Interest-Bearing Transactions in US Finance

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Abstract

In pre-Islamic Arabia, when the duration of a loan agreement was completed, the lender would be given the option of fully repaying the debt or agreeing to an extension with interest. This was later coined as "Pre-Islamic Interest" (*Riba al-Jahiliyya*) and is prohibited by the Qur'an and Sunnah. Thus, the tenets of Islam prohibit interest (Riba) in business transactions. As soon as interest is introduced in a loan agreement, the agreement is rendered sinful; whether interest is at the onset of the agreement or the conclusion. There are several types of Riba, these will be discussed.

Modern banking has introduced a wide array of new loans and transactions; these include Marginal Accounts, Home Equity Conversion loans and Money Market Accounts to name a few. For Muslims trying to adhere to Islamic laws navigating through modern banking services can be dauting. Understanding the difference between service fees and interest in necessary. Rulings on credit cards, savings accounts and checking accounts are therefore covered. Additionally, rulings on billing is addressed. For example, fines issued due to a delinquent account also fall under the prohibition of interest and are thus prohibited.

Keywords: Riba, Interest, Multi-level Marketing, Bankruptcy, Islamic Laws, Debt, Wakala, Ijarah, Credit Cards.

In the Name of Allah, the Most Gracious the Most Merciful

The subject of interest as it is related to the global economy is one that is at the top of a list of hot-button issues that often stirs controversy within Muslim communities. Attempting to reconcile Islamic religious teachings regarding business transactions, and the standards of a market founded upon interest –one by the way that has taken a clear and unapologetic stance in favor of interest--can be a momentous task indeed.

The following is a brief study of interest-bearing transactions in the American finance industry that will hopefully provide rational perspectives on the merit of following Islamic law. The subject is very nuanced, as the wide acceptance of interest is a deeply rooted in modern finance. I pray that this study will give some clarity to Muslims in the West, especially students of sacred knowledge. It is paramount that students of sacred knowledge are able to couple between clearly understanding the context and dutifully applying the appropriate religious understandings. May Allah enable us to devoutly serve Him through sound worship as well as sound dealings.

Introduction

This study has two parts;

First:

Addresses religious rulings pertinent to the subject of interest and then discusses the transactions that appear to contain interest. When discussing those transactions, I address whether they are allowable or prohibited, or if the ruling is obscure based on my assessment. Rarely do I discuss the evidences or the scholarly differences.

Second:

Discusses the status of dealing with different Islamic mortgage companies in the US, based on deep analysis of their modes of finance and the legal contracts they use. Buying homes via conventional mortgage process or through the Islamic mortgage companies could be easily included in the first part of this research. However, due to the amount of technical details involved in contracts, as well as the controversies regarding this issue between various scholars in the US, it is therefore discussed in detail, separate from other topics.

Frequently referenced are conclusions of the Permanent Fatwa Committee of the Assembly of Muslim Jurists of America (AMJA) on finance and investment issues. The presence of those scholars on the ground in Muslim communities throughout America has given them first-hand exposure to the nature of the system. Many scholars in other parts of the world are not in such a situation, and as the ancient expression maintains*: "The People of Makkah are best aware of its routes".*

Research Method

This is an applied research, or a scrutiny of the transactions in the first part, where I explain the nature of the transaction or the deal, and then I pass a judgment on it, whether allowed or not allowed.

On the second part, I study thoroughly the actual contracts used by various banks and Islamic mortgage companies and other paperwork that the client must sign mutually with the financier.

This research is not meant to set rulings and regulations for different business transations or different models of finance, since our respected scholars in Fiqh Councils have already done superb scholarly work in furnishing such rules. Also, rules for business transactions and modes of Islamic finance could be sought in the classical Fiqh books. The main objective of this humble effort is merely to check whether or not these rules have been considered and accurately implemented.

Sources of Information

This research depends on the following sources of information:

1. Classical Fiqh books belong to the four major juristic schools.
2. My academic background and experience in this field.
3. Fatawa of various Fiqh Councils, especially AMJA.
4. Online resources, especially Wikipedia and Investopedia.

And for the second part in particular, I added to the above:

5. Actual contracts that have been provided for me by inquirers.
6. Companies' websites.
7. Personal communication with top executives of these institutes for verification purposes.
8. Consultation with some scholars and specialists in Islamic finance.

Fiqh Guidelines of This Research

This research abides by the following rules:

1. Transactions and different modes of finance are permissible by default, unless otherwise clearly proven.

2. Adopting the easiest of different opinions of individual scholars and Fiqh Councils, as long as the opinion sounds reasonable to me and not well-known to be a wired or a weak one.
3. Understanding the process and the procedure of conducting transactions before passing a judgment, as judging something properly depends on understanding its reality accurately.
4. And for analyzing contracts, emphasizing only the recognizable shortcomings of these contracts, if any. Minor glitches that could be overlooked will not be emphasized.

If this study can be seen in any way relevant to the subject of Ijtihad (legal discretion), it only focuses on the rulings from the aspect of *Tahqeeq al-Manat,* or in other words, applying the rulings to the specific circumstances. As for *Takhreej al-Manat* and *Tanqeeh al-Manat*, or in other words, delving into the legal theory behind interest and reasonings for the rulings, that is beyond the scope of this study. The Islamic legal framework for the prohibition of interest has been established by jurists long time ago.

Finally, I do not claim that I have covered all transactions in this research, but what I am aware of, providing that the the rulings of Riba are fixed and well-established, but the contemporary transactions are vibrant and developing rapidly, especially in a sophisticated and complex economy, like the American business and finance industry.

I pray that Allah, Glorified and Exalted, accepts this effort, and makes it sincerely for His sake. Peace and blessings be upon our Prophet, Muhammad (s), his family and his companions.

Interest in the Balance of Shari'ah

1. Interest is a major sin that incurs divine damnation and distances one from Allah's mercy. Its prohibition is known by necessity. It is reported on the account of Jabir that *Allah's Messenger ﷺ cursed the accepter of interest and its payer, and one who records it, and the two witnesses, and he said: They are all equal. (Sahih Muslim)*

2. It is also one of the seven fatal sins the Prophet ﷺ warned about. It is the only sin in the entire Qur'an which Allah declared war upon those who commit it. *{O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. And if you do not, then be informed of a war [against you] from Allah and His Messenger.}* *(Al-Baqarah: 278-279)*

3. In terms of the prohibition of interest, there is no difference between the Abode of Islam (*Dar al-Islam*) and the Abode of War. Some scholars - Allah's mercy and blessings upon them all - have explicated that engaging in invalid transactions with non-Muslims in the Abode of War is allowed. But in my belief, they are mistaken because that directly conflicts with authentic evidence pointing to the contrary.

4. General Hardship cannot be used as a justification to allow interest (*Riba*) outside of Muslim lands, neither can difficulty in avoiding it or living in a capitalist society that promotes it be seen as sufficient legal grounds to change the ruling. One can indeed avoid dealing with interest. Whoever finds it impossible to do so should consider living elsewhere.

5. The calls made by some activists for allowing interest so that Muslims may become more financially viable and influential in our society are unfounded. In Shari'ah, means are treated the same as objectives. Allah is best aware of the interests of His servants, and He knows what serves their betterment. For the believer, all that is allowed is what Allah and His Prophet ﷺ have permitted, and all that is forbidden is what Allah and His Prophet ﷺ have forbade.

6. Necessity - according to its technical usage - and general needs should be considered in special circumstances for allowing some interest-bearing transactions. Such situations should be dealt with case by case.

7. Those individuals who have the religious aptitude to reach out to Fiqh councils, such as The Assembly of Muslims Jurists of America (AMJA), for addressing these types of questions, should do so rather than limiting themselves to individual scholarly opinions.

Summary of the Types of Interest

1- Riba could be defined as (Increase or delay or both in certain assets in certain transactions). When considering the key elements of interest-bearing transactions, they either involve Riba of Increase (Al-Fadhl), or Riba of Delay (Al-Nasa') or both of them (Riba Al-Naseeah).

Riba of Increase: The exchange of homogeneous commodities, food or money only, for a cost plus.

Riba of Delay: The submission of one item in any exchange of homogeneous commodities, food or money only, while deferring the other item.

Riba Al-Naseeah: The premium that must be paid by the borrower to the lender along with the principal amount, either as a condition for the loan, or for an extension in its maturity. Usurious items (subject to Riba) are food and money only. Usurious transactions are loan contract (and debts in general) and sale contract. However, Riba might be incorporated in other transactions as well.

2- Causes for debt are wide-ranging and are certainly not limited to loans. For business owners, it may include the wages and salaries of employees, and for consumers, it may include payment plans, or fees for utility services (water, electricity, phone bills and etc.). Hence, every loan falls under debt, but not every form of debt is necessarily a loan.

3- It is important to note that in Islamic law, for the rulings of debt to be applicable, it is enough for the nature of a transaction to fall under this broad definition, even if it is not worded as a loan agreement or referred to as debt.

   This understanding comes handy when assessing the ruling of opening a savings account at a bank that deals with interest. Islamic jurists consider this agreement to be forbidden because it does not meet the religious standards of a loan agreement.

   In this agreement, the bank is essentially a borrower and the client is a lender. The bank makes use of the deposited funds, guarantees the capital and gives interest. Hence, the agreement cannot be considered a profit and loss sharing agreement (*Mudarabah*) because the nature of the *Mudarabah* agreement does not hold the fund manager liable for the capital or the profit. *Mudarabah* is a contract in which an investor (*Rabb al-Mal*) gives capital to a fund manager (*Mudarib*) to invest in commercial enterprise.

