diversified until, in practice, they came to include most forms of insurance.

These exceptions, without doubt, weakened the theoretical framework built upon the absolute prohibition of commercial insurance. A better course for the prohibitors would be to state conditional permissibility if they do not choose to state absolute permissibility.

And the view of conditional permissibility—subject to precise criteria—is methodologically more coherent and closer to juristic analysis in *uṣūl al-fiqh*, while its practical outcome aligns more closely with the objectives of the *Sharīʿah* than either absolute prohibition or complete permissibility.

Fourth Benefit

The Invalidity of Differentiating Between Similar Cases in Ruling

It is well known that the *Sharī'ah* came with uniting what is similar and distinguishing between what is different; thus, a thing takes the ruling of its counterpart and is not given the ruling of its opposite.

Concerning this, the Exalted said: "So do you believe in part of the Scripture and disbelieve in part?"[1]

Ibn al-Qayyim said: "As for His legislative command-based rulings, all of them follow this pattern: you find them establishing equality between similar cases, attaching each counterpart to its like, and evaluating each matter by its equivalent."[2]

Thus, differentiating between similar cases without a legally significant distinction is a type of contradiction and arbitrary judgment without authority.

In light of this, the methodological flaw becomes evident in the practice of those who permitted the contract of social insurance implemented in most Muslim countries while prohibiting commercial insurance, even though both rest upon the same foundation: periodic financial contributions in exchange for the commitment of the guaranteeing party to compensate at a certain threshold or upon the occurrence of a risk. Social insurance includes liability insurance, personal insurance, and life insurance.

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[1] [Al-Baqarah: 85].

[2] *'I'lām al-Muwaqqi'īn* (2/330).

The resolution of the Council of Senior Scholars in Saudi Arabia issued in 1397 AH stated: "Drawing an analogy between commercial insurance contracts and the retirement system is invalid, for it is an analogy with a material difference. What is given in retirement benefits is a right undertaken by the ruler due to his responsibility toward his subjects. In disbursing it, he considered the service rendered by the employee to the nation and established a system that takes into account the interests of those closest to the employee and the likelihood of their need. Thus, the retirement system is not of the category of financial exchanges between the state and its employees. Accordingly, there is no resemblance between it and insurance, which is among the contracts of commercial financial exchange through which companies aim to exploit policyholders and profit from them through impermissible means. What is given in retirement cases is a right undertaken by governments responsible for their subjects, disbursed to those who have served the nation as a recompense for their contribution and in cooperation with them in return for their cooperation with the government through their physical and intellectual efforts and the great portion of their time spent in advancing the nation."[1]

If we set aside the exhortative tone appearing at the end of the statement—such as references to the cooperation of the nation and recompensing good with good—since such phrasing could be said about any form of insurance in view of its benefits and returns to the insured, then the moral and emotional framing used to distinguish between structurally similar contracts does not resolve the juristic problem; rather, it increases its vagueness. This is because the *Sharī'ah*-based criterion in judging contracts is not emotional rhetoric but the fulfillment of *Sharī'ah*

[1] *Fiqh al-Nawāzil* (pp. 272–273).

conditions within a contract of exchange (*mu'āwaḍah*) or a contract of donation (*tabarru'*). Hence, limiting the distinction to this type of discourse is no more than a post-hoc justification for a pre-existing position, not a juristic foundation adequate to differentiate between what is labeled "social insurance" and what is labeled "commercial insurance."

Here, briefly, I will demonstrate the extent of equivalence between the two types, and indeed I will show that the contract of commercial insurance is more deserving of permissibility than social insurance.

1. Similarity in the Nature of the Contract

Whoever examines the nature of both commercial insurance and social insurance will find that they share the following characteristics:

- Both are contracts of *mu'āwaḍah* (financial exchange): the premiums are given in return for compensation.
- Both are contracts of adhesion: for the insurer (the insurance company or the state) prepares the insurance contract in advance, and the role of the client is limited to acceptance. Yet it is noticeable that the degree of adhesion in social insurance is stronger than in commercial insurance.
- Both are originally consensual contracts: for offer and acceptance are presumed. However, formality in social insurance is more apparent, for the insured employee cannot reject it; thus, it is closer to formality than to consenting.
- Both are contracts extending over time: they last for a defined period during which the insured risk may occur.

- Both are contracts based on good faith: neither party may conceal essential information from the other that affects the contractual process, otherwise the contract is invalid.

