

A Draft Proposal

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A Medical Aid Fund
A Medical Aid Fund
in conformity
in conformity
to
Islamic Principles

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A draft proposal

A Medical Aid fund in conformity to Islamic Principles

1. The background to a need for a separate fund for Muslims.

People who follow Islam are called Muslims immaterial of race, nationality, gender or age. Muslims adhere to Islamic principles advocated in the Qur'an and the teachings of the prophet Muhammad (peace be upon him). The latter teachings prohibited Muslims from engaging in any form of Riba. Riba entails interest and usury contracts. Interest in western terms is not synonymous with *RIBA* since the definition of the latter concept encompasses a more broader sector of transactions.

Thus, at a prescriptive level of religious teachings, Muslims cannot lend or borrow on an interest basis. They can neither buy, nor sell on an interest basis. This ruling is not limited to an Islamic State, it is a divine ruling that binds Muslims in all countries. The ruling is neither restricted to the early days of Islam. It extends to all periods of time.

Contrary to the Jews who cannot exact interest from each other but may take interest from non-Jews, Muslims can neither exact interest from other Muslims, nor exact it from non-Muslims.

Muslims, have indeed not developed fractional reserve banking. However, the emergence of interest dealing banks also acted as a factor in the introduction of interest into Islamic countries and Muslim societies.

The vital element in this regard is to know that despite whatever critics have to say, Islamic law is integral to the life of a Muslim, thus failure, in an Islamic investment or Islamic financial product, to comply to the wishes of Muslims regarding their investment structure and its compliance to Islamic commercial law actually renders income from such a source as Haraam (impermissible). Such income cannot be used for pilgrimage, nor for food, nor for any assets. Thus, the serious nature of the matter and all associated issues must be noted.

2. Present Muslim economic practise.

At a realistic level, we need to separate the rule of Islam from the practise of Islam. Like all adherents of other faiths, some Muslims are conformists while others do not adhere to all Islamic teachings. Some Muslims apply Islamic teachings in their lives; and where this is not possible; they adopt aspects in relation to needs and necessities of the time. Others would not care about some aspects of the religious law in order to gain an income or increase their capital. Thus, they may not steal to earn, but would

lend on an interest basis to earn. It is therefore that Muslims would invest in banks, and take interest.

Sometimes, Muslims are compelled to be associated to interest although they would not prefer to do so. Thus, Muslims would bank in interest-related banks due to commercial necessity. They may economically face predicaments that demand that they borrow and buy on an interest basis. Thus, it is not uncommon for any normal interest banking institution to hold thousands of Muslim accounts. In some cases, the accounts are held to securely keep their monetary resources. In other cases, Muslims are economically compelled to buy homes, vehicles and other equipment on an interest basis. Sometimes, because Islamic banking is a nascent concept and has failed, in some cases, to gain the confidence of Muslim communities, Muslims would still prefer to deal with conventional interest banks. In other cases, the variety of services offered by conventional interest dealing banks outstrips the limited expertise and the restricted amount of banking facilities that Islamic banks offer. Thus, for the purpose of business and other needs, Muslims would still support conventional interest dealing banks.

As an extension of the Islamic prohibition of interest, investing in any financial product or instrument that purely earns interest is also prohibited at a theoretical or religious level. Thus, investing in “fixed deposit accounts” that purely provide a interest return is Haraam “religiously / Islamically prohibited.” However, investing in a company that does not fully earn interest, but earns an Islamically legitimate income, would not classify the entire segment of earnings from such a company to be Haraam. Thus, if shares were purchased in a furniture company, all income of the latter company; excluding interest earned from its other investments, bank accounts and interest earned from clients, would be Halaal “Islamically allowed”.

If this is the rule, then what do Muslims do with interest they earn from conventional banks? Some, distribute it to charity. Others use it to offset other interest payments to which they are obligated. Others, use it to pay traffic fines. Ultimately, we reach a class of Muslims that would use the interest money for their needs, immaterial whether real needs or whether to increase their capital base.

2.1 Islamic Investment Criteria

In order for Muslims to earn a religiously legitimate income, their investments require to be interest free as well as to be in areas that Islam allows. It also demands that the transactions concluded do not violate Islamic commercial principles. This means that:

1. The concept of interest, in terms of Islamic law, be clearly defined.
2. The avenues where Islam prohibits investment be stipulated.
3. A broad outline of Islamic business principles and contracts be studied and classified for adoption.

All of the above issues, enable investing consultants to ensure that Muslim funds are not invested into sectors where Islam prohibits investment, as well as ensures that

funds invested in Islamically allowed sectors are channelled through contracts that Islam permits.

The second issue can be briefly be enumerated but such enumeration is not a limitation to the possibilities where investment is prohibited. Islamic prohibits investing in a gambling industry or an industry that manufactures intoxicants for human consumption. Muslims cannot sell or even manufacture wine, beer and similar products. Neither can they sell or purchase Islamically prohibited products. Thus, Muslims cannot own shares in a wholesale meat industry that earns its income through the sale of pork, or beef that is not slaughtered in an Islamically acceptable format.

The third point is to be noted as Islam has a very wide and extensive base of commercial law that Muslim jurists developed over centuries. All of these laws are codified in Arabic texts dealing with Islamic jurisprudence. Much material and many translations are available for the English reader. However, since Islamic law has been inferentially extended over various periods, in different geographic regions and by jurists who differed on the interpretation of certain verses of the Qur'an and certain prophetic traditions, we have a situation where four main divisions or Islamic legal schools emerged. Each of these schools developed its own theories to interpret aspects of the law. In many situations, one or more schools would concur on a matter. Yet, differences do exist. The challenge to resolve these differences, rests upon Muslim jurists of Islamic law. They require not only to know the reasons of the differences, but also be enabled to evaluate the juridical basis of these differences so that the most sound arguments lead to us to support given interpretations of the law. Here again, Muslims no longer live in pure Islamic societies, not even in Muslim countries. Thus, Islamic law is often always faced with a secular legal system that neither emanates from a divine source, nor respects the concepts and teachings of Islam. Thus, Muslims in each country are faced with different challenges to find alternatives around present financial legislation in order to create Islamic financial products that would most closely conform to Islamic teachings.

2.1.1 Islamic Investment Criteria from www.iHilal.com

Islamic Investment Criteria (from www.iHilal.com).

I added some of my personal notes to applicable areas.