It also cannot be considered a trust (*Wadi'ah*), which is an agreement to the safekeeping of a deposit, because *Wadi'ah* is an agreement purely for the purpose of safekeeping. The party overseeing the trust (*Wadi'ah*) cannot make any use of it and is not liable for financial loss as long as there isn't any negligence on their part.

4- Loan agreements can potentially have both types of interest, *Riba al-Fadl* and *Riba al-Nasa'*. If the borrower returns the loan with a stipulated increase, this is referred to as *Riba al-Fadl.* Even if there is no stipulated increase, hence removing the element of *Riba al-Fadl*, if there is anything else imposed upon the borrower, whether it is an item or a required service, this would also be considered *Riba.* This is because every loan that is in any way profitable for the the lender is considered *Riba.*

5- As soon as interest is introduced in a loan agreement, the agreement is rendered sinful, whether that is at the onset of the agreement or upon its conclusion. In pre-Islamic Arabia, when the duration of a loan agreement was completed, the lender would be given the option of fully repaying the debt, or agreeing to an extension with interest. This was later coined as "Pre-Islamic Interest" (*Riba al-Jahiliyya*) and was outright prohibited by the Qur'an and Sunnah.

However, if the borrower decides to give the lender a gift entirely of his own volition, this is not in any way prohibited, and is a kind and noble gesture. In fact, we learned such conduct from the character of our Prophet ﷺ, for he took a loan and repaid the debt with something of greater value. He ﷺ said: *"The best of people is the most excellent in repaying debts".* *(Bukhari and Muslim)*

6- The definition of *Riba al-Nasa'* - as it was mentioned above- is "The submission of one item in any exchange of homogeneous commodities, food or money only, while deferring the other item". In premodern times, bartering goods was very common and Islam warned of interest in any kind of foods, such as dates, barley, wheat and salt. When initiating a monetary exchange or a sale involving these foods, it is required that the amounts are identical and the exchange is immediate (i.e. when the transaction is initiated). If the transaction involves homogeneous items, it is forbidden for either to be deferred.

Based on that, a basic loan agreement should be considered interest since the type (i.e. money) and the kind (i.e. US Dollars) are both the same. However, Islamic law disregarded the deferral of payment involved in a loan because in Islam loans are not profitable ventures. Rather, in Islam, a loan is to be given purely in the spirit of

cooperation and support, and hence, this understanding warranted that it be treated differently from other transactions.

7- **In contracts of sale**, if the requisites of the below different scenarios are not met, one is considered to have engaged in interest at the time of exchange, whether it involves currency exchange or bartering foods:

- **Case #1:** A transaction involving the same type and kind of interest-bearing items: such as a US Dollar and US dollar. In this case, both amounts must be identical. Also, the exchange must be immediate. Meaning, it cannot be a deferred payment.

- **Case #2:** A transaction involving one type but two different kinds: An evident example would be currency exchange. The transaction involves one *Riba* type, which is money, but two different kinds, such as a US Dollar and a Jordanian Dinar. In this case, the exchange must be immediate, but the numbers do not need to be identical.

- **Case #3:** A transaction involving different *Riba* types: For example, selling food for money. This transaction is allowed, and identical amounts and immediate exchange of both items are not required. However, at the time of the transaction, either the item or its compensation must be submitted; a transaction cannot have both deferred.

- No difference between this last case and an ordinary transaction, when a non-*Riba* type is used. This includes an exchange between a *Riba* type and a non-*Riba* type (like selling a car for "x" amount of money) as well as an exchange between two non-*Riba* types (like exchanging a car for furniture). In both cases, immediate exchange of both items is not required. However, at the time of the transaction, either the item or its compensation must be submitted; a transaction cannot have both deferred.

PART ONE

Transactions Commonly in Question

FIRST: BANK LOANS

Whether it is a loan with a fixed interest rate or a variable interest rate, regardless of it being a consumption loan or business loan, bank loans are the essence of *Riba*, forbidden by the clear text of the Qur'an.

However, modern banking has introduced a wide array of new loans and transactions. Below is a few of these options:

1. **MARGINAL ACCOUNTS**: A margin account is a brokerage account in which the broker lends the customer cash to purchase securities. The loan in the account is partially collateralized by the securities and cash. Because the customer is investing with a broker's money rather than his own, the customer is using leverage to magnify both gains and losses.

   This transaction is in many ways similar to a bank loan but the difference is there is no actual transfer of money. Islamic law prohibits transacting with something one does not actually possess. The broker charges the investor money for the right to borrow money. Also, the agreement requires an initial deposit into the account, which would essentially mean that there are two simultaneous transactions in one sale, which is strictly forbidden in Islamic law. In other words, the bank stipulates in the agreement a line of credit of $100,000 pending the client deposits (i.e. loans the bank) $1,000, for example.

2. **HOME EQUITY CONVERSION MORTGAGE (HECM):** This is also referred to as a reverse mortgage. This is a type of loan for senior citizens above the age of 62 that allows them to pull out an interest-bearing loan that does not exceed their equity, or the total amount paid off on their home. This loan is taken out by the borrower as a monthly payment until he dies or decides to sell the house.

   If the price of a home is $200K, for example, and $100K has been paid off as an equity, the homeowner cannot take a loan that exceeds $100K after factoring in the

interest rate. As a collateral, a lien is placed on his equity in the home, and this is why the loan doesn't need to be repaid if the owner is alive. The mortgaging company has full right to sell the home after the owner's death as payment for the balance of the loan.

Regardless of the regulations and the ways that this loan may be repaid, for the purpose of this research, this type of loan is prohibited by Islamic law because it is interest-bearing.

3. It is allowed to take an interest-free loan from a person with wealth from unlawful sources because the unlawfulness of that wealth only relates to that individual and does not extend to others. This applies to wealth gained through interest or any other unlawful source. It is even allowed to accept donations to build mosques or schools from someone with unlawful wealth.

4. According to the preponderant opinion among the scholars, it is also allowed to inherit unlawful wealth. The inheritors will reap the financial gain, whereas the blame will be upon the deceased. However, there are two notable exceptions to this ruling:
    - **First**, if the property inherited is not merely from unlawful sources but rather is inherently "**prohibited due to its substance**" (*Haram li wasfih*), then it must be disposed of and cannot be used for profit. Pork products or liquor for instance.
    - **Second**, if the wealth is **taken unlawfully** (*Haram li kasbih*) by any means of theft or robbery and there is a party clearly entitled, the wealth must be returned to its rightful owner.

    So, the ruling mentioned above applies to unlawful earnings like interest-bearing transactions or money from unlawful employment such as working at credit companies or conventional banks (Al-Qudah)[1]. In Islamic law, prohibited-ownership does not transfer in such an inheritance transaction, so the wealth accrued through interest doesn't have a clearly entitled party. Hence, the prohibition would be upon the collector of interest and would not extend to the inheritor. That being said, it is best to get rid of such wealth by donating it to public interests because avoiding areas of scholarly difference is recommended.

5. **SECURED LOANS**: Commenly known in the US as (Pawnshop). This is a loan in which the borrower pledges an asset as collateral to borrow. The agreement is to pay a fee or interest,

[1] In his book, "**Rulings of Employment in the Finance Industry in the US**", Dr. Main Al-Qudah discusses the nuances of working in this field and assesses potential dispensations Islamic law offers in this regard. The book is available online: http://www.iefpedia.com/english/wp-content/uploads/2015/01/Rulings-of-Employment-in-the-Finance-Industry-by-Dr-Main-Al-Qudah.pdf

even if the loan is paid off within a certain period of time. If the borrower does not pay off the loan, the lender may seize the collateral. However, defaulting on a secured loan does not negatively affect the borrower's credit report. This loan agreement is not allowed because it is an interest-based loan. However, if it is proven that a certain pawnshop does not charge interest except in case of default, then borrowing from that pawnshop is permissible, as needed only.

6. **ROTATING SAVINGS AND CREDIT ASSOCIATION (ROSCA):** a group of individuals who agree to share their wealth for the sake of **peer-to-peer lending**. In this model, the group sets a borrowing schedule for all of the individuals involved. This type of agreement is completely fine according to Islamic law because it does not relate to interest.
   Although similar to this model, credit unions are much more prevalent in the United States. Credit unions might hold a not-for-profit status in the sense that their objective primarily is to serve their members, not to maximize profit. Credit unions offer a number of financial services to their members, and they are unique in that those who have accounts are its owners and its members, and they elect their board of directors. Since the owners are also the customers, there isn't a conflict of interest.
   Even though their not-for-profit status might grant them tax-exemptions and they offer a number of services to their members, none of this would excuse the interest-bearing transactions that they offer. Hence, becoming a member of a credit union is basically allowed, but benefitting from any interest-based service would **not be allowed** because of the legal maxim: ***"Means are given the same ruling as the ends".***

7. Some companies also offer their employees interest-bearing loans but offer to pay the interest rate on their behalf. If the company lends the money in this case, there is no *Riba* in the agreement because *Riba al-Naseeah* is paid by the borrower to the lender. In this case, the company is essentially paying an 'interest rate' to itself. If a third party is lending the money, it is still allowed if the company is one who pays the interest; the gain will be for employee and the blame upon the company. Every individual will be held accountable for what he earned.

