

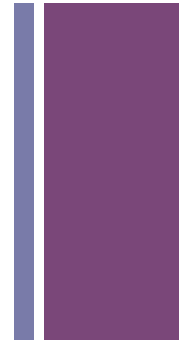
Introduction to Takaful

Zulkifli Hasan, PhD

+ Contents

- Insurance

- Takaful

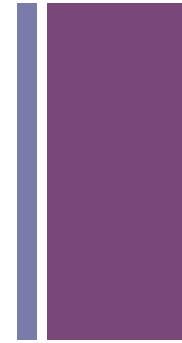


+ HISTORICAL BACKGROUND OF WESTERN CONCEPT OF INSURANCE

- **1. Ottoman Empire- First introduce western concept of insurance- Maritime Code 1863.**
- **2. Ottoman Law of Insurance 1874-only life insurance is haram or unlawful**
- **Since then, western concept of insurance is practiced almost in all countries in the world**

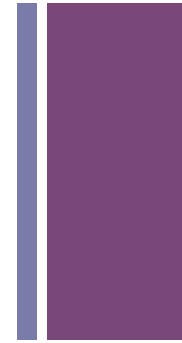
+ Insurance?

- Financial protection which involves the execution of contracts between the insurer and the insured in which the insurer agrees to underwrite the subject risk of such contracts.



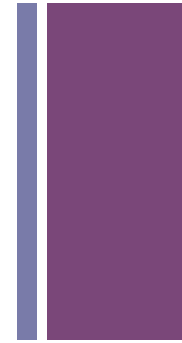
+ Definition

- Insurance is an economic device whereby the individual substitutes a small certain cost (premium) for a large uncertain financial loss (the contingency insured against) that would exist if it were not for the insurance.



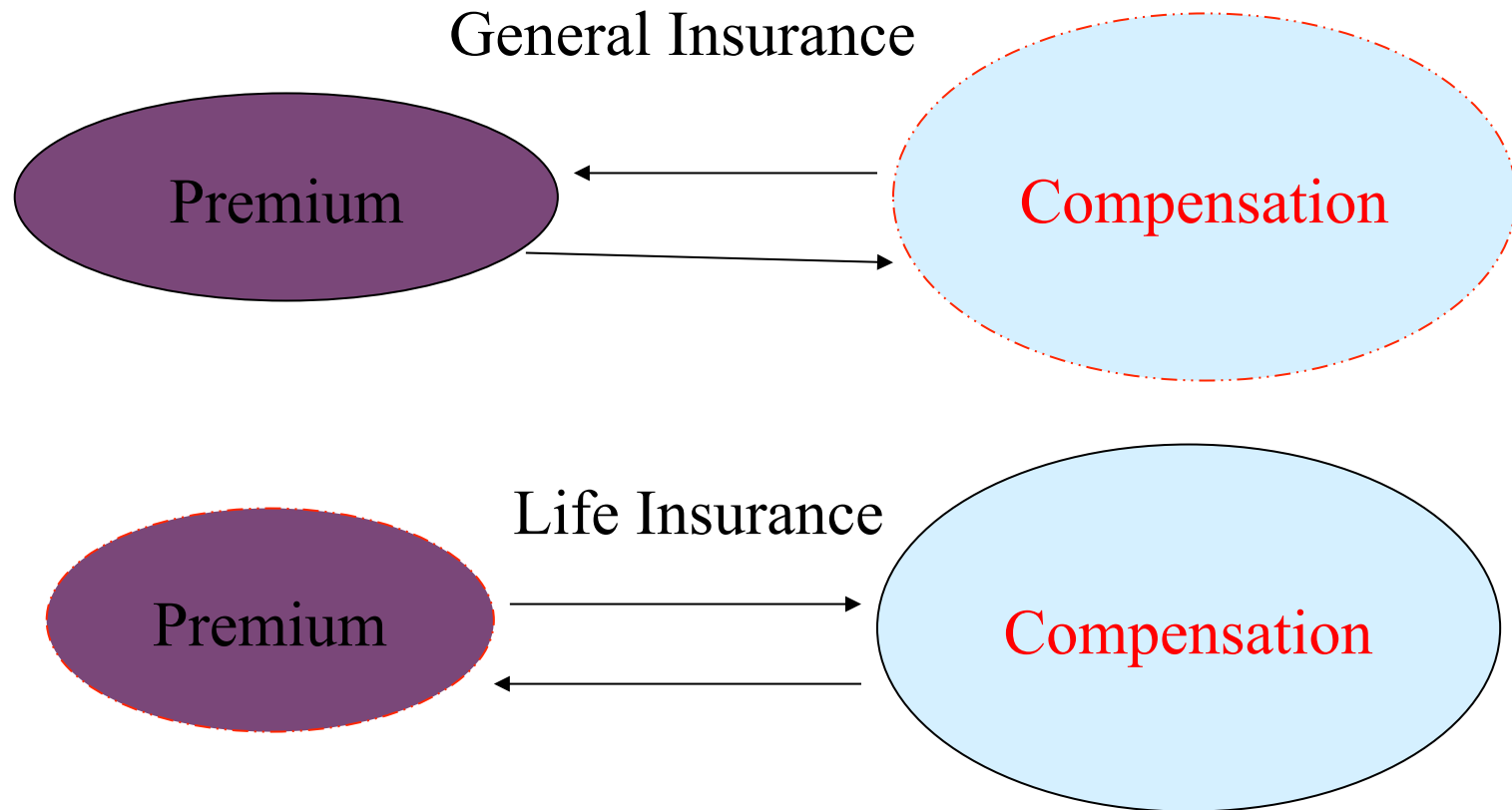
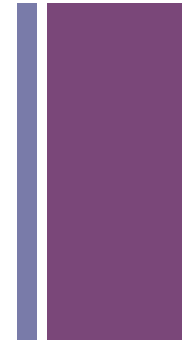
+ Socio-Economic Benefits of Insurance