The following checklist provides the general rules followed by Shari'ah scholars in determining what is halal and what is haram for investment.

a) Qualitative Screens

i) **industry screening:** Is the company in an industry prohibited in Islam? Examples of industries that are haram (or are necessarily involved in haram activities) include: alcohol production, riba based financial institutions, gambling, and entertainment.

(Note by Ustaaz, Ahmed Fazel Ebrahim:

Meat industries that process meat of animals not slaughtered in terms of Islamic law, industries producing and selling musical equipment and productions, pig farming, food outlets that market Islamically haraam foods are also included amidst others)

ii) **business practices:** Is the company exploitative in its relationship with customers and suppliers or unethical in its trade practices?

b) Quantitative Screens

i) **debt/asset ratio:** Has the company borrowed funds on interest (whether fixed or floating)? It is clear that there should ideally be no interest-based debt, but based on the Islamic legal principle "li al-akthar hukm al-kul" (to the majority goes the verdict of the whole) and subsequent scholarly opinions, a company is not a permissible investment if debt financing is more than 33% of its capital.

(Note by Ustaaz, Ahmed Fazel Ebrahim:

Islam allows the use of debt for consumptional needs as well as for generating income. However, although taking a loan on interest is prohibited, there is no clear Islamic ruling which classifies income earned on such a loan to be Haraam [prohibited in Islam]. Thus, we need to separate the borrower's giving of interest, to the financier, from the borrower's generation of Halaal income on the loan.

If it was at all valid to assume that income earned on money borrowed on an Interest basis is Haraam, then even the 1/3 of interest-related debt capital would render 1/3 of the profits to be Haraam [Islamically prohibited]. Therefore, the essential reason for such a condition is purely to grant preference to a company that is closer in conformity to Islamic commercial regulations as well as to minimize the extent of interest liability that you, as a partner or shareholder have to also legally discharge.

Thus, this is not a case where we can say that if 51% of the capital is interest related, then it would not be valid to invest in. Even if 49% of the capital was interest-based that required the company to discharge interest, then also, it would in some sense imply that the prospective investor is participating and silently acknowledging the paying of interest.

Sometimes, the presence of excess liquidity and the need for investment may demand investing in a company that has more than 1/3 of its capital financed through interest. Furthermore, if the company is a non-Muslim company, or the greater shareholding is held by non-Muslims, we as Muslims cannot demand an interest-free capital base since we are not religiously obligated to govern the nature of their earnings or their capital. We can conclude that due to our partnership through shareholding, we validly need to govern format of the company's earnings since that would govern the Islamic permissibility or the prohibition of the income on our shareholding. Thus, for the sake of argument, if a non-Muslim company uses its earnings from a Beer industry to set up a Hardware and tool business in a nearby forest, Muslims can still be partners in the Hardware business. Although Muslims cannot be partners in the Beer industry, they can validly be partners in the Hardware and tool business since that is an Islamically legitimate business. So, if the non-Muslim partners bring in 50 % of capital from their earnings earned from the beer industry and further borrows 25% from a bank, nothing stops a Muslim from investing his 25% halaal money in the Hardware and tool business if the latter business will be run on an Islamically compliant manner in terms of sales, purchases and income. Furthermore, the Muslim partner will only get back 25% of the profits and not get the profits of the 75% unless due to further work [or if the non-Muslim partners are sleeping partners who just provided venture capital] which would validly justify a larger percentage of income. However, in the situation where the company is obligated to pay interest on its capital, the Muslim investor would, likewise, be obligated to pay the proportional amount of interest in terms of his/her shareholding.

Muslims are neither obligated to know the nature of the manner in which any other Muslims have earned their capital. Thus, if a Muslim enters into a partnership with another Muslim who has acquired his capital through winning money in the casino, the partnership will be valid for as long as the first partner is unaware of the nature of the other partner's capital. However, if he knew that the other Muslim partner has earned his capital through Islamically illegitimate means, he cannot enter into the partnership since the other Muslim is religiously obligated to dispose of invalid income.

The application of the Islamic legal principle "lil -akthar hukm al-kull" (the nature of the major sector is attributed to the whole unit) is also relative to the issue and contract. Thus, if most of the income of any person is through invalid means, it does not imply that the rest of the income is also invalid. The reverse also holds true. Thus, if the major income of any company is halaal, it does not classify the haraam income as Islamically valid.)

ii) **interest-related income:** Does the company generate any interest or interest-related income? This includes those companies who do not make earning interest their business, but place their surplus funds in investments that yield interest income. As in the previous case, ideally no income should come from interest-related sources. According to some scholars, however, up to 10% of a company's total income can be derived from interest sources.

(Note by Ustaaz, Ahmed Fazel Ebrahim:

It is possible that the Islamic legal principle "lil -akthar hukm al-kull" (the nature of the major sector is attributed to the whole unit) is applied in evaluating the major business of any company, Thus, if the major business is Islamically valid but the company deals with a segment of business that Islam prohibited, then the proportionate amount of income of the impermissible segment will be impermissible. Such an income must be transferred to a separate account of any fund or to a separate account of the client who will dispose of it in terms of his/her preference or compliance to Islam. This is essential to note since many companies may earn interest despite the fact that the major business is Islamically allowed. The interest income will then be separated from the permissible income.

The above allowance by some scholars who say that up to 10% of a company's total income can be derived from interest sources is given on the basis that there is a need to allow a minimum Haraam income since, it is seldom that we will find companies that are 100% Shariah compliant. Demanding a strict Shari'ah compliant company will prevent investment since almost every company earns interest or Haraam income in some way. This allowance does not imply that Haraam income earned from such an allowance is also allowed. It means that this is a tolerance level in relation to investment, but haraam income earned through interest or Islamically prohibited contracts will have to be segregated from the Halaal funds.

On the other hand, companies that earn interest through some avenues may have to pay interest to other sectors. The primary Islamic ruling that binds Muslims requires that interest is not even charged to non-Muslims, and where this has been done, it should be returned to the source from where it is taken. Some Islamic scholars, due to contemporary economic and financial perspectives, allow Muslims who have taken interest to distribute it to other deserving sectors or to use it to pay other interest payments due to the same institution from where it was taken. I wrote a lengthy article related to "The disposal of interest in Islam." It may be envisioned that some scholars might have allowed interest received against interest paid. In one of the Seminars, some scholars allowed the taxation on a given account be paid from any interest earned in that same account. Thus, total interest earned in any given pool of funds could be used to pay taxation on that very pool of funds in terms of some jurists of Islamic law.)

iii) **monetary assets:** Are substantial portions of the company's assets monetary? Watch out for items such as accounts receivables and liquid assets such as bank accounts and marketable securities. Various minimums have been set for the ratio of illiquid assets (assets that are not in the form of money) necessary to make an investment permissible. Some set this minimum at 51% (again, according to the principle of "to the majority goes the verdict of the whole"). A few cite 33% as an acceptable ratio of illiquid assets to total assets.

