

In the name of Allah, the all-merciful, the  
bestower of mercy

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**The difference between the  
permissibility of commercial  
insurance due to a need and the  
impermissibility of riba-based  
financing even when there is a need**

الفرق بين جواز التأمين التجاري  
للحاجة وتحريم التمويل الربوي ولو  
للحاجة

All praise and thanks belongs to Allah,  
the Lord of the worlds, and may  
salutations and peace be upon our  
Prophet Muhammad, all his family and  
companions.

الحمد لله رب العالمين، والصلاة  
والسلام على نبينا محمد وآله وصحبه  
أجمعين.

As for what follows: Verily what Allah,  
mighty and majestic, has made halal in  
regards to financial transactions  
(*mu'amalat*)<sup>1</sup> is more abundant than  
what He has made haram. The haram  
types are restricted to specific dealings  
such as a transaction that involves riba<sup>2</sup>,  
gharar<sup>3</sup> (ambiguity), usurping the rights

أما بعد: فإن ما أحلَّ الله عزَّ وجلَّ  
لعبادة من المعاملات المالية أكثر مما  
حرَّم عليهم، فالحرام محصورٌ في  
معاملاتٍ محدَّدةٍ، كالمعاملة التي  
يدخلها الربا أو العرُّر أو الظلم أو

<sup>1</sup> *Mu'amalat*: all kinds of economic activities related to the exchange of goods and services. Muhammad Ayub, *Understanding Islamic Finance* (Chichester: John Wiley and Sons Ltd, 2007).

<sup>2</sup> *Riba*: literally, an excess or increase. Technically, it means an increase over the principal in a loan transaction, over a debt or in exchange transactions, accrued to the lender/creditor or a party to exchange without giving an equivalent counter value or recompense (*'iwad*) in return to the other party. Ayub, *Understanding Islamic Finance*. In English it is usually translated as interest or usury.

<sup>3</sup> *Gharar*: literally, uncertainty, hazard, risk relating to major elements of a contract; technically, sale of a thing which is not present at hand, or the sale of a thing whose consequence or outcome is not known, or a sale in which one does not know whether it will come to be or not, such as fish in water or a bird in the air. It refers to an element of absolute or excessive uncertainty in any business or a contract about the subject of contract or its price, or mere speculative risk. It leads to undue loss to a party and unjustified enrichment of another, which is prohibited. Gambling is a form of Gharar because the gambler is ignorant of the result of the gamble. Selling goods without allowing the buyer to properly examine the goods is also a kind of Gharar. Some examples of Gharar are: selling goods that the seller is unable to deliver; selling known or unknown goods against an unknown price, such as selling

of others, or what is similar to it from the forbidden matters. The basic rule regarding the rest of the transactions is one of permissibility until significant evidence is established proving its prohibition.

This article is connected to two transactions: the first is riba-based financing via riba-based banks for buying homes, cars and other things, and the second is commercial insurance.

Both of these are haram transactions. It is known that a group of contemporary scholars permitted commercial insurance due to a necessity, alongside the fact that some of them affirm that from the evidences of prohibition is that commercial insurance contains riba. Based on this they maintain that riba-based financing to buy homes and what is similar to it is permissible due to a need and there is no difference.

From first glance, this specious argument is perceived to be a correct evidence. However, the truth is that it is not correct to adhere to it due to the differences between riba-based financing and commercial insurance. From these differences:

**Firstly**, that financing homes or what is similar to it through riba-based banks, contains riba al-fadl<sup>4</sup> (excess interest)

نحوها من المحرمات، وباقي المعاملات الأصل فيها الحِلُّ حتى يقوم دليلٌ معتبرٌ على التحريم.

وهذا المقال يتعلّق بمعاملتين:

الأولى: التمويل الربويّ عن طريق المصارف الربوية لشراء المساكن والسيارات وغيرها.

والثانية: التأمين التجاريّ.

وهما معاملتان محرّمتان، ومن المعلوم أنّ جمعاً من أهل العلم المعاصرين أجازوا التأمين التجاريّ عند الحاجة، مع أن منهم من يقرّر أنّ من أدلة التحريم اشتمال التأمين التجاري على الربا، فيلزم على هذا أن يجوز التمويل الربويّ لشراء المساكن ونحوها عند الحاجة، ولا فرق.

