

# Shubuhat in Islamic Financial Products

Essa Ries Ahmed a, Md Harashid Haronb, Sofri Yahya c.  
 a.b Universiti Sains Malaysia, School of Management, 11800, Penang, Malaysia.  
 c Universiti Sains Malaysia, Graduate School of Business, 11800, Penang, Malaysia.

## *Part 1*

### **ABSTRACT**

Islam, in principles, prohibits all activities that cause harm to the dealers and consumers in the market as well as in the society as a whole. However, less emphasis has been made on doubtful activities (shubuhat). Besides the dearth of latter studies in general, no study has been ever conducted as regards specifically the determinants of shubuhat and the use of any determinants to test for existence of shubuhat in Islamic financial products. Thus, the objectives of this paper are, firstly, to come up with determinants of shubuhat, and, secondly, to test the existence of shubuhat in some selected Islamic financial products using the determinants. Using the qualitative textual analysis, determinants of shubuhat were constructed, and consequently used to identify the effective determinants underlying the Islamic products under study. A total of nine Islamic financial products were selected and tested, and it was found that shubuhat did exist in the Islamic financial products.

Keywords: Doubtful activities (Shubuhat), Islamic financial products, Shariah compliance.

### **1. Introduction**

Islam seeks to bring benefits to individual and community through Shariah, and its laws are designed to protect these benefits and to facilitate the improvement and perfection of the conditions of human life on earth (Kamali, 2009). 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, in particular economic activities (earning and consumption).

Similarly, the shariah ordains the avoiding of haram, because it is impure and harmful to society, in any form or activity regardless of its nature of purpose. Halal is what the shariah has made lawful and haram is what the shariah has made unlawful, otherwise considered harmless (Imam Al-Gazzalli, (d.111) (1096-7)). Allah (Subhanahu Wa Ta'ala) has laid down ordinances that must be followed, boundaries that must not be transgressed, and matters not

addressed, not forgotten, but out of mercy to mankind. So it is imperative that these matters are assumed to be permissible without going out of the way to enquire them.

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.

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.

### **2. Islamic Financial Institutions and their products**

Islamic financial institutions (IFIs) today have become an undeniable reality. The number of IFIs is forever increasing. Of the constituents of IFIs, Islamic banks and Takaful operators are the most important ones. For example, new Islamic banks with large amount of capitals are being established. Conventional banks are opening Islamic windows or Islamic subsidiaries for the operations of Islamic banking. Even the non-Muslim financial institutions are entering the field and trying to compliments each other's business in order to attract as many Muslims and non-Muslim customers as they can. It seems that the size of Islamic banking will be multiplied during the next decade and the operations of Islamic banks are expected to cover a large area of financial transactions of the world (Usmani, 2002)

Although the IFIs are different from their conventional counterpart; there are similarities between the two. For instance, an Islamic bank conducts its activities in accordance with the Islamic Shariah principle that strictly prohibit any payment or receipt of interest. However, the Islamic bank can also offer products and services which are similar to those offered by a conventional bank (Gerre and Cunningham, 2001). The difference mainly lies in the manner the banking transactions are conducted and the way money is mobilized and recorded. The same is also true for the takaful operators. In addition to basically subject to the same shariah principles of that of the Islamic banks, takaful is capitalizing on the concept of donation (tabarru') in conducting their operations instead of interest-based concept of premium as of the conventional insurance companies.

In line with shariah principles IFIs are engaged in product development activities to cater for the needs of a wide range of parties. It is essential for these IFIs to innovate and operate within the ambit of shariah. Hence, the need for supervision is an integral part of any institution that deals by the name of Islamic finance. The safeguard to make IFIs perform their dealings according to the shariah comes when there is a legitimate control body in the bank (Lahsana, 2010) and Shariah Supervisory Board (SSB) is formed to shoulder the tasks. The SSB normally consists of fiqh muamalat experts to guide the Islamic institutions operations and transactions in accordance with the rules of Shariah. All countries have passed laws to govern the formation and functions of Shariah Supervisory Board. Therefore, Shariah Supervisory Board undoubtedly forms the most important and influential entity in any Islamic financial institution (Mass, 2010).

The paper defines IFIs' products as goods and services offered by the IFIs, and all activities related to the production of the said goods and services. For the purpose of this study, nine IFIs' financial-related products were selected, namely commercial insurance, investment certificates, short selling, interest received due to depositing savings in government deposit funds, receiving interest from foreign banks but not from Islamic banks, waiving part of a loan in exchange for early payoff, Bay' Al I'nah, Bay' Al Tawwaruq and Pricing.