(Note by Ustaaz, Ahmed Fazel Ebrahim:

A decision based on the liquidity of a company is more a financial decision rather than a Shariah [Islamic legal] specification. The liquidity of a company may affect its viability and financial feasibility. However, this is relative to the nature of the business.

The essentiality relating to the Islamic perspective of the forms of assets would demand that all marketable securities are :

- a. Inherently allowed by Islam
- b. Bought and sold in Islamically permissible formats)

However, the format of evaluating shares when intending to purchase either a limited quantity of shares or all the shares of a company requires that the nature of marketable securities within its assets must be considered and evaluated in relation to Islamic principles since it may be possible that the presence of such securities and the existence of debts lead to an interest transaction at the instance of the purchase of such shares. Basically, Islam allows the transfer of debt but does not allow the sale of debts, thus where the share value is less than, for example, the proportionate debt/per share due to a company, it would imply that the company has sold its debts at a discount. This would not be permissible in Islam. Since many marketable securities are also of a "Debt type nature" we need to consider the asset structure of the company in relation to the share value.

c) Trading and Investing Practices

In addition to criteria for selection of securities, Shari'ah principles are also applicable to investing and trading practices, applied to individual investors as well as Islamic Mutual Funds. These practices include:

i) **Investable funds must be free of interest based debt.** The investor cannot borrow on interest to finance his investments, and therefore cannot trade on margin—i.e., borrow to purchase shares. Conventional funds such as hedge funds, arbitrage funds, and leveraged buy-out (LBO) funds all borrow heavily in order to finance their investment practices, and they are therefore prohibited for Islamic investors.

(Note by Ustaaz, Ahmed Fazel Ebrahim:

The issues relative to borrowing on interest to generate income are the same in relation to acquisition of business capital on an interest basis. However, the individual Muslim investor or the Islamic investing institution has the obligation and discretion to abstain from acquiring an interest-based capital. On the other hand, Muslim investors, at the instance of investment, have no say in the previous financial position of the companies in which it invests. Even after investment, the ability to change company policy depends on the extent of shareholding. Often, the shares would be held for a very minimum period of time since the motive for acquisition was pure profit and re-sale.

We cannot say that since "Conventional funds such as hedge funds, arbitrage funds, and leveraged buy-out (LBO) funds all borrow heavily in order to finance their investment practices, and they are therefore prohibited for Islamic investors." The issue of borrowing is separate from the nature of hedge funds, arbitrage funds, etc. Each of these mentioned funds require to be studied on an independent basis to establish its permissibility or impermissibility)

ii) **Prohibition of speculation.** Unlike conventional investors, Muslims are prohibited from basing their investment decisions on short-term speculation. As a Muslim, the logic of sound analysis is paramount before making an investment decision. Trading is important and should be well timed to take advantage of market prices, but these considerations should go hand in hand with the fundamental value of the companies in which you invest.

(Note by Ustaaz, Ahmed Fazel Ebrahim:

For as long as the nature of the contract is Islamically valid, there is no Islamic prohibition relating to a strategic short term speculation in order to earn profits or to maximise profits. Even conventional banks do not engage in short term speculation except after sound analysis of market trends. However, these interest banks also engage in speculation on

products that are Islamically prohibited e.g. some of the financial products in the derivative markets).

What can be done with Haraam income

All Haraam income can be transferred to a Haraam income account? It may be permissible to use the income in:

- Use to assist Muslims pay off interest on debts.
- Use of income to donate to specific sectors of Islamic charity organizations without intention of *thawaab* (reward).
- Use of income to donate to non-Islamic charity.
- Bursaries to non-Muslims

In regard to a medical aid fund, a forth matter of importance is the nature of the contract between the policy holder and the medical aid company. Shariah “Islamic legal” compliance of the contract is absolutely essential to the validity of the contract. Thus:

4. Islamic validity of the nature of the contract between the Medical Aid company and the policy holder.

Thus, since Islam prohibits abortion except under qualified medical opinion, and only for reasons that are justified by Islam, no Muslim female would be entitled to abortion costs that are purely due to the desire to terminate the life of an illegitimate foetus.

Neither would Islam permit sex changes.

Some jurists would prohibit a female from undue sterilization or termination of her natural ability to bear children.

A non-married female is not entitled to a prescription of contraceptives or an internal insertion of any contraceptive device.

If any state allows a gay and lesbian marriage, then any one of the two spouses within the gay or lesbian marriage cannot contract to the fund as a married person since Islam rejects the validity of such a marriage.

Many of the above matters will require that a database of Islamic verdicts and contemporary Islamically related debates pertaining to medical practices be collated. Thus:

5. Collation of Islamic views expressed and verdicts issued by Islamic jurists on Medical practises would assist as a guideline on some matters of what the fund can or cannot finance.

See appendix 3 for a sample of an Islamic verdict on Birth Control.

4.1 The thinking of Non-Muslim and Muslim professionals in regard to Islamic Finance

Islamic finance is the fastest growing discipline in the Middle East. It has attracted the attention of international capital markets, and seeks to innovative a wide variety of Islamically acceptable financial products. Islamic Economic and Financial teachings do not negate every aspect of contemporary Economic models and financial disciplines. Rather, the flexibility of Islam allows applying Islamic commercial law in non-Muslim countries as well.

The disciplines of Islamic finance is also one that is least understood both by the western financial community and, paradoxically, also by Muslim professionals whose training in finance has been purely in accordance to non-Islamic models.

