

Rulings of Employment in the Finance Industry in the USA



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A Research paper submitted to the 5th annual AMJA convention in Bahrain, November 2007.

Published in the 40th issue of the Saleh Kamil Center for Islamic Economics academic journal at
al-Azhar University, January 2010



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Introduction

In The Name Of Allah the Most Gracious the Most Merciful

All praise is due to Allah; we praise Him and seek His guidance. We seek refuge in Allah from the evils of our souls and our misconduct. Whoever Allah guides cannot be led astray and whoever He misguides cannot be guided. I bear witness and testify that there is no deity worthy of worship except Allah and that Muhammad (s) is His servant and messenger.

For Muslims in America, employment in the finance industry is a topic of heated discussion because of the potential involvement in unlawful practices. Avoiding these unlawful practices in a capitalist society that holds interest as one of its economic cornerstones is an issue of great concern.

The Assembly of Muslim Jurists of America (AMJA) often receives questions regarding the legality of job positions in this field and of some of the financial services offered. This is a strong indicator that there is a growing sense of religious awareness and devotion in the Muslim community. The multitude of questions AMJA receives in this regard also shows that, by Allah's grace, the assembly garnishes a great deal of respect.

In an effort to cater to the Muslim community's urgent need for religious instruction regarding employment in the finance industry, AMJA's Leadership Council dedicated the assembly's 5th annual convention to addressing its nuances.

Objective

The convention assessed the impact of necessity (*daroora*), need (*haja*) and general hardship (*'umoom al-balwa*) on the ruling of holding various job positions available in this field in non-Muslim lands. Classical texts in source methodology (Usul al-Fiqh) and juridical maxims (Qawa'id Fiqhiyya) have already addressed the nuances of necessity, need, general hardship, public interest and etc.

This research does not aim to replicate past works or redefine our legacy of Islamic scholarship; rather, the aim is to practically apply Islamic juridical discourse and to shed light on the ruling of some of these dealings and the legality of being involved at any capacity.

Hence, this research assesses the presence of the reasons (*'illa*) for the legal ruling. This is known as *tahqeeq al-manat*. It does not address the theoretical nuances of juridical reasoning (*tanqeeh al-manat*), and it does not aim to establish reasons (*'illa*) for juridical rulings (*takhreej al-manat*).

It is common knowledge that there are two different categories of Islamic legal discretion (*Ijtihad*). Imam al-Shatibi expounded:

“There are two categories of Ijtihad:

- 1. Ijtihad that cannot become nonexistent unless legal liability (takleef) expires, which will only occur when the Last Hour sounds.*
- 2. Ijtihad that can cease to exist before the world's end.*

The first category of ijtiḥad refers to taḥqeeq al-manat, which is a valid method by consensus. This is when a ruling is already established on proper juridical reasoning, but its practical application remains open to scholarly speculation.

The second category is of three types:

- 1. The first type is known as tanqeeḥ al-manat. This refers to a condition in which there are several varying descriptions connected to the source text (al-nas). Ijtiḥad would be applied to discern the viable description regarded in juridical reasoning (ta'leel) and to weed out the irrelevant descriptions.*
- 2. The second type is known as takhreej al-manat. This refers to a condition in which the source text (al-nas) for the ruling does not address the reason ('illa, i.e. manat). Ijtiḥad would be applied to expose the reason for the ruling... " (al-Shatibi)*

In terms of employment in the finance industry, the relevant general rulings are already established with sound juridical reasoning; however, the proper application remains an area of scholarly speculation. God willing, this research will address the relevant nuances needed to make those conclusions.

References

The fiqh-based material covered in this research paper is referenced to primary sources. The information regarding the services and practices of the case studies are taken directly from the companies' official websites. Definitions for finance and investment concepts are either taken from Wikipedia or from experts in the field. The assembly called in experts to explain the

available financial services and the various methods applied by finance corporations. As a researcher in this field living in the United States for the past seven years, I have examined firsthand the methods applied by financial corporations and to what extent unlawful practices are present and if they can actually be categorized as needs or necessities.

Guidelines

The research will consider the following guidelines when addressing the nuances of working in the finance industry:

- 1) The default ruling in financial transactions is permissibility (*ibaha*) as long as it does not conflict with textual evidence (*al-nas*) or consensus (*ijma*’).
- 2) Taking the easiest scholarly opinions or fiqh council decisions as long as it has sound reasoning.
- 3) Location is irrelevant to changing a legal verdict. Whether an act is obligatory (*wajib*), recommended (*mustahabb*), permissible (*mubah*), abhorred (*makruh*) or prohibited (*haram*) is based on fixated religious principles irrespective of geographic location.
- 4) The opinion upheld by the Hanafi School that states that partaking in invalid transactions with unbelievers in ‘the abode of war’¹ (*dar al-harb*) has been declared weak by a multitude of scholars; this opinion does not maintain any merit when compared to the plethora of legal evidence that attests to it being unlawful to engage in invalid transactions.

¹ This is a term classically used to refer to territories outside of Muslim rule. (Translator)

- 5) Rulings can change based on necessity (*daroora*) or need (*haja*) according to its specific fiqh use, not its definition in Usul al-Fiqh. The research paper will assess if that notion has any application regarding employment in the finance industry. This issue was the convention's central point of discussion.

Explicitly addressing the issue from the standpoint of being in non-Muslim lands is not intended to rule out the need for such a study in Muslim lands. Although research should be devoted to that, it is not the scope & focus of the assembly's research.

Research Layout

Chapter One: An Overview of the Finance Industry

This chapter covers the following sections:

- 1) Insurance
- 2) Banking
- 3) Mortgaging
- 4) Credit Cards
- 5) Brokerage and Financial Advisory
- 6) Multi-Service Financial Corporations

Chapter Two: Job Positions Available in this Field

This chapter covers the following sections:

- 1) Medial and Senior Administrative Departments
- 2) Communications



- 3) Consumer Banking
- 4) Public Relations
- 5) Finance
- 6) Human Resources
- 7) Operations
- 8) Risk Evaluation
- 9) Sales
- 10) Technical Support

Chapter Three: The Ruling of Working in this Field

This chapter contains the following sections:

- 1) Jobs permissible or prohibited by default ruling
- 2) Jobs that are abhorred or impermissible
- 3) Prohibited for its own sake Vs. prohibited due to another cause
- 4) Permissibility of an act prohibited in itself due to necessity
- 5) Permissibility of haram li ghayrih due to need

Research Conclusions



I ask Allah, The All Capable, to accept this humble work, and to bless us to discern truth and follow it and to discern falsehood and avoid it. I pray that Allah's blessings be upon Muhammad (s), the best of His creation, and upon his family and companions in entirety.

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Dearborn, Michigan

29th of Ramadan 1428 A.H

October 11, 2007

Chapter One

An Overview of the Finance Industry

The finance industry comprises an intricate system of financial services so intertwined that each service can hardly be assessed independently. To shed light on the nuances of this industry, this section will assess the functions of keynote corporations that offer a wide range of financial services.

Developing a proper outlook on these nuances is paramount to offering juridical insight. As the scholars have expounded, sound judgment is the product of proper perception. The *fiqh* jurist is confined by the questioner in the sense that his answer is in part tailored by the framework imposed by the question. If the jurist has background information relevant to the question, he can circumvent any misinformation to which the question may allude.

In theory, one should evaluate insurance, finance, brokerage and all other services independently. However, in light of the complexity of modern economics, assessing each service independent of its correlatives is a premier challenge. As the reader will come to realize, it is impractical to find a single corporation that offers a financial service wholly independent of adjoining services.

Section One: Insurance

The American Automobile Association (AAA) is one of the leading insurance corporations. It offers a number of services including: (autoclubgroup)

- 1) Home and life insurance
- 2) Roadside Assistance: This service includes towing, flat tire and winching services, battery jump start and replacement services, vehicle lockout assistance, emergency fuel delivery, 24-hour customer support along with free AAA maps, tour book guides and TripTik routing maps. These services are included in the AAA membership package.
- 3) AAA Show Your Card & Save member program: AAA members earn special savings at a multitude of locations including shopping centers, restaurants, hotels, car rentals and more.
- 4) AAA Driver Training & Education program
- 5) Auto Loans & Refinancing program (wikipedia)
- 6) AAA Car Care Plus Facilities: These automotive facilities provide auto repair and maintenance services and offer members special discounts.
- 7) AAA Visa Credit Card: AAA coordinates with leading credit card companies to provide financial services to its members.

The services offered by the American Automobile Association (AAA) are by no means limited to insurance; they include loaning, finance and a multitude of other non-financial services.

Section Two: Banking

Bank of America is one of the leading financial corporations catering to consumer and commercial needs nationwide. It is also one of the leading credit card vendors internationally. The following assessment of its services will provide sufficient insight into the banking system.