As Islam encompasses all aspects of life; it is incumbent upon Muslims to follow all the rules and Islamic laws and not be restricted and limited to certain areas, particularly finance, banking and

insurance only. Even though, halal and haram are clearly delineated, there are doubtful and controversial issues, especially in the institutions that are dealing with both systems (conventional and Islamic). A minor amount of activities that do not meet the requirements of Shariah will affect Muslim customers, even if the company is committed to comply with the law of Shariah (Abdul Rahim, 2008). According to Jamal (2002), Imam al-Bukhari recorded a hadith in the Book of al-Buyu' (commercial) that when it comes to trade there are a considerable amount of doubtful activities, for example where fraud is done professionally.

Furthermore, a part of being shariah compliant is avoiding the shubuhah deeds. Thus, it is essential that all dealings and business activities in the IFIs have to avoid shubuhah activities. Shubuhah are matters that are neither distinguishable as being halal nor haram. Therefore, the paper will come up with determinants of shubuhah, and consequently applying the determinants in ascertaining the existence of shubuhah in Islamic financial products. The objectives of the paper can be summarized as follows:

1. To come up with determinants of shubuhah.
2. To determine the existence of shubuhah in some selected Islamic financial products using the determinants.
3. 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. However, it is worth noting here that while textual evidences (Quran and hadith) are explicit about shubuhah, the injunction on avoiding shubuhah is only found and explained in details in the hadith. Among these texts are:



3.1- The hadith narrated by al-Nu'man bin al-Basheer –May Allah be pleased with them– said I heard the Prophet (PBHU) saying: “Halal is clear and 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” (Al-Bukhari, 1/295), (Imam Muslim, 11/28), (Imam Ahmad, Al Musnad 4/269, 4/184).

There are several notes and worthy points in this hadith:

3.1.1- 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.

3.1.2- 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.

3.1.3- 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 dishonor 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 conclusion (Imam Al Nawwawi–Commentary on Sahih Muslim: vol. 11/27, 16/111). 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, 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:

The first: No classification is made, neither 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). (Imam Al Nawwawi – Commentary on Sahih Muslim: vol. 11/27).

3.1.4- Also this hadith is an example of the eloquence in the Prophet's speech (P.B.U.H) 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 (P.B.U.H) 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 (P.B.U.H) portrayed that by likening it to the sanctuary that the Arabian 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 themselves to the king's punishment.

He (P.B.U.H) 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.

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

3.1.6- 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” (Ibn Rajab Al Hanbaly, Umdat Al Qaree: 1/116).

3.2- 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 Tirmidhi 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 (PBHU) 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 something 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- 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 obligatory 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.

3.3- 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" (Imam Muslim, Sahih 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).

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: 189. 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. There may be many other meanings but these two are the 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 (Imam Al Nawwawi– Commentary on Sahih Muslim).

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 of a virtuous matter is that the heart is rested by it, and the sign of a sin is that it agitates in the chest and 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 skillfulness...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 are the permission for the traveler to break his fast or shorten his prayer.

3.4. On the authority of Abu Mohammad Husain bin Ali bin Abi Taleb- May Allah be pleased with him- said: "I learned from the Prophet (PBHU): 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 (PBHU) said to a man, "Leave what perplexes you" So he said, how I can tell? He replied, place you 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 perplex 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? (Ibn Rajab Al Hanbaly, (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.

3.5. On the authority of Abu Hurairah –may Allah be pleased with him- that the Prophet (P.B.U.H) said: “If any of you were to come upon his brother Muslim and be offered food by him, he should accept and not inquire about it, and if he were to be offered drink he should accept and not inquire about it” (Ahmad, Nayl Al Awtar: 5/p210).

It is reported that Anas ibn Malik said: “If you came upon a Muslim you do not doubt, eat of his food and drink of his drink” (Al Bukhari).

