

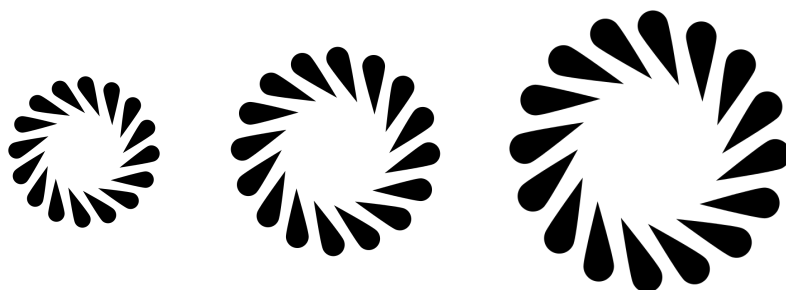
Essential Guide to Shubuhat Activities in Islamic Finance

Essia Ries Ahmed
Sofri Bin Yahya
Md Harashid Haron



Essential Guide to Shubuhat Activities in Islamic Finance

Essia Ries Ahmed
Sofri Bin Yahya
Md Harashid Haron



2017

توضيح

إنَّ كلَّ ما وردَ في الكتابِ هو حقوقُ بحثيةٌ للمؤلفِ، ويُعتبرُ ورقةً بحثيةً من الأوراقِ البحثيةِ لمركزِ أبحاثِ فقهِ المعاملاتِ الإسلاميةِ.

ويَسمحُ المؤلفُ باستخدامِ هذا الكتابِ كمنهجِ جامعيٍّ مجاناً شريطةً الحصولِ على إذنٍ خطِّيٍّ من المؤلفِ الدكتورِ سامرِ مظهرِ قنطقجي.

www.kantakji.com

مطبوعات KIE

إنَّ مطبوعات (كتاب الاقتصاد الإسلامي الإلكتروني المجاني) تهدفُ إلى :

- تبنيَّ نشرَ مؤلفاتِ علومِ الاقتصادِ الإسلاميِّ في السوقِ العالميِّ؛ لتصبحَ متاحةً للباحثينَ والمشتغلينَ في المجالِ البحثيِّ والتطبيقيِّ .
- توفيرَ جميعِ المناهجِ الاقتصاديةِ للطلابِ والباحثينَ بصبغةٍ إسلاميةٍ متينةٍ .

● أنَّ النشرَ الإلكترونيَّ يُعتبرُ أكثرَ فائدةً من النشرِ الورقيِّ .

● أنَّ استخدامَ الورقِ مسيءٌ للبيئةِ، ومُنهكٌ لموارِدِهَا .

واللهُ من وراءِ القصدِ

أسرة KIE Publication

لزيارة جامعة KIE University : [رابط](#)

يمكنكم التواصل من خلال: www.kantakji.com

مركز أبحاثِ فقه المعاملاتِ الإسلامية
Islamic Business Researches Center



Synopsis of book
Essential Guide to Shubuhath Activities in
Islamic Finance

Islamic Shariah establishes rules which govern and define the economic, social, political and cultural life of Islamic societies, including their financial institutions. Islam, in principle, prohibits all activities that cause harm to the dealers and consumers in the market as well as the society as a whole. It is very important that all dealings and business activities must abide by the rules of Islamic law so as to avoid all doubtful activities. The primary objectives of this book are to define Shubuhath from the Islamic Finance perspectives and to re-conceptualize the definition of Shubuhath especially with regard to Islamic Institutions and to investigate variables that have impacts on the involvement of Shubuhath in the Islamic Financial Institutions. This study also highlights the synthesized Shubuhath definition from the previous studies as well as the interviews on Shubuhath with religious experts and consequentially the operational definition used in the study.

The book enriches the Shubuhath literature. The definition of Shubuhath has been conceptualized to the Islamic Finance in this study. Furthermore, this study added a new discussion, i.e. Shubuhath on the business activities in Islamic finance. And it is a novel study since there are no previous studies, as to the author's knowledge that has covered this area from the Islamic finance perspectives.

This study would enlighten the Ummah and contribute to knowledge to provide clarification on the Shubuhah fundamentals for further investigations and with more detailed description of the Shubuhah. Also this study introduces a value chain of shariah compliance by adding the elements of shubuhah to the general understanding of shariah compliance which has been generally understood as having the elements of halal and haram. And this study contributes to both academic and practitioner individuals. The study may have some policy implications whereby the policy is made (shariah advisory council, Islamic banks management). This is not for the benefits of the Islamic financial institutions only but also for the public and shareholders as a whole.

TABLE OF CONTENTS

Preface	1
<i>Maqasid Al Shariah</i> and Business	6
Characteristics of Islamic Financial Institutions	10
<i>Halal</i> and <i>Haram</i> in Islamic <i>Shariah</i>	16
Business Activities which may be exposed to Doubtful Deeds	19
Defining al <i>Shubuhah</i>	22
Evidences on the Necessity of Avoiding Doubtful Deeds	25
<i>Shubuhah</i> Arises out of Mixture	39
Determinants of <i>Shubuhah</i>	47
Summary of Definition of <i>Shubuhah</i>	49
Parameters and Criteria of <i>Shubuhah</i>	49
Mixture-proportion Measurements in <i>Shubuhah</i>	52
Methods of Financial Analysis to Determine <i>Shubuhah</i> Mixture	54
Operational Definition of <i>Shubuhah</i>	57
<i>Shubuhah</i> from Islamic Finance perspectives	62
Conclusion	64
References	66

PREFACE

The Islamic *Shariah* ordains seeking *halal*, not only as it is pure in itself, but also for its overall benefits to society as a whole, affecting food, drink or any other activities, particularly economic activities (earning and consumption).

Similarly, the *shariah* ordains the avoidance of *haram*, in any form or activity regardless of its nature of purpose, because it is impure and harmful to society. *Halal* is what the *shariah* has made lawful, and *haram* is what the *shariah* has made unlawful, otherwise considered harmless (Al-Gazzalli, d.111). Allah (swt) has laid down ordinances that must be followed, and has set boundaries that must not be transgressed, while matters not addressed, were not forgotten, but deliberately done out of his mercy to mankind. So it is imperative that these matters are assumed to be permissible without the necessity to enquire about them.

There are some objectives for *Shariah* in Islam. The primary objectives that *Shariah* tends to realize are the protection and preservation of religion, life, progeny, property, intellect and honour. The main objectives of Islamic laws could lead to a number of secondary goals of all aspects of life. Under *Shariah* principles, all business activities and transactions taking place in the capital market should be free from prohibited activities such as usury (*riba*), ambiguity (*gharar*), gambling (*maisir*) and doubtful (*Shubuhah*). According to *Iqbal* (1997), investing in interest-based financial institutions is not allowed in *shariah* intact, compliant companies are expected to offer activities and services base on

the code of Islamic ethics and must function within the limits of *Shariah*.

The Islamic *shariah* has laid out in detail and outlined clearly what is *haram* both through the Quran and the *sunnah*. Therefore Allah (swt) says in the Holy Quran, in *surat Al An'am: 38*, "... we have not left out anything in the Book." Similarly in *surat Al Nahl: 44*, "and we have revealed upon you that by which you may make clear to the people what has been revealed and so that they may reflect." And in *surat Al An'am: 119*, "... and it has been made clear to you that which has been forbidden except what you have been forced to."

Further reason to show the importance of seeking goodness in earning is that Allah (swt) has ordered all Muslims, male or female, to seek goodness. He says in *Surat Al Mu'minun: 51*, "O messengers! Eat of the good things and do good; surely I know what you do" as well as *surat Al Baqarah: 172*, "O you who believe! Eat of the good things that we have provided you with, and give thanks to Allah if Him it is that you worship".

Indeed Allah (swt) has bestowed great bounty on mankind by sending Mohammad (PBUH) as a Prophet in order to make all good things lawful for them, and make all impure things unlawful, and to remove the chains that were imposed on previous nations. Allah (swt) says in *surat Al Araf: 157*: "Those who follow the Messenger-Prophet, the Ummi, whom they find written down with them in the Taurat and the Injeel (who) enjoins them good and forbids them evil, and makes lawful to them the good things and makes unlawful to them impure things, and removes from them their burden and the shackles which were upon them; so (as

for) those who believe in him and honor him and help him, and follow the light which has been sent down with him, these it is that are the successful”.

As the good things are those that are enjoyed and desired by those with balanced souls, and sought after by the people of good character. And that is *halal* as long as it fulfils its requirements as is the case with slaughter and its requirements (*Al-Gazzalli*, d.111).

Whenever a thing is deemed unlawful in Islam there is always a lawful alternative that achieves the same benefit at the same time attaining a superior state. For instance, Islam forbids adultery, but instead allows marrying two or three or four wives. And while it is unlawful to steal, it is encouraged to earn, similarly, interest is forbidden but it is permissible to form all sorts of lawful partnerships, such as *qiradh* (*mudharabah*) and *muzara'ah* (sharecropping) and *musaqah* (tending to crops in exchange for a share of the proceeds) and others. In addition it has been made permissible to buy and sell (*bay'*) and to rent (*ijarah*) as well as forward sale (*salam*)...etc.

Furthermore, the Prophet (PBUH) warned against unlawful earnings and mentioned that if a person were to be fed with *haram* and dressed in *haram*, Allah (swt) would not accept his efforts, even if they were of the highest and most sacred form of worship and the most painstaking, such as *jihad* (striving in the way of Allah). For it has been narrated by Imam Muslim, that the Prophet (PBUH) mentioned a man stepping out for *jihad*, dishevelled and dusty, raising his hands up to the sky saying: "O Allah!" and his food is from *haram* and his drink is from *haram* and his clothes are from

haram, how will his prayer be answered? Imam Ahmad narrated that the Prophet (PBUH) said to his companion, *Sa'ad ibn Abi Waqqas*, "O *Sa'ad* make pure your sustenance, your prayers will be answered"(Muslim, 2/228).

Thus, a Muslim is expected to seek *halal* to earn his income while going about his various activities, especially economic activities (earning and consumption) and to invest excess funds and offer (as charity) accordingly. Similarly, he is expected to distinguish *haram* in order to refrain from and escape it and purify his earnings and investments and offerings.

Fortunately, it is by the grace of Allah (swt) that *halal* is obvious and naturally accepted by instinctively good souls, and that *haram* is obvious and avoided by people of sound nature. However, the problem lies in that there is an area in between that leaves a devout Muslim in uncertainty and worry, wanting to know how the *shariah* classifies it. Those are matters few people know for certain though it is clear to scholars. It is an area which closely resembles *halal*, or closely resembles *haram*, such as *bay' al ainah*, *tawaruq*, *arbutun* ... etc.

According to the principles of *Shariah*, all business activities must be in accordance to rules and regulations of *Shariah* and any activity against these rules and regulations will be *Haram* in Islam. Therefore business activities are very essential in *Shariah* compliance criteria, and here business activities are referred those business deal only clear businesses and not dealing with *Shubahat* (El-Gamal, 2000).

It's troublesome define to precisely clear and unclear

issues in business activities because similarities between them exist. The agreed-upon *Hadith* states “What is lawful is clear and what is unlawful is clear, but between them are certain doubtful things which many people do not recognize. Who guards against the doubtful things keeps his religion and his honour blameless (*Al-Bukhari & Muslim*)”. Explaining this *Hadith*, *Alasqlani* states that its identicalness to each other where the verdict was not evident. However, *Ibn Mandhour* states that the similarities than problems' matters. When Imam Ahmad was asked about *Shubuhah*, he replied that it is status between *Halal* and *Haram* and a Muslim, who wants to keep his religion, should not approach it. Although in *Shariah*, *Halal* and *Haram* are strictly decided, between the statuses of *Halal* and *Haram* *Shubuhah* exists. However, this status of *Shubuhah* is only known by scholars in *Shariah*. This is supported by *Hadith* mentioned above as it states that “between them are certain doubtful things which many people do not recognize”. Therefore, it is not easy for many people to recognize doubtful activities that exist in the middle between *Halal* and *Haram*. Subsequently, Muslims should avoid *Shubuhah* because it is a status that Muslims may get involved in it.

It is worth mentioning here that studies focusing on doubtful businesses in Islam are few. However, some researchers, such as Imam *Ghazzali*, have highlighted the *Shubuhah*. In his book, *Ihya-Ulum-Id-Din*, *Al-Ghazali* (1096-7) mentions doubtful activities in general, and then divided the money into *Halal* and *Haram*. Also specified the ranking of the doubts activity and places,

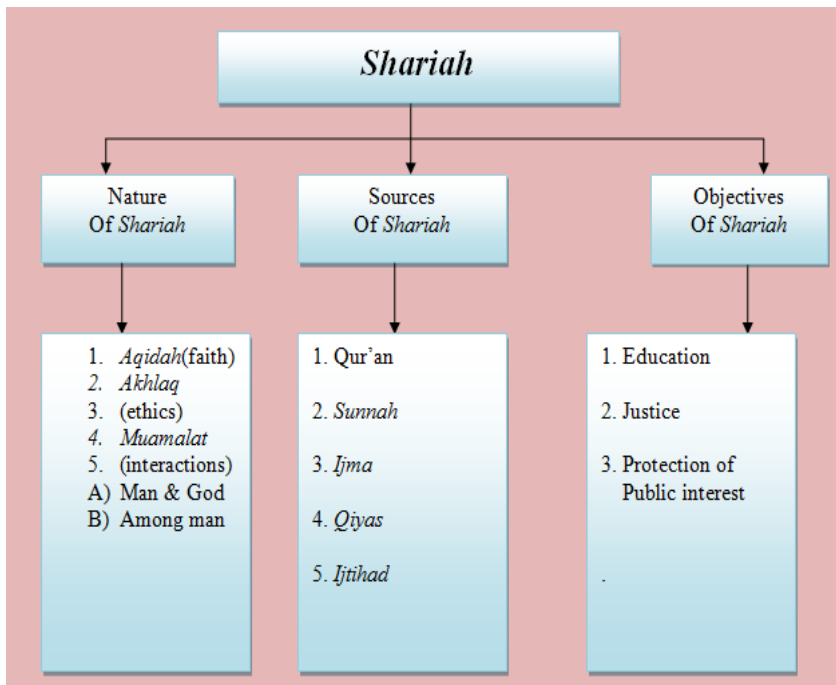
this book by Imam *Ghazali* is very important because he rooted and divided the doubts things on the basis of Islamic *Shariah* law. *Al-Qaradawi*, (1997) emphasizes that types of money are either *Halal* or *Haram*. He calls for avoiding such doubtful activities based on *Hadith* given in *Al-Bukhari*.