The services provided by Bank of America include: (BankofAmerica) (wikipedia)

- 1) Account Management: This includes checking accounts, savings accounts and certificates of deposit (CDs). Each of these accounts has unique benefits. However, the important difference relevant to this research is that checking accounts are usually non-interest bearing, whereas savings accounts and CDs accrue a fixed amount of interest periodically added to the account.
- 2) Insurance: The various insurance policies at Bank of America are operated by a bank subsidiary known as Banc Of America Insurance Services, Inc.
- 3) Credit Card Services: Some types of credit cards loosely fall under the term, such as Commercial Prepaid Cards. A Commercial Prepaid Card is a pre-funded card with a spending limit set by the amount of money one's sponsor loads onto the card. Hence, it doesn't reflect the technical *fiqh* definition of a loan.
- 4) Mortgage loans: This loan comprises two transactions:

1. Financial Lending: The lender, in this case the bank, purchases the property on behalf of the borrower and collects the sum total at interest in an agreement that can be thirty years long.
2. Mortgage agreement: The bank places the property as collateral for the loan and the borrower is the lienholder on the deed. This consequently limits the borrower's ability to sell or transfer ownership of the property.

Another service provided is mortgage refinance loans, which is to basically replace an existing debt obligation with another debt obligation. This is commonly done to reduce the monthly payment and, in turn, the property owner agrees to a longer term.

- 5) Home Equity: This refers to the difference between the home's fair market value and the outstanding balance of all liens on the property. There are two different types of equity loans:

1. Home Equity loans: The borrower uses the equity of his home as collateral in order to receive a loan with the sum of his equity. For example, if he paid 30% of the home's value, which has a sum total of \$200,000, he will receive a loan of \$60,000 in return for placing 30% of his home as collateral.
2. Home Equity Line of Credit (HELOC): The lender agrees to lend a maximum amount within a term where the collateral is the borrower's equity. The borrower is not advanced the entire sum up front, and the loan does not exceed the amount of equity.

- 6) Individual Retirement Accounts (IRAs): With this account, the bank offers the investor a variety of investment options. The IRA account holder accrues his profit by Speculation² (*mudharaba*) via a brokerage firm in the stock and bonds market. These investment options are regulated by American law in order to protect the rights of taxpayers and to facilitate for them a way to build tax-deferred savings for retirement (Wikipedia).
- 7) Mutual Fund: A mutual fund is a common collective investment option in the United States that pools money from many investors to purchase securities such as stocks, bonds and other money market instruments. The fund is operated by a portfolio manager who speculates (*mudharaba*) the money markets with the investments. The money manager would provide potential investors with a disclosure document known as a prospectus that describes financial securities including material information about a company's business, its financial records and its officers and directors. The prospectus is law-binding between the investors and the portfolio manager. There are many different types of mutual funds with varying degrees of risk (Colombiafunds). Some mutual funds provide safe financial gains, whereas others are high risk for investors. These high risk investments are known as hedge funds.

In return for offering this service, the bank gains a monthly rate from both the investor's capital and profit.

² This term refers to investment in stocks, property and etc. with considerable risk but offering the chance for large gains. (Translator)

- 8) Wealth Management: This service incorporates financial planning, investment advice and other financial services usually for high-net-worth individuals (HNWIs). The bank offers these free services to gain the continued investments of its valued patrons.
- 9) Personal loans, boat loans, auto loans and aircraft loans are all interest bearing loans.
- 10) International Banking: This service includes issuing traveler checks, which are pre-printed fixed amount checks for those who prefer to not carry cash in their travels. Traveler checks can be canceled immediately if lost or stolen. This service also includes currency exchange in which the bank benefits from the difference between the price of purchase and sale of foreign currency.

It is noteworthy that 90% of the bank's income is from its financial activities within the United States. However, the bank's international operations actively purchase its international stocks, and that is the source of the remainder of its income.

Section Three: Mortgaging

Countrywide Financial is a mortgaging company that offers interest bearing loans. There are two ways that properties are mortgaged in the United States: (Wikipedia)

- 1) Foreclosure: This is a legal process in which the lender obtains a court order or follows statutory procedure to sell the asset used as collateral for the loan. In attempt to recover the balance of a loan, the lender may foreclose the property if the borrower defaults on three consecutive payments. The foreclosure process can be slightly different from state to state.
- 2) Deed of Trust: The lender does not need to follow a legal process or obtain a court order in order to sell the property. Trust deeds are prevalent in some states such as California. Foreclosures and trust deeds are both interest bearing transactions that involve collaterals.

Countrywide Financial offers the following services:

- 1) Home Ownership Mortgage Education (HOME) program: This program educates customers on homeownership laws and regulations.
- 2) Refinance
- 3) Home Equity loans and Home Equity Lines of Credit (HELOC)
- 4) Mortgage
- 5) Reverse Mortgage: This is “a home loan that provides cash payments based on home equity. Homeowners normally defer payment of the loan until they die, sell or move out

of the home. Upon the death of homeowners, the heirs either give up ownership to the home or must refinance.” (Wikipedia) This is usually practiced by retirees. The presence of interest and gambling and the uncertainty (*gharar*) posed by this transaction is evident.

Section Four: Credit Card Services

In essence, credit cards are issued as a financial lending tool. There are four major corporations that have monopolized this field in the United States, namely Visa Inc., MasterCard Worldwide, American Express and Discover Financial Services.

Although there are a number of different fees imposed by credit card corporations, the principle way they generate revenue is from interest. The following methods are all included in the credit card agreement: (Wikipedia)

- 1) Interchange fees: Basically, when cardholders purchase merchandise that values \$100, for example, the credit card company pays the seller only \$97 or \$98. The rest of the amount goes to service fees. The interchange rate defers depending on the credit card company, the state and the general economic conditions.
- 2) Credit card companies often issue change of terms notices that may include higher interest rates for cardholders, even if they pay before the deadline.
- 3) If a cardholder decides to make the minimum payments for his card balance (which can be as low as \$10-\$20) on the due date, an interest rate will be added to every payment. This is similar to the agreement in *Jahiliyya* known as “Defer for an increase” in which the borrower would request a payment deferral and in return he would pay more than the agreed amount.

- 4) When the grace period finishes, an interest rate is added to the cardholder's balance, even if he pays it in full.
- 5) Overdraft fees: If the credit card limit is \$1000, for example, the bank pays the extra amount and imposes an overdraft fee.
- 6) A Non-Sufficient Funds (NSF) check is when the written amount exceeds the available balance, and in such a case, the cardholder is required to pay a penalty.
- 7) Card withdrawals always have an interest rate.
- 8) Some credit card companies charge annual fees.
- 9) Currency conversion fees: When a cardholder makes purchases abroad, the credit card company imposes higher conversion rates.

Evidently, the only services that may not include interest (*riba*) are the interchange fees, annual fees and currency conversion fees. All other services are interest bearing loans that are strictly prohibited by the Qur'an and Sunnah.

Section Five: Brokerage and Financial Advisory

Speculation (*mudharaba*) of the money market is its own practice in the United States that has separate statutes and regulations. One of the regulations in the money market is that an investor must work through a brokerage firm to attain financial securities. Brokerage firms serve their investor clientele by researching the markets to provide appropriate recommendations regarding the type and time of investments. The stockbrokers also represent their clients in purchases and sales in the stock market.

Fidelity Investments is a retail brokerage firm that offers the following services to its clientele:

(Fidelity)

- 1) Mutual funds
- 2) Stock Trading: Fidelity speculates the stock and bonds market with the direct supervision of its clients. The service provided for lucrative investors is known as Active Trading.
- 3) Fidelity Individual Retirement Accounts (IRAs): This program provides a broad range of investment options and investment guidance for retirement planning. These accounts are not exclusive to employees; one can combine between an IRA and a 401 (K).
- 4) 401k Rollover Options: Rollover specialists assist employees in rolling their 401k from one company's plan to another usually for better investment options.
- 5) Special financial advisory for high-net-worth clients (HNWIs).
- 6) Fixed Income Annuities: This plan helps the client turn a portion of his income into a guaranteed stream of income after retirement. There are specified fees by the company for this service.
- 7) Fidelity assists businesses in hiring employees and filing their personal records.

- 8) The company has investments in hotels, public transportation, the telecom industry, newspaper chains and in commercial lumber and building materials.
- 9) Life insurance

Section Six: Multi-Service Finance Corporations

In the United States, some of the leading financial corporations offer a full range of financial services.

Citigroup is a premier example of this dynamic. This London based multinational corporation has a strong presence in the United States and plays a critical role in finance, investment, financial advisory and stock market brokerage. The only sector it has left untouched is insurance. (Wikipedia)

JPMorgan Chase & Co. is an American Multinational banking and financial services holding company. (Wikipedia) Historically, this New York based bank has played a pioneering role in the finance industry. It is perhaps the third most significant bank nationwide following Bank of America and Citigroup.

Since Chase bank is indigenous to the United States, it is perhaps the most suitable case study for multi-service financial corporations: (Chase)

- 1) Common bank account options which are checking accounts, savings accounts and certificates of deposit (CDs).
- 2) Issues credit cards

- 3) The common loans such as home equity loans, mortgages, automobile loans and student loans.
- 4) The Chase Insurance Agency offers life insurance policies.
- 5) Retirement planning advice, financial advice on handling property assets and private client services for high-net-worth individuals.
- 6) Brokerage services in local and international stock and bond markets.
- 7) Three different types of annuities to its customers:
 1. Fixed Annuity: Under this policy, the bank guarantees a fixed interest rate to the principal of the annuitant. The bank makes fixed dollar payments to the annuitant for the term of the contract, usually until the annuitant's death.
 2. Immediate Annuity: This policy guarantees that the issuer will make a series of payments. The payments are according to the sum paid by the annuitant at retirement regardless of the bank's profit from the money.
 3. Variable Annuity: This policy guarantees a minimum payment by the issuer that may potentially increase depending on the performance of the managed portfolio.