8. Regarding the fees for issuing a loan, if it is a one-time fee and is not a percentage from the amount of the loan, then it is allowed. However, if it is a percentage, then its similitude to interest is very strong. If this percentage is a periodic fee – if, for example, the loan is given in payments- then it is clearly *Riba*, even if it is referred to as administrative fees.

9. Regarding payment plan fees, the ruling is similar to administering fees for issuing a loan. For example, American universities allow students to pay tuition in installments, and they may handle the bookkeeping and finances directly, or outsource it. If the fees issued for the installment plans are fixed - and they indeed are-, even if they are periodical, it would

not be considered interest. These fees would be for services rendered, which would be bookkeeping and collection. As for the students, the fees could also be considered as part of the original loan. For example, if the tuition is $1,000 paid outright, and the university takes $25 for every installment and a maximum of (3) installments, the tuition agreement would be ($1,000) paid immediately or ($1,075) paid in installments.

10. It is allowed to deal with a Shari'ah compliant branch in a bank that deals with interest as long as the actual transaction is allowed such as a profit and loss sharing contract (*Mudarabah*), partnership (*Musharakah*), *Murabahah* or other financing options that are valid according to Islamic law. These transactions would not be tainted by the fact that the bank's funds are from unlawful means. The Prophet ﷺ did business with the polytheists of Makkah and the Jews of Madinah, and in fact, he even ate from the food offered by the Jewish tribes, fully aware that they engaged in interest.

11. Partnering with or engaging in any other form of business, with someone whose wealth is from mixed sources (i.e. partially forbidden), whether a Muslim or non-Muslim, such as someone who has Halaal income but gives or takes interest-bearing loans, is allowed. In fact, it's even allowed to deal with one whose entire wealth is from unlawful means. As long as the partnership is in something Halaal, there is no blame, but it is better for a Muslim to partner with righteous people.

12. It is allowed to work at a company that takes interest-bearing commercial loans if the company's business is Halaal because Allah says: *{And whoever commits a sin only earns it against himself} (An-Nisa': 111)*. It is also allowed to work at a company that gives interest-bearing loans as long as the business is Halaal and the employee does not play a supportive role in issuing the loan, even if it is mere supervision.

13. If one is in dire need of money and cannot find an interest-free loan, it is allowed to buy a car, for example, with deferred payments and sell it to a third party that will pay upfront. Islamic jurists refer to this practice as *Tawarruq*. This should not be made a habit because some jurists prohibit this practice, and it is recommended to avoid areas of scholarly difference. If the buyer sells the item back to the seller in the same fashion, it would fall under the sale of *Al-'Eena*, which the Prophet ﷺ expressly prohibited.

This method of *Tawarruq* is different than the practice done by some Islamic banks in the Muslim World, also referred to as ***Tawarruq* banking**. In this transaction, the bank sells the merchandise on the basis of *Murabahah* with a deferred payment to the client. Then, the bank sells the merchandise outright on behalf of the client to a third party -usually for a cheaper price- and then gives the capital to the client. So, the client received (8), for example, from the bank immediately from the second transaction and owes the bank (10) for the first transaction. This transaction is forbidden because even if it is not *Riba* per se,

it is a very similar. Yet, contemporary Fiqh Councils are not unanimous regarding its prohibition.

14. Letter of Guarantee is a type of contract issued by a bank on behalf of a customer who has entered a contract to purchase goods from a supplier and promises to meet any financial obligations to the supplier in the event of default (Chen)[2]. The bank does not issue this letter unless the client (i.e. importer) pays at least part of the cost upfront. In essence, the client has given the bank power of attorney if he pays the entire cost, and taking compensation for acting on behalf of another is allowed. All issuance and administrative fees are completely allowed as long as it is the average market price.

However, if the client has only paid part of the cost, the bank either guarantees or sponsors the remaining balance. In this case, it is forbidden to take compensation for sponsorship because it is similar to a loan that incurs financial benefits, whereas administrative and issuance fees are allowed. However, if the bank pays the importer on behalf of the client and then takes a larger sum from the client, it would be considered a loan with interest, which is clearly forbidden.

15. **Factoring:** is a financial intermediary service based on purchasing receivables from a company for a discount. A factor is essentially a funding source that agrees to pay the company the value of the invoice less a discount for the profit of collecting the entire debt, and possibly pays commissions/fees to an agent to help collecting the balance of the invoice. The factor advances the invoiced amount to the company that sold the invoice immediately. Factoring is not a permissible transaction since buying debts with discount by a third party leads to clear Riba. Upfront payment of the agreed-upon amount by the factor to the company, whether fully or partially, does not make any difference or change the ruling, both transactions are considered prohibited.

The Fiqh Council stated in this regard "Selling undue debts to a party other than the debtor is not permissible, whether paying upfront with the same currency or a different one, as this leads to Riba. Delaying the payment or part of it is not permissible as well, whether using the same or different currency, as this is the prohibited credit-for-credit, sale where there is no submission of any of the traded items. No difference acknowledged whether the debt is a result of a loan or credit sale".

16. **Debt Collection:** a collection agency or debt collector as an agent, is a company hired by lenders to recover funds that are past due or accounts that are in default for a reward or a

[2] http://www.investopedia.com/terms/l/letter_of_guarantee.asp

portion of the collection. Lenders or creditors usually hire a collection agency after they have made multiple attempts to collect their receivables.

This service is permissible, as long as the agency hired by lenders under a clear understanding. This transaction could be interpreted as *Ja'alah*, which means: (certain reward is paid upon accomplishing certain task). In our case; upon the real collection of the debt. However, if the agency decides to buy the debts, then the service becomes (Factoring) like the above one, even if it is called otherwise, and it is null and not allowed.

Another violation is the uncertainty involved, where there is no assurance that the agency will collect its money. In the Hadeeth "The Prophet PBUH has banned the sale of *Gharrar*" or uncertainty.

On the contrary, discounting a balance by the creditor to collect it from the borrower is allowed, as long as a third party is not involved to benefit from this transaction.

SECOND: LATE FEES

1. Fines issued due to an account being delinquent also fall under interest, whether it's for a loan, utility bill or a payment plan, because all of these are forms of debt, and every increase on the original capital of a debt is considered interest unless there is clear evidence that points to the contrary.

   However, it is noteworthy that these fines fall under "Forbidden for other cause" (*Haram li ghayrih*) in Islamic law, i.e. a prohibition of means, not "Forbidden in itself" (*Haram li thatih*). This means that it is only a means that leads to paying interest and can be fully avoided if the borrower pays off the debt by its due date.

   Matters "Forbidden for other cause" are allowed by Islamic law on the basis of need, and there is a clear need for utilities in the modern day. All companies that offer utility services stipulate non-negotiable **delinquency fines**, so this case would fall under general hardship (*'Umoom al-Balwa*) and difficulty that warrants ease.

   Furthermore, stipulating the payment of fines in the agreement does not invalidate the agreement according to Islamic law; rather, the agreement remains valid and the stipulation is voided. Thus, if the aforementioned - items or services - falls under the category of needs, a Muslim may engage in such a transaction but must be keen to pay on time to avoid interest because the taker and giver of interest are equally sinful, as the Prophet ﷺ said.

If the fines are paid to a third party, such as to a collections agency, or to legal expenses, it is no longer problematic.

2. Some late fees are allowed according to Islamic law. For example, if a buyer and contractor agree to a **penalty clause** if the contractor does not complete the project by the deadline. The nature of a penalty clause is different than other late fees because late fee involves a borrower and a lender. Also, penalty clause is paid by the (service provider) to the (customer), while late fees are on the opposite; where customer pays to the service provider.

   In some contracts, this penalty clause is referred to as interest because it is a percentage of the amount paid to the contractor for the property. However, this would not be considered interest according to Islamic legal terminology. The contractor does not borrow money from the buyer, thus there is no loan involved, nor is the property considered an interest-bearing item for an immediate exchange to be required.

   Of course, that's assuming the deal is a conventional sales agreement, but the more accurate depiction is that it is ***Istisna'***, or (Manufacturing Sale) which is a contract of sale in which the seller undertakes to manufacture or construct specified items with his own raw materials according to particular specifications (Bakir)[3].

   Ultimately, referring to a penalty clause as interest doesn't prohibit it because according to Islamic law, the ruling of contracts is judged by the meanings and objectives, not merely the wording. However, it is best that the penalty clause is a fixed amount for a set period, not a percentage

3. Late fees may be in favor of the individual, and it may even be paid on his behalf. For example, if a taxpayer notices a mistake in his tax refund and proves to the **Internal Revenue Service (IRS)** that he paid more taxes than owed in a previous year, the IRS would refund him the amount with interest.

   Even though paying taxes is not a contract of sales or a loan, the Fiqh breakdown of the extra amount mistakenly taken by the government is still considered a debt. When this debt is repaid, the amount the government returns in interest is forbidden since the government is required to pay interest by law. If the government was not required to pay interest, the added amount could be interpreted as benevolent repaying a debt.

Third: Credit Card

[3] http://investment-and-finance.net/islamic-finance/questions/what-is-the-difference-between-istisnaa-and-parallel-istisnaa.html

A credit card agreement is essentially a loan agreement. The credit card company offers the client a line of credit that can be immediately accessed by using the card. For Muslims, this agreement is subject to the rules and regulations that govern loan agreements in Islam.

