

SOURCES OF LAW AFFECTING 'TAKAFUL' (Islamic Insurance)

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This paper highlights various sources that could form the basis of law governing Islamic insurance or takaful. The paper covers primary sources of Islamic law, such as, the holy Qur'an and Sunnah and secondary sources, such as, Ijma, and Ijtihad. Other bases of law, such as, maslahah mursalah, urf, precedence etc. are also examined.

An insurance policy remains valid if none of its aspects contravene the *Shari'ah* principles.² Hence, every element of an Islamic insurance policy should absolutely be based on the *Shari'ah*.³ This section attempts to highlight the sources of Islamic insurance contracts which may be divided into two categories:

Sources In General

The general sources of Islamic law begin with the holy *Qur'an* and the *Sunnah* or the Traditions of the Holy Prophet (*s.a.w.*). These two are regarded as the principal sources of Islamic law. Other secondary sources of Islamic law indeed should strictly be based on these two primary sources. This paper attempts to highlight the sources of Islamic insurance contracts, which may be divided into two categories:

*"O you who believe! Obey Allah (s.w.t.) and obey the Prophet (s.a.w.) and those charged with authority among you. If you differ in any thing among yourselves, refer it to Allah and His Messenger, If you do believe in Allah and the Last Day: That is best, and most suitable for final determination."*⁴

The Holy Qur'an

There are five hundred verses in the Holy *Qur'an*, which deal with legal sanctions.⁵ There are indeed a number of Divine injunctions in the Holy *Qur'an*, which justify the validity of an insurance contract. The contract of insurance contains the elements of mutual co-operation.⁶ It is a binding promise, which binds both the insurer and the insured, based on the general principle of contract.⁷ It also contains the elements of alleviation of hardships and provision of material security and assistance for those who face unexpected risk and peril so to ensure for them a comfortable life.⁸ All these elements of a contract of insurance are justified by the *Qur'anic* principles. Thus, the Holy *Qur'an* is the principal guidance to provide an instrumental justification for the application of insurance contract, as the Holy *Qur'an* is a plain statement and guidance for mankind in order for them to be successful in both worlds. This is indicated in the following *ayat* of the holy *Qur'an*:

*"... it is a plain statement to man, a guidance and instruction to those who fear Allah (s.w.t.)...."*⁹

The above provisions render an opportunity for mankind to practise *inter alia*, insurance policy so long as one does not violate the Divine sanctions either directly or indirectly.

The Sunnah

The *Sunnah* or Traditions of the Holy Prophet (*s.a.w.*) is a second source of Islamic law immediately after the Holy *Qur'an*.¹⁰ As regards the justification of an insurance contract and practice, there are indeed numerous traditions justifying the validity and permissibility of its concept and practices. For instance an insurance policy embodies the concept of *Tawakkul* whereby one should strive hard in overcoming one's unexpected future risk or

peril before leaving one's fate and destiny in the hands of *Allah* (s.w.t.). Such a concept has been justified in one of the traditions of the Holy Prophet (s.a.w.), which reads:

“... Narrated by Anas bin Malik ®, the Holy Prophet (s.a.w.) told a Bedwin Arab who left his camel untied trusting to the will of Allah (s.w.t.): Tie the camel first and then leave it to Allah (s.w.t.)...”¹¹

Moreover, an insurance policy aims at protecting the insured from future material constraints upon the occurrence of a particular unexpected future risk. Such idea of protection for those who are in need is justified by the following Tradition of the Holy Prophet (s.a.w.):

“Narrated by Abu Huraira ® the Holy Prophet (s.a.w.) said: whosoever removes a worldly hardship from a believer, Allah (s.w.t.) will remove from him one of the hardships of the day of judgment. Whosoever alleviates from one, Allah (s.w.t.) will alleviate his lot in this world and the next...”¹²

There are also other essential aspects of an insurance contract justified by the *Sunnah*, such as the fact that an insurance policy originated from the ancient Arab custom of *al-Aqilah*, which was approved by the Holy Prophet (s.a.w.) during his time.¹³ Moreover a life insurance policy aims at providing, in advance, material security for the offspring of the deceased (assured) and this is also justified by one of the Traditions of the Holy Prophet (saw) as follows:

“Narrated by Amir bin Saad bin Abi Waqqas ®, The Holy Prophet (saw) said verily it is better for you to leave your offspring wealthy than to leave them poor asking others for help...”¹⁴

Practices of the Companions

Insurance originated from the doctrine of *al - Aqilah*. During the later stage of the period of the second caliph, *Sayyidina Umar*, ® the Caliph, directed that in the various districts of the State, lists of Muslim brothers-in- arms should be drawn up. The people whose names were contained in those lists owed each other mutual assistance or co-operation and had to contribute to the payment of *diyat* (bloodwit) for manslaughter committed by one of their members of their own tribe.¹⁵ This was how *Sayyidina Umar* ® developed the practices of the doctrine of *al-Aqilah*.

Ijtihad and Consensus of Opinions among the Islamic Scholars

The idea, meaning and legal characteristics of an insurance policy as practised in the world of today had first been discovered by the famous Hanafi lawyer *Ibn 'Abidin* (1784 - 1836) probably in early nineteenth century. The ruling of Ibn Abidin is therefore quoted as follows:¹⁶

“And from our noting, the question about which a large number of inquiries are being made, is also answered and it is that when merchants charter ship owned by the subject(s) of belligerent state, then, together with the charges for the ship, another amount is separately paid to the same or another subject of the belligerent state. This payment is known as “Sokra” or insurance premium and its payment means that in case goods on the particular ship catch fire, or if the ship capsizes or if the person who received insurance premium, is responsible to indemnify the merchant(s) who incurred the loss. An agent of the person receives the insurance premium, resides in the coastal cities of our country as a protectorate, after obtaining permission from the government. He receives the premium amount on behalf of his principals and, in the case of destruction of goods, indemnifies the insured for entire loss”.¹⁷

From the above rulings of Ibn 'Abidin, it is understood that a merchant used to charter a ship from the respective ship owner with a mutual understanding that the charterer would pay an additional amount known as *sukra* (a premium in today's practice) in which, if the ship faced any form of risk, the owner, in consideration of the *sukra*, would provide a reasonable indemnity for the loss suffered by the merchant (charterer). The *sukra* used to be collected by a nominated agent on behalf of the principal (ship owner) and he (agent) would also settle the indemnity (claimed by the merchant) on the owner's behalf.

Thus, these rulings could be a basis to justify the Islamic insurance (*Takaful*) practice of today's world. For example, in *Takaful*, the participants resemble the merchant in the above ruling and contributions paid by the participants resemble *sukra*, while the indemnity provided against the risk is similar to the indemnification in *Takaful* practice. Also, the mutual understanding held between the merchant and the ship owner is like a *Takaful* policy agreement between the participants and the operator.

Mufti Mohammed 'Abduh also agreed to the validity of insurance practices generally.¹⁸ In 1906, the Mufti of Egypt, Sheikh Muhammad Baqit also accepted the idea of insurance as laid down by Ibn 'Abidin.¹⁹ There are other Islamic scholars who did not oppose the idea of insurance, such as Muhammad Musa, Ahmad Ibrahim, Khan Muhammad Yusuf Musa, Ahmed Taha Sanusi, Abdur Rahman Isa, Ali Khafif,²⁰ Mustafa Ahmad Zarqa, Dr. Nejatullah Siddiqi to name a few contemporary Islamic scholars who agree on the validity of insurance. However, despite agreement among the above-mentioned Muslim scholars, there are some contemporary Muslim scholars who refuse to accept insurance especially life insurance, based on certain objections. They object to the elements of *garar*, *riba*, and so on.²¹ The diversification of views among the '*ulama* on this issue will be highlighted in Chapter Three of this work.