Chapter Summary

After explaining the functions of the various sectors in the finance industry, the following conclusions can be made:

- 1) The services in the finance industry in the United States are strongly intertwined. It is very difficult to disassociate one service from the rest because in the insurance sector, for example, the same corporations that issue loans also issue credit cards. In the banking sector, the banks that offer insurance also speculate the money market and set up mortgages. The mortgaging sector also offers loans for purposes other than buying homes, and the financial advisory and brokerage sector also offers advice regarding life insurance.

The dynamics of this industry are not set in stone; just as there are multi-service corporations, there are other agencies dedicated to one service. Therefore, it is difficult to issue a ruling regarding one sector independent of the other sectors; the ruling must be general to the entire industry.

- 2) Interest is considered a hallmark of capitalist economic systems; rarely is interest not factored into the equation.

Any given financial service is either purely interest bearing such as mortgages, saving accounts, certificates of deposit, most insurance policies, refinance and all forms of financial lending (e.g. home equity, student loans, personal loans, annuities and etc.) or usually leads to interest such as credit cards. Credit cards are not initially interest bearing, but they usually involve a great deal of interest. Most credit card holders in the US

usually exceed the grace period one time or another or otherwise pay off their credit debts in multiple payments or overdraft their credit cards. In all of these cases, the credit card company would add additional costs to the cardholder's original balance, and this is the essence of *riba*.

Similarly, checking accounts are usually non-interest bearing in the sense that the bank does not offer an interest rate for simply depositing money. However, the problem is that the bank invests a sizable portion of your deposit to achieve its endeavors, which *do* involve interest. Therefore, the account holder is supporting the bank in its illicit practice. Although this entails a lesser degree of unlawful practice because the account holder is not giving or taking interest, it nonetheless indirectly supports it.

- 3) There are some financial services that do not involve interest such as currency exchange and the issuance of traveler checks. These services usually are in accordance with the regulations of monetary exchange in Islamic law. In terms of currency exchange, the monetary exchange usually occurs at the time of the transaction. The profit the bank gains by issuing traveler checks can be described as compensation for hiring services (*Ijara*) or *Ja'ala*³.

³ This is a non-binding agreement between the buyer and seller in which the compensation is specified but the job may have unknown variables. It differs from *Ijara* in that there doesn't need to be a specific individual hired, the individual is only deserving of the compensation if the task is completed, and it cannot have a specific timetable. An example of *Ja'ala* is if one announces: Whoever finds and returns my lost possession will receive a \$100 reward. (Translator)

Also, the fees that credit card companies charge business owners can also be described as compensation for hiring services (*Ijara*) because the credit card companies are providing the service of delivering the money paid by the customers via credit card.

Similarly, the fees for issuing a credit card and annual membership fees aren't directly related to the loan.

Another example of a non-interest bearing financial service is the 401 (k) Rollover unless it involves investing the money in interest bearing companies. In that case, it would be prohibited from the aspect of supporting unlawful practices, not because of dealing interest.

- 4) There are non-financial services that indirectly lead to interest such as the H.O.M.E program, property management services and retirement planning. The H.O.M.E program informs customers of the regulations and statutes in place for mortgaging homes. Property management services offer financial advice, and retirement planning helps customers choose the best IRA plan.
- 5) There are other non-financial services that do not lead to interest. As previously mentioned, Fidelity Investments has investments in telecommunications, transportation, hotels, commercial lumber and building materials and newspapers, and it also has employment and payroll agencies. Also, AAA offers driver's education, auto repair and membership discount services.

Chapter Two

Job Positions Available in this Field

It is evident that banking, insurance and loan services strongly intertwine; similar is the condition of the job positions available in this industry. At a deeper glance, one will realize that it is impractical to disassociate administrative work that directly deals with prohibited transactions from positions that facilitate the logistics such as maintenance or security. The financial industry is ever growing and the available job positions deal with interest at varying degrees.

This section will assess the job positions available in two major financial corporations, namely Bank of America and Chase. The assessment will conclude with a summary of the most significant observations. These two corporations cover most of the financial services available in the industry. Therefore, studying their corporate hierarchy will help develop a broad outlook on the job market in this field.

Section One: Job Positions in Chase

Retail Banking

The jobs will be listed from lower to higher grade:

- 1) Bank Teller: A teller directly deals with the bank patrons' deposits and withdrawals from checking and savings accounts.
- 2) Customer Service Representative: A representative provides advice regarding opening checking and savings accounts as well as Certificates of Deposits (CDs).
- 3) Banker: A banker also opens checking and savings accounts and handles investment management and issues debit cards.
- 4) Financial Advisor: If the patron requests the investment department, he will be assisted by a financial advisor who will clarify the bank's investment policies and speculation in stocks and bonds. He can also help set up annuities as part of a retirement strategy.
- 5) Loan officer: A loan officer helps patrons with the procedures of purchasing a home or receiving an equity loan.
- 6) Business Banker: A business banker deals with lucrative investors who invest a minimum of \$250,000 in the name of a business or entity they own. He offers all of the previously mentioned services for these patrons. Hence, the last four mentioned job descriptions are all at the same level in the corporate hierarchy.

- 7) Branch Manager: A branch manager is accountable for all of the administrative responsibilities at one branch.
- 8) District Manager: A district manager is accountable for all of the administrative responsibilities at no more than 13 branches.
- 9) Market Manager: A market manager is responsible for supervising no more than four districts.
- 10) Area Manager: An area manager supervises the work of 6-10 market managers.
- 11) Head of Retail Banking: The head of retail banking represents the board of directors in supervising the financial services of the company.
- 12) Chief Executive Officer (CEO): The executive manages the various divisions of the company.

Mortgage Lending Department

- 1) Loan Officer: A loan officer helps patrons with the procedures of purchasing a home or receiving an equity loan.
- 2) Supervisor: A supervisor in this division supervises 10-20 loan officers
- 3) Area Manager: An area manager supervises 6-10 supervisors
- 4) Regional Manager: Supervises the work of a number of area managers

- 5) Head of Mortgage Lending: The head of mortgage lending is responsible for the entire mortgage division in the corporation, and he reports directly to the CEO in the executive committee meetings.

Investment Banking Department

- 1) Financial Advisor: He clarifies investment options and speculation in stocks and bonds to the bank's patrons and assists in setting up annuities.
- 2) Area Manager
- 3) Market Manager
- 4) Regional Manager
- 5) Head of Investment Banking

Business Banking Department

This department starts with a business banker and has the same hierarchy as previous departments.

Section Two: Job Positions in Bank of America

Medial and Senior Administrative Departments

These departments usually report directly to the CEO and do not communicate with the general populous. Their functions revolve around supervision, performance enhancement and enforcing the corporation bylaws and corporate strategy.

There are a number of subdivisions in these departments, and each subdivision has a number of job positions, and each position has its own unique job description. The subdivisions are:

- 1) Change Management: This subdivision's focus is helping the employees and departments transition from one phase to the next.
- 2) Corporate Executives: This subdivision is responsible for developing long term corporate strategies and planning corporate communications with other organizations.
- 3) Corporate Work Place: This subdivision develops the corporate portfolio for speculation of the money market. It submits its reports to the senior level administration.
- 4) Learning and Leadership Development: This subdivision analyzes the efforts of corporate competitors and it also hosts courses and workshops for human resource development. It also develops innovative outreach methods.

- 5) Risk Management: This subdivision consists of a legal advisory panel that provides legal representation for the bank in the court of law, and it reviews the bank's paperwork to ensure that it complies with legal ordinance.
- 6) Public Relations: This subdivision works toward meeting consumer demands. It develops the company product to meet consumer appeal and maintains the company's public image. It issues employee regulations and guidelines.

Communications Department

This department focuses on enhancing communications and facilitating the information flow throughout the corporate hierarchy and to the front desk employees who directly deal with the bank patrons. It also regularly upgrades the bank's communications efficiency to improve internal communication and markets the bank's products through various media channels.

Retail Banking Department

This department consists of front desk employees that directly deal with the bank's patrons. The job roles are the same as Chase.

Consumer Care Department

This department focuses on the changing needs and demands of the bank's customers. It directly supervises employee-customer interaction and focuses on human resource development.

This department contains a number of subdivisions:

- 1) Corporate Workplace: This subdivision communicates with other competing corporations
- 2) Customer Services: This subdivision handles the bank's customer hotline and addresses their questions and concerns.
- 3) Relationship Management: This subdivision focuses on meeting the needs of high-net-worth individuals (HNWIs) with accounts no less than \$250,000.

Finance Department

This department develops the bank's general finance and investment strategies. It also specifies the reasonable degree of financial risk the bank can take with its customers while maintaining its corporate image. It also works directly with bank customers regarding finance and investment opportunities.