- Risk Coverage
- Habit of Thrift
- Safe and Profitable Investment
- Secure working environment for Businesses
- Planning for life stage needs
- Capital formation in the Economy



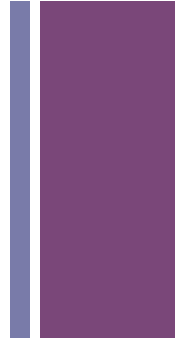
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Nature of Insurance Contract





Insurance from Islamic Perspective



- **Three major groups.**
 1. **Those who consider both the concept and practice of commercial insurance un-Islamic.**
 2. **Those who are in agreement with the present insurance and find nothing wrong in it.**
 3. **Those who accept the concept of insurance, but find prohibited elements in its present practice.**

+ Rulings of Collective Fiqhi Bodies

- **Islamic Research Institute of Al-Azhar Uni: 1965**
- **Council of Grand Ulama of Saudi Arabia**
- **Majlis Tahqiqat-e-Shari'yah Lucknow, India**
- **Islamic Fiqh Academy of Rabita al-Aa'lam-e-Islami**
- **Al Majma' Al-Fiqhi Al-Islami of OIC: 1975**
- **Council of Islamic Ideology, Pakistan: 1983**
- **International conference on islamic economic 1976**
- **European Council for Fatwa.**

Conventional Insurance is unlawful because of involvement of prohibited elements

+ Fatwa on Conventional Insurance

- **In 1972: the Fatwa Committee declared the western concept of insurance was unlawful because of gharar, riba and maisir**
- **In 1982- A committee set up by the govt to study the implementation of takaful.**
- **Fiqh Academy of the Organization of Islamic Conference (OIC) at its gathering in Jeddah in December 1985 resolved that no form of insurance, be it life or general, had conformed to the Islamic principle**

+ Fuqaha Views on Life Insurance

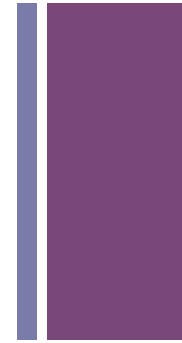
- **1. Opponents:- Sheikh Shaukat, Abu Zaharah and others**
- **i. Insuring ones life**
- **ii. Betting**
- **iii. Element of riba, maisir, gharar.**
- **iv. Supersede the will of Allah**
- **v. against the principle of mirath**
- **vi. No direct authority to justify it**

+ **Life insurance in the form of Family Takaful**

- **Mere financial transaction through mutual cooperation.**
- **No unlawful element.**
- **Implied model of takaful-aqilah and mudharabah.**
- **Mutual cooperation to protect the necessities.**
- **Securing the offspring it does not supersede the will of Allah.**
- **Security for poor.**
- **Protection of unexpected difficulties.**
- **Self reliant society**