Several points may be noted from these two hadiths:

a) While it is desirable to be careful in one's religion and essential to do away with doubt when there might be confusion between halal and haram. This is especially important while dealing with non Muslim society or a group of corrupt Muslims or even someone who is careless when it comes to his religion. However, when it comes to a Muslim who is above suspicion, this level of inquiry and mistrust is uncalled for and better left alone so as not to hurt anyone's feelings.

b) The Prophet (P.B.U.H) stipulated the taking of food and drink only on two conditions: Islam, and being above suspicion. This implies that one must guard against eating from a suspicious person's food if there is reason to doubt him, and if there

is an obvious sign of haram then he must refrain altogether.

c) When the status of a person is unknown and inquiring about his livelihood and means of earning before eating could hurt his feelings, it is better not to ask as it is forbidden to cause harm to a fellow Muslim.

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 it 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 a sin 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' – vol.9/442).



# Shubuhat in Islamic Financial Products

Essa Ries Ahmed a, Md Harashid Haronb, Sofri Yahya c.

a,b Universiti Sains Malaysia, School of Management, 11800, Penang, Malaysia.

c Universiti Sains Malaysia, Graduate School of Business, 11800, Penang, Malaysia.

## Part 2

### 4. Concepts and Determinants of Shubuhat

Al Shubha lexically means likeness; that which bears resemblance to two things. Allah (swt) says in the Quran: for surely to us the cows are all alike -tshabaha- (Al-Baqarah: 70), i.e. It has become difficult for us to distinguish between the required cow and the others, 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 (Al-Baqarah: 118) i.e. they are alike. 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 (Al-Imran: 7).

Al shubhat in shariah means doubtful deeds or matters. 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 it is mubah (permissible) and others said it is makrooh (disliked) (Nayl Al Awtar, Al Showkani). Ibn Daqqeq 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 Sunan 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.

Imam Ghazzali had highlighted the Shubuhat in his book, Ihya-Ulum-Id-Din and pointed out that doubts could arise out of four places:

- i) First place is doubt in the course of Halal and Haram.
- ii) Second place of doubt is mixture of Halal and Haram.
- iii) 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.
- iv) 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; (i) Contradictory evidence of Shariah. (ii) Contradictory signs, (iii) Contradictory doubts.

On the other hand, there are some scholars who said that doubtful deeds are 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 makrooh took into consideration that Shariah has warned against doubtful deeds, and if there is no clear evidence forbidden a certain matter, then what would it be? It must be makrooh, and excesses of this nature certainly lead to haram itself.

As such, in consistent with the synthesized concepts of shubuhah by Islamic scholars discussed above, this study conceptualizes shubuhah as a region between the halal category and the 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 (quantity of haram has become mixed with quantity of halal). 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.

This study further conceptualizes shubuhah as one of the elements of shariah compliance. Shariah compliance is commonly delineated by halal (permissible) and haram (forbidden). In a way, this study adds another element to the concept of shariah compliance, shubuhah in consistent with the first hadith quoted in the foregoing section earlier.

## 5. Methodology

In this paper, the concept of shubuhah and consequently the shubuhah's determinants were constructed using the qualitative textual approach. Texts containing literature reviews on evidences of shubuhah in shariah based on Quran, Sunnah and writings of Muslim scholars were conducted. As a result of the textual analysis, synthesized concepts of shubuhah were constructed, and consequently the causes of the shubuhah identified, henceforth called determinants.

Then, selected Islamic financial-related products were scrutinized using the determinants one by one. Each time an Islamic financial-related product was investigated, texts containing description of the product and shariah issues would be thoroughly reviewed and an appropriate corresponding effective determinant or determinants assigned

categorizing it under conflicting evidences, mixing and/or resembles.

## 6. Results and Discussion

### 6.1 Determinants of Shubuhah

The first objective of this paper is to come up with the determinants of shubuhah, thus this section will discuss the shubuhah concepts and consequently the determinants of shubuhah derived from the concepts.

From the review of previous literatures (Sections 3 and 4), 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, see Table 1.

Table 1 Determinants of Shubuhah

1. Conflicting evidence, or due to doubtful in the application of the evidence on a particular matter, henceforth called conflict.
2. The mixed financial quantities (Quantity of haram has become mixed with quantity of halal), henceforth called mix.
3. Resembles (iltibas) this term is used to describe something resembles a certain base matter, as if it resembles the latter more closely, hence they say ishtabaha i.e. its mixed from two deferent things and become one thing, henceforth called resemble.

These determinants were fundamentally constructed and premised on the syntheses of shubuhah concepts by different Muslim scholars of the past and the present (see section 4), the summary of which is given in Table 2.