In the same manner that no layperson cannot interpret the law from a few legal texts, similarly the exposition and understanding of Islamic law is not derived from the reading of a few Islamic texts on the subject. All material written in this area is subject to critical reviews, and interpretations of the early Islamic jurists govern the format of Islamic contracts. Thus, what one reader finds in a text may not necessarily be the sound opinion of scholars of Islamic law. It is thus that a left wing extremist group of contemporary Muslims deny the validity of Islamic Banking since these forms of financial entities did not exist in the early Islamic era. It is therefore judicious for any professional who is not conversant with Arabic and the schools of Islamic law to abstain from advocating assumed interpretations of Islamic law or the formats of its contracts unless these are authoritatively subjected to critical Islamic evaluation.

3. Muslims want their own economic vehicles. We are determined not to be continually subjugated by foreign financial principles.

As democracy widens, and the need to do business and create allowances for the client becomes a wider notion, even non-Muslim countries are allowing Muslim communities the financial freedom to do business in terms of its own religious requirements. Thus, Islamic banks emerged to serve a segment of this need. Islamic insurance companies are slowly developing to serve another segment. However, an infinite range of Islamically acceptable products can still be created for the Muslim market.

4. The need to engage the services of Muslim scholars who engage in the research of Islamic commercial law and a Religious Supervisory Board.

Muslims are, indeed, attached to religious values. The fact that Muslims live in non-Muslim countries does not imply their sentiments to Islamic practise has been eliminated. We yearn to adopt ways of earning that will not allow the wrath of God to befall us. Investing in interest bearing accounts not only creates a return that Islam prohibits, but also perpetuates the cycle of interest. Likewise, although insurance is a need of Muslims as well, a conventional insurance firm invests in Islamically prohibited avenues and on the basis of interest returns. Thus, any income, from these Islamically prohibited sources, which is distributed to Muslim policy holders or

claimants is tainted by the unlawful. It is thus, that Muslims have not restricted themselves to Islamic Banking, but had to ensure that even the insurance sector is void of interest and free of income that Islam prohibits.

Scholars of Islamic law are generally known as Ulama. Not all of them specialize on Islamic finance. Many of them totally do not engage with finance. However, there are a growing number of Muslim scholars whose interest in the field has had a remarkable impact in the growth of Islamic finance and in the development and marketing of Islamic financial products. The services of these scholars is absolutely essential in order to monitor the formats of all the types of transactions concluded by the fund managers as well as by other persons who deal with the assets into which Islamic funds are invested. Thus, in reality, even when an Islamic bank invests in an external fund or property syndicate, the Islamic compliance of the latter entities is also essential to the greater whole of the Islamic Bank concerned.

In some sense, their acknowledgment and acceptance of the financial practices of the fund is essential for Muslim trust and confidence on the Islamic nature of the investment.

Some of these scholars “Ulama” graduated from “Dar-ul-Ulooms”(traditional Islamic educational institutions that provide higher levels of Islamic education). Scholars from this sector sometimes further their education to become Muftis. A mufti is a scholar who is entitled to issue Islamic verdicts. However, not all muftis have the same level of education or knowledge in every area of the law. Thus, it is possible that an Aalim (Singular of Ulama) “Islamic religious scholar” is more conversant with an aspect of the law than a mufti. These scholars, together with having Arabic skills that is essential to research issues in Islamic commercial law, also deal with the intricate details relating to the methodologies of interpreting the Qur’an and the prophetic teachings.

Others, graduate from Muslim and / or non-Muslim secular universities and either have written a thesis or dissertation on some aspect of Islamic Banking, Finance or Insurance. Each group of scholars have their unique skills. An amalgamation of the “Dar-ul-Uloom” type of Islamic knowledge to contemporary economic, financial and accounting skills is the ideal blend of attributes for this task. Indeed, much learning has to be continually gained in the various sectors of the financial world. Some M.A. and PhD. scholars also have a very good and focussed idea to the concepts that they researched.

However, I have also seen a Muslim PhD scholar’s work whose definition of interest, in terms of Islam, is a thousand kilometres away from its mark, let alone use the phrase “a miss is as good as a mile.” In some cases, conservative scholars failed to adequately grasp the full economic, accounting and legal implications of the contract.

All Islamic banking institutions employ one or Muslim scholars / jurists of Islamic law to research issues related to the law and to sanction their transactions. Alternatively, they may also have a panel of such scholars to oversee the transactions that they undertake. Such panels are normally designated as “Religious Supervisory Boards.”

It is my considered opinion that one or more qualified Muslim accountants or C.A.s also be part of such a board in order to amalgamate the secular accounting procedure to the demands of Islamic commercial law.

It is also essential to have one or more lawyers who are skilled in commercial law to be part of the panel so that they could formulate contracts in terms of Islamic law as well as discern when such contracts violate the statutory or commercial law provisions of the country concerned.

Some of the Islamic verdicts issued by these boards could maybe be procured from the individual Islamic Banks or Insurance companies. A software company in Egypt, Harf¹ has published many such verdicts of many different banks on a single CD rom. However, this material is in Arabic. An English translation of many such verdicts has been done by Sheikh Yusuf Talal de Lorenzo, Islamic Advisor to the Dow Jones Islamic Index and on the panel of Islamic religious Advisors of Oasis Asset Management (South Africa). At one stage, the verdicts issued by the RSB (Religious Supervisory Board) of Al-Baraka Bank (Head Office) was also available on line.² The verdicts of the Islamic Fiqh³ Academy, Saudi Arabia are also often adopted by these institutions.

Refer to the appendices for a few samples of Islamic verdicts issued by Muslim scholars in relation to issues in Islamic Finance.

Appendix 1: **Futures, Options and Swaps**

Appendix 2: **Warrants**

What needs to be noted is that many verdicts are issued related to the format of a financial contract that has specific definitions, or which is in vogue in a specific financial market. The international differences in the format of these transactions may sometimes imply that one format is allowed while another is prohibited due to given considerations. Also, depending on the source and nature of the verdict, other Muslim jurists may either criticize it or support its contents.

It must also be noted that there are diverse schools of Islamic law. Each adopts, throughout its legislative procedure, specific theories for the extension and development of the law. Thus, a juridical religious edict that allows laxity in one such school, may not necessarily be the same in another school. Also, a ruling relating to a specific contract may be allowed in one legal school but prohibited in another school for various reasons which relate to the inferential methodology applied to infer the law. This does not imply that Muslim jurists are now free to selectively adopt a ruling in terms of need or an exigency. A complex process of juridical reasoning then needs to be employed to evaluate conflicting opinions on the basis of ascertain the soundness of the arguments in relation to the greater pool of source material on Islamic primary law. If this be the case in relation to Muslim jurists, then *a fortiori*, non-Muslims associated to the field of Islamic products must understand that this domain is exclusive to specialists jurists of our law.