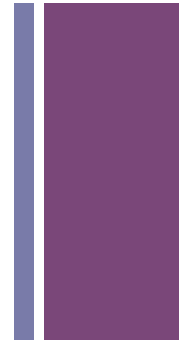
+ Objection to the Western Concept Of Insurance

- **Riba**
- **Gharar**
- **Juhala**
- **Maysir**
- **Violation of inheritance law**
- **Against the concept of qada and qadr**
- **Forfeiture of premiums.**



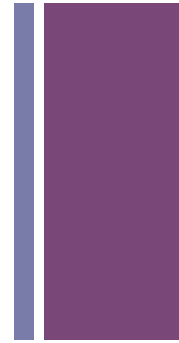
+ 1. Riba

- **Insurance companies invest in trade and bonds.**
- **Life insurance- insurer undertakes to pay the insured. The sum is in excess of the total premium paid.**
- **Non-Life insurance- The insurance companies invested the premium paid in fixed interest earnings investment.**



+ 2. Gharar

- **Uncertainty= Risk, hazard or peril**
- **Neither the insurer nor the insured knows the nature and extent of their rights and obligation until after the occurrence of the insured event.**
- **Any transaction must free from excessive uncertainty**
- **The insured is ignorant of the terms of the insurance.- Unacceptable reason.**

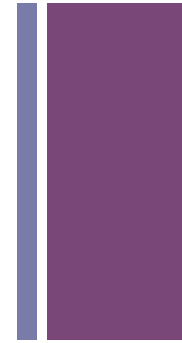


+ 3. Juhala

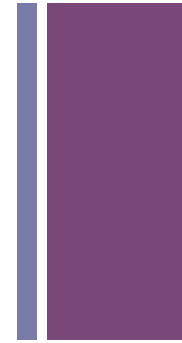
- **Uncertainty per se- all particulars of the contract must be known to the parties at the time of the contract. Otherwise- invalid**
- **Life insurance- The insured does not know – how long he will be paying the premiums.**
- **Non life insurance- does not know how much the insurer will pay him in the case of insured event takes place**

+ 4. Maisir

- **Prohibition of unearned gains.**
- **To court unnecessary risk by entering into a transaction with a hope of gain as well as fear of loss.**
- **Undertaking a risk in the spirit of speculation**
- **Life insurance- If dies early-Lucky= Policy money will be paid.**
- **Non life insurance- if the insured event occurs- Lucky. If no- gets nothing**



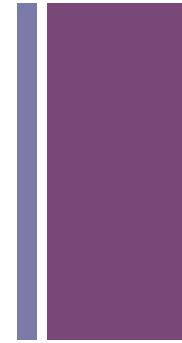
+ Pure Risk v Speculative Risk



- Policyholders- Pure Risk
- Insurance Co- Speculative Risk
- Its an effective risk transfer mechanism by which individuals or organizations can exchange the uncertainty of financial loss (or risk) for the certainty of premium.
- Premiums with promise to pay any claims

+ 5. Violation of Islamic Law of Inheritance

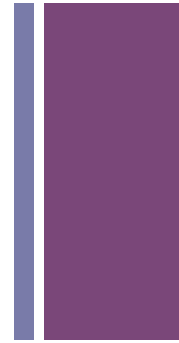
- **Law on Nomination- insurer can nominate to any person as beneficiaries.**
- **§ 23- Hock Hoes Policy. Nominee enjoys full benefit of the insurance policy.**
- **In Islam- nomination is just a trustee. The policy money must be distributed –faraid.**



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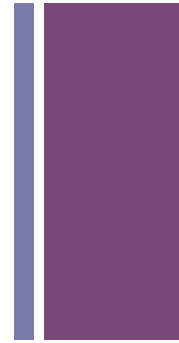
6. Contravention of the Conception of Pre-Destination

- **Concept of *Qada* and *Qadar*- The ultimate destiny is in the hands of Allah.**
- **Failure to appreciate the real function of insurance.**
- **The insurance does not prevent pre-destined events. It only reduces the pain and suffering resulting from the insured events.**



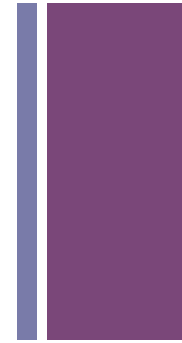
+ 7. Objection to forfeiture of Premiums

- **Insurer may forfeit the premiums that have been paid in certain circumstances.**
- **May forfeit in the event of avoiding non-disclosure or breach of warranty by the insured.**