فهذه شبهةٌ قد يُظنُّ في مبدأ النظر أنها دليلٌ صحيحٌ، والحقُّ أنه لا يصحُّ التمسك بها؛ لما بين التمويل الربوي والتأمين التجاري من الفروق، والتي منها:

أولاً: أن تمويل المساكن ونحوها عن

the contents of a sealed box without exact information about its contents; selling goods without proper description; selling goods without specifying the price, such as selling at the “going price”. Ayub, *Understanding Islamic Finance*.

<sup>4</sup> *Riba Al-Fadl*: the quality premium in exchange of low quality with better quality goods, e.g. dates for dates, wheat for wheat, etc. – an excess in the exchange of Ribawi goods in the case

and an-nasee'ah<sup>5</sup> (interest-based credit) and it is known by necessity in the religion that they are both haram.

As for the commercial insurance contract, it is a contract that contemporary scholars have a difference of opinion about. And the disagreement about it is a scholarly difference. The view that it is permissible is not an odd view, even if the majority of scholars are of the view that it is prohibited - and this is the more preponderant position, Allah the exalted willing, due to the clear evidences of prohibition and the weakness of the evidences stating its permissibility.

There is a difference between a contract whose prohibition is agreed upon and a contract where there is a difference of opinion over. As for the latter, then the scholars have taken into consideration the difference when there is a need and the liable person falling into difficulty and restriction. So they gave a ruling for this which is lighter and they did not take this into consideration in regards to the contract whose prohibition is agreed upon.

طريق المصارف الربوية قد تضمن ربا الفضل والنسيئة، وقد علم من الدين بالضرورة تحريمهما.

أما عقد التأمين التجاري فهو عقد مختلف فيه بين المعاصرين، والخلاف فيه خلاف معتبر، وليس القول بالجواز قولاً شاذاً، وإن كان جمهور أهل العلم على القول بتحريمه، وهو الرجح إن شاء الله تعالى؛ لظهور أدلة التحريم، وضعف أدلة القول بالجواز.

وفرق بين عقد متفق على تحريمه، وعقد مختلف في تحريمه، فالمختلف فيه قد يُراعى فيه أهل العلم الخلاف عند الحاجة ووقوع المكلف في الحرج والضيق فيفتون فيه بالقول الأخف، ولا يُراعون ذلك في المتفق على تحريمه.

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of a single genus on both sides. The concept of Riba Al-Fadl refers to exchange/sale transactions. Ayub, *Understanding Islamic Finance*. According to a hadith of the Prophet ﷺ: 'If gold is sold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, or salt for salt, then it must be one for one, and immediate exchange. Whoever gives or asks for extra commits usury. The giver and the taker are the same.' *Sahih Muslim*, no.1584. It is in regards to six things; gold, silver, wheat, barley, dates and salt.

<sup>5</sup> *Riba Al-Nasihah*: riba of delay, due to exchange not being immediate with or without excess in one of the counter values. It is an increment on the principal of a loan or debt payable. It refers to loan/credit transactions or lending money on the understanding that the borrower will return to the lender at the end of the period the amount originally lent together with an increase on it, in consideration of the lender having granted him time to pay. Interest, in all modern banking transactions, falls under the purview of Riba Al-Nasihah. Ayub, *Understanding Islamic Finance*.

**Secondly**, those who say that commercial insurance is prohibited, they have agreed that there is a lot of ambiguity in it and they differed about the existence of other prohibited matters. From them are those who say that it is prohibited because of the ambiguity only and this appears to be the decision of the International Islamic Fiqh Academy, for they do not warrant the prohibited except due to abundant ambiguities and make no mention of riba or gambling.

And from them are those who say that it is prohibited because of the ambiguity and other than that, so along with the ambiguity there is riba and gambling in it. This is what the Council of Senior Scholars in the Kingdom of Saudi Arabia and the Islamic Fiqh Council have deduced.

What concerns us in this article is the inference of the prohibition of commercial insurance due to it involving riba. This has details which will become clear in what follows.

In most cases the compensation agreed upon between the policy holder and the commercial insurance company is cash-compensation upon the occurrence of an insured khatar<sup>6</sup> (a type of risk). At that time the commercial insurance contract is not devoid of one of two parts:

ثانيًا: أنّ القائلين بتحريم التأمين التجاريّ قد اتَّفَقوا على وجود الغرر الكثير فيه، واختلفوا في وجود غيره من المحرمات:

فمنهم من يقول: إنَّه محرم لأجل الغرر فقط، وهو ظاهر قرار مجمع الفقه الإسلامي الدولي، فإنه لم يُعلَّل التحريم إلا بالغرر الكثير، ولم يذكر الرِّبا ولا القمار.