Credit card companies sometimes collect debts without interest. Beyond the scope of loans, they have multiple streams of revenue, some that are allowed (*Mubah*) and others that are forbidden. A client must agree to all terms of the contract, among which is paying interest.

Hence, the default ruling is that it is forbidden to initiate this contract because it entails agreeing to pay interest, which is strictly forbidden upon Muslims.

However, agreeing to pay interest without actually paying it is "Forbidden due to other cause" (*Haram li Ghayrih*) because it leads to an unlawful practice, whereas actually paying it is "Forbidden in itself" (*Haram li Thatih*) because it is the essence of interest.

Islamic jurists distinguish between the two cases. A matter forbidden in itself is only allowed on the basis of necessity (*Daroorah*) - based on its legal definition – and a matter forbidden due to other cause is allowed on the basis of need (*Hajah*).

There is no necessity (*Daroorah*) to carry a credit card, however there is a serious need for it, at least in America, because there are a number of transactions that can only be done with a good credit history, such as taking out a loan, renting, buying something in installments and etc. If one doesn't build credit, immense difficulty will be faced. The way to build good credit is by getting a credit card and regularly repaying the debt on time. Furthermore, some points of sale do not accept any payment method other than credit card.

Hence, it is allowed for Muslims in the West to own credit cards with the following requisites:

1. The presence of an actual need (*Hajah*) for the individual.
2. Using it in an allowed (*Mubah*) way that does not lead to paying interest.
3. Using it only to the extent that covers the need because matters allowed on the basis of need (*Hajah*) should be limited to the scope of needs.

Allowed Credit Card Transactions:

1. Buying essentials or paying bills as long as the balance is paid in full, and by the due date.

2. Purchasing from outside the US if there isn't any interest tacked on to the credit card purchase. There is no issue if the additional amount is a profit from currency exchange or compensation for wiring the money to the seller outside of the country.

3. Withdrawing money from an ATM without any additional charges. However, if the charges are compensation for services rendered, they are allowed, whether the charge is a fixed amount or even a percentage. Charging a fixed amount in this case would be safer in avoiding interest. The ruling is the same whether the ATM belongs to the cardholder's bank or to a third party. In reality, most credit companies charge interest on cash withdrawal, thus, using credit card for cash withdrawal is prohibited.

4. Paying credit card renewal fees or issuance fees. These fees are unrelated to the actual use of the credit card and are completely fine.

5. Business owners accepting credit cards as a means of payment. Credit card companies deduct an amount or percentage in every transaction that the card is swiped. This means that business owners receive less than the retail price in credit card transactions.

6. Transferring a loan from a credit card company to another company that doesn't take interest. Transferring the loan may require one-time fees for transferring the loan, and this is not problematic according to Islamic law.

7. Promotional Discount for Purchase: some credit card companies offer their clients promotional discount when purchasing from partner stores. To participate in this reward program, the client will be charged membership fees, which are usually automatically withdrawn from the client's account.

This agreement is allowed because the monthly deduction is not a part of sale or loan agreement, rather a privilege given to subscribers, in which they might leverage on it, and might not.

FORBIDDEN CREDIT CARD TRANSACTIONS

1. Delaying credit card payments beyond the due date, even when used to buy essentials or pay utilities, or paying the credit debt in payments, because both scenarios would entail interest. To avoid paying interest, the minimum could be paid monthly is the (statement balance), while paying the (current balance) is better, yet, not required.

2. Paying extra for purchases outside of the US, if that is in the form of interest, not if it is for currency exchange or for wiring fees.

3. If an ATM withdrawal entails an interest charge, not simply a service fee. If there is interest tacked on to withdrawals - whether the ATM machine belongs to the client's credit company or to a third party – then the transaction is prohibited, whether it is a set amount or a percentage.

4. If using a credit card entails paying interest anyway, even when paying before the due date.

Secured Credit Card

This is a type of credit card that is backed by a security deposit used as collateral on the line of credit available with the card. Money is deposited and held in the account backing the card. The limit will be based on both your previous credit history and the amount deposited in the account (Segal)[4]. Without a credit history, the amount deposited is the limit on the card. The contract is usually for one year, and at the end of the year, the company returns the deposit, sometimes with interest.

This agreement is in ways similar to an unsecured credit card because the deposited funds are not the same funds withdrawn. In other words, if the client used the entire amount and then wanted to cancel the card, the entire balance must first be repaid before the deposit will be returned. Hence, the rulings that apply to a secured credit card are the same ones that apply to an unsecured credit card.

If the credit card company returns the deposit with interest, one should get rid of the interest amount by giving it to public interests. One should not consider this a donation because Allah, Glorified and Exalted, is pleasant, and only accepts that which is pleasant and pure. In other words, giving charity (*Sadaqah*) is an act of worship, and this act of worship should not be fulfilled with unlawful wealth. God willing, he will be rewarded for removing unlawful wealth from his possession.

Some reliable scholars, such as Shaykh ibn Taymiyyah, view that this wealth is allowed because the individual will be questioned about his own actions, not about the actions of others. The credit card company is the party that has chosen to invest the deposit in interest, not the client, and without seeking his permission. Hence, the client would not be liable for taking this money according to this opinion, and Allah knows best.

[4] http://www.investopedia.com/terms/s/securedcard.asp

FOURTH: DEBIT CARD

A debit card is very different from a credit card because the money used is actually owned. It is more of a means to easily accessing the funds in your checking account. Hence, there is no issue in using a debit card as long as there are enough funds in the checking account. However, it is forbidden to allow the account to overdraft because in such a case, the bank will cover the expenses on behalf of the client and charge an **overdraft fee**, which is essentially interest. Even though it's referred to as an overdraft fee, it doesn't change the fact that it is an interest-bearing loan.

Debit card issuance fees and withdrawal fees are allowed because the funds withdrawn are not debt, so these fees would be for services rendered, not for interest.

Some debit cards can be used as a credit card as well. If it used as a credit card the funds will not be immediately withdrawn from the account. Using it as a credit card may also be useful if a business doesn't accept debit cards. Even if a debit card can be used as a credit card, it still remains a debit card in terms of its ruling in Islamic law.

Furthermore, it is not allowed for a client to pay for overdraft protection, which is a credit arrangement under which a bank automatically extends a short-term loan to cover a check's amount that exceeds the check writer's (drawer's) account balance.

Although this arrangement ensures the check is not returned insufficient funds, it is prohibited because guaranteeing another's financial obligations entails financial lending, and thus, it must not be for profit. Otherwise, the guarantor benefits when paying on behalf of others. It is well-established that each loan brings stipulated benefit to the lender is Riba.

FIFTH: SAVINGS ACCOUNT

A savings account is a deposit account held at a retail bank that pays interest but cannot be used directly as money in the narrow sense of a medium of exchange (for example, by writing a check). These accounts let customers set aside a portion of their liquid assets while earning a monetary return (Wikipedia)[5].

In Islamic law, a savings account clearly entails interest because the legal breakdown of this agreement is more similar to a loan than a trust. The bank invests the money and guarantees the capital to the client with interest, regardless of the bank profiting through investing the money or not.

[5] https://en.wikipedia.org/wiki/Savings_account

Had a savings account been similar to a trust (*Wadi'ah*), the bank would not be allowed to invest it and would not be expected to guarantee it in case it was lost, according to Islamic law. It also can't be considered profit and loss sharing (*Mudarabah*) because according to the nature of this agreement, the client is not liable for any damage or loss. But in a profit and loss sharing agreement, the financier (i.e. the client) is fully liable. Hence, a savings account can only be likened to an interest-bearing loan.

RULINGS RELEVANT TO SAVINGS ACCOUNTS

1. Opening a savings account with the intention of getting rid of the interest by giving it to public interests doesn't make it an allowed transaction because taking interest is forbidden for itself (*Haram li thatih*), and hence, it would only be allowed if there is a necessity. There cannot be a necessity that would subject one to take interest from otherds, although there might be a necessity that would warrant giving an interest to others.

2. Opening a savings account to use the interest earned to pay off a balance of interest due to the bank from other transactions is also forbidden according to Islamic law because of the known legal maxim: *"Means are given the same ruling as the ends"*.

   Hence, both giving and taking interest are forbidden. One who newly discovers this ruling after having collected a sum of money through interest may use that money to pay off debts that involve interest. Hopefully, being ignorant of such rulings is excusable according to the Islam law.

3. Claiming to open a saving account to protect your money from fraud or identity theft is not enough of a reason to warrant this practice, because the possibility of theft is merely probable, whereas the sin for opening a savings account is certain. When probability and certainty conflict, certainty takes precedence.

4. Opening an additional checking account to save funds is the lawful alternative. If an individual is afraid of his banking information being used in identity theft, he can have one checking account with a small amount of funds to use for purchases and paying bills and the other can be used to safekeep the money.

5. Money Market Account: is an interest-bearing account that typically pays a higher interest rate than a saving account, and which provides the account with limited check-writing ability, thus, offers the account holder benefits typical of both saving and checking accounts, in addition to a settling account for investments in the stock market transactions. This type of account is likely to require a higher balance than a saving account, invests in low-risk assets, and is

insured. Obviously, a Money Market Account is another kind of a saving account but with different features, thus, it is prohibited for interest use.