***Maqasid Al Shariah* and business**

The *Shariah* encourages behaviours which reflect the basic values of Islam, including cooperation, thrift, responsibility and economic and social justice. The objectives of *Shariah* known in Islamic law as "*Maqasid As-Shariah*" which protect humankind from any problem whether it's in the financial system or other aspects of life. The commitment to Islamic law in the context of any action or decision leads to the final outcome of the objectives of *Shariah* "*Maqasid As-Shariah*". These *Maqasid* are five: a) Preservation of the Religion. b) Preservation of Life. c) Preservation of Intellect. d) Preservation of Property. e) Preservation of Progeny. The provisions and rules of *Shariah* revolve around these objectives. In Figure 2.1 next, the nature of *Shariah*, objectives of *Shariah* and sources of *Shariah* are presented.

It's very essential that all dealings and activities in business must avoid *Shubuhah* and also should be compliant to the rules of *Shariah*. For example, Muslims are required to work in *Halal* activities because "*Shariah* is a body of legal principles derived from Quran, the teachings of the prophet Mohammed (PBUH) and interpretations of those teachings by Islamic jurisprudential scholars" (*Masudi*, 2005). *Shariah* generally predicts benefits to individual and com-

munity, and its laws are designed to protect these benefits and facilitate the improvement and perfection of the conditions of human life on earth (Kamali, 2007).



Under the principles of *Shariah*, transactions taking place in the capital market should be free from prohibited activities such as usury (*riba*), ambiguity (*gharar*) and gambling (*maisir*), and also the profit cannot be generated from prohibited activities such as alcohol production, pornography, and gambling (Iqbal, 1997). Ayub (2008) provides definitions for the terms of *riba*, *maisir* and gambling.

Riba is an excess or increase. It means an increase over the principal in a loan transaction, over a debt or in ex-

change transaction, accrued to the lender/creditor or a party to exchange without giving an equivalent counter value or recompense in return to the other party. The Holy Qur'an mentioned that *riba* is prohibited. The Quran read what means:

"And for their taking Riba although it was forbidden for them, and their wrongful appropriation of other people's property. We have prepared for those among them who reject faith a grievous punishment." (Quran 4:161)

Also the Prophet (PBUH) prohibits Muslim from involved in *riba*. He said:

"When one of you grant a loan and the borrower offers him a dish, he should not accept it; and if the borrower offers a ride on an animal, he should not ride, unless the two of them have been previously accustomed to exchanging such favours mutually." (Anas ibn Malik).

Either evidence of the prohibition of *maisir*. The Qur'an read what means: *"O you who believe! Intoxicants and gambling, sacrificing to stones, and divination by arrows, are abominable actions of Satan; so abstain from them, that you may prosper"*.(Quran 5:90)

Islam fully recognizes the desirability of engagement in business activities. It is a religion that is pro-business. The Qur'an states:

"Allah has made business lawful for you"
(*Qur'an, Sura Al Baqarah-2: 275*).

Islam has its own distinctive value-based ethical system for business dealings. This system prescribes cer-

tain specific guidelines governing business ethics. It

(i) Enumerates the general ethical rules of business conduct,

(ii) Identifies ethically desirable forms of business, and,

(iii) Specifies the undesirable modes of transactions.

In describing the moral code of Islam, it is important to understand that actions can be categorized according to their degree of permissible (*Halal*) and forbidden (*Haram*). Nothing is prohibited (*Haram*) except what is prohibited by a sound and explicit verse of the Qur'an or a clear and authentic *Sunnah* (practice or saying) of the Prophet Mohammed (PBUH). In Islamic jurisprudence (*Fiqh*), five such classes are identified: *Fardh*, *Mustahabb*, *Mubah*, *Makruh*, *haram*.

Fardh (required) represents the class of actions that are mandatory on every person claiming to be a Muslim, such as *Salat* (prayers), *Sawm* (fasting during the month of *Ramadhan*) and *Zakat* (Islamic tax).

Mustahabb (recommended) describes the class of actions that are not obligatory but highly recommended for Muslims, such as supererogatory fasting beyond *Ramadhan*, praying *Nawafil*, etc.

Mubah (indifferent) actions are those that are neither mandatory nor forbidden, such as having personal preference for one type of *halal* (permissible) food over another or a Muslim may like to garden.

Makruh (reprehensible) actions are that is less in degree of prohibition than *Haram* (prohibited), and In Islamic terminology, something, which is makruh is a disliked or offensive act (literally "hated"). Though it is not

haram (forbidden) and therefore, not a sin, a person who abstains from this action will be rewarded. An example of something *makruh* is the use of a great amount of water for the large (ghusl) and small (wudu), the ritual washings known as the *wudu* and *ghusl*. Muslims are encouraged to avoid such actions when possible.

Haram (prohibited) actions are unlawful and prohibited action and committing them is a major sin. Such actions include murder, adultery, drinking alcohol, and so further. There are some business activities of lawful (*Halal*) and unlawful (*Haram*) in aspect of the transactions (Jawed, 2007).

Islamic Tenets of Business Transactions

<i>Halal</i> Business Transactions	<i>Haram</i> Business Transactions
Keenness to earn Legitimate (<i>Halal</i>) Earnings	Interest (<i>Riba</i>)
Trade through Mutual Consent	Dealing in Prohibited (<i>Haram</i>) Items
Truthfulness	Sale of <i>Al-Gharar</i> (Uncertainty, Risks, Speculation)
Generosity and Leniency	Arbitrarily Fixing the Prices
Trustworthiness	Hoarding of Foodstuff
Honouring and fulfilling Obligations (<i>Uqud</i>)	Exploitation of one's Ignorance of Market Conditions
Fair Treatment of Workers	Cheating and Fraud

Source: Jawed 2007

Characteristics of Islamic Financial institutions

The Islamic banking is a novel phenomenon in the modern financial institution and it has many advantages over the traditional Non-Islamic institution either for investors or financial investment instruments (Cibafi, 2003). The Islamic Financial institution can be defined as a financial institute that that deals with money investment and saving according to the Islamic *Shariah* rules in order to achieve the Islamic *takaful* and wealth distribution justice additional to the commitment to avoid dealing with the forbidden interests (Riba) and other actions those opposites the Islamic *Shariah* rules.

Islamic Financial institution invests the frozen capitals (non-investing capitals) to benefit the capital owners as well as the entire community by the economic development. Islamic Financial institutions are also known as the non-interest banks and the share-holders based institution. Islamic banking is one of the major components of the Islamic economy due to the following reasons:

1. Financial institutions in general drive and control the international economical progress.
2. Islamic Financial institutions so far are the only financial Islamic institutions that achieved a considerable position among the international economy institutions due to its high reliability and practicality.
3. Islamic Financial institutions have proven to be beneficial for the national economy in many Islamic countries.

Islamic Financial institutions have an important role in the national economy due to its efficient operation that allows it to compete with the Non-Islamic institution. Moreover, it contributes significantly to the national economy additional to its social benefits such as improving the cooperation, takaful (solidarity) and brotherhood within the community as investors, shareholders or workers in the bank. Thus, Islamic Financial institutions become as an effective tool to achieve the social solidarity within the modern Islamic financial institutions (Abdullatif, 1991).

That being said, Islamic Financial institution has to contain three essential components:

- i. A large number wide variety of the sharing companions to achieve enough depth and strength for the system.
- ii. A wide variety of departments that offer varies services in order to fulfill the different requirements of the customers. i
- iii. Islamic secondary market for banking that connects between the different companies/institutions with the bank's departments.

Islamic banking fundamentals can be summarized as following:

- The employed money has to be from Halal sources.
- All investments have to avoid Riba.
- Revenues_have to be distributed between the shareholders and investment management.

- Poor people have some share as well from revenues through Zakat.
- The auditing process in the bank is based on the Islamic rules.
- The financial matters should not be separated from the Islamic spiritual and moral considerations (Abeed, 1992).

From the fundamentals mentioned above, the bank policy is based on the following rules:

- The policy should be compatible with the Islamic rules.
- To achieve a flexible policy that allows the bank to deal successfully with the different modern financial situations as revenue oriented institution.
- The Islamic based policy should lead the bank to the success and to be compatible as a bank with the modern economic, industrial and financial institutions. It should take into consideration as well the slow growing of the Islamic economy and industry.

Islamic Financial institution has a fundamental difference in approach from the Non-Islamic institution since the latter is aimed at the financial profit as its only goal. Whereas, Islamic Financial institution aims at the community financial development as a primary goal and the financial profit comes as the secondary goal (Mohealdean, 1993).

The main differences between the Islamic and Non-Islamic Financial institutions can be summarized as following:

1. The work and the capital are the profit sources in Islamic Financial institution rather than the capital as the only profit source.
2. Islamic banking is on the financial gain/lost share bases as a company or Modarabah rather than the guaranteed interest.
3. The financial capital in Islamic banking is to be employed in community development rather than being separated from the community requirements (Abdulhaleem, 2005).

There are two main rules that the Islamic Financial institution are committed to:

First rule: the right to get the revenue (profit) is based on the amount of effort and the financial lost possibilities since the share holder is the bank's partner and has the share in the revenue as well as any financial lost.

Second rule: whoever guaranties the financial capital and take the responsibility for any loses has the share in the revenue gained from the capital investment. For example, Islamic bank guarantes the capital of the share holders as Secretariat deposits that can be requested any time. Thus, the institution has the right to get a share of the revenue generated from the capital.

That being said, Islamic Financial institutions characteristics can be summarized as following:

1. The religious characteristic: Islamic banking is a part of the Islamic economy since Islam involves all the human life social, moral, economical and political activities. Thus, Islamic banking follows the Islamic financial principles that are based on the fact that money belongs to Allah (all mighty) and humans are successors (*Mstakhlafan*) on that money and they will be asked about it in the hereafter. This principle is mentioned in the holly Quran *“Believe in Allah and His apostle, and spend (in charity) out of the (substance) whereof He has made you heirs. For, those of you who believe and spend (in charity), - for them is a great Reward”* (surat alhadid 7), and also Allah (swt) said at Surat al’raf, 129 *“It may be that your Lord will destroy your enemy and make you inheritors in the earth; that so He may try you by your deeds.”*

“Give them such a deed if ye know any good in them; yea, give them something yourselves out of the means which Allah has given to you” (Surat annur, 33).

Consequently, Islamic Financial Fnstitution has to assign an auditing comity consists of Islamic and economic scholars. This comity has the inspection responsibilities for all bank's activities to insure that all the activities are compliant with the Islamic rules. This process enhances the bank's rule in the community to be beneficial for the community as well as the financial institution.

2. Avoid dealing with interest: Islamic banking idea was primarily created to offer a banking services free of the forbidden interest process (i.e. Riba) that all conventional banks are contaminated with. Riba is based on the loan contract that demands additional payment

(i.e. interest) that increases with time. Riba is considered in Islam as a major sin as mentioned in the holly Quran: *"O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, take notice of war from Allah and His Messenger. But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly"* (surat albaqara, 278-279). Islamic banking replaces the forbidden interest with the financial profit/loses share as a company.

Halal and Haram in Islamic *Shariah*

Each individual in the Islamic society enjoys full freedom in earning his livelihood. Islam gives full freedom to all economic enterprise. Anybody can start, manage and organize any kind of business activities within the limits set by the Islamic *Shariah*. However, freedom does not operate with a sense of responsibility. individuals is not free in pursuing their economic activities provided that they respect the code of conduct prescribed for the profession, which broadly means choosing lawful things and avoiding unlawful matters. The dictates of the Holy Qur'an and the teachings of the Prophet (P.B.U.H) serve to the scale of everybody's minds of the distinction between legal and illegal means of earning, and forbidden or non-approval of all things that are either socially unacceptable or morally wrong.

In Islam there are principles of prohibition. They are all activities that cause harm to dealers and consumers in the market as well as society as a whole. It encourages the prevalence of free market where everyone earns his sustenance without government intervention.

However, it places some restrictions for eliminating situations of injustice and bad practices, and checks the unlawful. All aspects of market in Islam are considered free of any interference by the government. In any event, if people fail and to take guidance from the Holy Quran and *Sunnah* in matters relating to all business activities and business transactions, an Islamic State will struggle to regulate the market transactions (activities) on the Islamic sound principles. Freedom of institution in the Islamic market will, therefore, be organized by the (i) dictates and instructions of Qur'an and the commands and teachings of the Prophet Muhammad (P.B.U.H) and (ii) the orientations of the temporal authority. During the first centuries of Islam, this function was mainly performed by the institution of *Muhasbah* that used to be headed by a market inspector called *Muhtasib*. It was an important institution with broad-based and multifarious functions. The most important position in this institution was the chief whose duties were to maintain the control and watch on the harmful practices prevailing in the market, and society and looking and checking the incidence of injustice and bad practices in the market.

It is very necessary that all dealings and business activities must abide by the rules of Islamic law. Islamic *Shariah* establishes rules which govern and define the economic, social, political and cultural life of Islamic societies, including their financial institutions. As a religiously-based set of rules, the *Shariah* encourages behaviours which reflect the basic values of Islam (Joan, 2003). It discourages or prohibits behaviours which are viewed as inconsistent with the social goals

Islam espouses. *Shariah* encourages all types of investment in activities that benefit the society, and completely prohibits the use of money to raise money, payment or use the money for get interest. Prophet Mohammed (P.B.U.H) says,

“A time will come upon the people when one will not care as to how he gets his money whether legally or illegally” (Bukhari, No: 1941).