This department contains a number of subdivisions:

- 1) Credit Management: A credit manager controls and collects payments from customers. He also keeps records of the financial operations and monitors the company's high risk accounts.
- 2) Investment Banking: This subdivision monitors the financial development of individual retirement accounts (IRAs), 401 (K), mutual funds and annuities. It also offers financial advisory to high net worth investors to increase their revenue and to legally avoid taxation.

Human Resources

This department works on defining the job descriptions in the bank and specifies all necessary credentials for the positions. It also interviews employment candidates and completes all relating procedures, and it develops employee training workshops.

Operations

This department assesses the bank's day to day performance as well as its various transactions minimizing losses and salvaging gains. This department directly supervises the bank's workflow and its legal matters as well as the consumer care department.

Risk Evaluation

This department directly reports to the corporation's senior administration. Its key focus is keeping tabs on risk assessment and loss forecasts. These reports include fraud risk assessment which basically analyzes the effects of fraud on the company's success and on consumer approval ratings. The department is also responsible for periodic audits.

Sales

This department focuses on promoting the bank's products to the public such as unique banking services, mortgage loans and credit card advantages.

Information Technology (IT)

This department secures the bank's IT infrastructure which includes the consumer information database, transaction details and the software and networks that maintain the bank's services.

Chapter Summary

After explaining the available jobs in this field, the following conclusions present a degree of significance in addressing the fiqh nuances:

- 1) The jobs in this field are not limited to the ones mentioned; other companies may have a different setup for their corporate hierarchy because this is not a matter mandated by law; it is left to the discretion of each corporation. It is noteworthy that some of these job titles may have varying job descriptions between companies.
- 2) These job positions all formulate a supportive network by which they achieve corporate goals collectively. Each department in a sense is dependent on the proper function of the other departments; if one department fails to perform its responsibility that will take a heavy toll on corporate productivity.
- 3) These departments and job positions deal with interest (*riba*) at varying degrees. For example, the corporate executive officer (CEO) does not deal with the public, let alone handle a transaction. Although he does not directly deal with interest, he is the brains behind corporate operations and he makes the critical decisions. To hold such an important position, he would usually make his way up the chain and have his share of what the Qur'an described **{as one stands who is being beaten by Satan into insanity}** (al-Baqarah: 275), for those who deal interest.

Similarly, customer service representatives do not usually open accounts; they would forward the customer to a banker. So, the representative *directs* the customers to the services.

- 4) Some financial corporations do offer non-financial services. The American Automobile Association (AAA) offers auto repair and driver's education and Fidelity controls other businesses such as telecommunications, hotels, commercial lumber and building materials and newspapers.
- 5) Technically, an employee can remain in a single department for the duration of his employment. For example, one can work as a mechanic in an AAA car care center or as a commercial lumber and building materials salesman with Fidelity or an IT technician with Chase.

Similarly, employees in the communications department or consumer care would not perform a different department's task because that is not where they are needed.

When applying for a job in this field, some Muslims try to make an agreement with their employers to work exclusively in information technology assuming that this would relieve them of sin. Nonetheless, even this is not always available by simple request; discretion is left to the company's administration.



- 6) It is noteworthy that some companies contract the responsibilities of an entire department to an individual agency. In the United States, it is prevalent for a corporation to contract a human resources agency to handle the employment recruitment process or an information technology agency to set up its IT infrastructure.

Chapter Three

The Ruling of Working in this Field

After explaining the intricacies of the financial industry and the services it offers as well as the employment possibilities, it is now suitable to present the religious edicts involved.

The section will separate the permissible (*mubah*) from the abhorred (*makruh*) -if applicable- and the prohibited (*haram*). It will also address cases that are forbidden for its own sake (*haram li dhatih*) and cases that are prohibited due to another cause (*haram li ghayrih*); that is, a prohibition of means. The section will conclude by addressing the suitability of applying the objectives of Islamic law (*maqasid*) pertaining to necessity (*daroora*) and need (*haja*) to bring ease and alleviate hardship.

Jobs Permissible or Prohibited by Default Ruling

As explained in chapter one, there are a multitude of financial corporations that aren't strictly limited to financial services. These other non-financial services do not contain interest (*riba*), and hence, aren't included in its prohibition.

There are countless examples of non-financial services offered by corporations. Some of these include: Auto repair, driver's education, telecommunications, transportation, construction, pharmaceuticals, computer technology, dining and lodging, car and property sales and etc.

Every business that is permissible by default ruling is initially deemed a lawful workplace and remains so as long as there aren't external causes of prohibition such as stipulating an invalid requisite (*shart fasid*), interest (*riba*) or monopolizing the product (*Ihtikar*) or dealing fraudulently or dealing in excess uncertainty (*gharar fahish*).

Even though these unlawful stipulations and tactics may be part and parcel to the finance industry, some may be employed to carry out tasks that are purely lawful, regardless of the source of their income. There is great hardship in requiring people to discern that their wealth comes from a pure source.

In this regard, Imam Ibn al-Qayyim says:

"Prohibition does not cling to the dirham itself; rather, the prohibition lies in the way it has been earned." (al-Jawziyya)

That is, money doesn't become forbidden in and of itself; rather, it becomes forbidden due to the way it was earned.

In some cases, the money may be unlawful for the giver - if he is legally liable for subsidiary laws (*furu'*) of shari'a- but lawful (*halal*) for the taker.

The Prophet (s) requested from Bareera, the emancipated slave of 'A'isha (r), to feed him from the meat she received from charity. Someone commented: This is charity given to Bareera. The Prophet (s) said: "*For her it is deemed charity, and (from her) to us it is considered a gift*". (Al-Bukhari)

A more evident testimony to this concept is the Prophet's dealings with the polytheists of Quraysh before hijra and with the Jews of Madinah after hijra, and his acceptance of a gift from Cyrus of Alexandria with his full knowledge that they all deal in usury.

It is also permissible (*mubah*) by default ruling to work in finance corporations that function according to Islamic law, whether it is in mutual funds, mortgage lending companies or etc. whether it is run by Muslims or non-Muslims. This also includes being employed by independent institutions or by subsidiaries of interest-dealing banks.

However, it is required that an eminent scholar declares that the dealings of this company are indeed shari'a compliant. Reason being it has become commonplace for companies in the United States to claim to be shari'a compliant, whereas they do not consult qualified scholars, let alone employ a supervisory shari'a committee (al-Qudah).

Similarly, it is permissible for one to take up an internship in a company with unlawful practices if it is needed for academic requirements because there is a great need for that. If a Muslim gains any wealth from this internship, he should discard it from his possession by giving it to general Muslim causes.



In the following sections, the default ruling of permissibility will not be used to justify employment in the finance industry.

Jobs that are Abhorred or Forbidden

Deeds either fall under the general sense of permissibility, which comprises obligations (*wajib*), recommendations (*mandub*) and lawful deeds (*mubah*), or under the general sense of prohibitions (*nahy*), which comprises abhorred (*makruh*) or forbidden (*haram*) acts.

The majority of scholars of Usul al-fiqh define *makruh* as a non-binding demand from the Legislator to avoid an act (al-San'ani).

Al-Shawkani's definition of *makruh*:

"Makruh is an act which its abandoner gains praise and its engager doesn't receive blame. This definition of the term implicates three different matters:

- 1. Acts with a non-binding prohibition (makruh tanzeehi): These are deeds that are better avoided than performed.*
- 2. Abandoning a preferred act (tark al-awla)*
- 3. Binding prohibitions (haram)" (al-Shawkani , 24)*

Al-Shawkani's definition of *haram*:

"Haram is an act which its performer incurs blame and its abandoner gains praise".

However, al-Shawkani's definitions are problematic in that prohibition, based on his definition, would not be inclusive of *makruh* because according to him a prohibition only refers to an act which its performer incurs blame and its abandoner gains praise.

Hence, Imam al-Subki clarified this inconsistency in his book al-Ibhaj:

“There are three terms implicated in the word makruh: The first is a binding prohibition (haram). Imam al-Shafi’i would say ‘I dislike such and such’, and he would intend that it is bindingly prohibited (haram). This is the common reference of the earlier scholars so as to avoid falling into the act prohibited in the verse {And do not utter what your tongues wrongfully describe this is halal and this is haram} (al-Nahl: 116). So, they avoided the word haram.” (al-Subki)

Imam al-Subki goes on to mention the other two terms which are non-binding prohibitions (*makruh tanzeehi*) and abandoning a preferred act (*tark al-awla*).

In brief, a *makruh* act may be permissible (*mubah*) in its origin, but becomes *makruh* due to another cause, just as a *haram* act may downgrade to *makruh* due to another cause. The upcoming sections will examine if this dynamic plays any role in the ruling of holding job positions in the money market.

The previous section already examined the jobs that are permissible by default ruling. As for the rest of the jobs in the market, they either directly deal interest (*riba*) or indirectly support it by supervision, logistic support, strategy or otherwise helping to maintain the corporations that facilitate unlawful practices. The services that purely engage in interest and those that indirectly contribute or lead to interest have already been detailed in previous chapters.