However, since all investment accounts in the stock market require the use of this type of account to settle transaction, the account is to be used for this purpose only, and all interests gains to be separated and disposed of. This is based on the maxim of necessities, where the need requires the use limited and restricted to the actual need.

6. Health savings account (HSA): is a tax-advantaged medical saving account available to taxpayers in the United States who are enrolled in a high-deductible health plan. The funds contributed to an account are not subject to federal income tax at the time of deposit. HSAs are owned by the individual and its funds roll over and accumulate year to year if they are not spent.

As of the ruling of Muslims participating in it, it is permissible in order to procure the benefits granted to its participants. However, Muslims should stay away from any usurious earnings, whether by avoidance, which is preferable, or riddance, in case their investments were tainted by them.

SIXTH: CHECKING ACCOUNT

A checking account is a deposit account held at a financial institution that allows withdrawals and deposits (Frankenfield)[6]. This is an essential banking service that people need to facilitate their day to day transactions. In fact, some transactions cannot be completed without having a checking account.

RULINGS RELEVANT TO CHECKING ACCOUNTS

1. Banks usually use the money deposited in checking accounts to finance interest-bearing loans knowing that the larger part of the money deposited by the clients is not immediately used.

2. Essentially, by depositing money in this interest dealing institutions, Muslims are indirectly supporting these banks in giving out interest-bearing loans, and that is prohibited by Islamic law because it entails supporting sin.

[6] http://www.investopedia.com/terms/c/checkingaccount.asp

3. However, because of the great need for this service, opening a checking account at a bank is allowed as long as there remains no non-controversial alternative. If there is an alternative, such as an Islamic bank, it is forbidden to keep an account at a traditional bank.

4. One must be heedful of avoiding interest even in checking accounts because some checking accounts accrue interest as well.

SEVENTH: INSTALLMENT PLANS/FINANCE

Fiqh councils have ruled that it is allowed to buy products with an installment plan, even if the price is subsequently higher. However, the price of purchasing outright or via an installment plan should be agreed to at the time of sale. For example, the agreement should state that the product is for $7,000 outright or $10,000 with installments.

Allowing this transaction based on default ruling is contingent upon two requisites, a major and a minor one:

1. Major: the buyer cannot introduce a third party to finance the agreement on his behalf with terms that involve interest. If the financial lending company is involved, it will pay the value of the agreement on behalf of the buyer. It will not assume ownership of the merchandise, nor will it be liable carry for its loss or ruin. Hence, the financial lending company is issuing a loan to its client (i.e. the buyer) and he agrees to repay it with interest. This is the essence of interest, and that is why this transaction would be forbidden.

2. Minor: the seller cannot stipulate a fine upon the buyer if he is delinquent in payment. If the seller does stipulate a late fee upon the buyer, the agreement is allowed if the buyer is in actual need of the product and cannot find an alternative. However, the buyer in this case must avoid being late in his payments.

If there isn't an actual need, or there are other alternatives, it is forbidden to buy from a seller that stipulates late fees because this stipulation is "forbidden due to other cause" (*Haram li ghayrih*), and this is only allowed on the basis of need. As previously mentioned, a matter allowed on the basis of need cannot be extended beyond its scope.

APPLICATIONS FOR THIS TRANSACTION IN THE US

1. Dealership financing is initially an agreement between the buyer and the dealer to enter a contract wherein a car is financed through the dealership (with the Finance Department of

the car dealership in particular), and the buyer agrees to pay over time the amount financed plus a finance charge or a certain %APR, which is obviously interest. Hence, the agreement is forbidden because the Finance Department involves is a fully independent third party that collects interest off of the loan.

The fact that the dealer/finance department typically sells the contract to a bank, finance company or credit union — called an assignee — that services the account and collects clients' payments (Federal Trade Commission)[7] has nothing to do with the status of this transaction.

2. Direct lending, which is auto financing via a third party, is allowed as needed only, if it is an interest-free loan, or 0% APR, because it entails paying interest after the grace period.

3. The element of interest in auto financing can be avoided if the finance charge is tacked on to the original price of the vehicle and the buyer makes a down payment, commonly known as Capitalizing the Interest.

4. Likewise, if an auction's owner agrees to give 0% APR line of credit to a car dealer to buy cars from that auction, then the potential interest could be avoided if both the total price and the deadline are increased. For example, instead of agreeing to pay $100,000 total price of purchased cars within 3 months, the agreement could be paying $105,000 total price within 6 months.

   However, car dealers have to be careful! because usually the line of credit is offered by a bank or credit company, not by the auction's owner directly. In such a case, if the loan is 0% APR, then it could be permitted due to the need. This transaction is commonly known as Floor Plan.

5. There is rarely a contract in the US that does not stipulate late fees. The stipulation of late fees is typically a non-negotiable clause in the contract. So, it is allowed to engage in such contracts on the basis of general need and general hardship, but Muslims must do their best to make their payments on time.

EIGHTH: AUTO LEASE-TO-OWN AGREEMENT

Under an auto lease agreement, a financier (bank or credit company) purchases a car from the car dealership on behalf of the customer, and then leases the vehicle to the customer, who in turn makes monthly payments. At the end of the term of the lease, the car dealership gives the

[7] https://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing

customer the option to purchase the vehicle in return for a final installment (Residual Value). Alternatively, the customer may choose to "trade in" the vehicle, or re-finance the residual and continue the lease (Stratton Finance)[8]. If the car is returned before the end of the term, a penalty clause in the leasing agreement takes effect.

Some note that the controversial element in this transaction is that the dealership sells the car to a third party, i.e. the bank, which checks the applicant's credit history and monthly income to assess if he is financially viable before approving the lease. Even though it appears similar to a rental agreement, they assume that the nature of the agreement is a sale from the dealership to the bank and an interest-bearing loan from the bank to the leasee, and hence, they consider it forbidden.

I believe that there is no basis for this argument because the applicant in no way deals with the bank in this transaction, and thus, cannot be held responsible for the dealership's dealings. In this transaction, the agreement is between the leasee, i.e. the client, and the leasor, i.e. the dealership. Since the transaction is a leasing agreement and there is no sale or loan apparent, there is no element of interest to begin with because interest is only considered in sales and debts.

NINTH: EARLY WITHDRAWAL FROM RETIREMENT ACCOUNTS, LIKE 401(K)

If an individual decides to make an early withdrawal from his 401(K), he may be subject to taxes and an early withdrawal penalty. In some cases, the account holder may qualify for an exception if it is a disability withdrawal. If the original account holder dies, the beneficiaries may seek distributions of an inherited 401(K).

An employee can make an early withdrawal from his 401(K) by doing one of the following methods:

1. Take an interest-bearing loan from the investment company. The company would give him funds directly from his 401(K) and may impose a penalty with interest on the account. Clearly, this transaction is not really a loan, even if named as such because it is from his own earnings. Hence, this transaction is allowed because meanings and objectives are given the ultimate consideration in transactions, not the word structures. This method will save the withdrawn amount from additional taxes.

2. The employee may directly withdraw from his 401(K), in which case penalties are imposed on the account. This method is also not problematic.

[8] https://www.strattonfinance.com.au/car-finance/learn/faq/car-lease/what-is.aspx

It is noteworthy that companies stipulate these clauses to discourage employees from withdrawing from their 401(K) before retirement or disability. Also, the employee may not exceed the maximum early withdrawal percentage unless they qualify for an exception.

TENTH: INVESTMENT OPTIONS FOR 401(K)

In many cases, an employee can select any of the following investment options:

1. **STABLE VALUE FUND**: Or a saving account that has a fixed interest rate. The client loans his money to the investment company, and in return, the company guarantees the investment by law and the account accrues interest. This option is clearly forbidden because it is interest.

2. **BALANCED FUND**: Usually 50% stocks and 50% bonds. This option is also forbidden because bonds are interest-based loans.

3. **LOCAL STOCK FUND**: This option is allowed as long as the stocks are for companies with Halaal dealings.

4. **INTERNATIONAL STOCK FUND**: This option is also allowed with the same requirements as the previous.

5. **EMPLOYER STOCK FUND**: This is also allowed as long as the company engages in Halaal dealings.

SUMMARY OF REQUIREMENTS FOR HALAAL INVESTMENT

1. The invested capital and the profit cannot be guaranteed. Hence, choosing Stable Value Fund is prohibited. Also, Balanced Fund option is forbidden because a bond is essentially a loan with interest in which the borrower guarantees the money and the interest.

2. One cannot invest in stocks of companies with unlawful dealings, such as banks, credit card companies, wineries, cigarette and tobacco products, gambling, casinos, musical instrument companies, adult film productions, mortgage companies… etc.

3. Within the Halaal core business companies mentioned above, the Haraam investment, Haraam assets, and the debt-equity ratio have to be to the minimum.

   Socially responsible investing Companies (SRIC), also known as socially conscious, "green" or ethical investing, is any investment company that follows strategy which seeks to consider

both financial return and social good to bring about a social change (Wikipedia)[9]. Usually, they avoid investing in whatever is harmful for people or environment.

A Muslim may reach out to a socially responsible investing company to evaluate how Sharia compliant his portfolio might be[10].

If an employee doesn't have a choice in the type of investments, he still may benefit from the 401(K) investment. However, he must make an effort to discover the nature of the investments and the amount of unlawful wealth accrued so that he may discard unlawful earnings from his ownership by giving it to general causes.