¹ They have a website.

² Do a net search to ascertain continued availability.

³ Jurisprudence.

In the case of a Islamic Medical Aid fund, we would have to deal with verdicts on Islamic Medical issues as well. These verdicts can either be sourced from the net, local and international Islamic organizations which deal with Islamic verdicts

e.g.

Title	Year of Publication	Published by or place of publication	Contents	Language	Period
Important fiqh decisions	1996	Islamic Fiqh Academy (IFA), India Post Box No. 9746. 161-F, Jogabai, Jamia Nagar New Delhi -110025 Phone 6821779 Fax: (011) 6926106, 6820318	Verdicts on medical issues, finance, Islamic banking, other Islamic issues	English	Perhaps annually
Bahs-o-Nazr,		Patna, India		Most likely in Urdu	Quarterly
Selected Verdicts from a 100 year collection of the verdicts of Al-Azhar, Cairo Egypt		www.islamic-council.gov.eg or www.alazhr.org	Verdicts in all sectors of Islamic Law	Arabic (The file was downloadable, it might be updated or perhaps not exist any longer)	

Verdicts from the Islamic world would often have to be translated from Arabic or Urdu to English. Many Islamic scholars / Muslim religious leaders would be enabled to do this.

5. Extent of Muslims having medical aid policies.

Creating a true statistical model with all pertinent financial data in relation to the number of Muslim participants in medical aid schemes in South Africa is indeed a gigantic task.

I do not suppose that medical aid companies also classify their clients in terms of religion. Even if they did, whether such data can be collated from all such companies is another obstacle in the path to the acquisition of the extent of Muslim capital in these funds!

Due to confidentiality of their private financial affairs, Muslim doctors, dentists and other Muslim professionals in the medical sector will neither be willing to truly provide statistics relating to the number of Muslim patients who visit them, and

charge the costs to their medical aid policies. This data will neither be attained from individual Muslims.

However, medical treatment is an essential basic need for all people. Thus, not only Muslims having medical aid policies acquire treatment. Others also go to medical personnel for treatment.

I am sure that Islamic Banking in South Africa and other parts of the world, took population statistics and demographics of concentrations of Muslims into consideration rather than wait for a detailed statistical report of the extent of Muslims who would express their willingness to participate in Islamic financial models.

6. Marketing of an Islamic Medical Aid Scheme, some obstacles and suggested solutions

6.1 Company policy that requires their employees to be medically insured with given companies.

In this case, marketing teams would have to engage with these companies and their Muslim staff in order to create an allowance for Muslims to adopt a policy that suits their religious ideals. This would only be viable where a large number of Muslims work for the company.

6.2 Muslim medical professionals must be targeted to market the product. This is provided that they are legally allowed to advise patients in this regard.

In South Africa, the Islamic Medical Association (I.M.A.) may have a large affiliation of Muslim medical professionals and could possibly be approached to highlight the concept amidst its members. Other non-Muslim states may have similar bodies and organizations which can market the idea and concepts of an Islamic Medical Aid Scheme. In fact, the very professionals could be shareholders in such a scheme. 500 Medical professionals with a shareholding of R20 000 South African Rands would give us R10 000 000-00 to start.

6.3 Also advertising through Islamic media – Radio Islam, C I I, satellite radio station and other Islamic newspapers in the various provinces.

6.4. Muslim insurance brokers. Other Muslim brokers, on the contrary, would be averse to marketing an Islamic product since they would fear to lose the commissions achieved from the marketing of non-Islamic medical products.

6.5 Muslim theologians and others can be provided guidelines relating to the financial qualifications required in order to allow them to market such a product.

6.6 Incentives can be created if the participants accept to use fairly equivalent generic medication or acquire treatment from specific doctors and medical clinics that would offer services at reduced rates.

6.7 Negotiate directly with medical aid companies.

They may send an e-mail request to the HR administrators of each member company. These HR administrators will send an email request to each (Muslim) staff member, requiring responses from Muslim staff (and possibly also Non-Muslim staff) about their willingness to sign up for Islamic compliant Medical Aid plan.

7. Muslims need to be reminded of religious, ethical and humanitarian values.

The under world of crime is not a phenomenon restricted to a given society, race or financial class. White collar crimes are also executed by Muslim patients and Muslim medical professionals. Muslims need to be warned against all crimes in this sector and also made to face the legal consequences of violation of the terms of the contract.

8. Non-Muslim participation in the fund or non-Muslim administration of the fund.

Provided that the clients or participants to the fund agree to the terms within the contract of the policy, all persons of any race, religion, gender, sexual orientation or political allegiance may contract with the fund.

Islam has not denied Muslims from contracting with non-Muslims. However, Islam has restricted the format in which Muslims contract with non-Muslims. Thus, even if the Islamic fund was administered by non-Muslims, Muslims would still be allowed to contract and participate into such a fund provided that the fund ensured compliance to Islamic contractual regulations and that they were assured that the fund is also overlooked by a team of scholars of Islamic Law.

9. The Islamic Medical fund needs compliance with regulations of the FSB (Financial Services Board) in South Africa, or the respective authorities in other countries

All regulations governing financial products must be fully ascertained from the relative authorities. Negotiations must be made to cater for specific Islamic requirements that may sometimes not be catered for under present financial regulations.

Tax implications and incentives related to participation in such a fund must be, in fairness, the same as those participants who engage with conventional interest based medical aid funds.

Other applicable legislation that needs to be considered (diverse and relative to each country)

- a. Medical Schemes Act,
- b. Medical Schemes Regulations
- c. Other Acts or applicable legislation

10. Re-insurance of an Islamic Fund

An Islamic fund, needs to be free from any taint that emanates from Islamically prohibited income. Thus, any re-insurance of the fund would also require compliance to the principles of Islamic commercial law.

Possibilities of off-shore re-insurance with Islamic Insurance companies need to be investigated.