Analogical Sources

Analogical sources such as *qiyas*, *istihsan*, and *istishab* could also be used as further justification for the idea and practice of insurance, so long they do not contravene the sanctions of the Holy *Qur'an* nor the *Sunnah* of the Holy Prophet (*s.a.w.*). *Allah (s.w.t.)* advised people to come up with analogical decisions, if necessary, so long as such analogical decisions are not contrary to the Holy *Qur'an* and the *Sunnah*.²²

Masaleh al-Mursalah

The insurance contract we see today was not exactly practised during the time of the Holy Prophet (*s.a.w.*). However, life, necessity, and the status of human beings has changed with the passing of time and the necessity to practice insurance arose to suit the changing environment, in the sense that there is an urgent need to find a way of providing material security for those who are suffering in the society due to unexpected loss, damage or peril. Hence, insurance is necessary in the public interest so that the victim can be rescued from an unexpected risk, and thus, it is justified by the doctrine of *Masaleh al-Mursalah*. Even though the practice of insurance could also be based on the said doctrine, its validity is still subject to compliance with the divine principles laid-down in the Holy *Qur'an* and the *Sunnah* of the Holy Prophet (*s.a.w.*). The significance of an insurance practice based on the doctrine of *Masaleh al-Mursalah* is, *inter alia*, to ensure a comfortable life, which is also a wish of *Allah (s.w.t.)* as evident in the following *ayat*:

“ *Allah (s.w.t.) intends every facility for you; He does not want to put you to difficulties....* ”²³

Urf

'*Urf* means custom, practice or usage of the community. An '*Urf* could also be used as a justification of a particular matter provided that a '*Urf* does not contravene any divine sanction. The initial idea of Islamic insurance practices originated from the Arab's tribal custom known as *al-Aqilah*, which was approved by the Holy Prophet (*s.a.w.*) in a dispute between two women from the tribe of *Huzail*.²⁴ Hence, it is clear that the '*Urf* (custom) of *al-Aqilah* practised by the ancient Arab tribes, and approved by the Holy Prophet (*s.a.w.*) could stand as a valid justification for the validity of insurance.

Fiqh

There are provisions in the *Fiqh* which deal with the practices of insurance. For instance, *Sayyed Sabeq*, in his book *Fiqh al-Sunnah*, under the section of '*Shirkatut Tameen*' discusses the validity of insurance contracts. An insurance contract is based on the general principles of *Al-Aqd al-Mudharabah*, *al-Wakalah*, *al-Sharikah*, and

so on, which have also been discussed in detail in his book.²⁵ There are many other *Fiqh* sources²⁶, which discuss directly or indirectly, partly or wholly, the relevant aspects of insurance.

Relevant Literatures of the Islamic Scholars

There are, in fact, many Islamic scholars who uphold the validity of insurance, as well as the essential procedures and solutions to its practices. For example, in 1982, Abdullah bin Jaid al-Mahmoud wrote a book on insurance entitled *Ahkam 'Uqudut Tamin wa Makaniha Min Shariat al-Deen*; in 1989, Saad Abu Zaid wrote *al-Tamin binal Khator wal Ibahat*, while in 1984, Mustafa Ahmad Zarqa wrote *Nizam al-Tamin*. In 1969, Dr. Muhammad Muslehuddin wrote *Insurance and Islamic Law* while Dr. Nejatullah Siddiqi wrote *Insurance in an Islamic Economy* in 1985.

There are also a number of articles, which have been written by various Islamic scholars. Prof. Shamir Mankabadi who wrote "*Insurance and Islamic Law*" published in *Arab Law Quarterly* 1989, is an example. Prof. E. Klingmuller who wrote "*The Concept and development of Insurance in Islamic countries*" published by *Islamic Culture* in 1969, is an example of a non-Muslim scholar.

These works written by Islamic scholars portray the validity of insurance practices in the contemporary *Muslim* world.

Acts of Parliament

There are several *Shari'ah* based insurance companies established and operating today in the contemporary world, for example, in *Malaysia, Sudan, Brunei, Qatar, and Saudi Arabia*, to name a few. These Islamic insurance companies have been established and operate based on the *Shari'ah* based enactment and regulations, approved by the Parliaments of the respective countries. A clear example, among such enactment and regulations is The *Takaful Act* (Malaysia) 1984 (Act 312) which is one of the Acts of Parliament aimed at controlling insurance practices in Malaysia based on the *Shari'ah* principles.