Therefore, it is difficult to describe these job positions as simply being *makruh* unless the term is used to refer to binding prohibitions (*haram*), as Imam al-Shafi’i and the earlier scholars used it. The only suitable description for these job positions is that they are *haram*.

This conclusion is supported by the fiqh *maxim of dhara’i*, which basically states that the means are given the ruling of the objective. Hence, the means to an obligation are obligatory and

the means to a prohibition are prohibited. There are of course academic nuances pertaining to the maxim in the books of Usul al-fiqh; however, it may be sufficient for the purpose of this research to mention a brief quote on the issue by Imam al-Qurtubi relayed by Imam al-Shawkani.

Imam al-Shawkani said:

*“Al-Qurtubi said: ‘Know that matters that lead to committing a prohibition either have certain or probable potential to lead to that result. If the matter certainly leads to a prohibition, it isn’t addressed in this maxim; rather, it is mentioned in another maxim which dictates that **‘matters necessary for the fulfillment of an obligation are themselves obligatory’**, because one can only circumvent the prohibition by abandoning those means.*

As for means with the potential of leading to a prohibition, they may either have:

- 1. A high probability of leading to prohibitions*
- 2. A medial probability*
- 3. A miniscule probability*

*This is what we refer to as the **maxim of dhari’i**. The first category (i.e. high probability) must definitely be regarded by the maxim. As for the second and third category (i.e. medial or miniscule probability), the scholars of the school (madhab) have differed as to whether they are included in the maxim or not. Some of them also include it in the maxim and name it a weak or implausible cause”. (al-Shawkani , 411-412)*

Accordingly, employment in the operations level and lower administration that directly deals with the public would be prohibited based on the maxim that states: **“Matters that must be avoided in order to circumvent a prohibition are also prohibited”**.

The rest of the departments that deal with communications, customer care, finance, human resources and etc. all lead to unlawful practices, as earlier mentioned. At best, these roles usually lead to unlawful practices, and hence, it would be included in the *dhara'i maxim* and it would be given the ruling of matters that definitely lead to unlawful practices, as indicated by al-Qurtubi. Matters that usually lead to prohibitions are treated as matters that definitely lead to prohibitions.

Forbidden for its own Sake Vs. Forbidden for another Cause

Haram refers to a matter that the Wise Legislator bindingly demands to be avoided. It denotes a matter which its abandoner gains reward and the performer earns reprimand (al-Amidi).

Scholars divide prohibitions into two degrees:

- 1) Forbidden for its own sake (*haram li dhatih*): This denotes matters prohibited by Islamic law due to certain or highly plausible harm that cannot be disassociated from the act such as fornication, murder and intoxication. This is also referred to as *tahreem maqasid*.
- 2) Prohibited for another cause (*haram li ghayrih*): This denotes matters prohibited by Islamic law due to external factors, although the matter is permissible in its origin. Examples of this are the marriage of a *muhallil*⁴, gazing at the private areas (‘*awra*) of another and conducting business during the call to Friday prayers. This is also referred to as a prohibition of means (*tahreem wasa'il*) (al-Qarafi).

By examining the cause of prohibition, Imam Ibn Taymiyya divided prohibitions into two categories:

⁴ A *Muhallil* is one who is complicit in the marriage of a woman who has been divorced by her first husband three times. The purpose of this second marriage would be for the woman to lawfully return to her first husband after consummating the second marriage and divorcing. Hence, the second marriage is temporal and for ulterior motives. (Translator)

- 1) Prohibited due to its description: Examples of this would be eating a dead animal (i.e. one improperly slaughtered), pork or eating blood. This is similar to the definition of *haram li dhatih*.
- 2) Prohibited due to its source: Examples would be stolen wealth or wealth earned by invalid transactions. This category can also be divided into prohibited for its own sake and prohibited for another cause based on the degree of prohibition emphasized on the particular unlawful practice (A. I. Taymiyya).

In this chapter, it is important that we examine the ruling of giving or taking interest and the ruling of working in interest-based institutions and whether it is prohibited in itself or for another cause.

Imam Ibn al-Qayyim said:

“There are two kinds of interest: Evident interest and subtle interest. Evident interest is prohibited because of the extensive harm it incurs, and subtle interest is prohibited because it is a means to evident interest.

*Hence, the first kind is prohibited in itself and the second is prohibited for another cause. Evident interest is known as *riba al-nasee’a*⁵, and it is the one applied in Jahiliyya. The Arabs would practice that if one delays the payment of his debt he would be required to increase the*

⁵ This refers to a type of interest in which the borrower agrees to increase the payoff on a loan in exchange for deferring its due date. This is also referred to as *riba al-Jahiliyya* because it was the only form of interest practiced in pre-Islamic Arabia. (Translator)

amount; the longer the delay, the greater the increase to the extent that a debt of one hundred would become thousands.

*Hence, by Allah's infinite mercy and wisdom, He forbade interest and damned its giver, its taker, its clerk and its witness, and He warned those who do not abandon it of an impending war declared by Him and His prophet. As for *riba al-fadl*⁶, it is forbidden for another cause (*haram li ghayrih*)". (al-Jawziya)*

The Reason *riba al-fadl* is forbidden for another cause is because if it was allowed to instantly exchange \$90 for \$100 but prohibited when the same transaction was deferred (i.e. *nasee'ah*), instant transactions of this kind would merely become a ruse for deferred transactions. That is, buyers and sellers would circumvent the prohibition by using instant transactions as a pretext while agreeing to defer the compensation. Thus, *riba al-fadl* would become a pretext to *riba al-nasee'a*.

The Prophet (s) said: "*Do not sell a Dinar for two Dinars or a Dirham for two Dirhams; I indeed fear for you of interest (riba)*"⁷. (Hanbal)

Hence, the Prophet (s) forbade *riba al-fadl*, which is to sell one *dinar* for two or one *dirham* for two, because he feared that it would be a pretext to *riba al-nasee'a*. Therefore, the prophetic tradition proves that *riba al-nasee'a* was prohibited in itself and *riba al-fadl* was prohibited for another cause.

⁶ This refers to a type of interest in which there is an exchange of money or interest-based commodities for a compensation identical in type but greater in amount. (Translator)

⁷ Imam al-Zayla'i mentioned this hadeeth in *Nasb al-Raya* and he did not grade it weak. Dar al-Hadith: Volume 4 page 56. Imam Malik also mentioned this hadith in al-Muwatta'.

Generation after generation, scholars have relayed the consensus (*ijma'*) on the prohibition of *riba al-nasee'a*.

In modern times, one of the first fiqh assemblies to address the matter was the Assembly for Islamic Research in Cairo the year 1385 A.H. The assembly expressed in its decisions:

“Interest bearing loans are prohibited on the lender and aren't made permissible on the basis of need (haja) or necessity (daroora). This prohibition is also applicable to the borrower, and he isn't relieved of sin unless he is in a state of necessity. Every individual is left to his good faith in calculating his own necessity”.

That being said, the interest-based financial services provided in the United States such as mortgage, savings accounts, Certificates of Deposit (CDs), insurance, refinance, loans, annuities and credit cards are all categorized as *riba al-nasee'a* in that the lender generates profit from the original loan. Therefore, these transactions are merely modern forms of the interest prevalent in *Jahiliyya*, and thus, are prohibited in itself by scholarly consensus.

Ibn Rushd al-Hafeed said:

“The scholars are in agreement that interest can be present in two matters:

1. *Transactions*
2. *Deferred financial liabilities which include deferred payments, loans and etc.*

The presence of interest in deferred financial liabilities can be divided into two categories: One category is prohibited by consensus and that is the one regulated in Jahiliyya. The Arabs would loan large amounts of wealth and allow the borrower to defer the payment. The borrower would request to defer payment in exchange for a larger payout. This type of interest is

exactly what the Prophet (s) referred to in his farewell sermon: ‘Indeed, the interest of Jahiliyya is now annulled, and the first interest I cancel is that of al-‘Abbas ibn ‘Abd al-Muttalib’.

The second category is for the borrower to request reprieve from part of the loan, and in return he will instantly pay off the rest. This category is an area of difference between the scholars”. (al-Hafeed)

None of the modern transactions contain the instant exchange of varying amounts of the same currency; rather, they all stipulate a deferred increase in compensation, and hence, they are replications of the interest prevalent in *Jahiliyya*.

The second category that ibn Rushd briefly mentions can be likened to a modern transaction in which a borrower makes a down payment to a mortgage company, and in return the company removes the interest rate on the capital that is paid up front and makes him pay a penalty instead.

In any case, the area of difference ibn Rushd mentions does not relate to what is being addressed because the type of interest that is the basis of the finance industry is *riba al-nasee’a*. Making a down payment on a mortgage does not remove the stipulated interest rate from the equation. The mortgage will have a fixated interest rate; the down payment can only decrease the amount of interest the borrower is required to pay on the rest of the mortgage because of the lower Loan to Value ratio (LTV).

After clarifying that the employment options in the finance industry cannot be disassociated with interest, even if involvement is at varying degrees, **it is evident that working in this industry is prohibited in itself**. The only exception to this ruling is working in non-

financial services that in no way relate to interest, working in companies that are shari'a compliant or taking on an internship as a requisite for graduation.

