

INSURANCE AND INDEMNITY CONTRACTS FROM THE ISLAMIC POINT OF VIEW

Prof. Dr. Yaşar Nuri ÖZTÜRK*

ÖZET

Sigorta akitlerinin tümü az veya çok, şöyle veya böyle, Kur'an'ın istediği anlamda bir yardımlaşmayı amaçlayan akitlerdir. Veya küçük müdahalelerle bu hale getirilebilecek akitlerdir. Dünyanın hiçbir yerinde hiçbir sigorta aktinin Kur'an'ın yasakladığı türden bir yardımlaşmayı esas aldığı söylenemez. Sapıtma ve istismarlar, elbette ki her zaman, her kavram ve kurumda olabilir. Sigorta, varlık kanunlarına yani kadere bir karşı çıkış değil, bu kanunların yani kaderin açacağı yaralara karşı tedbir almaktır. İslam, Allah'a ve onun koyduğu kanunlara karşı çıkmayı yasaklıyor, tedbir almayı yasaklamıyor. Tedbir almak İslam'ın emridir. İslam'ın emri, İslam'a aykırılık olarak değerlendirilmez. Kur'an, ancak örnek olarak değerlendirebileceğimiz satım (bcy') akitlerinden ayrı olarak (ve elbette ki yine örnek türünden) dayanışma veya güvenlik akti diyebileceğimiz bir başka akit daha düzenlemektedir. Dördüncü sure olan Nisa surisinin 33. Ayeti şöyle diyor; "Yeminlerinizin/anlaşmalarınızın akitle bağladığı kimselere gelince, onların paylarını da kendilerine verin". Ne ilginçtir ki bu ayette, akit kökünden bir fiil yanında anlaşma ve taahhüt ifade eden "el-cyman" (yeminler) deyimini, ayrıca "pay" anlamındaki "nasib" sözcüğü kullanılmıştır. Ayet, bu haliyle sigorta akitlerinin yapısına ve yöntemine son derece uygun bir çerçeveye çizmektedir. Gerçekten de sigorta akitlerinde, taraflardan her biri "pay" almaktadır. Bu pay, konumuz olan ayette "kendi payları" (nasibahum) şeklinde ifade edilmiş ve herkesin payının kendisine verilmesi gerektiği söylenmiştir. Başka hiçbir dayanak olmasa, sadece bu ayet bile sigorta akitlerinin Kur'an'a uygunluğunu kanıtlamaya yeter kanısındayım.

SUMMARY

Insurance covenants are all, to a small or large degree, agreements which are directed towards that very mutual aid which it is the Koran's will to implement. Nowhere in the world is it possible to say that any form of insurance at all falls into categories of mutual assistance which the Koran proscribes. Of course every institution always has its irregular deviants and exploitations. Insurance is not opposition to the laws of existence and of fate, but rather is a means to ease difficulties. Islam forbids opposing Allah and principles but never forbids that we take necessary precautions. Guarding against what could be avoided is commanded by Islam. The best of Islam cannot be evaluated as a contradiction to Islam. In addition to the classical contracts the Koran also formulates some kind of solidarity or mutual security pacts. The fourth sura, called Nisa-Women, in the 33rd verse states thus: "Give their share **unto those persons with whom you covenant or draw up a deed.**" How interesting that in this verse alongside a verb from the root "akd" (contract) there is also "al-ayman", which is used to express covenanting and engagements and the word "nasib" (share or portion). The verse shows an insurance contract in which both parties receive a share. The verse as our subject uses the term "**nasibahum**" (their portions) meaning that everyone has to be given his due. In my opinion, even if there were no other proof, this verse would be sufficient to declare that insurance deeds were in keeping with the Koran.

* Dean of the Faculty of Divinity, Istanbul University

Muslim religious scholars generally, and Islamic legalists in particular, are observed to have been tardy in saying anything about principles of insurance, a system which has developed into one of the be-all and end-all conditions of present-day communal life, in which contracts of indemnity are universally operational. In this regard, the first discovered documentary evidence is to be noted in the work of the renowned Ibn Abidin¹. This statement became the Ottoman rule throughout its territories, binding on those who held to the Hanefi canon of jurisprudence. It concerned maritime insurance, and its main line of opinion traced a negative attitude. According to him, such a contract entered upon was null and void did not oblige the signatory in any way. Thus Ibn Abidin was not behind hand in propounding the well-known 'fraudulent canonical edict' (hıla-i shar'ıya) in these words: Such a contract, if made in a non-Muslim land, because it is invalid, a Muslim may receive whatever accrues as a result of the deed.