Some modern Islamic scholars hold that all forms of 401(K) are allowed, regardless of the nature of the investment. They explain that as being part of the employee package. Along with their income, employees often receive special offers and incentives, such as travel deals, health insurance, 401(K), paid vacations and etc.

They argue that the employee is allowed to benefit from all the above because they are peripherals to the agreement. Peripheral matters are usually not given the same scrutiny as the main contract. Since that is the case, allowing an employee to benefit from his 401(K) should not be an issue because the company offers it as part of the package in the employment agreement and there is clear need for it. Choosing the type of investment is at the company's discretion, and hence, any blame should be directed against it for choosing to invest in something unlawful.

Even though there is some depth and evidence to back this opinion, avoiding it is better and more religiously precautious. Islamic jurists have long championed the principle that avoiding scholarly disagreement is a virtue.

ELEVENTH: LATE REGISTRATION FEES

Schools among other institutions give students three options to pay for tuition fees. If they pay on time, they will receive the average rate, but if they pay before time, they may receive an early-bird discount. And if they are late, they will have to pay what is so called "late registration fee".

9 https://en.wikipedia.org/wiki/Socially_responsible_investing

10 Our Islamic Finance Department provides this service: https://www.guidancecollege.org/Eltizam

This transaction is allowed because these are just three different prices for the same service. Prior to registration, there is no agreement between the school and the student, so the "late fees" are not actually penalties; rather, a higher price for the same service, not actually interest.

This is different than the ruling of stipulating a penalty clause if a client's account is delinquent on the monthly payments. This would be considered interest. The company can protect its rights by requiring co-signers or canceling the account if the client is delinquent on two consecutive payments.

Twelfth: Keeping Unlawful Wealth after Repentance

1. For Muslims, the following are examples for unlawful earnings: working at a bank, a mortgage company or a credit card company, gambling, working at a bar, a cigaraette company, a night club, selling drugs, pornography, prostitution, Musical instruments, or gives an interest-bearing loan.

   If a Muslim earns wealth from unlawful sources then intends on sincerely repenting to Allah, it is allowed to keep those earnings according to a valid opinion by the scholars. Genuinely feeling regret and changing one's conduct is enough to purify that wealth and make its use lawful. Allah says: *{Whoever receives an advice from his Lord and desists (from indulging in Riba) then what has passed is allowed from him. But whoever returns (to dealing in interest or usury) those are the companions of the Fire; they will abide eternally therein.} (Al-Baqara: 275)*

   The opinion that says it is sound has strong legal backing, especially when considering cases in which the repentant is in dire need of the money and will face evident hardship if he discards the unlawful earnings from his ownership. Similarly, it is allowed, if his practice of Islam is weak and asking him to discard that wealth will be a major obstacle in the way of his repentanc. Otherwise, it is safer and more religiously precaucious to discard the money. However, unlawful wealth that has intrinsic prohibition, like liqure or pork products or so are different in ruling. Unlawful wealth is to be discarded entirely.

2. For Muslims, interest falls under unlawful earnings. In legal disputes, the judge may award the creditor reparations rule if the debtor avoids repaying a debt. Even if there is no stipulation of interest in this loan, or even if the transaction was a sale and had nothing to do with interest, these reparations are essentially interest in Islamic law, whether it is referred to as such or not. *Riba al-Jahiliyyah* that was practiced by the Arabs in pre-Islamic Arabia was also an interest-free loan initially, and the Qur'an and Sunnah unequivocally prohibited those practices.

"Usury in the Jahiliyya was that a man would give a loan to a man for a set term. When the term was due, he would say, 'Will you pay it off or increase me?' If the man paid, he took it. If not, he increased him in his debt and lengthened the term for him." (Al-Muwatta') This hadith shows that *Riba al-Jahiliyyah* was initially interest-free, and interest was later introduced in the agreement and Islamic law still prohibited it. So, the judge's verdict does not change the ruling from unlawful to allowed and vice versa.

3. In order for this unlawful income to become Halaal, the wealth cannot be relating to the rights of others. If the money is stolen, embezzled, taken by force or taken as a bribe and the original owner seeks compensation, mere repentance is not enough. All rights must be returned to their rightful owners, or to their inheritors if they already passed away. If the rightful owners or their inheritors are not known, then the money has to be getting rid off by paying it for the benefit of the society. Off course, it would't be counted as Sadaqah. However, if the repentant is in need for that money, then he can take what suffices his need.

4. If an individual lends money with interest and repents to Allah before collecting the loan, it is forbidden to collect more than the principal amount. Allah says: *{But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged.} (Al-Baqara: 279).*

   If others owe someone money due to a Haraam service he provided or Haraam transaction he got involved in before accepting Islam, yet, received his money after embrassing Islam; it is better for him to dispose the money, but he does not have to. This is because he is entitled to that money before becoming a Muslim. Accepting Islam necessitates negates all previous sins.

5. If an employee's main source of income is a job that engages in forbideen activities, it is allowed for him to keep that job until he finds another alternative. However, he must only take the amount that covers his need and the need of his dependants. As for the remaining income, he must discard it from his ownership and give it to public interests without the intention of charity. That being said, the individual is also required to actively search for another job.

6. As for the borrower, repentance would entail immediately ceasing to engage in those practices, feel a burning sense of regret and to resolve to never resort to the act ever again. However, the scholars are in agreement that there is no need to cleanse his wealth because he was giving interest, not collecting it.

7. When Haraam money is to be disposed, it should be given to public interests without the intention of charity. This includes building a Masjid and maintaining it. The "prohibition status" is limited to the direct owner of the money due to the reason of gaining the money, but is not extended to other beneficiaries when they receive the money as a gift or as a donation.

THIRTEENTH: SALES PROMOTIONS

Some businesses offer sales promotions to incentivize their customers to make purchases, such as offering store credit for buying a certain amount of prodcuts, or offering a rebate, which is an amount paid by way of reduction, return, or refund on what has already been paid or contributed (Wikipedia)[11]. Similarly, some banks offer cash bonuses for opening new accounts.

These promotions and rewards do not present any legal issues in Islamic law. Actually, they represent the opposite of interest. Businesses are actually giving up part of their profits to encourage customers to buy, and banks compete with one another in offering the best incentives and rewards to gain more customers. As for the spirit of interest-bearing transactions, generally speaking, they tend to be predatory and exploitacious by nature.

However, it is important to note that certain cases in this regard can be controversial. For example, if an individual opens an account and deposits an insignificant amount of cash merely hoping to win a cash bonus and not actually intending to make use of the account, these rewards will be a form of 'concealed interest'. This practice is unlawful, and it entails two prohibitions: Dealing with interest and gambling. Reliable scholars should be sought for insight on the nuances of this issue.

FOURTEENTH: NON-MONETARY REWARDS

Some credit cards offer frequent flyer points or merchandise points instead of cashback rewards. The credit card holder gains points for every mile traveled on purchases made with the credit card. Once a certain amount of points is earned, the customer receives discounts and even free tickets.

Other examples of non-monteary rewards would be receiving a free gift when making certain purchases, or a buy two get one free sale.

[11] https://en.wikipedia.org/wiki/Rebate_(marketing)

These rewards also do not present any legal issues because on one end it doesn't involve money, and on the other, as previously explained, this is the opposite of interest. Interest involves an increase, whereas in this offer, the company is giving up part of its profits for the sake of incentives and consumer relations. These rewards programs are considered as conditional gifts by the sellers.

FIFTEENTH: CHECK CASHING SERVICES AND THE LIKE

1. Some businesses offer check cashing services, and some people prefer that over cashing it at a bank. The fees for this service may be a fixed amount, and it may be a percentage.

   Many scholars interepret this transaction to fall under currency exchange, and hence, the transaction would be forbidden because the amounts need to be identitical and the exchange immediate, as is explicitly mentioned in Prophetic traditions. So, in this regard, the transaction involves interest. These scholars add that the company takes an amount or percentage as compensation for the risk of fraudulent checks or insufficient funds.

   In order for this transaction to be valid, these scholars also require that the store cashes the check at the bank to confirm that there are enough funds to cover the check. Then, the store must give the full amount to the customer in order to receive the agreed compensation.

   This opinion is certainly safer and more precautious. However, the fees could be seen as compensation for the agency contract (*Wakala*) or as a commission *(Ju'alah)*, or hiring compensation *(Ijarah).* The store would deserve the compensation for its services. Hence, cash checking services actually comprise two transactions: currency exchange and either an agency contract (*Wakala*), commission (*Ju'alah*), or hiring compensation (*Ijarah*)

2. Coin-Counter Kiosk: When using a coin-counter kiosk, there is usually a charge of approximately 10% of the amount used in the service. Using these kiosks is allowed because the charge is a service fee.

3. Gift Cards: Buying and selling gift cards for less than its value is a controversial transaction that should be avoided. On one end, gift cards are given the same ruling as actual money because it can only be used to purchase products. So, from this aspect, it follows the guidelines of currency exchange (i.e. identical amounts and immediate exchange). From another angle, these gift cards can only be used at the retail stores that issued them, and

hence, they would be considered among the stores' products, or considered money, but of a different type at the very least. From this angle, the transaction would be considered valid if the amounts aren't identical. Because of the conflicting nature of this agreement, it is best to avoid it.