Rules of the Shari'ah Supervisory Board

Behind every *Shari'ah* based insurance company, there is a Council or Board called the *Shari'ah Supervisory Board*. This Supervisory Board functions as the supervisor of the Islamic Insurance activities run by that particular company to ensure that all these insurance activities operate in accordance with the Divine Principles. For instance, the Malaysian *Takaful* Operation is supervised by a *Shariah Supervisory Council* by virtue of Section 8 (5) (b) of The *Takaful Act* 1984.²⁷ In *Sudan*, moreover, there is a *Shari'ah Supervisory Board* which supervises, *inter alia*, insurance business in the country and it also passed the *Rules of the Shari'ah Supervisory Board* published by the Faisal Islamic Bank of Sudan (n.d.).

Precedents

Precedents could also play a role as one of the sources of insurance law and practice. Some Islamic scholars have given particular decisions on several issues of insurance policy and practice. These may be useful to regulate Islamic insurance practices. For instance, the opinion given by Ibn 'Abidin later became a precedent which influenced *Muftis* in advising the governmental departments and various bodies on insurance matters.²⁸ Mufti Muhammad 'Abduh said on many occasions that insurance policy and practices are valid.²⁹ Besides the precedents set by the independent Islamic scholars, there is also another type of precedent set by the contemporary courts relevant to insurance practices.³⁰ Such precedents could also be considered as a valid source of insurance law.

Unanimous Decision of the Islamic Scholars

There have been numerous conferences on Islamic insurance held worldwide in which Muslim scholars have unanimously agreed on the validity of insurance practices. Some of those conferences are listed as follows:

The Islamic Fiqh Week held in Damascus from 1st - 6th April in 1961;³¹ *The Seminar* held in Morocco on 6th May 1972 which upheld the validity of insurance business with the exception of life insurance business;³² *The Second Conference on Muslim Scholars* held in Cairo in 1965;³³ *The Symposium on Islamic Jurisprudence* held in Libya from 6th - 11th May, 1972;³⁴ *The First International Conference on Islamic Economics* held in Makkah from 21st - 26th February, 1976;³⁵

The Islamic Conference held in Mecca in October, 1976;³⁶ *The First International Summit on Islamic Insurance* held in Dubai on 11th Nov, 1996, and *The Labuan International Summit on Takaful (Islamic insurance)* held in Labuan, Malaysia, on 19 - 20 June, 1997.

Specific Sources

Principles of Contract

An insurance policy binds the parties unilaterally by an offer and an acceptance in reliance on the principles of contract. The fundamentals required in an insurance policy are the parties to the contract, legal capacities of the parties, offer and acceptance, consideration, subject matter, insurable interest and good faith, most of which are found in the general type of contracts. For example, a contract is a promise by an offer and an acceptance, which must be fulfilled as *Allah (s.w.t.)* has commanded to the effect:

*“O ye who believe! Fulfil your obligations.”*³⁷

As for the legal capacity as to age of the parties to the contract of insurance, a minor below the age of 15 (the age of *rushd* or majority or puberty) is not able to buy a policy unless the guardian holds the full supervision over the policy and also the policy should be for the benefit of the minor.³⁸ Thus, the *Takaful Siswa* operated under the Syarikat Takaful Malaysia Bhd. allows an infant between the age of the majority and the fifteenth day of birth to hold a *Takaful* policy for education which is under the supervision of the respective guardian.³⁹ This operational method may be justified by the following Qur’anic sanction:

*“Make trial of orphans until they reach the age of marriage; if then you find sound judgment in them, release their property to them; but consume it not wastefully”*⁴⁰

The requirement of minimum age of the parties in an insurance policy is the same as required in general contract. Hence the above principles and other relevant principles relating to contract are basically applied to the formation of an insurance contract.

Principles of Liability

An insurance policy covers losses arising from the death, accident, disaster and other losses to human life, property or business. The insurer (insurance company) undertakes in the policy to compensate against the losses to the agreed subject matter. Such undertaking is considered as vicarious liability. For instance, in the case of *‘Aqilah* practised in the ancient Arab tribes approved by the Holy Prophet (*s.a.w.*) if a person was killed by another from a different tribe either mistakenly or negligently, this would bring a liability to the members of his tribe to pay blood wit to the heirs of the slain.⁴¹

Moreover, the rights and obligations in an insurance policy mainly arise from the law of contract and tort. For example, in a case of a motor accident, the operator (insurance company) is liable on behalf of the person who causes that accident (i.e. the insured) to compensate the victim. Here, the operator is bound by the terms stipulated in the proposal to pay that compensation under the principles of vicarious liability under the law of Tort.