+ Takaful

- The takaful model is based on the concept of taawun, which means mutual assistance. The concept of taawun is recommended in the Quran (5:2):
- *“Help (taawun) one another to do what is right (birr) and good (taqwa); do not help one another towards sin and hostility. Be mindful of Allah, for His punishment is severe.”*



+ Development of takaful

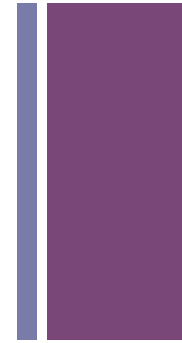
- **Takaful started some 30 years ago in Sudan and Middle East in 1979 :**
 - **The Islamic Arab Insurance Co. (IAIC) in the UAE and**
 - **The Islamic Insurance Co. of Sudan**
- **In 1984, Malaysia played a pioneering role in setting the first Legal framework specific to Takaful (Takaful Act Malaysia).**
- **This was instrumental in the successful launching of the Takaful model in Malaysia and in other countries of South East Asia.**

+Takaful Operators for General and Family Takaful Business

- HSBC Amanah Takaful (Malaysia) Berhad
- Hong Leong MSIG Takaful Berhad
- MAA Takaful Berhad
- Prudential BSN Takaful Berhad
- Sun Life Malaysia Takaful Berhad
- Syarikat Takaful Malaysia Berhad
- Takaful Ikhlas Berhad
- Etiqa Takaful Berhad

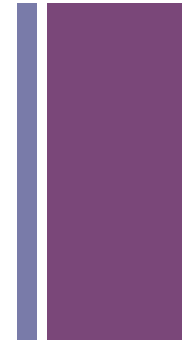
+ Takaful Operators for Family Takaful Business

- AmMetLife Takaful Berhad
- Great Eastern Takaful Berhad
- AIA Public Takaful Bhd





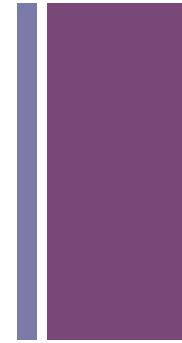
Retakaful Operators for Family and General Retakaful Business



- Munchener Ruckversicherungs-Gesellschaft (Munich Re Retakaful)
- Swiss Reinsurance Company Ltd. (Swiss Re Retakaful)
- MNRB Retakaful Berhad

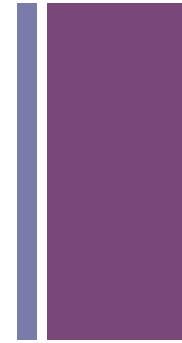
+ Conceptual Definition

- **Kafala: responsibility, guarantee or suretyship**
- **Mutual Guarantee, shared responsibility, joint guarantee, collective assurance and mutual undertaking= mutuality and cooperation.**
- **Method of joint guarantee among a group of members or participants against loss or damage that may inflict upon any of them. The members of the group agree to guarantee jointly that should any of them suffer a catastrophe or disaster, he would receive certain sum of money to meet the loss or damage. All members of the group pool together their efforts to support the needy.**



+ Origin of Takaful

- 1. Aqilah- Blood money
- The tribe had to be ready to compensate the heir of the victim.
- Compensation likes indemnity in insurance policy
- 2. S.Umar- Al-Dawawin System- Ministry to contribute money for emergency or in need.
- 3. Khairat Kematian- The principle of “fortunate many helping the unfortunate few” is a concept recognized by Islam.



+ Sources of Law Affecting Takaful

- 1. Al-Quran- elements of mutual cooperation=
Almaidah: 5:2. Alleviation of hardship= 2:201
- 2. Sunnah= Prophet said: Tie the camel first and then leave it to Allah
- 3. Practices of the companion- Al-Dawawin System by S. Umar.
- 4. Fatwa or Ijtihad: Ibnu Abidin=Permissible insurance in trade for merchant known as Sukra.
- Muhammad Abduh, Zarqa, Yusuf al-Qaradawi- agreed to the validity of Islamic insurance

+ Cont...

- 5. Masalih Mursalah= Life, necessity. A way of providing material security.
- 6. Urf- Tribal Custom practice known as Aqilah.
- 7. Unanimous Decision of Muslim Scholars-
- Islamic Fiqh Week Syria 1961, Muslim Scholars Conference 1965 Egypt and Islamic Economic Conference Mecca 1976- Validity of insurance business except life insurance.
- International Islamic Insurance Dubai 1996 and Labuan 1997- Validity of Takaful.