SIXTEENTH: COMMERCIAL INSURANCE

1. The semi- consensus amongst Fiqh Councils that commercial insurance is a transaction that involves ambiguity, misrepresentation, interest, and gambling. Therefore, transactions that involve these defects are forbidden. Accordingly, sales insurance- or purchased extended warranty- being a type of commercial related insurance is also not allowed.

2. Nevertheless, there are two other types of general structures of insurance that are permissible, government sponsored, and cooperative or mutual insurance.

3. Arguably, this distinguishing is based on the differentiation between unilateral and bilateral contracts. Many contemporary scholars see commercial insurance as a bilateral contract and transaction, and the other two categories as unilateral.

4. Close analysis of this argument leads others to point out the invalidity of this understanding, and its lack of soundness. All insurance, except welfare insurance without premiums, are bilateral contracts and transactions. All policies will be cancelled by the underwriter if a premium is not paid by the insured, hence, the inherent bilateral structure of all insurance products is obvious.

5. The other argument of the scholars that see the differentiation between insurance types, is all insurance present ambiguity, gambling and *Riba*, therefore, it is only permissible in the case of government sponsored or none for profit cooperatives due to its benevolence goals (where all these deficiencies are overlooked according to the Islamic law); which is also a false argument.

6. It is noteworthy to point out that underwriters will immediately cancel any insurance policy that does not generate profits or breakeven at least; another proof of the nature of the bilateral nature of insurance.

7. Insurance is not meant for lazy profits by the insured, rather, it is meant to provide protection of lives and property. The insured is seeking protection as a service, and is not entering the transaction to make an easy return on money for money arbitrage transaction.

They're multiple contracts in history allowed by scholars to seek protection for a fee, and even compensation for a "measurable loss".

8. Governments do not provide underwriting services of insurance, they may subsidize it, in reality private companies do. Therefore, the arguments to draw a distinguishing are flowed.

9. Based on the above; insurance in theory is a permissible a bilateral transaction based on the Fiqh maxim: "In principle, everything is permissible" i.e. transactions are permissible unless its clearly proven to be otherwise.

10. However, few of the options insurance companies give to their clients in the form of guaranteed returns are not permissible. For example, offers of fixed returns on added premiums for the purpose of building a cash savings position, are considered *Riba*; despite the fact that the policy and its variable investment account maybe permissible. This includes any fixed returns benefits on accumulated premiums paid out on future events, in addition to death or disability benefits; like interests on cash positions.

11. Finally, there have been few scholars who agree to the permissibility of insurance as a valid and sound contract and subcontracts in Islam including commercial insurance with all its subcategories.

SEVENTEENTH: FACILITATING PROHIBITED TRANSACTIONS FOR CUSTOMERS

1. If a Muslim works as a car salesman – for example – he may need to provide information to his customer who may or may not be Muslim. He may need to inform him how to get an auto loan, and he may need to help him fill out the application and forward it to the bank and do all of the necessary follow up to finalize the deal. Real estate agents also face the same reality.

2. By participating in this capacity, a Muslim is directly assisting in unlawful practices, and hence, falling in sin in the process. Allah says: *{and whoever intercedes for an evil cause will have a portion of it} (Al-Nisa': 85)* It is okay if he points the customer in the right direction, but he may not work in a capacity that would force him to take practical steps to fulfilling such a request.

3. Claiming that the client is not Muslim and doesn't view that interest is forbidden is not a valid argument. Interest is clearly forbidden in the semitic religions (i.e. Judaism, Christianity and Islam). Allah mentions about the Jews in the Qur'an: *{And [for] their taking of usury while they had been forbidden from it} (Al-Nisa: 161)*

EIGHTEENTH: CURRENCY EXCHANGE ONLINE OR VIA A THIRD PARTY

1. In Islamic law, it is established that currency exchange requires immediate exchange (i.e. at the time of the transaction). This is not possible when currency is exchanged online or when there is a third-party intermediary. In a literal sense, the currency will not be exchanged between the buyer and seller at the time of the transaction because they are not physically present in the same location.

   However, it is not necessary to interpret the concept of immediate exchange in such a literal sense. It is enough that the buyer and seller connect via modern communication tools. In the modern day, Islamic jurists allow buying, selling and agency contracts (*Wakala*) by modern communication tools, and they still consider the transaction 'immediate'.

   Furthermore, collecting the item or the payment doesn't have a specific interpretation in Islamic law; rather, this is something relative to the transaction. Picking up a car is very different than moving into a house. Hence, it would be subject to the common business practices and trade regulations.

   So, when currency exchange is done on the internet, the transaction is in fact immediate, and the transactions are confirmed. Although it is not the same as the hand-to-hand exchange that officiated transactions in premodern times, on the internet, it is an account-to-account exchange. As soon as the sale is complete, each party assumes full ownership, and the details may take a few days to be finalized by the intermediaries.

   Thus, this transaction is allowed in light of the above explanation, as long as neither party intentionally delays giving the money.

2. CURRENCY FUTURES**:** A currency future, also known as an FX future or a foreign exchange future, is a future contract to exchange one currency for another at a specified date in the future at a price (exchange rate) that is fixed on the purchase date (Wikipedia)[12]. Essentially it gives the customer the option to purchase a currency at a set price now, or a higher price

[12] https://en.wikipedia.org/wiki/Currency_future

delayed. This cleary falls into *Riba* because currency exchange cannot be delayed to begin with.

3. BUYING ON MARGIN**:** This is the purchase of a currency by paying the margin and borrowing the balance from a broker. Buying on margin refers to the initial or down payment made to the broker for the currency being purchased; the collateral for the borrowed funds is the marginable securities in the investor's account. Before buying on margin, an investor needs to open a margin account with the broker (Investopedia)[13].

   The purchased currency would remain with the broker, but the investor gains the profits. The broker pays the lending banks (where he borrowed money from) an interest rate that is about 0.5% to 2% less than the interest rate the investor pays him.

   This transaction is clearly forbidden because it involves interest-bearing loans. The investor buys the currency and pays the broker interest when he pays off the rest of the amount, and the broker pays interest rate to the bank.

   Even if the broker offers interest-free loan, the transaction will remain prohibited. This is because the broker stipulates all currency trading activities to be done through his agency, and off course, charges fees. This converts the loan he offers into an interest-based one because it derives for him a benefit. It is a well-established rule that any loan brings stipulated benefit to the lender is Riba. The Fiqh Council of Muslim World League issued a Fatwa in 2006 indicates the prohibition of Margin Trading.

4. FIAT MONEY: This is currency that a government has declared to be legal tender, but it is not backed by a physical commodity. For fiat money to be considered a valid medium of exchange, it must have legal backing. When it becomes outdated and loses its legal tender, it loses its monetary value, and hence, the rulings of currency exchange would no longer apply to it. However, commodity money (such as gold and silver) has intrinsic value, and hence, the requirements for currency exchange remain. Immediate exchange is required when exchanging gold for silver. Additionally, it is required that the amounts are identical when exchanging gold for gold or silver for silver.

5. CRYPTOCURRENCY: Cryptocurrency is a digital currency in which encryption techniques are used to regulate the generation of units of currency, and verify the transfer of funds, operating independently of a central bank.

[13] http://www.investopedia.com/terms/b/buying-on-margin.asp

The general rule is that any currency is acknowledged based on its accepted representation declared by a monetary authority. The lack of regulatory body and lack of regulation on this type of currency represent a concern of great uncertainty, or *Gharar* in Islamic terms. Also, lack of material facts that may influence the actual value of this currency. The driving event behind these currencies once it is introduced through encryption techniques, a nominal process that lacks real resourceful value behind it leads others to believe that this is a pyramid scheme!

The many scandalous issues aroused recently from the abusive use of this type of currency did not help its case too. In order for others to feel comfortable to issue an approval, this uncertainty has to be minimized.

In summary, lack of regulations is a source of uncertainty and moral hazard that leads other scholars to refrain from giving it the seal of approval so far.

NINTEENTH: MEMBERSHIP FEES

Some businesses have a member only model for their sales and services, and to become a member, one must register and pay annual fees. These fees are allowed.

It is completely allowed for businesses to offer discounts or any other promotions to its customers, like coupons or clearances or sales or so.

TWENTIETH: STUDENT LOANS

FEDERAL STUDENT LOANS are loans made for post-secondary education issued or guaranteed by a federal agency. The Federal Department of Education controls most federal student loans.

PRIVATE STUDENT LOAN are loans made by a bank or credit union to pay for the costs of post-secondary education (Loftsgordon)[14].

There are two types of student loans:

1. **SUBSIDIZED LOANS**: Federal loans may be subsidized; in which case the government pays the interest for you until you graduate. Students are then given a six-month grace period to

[14] http://www.nolo.com/legal-encyclopedia/whats-the-difference-between-private-federal-student-loans.html

pay off the loan before it starts accruing interest. If the loan is not paid off within the grace period, the interest is capitalized. When your interest is capitalized, the interest charges you failed to pay are added into the principal balance of your loan. This increases the total amount you owe (Leonard)[15]. Subsidized student loans are offered to students based on demonstrated financial need (Wikipedia)[16], and only for undergraduates.

It is only allowed to take student loans when there is an evident need (*Haajah*) because there are other Halaal alternatives to finance one's studies. There are many types of scholarships, student grants, academic fellowships and financial aid programs that a Muslim student must first consider. If the alternatives do not cover the need, then it is allowed to take a student loan.