This verdict is also upheld by the Permanent Fatwa Committee of Saudi Arabia. The committee did not mention the degree of prohibition, however. Its answer was also specifically addressing the ruling of working in interest-dealing banks. In that context, the committee said:

“Most of the current financial transactions are interest bearing, and this is prohibited by the Qur'an and Sunnah and by scholarly consensus. The Prophet (s) ruled that one who aids the giver and taker of interest by recording the transaction or witnessing it is also deserving of divine damnation.

Jabir (r) reported:

‘The Prophet (s) has invoked damnation upon the taker and giver of interest as well as its clerk and witness, and he said they are all equals’⁸.

Employees support the system by supervising, clerking, witnessing the transactions, recording the information, submitting and receiving the money or etc. Therefore, this type of job is unlawful, and the Muslim must avoid such income and seek that which is lawful. There is a multitude of job opportunities that are lawful; the individual should fear Allah and avoid incurring His wrath and that of His Prophet (s)”. (Fatawa al-Lajna al-Da'ima)

⁸ Sahih Muslim

In another question posed to the committee on whether such a ruling differs between Muslim lands and non-Muslim lands and if there are departments in the bank that are exceptions, the committee responded:

*“Firstly, working in interest-dealing banks is unlawful whether it is in a Muslim country or a non-Muslim country because it entails supporting unlawful practices that transgress the boundaries of Allah. Allah said: {**And cooperate in righteousness and piety, but do not cooperate in sin and aggression.**} (Al-Ma'idah: 2)*

Secondly, there are no exceptions as far as we can see in Islamic law because the element of supporting unlawful practices is present in all bank employees”. (Fatawa al-Lajna al-Da'ima)

Permissibility of an Act Forbidden in itself Due to Necessity

The previous section concluded that interest dealt by corporations in the financial industry in the United States is *riba al-nasee'a*, which is prohibited in itself. The significance of defining the degree of prohibition lies in the application of a known fiqh maxim that states:

“A Matter prohibited in itself is allowed on the basis of necessity (daroora), and a matter prohibited for another cause is allowed on the basis of need (haja)”⁹.

Ibn Taymiyya said:

*“Matters prohibited based on the **dhara'i maxim** are allowed in the presence of outweighing benefits”¹⁰.*

Needs and outweighing benefits (*maslaha*) will be addressed in the next section.

The type of necessity intended here is the specific implication of the term by the *fuqaha'*. The inference of necessity by the scholars of Usul al-Fiqh is in general terms. That is, it does not need to be confirmed in every individual case in order for it to be instated to allow prohibitions. Hence, its focus is the general principles that preserve faith, human life, intellect, wealth and heredity. This is **not** the type of necessity examined here.

The scholars of fiqh use necessity (*daroora*) in two ways:

⁹ Reference al-Furuq by al-Qarafi (#58)

¹⁰ Majmu' al-Fatawa

- 1) Necessity in its general indication: This has the same definition as need (*haja*), and it does not entail making a matter prohibited in itself (*haram li dhatih*) permissible, as will be addressed.
- 2) Necessity in its specific implication: This is the focal point of discussion in this section¹¹.

Al-Suyuti defined necessity in its specific implication:

“For one to reach a point that if he does not perform the unlawful, he will near death or in fact die. This condition allows one to perform the unlawful”. (al-Suyuti)

The practical application of this when addressing employment in the financial industry is that if a Muslim aggressively searches for lawful employment options, and follows all leads even outside of his locality, but fails to find an opportunity, and is overburdened by financial responsibilities that make him certain he will not be able to cover his basic needs and the needs of his dependents, at that point he may engage in any job until his necessity ends.

There are a number of important clarifications that must be mentioned here:

- 1) Considering necessity in its specific implication requires that it be dealt with on an individual basis. It is improper to generalize the ruling or to presuppose that the outlets to halal jobs are indeed absent. An individual must confirm his situation with a reliable and God fearing scholar. If the scholar allows him to work in this field, he may proceed, and if he does not he must refrain.

¹¹ For more details regarding the difference between needs and necessities reference “Al-Farq bayn al-Daroora wa al-Haja” by Dr. Abdullah bin Bayyah (Islamic European Council of Research and Fatwa: 4th and 5th edition of the academic Journal)

- 2) It isn't required for the necessity to be imminent; it is sufficient for it to be highly probable. However, it should be noted that there is a big difference between a plausible necessity and one that is merely presumed. The signs of a presumed necessity aren't evident, and it can be a figment of one's imagination or a whisper from the devil. A plausible necessity is when one loses his job and his savings are dwindling. He is actively searching for a job, but realizes it won't be easy, and it isn't convenient for him to borrow money from someone until he finds a job. In such a case, he isn't required to wait until his savings are depleted; he should work in any available job before reaching such a condition. Holding people to standards beyond this would be burdening them with more than they can handle.

Imam al-Zurqani espoused the same view in his fiqh commentary in the chapter of foods:

“Necessity is when there is certain or highly probable fear of death. It isn't required for one to be on the brink of death”. (al-Zurqani)

Clearly, this sound understanding dictates that high probability, which is measured according to one's own knowledge and experience, is sufficient to apply the rulings of necessity.

- 3) If a Muslim holds an unlawful job position, he should not depend on it; it is incumbent that he continues to search for a halal alternative.

- 4) If a repentant Muslim holds an unlawful job position, he is not required to immediately leave if it is his only source of income. Otherwise, it would be obligatory for him to leave that position immediately.

- 5) In a case where it *is* allowed for a Muslim to work in this field, he can only spend as much as is needed to alleviate his necessity (*daroora*) or even his need (*haja*) and that of his dependents; by no means is it allowable for him to spend more than that. In fiqh, it is established that needs are treated as necessities in allowing prohibitions. However, in order to apply this maxim, necessity (*daroora*) needs to be initially present. That is because the matter is prohibited in itself (*haram li dhatih*), and hence, only permitted by necessity.

Imam al-Juwayni extensively addressed this issue when addressing what is permissible for a Muslim to take if prohibitions become prevalent and outlets to halal are limited:

“This section is based on a situation where unlawful practices become dominant and people across the globe do not find an alternative location with lawful practices...In such a case, it is incumbent that one limits himself to his needs, and it is prohibited to live in any type of luxury...The ruling remains the same even if the inhabitants of an area with unlawful practices are unable to relocate, and are large in numbers, and it is presumed

that if they limited themselves to the basics of livelihood, they will not be able to prosper; they too must limit themselves to fulfilling needs... ”¹² (al-Juwayni)

The words of Imam al-Juwayni are clear in that the presence of necessity is required, and in that case it is permissible for one to acquire the amount that will fulfill his needs, and it is impermissible to engage in any form of luxury.

- 6) Since one can only take a position with unlawful practices to fulfill a necessity or a need, he must discard the rest of the income and give it to general Muslim causes. Nonetheless, it is hopeful that he will be rewarded for his pleasant intention of discarding unlawful wealth from his possession.

¹² Reference a detailed critique of Imam al-Juwayni’s opinions in “Waqafat Hadi’ah” by Dr. Salah al-Sawi page 32

Permissibility of Haram li Ghayrih Due to Need

The scholars of Fiqh have defined a need (*haja*) as a necessary element in order to consider ease in mitigating circumstances in which the benefit (*Maslaha*) is lost. If such a need is not considered, a great deal of hardship will befall the public. (al-Shatibi p. 9 vol. 2)

Commonly, the *fuqaha* offer in this regard the examples of transactions allowed by Islamic law contrary to the general rule.

Imam al-Suyuti explained the maxim, *“A need is dealt as a necessity whether it is general or specific”*:

“An example of a general need allowing otherwise unlawful transactions is the permissibility of renting goods and hiring services (Ijara), ja’ala¹³, reassignment of debt (hawala) and other transactions which have been allowed contrary to the general rule...And an example of a specific need is repairing vessels by welding them with silver (tadbeeb)”. (al-Suyuti, 62)

It is apparent that considering a need as always being a cause of ease is an overstatement that should **not** be generally applied. That is, it is impermissible for an individual to engage in unlawful practices just because of common difficulties; there must be explicit consideration of the specific circumstance by Islamic law via textual evidence or an apparent analogy (*qiyas jaliy*) in order for this maxim to be regarded. Thus, the axiom *“A need is dealt as a necessity whether*

¹³ This is a non-binding agreement between the buyer and seller in which the compensation is specified but the job may have unknown variables. It differs from *Ijara* in that there doesn't need to be a specific individual hired, the individual is only deserving of the compensation if the task is completed, and it cannot have a specific timetable. An example of *Ja'ala* is if one announces: Whoever finds and returns my lost possession will receive a \$100 reward. (Translator)

it is general or specific” is merely referred to in the context of setting the framework for Islamic rulings and conveying the cohesion of its legislations.

Consequently, this axiom is an axiom of Usul al-fiqh, not a Fiqh maxim¹⁴. Meaning, it isn't essential for need (*haja*) to be present in individual cases in order for renting goods or hiring services (*Ijara*) and *salam*¹⁵ to be allowed; rather, these transactions are deemed permissible from the outset. Therefore, need (*haja*) in the maxim denotes a general, consistent cause that Islamic law has regarded to establish specific rulings and exemptions (*rukhsa*), and it is **not** a nebulous concept.