This decision on canon law given out by Ibn Abidin, although nominally concerned only with maritime insurance, in essence, provided a point of view for judging inclusively all subsequent contracts of insurance: those who thereafter opposed insurance used its precedent to support their arguments. Thus in **Egypt's Criminal Court of Law, 1906**, a decision was made concerning a claim arising from an insurance contract, which claim was dismissed on the grounds of Ibn Abidin's fatwa. In 1907 the same Court decided another case on the same grounds².

Developments concerning insurance, before investigating in an academic manner, will have us note everyday needs requiring legal statements from the Mufti and religious authorities, so our attention will be drawn in this direction. In 1870, in Istanbul's Beyoğlu, the Great Fire which broke out required of Shayhulislam an official ruling as to whether or not insurance was legitimate in Islam. The fatwa rendered, assured positively: Each individual is under obligation of protecting the property bestowed on him by Almighty God³.

This brief submission in the matter of insurance is observed to constitute the main-stay of Islamic opinion, built around the necessity which prompted the office of Shayhulislam to declare on a new doctrinal issue affecting everyone: Each individual is dutybound to protect the life and health given him by Allah. In addition the first of these two requirements is a statement in principle of Islamic savants' "**Five Basic Aims**" (**Makasid-ı Hamsa**), in which is found "**The Protection of Goods and Property.**" What we now add to this is but a repetition of the same basic aims, one of which is "**Protection of Life.**"

1 Ibn Abidin; *Raddu'l-Muhtar ala'd-Durri'l-Muhtar* (Hashiyatu Ibn Abidin), Halep, 1966, III, 273.

2 Abdülmuttalib Abduh, *et-Ta'min ala'l-Hayat*, Kahire (Danu'l-Kitab al-Cami), 65.

3 Karaman, Hayreddin; *İslama Göre Banka ve Sigorta* (Nesil Yayınları), İstanbul, 1992, 13-16.

Islamic religious savants make their point of departure the essential protection which religion requires by virtue of those five basic values when they formulate on insurance matters, concerning life and property, which then allows the most dependable answer to the question of what Islam's attitude is to the subject of insurance. That is to say, essentially that insurance is an activity directed towards the five-fold protection which Islam would aim at. This is the intention, whereas the actual means and methods adopted practically would certainly exhibit various differences.

What we understand is that in the matter of insurance those who see difficulties or who create problems, become confused precisely at this point of practical application, and, sad to say, by over-much concern with operations, pave the way to missing the essential goal.

In what lies ahead we shall be returning to this point.

In 1911 the office of Shayhulislam, to a question concerning Life Insurance decreed: "On condition that the contract is made in a foreign land, it is permissible." One's attention is drawn once more to administration and method...anxiety concerning non-essentials.

Let's continue with practical approaches to solving this urgent problem of everyday living with examples: In 1903 The General Mufti in Egypt, the notable Islamic savant Muhammad Abduh (d.1905), was confronted with a question from The American Mutual Life Insurance organization's directorship. The question posed was essentially: If someone pays to a group a certain amount of money for them to use for a certain time, and that term is up, if he is alive, and is paid what accrues to him, or if he is dead and his heirs are paid the profits, is such an arrangement acceptable to Islam? Abduh gave reply in the direction of classical legalism concerning insurance, but his manner of speech held to moulds of the past: "This is lawful because it conforms to contracts of "mudaraba."⁴

According to Abduh's ruling fatwa the generally accepted opinion is that from the point of view of Islam some types of insurance are permissible; other accepted stands are that Life Insurance and all kinds of insurance, inclusive, are contracts acceptable to Islam. And Abduh's views are offered in support of this opinion.

Publicity of insurance has received fairly wide coverage in the Islamic-Arab world. From these publications, and a few in Turkish of a limited distribu-

⁴ See ahead for explanation and see, Muhammad Zaki Sayyid, *Nazariyyatu't-Ta'min fi'l-Fikhi'l-Islami*, Lazikiye (Daru'l-Manar), 1986, 79; Abdulmallalib Abduh, *at-Ta'min 'aiu'l-Hayat*, 66; Karaman, 17.

tion, it is understood that Muslim legalists, particularly specialists in jurisprudence, while being in agreement on one question, on various other points hold quite different opinions.

The point on which they usually agree is that insurance is one of the *sine qua non* of human existence, basically a mutual aid corporation as should be apparent to all. Where they differ are the points which stress unlike procedures by which matters are arranged for the drawing up of agreements. At present, the points of concern are whether or not insurance contracts abide by Islamic niceties, and that the establishments are within the pale of conscience.