10. 1 Dearth of re-takaful or re-insurance on an Islamic basis

The dearth of re-takaful companies in the market has posed a major dilemma among takaful companies to serve its customers, who prefer to go for a Shari'ah-based insurance cover. Re-takaful had become an area that is much debated

This has left takaful “Islamic insurance” companies with a dilemma of having to reinsure on conventional basis, contrary to customers' preference of seeking cover on Islamic principles. It may be noted that some Shari'ah scholars have allowed dispensation to takaful operators to reinsure on conventional basis, as long as there was no retakaful alternative available. This again is absolutely contrary to the Islamic reason for which a Shariah compliant insurance system is founded. Where this does take place, the Islamic insurance company must re-insure with a conventional insurance company that will deal with the Islamic insurance in a manner allowed by Islam. It does implies that the re-insurer will have to invest the premiums received from the Islamic insurance company on an Islamically allowed basis.

Takaful companies must actively promote co-insurance on an Islamic basis. At present, a number of large conventional reinsurance companies from Muslim countries take on retrocession but there is still a lack of capacity within the takaful industry worldwide. A certain proportion of risks is being placed with international reinsurance companies that operate on conventional basis. The retrocession from takaful companies ranges from 10 percent in the Far East, where takaful companies have relatively smaller risks to the Middle East, where up to 80 percent of risk was reinsured on conventional basis. The more successful takaful companies in the Arab region currently declared a dividend of only up to eight percent, he said, adding that these companies could do much better if the critical mass of business was built up. At the moment there is not only a lack of capacity to write different classes of business, but also low retention and limited product range.

11. Contemporary models of Islamic Insurance and Islamic Medical aid schemes.

Although Islamic Banking has been growing Internationally, the progress of Islamic insurance companies has been very limited. This is possibly attributed to the “trial phase” in which Islamic banking operates. In other cases, it relates to the absence of capital and infrastructure.

Islamic insurance companies have been known as “Takaful”⁴ companies. Takaful is an Arabic noun meaning “mutual care.” Some of these companies are in the Middle East, e.g. Bahrain. Another successful company is in Malaysia. Perhaps another exists in Pakistan.

⁴ Better pronounced as “Takaaful.”

1. Takaful Malaysia (Kumpulan Bank Islam)
[http:// www.takaful-malaysia.com](http://www.takaful-malaysia.com)
2. First Takaful USA
3. www.iHilal.com offers Islamic Investment products. They may have links to Islamic insurance.

Each of these companies have its own flow-charts of the accounting models within which they operate. The terms and conditions of the contracts are also vetted by Islamic scholars to ensure that every term is Islamically valid.

I do not know of an Islamic Insurance company that specifically deals with a Medical Aid scheme. An Islamically acceptable format for such a scheme could centre around the above models but does not necessarily have to exactly conform to such models since the essential element are a) Financial viability through Islamically acceptable investments, and b) the terms and conditions of the contracts must be Islamically acceptable.

A variety of diverse medical aid contracts could be offered so that a wider market can be included in the target market. People of different financial standing can opt to a contract that suits their financial position.

12. Ownership of the fund

Ownership of the fund rests with the shareholders of the fund. This depends on the manner in which the shareholder structure is formulated.

In South Africa, the Islamic Medical Association (I.M.A.) may have a large affiliation of Muslim medical professionals and could possibly be approached to highlight the concept amidst its members. Other non-Muslim states may have similar bodies and organizations which can market the idea and concepts of an Islamic Medical Aid Scheme. In fact, the very professionals could be shareholders in such a scheme. 500 Medical professionals with a shareholding of R20 000 South African Rands would give us R10 000 000-00 to start.

The fund administrator can be a non-Muslim company. Likewise, a non-Muslim company may also fully own such a fund. However, a partnership between a non-Muslim company and Muslim investors would be an ideal amalgamation and preference of Muslims. As the fund grows, it may be listed as well.

13. Educational resources in the field of Islamic Economics and finance, and its locations

1. Islamic bookshops.
2. The internet
3. Institutions :

- 3.1 Institute of Islamic Banking and Insurance, London
- 3.2 Islamic Development Bank, Saudi Arabia

4. Journals

4.1 International Journal of Islamic Financial Services is a quarterly publication of the School of Islamic Business Education and Research (SIBER)

5. Specialist publications like the following

Islamic Banking & Finance Yearbook 2005 – Banker Middle East

This volume is a directory listing of all significant institutions involved in Islamic banking and finance across the globe – in the MENA region, in UK and Europe, Asia and the USA.

"What the reader ends up with is the single most useful and comprehensive database listing of Islamic finance institutions ever published."

Coverage of:

Retail banks
Investment banks
Funds management companies
Insurance and Takaful operators
Modaraba associations
Central banks
Monetary authorities
Regulators
Legal firms
Advisory firms
Accountancy firms
Consultants
Educational establishments

This is a single tool that the reader will refer to time and again as the one source of data on these increasingly important institutions.

Each entry carries:

Name of company ● Address ● Telephone number
● Fax number ● Email address ● Web address
● Name of key executive officer

A large variety of material has been written on the subject and the resource base is ever increasing.

14. The need for Islamic accounting policies and mathematical precision in relation to interest earned on shares and other investments like e.g. property.

For as long as the company whose shares are purchased is primarily engaged with Islamically permissible trade, then, at the instance of acquiring a share, all previous interest or Islamically impermissible income earned on the share will not be a matter of consideration since we, as Muslims, are not Islamically held liable, for the pure purpose of buying shares, to have details of how the company has previously earned its income.

It is nevertheless essential to have:

1. Financial details of the company
2. Ascertain the extent of its Islamic compliance in terms of what business activities a the company engages with
3. Extent of Islamically impermissible income (interest as well as earnings from other contracts that are not permitted by Islam
4. Is the company a holding company or a subsidiary of another.
 - 4.1 Does the holding company earn Haraam income from subsidiaries
 - 4.2 If yes, what is the extent of such earnings
 - 4.3 If the investment is in a subsidiary company, then investments made by a Holding company that earns Haraam money will not effect the validity of investing into the subsidiary that trades in Islamically allowed business or production

However, subsequent to acquisition:

1. The financial statements of the company whose shares are held must be re-viewed annually for
 - 1.1. Changes in its business activity that would conflict with Islamic law
 - 1.2. Extent of Haraam income (interest and Islamically prohibited income)
 - 3.2.1 Where Haraam income exists in the company, the proportionate amount thereof must be deducted from the shares held so that an Islamically permissible valuation of the share or fund of shares is established.
 - 3.2.2 In terms of an Islamic verdict issued at one of the sessions of the panel of Islamic scholars nominated by Al-Baraka Bank, interest earned on an account can be used to offset taxation on the same account. Thus, the use of such interest and Haraam income that is deducted from specific portfolios of funds can be used to pay taxation on the same funds. In the case of Oasis Asset Management in South Africa, those who invested into particular sectors of Islamic investment products offered by Oasis, were allowed to opt to receive interest earned on their investments or to opt to allow Oasis to place such income into a charity fund that is managed by Oasis.