Therefore, every Muslim must avoid investment in *Shariah* non-compliant activities. *Shariah* specifies such prohibited activities which are:

1. Financial services based on *riba* (interest).
2. Gambling and gaming.
3. Manufacture or sale of non-*halal* products or related products.
4. Conventional insurance.
5. Entertainment activities that is non-permissible according to *Shariah*.
6. Manufacture or sale of tobacco-based products or related products.
7. Stock broking or share trading in *Shariah* non-compliant securities.
8. Other activities deemed non-permissible according to *Shariah*.

Some scholars permit taboos in some necessary situations (i.e. *Mahaddourat*). However, those scholars of *Shariah* put some conditions for these necessities. These conditions are:

Conditions of Necessities

1. There should be insisting necessities.
2. Necessities must be present not waiting it.
3. There should not be any divulgence way (means) to remove these necessities.
4. Remove the necessity by as much as the need.

Business Activities which may be Exposed to Doubtful Deeds

There are some business and economic activities of the Islamic banking that are suspected (*Mashbuh*) because of evidence contradict, and difference among scholars. These activities are:

(A) - Commercial Insurance: Most scholars have ruled that it is *haram* and have forbidden it due to its involving several intrinsic violations of *Shariah* such as: *Gharar* (unknown risk), *Riba* (interest) in its both forms *Riba Al Fadl* and *Riba Al Nasee'ah*, illegal acquisition of other people's money, and selling debt for debt. Despite all of this violations there are still those who allow it and defend its legality (Mustafa *Al Zarqa* – Resolutions of International *Fiqh* Academy for Muslim World League – 1398 H.A) (*uqud al-ta'men* (Insurance Contracts) – Al Baltaji – 1982).

(B) - Investment Certificates (type C): these certificate do not involve interest, wither simple or compound, nor do they sell for more than their value, however they are subject to a draw at specified periods and the winner (of the draw) receives a large sum of money (a prize). Some scholars perceive this prize as a reward for saving, while others consider it a form of *riba*

(Yousef – *al-qeam al-islamia* (Islamic Values), 1990). In *al-mawsua' al-ilmia wa al-amalia lilbunok al-islamia* (the Scientific and Practical Encyclopaedia of Islamic Banks), Vol. 5, a paper by Dr. Abdel Aziz, assistant professor at Al Zaqazeeq College of Law, considers it *halal* and supports it.

Whereas, Al Saloos, mentioned it in his book on modern financial transactions(*al-muamalat al-malia al-muasera fi mesan al-fiqh al-islami*) and considers it worse than its counterparts, types A and B, for combining both *riba* and gambling.

(C) - Short selling (the sale of contracts on the stock market without ownership and without delivery) i.e. without the buyer paying the price or the seller owning the commodity, and then the buyer becomes a seller and the seller becomes a buyer and so on till the real buyer and seller are reached, and several buyers and sellers exit the transaction taking with them the difference of values as profit without actually making any sales. Some contemporary scholars permit this sort of economic activity buying and selling, while others forbid it for the risk and explicit violations of *Shariah* texts it involves. (Resolutions of International *Fiqh* Academy for Muslim World League, Its Resolutions p120).

(D) - The interest received due to depositing savings in government deposit funds: Some scholars perceive this as *halal* as they believe that forbidden interest, i.e. *riba*, is only in transactions between individuals whereas transactions between individuals and governments are not considered to be *riba*, which is an ambiguous matter. The accurate judgment is what the majority of contemporary scholars have ruled it be

considered *haram*, without discriminating on the basis of the individual involved, but rather on the basis of a stipulated increase in value uncompensated by a financial transaction (Sami Hassan 1982).

(E) - Some contemporary scholars have permitted receiving interest from foreign banks but not from Islamic banks, on the basis of what some earlier scholars permitted dealing with non believers in an enemy country (during war) as the forbidden practice is dealing with *riba* in a Muslim country. However the majority of scholars have ruled that *riba* is forbidden regardless of the place of transaction whether in a country at war or peace, and whether the parties in transaction are Muslims or non Muslims, enemy or not, as *riba* is *riba*. Those who allowed transacting with *riba* with a non believer or a Muslim in a country at war, are Abu Hanifah, and Al Hassan of the *Hanafi* school, and from the *Maliki* school, Abdul malik (*Al Kassani – Bada'e Al Sana'e: vol.7/2127*), and the majority ruled with the contrary (*Al Nawwawi- Al Majmoo' – vol.9/442*).

(F)- There are some scholars who permitted waiving part of a loan in exchange for early payoff, for instance if a person owed 1000 pounds at a certain date, one may discount part of the amount if he pays earlier than the due date. Their reasoning for permitting this is that the Prophet (P.B.U.H) had wanted to acquire loan money due to him from some of the Jews before exiling them. They asked for a grace period but he told them to pay a lesser amount at once. Many scholars have ruled against this (Ali Al Saloos 1982).

(G) - Bay' Al I'nah: A form of sale that proliferates among trading environments far from religious know-

ledge. Its when a person sells a commodity to another with a deferred payment while handing over the commodity and then re purchases it from the buyer at a lower price without any defect in the commodity. This is known as *Bay' Al I'nah* as the buyer is not seeking the commodity but he is interested in the *Ein* i.e. the money, and only used the transaction as a ruse for obtaining his purpose. The majority of scholars have forbidden it while the *Shafi'i* school allows it (*Al Showkani – Nayl Al Awtar – 5/206*) (*Majmoo' Al Fatawa – 29/30*).

(H) - Bay' Al Tawwaruq: This resembles *Bay' Al I'nah* except in that the buyer sells the commodity to someone other than the original seller. Some scholars have permitted it while others have refrained from it. *Omar ibn Abdel Aziz* named it the "sister of *riba*" and *Shaikh* of Islam *Ibn Taimeah* makruh it (reprehensible) and said this was the more likely ruling among the scholars (*Majmoo' Al Fatawa – 29/431*).

(I) - Pricing: This is one of the disputed matters in *fiqh* (jurisprudence). It is when the ruler or whoever has the authority orders the traders to sell a certain commodity at a particular price, forbidding any increase or decrease in price for a social benefit. The majority of scholars ruled against it and Imam Malik allowed it without reservations (Yousef 1990).

Defining *al Shubhat*:

i) *Al Shubha lexically (likeness):* that which bears resemblance to two things. Allah (swt) says in *Surat Al Baqarah: 70*, (*for surely to us the cows are all alike - tshabaha-*) i.e. It has become difficult for us to distinguish between the required cow and the others. *Surat Al Baqarah: 118*, (*and those who have no knowledge*

say: Why does not Allah speak to us or a sign come to us? Even thus said those before them, the like of what they say; their hearts are all alike –**tshabahat**-. Indeed we have made the communications clear for a people who are sure) i.e. they are alike. Also in Surat Ale Imran: 7 (He it is Who has revealed the Book to you; some of its verses are decisive, they are the basis of the Book, and others are allegorical -**mutshabihat**-; then as for those in whose hearts there is perversity they follow the part of it which is allegorical -**tshabaha**-, seeking to mislead and seeking to give it (their own) interpretation. But none knows its interpretation except Allah, and those who are firmly rooted in knowledge say: We believe in it, it is all from our Lord; and none do mind except those having understanding).

ii) Al Shubha in shariah (doubtful deeds): The scholars have disagreed on how to define *al Shubha* according to *Shariah*; some say as *ibn Rajab al-Hanbali* said "It is the doubtful deeds that occurs whenever there existed two different beliefs regarding a matter generated from two different reasons". *Al Showkani* said in *Nayl Al Awtar* (5/p309), "It is that for which there is conflicting evidence". Some scholars said that is *mubah* (indifferent) and others said it is *makruh* (reprehensible). (*Nayl Al Awtar*, *Al Showkani*). *Ibn Daqeeq Al Eid* said, "doubtful deeds is any matter supported by conflicting evidence from *Quran* and *Sunnah*, and could carry more than one meaning, and it is devout to avoid" (The explanation of the Imam *Nawawi*'s forty hadith: p24).

Al Qaradawi said "In the mind of a *mujtahed* (a scholar qualified to issue rulings) there is a region in

between the obvious *halal* and the obvious *haram*, either due to conflicting evidence, or due to doubtful in the application of the evidence on a particular matter. It is devout as a Muslim to avoid these doubtful deeds so as not to be dragged into resembling what is known to be *haram* (*halal* and *haram*, p33). Al-Imam al-Suyuti said in his commentary on *Sunanh Al Nassa'i* while narrating this *hadith*, " The scholars have had a lot to say on the explanation of doubtful deeds, we can explain it in the best way, doubtful deeds is confusion (*iltibas*) and this term is used to describe something resembles a certain base matter, while at the same time it resembles another matter conflicting with the former, as if it resembles the latter more closely, hence they say *ishtabaha* i.e. its mixed from two deferent things and become one thing. Obviously, here it is devoutness to avoid this confusion and whoever does that is described as devout and conservative in his religion (*Al Suyuti – Al Hashiah: 7/243*)". *Al Suyuti* has also explained this matter in detail in his book *Al Ashbah wa al nathaer*.

As for those who said that doubtful deeds is those matters that are considered permissible (*mubah*), their reasoning is that these matters are neither explicitly *halal*, nor explicitly *haram*, therefore what else could they be but *mubah*, especially as excesses in these permissible matters could lead to *haram*, for instance in food and drink and attire and so on. And those who defined it as *makruh* took into consideration that *Shariah* has warned against doubtful deeds, and if there is no clear evidence forbidden a certain matter,

and then what would it be? It must be *makruh*, and excesses of this nature certainly lead to *haram* itself.

Shubuhah definition: It is the region between the obvious *halal* category and the obvious *haram* category leading to confusion (*iltibas*) in the mind of a mujtahed (a scholar qualified to issue rulings) in the matter of categorizing it in either category. In the mixed financial quantities, *Shubuhah* is generated when:

- A finite quantity of *haram* has become mixed with a finite quantity of *halal*.
- A finite quantity of *haram* has become mixed with a non-finite (i.e. extremely large) quantity of *halal*.
- A non-finite (i.e. very large) quantity of *haram* has become mixed with a non-finite (very large) quantity of *halal*.

In the non-mixed financial quantities, *Shubuhah* is generated due to conflicting evidence, or due to doubtful in the application of the evidence on a particular matter. It is devout as a Muslim to avoid these doubtful deeds so as not to be dragged into resembling what is known to be *haram*.

Evidences on the Necessity of Avoiding Doubtful Deeds

There are numerous texts that prove the importance of avoiding doubtful deeds and warn against the accompanying danger of leading towards *haram*. Among these texts are:

1- **The *hadith* narrated by *al-Nu'man bin al-Basheer*** – May Allah be pleased with them – said " I heard the Prophet (P.B.U.H) saying: "The *halal* is clear and the

haram is clear, in between there are doubtful deeds, not many people knowing them. For he who avoids them has achieved purity of religion and reputation. And he who falls in the doubtful deeds falls into *haram*, just like a shepherd guarding a sanctuary nearly resting in it. Indeed for every kingdom there is a sanctuary, and the sanctuary of Allah is His boundaries; and indeed in everybody there is a structure that if corrected will correct the entire body, and if corrupted, will corrupt the entire body; indeed it is the heart" (*Bukhari* 1/295) (*Muslim* 11/28) (*Imam Ahmad, Al Musnad* 4/269).

There are several notes worthy points in this *hadith*:

1- *Halal* is clear and obvious and so is explicit *haram*, but there are matters in between that perplex a lot of people: is it *halal* or *haram*? As for those who are sure of their knowledge, it is obvious to them where it falls.

2- As for the Prophet's phrase, "not many people know them" shows that there are those who do know and that it confuses those who do not know, not that they are confusing in their selves. That is so as the Prophet (P.B.U.H) did not die until he had completed the religion, and made clear every matter to the people making it a testament against them. He left no matter *halal* or *haram* without clarification, but this clarification varies and some matters are well known to all people so much as to be unacceptable for a person living in an Islamic country to be ignorant of them. Some matters are less widely known, and may only be common knowledge among holders of religious knowledge and agreed upon as *halal* or *haram* by the scholars, while they may be unknown to outsiders. Other matters may

even be less widely known even to *Shariah* scholars causing them to disagree on their *haram* or *halal* status, for various reasons which will be made clear while discussing types of doubtful deeds and their causes.

3- The *hadith* shows that when it comes to doubtful deeds, people fall into three different categories:

The first category: Those who avoid all doubtful deeds as they are not sure of their status. They are the ones who have demanded purity in their religion and reputation, i.e. those who attain this purity will safe guard their religion and their reputation against any criticism and infirmity that befalls those who do not, and one's reputation is what is exposed to praise or criticism. He who avoids doubtful deeds will have protected his reputation from attack and dishonour due to those who do not.

The second category: Those who fall in doubtful deeds as they cannot distinguish it being *halal* or *haram*, and they are those who fall into *haram* as a result. The reason is that eventually they will fall into *haram* without knowing it since they cannot distinguish whether or not it is *halal* or *haram* for sure, so they might be committing *haram* unknowingly and many people unwittingly fall in this category.