In explanation of the maxim, *“General matters cannot be rendered analogous to a matter established contrary to the general rule”*, Imam al-Ghazali expounded:

“The second category refers to matters of an analogous nature (i.e. the reasoning for exemption is evident) that are exempt from a preceding rule. All other matters that are analogous to the exemption but have the probability of falling under the rule are in fact exempt based on analogy (qiyas). For example, the sale of al-‘Araya¹⁶ did not abrogate or overturn the regulations that define interest; it was simply an exemption from the general rule. Grapes were deemed analogous to dates, and if there weren't any indicators to the soundness of such an analogy, we would not have dared to append its ruling”. (al-Ghazali)

¹⁴ Dr. Abdullah bin Bayyah supports this opinion in his book “Al-Farq bayna al-Daroora wa al-Haja” p. 128

¹⁵ This is a transaction in which the price is paid upfront and the delivery of the product is deferred. It is an exception from the prohibition of selling that which one does not possess. It has been exempt from the general rule because of the great need for it. For example, farmers may not have the money to farm, so this transaction allows them to use the money fronted by the buyer, and they would deliver the product at the time of harvest

¹⁶ This refers to the sale of moist dates on the palm trees in exchange for dry dates, or the sale of grapes still on its vines in exchange for raisins. (Translator)

In this excerpt, Imam al-Ghazali establishes that drawing analogies between non-textual based needs (*haja*) and textually established needs should not be loosely applied. In fact, this can only be applied when there is apparent reasoning for the exemption, which would deem it of an analogous nature. Hence, he mentioned the analogy of grapes and moist dates. This analogy would entail the permissibility of selling grapes in exchange for a larger volume of raisins, because they are storable goods or because they are fruits.

Ibn Hajar mentioned this in his commentary on the hadith of al-‘Araya:

*“The Salaf have differed as to whether grapes and similar fruits are analogous to moist dates in the ruling of al-‘Araya. It was said that they are **not** analogous, and this is the opinion of the Dhahiris and some Shafi’i scholars. It was also said that all storable goods are analogous to moist dates, and this is the opinion of the Maliki scholars. Some held that all fruits are analogous to it, and this opinion is referenced to Imam al-Shafi’i”. (al-‘Asqalani)*

Every reason mentioned by Ibn Hajar can be referred to as an apparent, consistent cause that can suitably be linked to the fiqh verdict. Hence, the presence of need is **not** the only cause of this ruling, as is apparent.

Ibn Qudama sums up this conclusion in the context of addressing public interest (*masalih mursala*) after mentioning examples of needs (*hajiyyat*) and luxuries (*tahseeniyat*):

“We do not know of any difference of opinion regarding the impermissibility of clinging to these two categories without any textual basis. If that was allowed, it would entail legislating laws based on conjecture, and it would downplay the need for sending messengers. Such a dynamic would place the layman on the same footing as a scholar, because everyone knows his own personal benefit”. (al-Maqdisi)

That being said, the axiom that states, “*A matter prohibited in itself is allowed on the basis of necessity, and a matter prohibited for another cause is allowed on the basis of need or outweighing benefit*” is more of a Usul al-fiqh axiom than a fiqh maxim. Also, the application of the axiom in terms of needs is limited to needs that are textually based and analogous in nature.

The previous section established that the financial services available are usually on the basis of *riba al-nasee’a*, and hence, they are only allowed in cases of necessity. The only issue that remains to be addressed is if jobs with a lower grade of prohibition (i.e. prohibited due to other matters - *haram li ghayrih*) can be allowed on the basis of need (*haja*).

As previously mentioned, not all of the financial service companies offer a variety of services; some specialize in one service such as insurance, for example. It is common knowledge that the various insurance policies are prohibited; however, it cannot be clearly stated that all of these transactions are on the basis of *riba al-nasee’a*.

For example, in its 2nd annual conference in Jeddah, Saudi Arabia in 1985, the Islamic Fiqh Council, a subset of the Muslim World League, explicated:

“Consumer insurance that insurance companies commonly offer contains a great deal of uncertainty (gharar) that invalidates the transaction, and hence, it is unlawful in Islamic law”.

Notice that the Council’s declaration related the prohibition to the degree of uncertainty, not to interest (*riba*). However, many other fiqh assemblies unequivocally mentioned that both *riba al-fadl* and *riba al-nasee’a* are present in insurance policies.

Dr. Yusuf al-Shalabi is a modern scholar who challenged the notion that interest (*riba*) is present in insurance policies with the exception of life insurance. When discussing the ruling of insurance and the evidences mentioned by those who prohibit, he said:

“Secondly it is presumed to contain interest because an insurance policy entails a monetary exchange, namely the insurance payments in exchange for the service. This monetary exchange lacks the presence of immediacy (taqabud), and the payment and the compensation are not of equal sum (Tamathul) (Note: These are two regulations for monetary exchanges and the exchange of interest-based commodities set by Islamic law.). Note that life insurance is excluded from the discussion because it contains a fixated interest rate paid to the insurance beneficiary along with the payments made if he lives to the end of the agreement.

This argument is refuted from two aspects:

- 1. This agreement is actually a transaction of payments made to the insurer in exchange for a service, which is that the insurer covers losses and damage on behalf of the beneficiary. Hence, the compensation is a service; there **isn't** a monetary exchange for one to consider the non-compliance with the regulations of interest bearing transactions.*
- 2. The insurer does not compensate the consumer for his payments per say because in many instances he doesn't need to make any payout; the insurer is only required to provide coverage when there are specific dangers involved. These payouts are a **secondary** result of accident coverage. If this is considered interest, every transaction involving a risk should also be considered interest”. (al-Shalabi)*

Working off of this valid scholarly opinion, if it is in fact established that consumer insurance does not contain interest, and if there are some insurance companies that **do not** offer

life insurance, and there is a legally regarded need (*haja*) to work in this field, I pray that this would be fine based on the maxim that states: *“Matters prohibited due to other causes (haram li ghayrih) are allowed on the basis of need”*.

The following reasons can be suggested for the opinion that holds it is permissible:

- 1) Some insurance companies offer auto repair services, such as the American Automobile Association (AAA). This specific service is void of any interest because the consumer is clearly paying insurance for a service, namely auto repair and maintenance. This isn't considered interest by anyone.
- 2) The unlawful element of excess uncertainty (*gharar fahish*) in insurance policies is less severe than the unlawfulness of interest. Thus, Islamic law has allowed some transactions that contain a degree of uncertainty such as property sales; the condition of the building's infrastructure may not be known. (A. i. Taymiyya)

In this regard, Imam al-Nawawi said:

“The deciding factor for transactions containing a degree of uncertainty (gharar) is that if its presence is inevitable and can only be avoided by extreme measures, or if it is only present at a miniscule degree, the transaction is permissible. If that is not the case, the transaction is invalid”. (al-Nawawi)

- 3) Islamic law has allowed some transactions containing *riba al-fadl* based on its prohibition being due to other causes (*haram li ghayrih*). One of these transactions that is widely

accepted by scholars and supported by textual evidence is the sale of al- 'Araya. Another transaction that is more controversial is selling jewelry in exchange for gold or silver heavier in weight. Ibn Taymiyya and his student opposed the scholarly majority on this issue; this issue is not heavily controversial, but nonetheless it is significant.

Ibn Taymiyya -Allah have mercy on his soul- said:

“It is permissible to sell gold and silver jewelry in exchange for its own type without the stipulation of it being of an equal sum (Tamathul). The increased payout of gold or silver is considered a compensation for the craftsmanship. The payment can either be instant or deferred, as long as it is not dealt as a monetary exchange”. (al-Ba'li)

That is, as long as the jewelry is dealt as a commodity, rather than being a monetary tool. Ibn al-Qayyim strongly defends the opinion of his teacher in his book *I'lam al-Muwaqi'een*. (al-Jawziya p.140 vol. 2)

- 4) Just as there may be a need to have insurance, there may be a need to work in insurance companies. An example of such a case would be if a Muslim cannot find any other halal alternative that would cover his needs, or he may find an alternative that is not suitable for his social status. Such a person can work in insurance companies, but he must only use the amount that covers his needs. He must discard the rest of his income from his possession, not as charity but as a payment to general Muslim causes. Basically, everyone who is categorized as poor and deserving of zakah is allowed to work in insurance companies on the basis of need.