Muslim legalists are divided into three opinions concerning insurance and its contracts of agreement:

1. Those who give insurance deeds of all kinds the mark of approval. Diametrically opposed to earlier times, the large majority at the present day are of this opinion.
2. Those who would oppose all kinds of insurance activity outright. In direct contrast with former times, these days one may count such die-hards on the fingers of one hand.
3. Those who, although not opposing insurance in principle, yet are against some contracts. Prof. Yusuf al-Kardavi, Abdullah bin Zayd Alu Mahmud, Faysal al-Mawlawi, Muhibbuddin al-Hatib, Prof. M.A. al-Mannan, Muhammad Abu Zahra, Muhammad al-Madani are eminent in this category.

At the head of the list of those whose approval of insurance deeds is unqualified, is found the renowned Islamic savant, thinker, writer, legalist Muhammad Abduh. Only, Abduh, in the fatwa just referred to, does not include some contracts of insurance, for it is clear that they can not be part of what is approved because of their content. For example, Abduh's fatwa does not defend life insurance in a scientific way. With this being the case, scientists who see insurance agreements of all kinds as agreeable to Islam at the present-day, all use Abduh's fatwa on life insurance as evidence to support their stand.

Abduh's student, commentator, and savant equal to him in scope, Muhammad Rashid Riza (d.1935) also agreed that insurance agreements, with some conditional adjustments of direction, were in confirmity with Islam.

Contemporary with us at the Sorbonne University, Professor Muhammad Hamidullah of Pakistan, while approving general insurance as conforming to Islam, yet is somewhat hesitant concerning employment insurance, only without ever declaring absolutely "legal" or "illegal" according to religion; rather he

just makes do with: "It is not favoured". Prof. Dr. Ahmad Danish, in article which he wrote for *al-Azhar Magazine*, criticized his fellow professor Muhibbuddin al-Hatib for opposing some types of insurance by stating that all kinds of insurance were in keeping with Islam, and he even encouraged the practitioners of insurance ⁵.

Probably the prime authority who declares that all insurance and its related agreements are in harmony with Islamic rule is The University of Jordan's Professor of Islamic Law, and of *al-Majma'ul-Fikhi* membership in Saudi Arabia, Mustafa Ahmad az-Zarka. Zarka has everywhere and all times defended agreements of insurance as being all "ta'avuni" (directed to mutual aid), and that there is no Islamic basis of determining some to be lawful and some unlawful⁶.

In unfavourable comment on the well-known decision of *al-Majma'u'l-Fikhi*, directed to mutual aid, to the effect that apart from this, all other insurance forms are unlawful, Zarka underscores the following noteworthy points: This decision was taken at a meeting where half the members of the association were not present. However such a ruling of immense concern to the whole Islamic world, besides requiring full membership of the committee, should be taken with the full agreement of all sectors of Muslim jurisprudence in every land. Otherwise such a decision will not be binding from the Islamic point of view; this is because of the general principle which states: "Free choice is the essential." Where this general precept is over-ruled and illegalities intervene, the "consensus of the learned" (*ijma'*) is an essential requirement⁷.

Zarka underscores this, with insistence: There is no Islamic proof to show that insurance contracting of any kind is unlawful⁸.

Someone who shares the same ideas, and for the same reasons, is Prof. Dr. Muhammad al-Bahiyy. According to him insurance contracts all fall within the scope of "ta'avuni", that is to say that they are all directed toward mutual aid, and in such are approvable in Islam.

The views of Muhammad al-Bahiyy, who sees all insurance agreements as neither commanded nor proscribed, therefore permissible, is summarized by his colleague Faisal al-Mawlawi as follows:

5 *al-Azhar Magazine*, vol. 26, pp 273-75.

6 For these views in particular, see, Faisal Mawlawi, *Nizamu't-Ta'min va Mavkifu's-Shariati minhu*, Beirut (Daru'r-Rasad), 1988.

7 For this counter-opinion on the part of Zarka, see, Mawlawi, 166-168.

8 Mustafa Ahmad Zarka, *Nizamu't-Ta'min, Hakikatuhu va'r-Ra'yu's-Shar'i fih*, Beirut (Muassasatu'r-Risala), 1984, 63.

"Actually Islam does not foresee anything beyond the mutual aid given each to each by the members of its community, nor does its teaching point in any further direction. If we are to speak in general terms, Islam requires honesty and the fear of God which prompts helping one another. Insurance, in all its forms, thus realizes the most select example of mutual aid which rests upon honesty and the fear of God. The insurance contract gives opportunity for putting one's property to work and function actively."

"The insurance treaty implies loyalty and fidelity in the most ideal form, providing patient endurance in difficulty, as well as solidarity in times of happy prosperity."