2. Similarity in the Presence of *gharar*

The *gharar* (uncertainty) taken by the prohibitors as the cause for forbiddance of commercial insurance exists in the social insurance system without any meaningful difference:

- Vagueness regarding what is given and what is received.
- Vagueness regarding the term.
- Vagueness regarding whether the benefit will materialize in cases such as death, disability, or illness.

3. Similarity in the Claim of Gambling

The prohibitors likened commercial insurance to gambling on the basis that the insured may pay premiums for many years and receive nothing if the risk does not occur, while he may receive a large sum far exceeding his contributions if the risk does occur.

The exact same condition exists in the social insurance system. The contributor may receive more than he paid—especially if he lives for a long period or if benefits continue for his wife and unmarried daughters, as well as in the case of accidents and similar situations. And he may receive less than he paid if he dies early without an heir or beneficiary.

4. Similarity in the Claim of *Ribā*

The prohibitors claimed that commercial insurance involves *ribā al-faḍl* (usury of surplus) if the compensation is received later in an amount greater than what the insured paid, and involves *ribā al-nasī'ah* (usury of deferment) if it is delayed.

This is exactly the case in social insurance: the employee may receive an immediate compensation exceeding what he contributed if an accident occurs, or he may receive it by deferment if he waits for the pension after forty years of service.

5. Similarity in the Claim That It Is "the Sale of a Debt for a Debt"

The prohibitors argued that commercial insurance is nothing but an exchange of money now for money later.

In reality, although this claim has been shown to be invalid throughout the book, its invalidity is even more apparent in social insurance: financial exchange is the essence of the pension system, whereas commercial insurance offers its services in the form of benefits or financial compensation. Social insurance, however, consists solely of monetary compensation. Thus, if we were to take this as a criterion for the ruling, social insurance would be more deserving of prohibition.

6. Similarity Regarding Liability

The prohibitors claimed that commercial insurance obliges the company to guarantee a risk it did not cause. Yet this is seen equally in social insurance, for the state did not cause the death, disability, or illness for which it commits itself to provide compensation.

7. Similarity Regarding Funding Mechanisms

In both cases, the compensation fund is financed by participant premiums. The supposed state support in social insurance is paralleled by the investment projects of commercial insurance companies.

The *takāful* (mutual-assistance) aspect is clear in both forms,

since the group compensates some of its members.

As for the differences, they are either non-influential in the nature of the contract or they tend to favor the permissibility of commercial insurance more than social insurance. This is clarified as follows:

Differences

• Concerning the responsible party:

In commercial insurance, it is the insurance company—an authority outside the control of the insured. Likewise, in social insurance, it is the state—also an authority outside the control of the insured. The difference is that the company seeks profit, whereas the state claims that its aim is the protection of the insured. Yet in reality, states benefit from social security funds in several ways:

- Borrowing from social security funds.
- Investing them—or portions of them—in sovereign funds or national companies.
- Using these funds at times to cover budget deficits.
- Reducing governmental burdens in assisting the needy and the elderly.

Thus, the claim that insurance companies profit while states do not is a claim without evidence, contradicted by observable reality. Indeed, some states have publicly declared bankruptcy and consequently nullified debt claims, including domestic debts.

• Concerning compulsion:

The default principle in commercial insurance is that it is voluntary in most of its forms, though the state may mandate

some of it. Social insurance, however, is compulsory for all employees or for specific categories, and the individual has no ability to opt out except by leaving employment—especially in Muslim countries.

• Concerning the contractual relationship:

Commercial insurance establishes a direct relationship between insurer and insured, allowing for cancellation of the contract or modification of its terms.

In social insurance, however, there is no room to modify terms or change benefits.

• Concerning the beneficiary:

In commercial insurance, the beneficiary is the insured or any person he designates, and anyone may benefit from the policy.

In social insurance, there is no such freedom. The beneficiary has no right of bequest here; rather, the recipients are limited to certain heirs and in specified forms, and only employees and workers may participate.

• Concerning flexibility:

Commercial insurance is more flexible with respect to the type of coverage, the conditions of the contract, and its duration. Social insurance is less flexible, changing only by a general legislative decision.