The third category: Those who make an effort to make an independent reasoning (*ijtihad*), provided they are qualified to do so. This is similar to the first category, only they might be better off, for each *mujtahed* has his reward, whether or not he reaches a correct con-

clusion (Al Nawwawi – Commentary on Sahih Muslim: vol. 11/27). Imam Nawwawi in his commentary classified all things into three types: those that are obviously *halal* beyond any doubt such as bread, fruit, oil, or honey, similarly talking, walking or looking at something and all such actions which are *halal* beyond any doubt. Then there are those that are obviously *haram* such as alcohol, pork, the meat of dead animals and urine, similarly actions such as adultery or lying or backbiting or gazing at an unrelated female and so on. As for doubtful deeds they are things that are neither distinguishable as being *halal* nor *haram*, and so not many people recognize them or know their ruling. Scholars however can reach a rule regarding such matters by applying a suitable text or *quias* (analogy) or *istishab* (accompanying). So if the scholar were to come across such a matter in which it is not immediately obvious whether it is *halal* or *haram*, then he would attempt to classify it as one of the two with the appropriate evidence. If he is able to classify it under *halal* then it is considered as such. Such matters may not be free of doubt even then and if it is so then it is safer to leave it falling thus under the Prophet's words, "he who avoids doubtful deeds has achieved purity in his religion and his reputation". As for those matters that a *mujtahed* is unable to classify, should he rule it to be *halal* or *haram* or refrain from ruling (*al-twaquf*)?

There are four opinions:

Opinion of Classification

The first: No classification is made, neither as *halal* nor haram nor permissible or other, since mandatory rules are made according to religious texts only.

The second opinion: It is ruled to be *haram*.

The third opinion: It is permissible.

The fourth opinion: *al-twaquf* (unable to decide the ruling).

Source: (Al-Nawawi commentary on *Sahih* Muslim 11)

4- Also this *hadith* is an example of the eloquence in the Prophet's speech (PBUH) and the use of imagery to picture an abstract idea with a physical example extracted from the environment in which they lived at the time. It is obvious that this is what he (PBUH) intended to warn against the inevitable danger of falling into *haram* if one were to continue in doubtful deeds, and that it is preferable to avoid all doubtful deeds to guard oneself against falling into *haram*. The Prophet (PBUH) portrayed that by likening it to the sanctuary that the Arab kings of the pre-Islamic era were accustomed to mark the boundaries of their lands with. These sanctuaries were typically green lands which were forbidden for common people to graze their livestock, and those few who would dare to graze their animals near the sanctuary would easily slip and transgress into the forbidden property and expose himself to the king's punishment.

The Prophet (PBUH) then showed that the real king is Allah, and that His sanctuary is His boundaries that He has forbidden. So who so ever wishes not to fall into *haram* must distance himself as far as possible from the boundaries by avoiding what may lead to them

even if it were doubtful deeds. There must be a guarding fence around the *haram*, and it is essential that a Muslim must avoid crossing this fence.

5- This *hadith* is also evidence chosen by those who forbid certain matters to block all paths that may lead to *haram* (*sadu althrraie'*), and that includes all schools of jurisprudence though the *Maliki* school is relatively more reliant on that in secondary matters.

6- Further it can be derived from the *hadith* that the viability of a person's actions and avoidance of doubtful deeds relying on his limbs is subject to the viability of that person's heart. The person's heart in question here is obviously not the organ made of flesh and blood, but that delicate spiritual godly thing that is the reality of man, that if it were unblemished and upright would render all his actions unblemished and upright as well. *Ibn Rajab Al Hanbaly* said: "The meaning of the up righteousness of the heart is its being filled with the love of Allah (swt) and the love of His obedience and the hatred of His defiance" (Umdat Al Qaree: 1/116).

2- Tirmidhi and ibn Majah recorded on behalf of Ateah Al Sa'di that he said: the Prophet (P.B.U.H) said: "*A servant (of Allah) does not attain the degree of piety certainty until he leaves a harmless thing fearing that which is harmful*" (Al Tirmithi 2451, authenticated by Ahmad Shaker /1353 hijri).

That is that the purpose behind a person's worship is fear and hope of his creator, while piety is watching Allah (swt) in every deed small or large, fearing His wrath and hoping for His approval. The Quran makes numerous mentions of the pious encouraging following in their footsteps. Of these verse is: *(Surely those who*

*guard (against evil) shall be in gardens and rivers, in the seat of honor with a most Powerful King.) Surat Al Qamar: 54, 55. In this hadith, the prophet (P.B.U.H) explains that a person cannot reach piety until he fears Allah and does not transgress His boundaries, and not only so but he also avoids what may be harmless lest it lead to some thing that is harmful and forbidden. That does not mean that piety means to forgo what is *halal* that is not what is implied here, but rather that a pious person will avoid which resembles *haram* standing by *halal*. In fact when a person reaches the state of piety he will distance himself as safely away from *haram* as possible by forgoing some of what may be *halal* in order to rest assured in his soul that he is far from *haram*.*

Abu *Darda'* – may Allah be pleased with him- and he is of those who attained the degree of piety- said: "To be complete in piety one must consider matters the weight of a single atom until he may leave what he believes to be *halal* lest it be *haram*, so that it may be a shield between him and the fire" (*Al Asbahani: 1/262, Al Khaneji, 1932 AD*).

Similarly, *Abu Dhar Al Ghaffari* – may Allah be pleased with him- also of this pious degree- used to say " It is of completeness in piety that one leaves some *halal* for fear that it may be *haram* shielding himself from *haram*" (*Mohammad Al Zeini, Notes on Fiqh (jurisprudence) from the Quran and Sunnah*).

Therefore a believer in fact protects his acts of worship and preserves his obligatory duty by maintaining a fence of voluntary supererogation, as one who forgoes voluntary supererogation may easily forgo the obligat-

ory duty as well and similarly preserves his worship by omission (i.e. by omitting certain forbidden and ambiguous acts) by maintaining a fence of permissible acts around them. It is highly probable for one who omits voluntary acts of worship to leave the obligatory and for who exceeds in permissible acts to fall into the forbidden unwittingly.

3- On the authority of *Al Nawwas ibn Sam'an*- may Allah be pleased with him- that the Prophet (P.B.U.H) said " *Virtue is good character and sin is what scratches in your chest and you hate that it be known*" (Muslim).

And of *Wasibah ibn Ma'bad* – may Allah be pleased with him- said, "I approached the Prophet (P.B.U.H) and he said have you come to ask about virtue and sin? Yes, I replied, so he said, "Search you heart, virtue is what rests the soul and rests the heart, and sin is what scratches at your soul and agitates in your chest even if the people reassure you several times" (Imam Ahmad, Al Musnad: 4/184).

We can note several points from these two *hadiths*, the narration of *Nawwas* and *Wasibah* respectively, namely:

- a) Al-Birr (Virtue) has two meanings, the first being with regard to dealing with others by treating them well as is especially applied to one's parents, and generally to treating all people well. When virtue is coupled with fear of Allah, as in (Help you one another in Al-Birr and At-*Taqwa* (virtue, righteousness and piety); but do not help one another in sin and transgression) *Surat Al Ma'eda*: 2, it then means dealing with people

by treating them well and dealing with the Creator with obedience by doing what He ordained and avoiding what He forbid.

The second meaning is to do all forms of obedience to Allah, obvious or subtle as in *Surat Al Baqara* (It is not Al-Birr (piety, righteousness, etc.) that you enter the houses from the back but Al-Birr (is the quality of the one) who fears Allah) 189. There may be many other meanings but these are the two most important and most general meanings of virtue. *Al Nawwawi* said describing the meanings of virtue: "virtue is maintaining contact (with one's relatives) and gentleness and being socially well behaved and obedience to Allah (swt) – and these are the makings of good character" (*Al Nawwaw* – commentary on *Sahih* Muslim: 16/111).

- b) The hadith also shows that Allah (swt) has created His servants with an inclination towards recognizing good and accepting it naturally, and an aversion for its opposite, and that is why Allah (swt) called them Ma'roof (what is known) and Munkar (what is refused), respectively.
- c) The hadith also shows that the sign that a matter is virtuous is that the heart is rested by it, and that the sign of a sin is that it agitates in the chest and that one dislikes that it be known to people. Both are easily distinguishable signs provided that one's heart is of the kind that is opened to faith and that one live in a Muslim community. Otherwise it is easy to see that a wicked heart can never recognize good or bad as

it is in the wrong direction. In fact in some evil societies a good thing appears to be bad, while a bad thing could be accepted as good through common practice and familiarity so that it is common place to call alcohol a spiritual drink, and a bribe a generous tip, usury becomes interest and loans are called deposits and deceit is known as skilfulness...and so on.

- d) Another point noted from the hadith is that the judge may not know the reality of the situation and may pass an unsuitable judgment. In this case it up to the believer to follow his conscience and if he feels comfortable with it he should accept it and if not then should refuse the judgment. Obviously this is not in matters in which there is a legal judgment, in which case he must surrender to it even if he disliked it in himself. On the other hand, even if a person felt uncomfortable with a judgment he mustn't refuse it if the judge presents him with legal evidence (such as a religious text), nor should he accept a judgment he feels good about if it is based only on the personal whim of the judge without any evidence. Examples of that is the permission for the traveller to break his fast or shorten his prayer.

4. On the authority of Abu Mohammad Husain bin Ali bin Abi Taleb- May Allah be pleased with him- said: " I learned from the Prophet (P.B.U.H): Leave what perplexes you for what does not" (reported by Ahmad in his *Musnad* – authenticated by Ahmad Shaker: 1947-*hadith* no. 1722).

In a narration by *Abu Huraira* – may Allah be pleased with him- that the prophet (P.B.U.H) said to a man, "Leave what perplexes you" So he said, how I can tell? He replied, place your hand on your chest, for the heart is disturbed by *haram* and stilled by *halal*, and a devout Muslim forgoes a small sin for fear of a great sin". In another narration reported by *Al Tabarani*: And who is the devout Muslim? He replied, the one who stops at the doubtful deeds". It may be understood by the *hadith* that one must avoid doubtful deeds. As pure *halal* does not disturb the believer's heart, while perplexion causes worry and discomfort.

It is worth noting that forgoing doubtful deeds and devotedness is a trait of upright Muslims. Whereas those who only pretend to be devout while committing offences of all sorts must be told off by those they seek out to ask about doubtful deeds, as *Ibn Omar (Abdullah bin Omar)* – may Allah be pleased with him- said when asked about the blood of a mosquito by someone from the inhabitants of Iraq: They ask me about the blood of a mosquito when they have killed *Al Hussain?* (*Jami'al Uloom wal Hikam* p104).

Al-Imam Ahmad was a very devout pious believer, but he disapproved greatly those who affected that by pretending to be concerned with the most complicated of doubtful deeds. The *hadith* stresses that it is essential that a Muslim avoid what he is not sure of and abide by that what he is sure of, as long as it is not a matter in which the *shariah* has provided a special concession. Imam *Nawwawi* said that "if one were to enter a village and come across a man you knew nothing about and couldn't find any discriminating feature or reason

to believe bad of him, nor any thing that distinguishes him like a soldier's uniform or the stance of a worshipper, then he is considered unknown and not considered a suspicious person, for suspicion arises out of two conflicting impressions for two different reasons. He said as well: most scholars cannot distinguish between what is unknown and what is suspicious.

Therefore devoutness is to leave what one does not know. And is permissible to buy from this unknown person or to accept his gift or his invitation. It is also better not to ask in this case as it would be hurtful to them and unwarranted suspicion which could be sinful in itself. Therefore one must either refrain from eating if he seeks to be devout or if he must eat then refrain from questioning, as the harm from not knowing is less than that caused by hurting an innocent Muslim's feelings or harming him. (*Al Nawwawi- Al Majmoo'*).

According to the principles of *Shariah*, all business activities must be in accordance to principles and rules of *Shariah* and any activity against them will be *haram* in Islam. Therefore business activities are very essential in *Shariah* compliance criteria, and here business activities are referred those business deal only clear businesses and not dealing with *Shubahat* (El-Gamal, 2000).

It is worth mentioning here that studies focusing on doubtful businesses in Islam are few. However, some researchers such as Imam *Ghazzali* have highlighted the *Shubuhahat*. In his book, *Ihya-Ulum-Id-Din, Al-Ghazali (1096-7)* mentions doubtful activities in general, and then divided the money *halal* and *haram*. Also specified the ranking of the doubts activity and places, the

book by Imam *Ghazali* is very important because in this book he rooted and divided the doubts things on the basis of Islamic law. *Al-Qaradawi*, et al. (1997) emphasizes that money types are either *halal* or *haram*. He calls for avoiding such doubtful activities based on *Hadith* given in *Al-Bukhari*.

Defining precisely what is clear and unclear in business activities is troublesome because similarities between them exist. The agreed-upon *Hadith* states “What is lawful is clear and what is unlawful is clear, but between them are certain doubtful things which many people do not recognize. Who guards against the doubtful things keeps his religion and his honour blameless (*Al-Bukhari & Muslim*)”. Explaining this *Hadith*, *Alasqlani* states that its identicalness to other where the verdict was not evident. However, *Ibn Mandhour* states that the similarities it is than problems matters. When Imam Ahmad was asked about *Shubuhah*, he replied that it is status between the *halal* and *haram* and a Muslim who wants to keep his religion should not approach it.

Although in Shariah, *halal* and *haram* are strictly decided, between the statuses of *halal* and *haram* *Shubuhah* exist. However, this status of *Shubuhah* is only known by *Shariah* Scholars. This is supported by *Hadith* mentioned above as it states that “between them are certain doubtful things which many people do not recognize”. Therefore, it is not easy for many people to recognize doubtful activities that exist in the middle between *halal* and *haram*. Subsequently, Muslims should avoid *Shubuhah* because it is a status that Muslims may get involved in it.

There is a range of business activities which raise many doubts and many questions on the legality of the work or dealings, and the money earned from these activities. These activities are:

Range Activities which raise doubt (*Shubuhah*)

1. Dealing with the conventional modern insurance companies.
2. Dealing with companies that sometimes perform a prohibited transaction in *Shariah*.
3. Working in places where taboos are committed.
4. Working in foreign countries, in places where taboos are committed.
5. Dealing with the traditional tax system (i.e. only tax systems those are Non-complaint with *Shariah*).
6. Working in the stock market (Bursa) with the companies those are dealing with *Shariah* non-compliant shares.
7. Working or dealing with the *Shariah* non-compliant investment funds.