"Insurance agreements have no place for un-earned increase of capital, outlawed "riba", because this exorbitant return on loans, as a component of commercial dealing, brings one of the parties to loss in a clearly defined manner." In riba, one of the parties to the deal does not make the agreement with full consent. If both parties are in pursuit of what is profitable, then, as in the time of the Prophet, such an exception which brings a profit to one or the other, is not accounted as falling under the category of riba, or usury. Jabir, a companion of the Prophet, to pay his father's debt, sold some un-ripened dates to a Jewish merchant, although he did not know when the fruit would mature nor how much it would weigh eventually."

"And there is in insurance nothing of the condition "Ġarar", of which any admixture would invalidate an agreement. "Ġarar" meant that in connection with a covenant there was ignorance of its conditions, or unfeasibility making impossible any of its terms which would bring one of the parties to fearful loss. Examples are the sale of fruit still hanging from the branches of orchard trees, or by guessing the next day's catch of fish in the sea. Insurance covenants, in actual fact, while not presenting either party with loss (Ġarar), neither is the resultant based on guess-work or surmise. Each party to the agreement knows very well what finally will happen, and which he will have to deal with when the time comes; and he draws up the agreement in full knowledge of this. Insurance deeds are purposed to give confidence facing what will be; it is not a "Ġarar": condition of hoodwinking, or ignorance by any means."

"Insurance contracts do not contradict putting one's faith in God. Because the deed is not anything that obstructs what results in the birth of events; on the contrary, it is a course of action planned to decrease the pangs of sorrow resulting from misfortune and loss."

"Contemporary techno-cultural communities are composed of people whose materialist affections are paramount in their lives. Filled with such indi-

viduals there is seldom to be found pure philanthropy dictating goodness towards others. Modern states are hard at work to achieve mutuality, and they are suffering under pressures experienced by would-be humanitarians. The way things are going, states and nations will one day make insurance compulsory."⁹

Isa Abduh, the researcher, adds to the list of those who approve of insurance agreements of Muslim legalist authorities¹⁰ Ali al-Hafif (Member of Majma'u'l-Buhus al-Islami), Prof. Dr. Abdulvahhab al-Hallaf (Cairo University, Law Faculty), Prof. Dr. Abdulmunsif Mahmud (Writes for Minbaru'l-Islam Magazine), Prof. Dr. Muhammad Yusuf Musa (Cairo Aynush-Shams University), Ahmad Taha as-Sanusi (Writer for al-Azhar Magazine), Prof. Dr. Tavfik Ali al-Vahba (Writer for al-Va'yu'l-Islami Magazine), Prof. Dr. Ja'far al-Shahidi (Tahran University), Abdulhamid as-Saih (Jordan Avkaf former Minister and Head of Sharia Court), Prof. Dr. Muhammad bin Hasan as-Sa'alibi (Karawiyyun University).

The only one supporting argument of those who find insurance contracts to be at variance with Islam, in part or as a whole, is that such contracts do not square with established principles of Islamic jurisprudence, or that they do not conform to known and recognized types; wherever these do not match up, the new departures are given the label "unlawful", or, at least 'defective'. This goes to show that their pivot of support is traditional legalism and uncritical re-duplication of forms which did service in the past. Fresh needs and new conditions discovered by the world of today concern them but little. That is, instead of working at the Islamic principle of "ijtihad" (striving with one's best endeavours to find solutions to new problems and conditions), they prefer the logic that the door is closed to novelty. This attitude rules their mentality to make all things measure up to the past, and be evaluated in accordance with monotonous copying and formalism; and this being so, insurance articles are only able to find a place for themselves, with difficulty, within the science of law, or not at all.

Classical forms which are kept unchanged, almost as a religious duty by traditional approaches, either reject on sight or they go the way of disqualifying the new, saying this: "There is herein something which leads astray" The traditionalists accused the fatwa of undisputed authority Muhammad Abduh, for example, of being pulled out of shape. It is even possible to discover their claim that Abduh was "manipulated."¹¹

⁹ al-Bahiyy's views relayed by Mawlawi; *Nizamu'l-Ta'min va Mavkifi'sh-Shariati minhu*, 52-54.

¹⁰ Isa Abduh, *at-Ta'min bayna'l-Hilli va'l-Tahrim*, Kahire (Daru'l-F'usam), undated, 149-165.

¹¹ For details, see, Isa Abduh; *at-Ta'min*, 87; Abdulmultalib Abduh, *at-Ta'min ala'l-Hayat*, 66-68.

Traditional approaches, from time to time are observed to employ parochial-emotional overtures instead of reasons, unfortunately. This is most surprising when it is noted that a scholar like Muhammad Abu Zahra, a legalist respected by everyone, in claiming 'the extra-Islamic nature of insurance' even at a meeting attended by the most notable specialists, should forward this opposition: "Large, international insurance companies are mostly found to be in the hands of Jews."¹²

As for those supporters who say that insurance as a system, and its agreement, does not fall foul of Islamic principle, there are some who force traditional possibilities to prove the Islamicity of present agreements by putting them into forms of classical contracts¹³.