ومنهم من يقول: إنه محرم لأجل الغرر وغيره، ففيه مع الغرر ربا وقمار، وهذا ما قرره مجلس هيئة كبار العلماء بالمملكة العربية السعودية، والمجمع الفقهي الإسلامي.

والذي يهْمُنَا في هذا المقال الاستدلال على تحريم التأمين التجاريّ باشماله على الربا، وهذا فيه تفصيل يتَّضح بما يلي:

وذلك أنّ الغالب في التعويض المتَّفَق عليه بين المستأمن وشركة التأمين التجاريّ هو التعويض النقديّ عند وقوع الخطر المؤمن منه، وحينئذٍ فلا تخلو عقود التأمين التجاريّ من أحد قسمين:

<sup>6</sup> *Khatar*: A kind of Gharar – Khatar will be involved if liability of any of the parties to a contract is uncertain or contingent, delivery of one of the exchange items is not in the control of any party or the payment from one side is uncertain. Ayub, *Understanding Islamic Finance*.

1) Commercial insurance contracts where the procurement of cash-compensation is certain; so the risk in it will come into effect even if the time of its occurrence is not specified. So these kinds of contracts are considered riba-based contracts. It is possible to give an example of this type with some of the life insurance contracts. From its scenarios is that the policy holder periodically pays a premium in exchange for his heirs to obtain an agreed amount after his death. So it is validated at the time of the contract that it is an exchange contract on the basis of dirhams for dirhams with a delay (in the exchange) of one of two equivalent counter-values, the absence of parity between them or ambiguity therein, so it combines in it riba al-fadl and an-nasee'ah.

2) Commercial insurance contracts where the procurement of cash compensation is not often achieved because they are dependent on the occurrence of the risk, which often does not occur to the policy holder. So the riba in these contracts when concluded is not certain to happen. This is because if the risk does not occur, there is no exchange in the commercial insurance on the basis of dirhams for dirhams in essence. With that however, it is not permissible to engage in it because it is a pretext and a means that leads to riba. And riba has been mentioned (in the Quran) with a severe threat which necessitates distancing oneself from it and taking precaution against falling into

١) عقود التأمين التجاري التي يكون التعويض النقدي فيها متحقق الحصول؛ لتحقق وقوع الخطر فيها، وإن كان وقت وقوعه غير معيّن، فهذه العقود تعدّ عقوداً ربويةً، ويمكن التمثيل لهذا القسم ببعض عقود التأمين على الحياة، ومن صورته: أن يقوم المستأمنُ بدفع أقساط دوريةٍ مقابل حصول ورثته على مبلغ متفق عليه بعد وفاته. فيصدق عليه عند العقد أنه معاوضةٌ دراهمَ بدراهمَ، مع التأخير في أحد العوضين، وعدم تساويهما أو الجهل به، فيجتمع فيه ربا الفضل والنسيئة.

٢) عقود التأمين التجاري التي يكون التعويض النقدي فيها غير محقق الحصول غالباً؛ لتوقفه على وقوع الخطر الذي لا يقع غالباً للمستأمن، فلا يكون الربا في هذه العقود عند إبرامها محقق الوقوع؛ لأنّ الخطر إذا لم يقع لم يكن في التأمين التجاري معاوضةً دراهمَ بدراهمَ أصلاً، لكنّه مع ذلك يحرم الدخول فيه؛ لكونه ذريعةً ووسيلةً قد توصل إلى الربا، والربا قد ورد فيه من الوعيد الشديد ما يوجب البعد

it. And engaging in this contract is consenting to riba and complying with it at the occurrence of a risk.

There is a statement of Imam Malik Ibn Anas, may Allah have mercy on him, which resembles the contract of commercial insurance entirely. In it he clarifies that riba occurs in this transaction when cash is exchanged for cash. In *Al-Bayan wat Tahseel (289/11)* Malik said: “Being a guarantor whilst charging a fee is haram, it equates to someone who sold a product from a man and a third party said to the seller; ‘will you give me two dinars on the basis that if the product sold reaches the person then I am a guarantor for that delivery. If it is concluded then it is gold for gold of a different quality and if it is not concluded then the third party has taken his money falsely. [In the printed edition: (‘he takes it for the sake of Allah falsely.’) and perhaps what I have ascertained is the correct wording], As though he is saying: Give me five for every fifty to impose a fine on it if he sells the product.”

As for his saying “If it is concluded then it is gold for gold of a different quality ...” it is clear that when the risk occurred and the exchange took place between the two currencies then this transaction is considered from riba al-fadl.