Accordingly: if the forms of social insurance—despite their vagueness, *gharar*, compulsory nature, and weak contractual relationship—have been deemed permissible by the majority of contemporary jurists out of consideration for public interest or in response to societal need, then commercial insurance is more deserving of permissibility, due to its consensual nature, clarity

of rights and obligations, transparency of contractual terms, linkage of benefit to consideration, and its realization of valid objectives of mutual support, guarantee, and compensation for losses.

Moreover, if the *Sharīʿah* has permitted matters involving even greater *gharar* and further from the standards of contractual balance, then it is more fitting that it permit what is closer to the objectives of contracts and the fairness of conditions. This follows from the principle of *a fortiori* reasoning (*qāʿidat al-ʾawlā*), upon which the jurisprudence of objectives and the branches of legal verdicts in contemporary issues are built.

Equality between analogous cases is an established principle in reason and in the *Sharīʿah*: what is permissible in one of two counterparts cannot be forbidden in its like except with evidence. Therefore, prohibiting commercial insurance while permitting its social counterpart—despite their similarity in form, causes, and contractual nature—is a contradiction in method and a flaw in assigning rulings to their consequential descriptions.

I also say: combining the principles of *maqāṣid*, the rules of preference (*tarjīḥ*), and consideration of the jurisprudence of contemporary reality requires reviewing particular rulings in the light of the overarching principles of justice, coherence, and consistency—not on the basis of fragmented formal classifications or selective, restrictive reasoning.

Fifth Benefit

The Claim that Commercial Insurance Companies Exploit People

One of the claims repeated by those who forbid commercial insurance is that companies exploit people's need for security and thereby achieve large profits. Here I would like to say:

1. Meeting People's Needs Does Not Mean Exploitation

Islamic jurisprudence recognizes that *ḥājah* (need) may serve as a basis for legislating contracts that may appear imbalanced on the surface, due to considerations of public or private interest. For example, in the *salam* contract we find that the seller receives payment in advance due to his need and benefits from immediate liquidity in exchange for a deferred good. Yet this is not considered exploitation, because the buyer may also benefit if he receives the good at a price lower than the market value.

A commercial insurance company does indeed benefit from the money of the insured through investment, and there may be a difference between the premiums and the compensation. But in return, it performs an important function for the insured who needs financial security, as well as for the national economy.

2. Commerce by Nature Seeks Profit

Achieving profit is the very purpose of all sales, and Allāh has permitted lawful gain and profit. If we were to prohibit certain trades on the basis of alleged exploitation, we would have to forbid trading in basic necessities such as food, drink, and medicine—goods upon which people's lives depend. This would render such necessities common property like water, air, and pasture, as mentioned in the Sunnah.

What is forbidden in *Sharīʿah* is profit arising from deception or

from committing a prohibited act. As for what is not prohibited, it is permissible—and may even be recommended.

3. The Extraordinary Profits Mentioned by Opponents Are Not Always Real

To illustrate this, I will take as an example a large country— the United States of America—given that it is the largest capitalist liberal system in the world.

Based on data from:

- S&P Global Market Intelligence (2025)[1]
- Verisk and APCIA (2025)[2]
- Insurance Information Institute (Triple-I)[3]
- NAIC (National Association of Insurance Commissioners)[4]

we can form a realistic picture of the nature and type of profits achieved by insurance companies. But before listing the numbers, we should understand—very simply—how insurance companies assess profit and loss.

Insurance companies measure underwriting profit through what is called the Combined Ratio:

- If it is below 100%, the company is achieving underwriting profits[5].
- If it is above 100%, the company is incurring underwriting

[1] A reliable source in financial and insurance studies.
[2] A specialized data-analytics company serving the global insurance sector.
[3] A U.S. non-profit research institution that provides studies and analyses of the insurance market.
[4] The official regulatory authority for the insurance market in the United States, whose data is government-certified.
[5] Meaning: out of total premiums, and investment returns are not included.

losses.

If we look at commercial insurance lines, the results for 2024 were as follows:

- Auto insurance: Combined Ratio of 107.2%
- General liability: Combined Ratio of 110–115%
- Certain medical liability: Combined Ratio of 103%
- Property insurance: Combined Ratio of 77–93%
- Workers' compensation: Combined Ratio below 100%

The combined ratio for all commercial lines together was 96.3%.

If we add personal lines to commercial lines, the overall ratio according to S&P Global is 99.9%.

This means that insurance companies achieved a very slight underwriting profit margin—or at least nearly broke even between premiums and claims after expenses.