+ How To Free From Excessive Gharar

- **1. Mutual and Cooperative basis**
- **2. The takaful coverage must be genuinely required in order to safeguard interest collectively**
- **3. such coverage can only be safeguarded through the insurance mechanism.**
- **4. Type of contract is Unilateral Contract- Al-Tabarruat.**

+ Fatwa on Takaful

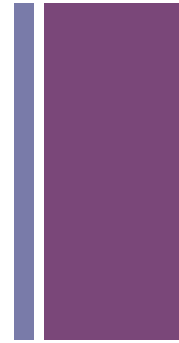
- Fatwa in Judicial Conference held in Makkah in 1398H.
- Unanimous resolutions and fatwa by Ulama in the Muslim League Conference in Cairo in 1965.
- Unanimous decision by Muslim Scholars in seminar held in Morocco, 1972.
- Fatwa by Higher Council of Saudi Arabia in 1397 A.H.
- Fatwa by the Fiqh Council of Muslim World League in 1398H.
- Fatwa by the Fiqh Council of the OIC in 1405 A.H. (1985).

+ Fiqh Academy Resolution 1985

- Islamic Fiqh Academy Jeddah:
- The commercial Insurance contract is prohibited (Haram) according to the Shariah.
- The alternative Takaful contract which conforms to the principles of Islamic dealings is Halal, being the contract of cooperative insurance, which is founded on the basis of charitable donation and Shariah compliant dealings.

+ Takaful and Maqasid al Shariah

- 1. Protection of property and Protection of life: hajiyyat and daruriyyat
- 2. Legal maxim: darar must be removed.
- 3. To spread the risks of losses around the large number of participants
- 4. Contemporary fuqaha: making takaful mandatory to muslims.
 - Compulsory to protect the essential needs of the society.



+ Characteristics of Takaful

- (i) Cooperative risk-sharing for protection
- (ii) Clear segregation between participant and operator
- (iii) *Shariah* - compliant investment strategies
- (iv) Avoidance of *riba*(interest),and *maysir*(gambling)
- (v) *Gharar* (uncertainty) is forgiven, using *tabarru* (charitable donation)
- (vi) *Shariah* advisory oversight and judicial approval

+ Insurance v Takaful



Issues	Insurance	<i>Takaful</i>
Organising principle	Profit for shareholders/ risk transfer	Mutual for participants
Value proposition	Profit for shareholders	Affordability and spiritual satisfaction
Laws	Secular regulations	<i>Shariah</i> plus Regulations
Ownership	Shareholders	Participants

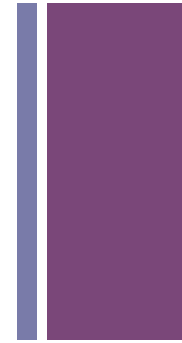
+ Insurance v Takaful



Issues	Insurance	<i>Takaful</i>
Management	Company management	Operator
Contract Form	Commercial exchange/ contract of compensation-adhesion	Cooperative, Islamic Contracts of <i>wakalah</i> or <i>mudarabah</i> with <i>tabar'ru</i> donations
Investment	Equity/debt – no restrictions	<i>Shariah</i> compliant equities/ no interest
Surplus	Shareholders account	Participants account performance fee for operator

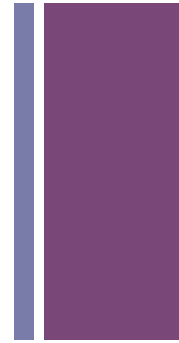
+ Takaful Act 1984

- S 2: Scheme based on brotherhood, solidarity, and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.



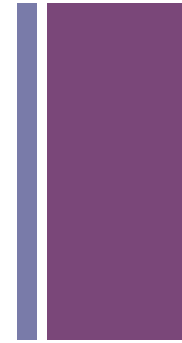
+ Takaful Act 1984

- “takaful business” means business of takaful whose aims and operations do not involve any element which is not approved by the Syariah;



+ IFSA 2013

- “takaful” means an arrangement based on mutual assistance under which takaful participants agree to contribute to a common fund providing for mutual financial benefits payable to the takaful participants or their beneficiaries on the occurrence of pre-agreed events;

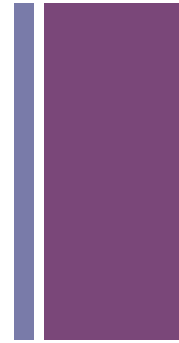


+ IFSA 2013

- **S5.** takaful business shall be divided into two classes—
- *(a)* family takaful business, which in addition to all takaful business concerned with family takaful certificates shall include any type of takaful business carried on as incidental only to the family takaful operator's business; and
- *(b)* general takaful business, which means all takaful business which is not family takaful business.