Shubuhah is an Islamic term which refers usually to arguments against or criticism of Islam. More precisely, it can point to difficulties perceived in Qur'an or Islam. *Shubuhah* activities in business are mixing the *halal* money with the *haram* money or interlacing *halal* activities and *haram* activities together, which scholars has disagreed, when some scholars said it is permissible, and others said that it is forbid, both sides have evidences with permissible or prohibition.

A derived term with similar meaning is mentioned in the Qur'an at (Sura Al-i-Imran): "*It is He who has sent down to you the Book. In it are Verses that are entirely*

clear, they are the foundations of the Book; and others not entirely clear. So as for those in whose hearts there is a deviation (from the truth) they follow that which is not entirely clear thereof, seeking Al-Fitnah (polytheism and trials, etc.), and seeking for its hidden meanings, but none knows its hidden meanings save Allâh. And those who are firmly grounded in knowledge say: "We believe in it; the whole of it (clear and unclear Verses) are from our Lord." And none receive admonition except men of understanding". (Qur'an, Sura Al-i-Imran-3: 7).

Commenting on the previous verse, it is reported that Prophet (P.B.U.H) says,

"When you see those who follow what is not so clear of the Qur'an, then they are those whom God described, so beware of them".(Hadith – Sahih Bukhari, Volume 6, Book 60, Number 70).

On the authority of Abu 'Abdullah al-Nu'man bin Basheer, May Allah be pleased with them, who said: I heard the Messenger of Allah, (P.B.U.H), say:

"Truly, what is lawful is evident, and what is unlawful is evident, and in between the two are matters which are doubtful which many people do not know. He who guards against doubtful things keeps his religion and honour blameless, and he who indulges in doubtful things indulges in fact in unlawful things, just as a shepherd who pastures his flock round a preserve will soon pasture them in it. Beware, every king has a preserve, and the things Allah has declared unlawful are His preserves. Beware; in the body there is a flesh; if it is sound, the whole body is sound, and if it is corrupt,

the whole body is corrupt, and behold, it is the heart."[Al-Bukhari & Muslim].

The *hadith* given above is one of the major principles of Islam, which is under the provisions of *halal* and *haram*. In this *hadith* Prophet *Mohamed* shows doubtful things and legitimate approach in dealing with *Shubuhah*. In this *hadith*, there are also some issues that are:

First, the things in terms of the provision are of three sections:

Things in Terms of Provision

. Pure *halal* and unequivocal no doubts on it such as, restaurants, boats foods.

. Pure *haram* and unequivocal no doubts on it such as, drinking alcohol, usury, adultery and eating from the properties of the orphan.

. Questionable, between the *halal* and *haram* such as those transactions are not clear.

***Shubuhah* Arises out of Mixture**

- i) ***Doubt arises out of four places.*** This is based on the book *Ihya-Ulum-Id-Din* by Imam *Ghazzali* (d. 1111).The following table 1.6 illustrates the matters of *shubuhah*:

Matters of Doubts

<p><i>Doubtful in the cause of permissible and impermissible.</i></p>	<ul style="list-style-type: none"> - <i>That the original prohibition is known, and then doubt ensues as to whether the procedure for rendering permissible has occurred.</i> - <i>That the original permissibility is known, and then doubt ensues as to whether some process rendering it haram has occurred.</i> - <i>That the default prohibition is known, but reasonable conjecture suggests that the process of rendering halal has occurred.</i> - <i>That the original permissibility is known, but reasonable conjecture suggests that a process of rendering haram has occurred.</i>
<p><i>Doubt the origin of mixing. (Doubt arises out of mixture).</i></p>	<ul style="list-style-type: none"> - <i>Where a finite quantity of haram has become mixed with a finite quantity of halal.</i> - <i>Where a finite quantity of haram has become mixed with a non-finite (I.e. extremely large) quantity of halal.</i> - <i>Where a non-finite (i.e. very large) quantity of haram has become Mixed with a non-finite (very large) quantity of halal.</i>
<p><i>There is impiety (sin) that relates the permissible cause.</i></p>	<ul style="list-style-type: none"> - <i>Existing an impiety in the parallel.</i> - <i>Occurring an impiety in the subsequent.</i> - <i>Occurred an impiety in the previous.</i> - <i>Occurred an impiety in the compensation.</i>
<p><i>Conflicts in the evidences (Differences).</i></p>	<ul style="list-style-type: none"> - <i>Conflicting the evidences of the Shariah.</i> - <i>Conflicting the marks which Indicating of halal and haram.</i> - <i>Conflicting the similarities in the characteristics.</i>

Ibn Qudamah's abridgement of Ibn al-Jawzi's summary of al-Ghazzali's "Ihya' `Ulum al-Deen. "Mukhtasar Minhaj al-Qasideen"

(1) First place is doubt in the course of *halal* and *haram*: It has four classes

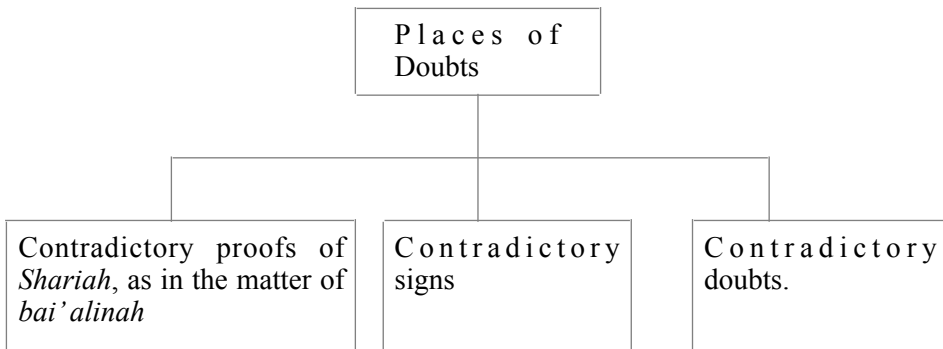
- i) A man knows a thing to be unlawful before, but doubt arises to be lawful. It is mandatory to give up this doubt and to take it as unlawful. For example, a hunted animal falls into water and it is lifted up as dead from water. Eating its meat is unlawful. There should be no place of doubt in it. Prophet (PBUH) said to Abdullah: Don't eat it. Your dog perchance has not killed it. Whenever anything was brought to prophet (PBUH), he used to enquire if doubt arose in his mind, till he knew whether it was *Zakat* or gift.
- ii) Although things are lawful, yet one doubts that it may be unlawful. The things are basically lawful, but owing to certain circumstances one doubts whether the legality of that thing still remains. For instance, two men quarrelled with each other, one man said to the other, "You are haters". An Allah-fearing man should leave them on doubt.
- iii) There are things that are essentially unlawful but a cause prevails upon it so strongly that it becomes lawful. It becomes a subject matter of doubt and becomes strong of its being legal. For instance, an animal after being shot disappeared. Afterwards it was found. With signs of only shooting in its body. It might be that it died owing to other reasons. Thus doubt arises whether its meat is lawful or not. An Allah-fearing man refrains from eating its meat. Prophet says, "If you know that your arrow killed it, and you do not find any wound in-

flicted by wild beasts, you may eat it." (Reported by *al-Tirmidhi*, who classifies it as *Sahih*).

- iv) Things are knowingly lawful, but it becomes unlawful at last owing to the rules of *Shariah*. For example, a pot is lawful but doubt arises whether there is any impurity in it. So to drink water from it becomes unlawful.
- (2) Second place of doubt is mixture of halal and haram: not kept separate but will become mixed and therefore doubt arises whether it is lawful or unlawful. There will be three types of this mixture of lawful and unlawful things.
- (A) One unlawful thing is mixed with limited number of lawful things, for instance the meat of a dead cow is mixed up with the meat of some sacrificed cows. Doubt in these things are to be given up, as there is no sign therein that the meat of a dead cow has been mixed. If there is reasonable doubt that the meat of a dead cow has been mixed, it will be unlawful.
 - (B) Secondly is the mixture of limited number of unlawful things with unlimited number of lawful things, for example, if there is prevalence of interest (usury) in a certain town, it is lawful to accept coins of that town.
 - (C) The third case is the mixture of unlimited number of lawful things with an unlimited number of unlawful things. In this case, if the unlawful things can be identified, it will be unlawful to enjoy them, but to give up a doubtful thing is a sign of piety. During the reign of *Yezid* some soldiers looted the properties of Medina for three days, although this did not prevent people from buying and selling goods in a market in Medina, which also consist of goods stolen.
1. Third place of doubt: Any sin found in any cause making

a thing lawful relates to the thing itself, or to its end, or to its beginning or to another thing in exchange of the thing, but it is not such a sin which nullifies an agreement or any cause which makes a thing lawful.

2. The fourth place of doubt arises out of diversity of proofs of *Shariah* in order to distinguish between a lawful thing and unlawful thing. This doubt is of three types;



Places of Doubts

ii) Doubt the origin of mixing. (Doubt arises out of mixture)

This issue was mentioned by scholars of *Fiqh* (Jurisprudence) and origins (*Ausol*), they have made clear ruling on this issue as to whether the proportion of *haram* more, less or equal than that which is *halal*. We shall recall the opinions of scholars on these issues.

(A) A Mix of Finite Quantity of *Haram* and a non-finite extremely large Quantity of *Halal*.

When there is a mix of two quantities of finite quantity of *haram* and a non-finite large quantity of *halal*, this mix is prohibited. This was mentioned by scholars of *Fiqh* (Jurisprudence) and origins (*Ausol*). *Ibn Taymiyah (Majmu` Fatawa)* states that if *haram* was mixed with *halal*, the *haram* status of

which is either totally forbidden or forbidden for external cause. This is because it might have been obtained by force or forbidden contracts like Riba. If this is doubt and mingled with other has not been forbidden on all generally. *Ibn Alqaym* (d. 1350) mentions the doubtful with respect to matter of money between permissible and impermissible (i.e. Muharram) that is taken forcefully or theft, etc. He said: this should not be avoided *halal* or forbidden it ultimately, but if his money mixing with *haram* (one *Dirhim*) or more should remove the amount of Muharram, and the remaining would be money *halal* without unlikable (*Makruh*).

Alkasany (*Badai'i` al-Sana'i*) states that everything marred with *haram* but the big part in it is *halal*, there is nothing wrong with the use and conduct. Moreover, *Ibn Najeem* says that if anyone suspects that sales of market is not free from *haram* and was often purchases are more, however, entitled to purchase. And he also said: If mixing *halal* with *haram* in the country, permitted the purchase and sale. Except as explicitly prove that it is forbidden. Ezz Ibn abdl Salam (*Qawa'id al-Ahkam*) states that if one Dirham mixed with one thousand Dirham, then it's a permissible dealing. According to what has been mentioned above it is permissible to deal with the activity of mixed if *halal* was more. "If the permissible money is more, that is, one dirham of prohibited money is mixed with one thousand of permissible money, and then the transaction is allowed."

(B) A Mix of Finite Quantity of Haram and a Finite Quantity of Halal

In this case, there are two quantities of Finite *halal* and finite *haram*. If *halal* part is larger than *haram* part, the whole mix is taken for granted as *halal* and vice versa. In other words, the decision of considering a particular mix as *halal* or *haram*

depends on the dominant part.

(C) A Mix of Non-finite Large Quantity of *Haram* and Non-finite Large Quantity of *Halal*.

With reference to this issue, *Ibn Najeem* states if anyone suspect that more of the sales of market are not free from corruption (dealing with *haram*) and were often purchases are more, however, entitled to purchase. Example for this case as is the case nowadays, when money from *Riba*, bribery and so for this in wide circulation in the market. In this case, it is not prohibited to partake of something of the entire quantity; unless there is some indication that this particular amount or Portion is from the *haram*. Otherwise, to abstain from it is precautionary, but not forbidden.

There are some issues mentioned by Imam al-*Ghazali* and by which they can know matters doubts.