Although the insurance industry overall achieved, in 2024, a post-tax surplus of around $170 billion, most of this came from investment returns, not from underwriting returns (premiums).

Given this data, the claim that commercial insurance companies engage in systematic exploitation or achieve enormous windfall profits does not withstand analysis of the actual figures issued by specialized institutions. The data shows that most companies barely achieve a limited underwriting margin (less than 5%), and some lines record continual losses. This confirms that insurance activity—under competition and regulatory oversight—is not a field of exorbitant profiteering, but a highly risk-sensitive commercial sector subject to volatility.

If exorbitant profit were a criterion for permissibility or

prohibition, then those who forbid commercial insurance would have to forbid pharmaceutical companies—which achieved net profits between 20–30% in 2024—and likewise military-industrial companies, which achieve extraordinary profits, both of which profit from people's suffering, pain, and even threats to their lives. Such moral criticism applies more to them.

If the *Shar'ī* or moral ruling must be based on verifying the nature of the activity and its outcomes—not on impressions about market size—then the insurance sector, despite its critiques, cannot be described as a domain of exploitation or monopoly, neither in *Sharī'ah* nor in reality, especially when compared with other sectors that profit from illness, war, and hunger.

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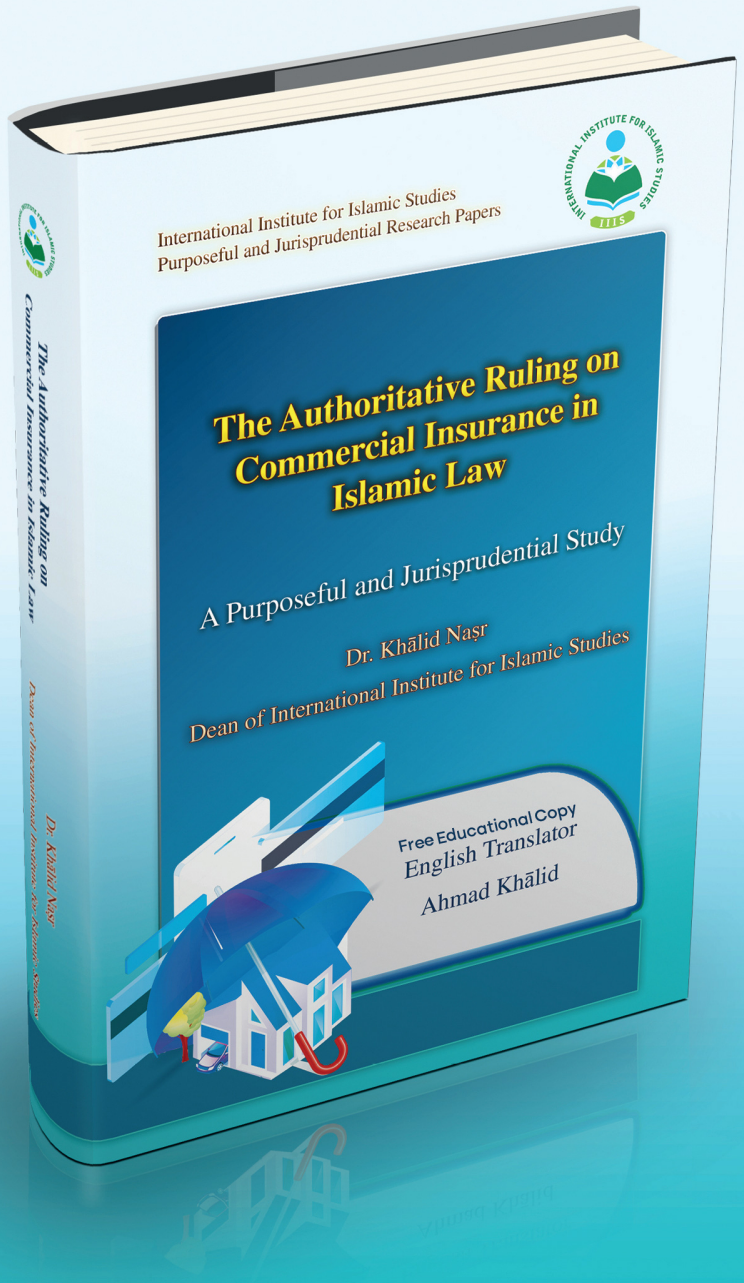
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