+ Classification of Takaful

- General Takaful Business
- Family Takaful Business



+ General Takaful Family Business

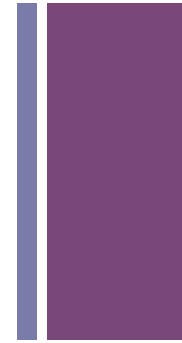
- **Short term policy**
- **Contribution goes to GTF which is then invested and the profits are paid back to the fund**
- **Contributions go to a common pool to compensate participants in the event of a loss.**
- **No saving and investment elements. TO will distribute any underwriting surplus to the participants.**
- **Eg motor vehicle, marine, personal accident, health.**

+ Family takaful Business

- **Long term policy (children education, pension, compensation in the event of death)
Eg. 10-30 years.**
- **PA: saving accounts**
- **PSA: tabarru accounts**
- **In the event of a loss the participants will be compensated.**
- **TO: fees or profit sharing**

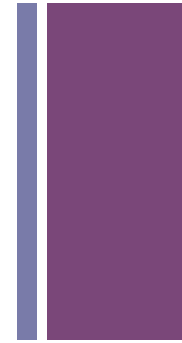
+ Underlying contracts

- **Takaful Business is based on the concepts of *Mudarabah, wakalah, waqf, jualah* and *Tabarru*.**
- **Latest attempt to introduce new concepts for takaful under the principle of *wadiyah* and *musharakah musahamah taawuniyah*.**
- **Involvement of these Islamic forms of business eliminates the elements of Riba from insurance contract and convert *Gharar* into tolerable form.**



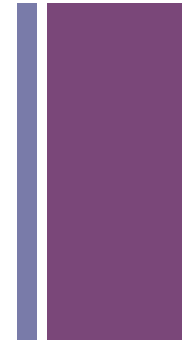
+ Nature of Relationship

- **Amongst the participants- al Tabarru**
- **Contracts between participants and takaful operators-**
 - **Mudharabah**
 - **Wakalah**
 - **Jualah**
 - **Waqf**
 - **Hybrid**
 - **Wadiah**



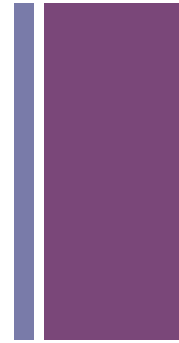
+ Contract among takaful participants

- **Tabarru: gift or donation, which given by one in favor of someone without seeking any consideration.**
- **A *tabarru'* made based on the general principles of contract in which the person binds himself unilaterally by offering something valuable for the noble cause of welfare of others**



+ Concept of Al-Tabarru'

- Mutual Help, Mutual Responsibility, Mutual Protection and Mutual insure one another.
- Participants' contributions credited mainly into two accounts; participants account (PA) and participants' special account (PSA).
- PA- To be invested based on mudharabah
- The amount credited into the PSA is regarded as *tabarru*, which is managed by the takaful operator to provide a security for others who deserve



+ Issue on *al-tabarru*

- Opponent: it is not *al-tabarru* but contract of exchange
 - Issue on gharar
 - *al-ibratu bi al-maani la bi al-alfaz* (one should look at the end result and not at its wording)
- Answer:
- (*iltizam bi al-tabarru* (self imposed donation)
“the one who commits himself to doing good, is obliged to do so”: **Maliki’s view**)
- **AAOIFI: *iltizam bi al-tabarru* or *nihd***

+ Contracts btn participants and TO

- **1. Mudharabah: Profit sharing**
- **2. Wakalah: Fees**
- **3. Jualah: Commission. Commitment to pay for the performance.**
- **4. Waqf: TO as trustee.**
- **Relationship- Not as an insurer and insured but participants and manager of the contribution money.**

+ Takaful Conditions (Mutual Assistance and Cooperation)

- **1. Speciality Condition: Compliance with the Islamic cooperative principles**
- **2. Partnership Condition: Participants- right t entitlement of surplus profit and render liable to cover losses. Surplus may be paid= pro rata basis.**
- **3. Investment Condition: To invest in halal sectors.**
- **4. Management Condition: Policy to have adequate representation on the board of directors of the company to scrutinize its accounts**