When traditionalists proclaim that insurance agreements are incompatible with Islam, they remark in particular on its "uncertainty", and that any covenant Islamic should not partake of this quality, for such involvement is the essence of "Ġarar" and ignorance.

Together with defence of formalism and its moulds, there are some middle-roaders who state that insurance agreements are able to abide by formats of past approval, and their response to traditionalists is that there is no "ignorance of terms "Ġarar" in any insurance contract¹⁴.

According to the middle-of-the-roaders, in contrast with the claims of traditionalists, there is no trace of "riba" (un-worked for gain) nor any kind of interest. This is because insurance agreements do not aim to provide unilateral profit only to one party, but there is profit on both sides of the contract. Whereas, by definition "riba", while allowing profit on one side, always plunges the other party into loss. In actual fact, in a contract which falls under the type "riba", the party involved who is clearly going to lose out on the deal, cannot be said ever to participate with full willingness. Whereas insurance contracts provide both sides with profit, so they willingly enter into such an agreement. This aspect of the matter, if we consider it in classical terms, conforms to "maslahat", the principle of public benefit¹⁵.

Middle-of-the-roaders continue: Insurance deeds within canon law find a place appropriately under these headings: "Muvalat, mudaraba, muahat,

¹² For this assertion and Zarka's response, see Zarka, 91-92

¹³ For documents offering evidence of both sides of the question, see, Sa'di Abu Habib, *at-Ta'min bayna'l-Hazri va'l-Ġbaha*, Beyrut-Dimashk (Daru'l-Fikr), 1983, 24-72.

¹⁴ Zarka, 52-54.

¹⁵ Zarka, 54. For another approach to the question of maslahat, see, Muhammad Şavki Fanjari, *al-Ġslam va'z-Zaman al-Ġctima'i*, Riyad (Daru Sakif), 1982, 30-34.

aman, itmi'nan" contracts with **"akila"** and **"kasama"** with the point of departure in each case being: the application to which the covenant is put¹⁶.

Let us briefly introduce these contracts which Zarka and those who think like him about insurance frequently indicate:

Muvalat (the nomenclature also mavla'I-Muvalat or vala-i muvalat): A non-muslim or someone who subsequently became a Muslim might enter into a contract with a Muslim or the citizen of a Muslim land as follows: "I hereby make of you a close associate. If I should slay anyone, you will pay the indemnity or compensation for loss; but if I die you are to be my heir."

Muvalat covenants were in force in pre-Islamic times.

Mudaraba: This is what is given of one's savings to some tradesman who puts the funds to work, and who passes on a determined portion of his profits to the person who made the loan to set him up in business. Another word of the same significance is "kraz".

Muahat: The word implies brotherhood, and instituting this bond means that by the contract muahat two strangers, will share material value, and in the event of death, they covenant to be each to each the heir to what remains. Historically the most famous occasion of applying the principle of muahat was when the first muslims trekked from Macca to Madina. According to the records, in Anfal Sura of The Koran, verse 75, until this was revealed, Maccan Muslims could legally be "brothers" to those in Madina who took them in.

Aman and Itmi'nan pacts: This type of covenant, as the name has one realize, is a kind of contract between someone in need of protection and a stronger person or persons. In the 'Times of Ignorance' (pre-Islam) weak persons or weak tribes would seek protection in this way from the more powerful. In the event of death or being killed, the protector would fall heir to the property, as a whole or in part, which was left by the deceased.

In the Koran (9th chapter Tavba, verse 6) this contract is brought into focus and its application is encouraged as a humanitarian value. In the Book the word used is "istijar" which sets no conditions, and we have to state this clearly: "protection and requesting help" is not bound to any condition or circumstance, but it is left free. "Jivar" which means nearness, or closeness of association, and its neighbour term "jar" are roots from which is derived the word "istijar": coming near, neighbouring and desiring this proximity, entering under protection,

¹⁶ Zarka, 60-62; Fanjari, 37.

in war to beg pardon and to be allowed being left in freedom, all possessing the same meaning, or its likeness.

The Koran, in putting this concept into practice as an institution, says that not even unbelievers and idolaters be excluded from its operation. Thus it is made into a **Value Principle superior to religion, district, or civilization differences**, a universal partnership resting on what it wishes that mankind should put into effect.

This concept of "**requiring protection and asking for quarter**" is to be established in time according to circumstance as man decrees. There is nothing to prevent present-day insurance, as a system, from being included in this Koranic precept. Quite on the contrary, the modern world's system of insurance stands as the contemporary application of this ordinance.