Shubuhah in Shariah

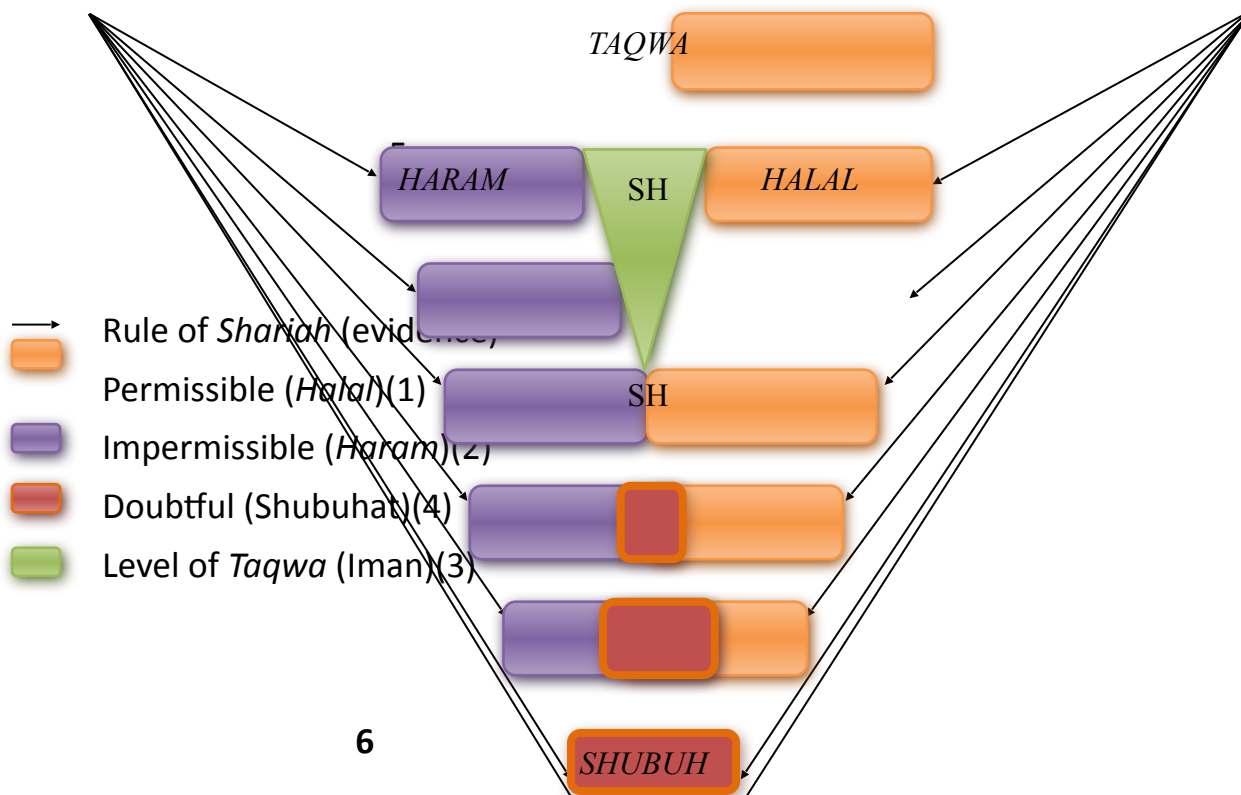
Islamic *Shariah*

1

3

4

2



In Figure above shows the places of *Shubuhat* in Islamic *Shariah* for each activity or transaction. This figure consists of six parts to clarify the place of *shubuhat* as follows: (1) Islamic *Shariah*: which illustrates the Islamic law and provisions (rules) on any activity or transaction on the basis of the rules of Quran, *Sunnah*, *Qiyas* and *Ijma'*, which recognizes it as *halal* or *haram*. (2) *Halal*: *halal* is that has permissible matter based on the provisions of *shariah*, and it is clear without a controversy such as the sale of bread. (3) *Haram*: *haram* is that has impermissible matter based on the rules of *shariah*, and it is clear without a controversy such as sale of wine. (4) Level of *Taqwa*: *Taqwa* is "Avoiding all that Allah (swt) abhors, be it word, action or emotion, and avoiding failing to do what Allah (swt) has ordered whether by action or by emotion". If a person's work is *halal* and then moves away from the forbid-

den, he/she will have a high level of piety. Whenever person is close to the forbidden (*haram*) was will be reducing the level of *Taqwa* until it reaches to the lowest level of piety, and then fall into the suspicions(*shubuhah*).⁽⁵⁾ Shubuhah: *shubuhah* is anything not clear if it is *halal* or *haram*? That are matters between the permissible and forbidden, and that its ruling did not know. ⁽⁶⁾ conflict of *shariah* evidence: this part in this figure is very important because there are many things controversies, because of contradictory proof of *Shariah* and differences between scholars of *Shariah* such as *bai' alinah* and *Tawarruq*. The figure above shows that there are some conditions that must be achieved to determine Shubuhah, namely, the existence of *halal* with *haram*, whether mixing or non-discrimination between them which is another issue.

Determinants of *Shubuhah*

Based on previous literature, as well as based on discussion and review of the opinions of scholars on the issue of shubuhah and its definition, it becomes apparent that there are three determinants for shubuhah (conflicting, resemble, and mixing). These determinants were fundamentally constructed and premised on the syntheses of shubuhah concepts by different Muslim scholars of the past and the present. These determinants are:

a- Conflicting: Conflicting of evidence is one of the reasons that lead to the difference between scholars. We can define the conflicting as contrary to the evidence based on the face of contradiction or antagonism. Usually, the conflict of opinions between scholars is based on understanding the evidence. Some scholars have understood the evidence assuming his knowledge and then will give the ruling about the matter. And other scholars may understand the evidence based on his

knowledge but with deferent ruling (i.e. the conflicting depend on understand of evidence from *shariah*).

In the fact, there is no conflicting in Islamic *shariah* (*Quran* and *Sunnah*) because the source of *shariah* only Allah (swt) (one source). *Allah* (swt) not gives us the deferent ruling (conflict) about one matter because Allah has the integrality (*Al-kamal*), *alkamal* just for *Allah* (swt) (i.e. only Allah (swt) has *Kamal*).

Sometimes the conflicting comes from how to use or apply the evidence on a particular matter. In this case, we can find deferent ruling about one matter. Therefore, the determinant of conflicting has included and contains all the issues that tolerate the differences between the views or opinions of scholars as well as comprehensive to the texts and the conflicting evidence in *Quran* and *Sunnah*.

b- Resemble: When *fuqaha* scholars using the word of resemble, they are meaning confusion and mixed. The scholars have confused in their minds about hokum (rule). There is *iltibas* about the particular matter because this matter included or containing the ambiguity. And the ambiguity comes from lack of clarity rule (hokum) because there are some rules at mind of a scholar. Sometime they resemble come from mixed to deferent things and become one thing. Therefore, difficult to judge from the *Ulama* about the particular matter because containing it the confusion and ambiguity.

c- Mixing: Determinant of mixing cover and included all aspects of quantity mixing, whether mixing material quantity (mix wine with food) or mixing money quantity (*halal* money with *riba*). Mixing *halal* quantity with *haram* quantity depend on account the level of contribution of interest income received by the institution from conventional fixed deposits or other interest bearing financial instruments. In addition, di-

vidends received from operations and investments in *Shariah* non-compliant are also considered in the analysis carried out by the *Shariah*. For institutions with business activities comprising both non-permissible (*haram*) and permissible (*halal*) elements, the level of mixed contributions from the activities that are clearly prohibited such as *riba* (interest-based institutions like conventional banks), gambling, pork, and liquor. Furthermore, the level of mixed contributions from the activities that involve the element of forbidden, which is *haram* (a prohibited element) affecting most people and difficult to avoid it. An example of such a contribution is the interest income from the conventional banks based on fixed deposits.

Summary of Definition of *Shubuhah*

Based on literature, the *shubuhah* can be defined as: it is the region between the obvious *halal* category and the obvious *haram* category leading to confusion (*iltibas*) in the mind of a *Mujtahed* (a scholar qualified to issue ruling) in the matter of categorizing it in either category.

Shubuhah was defined as the region in between the obvious *halal* and *haram*, either due to conflicting evidence, or due to doubtful in the application of the evidence on a particular matter.

Parameters and Criteria of *Shubuhah*

The following criteria can be used to analyse whether activities of a particular company can be deemed involvement in *Shubuhah* or not. The criteria are suggested by referring to the Quran, *Hadith* and general *Shariah* principles, and formulated according to the activities of a particular company. The criteria are as follows:

First Parameter

The activity of primary of the company is based on usury (*riba*) as practised by conventional financial institutions, including merchant banks, commercial banks, etc. evidence of. *Quranic* based on verses 275–276 in *Surah al-Baqarah* Meaning:

“Those who devour riba will not stand except as one whom the evil one by his touch hath driven to madness. That is because they say: ‘Trade is like riba,’ but God hath permitted trade and forbidden riba. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for God to judge; but those who repeat (the offence) are Companions of Fire: they will abide therein (forever). God will deprive riba of all blessing, but will give increase for deeds of charity: for He loveth not creatures ungrateful and wicked.”

And also *ijma'* evidence the Islamic jurists from all the *Mazhab* unanimously view that *riba* is forbidden. Because consensus of opinion has become a forbidden *riba* unanimously (*ijma'*) (*Ibnu Qudamah, Al-Syirazi, Ibnu Rusyd, Al-Zuhaili*) (SAC, 2007). Therefore, this criterion takes into account the level of contribution (mixing) of interest income received by the institution from conventional fixed deposits or other interest (*riba*) bearing financial instruments.

Second Parameter

Companies that are its primary activities gambling such as companies running gaming, casinos, and others. The prohibition of gambling clear is in the Holy Qur'an, where Allah s.w.t. ordered the faithful to avoid it, as decreed in verse 90, *Surah al-Maidah*:

Meaning: “O you who believe! Intoxicants, and gambling, (dedication of) stones, and (divination by) arrows, are an abomination of Satan’s handiwork: eschew such (abomination)

that ye may prosper." Therefore, this criterion takes into account the level of contribution (mixing) of dividends received from operations and investment in Shariah non-compliant.

Third Parameter

The primary activity of a company is the sale of prohibited goods, production and services, including:

- (a) Processing, producing and marketing alcoholic drinks;
- (b) Supplying non-*Halal* meat like pork, etc.; and
- (c) Providing immoral services like prostitution, discos, pubs, etc.

i) Evidence regarding food, Islam urges the whole of mankind to eat food which is *Halal* and good. This exhortation is based on the decree of Allah s.w.t. in the Quran, verse 168, *Surah al-Baqarah*: Meaning: *"O ye people! Eat of that which is on earth, lawful and good; and do not follow the footsteps of the evil one for, he is to you an avowed enemy."* and verse:3 in *Surah al-Maidah*: Meaning: *"Forbidden to you (food) are dead meat, blood, the flesh of swine, and that on which has been invoked other than Allah's name, that which has been killed by strangling, or by a violent blow, or by a headlong fall, or by being gored to death, that which has been eaten by a wild animal, unless you are able to slaughter it (in due form), and that which is sacrificed on stone altars."*

ii) Evidence for prohibition of alcoholic drinks, *Quranic* evidence based on verses 90 in *Surah al-Maidah*; *"O you who believe! Intoxicants and gambling, and (dedication of) stones, and (divination by) arrows, are an abomination of Satan's handiwork. So avoid such abomination that you may prosper."*

It was narrated of a *hadith*: *Meaning*: “*Verily Allah s.w.t. curses intoxicants, those who squeeze grapes to produce, those who buy the grape juice for making the drinkers, suppliers of intoxicants, bearers of intoxicants, those who pour intoxicants into cups for drinkers, sellers of intoxicants, those who buy them and those who spend the money earned from the sale of intoxicants.*”(Hadith narrated by *al-Hakim and Ibnu Hibban*).

iii) Evidence for Prohibition on immoral activities, In the matter of adultery, Islam prohibits its followers from committing the abominable act, so much so that the perpetrator deserves the heaviest penalty should he or she be found guilty. Allah s.w.t. decrees: *Meaning*: “*Nor come high to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils).*”(Surah *al-Isra’*: 32)

Similarly, with a company which carries out activities of immoral like selling alcoholic drinks, running pubs and discos, prostitution, etc. because such activities encourage vice.

In order to determine the status of doubtful banks as an Islamic Banks, it is necessary to draw up specific criteria to ensure that doubtful elements are minimal and related to those excused by *Shariah*. In other words, the presence of doubtful elements does not affect the permissible part which is larger and more important. Therefore, this criterion takes into account the level of contribution (mixing) of dividends received from business activities and services in *Shariah* non-compliant

Mixture-proportion Measurements in *Shubuhah*

The measurements and analysis of *Shubuhah* mixture-proportion are based on Quran and *Hadith (Sunnah)* evidences. For example, the prophet (PBHU) said: “*What is lawful is clear and what is unlawful is clear, but between them are certain*

doubtful things which many people do not recognize. He who guards against the doubtful things keep his religion and his honour blameless, but he who falls into doubtful things falls into what is unlawful, just as a shepherd who pastures his flocks round a sanctuary will soon pasture them in it. Every king has a sanctuary, and God's sanctuary is the things he had declared unlawful" (Al-Bukhari). Also, the measurements are based on what Imam Al-Ghazali divided the matters of doubts as shown in Table 1.6. Mixing halal quantity with haram quantity depend on account the level of contribution of interest income received by the institution from conventional fixed deposits or other interest bearing financial instruments. In addition, dividends received from operations and investments in Shariah non-compliant are also considered in the analysis carried out by the Shariah, for institutions with business activities comprising both permissible (halal) and non-permissible (haram) elements.

The level of mixed contributions from the business activities that are clearly prohibited such as *riba* (interest-based institutions like conventional banks), pork, gambling and liquor. Furthermore, the level of mixed contributions from the business activities that involve the element of forbidden, which is haram (a prohibited element) affecting most people and difficult to avoid it. An example of such a contribution is the interest income from the conventional banks based on fixed deposits.

The book investigates the nature of the business of these institutions which deal with business doubtful activities. These activities are: (i) mixing *halal* with *haram* based on finance. (ii) Mixing based on revenue. Measurement will be to this issue on the basis of the amount of money deposited (revenue and finance) by the Islamic Bank with traditional banks or vice

versa as measuring it by total funds of the bank (i.e. its rate to total). And will be on three cases:

Mixed of Quantity

-
- Where a finite quantity of *Haram* has become mixed with a finite Quantity of *Halal*.
-
- Where a finite quantity of *Haram* has become mixed with a non-finite (i.e. extremely large) quantity of *Halal*.
-
- Where a non-finite (i.e. very large) quantity of *Haram* has become mixed with a non-finite (very large) quantity of *Halal*.
-

Methods of Financial Analysis to Determine *Shubuhah* Mixture

The mixing of money can be determined through the finance or revenue sides. Therefore, *Shubuhah* can be identified on the basis of mixing proportion. Thus, the operational definition of *Shubuhah* was identified for the institutions where money mixing is permitted neither on the basis of finance, nor on the basis of revenue.

There are two methods of financial analysis and accounting religiously to financial statements for institutions to determine *Haram* mixture in the financial structure and the profits (*Shehatah*, 2003).

1-Method of analyzing the structure of finance in order to determine the proportion of the *Haram* mixture

This method is based on the idea of analyzing the elements of the structure of finance to the elements of self-financing, and elements of finance based on interest, to know Percentage to all.

Include elements of self-financing (equity) with the following:

1- Capital.

2- Reserves.

3- Undistributed profits.

4 - Profit for the period.

Deduct the losses during the period.

These are called equity items, and it's *Halal* in *Shariah*.

Include elements of financing by the credit system (finance based on interest) the following:

1- Long-term loans from banks or from other parties based on interest.

2-Loans bonds based on interest.