His saying “and if it is not concluded then the third party has taken his money

عنه، والتحرُّرُ من الوقوع فيه، كما أنَّ في الدخول في هذا العقد إقرارًا للربا، والتزامًا به عند وقوع الخطر.

وقد وُجد كَلامٌ للإمام مالك بن أنس - رحمه الله تعالى - في صورة تشبه عقد التأمين التجاري تمامًا، صرَّح فيها بأنَّ الربا إنما يقع في هذه المعاملة إذا تَمَّت معاوضة النقد بالنقد، ففي «البيان والتحصيل» (٢٨٩/١١): «قال مالك: الحَمالة بالجعل حرام، وإنما هي بمنزلة من باع من رجل سلعةً، فقال رجلٌ أجنبيٌّ للبائع: هل لك أن تعطيني دينارين على أنه إن تَبِعَ السلعةَ تَباعَةً لأحدٍ فأنا ضامنٌ لتلك التَّباعَةِ. فإن تَمَّت كان الذهبُ بالذهبٍ متفاضلاً، وإن لم تتمَّ أخذ ماله باطلاً [في المطبوع: (أخذ لله باطلاً)، ولعل الصواب ما أثبتته]، كأنه قال: أعطني خمسة في خمسين أغرمها إن تبع السلعة تباعَةً».

فقوله: «فإن تمت كان الذهب بالذهب متفاضلاً» صريح في أنه متى ما وقع الخطر، وتمت المعاوضة بين النقدين فإن هذه المعاملة تُعدُّ من ربا الفضل.

وقوله: «وإن لم تتم أخذ ماله باطلاً»؛ أي



falsely ...”means if the exchange did not take place between the two currencies, then he is considered one who falsely took the money and he [Malik] did not say that it is riba. This indicates that this transaction, when concluded, does not necessitate that riba will occur in it.

And from what supports this is the statement of Ashhab Ibn Abdul Aziz, may Allah have mercy on him, as occurs in *Al-Mudawwanah* (28/4): “It is not correct that a man says to another; ‘guarantee this product for me for a time period and you will get such and such’ because he gave him his money for what is not permissible for anyone to purchase and it is ambiguous and a gamble”. This type that Ashhab gave a ruling on being ambiguous and a gamble, completely resembles the commercial insurance contract, yet he did not judge it to be riba. And if he opined riba entered into this transaction he would not leave off declaring it and restrict it to what is less than ambiguity and gambling. Furthermore, his ruling on this transaction was only when the contract is concluded.

Some contemporary jurists have clarified that riba does not occur in the commercial insurance contract except when the insured risk takes place and the agreed compensation is paid out. And if it wasn't for fear of prolonging the discussion, I would have quoted their words.

وإن لم تتم المعاوضة بين التقدين فإنه يُعدُّ من أخذ المال بالباطل، ولم يقل إنها ربا، فدل على أن هذه المعاملة عند إبرامها لا يلزم تحقق وقوع الربا فيها.

ومما يُؤيِّد ذلك قول أشهب بن عبد العزيز - رحمه الله تعالى - كما في «المدونة» (٢٨/٤): «لا يصلح أن يقول الرجل للرجل: اضمن لي هذه السلعة إلى أجل ولك كذا وكذا؛ لأنه أعطاه ماله فيما لا يجوز لأحد أن يبتاعه، وأنه غرر وقمار»؛ فهذه الصورة التي حكم عليها أشهب - رحمه الله تعالى - بأنها غرر وقمار تُشبه تمامًا عقد التأمين التجاري، ومع ذلك لم يحكم عليها بأنها ربا، ولو كان يرى دخول الربا في هذه المعاملة لما ترك التصريح به، واقتصر على ما دونه من الغرر والقمار، مع أن حكمه على هذه المعاملة إنما هو عند إبرام العقد.

وقد صرَّح بعض الفقهاء المعاصرين بأنَّ الربا لا يوجد في عقد التأمين التجاري إلا إذا تحقَّق الخطر المؤمن منه، وتم تسليم العوض، ولولا خشية الإطالة لنقلت كلامهم.

However riba is accumulated from commercial insurance companies investing their surplus wealth in interest-based stocks and trading with them on credit and loans with riba and what is similar.