Principle of Utmost Good Faith

In an insurance contract, for the enforcement of the policy, the parties involved in it should have good faith. Therefore, non-disclosure of material facts, involvement of a fraudulent act, misrepresentations or false statements are all elements which could invalidate a policy of insurance, *Allah (s.w.t.)* says:

“...Do not misappropriate your property among yourselves in vanities but let there be amongst you traffic and trade by mutual good will.....”⁴²

Principles of ‘Mirath’ And ‘Wasiyah’

In a life policy, the assured (Muslim) appoints a nominee who must not be an absolute beneficiary. This decision was given in the *Fatwa* on Succession and Will by The National Council for Muslim Religious Affairs, Malaysia, in 1974,⁴³ and also in *Amtul Habib v Musarrat Parveen* in 1974.⁴⁴ In both *Fatwa* and decision, it was ruled that a nominee in a life insurance policy of a Muslim is a mere trustee who receives benefits from the policy and distributes them among the heirs of the deceased, in accordance with the principles of ‘*Mirath*’ and ‘*Wasiyah*’.⁴⁵ The above *Fatwa* and the case recently gained statutory weight in the Malaysian Insurance Act 1996, which came in force on January 1st, 1997. S167 (1) provides:

“A nominee, other than a nominee under subsection 166 (1), shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the licensed insurer shall be discharged from liability in respect of the policy moneys paid”.

In the light of this provision, it is concluded that the nominee in a policy nominated by a Muslim policyholder should be treated as a mere executor and not as an absolute beneficiary of the policy.

Principles of Al-Wakalah (Agencies)

The appointment of the agent by the insurer and the broker by the insured are of utmost important. In fact, such appointments are widely practiced for the purpose of making the transaction and dealings between the insurer and the insured more effective. The governing principles for the agents and brokers are laid down in the *Mejelle* as follows:

“Wakalat is for someone to put business of his on another and to make him stand in his own place in respect of that business.”⁴⁶

Principles of Dhaman (Guarantee)

In an insurance policy, the insurer undertakes to provide material security for the insured against unexpected future loss, damage or risk. The idea of such guarantee is justified by the principles of ‘*Dhaman*’ or guarantee under Islamic law.⁴⁷ In *Fiqh*, insurance can only be classed under *Dhaman* (guarantee), which is governed by some essential conditions. Among them the guarantor can only take upon himself a liability which has fallen or may possibly fall upon a person or property.⁴⁸ Thus, *Dhaman* or guarantee may only be payable to the victim or if the victim dies, to his legal heirs, according to their respective shares in inheritance.⁴⁹

Principles of al-Mudharabah and al Musharakah

The operation of an insurance policy under *Shari’ah* is in fact based on the principles of *al-Mudharabah* financing, which is an alternative to the contemporary interest-based transaction.⁵⁰ In such financing, one person provides the capital while the other party contributes business skills and both parties mutually agree to share the profits accordingly.⁵¹ However, an insurance policy, is a transaction wherein both parties agree that the participant pays regular contributions and the operator invests the accumulated contributions in a lawful business, in which both the

insured and the operator share the profits in an agreed portion. At the same time, the insurer also undertakes to provide the insured with compensation (in consideration of the paid-contribution) against an unexpected future loss or damage occurring on the subject matter of the policy. This is how the principles of *al-Mudharabah* financing in an insurance policy.

An insurance policy also operates on the basis of the principle of '*al-Musharakah*' as both the operator and the participants are partners in the policy run by the insurance company.⁵²

Principles of Rights and Obligations

An insurance policy is based on the principles of rights and obligations arising from humanity and nature. For instance, it is logical and natural for every person in the society to feel obliged to provide material security and protection as a right for themselves, their property, family, for the poor and helpless widows, and for children against unexpected perils and dangers. Such a natural obligation and right could well be justified by the following Tradition of the Holy Prophet (s.a.w.):

*"Narrated by Saad bin Abi Waqas ® ... the Holy Prophet (s.a.w.) said it is better for you to leave your offspring wealthy than to leave them poor asking others for help....."*⁵³

The Holy Prophet (s.a.w.) had also emphasized the importance of providing material security for widows and poor dependents in the following Tradition:

*"Narrated by Safwan bin Salim ®, the Holy Prophet (s.a.w.) said: The one who looks after and works for a widow and a poor person, is like a warrior fighting for Allah's cause or like a person who fasts during the day and prays all the night...."*⁵⁴

Principles of Humanitarian Law

It is one of the purposes of humanitarian law to inculcate mutual understanding in the community, to protect one against unexpected loss, damage or other forms of risks or hardships. Hence, an insurance policy contributes towards alleviating hardships from a person arising from unexpected material risks, which is of course within the scope of the principles of humanitarian law. This has been justified in the following Tradition of the Holy Prophet (s.a.w.), which reads:

*"Narrated by Abu Huraira ®, ...the Holy Prophet (s.a.w.) said ... whosoever removes a worldly grief from a believer, Allah (s.w.t.) will remove from him one of the grieves of the day of judgment. Whosoever alleviates a needy person, Allah (s.w.t.) will alleviate from him in this world and the next..."*⁵⁵

Principles of Mutual Co-Operation

In a policy, both the operator and the participant mutually agree to lawful co-operation, in which the participant provides capital (through the payments of contributions) to the operator (insurance company), enabling the insurer to invest the accumulated contributions in a lawful business (on the basis of *al-Mudharabah*). Meanwhile, the insurer, in return for the payments of the contributions, mutually agrees to compensate the insured in the occurrence of an unexpected loss or damage or risk on the subject matter. Such mutual co-operation among the parties in an insurance policy has been justified by the Divine principles of mutual co-operation, solidarity and brotherhood.⁵⁶ Allah (s.w.t.) commanded:

*"... co-operate you one another in righteousness and piety"*⁵⁷

Notes:

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²See *Rules of the Shariah Supervisory Board, op. cit.*, p. 12.

³ See also *The Takaful Act (Malaysia)* 1984, p. S. 2.

⁴ *al-Qur'an, Sura an-Nisa*, 4:59.

⁵ Al-Suyuti, *Itqan fi Ulumel Qur'an*, as cited in I doi, Abdur Rahman, *Shariah: The Islamic Law*, A.S. Noodeen, Kuala Lumpur, 1984, p. 36.

⁶ See *al-Qur'an, Surah al-Maidah*, 5:2.

⁷ *al-Qur'an, Surah al-Maidah*, 5:1.

⁸ *al-Qur'an, Surah al-Baqarah*, 2:201.

⁹ *al-Qur'an, Surah al-Imran*, 3:138.

¹⁰ *al-Qur'an, Surah An-Nisa*, 4:59.

¹¹ *Sunan At Tarmizi*, Vol. 4, Cagri yayinlari Istanbul, 1981 in *Kitab-ul Sifatul Qiyamah wa ar-Rakaik al-Wara*, Bab 60, No. 2517, p. 668.

¹² *Sahih Muslim (Arabic), Kitab al-Birr*, No. Hadith 59.

¹² See *Sahih al-Bukhari, Kitab al-Diyat, op. cit.*, Vol. 8, No. 725, p. 478.

¹³ See in Gibb, *Shorter Encyclopaedia of Islam, op. cit.*, p. 29.

¹⁴ See *Sahih al-Bukhari, Kitab al-Diyat, op. cit.*, Vol. 8, No. 725, p. 478.

¹⁵ See in Gibb, *Shorter Encyclopaedia of Islam, op. cit.*, p. 29f.

¹⁶ *Raddu al-Mukhtar, Bab al-Musta'min*, Vol. 3, at p. 345.

¹⁷ Anwar Ahmad Meenai, (trans), *Life Insurance, op. cit.*, p. 48.

¹⁸ See in Mankabady Shamir, "Insurance and Islamic Law", In *Arab Law Quarterly*, Vol.4, 1989, p. 201.

¹⁹ *Ibid.*

²⁰ See in Siddiqi, M.N. "Muslim Economic Thinking: A Survey of Contemporary Literature", *op. cit.*, pp. 216 - 217.

²¹ Among them the opinion of Sheikh al-Azhar which has been appeared in *al-Iqtisad al-Islami*, July, 1995, p. 60.

