

# THE CHALLENGES OF SHARIAH COMPLIANCE IN THE ISLAMIC BANKING PRACTICES: WHETHER IBN AL-QAYYIM'S PRINCIPLES OF MUAMALAT BE THE PANACEA?

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## ABSTRACT

The practices of Islamic banks under diverse economic and legal system across the world constitute challenges to its shariah compliance regime which is the hallmark of its uniqueness. This study presents some of the factors that militate against the shariah compliance requirement and it proposes the standardization of Ibn Qayyim's principles of al-Muamalat as the mechanism for the surmounting of the challenges. The focused areas in the study include; the challenges of conflicting of al-Fatwa, the quandary of the dominance of the civil law, the subjugation of the Islamic banks to the adjudication of the civil court, the supremacy of the International Monetary laws and regulatory bodies. Each of the challenges was discussed vis-à-vis of the principle that is proposed for its resolution. The study concludes that the Ibn Qayyim's principles of al-Muamalat are tested in the past generations by mufti(s) of his time and proved to be viable. It is, therefore, believed that the adoption and adaptation of the principles into the guidelines of shariah decision making for the practices of Islamic banking and finance will contribute immensely to the resolution of the challenges of shariah compliance management. It is suggested for future work on this topic to look into the possibility of universal adaptation of the adaptation of the principle in shari'ah guideline across the world.

**Keywords:** Islamic banking, shariah compliance, principles of Ibn Qayyim.

## INTRODUCTION

The nature of the operations of banking system requires a universal standardization. Hence, there is a need for the standardization of Islamic banking practices and the rules of the shariah compliance requirement across the world, regardless of geographical location or jurisdictional schools of shariah law. In another word, the operational framework of the Islamic financial institutions ought to be unrestricted to the view of a specific madhhab or the opinion of

the scholars of a geographic locality. For instance, it would be inappropriate for the Malaysian Islamic banks to restrict their activities to the philosophy and the principles of the Shafī'i school of law which is the national Madhhab, given the fact that the Malaysian Islamic banks are patronized by customers and partners all over the world (Fakihah, 2009). Thus, there is a necessity in the unification of the divergent and contradictory fatwā and legal opinion of the of the various shariah committees which are the main causes for the divisive practices of Islamic banking and finance across the world. The principles of Ibn Qayyim of the transaction are, therefore, proposed in this paper for the standardization of the practices. These similar issues confronted Ibn Qayyim during his time, when the opinions of the followers of the various madhha'ahib appeared to be contradictory on shariah compliant contractual and business questions.

### **Ibn Qayyim Al-Jawziyyah, His Educational Background and Juristic Acumen**

To start with, during the time of Ibn Qayyim, two major phenomena prompted the erudite scholar to strive toward the unification of the opinions of the jurists. The first of such phenomena was the influence of the *madhha'ahib* 'schools of law' on the scholars and the second phenomenon was the mis-evaluation of the circumstances in which the fatwa were issued. The situation was similar to what is happening within the circle of the various fatwa bodies of the Islamic banks today. The situation has negatively affected the hard earned public credence of the Islamic financial institutions. Hence, there is a need for restoring and reconstruction of the public trust in the Islamic financial institutions and their shariah bodies.

The Ibn Qayyim's principles that were tested and used in the past to resolve similar problems are considered as the best panacea for the fusion of the conflicting opinions of the various shariah bodies, (Alja'iri, 1421 H). This very proposition was pursued by al-Qardawi, who argued that the principles of Ibn Qayyim are the best solution to the challenges of conflicting shariah verdicts in general. Therefore, after due examination of the challenges that confront the modern Islamic banking and finance in terms of the lack of a standardized global practice that stems from the quandary of conflicting fatwa and juristic opinions, it is suggested that adaptation of the principle of Ibn Qayyim as the framework juristic opinions on the practices of the modern Islamic financial institutions will go a long way in eliminating the quagmire (Qardawi, 1987).

### **The Adaptation of Ibn Qayyim's Principles to Shariah Decision on Islamic Banking Practices**

A close observation of the practice of Islamic banking and finance around the world shows that the myriad of challenges that confronts the institution in respect of the shariah compliance requirements can be resolved through the principle of Ibn Qayyim. The principles are enumerated below, and the areas of their adaptation of the framework of shariah decision are discussed.

## The Principle of “al-shariah La Tukhalif al-Qiyas al-Sahih” and Its Effect on Existing Shariah Compliant Challenges (al-Jawziyah, 1969)

In Islamic jurisprudence al-Qiyas al-Sahih is the fourth source of shariah law. The term can simply be defined as ‘legal analogy’. That is, the application of the principle of a previous ruling, decision or judgment in a new a case due to the similarity in the cases, the circumstances and the consequences of both cases. This is referred to in the legal parlance as ‘precedence.’ The principle is regarded as a valid source of shariah law. Furthermore, Ibn Qayyim in his part argued that the rules of shariah law would never be in conflict with a valid Qiyas. In further explanation, he went on to say that whenever contradiction appears based on Qiyas, the shariah provision behind the enforcement of that particular Qiyas, would always be aligned with a valid Qiyas; since the rules of shariah and Qiyas cannot contradict (al-Jawziyah, 1969).