Akila: a kind of compulsory social insurance akila in effect, means, those who pay compensation, blood money, and the like. Even in the case of being the cause of death, injury or if a pregnancy miscarries, the guilty one, if not in a position to pay, is insured by such organizations to which he is affiliated: 1. The professional/occupational guild whose members (ahlu'd-divan) are obliged to pay. If not so, 2. The guilty one's male relative-senior (asaba). If not so, 3. There is payment made from the state.

If the guilty one be an emancipated slave, the compensation is paid by his former owner.

Akila, in Jahiliyya (pre-Islamic times) was operational.

Kasama: Rather than a covenant or agreement, kasama was a precaution to be forearmed against, particularly murder by persons unknown, in the legal sense. It was aimed at protecting relatives of the deceased, who fell to an unknown assassin, and to make sure that justice be done. The essence of this practice was that the inhabitants of the surrounding area where the murder was committed would have the retaliation monies demanded of themselves.

The contracts and agreements which we account for here, were all operational before Islam in some or other shape. Islam kept them guarded in its tradition because they were, each one, an acceptable social measure providing security.

Traditional reasoning and its stubborn attitude here becomes a little more worthy of attracting attention. In pre-Islamic times the means in force, while not conflicting with later principle, would be kept going; but contemporary insurance which answers to present-day needs, is declared extra-Islamic for the reason

that it does not abide with past Canon Law and its decisions. This situation is, in truth, an indication of a typical frame of mind.

We appear to be face to face with superstition and taboo.

The revolutionary approach displayed by the third group of attitudes above, while not abiding by the necessity of conforming to the past and Canon Law, then operate data selected from the Koran and the sunna (words and behaviour) of the Prophet which are unquestioned, and therefore valid as grounds on which to establish new rulings.

These are the ones who, instead of forwarding: "The door is closed to novelty", reply with the logic that "The door to novelty never closes by anyone's refutation": the door is always open; or else the continuity of Islam, its universality, could not be our consideration.

It is needful, primarily, to draw attention to this: "Classical legalists' approval of contracts" is something, which would not allow other types of agreement, and this was very early on taken out of currency. Zarka's pointing to the likes of this in pre-hegira 5 (11 A. D.) is notable, when a new type of agreement "bay' bi'l-vafa" was instituted. That form of contract has been in operation ever since.

"Bay' bi'l-vafa" is a contract entered into by which goods are sold on the condition that there is a refund if they are returned. In this way both the customer uses the goods and the salesman is given opportunity to use the money.

This agreement in such a form, although it appears to partake of "buying on surety", we cannot call it this when the parties to the agreement do not will or intend the resulting declaration. The opposition to this type of agreement, which held that the Hanafi had forcefully introduced it into Canon Law in order to legalize putting money on interest for unearned gain, never did take root, so "bay' bi'l-vafa" covenants became firmly established. Together with the opinion that this type of covenant is a kind of "giving in security" and is artificially mounted upon some or other older form of covenant, the generally accepted judgment is that it comprises a new departure in itself. Zarka, who touches on this point, adds the following: "On condition that they are not at variance with basic principles of the Koran, there is nothing to support the views that such novelties are counter to Islam. Such a principle was laid down by the Prophet himself most openly. Any condition which does not conform to The Book of Almighty God is invalid."¹⁷

In the Book, is there any condition which states that new kinds of cont-

¹⁷ Zarka, 33-35.

ract should not be realized or discovered; anything that says contracts must be composed in this particular way? Certainly not! Just the contrary, in areas beyond faith and worship, the general principle is to leave free the practice of what conditions require.

Zarka, finally comes to this point as he progresses according to data within the Koran: "More than saying that insurance is permissible from the standpoint of Islam, in some cases it is a necessity from the Islamic point of view..."¹⁸

Prior to forwarding our opinion, let us summarize in the words of an expert in Canon Law; the latest point judged in Islamic lands: "Present-day Islamic savants have declared insurance agreements to be canonically lawful from the Islamic point of view. According to them it is one of the essentials in commercio-technologic life in this century, in which we live. And this condition is established as extra-judicial civil usage, commonly called 'urf (tradition). Essentially, in this type of question, since there is not openly any prohibition involved, the matter is left to the individual and one is free to do as circumstance dictates, because the general principle is independent action."¹⁹

al-Misri's word as a conclusion of the Canon Law is such:

1. In our century, in the matter of insurance, the view of the great majority (jumhur), at least, is directed towards freedom of action. In Canon Law, the view of the great majority is essential for fatwa.
2. We are bound to say that insurance is free according to the principle that "to be free is essential." To claim the opposite would require that there be involved an undisputed, element previously decided against by precedent.