²² For a detail discussion and analogical sources See, Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, International Institute of Islamic Thought and Islamic Research Institute, Islamabad, 1994, pp. 131-132, 140-143.

²³ *al-Qur'an, Surah al-Baqarah*, 2:185.

²⁴ See "*al-Aqila*", in Gibb, *op. cit.*, p. 29.

²⁵ See Sayyed as-Sabiq, *Fiqh al-Sunnah*, Darul Kitab al-Arabi, Lebanon, 1971, Vol. 3.

²⁶ The literatures which focus on the ruling of *al-Mudharabah*, *al-Musharakah*, *al-Wakalah* and *al-Wadiyah* e.t.c.

²⁷ See *The Takaful Act (Malaysia)* 1984 at S. 8 (5)(b).

²⁸ See Mankabadi, Shamir, *op. cit.*, p. 200.

²⁹ See Muhammad al-Sayyid al-Dusuqi, *al-Ta'min wa Mawaqif al-Shari'ah al-Islamiyah Minhu*, *op. cit.*, pp. 74-77.

³⁰ Among the cases, the decision of *Amtul Habib vs Musarrat Parven* (1974) PLD 185 (SC) in which it was held that the nominee in a policy shall not be regarded as an absolute beneficiary but a mere trustee.

³¹ *Ibid.*

³² See in Mankabadi, *op. cit.*, p. 202.

³³ Hadagha, *op. cit.*, p. 17.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Shawky, Muhammad, *Al-Islam wat Tameen*, p. 14.

³⁷ *al-Qur'an, Surah al-Maidah, 5:1.*

³⁸ Since an insurance policy is a form of a contract, the determination of the legal capacity should also basically be based on the general principles of contract. For the legal capacity in a contract as to age factor see Hamilton, Charles, *The Hedaya, op. cit.* Vol. III, p. 529.

³⁹ See generally, *Sistem Operasi dan Tatacara Pelan Takaful Siswa*, Syarikat Takaful Malaysia Berhad, nd. p. 1 - 3.

⁴⁰ *al-Qur'an, Surah an-Nisa, (4): 6.*

⁴¹ For example, See Uddin M. Musleh, *Concept of Civil Liability in Islam and the Law of Torts*, Islamic Publication Ltd. Lahore, 1982 at 62, See also Niazi Liaqat Ali Khan, *Islamic Law of Tort*, Research Cell Dayal Singh Trust Library, Lahore, 1988, p. 339.

⁴² *al-Qur'an, Surah an-Nisa, 4:29.*

⁴³ [1974] 1 MLJ X.

⁴⁴ [1974] PLD 185.

⁴⁵ See in Billah, M. Masum, *op. cit.*, p. 319.

⁴⁶ See *Mejelle al-Ahkam al-Adliyah* by Tyser (trans.), C.R., *The Mejelle*, Law Publishing Company, Lahore n.d. art 1449.

⁴⁷ The Principle of 'Dhaman' is highlighted in detail in Hamilton, Charles, *The Hedaya, op. cit.*, Vol. II, pp. 318 ff.

⁴⁸ Yusuf, SM., *Economic Justice in Islam*, Sh. Muhammad Ashraf, Lahore, 1977, pp. 92-93.

⁴⁹ See, Government of Pakistan, Council of Islamic Ideology, *Offences against Human Body, (Enforcement of Qisas and Diyat) Draft Ordinance*, 1981, at S.94.

⁵⁰ See Shafi, Mawlana Mufti Muhammad, *op. cit.*, at 36.

⁵¹ See *Mudharabah Companies and Mudharabah bond Control Ordinance 1980* (The Gazette of Pakistan, extra, June 26, 1980, part 1) Article 2(2).

⁵² For further detail, on "Mudharabah" see Niazi, *op. cit.*, at 227ff and for "Sharikah," see p. 420f.

⁵³ *Sahih al-Bukhari, Kitabul Adab, op. cit.*, Vol. 8, No. 725, p. 477f.

⁵⁴ *Id, Kitabul Adab*, No. 35, p. 23.

⁵⁵ *Sahih Al-Muslim, Kitab al-Birr*, 59.

⁵⁶ See *The Takaful Act (Malaysia) 1984*, p. S. 2.

⁵⁷ *al-Qur'an, Surah al-Maidah, 5:3.*