Concept Scholars	Conflicting of evidences (Conflict)	Mixing Halal and Haram (Mix)	Resemble
Imam AlShowkani	√	-	-
Ibn Daqeeq Al Eid	√	-	√
Dr. Yousef Al Qaradawi	√	-	√
Al-Imam Al Suyuti	√	√	√
Ibn Rajab Al Hanbali	-	-	√
Imam AlGhazali	√	√	√

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.

Having established the determinants of shubuhah, the next thing is to test the existence of shubuhah in the products under study using the determinants.

## 6.2 Determining the existence of shubuhah in some selected Islamic financial products

Since the second objective of this paper is to determine the existence of shubuhah in the selected Islamic financial-related products, this section will discuss on how the analysis was being done on each of the products and consequently the assignment of appropriate determinant or determinants to the product, namely conflict, mix and/or resemble.

Determinants	Effective	Supporting textual evidences
Conflict	√	-Most scholars have ruled that it is <i>haram</i> ,-there are still those who allow it and defend its legality
Mix	√	- <i>Riba</i> (interest),-resulting in: illegal acquisition of other people's money, the selling debt for debt.
Resemble	√	- <i>Gharar</i> (ambiguity), which makes it unclear

### 6.2.2 Investment Certificates (type C)

These certificate do not involve simple or compound interest, 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

Arguably, there are hundreds of Islamic financial products available in the market. However, due to scope and context of the paper, only nine Islamic financial-related products are investigated. In analyzing the product, the explanation of and controversial issues surrounding the product will be given first, only then the assignment of the shubuhah determinants was given based on the evidences found. The products and the analyses on their relevant determinants are as follows.

#### 6.2.1 Commercial Insurance

Most scholars have ruled that it is haram and have forbidden it due to involving several intrinsic violations of the Shariah such as: *Gharar* (unknown risk), *Riba* (interest) in its both forms *Riba Al Fadl* and *Riba Al Nasee'ah*, and the illegal acquisition of other people's money, and the selling debt for debt. Despite all of this there are still those who allow it and defend its legality (Mustafa Al Zarqa, 1398 H, Mohammad Al Baltaji, 1982).

it a form of *riba* (Yousef, 1990). Dr. Abdel Aziz Amer, considers it halal and supports it (Abdel Aziz, The Scientific and Practical Encyclopedia of Islamic Banks), Vol. 5). Whereas, Dr. Ali Al Saloos, mentioned it and considers it worse than its counterparts, types A and B, for combining both *riba* and gambling (Ali Al Saloos, 1406 H).

Determinants	Effective	Supporting textual evidences
Conflict	√	- Some scholars perceive this prize as a reward for saving, while others consider it a form of <i>riba</i> - <i>Abdel Aziz Amer</i> , considers it <i>halal</i> and supports it, - Whereas, Dr. <i>Ali Al Saloos</i> , mentioned it and considers it worse than its counterparts, types A and B, for combining both <i>riba</i> and gambling
Mix	-	-
Resemble	-	-

### 6.2.3 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.

Determinants	Effective	Supporting textual evidences
Conflict	√	-Some contemporary scholars permit this sort of economic activity buying & selling, while others forbid it for the risk and explicit violations of <i>Shariah</i> texts it involves
Mix	-	-
Resemble	-	-

### 6.2.4 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 (RIFA, Resolutions p120).

Determinants	Effective	Supporting textual evidences
Conflict	√	- Some scholars perceive this as <i>halal</i> , - majority of contemporary scholars have ruled it be considered <i>haram</i>
Mix	-	-
Resemble	-	-

### 6.2.5 Receiving interest from foreign banks but not from Islamic banks

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 a country is 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 Mohammad ibn 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').

Determinants	Effective	Supporting textual evidences
Conflict	√	- some earlier scholars permitted dealing with non believers in an enemy country, - majority of scholars have ruled that <i>riba</i> is forbidden regardless of the place of transaction whether a country at war or peace
Mix	-	-
Resemble	-	-

### 6.2.6 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).

Determinants	Effective	Supporting textual evidences
Conflict	√	- Many scholars have ruled against this
Mix	-	-
Resemble	√	-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.

### 6.2.7 Bay' Al I'nah

A form of sale that proliferates among trading environments far from religious knowledge. It is 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 after 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 forbid it and the Shafi'i school allows it (Al Showkani Nayl Al Awtar, Ibn Taimeah, Majmoo' Al Fatawa – 29/431).