On the basis of what has preceded, those who consider the commercial interest contract haram due to the abundant ambiguities only and that it does not contain riba, they permit it due to mere need because abundant ambiguities makes it allowed if there is a need. Shaykh Al-Islam Ibn Taymiyyah, may Allah have mercy on him, said in *Qawaaid An-Nuraniyyah* (page 180): “The harm of ambiguity is less than that of riba and because of that it is permitted when necessity demands it and its prohibition is more severe in harm than the harm of it being an ambiguity.”

As for those who consider commercial insurance as containing riba along with abundant ambiguities, then if it is apparent as in some types of life insurance, then indeed these are not permissible due to a mere need. Rather it is not permitted except in case of necessity or an emergency that renders it a necessity because it is from the prohibited matters which have a severe threat mentioned about them. And I do not know of anyone from the people of knowledge who permitted this type of insurance due to a need.

لكن يَرِدُ الربا على شركات التأمين التجاري في استثمار فوائض أموالها في سندات ربوية، وتعاملها بالإقراض والاقتراض بالربا، ونحو ذلك.

وبناءً على ما تقدّم فإن الذين يرون أن عقد التأمين التجاري محرّم لأجل الغرر الكثير فقط، وأنه ليس فيه ربا، فإنهم يجيزونه عند الحاجة المجرّدة؛ لأن الغرر الكثير تبيحه مجرّد الحاجة، قال شيخ الإسلام ابن تيمية - رحمه الله تعالى - في «القواعد النورانية» ص ١٨٠: «ومفسدة الغرر أقل من الربا، فلذلك رُخِّص فيما تدعو إليه الحاجة منه، فإن تحريمه أشد ضرراً من ضرر كونه غرراً».

وأما من يرى أن التأمين التجاري فيه مع الغرر الكثير ربا فإن كان صريحاً كما في بعض أنواع التأمين التجاري على الحياة فإنه لا يجوز عند الحاجة المجرّدة، بل لا تجيزه إلا الضرورة أو الحاجة الماسة التي تنزل منزلة الضرورة؛ لكونه من المحرمات التي ورد فيها وعيد شديد، وهذا النوع من التأمين لا أعلم أن أحداً من أهل العلم أجازه عند الحاجة.



If the riba in the commercial insurance contract is not certain to occur as is often the case in commercial interest contracts, then this contract will then be a means that leads to riba. And its prohibition belongs to the category of prohibiting the means which leads to a prohibited matter. And the maxim is: what is forbidden from the means to a prohibition, is permissible for a need or preponderant benefit.

What supports the permissibility of this type of commercial insurance due to a necessity is that there is a difference of opinion as to whether it involves riba, even among those who view that it is forbidden. And this reduces the certainty of riba falling into it.

So it is clear from what has preceded that there is a difference between riba-based financing for buying homes and what is similar containing explicit riba - riba al-fadl and an-nasee'ah - and commercial insurance in which there is differing as to whether riba falls into it as detailed above.

With this, it is clear that there is a difference between the riba that exists in the riba-based financing contract for buying homes and similar and the riba that exists in the commercial insurance contract. It is not correct to attach riba-based financing at a time of need with commercial insurance when it is

وأما إن كان الربا في عقد التأمين التجاري غير متحقق الوقوع، كما هو الغالب في عقود التأمين التجاري، فإن هذا العقد يكون حينئذٍ من الوسائل التي قد توصل إلى الربا، فيكون تحريمه من باب تحريم الوسائل التي قد توصل إلى المحرم، والقاعدة أن ما حُرِّم تحريم وسيلةٍ جازٍ للحاجة والمصلحة الراجعة.

ومما يؤيد جواز هذا النوع من التأمين التجاري عند الحاجة أن دخول الربا فيه مختلفٌ فيه حتى عند القائلين بالتحريم، وهذا يُضعف القطع بدخول الربا فيه.

فتبين مما تقدّم وجود الفرق بين التمويل الربويّ لشراء المساكن ونحوها المتضمّن للربا الصريح: ربا الفضل وربا النسيئة، والتأمين التجاري المختلف في وجود الربا فيه على التفصيل المتقدم.

وبهذا يتضح أن هناك فرقاً بين الربا الموجود في عقد التمويل الربوي لشراء المساكن ونحوها، والربا الموجود في عقد التأمين التجاري، مما لا يصحُّ معه إلحاق التمويل الربوي عند الحاجة

permitted due to a necessity. Allah knows best. And may salutations and peace be upon our prophet Muhammad, all his family and companions.

بالتأمين التجاري في جوازه عند الحاجة، والله أعلم، وصلى الله وسلم على نبينا محمد وعلى آله وصحبه أجمعين.

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Translated by Umm Abdillah F.  
Khanom  
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