3-Overdraft from banks or from others based on interest

These elements are not allowed in Islamic *Shariah* because of including the interest of *Riba*.

Calculates the proportion of financing based on interest to the total financing structure As follows:

$$\frac{\text{The total finance by system of interest}}{\text{Total funding (Self-financing + finance based on interest)}} \times 100\%$$

Example: the following data and information extracted from the balance sheet for one of the Islamic banks:

Capital: **RM 5000000**

Reserves: **RM 2000000**

Undistributed profits: **RM 1000000**

The total of Self-financing: **RM8000000**

Finance based on interest **RM 2000000**

Total funding structure **RM 10,000000**

Calculated the ratio of funding interest on the credit system as follows:

$$20\% = \frac{2000000}{2000000 + 8000000} \times 100$$

Accordingly, the ratio of *Haram* mixture **20%** of the profits gained.

2-Method of analyzing elements of income and expenses to estimate the ratio of income mixing haram

This method is based on the idea of separating income from *halal* activities (away from the doubtful) on income gained from the activity forbidden. For example: bank interest earned, income from securities of the shares of institutions operating in *haram*, interest earnings resulting from debt rescheduling to others, Demurrage and the interest of bonds. On the basis of this method is divides to revenue from *haram* to total income and then calculate the Percentage.

$$\frac{\text{Revenue gained from the forbidden}}{\text{Total Revenues (Income } \textit{halal} \textit{ + Income } \textit{haram})} \times 100\%$$

For example: Following data on the revenue extracted from the income statement for bank:

Total income arising during the period: **RM50, 000,000**

Include the following:

- Income from bank interest earned: **RM 500,000**
- Proceeds of unlawful activities: **RM2, 000, 000**
- Total Revenues *Haram*: **RM2, 500, 000**

Calculated the ratio of income to total income of *Haram* as follows:

$$\frac{2500000}{5000000} = 50\% = 5\% \times 10$$

Accordingly, the ratio of *Haram* mixture 5% of the income gained.

Operational Definition of *Shubuhah*

Since main objective of this book is to determine the definition of *Shubuhah* from Islamic finance perspective, this section will highlight the synthesized *Shubuhah* definition from the previous studies as well as the *Shubuhah* interviews with religious experts and consequentially the operational definition used in the study.

Firstly, from the previous literature studies the linguistic meaning of *shubuhah* was driven from *Alquraan* (*Surat Al Baqarah: 70*) and can be summarised as: Al *Shubhat* that which bears resemblance to two things. Secondly, for *Shubuhah* definition from *Shariah* point of view, different definitions were proposed by the scholars. Majority of the definitions referred to *Shubuhah* as doubtful deeds. As for its cause, *Shubuhah* can occur due to the conflicting evidence from Quran and *Sunnah*, beliefs regarding a matter generated from two different reasons or confusion (*iltibas*) in resembling two conflicting matters.

In summary, *Shubuhah* can be defined as: It is the region between the obvious *halal* category and the obvious *haram* category leading to confusion (*iltibas*) in the mind of a *mujtahed* (a scholar qualified to issue rulings) in the matter of categorizing it in either category.

Where a finite quantity of *haram* has become mixed with a finite quantity of *halal*.

- Where a finite quantity of *haram* has become mixed with a non-finite (I.e. extremely large) quantity of *halal*.

- Where a non-finite (i.e. very large) quantity of *haram* has become mixed with a non-finite (very large) quantity of *halal*.

Shubuhah was defined as the region in between the obvious *halal* and the obvious *haram*, either due to conflicting evidence, or due to doubtful in the application of the evidence on a particular matter. It so as not to be dragged into resembling what is known to be *haram* (Al Qaradawi, 1997).

Summary of Definitions (Previous literature)

<i>Name</i>	<i>Conflicting of evidence</i>	<i>Mixing Halal and Haram</i>	<i>Resemble</i>
<i>Imam Al Showkani</i>	√	-	-
<i>Ibn Daqeeq Al Eid</i>	√	-	√
<i>Dr. Yousef Al Qaradawi</i>	√	-	√
<i>Al-Imam al-Suyuti</i>	√	√	√
<i>ibn Rajab al-Hanbali</i>	-	-	√
<i>Imam al-gazali</i>	√	√	√

Secondly; on the basis of the exploratory study, respondents are: (bank professional, academics' and scholars). Based on the Islamic banking experts point of view (*Shihatah, 2009*), Islamic banks are dealing with banks and correspondents in most countries of the world according to the global banking system, to facilitate the import and export transactions and the exchange of cash and financial investments. It is preferable to select correspondents on the basis of the jurisprudence of priorities in the transactions, and shall be dealt with according to the provisions and principles of Islamic law. In

this case several doubts should be avoided including the following:

Summary of *Shubuhah* (*Shihatah Interview*)

-
- 1: *Shubuhah* deposit funds with correspondents based on interest.

 - 2: *Shubuhah* invest some the money by process illegally or non-compliant with *Shariah*.

 - 3: *Shubuhah* of non-disclosure deal with correspondents.

 - 4: *Shubuhah* about Transactions with correspondents is not subject to *Shariah* Supervisory.

 - 5: *Shubuhah* of dealing with conventional banks per system of deposits based on interest.

Shubuhah from a Public Bank Chairman point of view (*Mohamad interview, 2010*) is something is not clear and non-transparent in the transactions.

Shubuhah from a member of SSB in Islamic *Qattar* Bank point of view (*Alhashimy, interview 2010*) is any transaction near or similar transaction in conventional banks. The deference's between falling in *shubuhah* and Infraction should by specify. The Infraction is anything happening on the basis of intentional, but *shubuhah* is anything happening that is not intentional.

Shubuhah was also known as the money which we doesn't recognise the rule, is it *halal* or *haram*? Because there is not any evidence for prohibition or permission (Mufti Penang, interview 2010).

Academic expert definition of *Shubuhah* business activities: are those that are similar to the right and the offending; confused about the matter between them was *shubuhah*, if the measurement on the basis of legal rules would be legally

doubtful, if the measurement on the basis of *Shariah* rules would be *Shariah* doubtful (*kantakji*, interview 2010).

Shubuhah is something that is not clear and non-transparent in the transactions (*Merakhor*, interview 2010).

From the Chairman of Program of *Shariah*-compliant banks (Beltagy, interview 2010) point of view, *Shubuhah* is tainting some transactions by violation of the legitimacy for examples get the interest (*riba*) or inaccuracy to implementation of the contract. Transactions in violation of *Shariah* get the interest (*riba*) from the accounts of reporters.

Summary of Definitions (Previous Interviews)

<i>Name</i>	<i>Conflicting of evidence</i>	<i>Mixing Halal and Haram</i>	<i>Resemble</i>
<i>Prof. Dr. Samir kantakji</i>	-	-	√
<i>Sultan Alhashimy</i>	-	√	√
<i>Hussain Shihatah</i>	-	√	-
<i>Mufti Penang</i>	-	√	√
<i>Abass Merakhor</i>	-	√	√
<i>Dr. Mohamed Beltagy</i>	-	√	-
<i>Saruan B Mohamad</i>	-	√	-

Next table shows the comparing of definitions between classic scholars and experts in Islamic finance and banking and scholars to determine the definition of *Shubuhah*.

Comparing of Definitions (Previous literature & interviews)

<i>Name</i>	<i>Conflicting of evidence</i>	<i>Mixing Halal and Haram</i>	<i>Resemble</i>
<i>Imam Al Showkani</i>	√	-	-
<i>Ibn Daqeeq Al Eid</i>	√	-	√
<i>Dr. Yousef Al Qaradawi</i>	√	-	√
<i>Al-Imam al-Suyuti</i>	√	√	√
<i>ibn Rajab al-Hanbali</i>	-	-	√
<i>Prof. Dr. Samir kantanji</i>	-	-	√
<i>Sultan Alhashimy</i>	-	√	√
<i>Hussain Shihatah</i>	-	√	-
<i>Mufti Penang</i>	-	√	√
<i>Abass Merakhor</i>	-	√	√
<i>Dr. Mohamed Beltagy</i>	-	√	-
<i>Imam alqazali</i>	√	√	√
<i>Saruan B Mohamad</i>	-	√	-

Based on the previous literature and interviews with the experts, (bank professionals, Academics' and Scholars) it became apparent that the definition and concept of *Shubuhah* are:

Shubuhah is the region between the obvious *halal* category and the obvious *haram* category leading to confusion (*iltibas*) in the mind of a *mujtahed* (a scholar qualified to issue rulings) in the matter of categorizing it in either category.

As for the *Shubuhah* of Islamic banks, two main cases are studied:

- I. Mixed financial quantities, *Shubuhah* is generated when:

Mixed Financial Quantities

- 1: A finite quantity of *haram* has become mixed with a finite quantity of *halal*.

 - 2: A finite quantity of *haram* has become mixed with a non-finite (i.e. extremely large) quantity of *halal*.

 - 3: A non-finite (i.e. very large) quantity of *haram* has become mixed with a non-finite (very large) quantity of *halal*.
-

II. Non-mixed financial quantities, *Shubuhah* are generated due to conflicting evidence, or due to doubtful in the application of the evidence on a particular matter. It is devout as a Muslim to avoid these doubtful deeds so as not to be dragged into resembling what is known to be *haram*.

The mixing of money can be determined through the finance or revenue sides. Therefore, *Shubuhah* can be identified on the basis of mixing proportion. Thus, the operational definition of *Shubuhah* was identified for the institutions where money mixing is permitted neither on the basis of finance, nor on the basis of revenue.

***Shubuhah* from Islamic Finance perspectives**

On the basis of the existing results in previous sections, this study redefined the *Shubuhah* because there was no clear and agreed upon definition by the scholars. From the perspective of the scholars (traditional '*Ulama*) *shubuhah* was referred to, generally, as an unclear religious matter. *Al Showkani*, *Ibn Daqeeq Al Eid*, *Dr. Yousef Al Qaradawi*, and *Al-Imam al-Suyuti* have considered the conflicting of evidence as apart from *Shubuhah*. The lack of understanding and the uncertainty in the evidence meaning was added to *shubuhah* definition as

reported by *Ibn Daqeeq Al Eid*, and *Dr. Yousef Al Qaradawi*. *Al-Imam al-Suyuti*, *ibn Rajab al-Hanbali*, *Prof. Dr. Samir kantakji* and *Sultan Alhashimy* have considered the resembles of things as a part of *Shubuhah*, thus, the resembles of matter conflicting with another, as if it resembles the latter more closely, is considered as *ishtabaha* (i.e. its mixed from two different things and become one thing).

Hussain Shihatah, *Dr. Mohamed Beltagy*, and *Sultan Alhashimy*, considered dealing with traditional banks as dealing with Riba.

Imam Algazali, *Prof. Dr. Samir kantakji*, *Dr. Mohamed Beltag*, *Al-Imam al-Suyuti* and *Hussain Shihatah*, considered the mixing between tow matters as *shubuhah* (mixing *halal* with *haram*).

Based on previous literature that has been access to the determinants of *shubuhah* to become a comprehensive discussion for the definition of *shubuhah*. The first objective of this study is to come up with the definition for *shubuhah*, thus this section will discuss the *shubuhah* definition and consequently the determinants of *shubuhah* derived from the concepts. From the review of previous literatures, determinants of *shubuhah* can be synthesized as:

- i) Firstly, that which bears resemblance to two things.
- ii) Secondly, majority of the definitions referred to *Shubuhah* as doubtful deeds.
- iii) Thirdly, as for its cause, *shubuhah* can occur due to the conflicting evidence from Quran and *Sunnah*, beliefs regarding a matter generated from two different reasons or confusion (*iltibas*) in resembling two conflicting matters.

As such, in consistent with what has been conceptualized earlier of *shubuhah*; it becomes apparent that there are three determinants that can cause doubts.

These determinants were fundamentally constructed and premised on the syntheses of *shubuhah* concepts by different Muslim scholars of the past and the present.

Although there are differences among scholars (traditional '*Ulama*') in their interpretations of *shubuhah*, they have common feature: (i) conflicting of evidences regarding the issue under Islamic rulings, (ii) issues that mix *halal* with *haram* activities, and (iii) there is no clear-cut lines boundaries whether this issue *haram* or *halal*. For example, Islamic banks deal with conventional banks that employ interest rate mechanism.

Therefore, to understand the definition three matters has to be included: conflicting evidence resembles between things and mixing between to matters. On that basis, the definition of *shubuhah* is the region between the obvious *halal* category and the obvious *haram* category leading to confusion (*iltibas*) in the mind of a *mujtahed* (a scholar qualified to issue rulings) in the matter of categorizing it in either category.

Although there are differences among scholars (traditional '*Ulama*') in their interpretations of *shubuhah*, they have common feature:

- a. Conflicting of evidences regarding the issue under Islamic rulings.
- b. There is no clear-cut lines / bonfires whether this issue *haram* or *halal*.
- c. Issues that mix *halal* with *haram* activities. For example, Islamic bank deal with traditional banks that employ interest rate mechanism.

The mixing of money can be determined through the finance or revenue sides. Therefore, *Shubuhah* can be identified on the basis of mixing proportion. Thus, the operational definition of *Shubuhah* was identified for the institutions where money mixing is non-permitted neither on the basis of finance, nor on the basis of revenue.

The operational definition of *shubuhah* can be defined: It is the region between the obvious *halal* category and the obvious *haram* category leading to confusion (*iltibas*) in the mind of a *mujtahed* (a scholar qualified to issue rulings) in the matter of categorizing it in either category. In the mixed financial quantities, *Shubuhah* is generated when:

- A finite quantity of *haram* has become mixed with a finite quantity of *halal*.
- A finite quantity of *haram* has become mixed with a non-finite (i.e. extremely large) quantity of *halal*.
- A non-finite (i.e. very large) quantity of *haram* has become mixed with a non-finite (very large) quantity of *halal*.

In the non-mixed financial quantities, *Shubuhah* is generated due to conflicting evidence, or due to doubtful in the application of the evidence on a particular matter.