Determinants	Effective	Supporting textual evidences
Conflict	√	-Majority of scholars have forbid it and the Shafi'i school allows it
Mix	-	-
Resemble	-	-

### 6.2.8 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 disliked it and said this was the more likely ruling among the scholars (Ibn Taimeah, Majmoo' Al Fatawa).

Determinants	Effective	Supporting textual evidences
Conflict	√	- Some scholars have permitted it while others have refrained from it.
Mix	-	-
Resemble	-	-

### 6.2.9 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).

Determinants	Effective	Supporting textual evidences
Conflict	√	- The majority of scholars ruled against it and Imam <i>Malik</i> allowed it without reservations. One of the disputed matters in <i>fiqh</i> (jurisprudence).
Mix	-	-
Resemble	√	- Containing the ambiguous.

Based on the analyses performed above, a summary of findings of the Islamic financial products under study and their corresponding effective determinants of shubuhah are tabulated, see Table 3. The table shows that conflicting of evidences is the main determinant causing the existence of shubuhah in all the financial products under study, followed marginally by the determinants of resemble and mixing halal and haram.

**Table 3 Summary of effective determinants of shubuhah in Islamic financial products**

Product	Determinants	Conflicting of evidences	Mixing Halal and Haram	Resemble
Commercial Insurance		√	√	√
Investment Certificates		√	-	-
Short selling		√	-	-
Interest received due to depositing savings in government deposit funds		√	-	-
Receiving interest from foreign banks but not from Islamic banks		√	-	-
Waiving part of a loan in exchange for early payoff		√	-	√
Bay' Al I'nah		√	-	-
Bay' Al Tawwaruq		√	-	-
Pricing		√	-	√

## 7. Implication

The findings highlight earlier leads to several implications. The discussion on these implications will be divided into two perspectives namely, theoretical and practical.

### 7.1 Theoretical perspective

This study added a new discussion on understanding of shariah compliance, i.e. concept of shubuhah in Islamic financial products of IFIs. This study also identified three determinants for shubuhah which are novel in the shubuhah study of IFIs' financial products.

### 7.2 Practical Perspective

The determination of shubuhah for the managers, authoritative bodies and even customers is becoming simpler with the newly-constructed determinants. The determinants could also be used for controlling the existence of shubuhah in Islamic financial products as the determinants would indicate the appropriate corresponding course of actions in lessening or avoiding shubuhah existed in the financial products. For example, if the effective determinant was identified as mixing halal and haram investment products, the corresponding course of action would be reducing the reliance on haram investment products and invest them in the halal products instead.

## 8. Limitations and Recommendations

The determinants were developed based on the concepts of shubuhah by the Muslim scholars of the past and present. It is recommended that future study would include the concepts of shubuhah by the contemporary experts in Islamic financial industry.

Three generic determinants namely conflict, mix, and resemble were created. Future study should focus on refining these three determinants by adding more elements in each to make it more specific and easily manageable by the staff of the IFIs, not necessarily the experts in the Islamic shariah.

This study investigated only nine of the Islamic financial-related products. As such, more products should be investigated in future studies.

## 9. Conclusions

Three determinants, namely conflict, mix, and resemble were suggested for testing shubuhah. IFIs as well as the authoritative bodies could use these determinants to test for the existence of shubuhah in their financial products, even though future refinement on each of the determinants is still feasible.

This study should be viewed in Islamic business perspective. In other words, the increasing emphasis

made on shubuhah is not for hindering the growth of IFIs, but for accentuating and, most importantly, giving practical form to the general purpose of shariah which seeks to benefit the people and prevent harms from occurring to them.