Appendices

Appendix 1

Futures, Options and Swaps

International Journal of Islamic Financial Services, Vol.1, No.1, April-June, 1999

Futures, Options and Swaps

According to one view, derivatives add value and are justifiable on efficiency grounds. At the same time, the Shariah does not perhaps explicitly forbid such contracts, as these are of recent origin. A variety of strategies are employed by conventional banks for risk reduction, hedging and speculation, involving forwards/futures, options, and swaps. In order to get a definite view on the

permissibility or otherwise of such contractual mechanisms, we formulated a few questions and sought the opinion of Justice Mufti Taqi Usmani. My questions and Justice Usmani's comments and answers are reproduced below.

The kind co-operation of Brother Ghazanfar Adil,
Director General, **Institute of Islamic Banking and Insurance, London**

1. Question: (Futures/ Forward Contracts)

i) Two individuals, A and B enter into a contract on 1st January, 1996 under which A would sell stock of company X at a price of \$100 to B after an expiry of six months. B has an obligation to purchase at this price irrespective of the market price on 30th June 1996. Is this contract permissible in Shariah?

ii) Can this contract or the rights and obligations of A and B be transferred by either of them to a third party C?

iii) If the object of the transaction is any commodity, or gold, silver or currency and not stocks, as in the case above, in what way is the validity or otherwise of the contract affected? It may be noted that the non-transferability of rights and obligations severely limits the possibility of speculation on Futures Exchanges.

A commonly held belief is that Futures contracts are prohibited when they are used for speculation. Does this imply that Futures contracts are permissible when these are used for hedging?

Comments by Mufti Taqi Usmani:

i) This is an example of a Futures transaction. The Futures transaction, as in vogue in stock and commodities markets today, are not permissible for two reasons. Firstly, it is a well-recognised principle of the Shariah⁵ that a sale or purchase cannot be affected⁶ for a future date. Therefore, all Forward and Futures transactions are invalid in Shariah. Secondly, because in most of the Futures transactions, delivery of the commodities or their possession is not intended. In most cases, the transactions end up with the settlements of difference of prices only, which is not allowed in the Shariah.

ii) As Futures are not permissible, no rights or obligations can emanate therefrom. Therefore, the question of transferring these rights and obligations does not arise.

iii) Futures transactions as explained above, are totally impermissible regardless of their subject matter. Similarly, it makes no difference whether these contracts are entered into for the purpose of speculation or for the purpose of hedging.

2. Question: (Options)

i) Two individuals, A and B enter into a contract on 1st January, 1996 under which A grants a right to B without any obligation on B's part. Under the contract, B gets a right to purchase a stock of company X from A any time on or before 30th June, 1996 at a price of \$100, irrespective of the market price on the day of purchase. B, however, does not have any obligation to purchase. A accepts a

⁵ Islamic Law

⁶ The correct word intended is "concluded."

consideration of \$5 from B for granting him this right without obligations. This is known as a "call" option in stocks.

(ii) A and B enter into a contract on 1st January, 1996 under which A grants a right to B without any obligation on B's part. Under the Contract, B gets a right to sell a stock of company X to A any time on or before 30th June 1996 at a price of \$100 irrespective of the market price on the day of sale. However, B does not have any obligation to sell. A accepts a consideration of \$5 from B for granting him this right without obligation. This is known as a "put" option in stocks.

iii) A and B enter into a contract on 1st January 1996 by which A sells 100 stocks of company X to B at a price \$100 per stock. The transaction is settled with exchange of cash for the shares. A also grants a right to B, under which B can sell back the stocks to A on the expiry of six months, that is June 30, 1996 at a price of \$120 per stock. This right, however is cancelled if the price of the stocks increase beyond \$120 and remains at that level for 21 consecutive days before 30th June 1996.

Unlike the previous two instances of transactions in pure options, the above is a case of option as an additional feature of an equity sale and purchase.

iv) If the object of transaction is any commodity, or gold, or silver, or currency and not stock as in the above three cases, in what way is the validity or otherwise of the contract affected?

v) Is the validity of the above contracts affected with an added provision that B can now transfer this contract to a third party C?

Comments by Mufti Taqi Usmani

i), ii), iv) & v) : According to the principles of the Shariah, an option is a promise to sell or purchase a thing on a specific price within a specified period. Such a promise in itself is permissible and is normally binding on the promisor. However this promise cannot be the subject matter of a sale or purchase. Therefore, the promisor cannot charge the promisee a fee for making such a promise.

Since the options transactions as in vogue in the options market are based on charging fees on these promises, they are not valid according to the Shariah. This ruling applies to all kinds of options, no matter whether they are call options or put options. Similarly, it makes no difference if the subject matter of the option sale is a commodity, gold, silver or a currency; and as the contract is invalid ab-initio, the same cannot be transferred.

iii) This contract has two aspects. Firstly, if the option of selling back the stocks to A has been made a pre-condition for the original sale transaction, the whole transaction will be invalid because, according to Shariah, a sale transaction cannot accept such a condition. Secondly, if the option is an independent promise without being a precondition for the original sale, no fee can be charged for such a promise as mentioned earlier. Although a complementary promise of this kind is permissible in the Shariah, it cannot serve the purpose of the option market.

3. Question: (Swaps)

Two banks enter into an agreement to exchange deposits for a period of six months in different currencies on 1st January 1996 at the prevailing exchange rates. Bank A exchanges Rupees 30 million with Bank B for US dollars one million

and the Rupee-Dollar exchange rate prevailing on the date is 30:1. During these six months, each bank utilizes the deposits it received at its own risk.

At the end of six months, Bank A pays back one million dollars to Bank B and receives Rupees 30 million from it, irrespective of the Rupee-Dollar rate prevailing on June 30, 1996. For example, the Rupee-Dollar exchange rate might have become 35:1 or 25:1 on June 30, 1996. Is this contract Islamically permissible?

Comments by Mufti Taqi Usmani:

It is one of the principles of the Shariah that two financial transactions cannot be tied together in the sense that entering into one transaction is made a precondition to entering into the second. Keeping this principle in view, the Swap transaction referred to above is not permissible because the deposit of one million dollars has been made a pre-condition for accepting the deposit of 30 million rupees.