Conclusion

Conceptually, the study still relates to the classical definition of *shubuhah*. However, it was re-conceptualized in the context of modern Islamic finance which include among others, the mixture of revenue and finance of Islamic financial institutions with *haram* elements.

The book enriches the *Shubuhah* literature. The definition of *Shubuhah* has been conceptualized to the Islamic Finance in this study. Furthermore, this study added a new discussion,

i.e. *Shubuhah* on the buseniss activities in Islamic finance. And it is a novel study since there are no previous studies, as to the author's knowledge that has covered this area from the Islamic finance perspectives.

This study would enlighten the Ummah and contribute to knowledge to provide clarification on the *Shubuhah* fundamentals for further investigations and with more detailed description of the *Shubuhah*. Also this study introduces a value chain of *shariah* compliance by adding the elements of *shubuhah* to the general understanding of *shariah* compliance which has been generally understood as having the elements of *halal* and *haram*. And this study contributes to both academic and practitioner individuals. The study may have some policy implications whereby the policy is made (*shariah* advisory council, Islamic banks management). This is not for the benefits of the Islamic financial institutions only but also for the public and shareholders as a whole.

Shariah Supervisory Board (SSB) should promote the importance of and avoiding, and have reducing the *shubuhah* in buseness activities to Islamic financial institutions. The committee of SSB in Bank central must also look into the importance of avoiding *shubuhah* and apply it to the Islamic financial institutions. Besides, the importance of avoiding *shubuhah* has been mentioned repeatedly in the holy Qur'an and *Hadith*.

The importance of reduction and subsequently avoidance of *shubuhah* will also act as guideline for the companies in their business activities. The Islamic financial institutions that reduction will know their limit in conducting their business activities that should not conflict with the *shariah* and affect the shareholders.

REFERENCES

1. AAIOIFI, Accounting and Auditing Organization for Islamic Financial Institutions 1999, Governance Standard for Islamic Financial Institutions No. 1 - *Shari'a Supervisory Board: Appointment, Composition and Report*.
2. Abdel Aziz Amer, *al-mawsua' al-ilmia wa al-amalia lilbunok al-islamia*. (The Scientific and Practical Encyclopaedia of Islamic Banks), Vol. 5.
3. Abdul Rahim, (2008). ISRA Islamic Finance Seminar shariah audit for Islamic Finance services: the needs and challenges 1.
4. Abdus, S. & M. Kabir, H. (2001). The performance of Malaysian Islamic Bank During 1984-1997: An Exploratory Study. *International Journal of Islamic Financial Services*, Vol. 1No.3
5. Ahmad Yousef, (1990) *al-qeam al-islamia* (Islamic Values).
6. Al Asbahani, (1932) Al Khaneji, AD 1/262.
7. Al-Asqalani, I, H. (1428). Fath al-bari fi shareh sahih al-Bukhari (5th ed. Vol. 1) Bertu: Daral-kotob Al-ilmyiah.
8. Alawneh, S.F. (1998), "Human motivation: an Islamic perspective", *American Journal of Islamic Social Sciences*, Vol. 15 No. 4, pp. 19-39.
9. Al-Bukhari, M. I, I. (870) sahih Al-Bukhari (5th ed. Vol. 1). Jeddah, Saudi Arabia: Daru' ibn kathir.1/295.
10. Alhabshi, S.O. (1993), "Management ethics from Islamic perspective", *Proceedings: Arab Management Conference*, University of Bradford, and Bradford, UK.
11. Ali, A.J. and Gibs, M. (1998), "Foundation of business ethics in contemporary religions thought: the Ten Com-

mandment perspective”, International Journal of Social Economics, Vol. 25, pp. 1552-64.

12. Ali Al Saloos, (1406 H.A) *al-muamalat al-malia al-muasera fi mesan al-fiqh al-islami* (modern financial transactions).
13. Ali Al Saloos, (1982) Appendix, Al Azhar Magazine.
14. Al-Imam al-Suyuti, commentary on Sunan Al Nassa'I with Al Suyuti – Al Hashiah: 7/243.
15. Al-Imam al-Suyuti, (1979) *Lubab Alnaqul fi asbab alnuzul*.
16. Al-Kasani, *Badai'i` al-Sana'i`*, vol. 6. –vol.7/2127.
17. Al-Rysuni, A, & Raysuni, D. (2005). Imam Al-Shatibi's Theory of High Objectives and Intents of Islamic Law: liit.
18. Al Showkani *Nayl Al Awtar* (5/p309), – (5/p206). (5/p210).
19. Al Tirmithi 2451, authenticated by Ahmad Shaker /1353 hijri.
20. Amir, S. (2009). The Bay' al-Inah Controversy in Malaysian Islamic Banking, Islamic Science University of Malaysia.
21. Aziz, D. (2009) Factors influence capital structure: the case Shariah compliant companies in KLSE. Thesis MBA, USM.
22. Aik Leng, A. (2004). "The impact of corporate governance practices on firms financial performance: evidence from Malaysian companies" SEAN Economic. Bulletin, 21, 308.
23. Bahaa El DinThe, (2009), college of Commerce, Cairo University, impact of the internal mechanisms of corporate governance on the financial performance of the Egyptian companies.
24. Beekun, R.I. (2004), *Islamic Business Ethics*, Goodword Books Pvt., New Delhi.
25. Black, B. S., Jang, H. & Kim, W. (2003). Does corporate governance affect firms' market value? Evidence from

- Korea. Working Paper No. 237, Stanford Law School, John M. Olin Program Law and Economics, July, 1 – 70
26. BMMB, Bank Muamalat Malaysia Berhad (n. d.). Organization Structure.
 27. Retrived: March 30, 2006.
 28. BNM (2001). Financial Sector – The Masterplan: Building a Secure Future. Kuala Lumpur: BNM.
 29. Chapra, M. U. & Ahmed, H. (2002). Corporate governance in Islamic Financial Institutions. Occasional Paper No. 6, Islamic Research and Training Institute, Islamic Development Bank, Kingdom of Saudi Arabia.
 30. Chen, J., Chen, D., and Chung, H., (2006). "Corporate control, corporate governance
 31. and firm performance in new Zealand" International Journal of disclosure and governance, Vol. 3, No. 4 pp. 263-276.
 32. Cohen, J. (1988). Statistical power analysis for the behavioural sciences: Lawrence Erlbaum.
 33. Cohen & P. Cohen (1983). Applied Multiple Regression/ Correlation Analysis for the Behavioural Sciences. Hillsdale, NJ: Lawrence Erlbaum]
 34. Cooper, R. & Schindler, P. 2003. Business research method (8th ed). Boson: McGraw-Hill Irwin.
 35. Derigs, U. New strategies and a new paradigm for shariah compliant portfolio optimization. Journal of banking & finance, in press, corrected proof.
 36. El Qorchi, M. (2005). Islamic finance gears up. Finance and Development, 42 (4), 46.

37. El-Gamal, M. (2000). A Basic Guide to Contemporary Islamic Banking & Finance.(2000, ed., vol. 1, pp. 41): Rice University.
38. Fakhri, M. (1991), Ethical Theories in Islam. E.J. Brill Leiden, pp. 12-13 (in Rafik, B. (1997), Islamic Business Ethics, Goodwords Books, New Delhi).
39. Hamim, S. A. M., Naziruddin, A. & Syed, M. H. (2006). Efficiency of Islamic Banking in Malaysia: A Stochastic Frontier Approach. *Journal of Economic Cooperation*, No. 27, Vol. 2, pp. 37-70.
40. Haniffa, R. M., & Cooke, T. E. (2005). The Impact Of Culture And Governance On Corporate Social Reporting. *Journal of Accounting and Public Policy*, 24, 391-430.
41. Hussain, S. Islamic Financial Analysis for The financial statements of companies.
42. Hussain, S. Controls and efficiency criteria and the development of the functioning of Islamic banks.
43. Ibn Rajab Al Hanbaly, (Jami'al Uloom wal Hikam p104.
44. Ibnu Rajab Al Hanbaly, Umdat Al Qaree: 1/116.
45. Ibnu Taimiyyah, Majmu` Al Fatawa, vol. 29. – 29/431.
46. Ibnu Qayyim, Bada'i` al-Fawa'id, vol. 3.
47. Iqbal, Z. (1997). Islamic Financial System. *Journal of Finance and Development*(June 1997), 42-45.
48. Imam Ahmad, Al Musnad 4/269, 4/184.
49. Imam Al-Gazzalli, (d.111) (1096-7) Ihya' 'ulum al-din (The Revival of the Religious Sciences).
50. Imam Muslim, sahih Muslim, (2/228).
51. Imam Al Nawwawi- Al Majmoo' – vol.9/442.

52. Imam Al Nawwawi – Commentary on Sahih Muslim: vol. 11/27, 16/111.
53. Imam Nawawi's, the explanation of the forty hadeeth: p24.
54. Izz al-Din bin Abd al-Salam, Qawa'id al-Ahkam, vol. 1.
55. Jamal, A. (2002) Commentaries on Imam Nawawi's Forty Hadith.
56. Kameel, A. (2000). Modelling monetary stability under dual banking system: the case of Malaysia. International of Islamic financial services.
57. Karim, R.A.A. (1990). Standard setting for the financial reporting religious business organizations: The case of Islamic banks. Accounting and Business Research, 20(80),pp. 299-305
58. Keown, A. J., D.John, Martin, J., & Petty, W. (2008). *Foundation of Finance: The Logic and Practice of Financial Management* (Sixth ed.). New Jersey: Pearson International Edition.
59. Majid, (2003). Efficiency in Malaysia banks: what happened after financial crisis, paper presented at the National seminar on “managing Malaysia in Millennium: economic and business challenges”. Organised by university teknologi Malaysia and Melaka state government, Melaka, Malaysia, (julye 2003).
60. Mohammad Al Baltaji, (1982) uqud al-ta'men (Insurance Contracts).
61. Mohammad Al Say's, (2002) Interpretation of the verses rules.
62. Mohamed, R. (2008). Islamic finance: the way forward.

63. Mohd. Ma'sum, (2001).Operational Mechanisms of Islamic Accepted Bill
64. Mokhtar, A. & Abdualla, & AL-Habashi. (2006). Efficiency of Islamic banking in Malaysia, journal of economic cooperation.
65. MASB, Malaysian Accounting Standards Board 2004, Financial Reporting Standards i – 1: *Presentation of Financial Statements of Islamic Financial Institutions*
66. Malaysia, S. C. (2008). LIST OF Shariah compliant Securities by the Shariah Advisory Council of the securities Commission, 2009, from www.sc.com.my.
67. Masudi (2005). Islamic Way of life (english, Trans. Second edition ed Vol. 1). New Delhi: Himilaya publishers.
68. Mujani (2011). Factors adopting Islamic home financing: a case study among consumers of Islamic banks in Malaysia. Middle-East Journal of Scientific Research 7 (Special Issue of Diversity of Knowledge on Middle East): 47-58, 2011 ISSN 1990-9233, IDOSI Publications, 2011
69. Muslim, sahih Muslim, 11/28.
70. Mustafa Al Zarqa, (1398 H.A) – Resolutions of International Fiqh Academy for Muslim World League.
71. Nor, M. (2003) Developing an Islamic Banking System, the Malaysia Model.
72. Patibandla, M., (2006) "Equity pattern, corporate governance and performance: A
73. .study of India's corporate sector" Journal of Economic Behavior & Organization, Vol.59, pp. 29–44.
74. Resolutions of the Securities Commission Shariah Advisory Council, Second Edition 2006.

75. SAC, (2006) Resolutions of the Securities Commission Shariah Advisory Council, Second Edition. www.sc.com.my.
76. SAC, (2007) Resolutions of the Securities Commission Shariah Advisory Council. www.sc.com.my.
77. Shahul, (2009) Alternative disclosure & performance measures for Islamic banks.
78. Shleifer, A., and Vishny, R. (1997). "A Survey of Corporate Governance". *Journal of Finance*, 52, 737-783.
79. Raihana and Abdul Rahim, (2007) Factors Influencing Knowledge of Islamic Banking Services: The Case of Malaysian Bank Managers *Review of Islamic Economics*, Vol. 11, No. 2, 2007.
80. Resolutions of International Fiqh Academy for Muslim World League, Its Resolutions p120.
81. Rosly, S. (2005) Critical issues on Islamic Banking & finance markets (second edition 2007 ed Vol. 1). Kuala Lumpur. Dinamas.
82. Sami Hassan, (1982) *tatwer al-a'amal bima yatafiq wa al-shariah al-islamia* (Development of business as permitted by the Islamic shariah).
83. Sekaran, U. (2003). *Research Methods For Business: A Skill Building Approach* (Fourth ed.). New Jersey: John Wiley & Sons, Inc.
84. Sekaran, U. (2006). *Research Methods For skill building Aproach (Vol. 1)* New Delhi: John Willey & Sons LTD U.K.
85. Subaida, S. (2005). *Law and power in the Islamic World, the shariah and political Authortiy* (2005 ed): I.B. Tauris.

86. Thahirah, b. h. (2009) corporate environment responsibility: the case shariah compliant companies, thesis MBA, USM.
87. Tahir, I. M., Mazlina, A. B. & Sudin, H. (2009). Evaluating Efficiency of Malaysian Banks Using Data Envelopment Analysis. *International Journal of Business and Management*, Vol. 4, No. 8, pp. 96-106.
88. Yusuf al-Qaradhawi, (1997) *Lawful and unlawful in Islam*, p33.
89. Zakaria, (2009). The Changes of Product Structure in Islamic Banking: Case Study of Malaysia. Two-Day Conference on Islamic Perspectives on Management and Finance, United Kingdom.
90. Weetman, P. (2006). Perpetuating Traditional Influences: Voluntary Disclosure In Malaysia Following The Economic Crisis. *Journal of International Accounting, Auditing and Taxation*, 15, 226-248.