- 5) **There aren't any insurance companies that do not offer life insurance, as far as I know. The details presented are merely a theoretical breakdown in case there are insurance companies that do not offer life insurance.**

Section Summary

The following conclusions can be made based on the research presented in this section:

- 1) The only jobs in the financial industry that are permissible by default ruling are ones involving non-financial services such as auto repair, driver's education, transportation, telecommunications, selling commercial lumber and building material, edible goods and etc. It is also permissible to work in Islamic banks and Islamic investment. In addition, it is permissible for one to seek an internship in this field for academic purposes, as long as one discards the income earned and gives it to general Muslim causes.
- 2) Other jobs that include high or medial level administrative positions, front desk positions, communications, technical support, marketing, human resources, loans, investment or etc. are all prohibited for its own sake (*haram li dhatih*) because it either directly leads to interest or usually does so.
- 3) One can only seek employment in a job position that is prohibited for its own sake if there is an established necessity according to the specific legal implications of the term, or if that necessity is highly probable. Only then can one work in that position to cover his necessities and even his needs, but he must continue to search for a halal alternative.
- 4) Under no circumstance is it allowable for one to spend on luxuries (*tahseeniyat*) when the source of his income is from financial services. He must discard any extra wealth and deliver it to general Muslim causes.



- 5) A repentant Muslim is not required to immediately abandon his position as long as he is in dire need of that income. However, he must actively search for a halal alternative, even if it is a lower pay grade.

- 6) There is an academic basis for it being halal to work in insurance companies that **do not** offer life insurance because the other insurance agreements do not contain interest. This opinion is based on the presence of a legally regarded need (*haja*).

Research Conclusions

After an extensive analysis of the United States financial industry and the various jobs one can hold in this field, the following matters can be concluded:

- 1) The finance industry encompasses a wide variety of financial services that include insurance, banking, mortgaging, credit card services, brokerage and financial advisory. Financial corporations usually aren't limited to one service; in fact, leading corporations usually offer all available services.
- 2) This industry reflects a capitalist economic system, and interest is one of its defining hallmarks; rarely is a financial transaction in this system void of interest. The transaction may directly involve interest, such as one of the various interest bearing loans, or the transaction may initially be void of interest, but either directly lead to it or usually does so, as is the case with credit card companies. Even a non-financial service may lead to interest. There are only a handful of services that do not lead to interest such as currency exchange or the issuance of traveler checks.
- 3) The type of interest dealt in this field is *riba al-nasee'a*; *riba al-fadl* is essentially nonexistent.

- 4) The jobs available in this field all play supportive roles in completing interest bearing transactions. Employees all essentially deal with interest, even though it is at varying degrees.
- 5) **Therefore, employment in the finance industry is prohibited for its own sake; it is only allowed in cases of necessity (*daroorah*). Necessity is measured according to its legal implication in fiqh; each case must be assessed individually.**
- 6) In the event that there is a high level expectancy of necessity, it is permissible to work in this field. However, the Muslim can only use the bare minimal that covers his necessity (*daroorah*) and even his need (*haja*), because needs are treated as necessities. Any money left over must be delivered to general Muslim causes. It is hopeful that he will be rewarded for discarding unlawful wealth from his possession.
- 7) A repentant Muslim is not required to immediately leave a position he holds in this field if he is in dire need of that income; he can maintain that job, but he must limit his use of his income to the bare minimal needed to cover his necessities and needs. That being said, he must continue to search for a halal alternative.
- 8) There is no leeway for one to work in this field on the basis of need. Reason being the axiom that states *“Needs are dealt as necessities in allowing unlawful practices”* is a Usul al-Fiqh axiom, not a Fiqh maxim, and hence, it is in general terms. This particular axiom was established in the context of Islamic law allowing a few specific transactions,

although they are contrary to the general guidelines; these general needs are textually established. The only case in which this axiom can be applied beyond this framework is if there is room for valid analogy (*qiyas*). In any case, *qiyas* would not permit a matter prohibited for its own sake; rather, it is only applicable in some cases where a matter is prohibited for another cause (*haram li ghayrih*).

- 9) It may be allowed to work in some insurance agencies on a need (*haja*) basis if **it is void of life insurance**, and if the scholars establish that it is indeed void of *riba al-nasee'a*.

Reason being Islamic law has allowed some transactions regardless of its potential harms due to need, although they may contain *riba al-fadl*, because *riba al-fadl* is prohibited for another cause. Everything that is prohibited due to external factors (*Sadd al-dhara'i*) is allowed on the basis of need (*haja*).

- 10) It is also allowed for one to work in Islamic finance or Islamic investing, whether it is via an independent financial institution or a subsidiary of an interest-dealing institution. However, it is required that a reputable scholar or a scholarly body attests that its dealings are shari'a compliant. It is also allowed for one to pursue an internship in this field if it is for academic purposes. However, he must discard the income from his possession and deliver it to general Muslim causes.

I conclude this research of the financial services industry in the United States praying to Allah, the Beholder of my success; I depend on Him alone and to Him is my return.

Bibliography

- al-Amidi, Saifuddin. *Al-Ihkam fi Usul al-Ahkam*. Vol. 1. Beirut: Dar al-Kitab al-'Arabi, 1983.
- al-'Asqalani, Ibn Hajr. *Fath al-Bari Sharh Sahih al-Bukhari*. Vol. 4. n.d.
- al-Ba'li. *al-Ikhtiyarat al-Fiqhiyyah*. www.almeshkat.net, n.d.
- Al-Bukhari, Muhammad bin Ismail. *Al-Jami' al-Saheeh*. n.d.
- al-Ghazali, Abu Hamid. *al-Mustasfa*. Beirut: Dar al-Kutub al-'Ilmiyyah, 1992.
- al-Hafeed, Ibn Rushd. *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*. Vol. 2. Beirut: Dar al-Fikr, n.d.
- al-Jawziya, Ibn Qayyim. *I'lam al-Muwaqi'een*. Cairo: Maktabah al-Kulliyat al-Azhariyya, 1967.
- al-Jawziyya, Ibn Qayyim. *Bada'i al-Fawa'id*. Vol. 3. Beirut: Dar al-Sharq al-'Arabi, n.d.
- al-Juwayni, 'Abd al-Malik. *Al-Ghiyathi*. Matabi' al-Dawha, 1979.
- al-Maqdisi, Ibn Qudamah. *Rawdat al-Nazir*. Vol. 1. Riyadh: Jami'at al-Imam, 1978.
- al-Nawawi. *al-Majmu' Sharh al-Muhadhab*. Vol. 9. Beirut: Dar al-Fikr, n.d.
- al-Qarafi, Shihabuddin. *Al-Furooq*. Vol. 3. Cairo: Dar-alsalam Publications, 2001.
- al-Qudah, Dr. Main. *Islamic Finance Corporations in the United States*. Nigeria: Assembly of Muslim Jurists of America, 2005.
- al-San'ani, Muhammad. *Ijabat al-Sa'il*. Vol. 1. Beirut: Mu'assasah al-Risala, 1986.
- al-Shalabi, Dr. Yusuf. "Insurance in America." *Assembly of Muslim Jurists of America* (n.d.).
- al-Shatibi, Abu Ishaq. *Al-Muwafaqat fi Usul al-Shari'ah*. Ed. Abdullah Draz. Vol. 4. Beirut, Lebanon: Dar Al-Ma'rifah, n.d.
- al-Shawkani. *Irshad al-Fuhood*. Vol. 1. Beirut: Dar al-Fikr, 1992.
- al-Subki, Taqiuddin. *Al-Ibhaj fi Sharh al-Minhaj*. Vol. 1. Beirut: Dar al-Kutub al-'Ilmiyyah, 1983.
- al-Suyuti, Jalaluddin. "al-Ashbah wa al-Naza'ir." Cairo: Mustafa al-Babi al-Halabi, 1977.
- al-Zurqani. *Sharh al-Zurqani 'ala al-Muwatta'*. Vol. 3. Beirut: Dar al-Kutub al-'Ilmiyyah, 1990.
- autoclubgroup. www.autoclubgroup.com/michigan/index.aspx. n.d.
- BankofAmerica. www.bankofamerica.com/hub/index.cfm?template=need&state=mi#skipnav. n.d.

Chase. www.chase.com. n.d.

Colombiafunds. www.colombiafunds.com/home.htm. n.d.

"Fatawa al-Lajna al-Da'ima." Vol. 15. n.d. 55.

Fidelity. www.fidelity.com. n.d.

Hanbal, Ahmad Ibn. *Musnad Imam Ahmad*. 2 vols. Cairo: Mu'assah Qurtubah, n.d.

<http://en.wikipedia.org/wiki/Citigroup>. n.d.

Taymiyya, Ahmad Ibn. *al-Fatawa al-Kubra*. Vol. 29. Beirut: Dar al-Ma'rifah, 1978.

Taymiyya, Ahmad Ibn. *al-Qawa'id al-Nooraniyah*. Ed. Muhammad Hamid al-Faqi. Beirut: Dar al-Ma'rifah, n.d.

wikipedia. <http://en.wikipedia.org/wiki/americanautomobileassociation#memberbenefits>. n.d.

—. <http://en.wikipedia.org/wiki/americanautomobileassociation#memberbenefits>. n.d.

Wikipedia. <http://en.wikipedia.org/wiki/Citigroup>. n.d.

—. http://en.wikipedia.org/wiki/Credit_card#revenues. n.d.

—. http://en.wikipedia.org/wiki/Individual_retirement_account. n.d.

—. http://en.wikipedia.org/wiki/JPMorgan_Chase. n.d.

—. http://en.wikipedia.org/wiki/Mortgage_loan. n.d.

—. http://en.wikipedia.org/wiki/Reverse_mortgage. n.d.