Since both the parties will use the deposits for their own benefit, they are termed in Shariah as loans (Qardh) and not as trust (Wedee'ah). Therefore, advancing one loan has been made a precondition for receiving another which means that two financial transactions are tied together. This is my first hand opinion about this transaction. However it needs further study and research.

International Journal of Islamic Financial Services is a quarterly publication of the School of Islamic Business Education and Research (SIBER)

Appendix 2

Private Iftaa (Islamic Verdicts) Department
3\2001

Fatwa No:

Date: 24 January

2001

Specialist Research Scholar: Islamic Finance & Economics
Ustaaz, Ahmed Fazel Ebrahim

Assalamu Alaykum wa Rahmatullah (May the peace and mercy of Allah be upon you)

Respected brother in Islam, Mufti Mas'ud, Madrasah Arabia Islamia, Azaadville

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

In the absence of Arabic fonts on your system, the line immediately above here is Bismillahir Rahmaanier Rahiem. Some other characters may display on to your screen.

Only the following response is possible after consideration of the much appreciated details which you faxed me that fully describe and define the warrants and its

application, as presently executed in the Johannesburg Stock Exchange (JSE), and dealt with by the fund managers of Banks, Financial Futures Exchanges and specific Insurance companies:

Warrants

Call warrants (with or without the intrinsic “in-the-money” value and immaterial whether long-term or short-term)

These are impermissible since you are paying for the right to purchase without acquisition of a reciprocal material value that is recognized in the Shar’iah.

Put warrants (with or without the intrinsic “in-the-money” value and immaterial whether long-term or short-term)

These are impermissible since you are paying for the right to acquire profits in shares that are external to your ownership purely on the basis of the changing market prices of the shares or indices concerned without having initial acquisition of the same.

Basket and Discount warrants: Similar principles, as those, here above, given apply due to the very nature of the warrant concept.

Indices: These are likewise prohibited in the Shari’ah since these purchases reflect the purchases of intangible assets, which reflect values of particular categories of shares, without acquisition of a reciprocal material value that is recognized in the Shar’iah.

Bond warrants: These are also impermissible due to:

1. the very nature of the warrant concept.
2. the fact that bonds are interest bearing instruments which are Haraam to purchase and impermissible investment tools for Muslims.

Since the purchased rights have no recognised formats of Islamic business contracts, therefore we are unable to place them within any category of Islamically acceptable contracts. The speculative profit consideration is neither valid, in the case of warrants, since there is no tangible purchase, in conformity to our classical and authoritative jurists, and nor any tangible assets e.g. copyrights which have been recognised by some of our latter jurists.

We can neither permit any Muslim stockbroker, Islamic Equity Fund managers and administrators, non-Muslim persons or juridical persons, in the form of any investment company, who administer Islamic Funds or Islamic Banks to engage in warrant purchases. Any profits made by such funds through the application and exercise of warrants will have to be diverted to a Haraam income account and disposed in Islamically acceptable avenues either by the Fund managers. In the case where such income is distributed to the shareholders of the particular fund, the latter would have to use their own discretion to the application of such Islamically impermissible income in terms of Islamic teachings.

Enclosed : Other relevant Fatawa which elucidate or express the impermissibility of options. The warrants are similar to the options, with the main difference in the delivery mechanism. However, the Shariah considers the contract in a comprehensive format.

Other : The other significant details which you have researched and extracted from our jurisprudence works are valid considerations which elaborate on Islamic regulations pertaining to the formats of “ A sale with an option” and the nature of those options. Many of these requirements, although not existing in the warrants, will not even apply to the warrants, since the very nature of the warrant denies any primary commodity value upon which the Islamic formats of options can be applied.

Important: Any further details, rectifications, notes, comments are more than welcomed since we are purely servants obligated to rectify our actions, conduct and perceptions to the Creator’s dictates.

May Allah reward you.

Ahmed Fazel Ebrahim

Appendix 3

FIRST FIQH SEMINAR – NEW DELHI April 1-3, 1989

The First Islamic Fiqh Seminar was held with the co-operation of the Institution of Objective Studies (Chairman Dr. M..Manzoor Alam) at the Jamia Hamdard Campus, New Delhi. Over 120 scholars, jurists and intellectuals from all parts of India representing different seminaries and schools of thought participated.

In the Seminar, three issues were put for deliberations:

1. Transplantation of organs, 2. Pagdi and 3. Birth Control.

Exhaustive and scholarly papers were read on all the three subjects. After considering several aspects of the *Pagdi* system and Transplantation of organs it was felt that they required further deliberation and should not be decided in haste. Therefore, a questionnaire was decided to be sent in this regard to theologians and experts of medical and social sciences. As for birth control, the following conclusions were arrived at unanimously.

Conclusions:

1. Any practice snapping the process of or restricting the human birth is against the basic tenets of Islam.
2. In no case does the Shariah approve the evasion or refusal of shouldering the responsibility of procreation on the ground of keeping the family small as a

fashion or because of hindrance in cultural pursuits or because of effecting employment or business engagements of the parents.

3. Women who take up employment as a career to achieve higher standards of living or to amass wealth ignore their function of procreation and also forget the sacred obligation which nature has blessed them with as mother of human race. Therefore, the idea of limiting the family under these considerations is totally un-Islamic.
4. If due care and nourishment of the child falls in jeopardy because of early pregnancy of the mother, in that case, to keep a suitable interval, temporary birth control devices can be adopted.
5. Adopting permanent birth control devices (like vasectomy) are in no case permissible for men. Such devices are prohibited for women as well. However, only in exceptional cases this is permissible, that is, if in the opinion of expert doctors there is danger to life of the woman or apprehension of destruction of some organ of the woman while delivering a child, oviductomy operation can be performed on the woman to prevent future pregnancy.
6. Use of temporary birth control measures under ordinary circumstances is not permitted in Islam.
7. Under the following exceptional circumstances use of temporary birth control devices or taking medicine for that purpose is permissible for men or women:
 - (a) If the woman is very weak and, in the opinion of doctors, she cannot bear the rigours of child-birth without the risk of grave danger to her life.
 - (b) If the pains of child-birth are going to be, in the opinion of expert doctors, unbearable for the woman and shall expose her to grave harm.