For a prohibition, there must be a clear injunction revealed to this effect (nass), a certain proof (subut) and an indication most pertinent to the revelation in question. In the matter of insurance none of these exist. Anyhow, if there had been clear opposition from the start, the matter would not be disputed to such length.

In other words, there are inter-sectarian differences of opinion concerning insurance. These disputes within rival schools of Islam (mazhab) include the possibility of approving any one. In such a situation it is wrongful for someone

¹⁸ Zarka, 175.

¹⁹ Abdussami' Misri, *at-Ta'min al-Islami bayna'n-Nazariyya va'l-Tatbik*, Kahire (Maktabatu Vahba), 1980, 21.

to forward the opinion that one or other of those views is "the official Islamic argument." Islam is those commentaries as a whole. Muslims are free to chose amongst them at will. Actually, the point in practice is precisely this. In the Islamic world, insurance deeds, in this or that fashion, in such and such a number, are constantly in operation. Insurance law is among compulsory subjects taught at most Islam universities, and may I give the titles of two books of study and reference: 1. Ahmad Sharafuddin, *Ahkamu't-Ta'min fi'l-Kanuni va'l-Kada*, Kuwait, 1983, 2. Abdulmuttalib Abduh, *at-Ta'min ala'l-Hayat*, al-Azhar University's publication: Cairo (Darulkutub al-Jami'i), 1989.

Our views on the subject of insurance:

1. Islam, the religion which the Koran has brought to men, from the point of view of time and situation, has universality as its quality.

That is to say, it addresses all times and peoples. From this it is understood that the religion is far from falling into conflict or opposing the necessities obtained by the life of any age and of human existence. In order that such conflict should not arise, the Koran constantly seeks to avoid the basis for controversy of this unpromising kind by calling for reason (al-akl) to be operated and functional, that those who do not work their minds will have unwholesomeness fall on them²⁰.

The Koran requires humankind to live in harmony with the unchanging Laws of God (sunnatullah) to which it draws attention as comprising the way or procedure of divine will, and this is its direction to peace²¹.

The Koran constantly draws attention to activity of knowledge and science, that knowing Almighty God is a measure acceptable; and the development of acquaintance with life and its reality is only possible through scientific exploration of principle. This sentiment is expressed in hundreds of places²².

The Koran commands abiding by "ma'ruf" (a word derived from the root 'urf) meaning universal human values of a common nature, values held in partnership with other human-beings²³.

20 The Koran (Yaşar Nuri Öztürk's translation of the Koran into Turkish: "Kur'an-ı Kerim Meali" has been used), 10/100.

21 The Koran, 35/43.

22 For example, see, 3/18, 35/28.

23 For example see, 3/104, 110, 114; 9/71, 112.

The system of insurance and its contracts is a set of operations to provide service in Koranic values; and it has become a condition of universal application of "ma'ruf".

2. One of the Koranic principles which learned men of Islam have repeated for centuries is this: Freedom has been established as the essential of life and being. In classical terms: "The essential is to be free." This principle can be stated in short: In any connection, to speak of prohibition in Islam, we need an ordinance of revelation to point clearly to such evidence. The moment there is dispute concerning the existence of such a ruling, it is out of the question to declare a prohibition of "haram"

There is no Koranic verse to declare that the subject of insurance be marked "tahrim" (the quality of prohibition). Every supporting argument holding up ideas which tend towards the prohibited or the questionable is tied this saying: **"they do not accord with traditional covenants."**

3. According to the accepted declarations which savants of Islam have been repeating for centuries, the main values based on the Koran, known as "makasid-i hamsa", are five in number. In present-day statements of human rights these are also paramount:

- a) The right to protect life,
- b) The right to protect the mind,
- c) The right to protect religion,
- d) The right to protect honor and dignity,
- e) The right to protect property.

Insurance, as a system aims by its contracts to protect what the Koran religiously upholds as its target areas of preservation, particularly life and health and all kinds of physical well-being together with caring for property. The means to achieve these ends may not be identical with what has gone before (vasail) of classical acceptance. This is an imperative, consequent on altering conditions in the lives of human beings. It is not possible to push into second place what is imposed by necessity and the five basic requirements of religion for protection of essential values, and then to say that it is proper to abide by Canon Law in the past, for such a thing is not intelligent, nor Koranic.

4. The Koran inclines to making custom the way of dealing with requirements in the field of law and of sociology²⁴. The Koran requires that the universally accepted principles (ma'ruf) are to be obeyed, and it states this insistently.

²⁴ For example, see: The Koran, 7/199; 2/180, 228, 263; 4/6; 65/2-6.

Insurance and its agreements has indisputably become a universal usage. It is not possible to reject insurance, which protects the fundamental values Islam aims to guard, by holding to method and form of the past.