## References

1. Abdul Rahim (2008). "ISRA Islamic Finance Seminar shariah audit for Islamic Finance services: the needs and challenges." International Shari'ah Research Academy for Islamic Finance (ISRA) Islamic Finance Seminar held in Kuala Lumpur on 11th. November 2008. .
2. Ahmad (1250). Nayl Al Awtar sharih muntaqa alkhbar. Amman, International Ideas Home.
3. Al-Bukhari, M. I. I. (1997). Sahih al Bukhari, Islamic Book Service.
4. Al-Ghazali, M. (1997). Ihya' Ulum al-Din [The Revival of the Religious Sciences](with commentary by Al-'Imam al-Zabidi)(Vols. 1-6), Beirut, Lebanon: Dar Al-Khayr.
5. AlHanbaly (880 H). Umdat Al Qaree. Beirut, Dar al-kutub alelmiah.
6. AlKassani (1986). Bada'e Al Sana'e. Beirut, Dar al-kutub alelmiah.
7. Al-Nawawi, Y. (1997). Al-Majmoo Sharh al-Muhadhib, Beirut: Daar al-Fikr.
8. AlSalooos (1406 H). al-muamalat al-malia al-muasera fi mesan al-fiqh al-islami (modern financial transactions). Kuwait, Maktabtu Alfiah.
9. AlSalooos, A. (1411 H). Banks and investments. Egypt, Al Azhar Magazine.
10. Alsayes, M. (1998). Interpretation of the verses rules. Beirut, Dar al-kutub alelmiah.
11. Al-Shawkani, M. "Nayl al-awtar min ahadith sayyid al-akhyar, sharh muntaqa al-akhbar." Dar al-jil, Beyrouth, sd.
12. Al-Suyuti, A.-I. (1138 H). commentary on Sunan Al Nassa'I with Al Suyuti – Al Hashiah. Beirut, Dar al-kotob al-ilmiyah
13. AlTirmithi (1353 H). Explain sunan AlTirmithi. Damascus, Dar alfikr.
14. AlZarqa (1398 H). Resolutions of International Fiqh Academy for Muslim World League Makah.
15. Amer, A. A. "The Scientific and Practical Encyclopedia of Islamic Banks." The International Association of Islamic Banks 5.
16. Asbahani, A. (1932 AD). Forty Hadith. qairo, Maktabtu al khanji.
17. Baltaji, A. (1983). "uqud al-ta'men (Insurance Contracts) " Practical and scientific encyclopedia for Islamic banks 5(The International Association of Islamic Banks).
18. Hambal, A. I. (1993). Musnad Imam Ahmad, Beirut: Dar Ihya al-Turath al-'Arabi.
19. Hanbaly, I. R. A. (2002). Jami'al Uloom wal Hikam Beirut, Dar bin hazim.
20. Hassan, S. (1991). tatwer al-a'amal bima yatafiq wa al-shariah al-islamia (Development of business as permitted by the Islamic shariah). Egypt, Darul turath.
21. Ibtainiah (728 H). Majmoo' Al Fatawa Egypt, Dar alwafa.
22. Ibrahim, E. and D. Johnson-Davies (1995). An-Nawawi's Forty Hadith, Kazi Pubns Inc.
23. Jamal, a. (2002). Commentary on the Forty Hadith of al-Nawawi: , Al-Basheer Publications and Translations.
24. kamali (2009). "Maqasid al Shariah made simple." The International Institute of Islamic Thought IIII.
25. Khan, M. M. (1986). "Sahih Al-Bukhari." Arabic-English), Lahore: Kazi Publications.
26. Lahsasna (2010). "Shariah aspects in business and finance." INCEIF: Kuala Lumpur.
27. Malaysia, S. C. (2011). List of Shariah-compliant Securities by the Shariah Advisory Council of the Securities Commission Malaysia. Kuala Lumpur, Securities Commission Malaysia.
28. Malik, M. R. (2010). "Shariah Supervisory Board in Islamic Finance." International Center for Education in Islamic Finance,INCEIF.
29. Mawdudi, S. A. A., K. Ahmad, et al. (1986). The Islamic way of life, Islamic Foundation, Leicester.
30. Muslim, A. (1971). Sahih Muslim, Dar Ihya al-Kutub al- Arabiyya.
31. Nawwawi, I. A. Commentary on Sahih Muslim. Beirut, Daar al-Fikr.
32. Quranic Arabic Corpus (2011). Quran Dictionary - ٥ ب ٥ retrieved on July 12th from [http://corpus.quran.com/quandictionary.jsp?q=\\$bh](http://corpus.quran.com/quandictionary.jsp?q=$bh)
33. SAC (2006). Resolutions of the Securities Commission Shariah Advisory Council. Kuala Lumpur, Securities Commission.
34. Usmani, M. T. and M. Taq Usman (2002). An introduction to Islamic finance, Brill Academic Pub.
35. Yousef, A. (1990). al-qeam al-islamia (Islamic Values). Cairo, Dar althqafa.
36. Yusuf, Q. (1989). "The lawful and the prohibited in Islam." Al-Faisal Press, Kuwait: 15.
37. Zarahozo, J. D. M. (1999). Commentary on the Forty Hadith of al-Nawawi, Al-Basheer Publications and Translations.