Although a penalty clause that would impose an interest rate if the borrower defaults or delays paying off the loan beyond the grace period is considered invalid in Islamic law, this would not diminish the dispensation in any way. Even though paying interest (*Riba*) is clearly forbidden, the prohibition in this case is not outright because it is "forbidden due to other cause" (*Haram li ghayrih*). Meaning, there is a window for the student paying off the loan without falling into interest, and that is why it is forbidden due to other cause. Matters forbidden due to other cause are allowed in the case of need (*Haajah*), and a college education is certainly a legitimate need at the very least.

2. **UNSUBSIDIZED LOANS**: If you have an unsubsidized loan, you're responsible for paying off all the interest. Interest builds up at a fixed rate while you're in school, but payments are typically deferred — or postponed — until after you graduate. All students are eligible for this type of loan (Barr)[17].

This type of loan is directly an interest-bearing loan, and hence, it is "forbidden in itself" (*Haram li thatih*). Matters inherently forbidden are only allowed in the case of necessity (*Dharoorah*), so mere need (*Haajah*) is insufficient in this case.

- That being said, attaining a college education is one of the most significant needs for Muslims in this day and age, especially in the US. Consequently, it is legitimate to consider borrowing with interest among necessities based on one of the definitions of necessity, which is: *"A unique irreplaceable matter that causes harm to people when absent".*

15 http://smallbusiness.chron.com/difference-between-interest-capitalized-interest-23512.html

16 https://en.wikipedia.org/wiki/Stafford_Loan

17 https://www.debt.org/students/types-of-loans

- Muslim students must exhaust all Halaal avenues to finance their studies. They should look into student grants, scholarships, academic fellowships, financial aid and any other way to facilitate their studies. If a student is able to decrease the amount of credit hours he takes per semester and work alongside his education, he should do that. If he knows of an individual or entity that is willing to give him an interest-free loan, he should pursue that option.

- If all of the above isn't feasible, he then may consider a subsidized federal loan and take the amount that covers his need. He must exert every effort to pay the loan within the grace period so it doesn't accrue interest. If all of the above avenues are of no avail, he may take an unsubsidized loan to cover the necessity of obtaining a college education.

Twenty First: Bankruptcy and the Rights of the Creditors

Bankruptcy is a legal status of a person or other entity that cannot repay the debts it owes to creditors. In most jurisdictions, bankruptcy is imposed by a court order, often initiated by the debtor (Wikipedia)[18].

After a bankruptcy is discharged the debtor will no longer be legally responsible to pay off the debts. A **discharge** in bankruptcy refers to a permanent order that releases the debtor from personal liability for certain specified types of debts, thereby releasing the debtor from any legal obligation to pay any discharged debts (Kagan)[19].

If the debtor wants to continue paying a particular debt to preserve an asset from being liquidated, such as a house, car or furniture, he may continue to do so, and the contract between the two parties isn't affected by the bankruptcy.

ISLAMIC LAWS PERTINENT TO BANKRUPTCY

1. Declaring bankruptcy means that the debtor is claiming that he is unable to payoff his debts. Hence, it is forbidden for a Muslim to make such a decision unless the claim is true and genuine. He must ascertain that all of his current possessions are insufficient to payoff the debts and that most probably, he won't be able to pay them off later on.

2. If a court order releases a debtor from personal libility for a debt, while creditors have received their money from a different recourse, he is also released from religious liability, even if he does gain money in the future. It is noteworthy that bankruptcy wipes out only some debts. There are a number of debts that are unaffected by bankruptcy. In order for a debt to be removed by bankruptcy, the creditor must be an institution or entity. If it is an individual or a group that gave a personal loan, that debt will not be affected by the bankruptcy.

   Creditors (whether they are banks, mortgage companies or credit card companies) have insurance on their loans. Companies that lose money to a debtor declaring bankruptcy collect the amount from the insurance companies. Since the rights have already reached the creditors via the insurance companies, there is no basis to compel the debtor to pay the debts after his bankruptcy is declared. It would also raise an issue with the company's

[18] https://en.wikipedia.org/wiki/Bankruptcy

[19] http://www.investopedia.com/terms/d/dischargeinbankruptcy.asp

accounting records if it collected the money from the debtor after receiving the insurance coverage.

3. Death takes the ruling of bankruptcy. So, if the debtor passes away and released from legal liability, while creditors have received their money from a different resource, then he is also released from religious liability.

4. If the creditor is an individual, neither declaring bankruptcy nor the death of the debtor would wipe out the debt. So, whenever he is able to pay the debt, then he has to, or if he died and left inheritance, then his inheritors are required to do so on his behalf, because the rights of others are not discarded with the passage of time or with death. In other words (statute of limitation) does not apply.

   Furthermore, insurance companies do not offer individuals coverage for the debts they are owed. The ruling of a judge doesn't change a religious ruling from being Haraam to being Halaal or vice versa.

5. In light of the aforementioned, if a Muslim declares bankruptcy is able to pay some of his debts, he must give priority to the debts owed to individuals over the debts owed to entities.

Twenty Second: Electronic Commerce

Electronic trading presents versatile consumers and merchants business activities. Some are based on online person-to-person auctioning; (eBay) for instance, where merchant's bulk sales include a transaction fee based on a percentage of sales. Although (Alibaba)'s core business resembles that of eBay, (Amazon) presents a different online retailer, and their model is complex. While Amazon does sell products at a standard mark-up, it has also pioneered alternate retail strategies by acting as the gateway for other retailers, a very robust marketplace for used goods. All of these merchant's activities fall under the allowed business activities in the marketplace. Indeed, the only exception to this rule is the type of merchandise to be traded, where simple scrutiny can indicate if it is allowed or not as a product. It is the structure of a transaction that needs further scrutiny. Two models to discuss:

1- Drop Shipping

- Goods are moved from the manufacturer directly to the retailer without going through the usual distribution channels. The retailers are not owners of this merchandise, nor they intend to physically carry it in their warehouses, even after the actual sale has taken place based on description. It is when the merchant or retailer has received the sales' funds in their accounts receivables, they place an order to the goods sold.

- Some scholars may say this transaction represent a violation of the maxims based on the ban of selling unowned specific merchandise by the seller to the buyer and parted ways. Fearing inability to deliver makes this form of sale forbidden. Yet, it is inapplicable in this case. Drop shipping is a type of *Salam* contract, where the merchandise is described, and the ability to deliver is almost guaranteed, and if the transaction is not delievered accordingly, the seller (manufacturer) refunds the fund to no risk on behalf of the buyer (retailer) under clear knowledge of this risk.

- That is not the dilemma; the challenge is who provides the warranties on the product?

- In most cases it is the manufacturer that is ultimately the party that provides the limited warranties on its product. The on-line retailer should bare legal and moral responsibility to the consumer, where failure by the manufacturer to guarantee the described product is carried by the retailer. Based on this structure of *Salam* sale, drop shipping is permissible.

2- Multi level marketing (MLM)

- Customary known, but referred to by businesses as Pyramid Sale. While the name pyramid schemes carry negative connotation to it, businesses have built an industry based on a marketing strategy in which the sales force is compensated not only for sales they personally generate, but also for the sales of others they recruit, creating a down-line of distributors and a hierarchy of multiple levels of compensation.

- Fiqh councils, Saudi Arabia for example, have banned this type of business activity based on an understanding that this activity as a nominal activity that is a covert for forbidden monetary transactions, namely Riba, ambiguity or *Gharar* and gambling. This prohibition is over reaching and brushstrokes what maybe in some cases a legitimate business activity.

- This business activity can be an agency contract or *Wakalah* relation, where the parties that are involved are structuring a legitimate understanding of representation to sell actual products for a fee. Many prominent businesses actually manufacture and brand a real specialized product to be marketed through an agent, based on a set schedule of fees depending on sales. On the other hand, if the MLM is based on a nominal activity to cover monetary only activity, then this type of marketing is rejected and is not allowed and the Fiqh Councils ruling stands.

Twenty Third: Treating Debt Repayment in a Hyper Inflationary Environment

- The general rule, debts are paid back in kind, and not based on a preset inflation related value. However, this maxim is reliable and applicable when dealing with commodity money, gold and silver for example, where they have an intrinsic value separate from their purchasing power.

- However, when dealing with representative money for lending purpose, like fiat currency, which is the case nowadays, it is noteworthy that the value of this money is a derivative of its nominal or declared purchasing power only, with no intrinsic value.

- Yet, in times of hyperinflation, prices of goods and services are clearly a factor, where the supply of these representative currency notes increase, money supply, and the prices of goods increase too, where it results in diminishing the value of money, and its purchasing power relative to prices. Furthermore, these loans based on its stated in-kind nominal value lose future earning power when recovered.

- Another negative cause to this calamity is equitable justice, which is essential to the soundness of contracts in Islamic economics. The loss to the lender will cause equitable damage. Yet, neither the lender, nor the borrower intended to inflect this damage on the loan, and it would be injustice to one party to suffer the consequences alone. In order for this calamity to maintain equitable justice, the parties have to equally share the damages; the lender and the borrower.

- Few modern scholars concluded this issue has to have a threshold where damages are considered negative equity. They agreed a currency reaching the threshold of one-third devaluation, debt in this unique case has to be valued based on a stable currency, like the American dollar for instance, and not in-kind currency that the original debt has taken effect.

- This is based on few scholars' *Ijtihad*, or Islamic legal reasoning, which so far can be applied for now until more Fiqh Councils decide on this issue.

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