5. The Koran explicitly commands us not to haphazardly fling away our goods and possessions, our self-respect, our existence: "With your own means do not put yourself to hazard."²⁵

Insurance of all types and categories does service by putting this ordinance into effect.

6. The Koran commands us to keep property and possibilities which make us powerful and not deliver them into the hands of the weak-minded: "Give not unto the silly-minded the goods which Almighty God affords, and by which you are established."²⁶

Within insurance contracts there is the aim to keep from having to confront the ruin of our property, and all agreements which it enters into, to a small and large degree, observe this divine injunction, offering service towards this end.

7. The Koran commands mutual aid for the purpose of realizing happiness, and it thereby proscribes helping each other towards the ill, all disturbance, and unhappiness²⁷.

Insurance covenants are all, to a small or large degree, agreements which are directed towards that very mutual aid which it is the Koran's will to implement. Nowhere in the world is it possible to say that any form of insurance at all fails into categories of mutual assistance which the Koran proscribes. Of course every institution always has its irregular deviants and exploitations. However, this being so does not lead to denial of the general concept's basic objective and of its function.

8. The faith which establishes our connection with Almighty God as the prime value of religion, has within itself feeling of security and trust. In everyday language security or trust (al-amn va'l-aman) lexicals are of the same root-form with iman (faith) and are synonymous. So, a believer (mumin), at the same time is someone who rests in security, a person who feels under protection.

25 The Koran, 2/195.

26 The Koran, 4/5.

27 The Koran, 5/2.

For a Muslim whose spiritual existence, by faith, rests on this cosmic submission to Almighty God, what is more natural than for him to avail himself of insurance, the system which assures security?

Putting out of the picture this reality by saying that insurance opposes the fate which Allah determines is precisely an act of ignorance. There, deviation in misconception of fate (kadar) leads to performance of an even greater evil and wrong-doing. One of the points on which those who oppose insurance depend, is precisely this. It is particularly so in the matter of life insurance. It is surprising that such opponents of the insurance system, life insurance particularly, could forward the opinion that it opposes the will of God.

Here, there is not only the misconception of fate (kadar), but also a deviant interpretation of the insurance system. Once and for all, may I state this: There is absolutely no contradiction between reliance on Almighty God and the measures taken in the way of insurance to confirm security. Insurance obeys the command: "Cast not yourself into danger!" Insurance does not claim to be able to withstand fortune; rather it eliminates the heart-rending which accompanies damage and loss.

Insurance is not opposition to the laws of existence and of fate, but rather is a means to ease difficulties. Islam forbids opposing Allah and principles but never forbids that we take necessary precautions. Guarding against what could be avoided is commanded by Islam. The behest of Islam cannot be evaluated as a contradiction to Islam.

As Zarka says, life insurance is not a boldness which guarantees a space for living, but is rather what aims to provide the necessities of living (maslahat) for those whom the deceased leaves behind. If the term "life insurance" is the problem then it may become "family insurance."

As understood from this, there is at the base of what opposes insurance: vocabulary, form and method. The attitude of traditional minds has the illusion of superstition. With this being so they cannot embrace what religion teaches as its aim and principle.

9. In addition to the classical contracts the Koran also formulates some kind of solidarity or mutual security pacts. The fourth sura, called Nisa-Women, in the 33rd verse states thus: "**Give their share unto those persons with whom you covenant or draw up a deed.**"

How interesting that in this verse alongside a verb from the root "akd" (contract) there is also "al-ayman", which is used to express covenanting and engagements and the word "nasib" (share or portion). The verse shows an in-

insurance contract in which both parties receive a share. The verse as our subject uses the term "nasibahum" (their portions) meaning that everyone has to be given his due.

In my opinion, even if there were no other proof, this verse would be sufficient to declare that insurance deeds were in keeping with the Koran.

Before we bring the matter to a close, it is needful to underscore one point here: In our day, some international insurance companies, when considering the traditional Muslim customer's attachment to form and precedent, they are changing the content and structure of their contracts. "The New York Life Insurance Company" and "North Western Mutual Insurance", two typical examples in The United States, both famous, provide example of commercial morality appealing to Islam. "New York Life Insurance", in effecting a merger (third ranking in the world, second largest in America) made partners of their three million policy holders. And even the increase of capital, is not arranged without informing their partners. They let all their partner/customers benefit from increase in profits. Thus the company, by turning into an organization where the partners share profits, satisfies traditional Islamic sentiments.

I believe that such examples can all the more abound in time. Because the heart-burning is only a question of method which is easily overcome.

Insurance contracts and agreements have to be introduced today into our lives as sine qua non in some or other way, to some degree. It is to deny the principle of universality of Islam if we say that Islam has not come up with its own solution to this important problem of present day living.