The vast revenues of the natural resources enabled the Arab oil producing countries to pursue massive investment programmes which required essential services such as banking and insurance. These services were also necessary for the development of the non-oil producing Arab countries. No documentary credit could be opened by a bank to finance imports without an insurance cover. The various construction projects require cover for the various risks. As a result, all kinds of insurance covers are nowadays offered in the Arab markets as major insurance enterprises have been established in the Arab World. Despite this expansion in the use of the insurance services, its legality has an air of mystery about it. Is it illegal under Shari'a law? Or is it only tolerated because it is a necessary service in a modern society? This paper considers the place of insurance in Islamic law.

**ISLAMIC SCHOOLS OF LAW**

There are many such schools in Islamic law. However, the two main ones are the Sunni and the Shi'a. The Sunnis consist of four sub-divisions:

- the Hanafis;
- the Malikis;
- The Shafi's; and
- the Hanbalis.

Scholars belonging to these schools differ on the legality of the contract of insurance. Abu Zhra, a Hanfi scholar, believed that co-operative insurance (which is quite different from mutual insurance) is legal whether it is compulsory or voluntary. As regards other types of insurance, he followed the view of Ibn Abdean, as he could not place insurance under the groups of contracts known in Islamic law namely: *bai* (sale); *hiba* (donation) and *ijara* (hire). Although he admitted that one of the fundamental principles in Islamic law is that contracts are legal, unless they are expressly prohibited, he believed that the contract of insurance is illegal on the following grounds:

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1. In 1973, the estimated income from total insurance premiums throughout the Arab World was less than US$600 million, and today it could exceed US$5000 million.
2. Saudi Arabia, for example, is a highly sophisticated industrial nation and yet insurance is not formally recognised by the law.
(1) *Riba* (usury) arising from earning of interest\(^3\) on the accumulated funds received from the assureds.

(2) *Gharar* resulting from a promise to pay a sum of money upon the occurrence of specified events. The lack of equality between what the assured gives and what he takes, brings the contract under *gharar* which is forbidden in Islamic law.

It may be of interest to quote Ibn Abdean from his book\(^4\) *Reply to the Hesitant on the Selected perils of Enlightening the Eyes*:\(^5\)

"From what we said, appears the answer to the question frequently raised in our time. It is customary that merchants, when hiring a ship from a person belonging to a non-muslim country, pay the hire and also another sum to a person resident in a non-muslim country. This sum is called *soukra*. In case the cargo on the ship is lost or damaged as a result of fire, sinking of the ship, attack or any other reason, this person guarantees to pay the equivalent of the value of the cargo. This is done through agents who live in the coastal Islamic states by permission of the Sultan. That agents receive the *soukra* money from the merchants and in case of loss of the cargo, they pay the merchants the exact value of a similar cargo. It seems to me that the merchant has no right to receive a sum as a substitute to his cargo . . . and such an agreement is null and void."

The case considered by Ibn Abdean is a cargo insurance and obviously he regarded the contract of insurance as illegal.

(3) *Gumar* (gaming or wagering) caused by paying a small amount of money (premium) and earning a large sum (indemnity). This is regarded as a form of gaming or wagering arrangement.

According to the Malikis, the contract of life insurance is null and void because it is based on gambling on risks. Other contracts of insurance are valid as they are essential for the commercial and industrial activities of the nation.

Although the Shafi's scholars agree with the Malikis on the illegality of the contract of life insurance, they believe that other types of insurance contracts are illegal as well.

The Hanbalis regard the insurance contract as consisting of two distinct undertakings: on the part of the assured and on the part of the insurer. Although these undertakings are different, insurance is illegal for both parties.

**COURT DECISIONS**

The opinion of Ibn Abdean influenced the advice given by the Moufti who is the highest religious person advising the government departments and others on matters according to Islamic law.

In 1906, the Moufti of Egypt, Shiek Mohammed Bekiet, published a letter in which he agreed with Ibn Abdean's view. Another Moufti, Shiek Abdul Rahman Kouraha,

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\(^3\) In some Arab countries, interest is couched under different terms such as fee, commission, brokerage, etc.


\(^5\) The book is in Arabic and the translation of the title and the text is by the author.