However, it is a common knowledge that one of the challenges that is inhibiting the growth of Islamic finance is *Ta’arudu al-Fatwa*, that is ‘conflicting fatwa or shariah rulings’, even though the conflicting rulings are products of the misinterpretation of texts (Alwan, 2010) and sources in which the shariah bodies rely upon to reach the rulings (Adamu Ibrahim, 2012) (al-Amari, 1997). Another reason is that the fatwā take regional and geographical approaches and it divides the views of scholars in terms of amendable shariah rulings not the rulings which are non-amendable because they are undebatable. Currently, two major blocks of shariah rulings on Islamic banking practices have emerged from the dichotomy in the fatwas. The first block is that of the shariah body in non-Arab countries, where the economic power is in the hands of the non-Muslims. The scholars in this region rely mostly on *Fiqh Maqasidi*, *Fiqh al-Awlawiyat*, and *Qawaid al-Fiqhiyah* for their decisions on the questions of modern Islamic financial transaction that are brought before them. On the other hand, the shariah bodies in the second block, that is the Arabian Gulf and the Middle Eastern countries that enjoy economic buoyancy, rely in their fatwā on the principles of ‘*Fiqh Alturath*’, that is, ‘traditional Fiqh’. For instance, while the shariah committees in the GCCs prohibit monetary penalty in default of settlement, based on the argument that it is not shariah compliant, the shariah bodies of the other countries and those with Muslim minorities passed fatwa to allow such penalty.

Moreover, al-Qardawi argued that the historical study of Islamic jurisprudence shows that, ‘geographical variations’ are acceptable justification for divergence of fatwa. He buttressed his views with the occurrences during the time of Imam Shafi whereby he passed different fatwa on the same question in various geographical locations (Kamali, 1989). Having said this, it has been established that the divergence of views in contemporary fatwa constitutes enormous challenges to the practices of Islamic banking and finance (Pita, 2014) and that there is a need for the universal standardization of the practices. The conflicting fatwa is impairing the credibility of the institutions before the general public as

well as the shareholders are increasingly becoming sceptical shariah compliance mantra (La'arabah, 2010). This, however, calls for a constructive reform and the standardization of the fatwā framework. The adaptation of the Ibn Qayim principle of 'al-Qiyas' will solve the problem (Qardawi, 1987).

Against this backdrop, it is suggested that the principle "al-Shari'ah Lā tukhālif al-Qiyas al-Sahih" should be adopted to resolve the dilemma. According to scholars of Islamic jurisprudence, Qiyas as one of the primary sources of shariah law is mostly relied upon by the shariah advisors of Islamic banking and finance in their rulings on new products. Thus, in order to streamline the various shariah rulings, the Ibn Qayim's principle should be agreed upon as the standard universal framework for the shariah ruling that emanate from Qiyas. This will solve the dilemma of contradictory rulings. It will also help to detect the cause of the inconsistency a fatwā, if there is any such fatwā. It will simplify a course of study to discern whether such fatwā complied with the required principle, and the reason for its conflict with an established consensus ruling (Ahmad, 2003).

In a nutshell, the standardization of Qiyas based on this principle will eliminate the causes of paradoxical fatwā. (al-Aliyat, 2006) and it will mitigate the negative effects on the practices of the Islamic banks across all jurisdictions (Pita, 2014). Nevertheless, there will still remain the possibility of minor jurisprudence differences in the opinions of various Shariah bodies due to the call of the Holy Quran to critical thinking and creativity. Nevertheless, differences that emanates from Qiyas will be minimized to an acceptable level (al-Shazili, 1427 A.H.).

### **The Principle of "al-A`amal Bi al-Zawahir Qabla al-Bahth Anil Ma`arid" and Shariah Compliant product Challenges**

This principle is proposed by Ibn Qayyim to address the causes of the sincerity of the intention of contractual parties as it relates to the validity of a contract (Salih, 1428H.J). This principle is proposed for shariah advisors of Islamic banking and finance subject to adherence to the following steps:

**1<sup>st</sup> step:** the intention of the parties should be treated objectively so far the agreement which signifies the intention of the parties, was officially drafted.

**2<sup>nd</sup> step:** the contradictions in shariah issues in the contract should be treated as an 'irrelevant' matter so far the agreement states the objective of the parties to the contract (al-Jawziyah, 1998).

**3<sup>rd</sup> step:** shariah matters should be treated in the light of the rules of "al-ibrah fi al-uqud bima'ani'ha wa haqa' qiha, la bi al-siyagh wa al-faziha." That is, when there is a contradiction in a mu'amalat agreement, the purpose for which the contract is concluded will overrule the contradiction. According to Ibn Qayyim the consideration of niyat, that is, 'intention' of the parties in a mu'amalat contract is important for the reason that the intention is the element that makes a contract

to be lawful or unlawful, valid or invalid. Furthermore, in al-'Ibadat, that is acts of adoration, it is al-Niyah 'intention' that makes an action obligatory, undesirable, prohibited or unwanted (Zaid, 1428 A.H). An example of this is in the situation whereby a person sells some items with the intention of usury, his transaction will be considered to be prohibited act due to the involvement of usury 'riba', regardless of the nomenclature or label of such transaction or contract (al-Jawziyah, 1998).

Thus, since the grounds of some of the conflicting rulings by contemporary scholars is as a result of the determination of the actual definition of some legal terminologies in respect of the modern Islamic banking business, the adoption of this principle in this respect will resolve the quandary. An example of this is the differences between the scholars on the terminology of '*al-faedah al-banki'iyah*'. While the majority of the contemporary scholars and the Middle Eastern scholars argue that it refers to 'banking interest' which is synonymous to the prohibited riba in shariah law. Al-Tantawi, a former Sheikh al-Azhar and his followers disagree with the majority of scholars and insist that the term '*fa'waid al-Bunuk*' which is Arabic term for 'bank interest' is not synonymous to the prohibited riba. They even went ahead to pass a fatwa that legalizes the transaction on the basis of interest, which is totally contrary to the view of the contemporary scholars (Zerrin, 2014),

Nevertheless, some Egyptian scholars like Ahmad Taha Rayan, al-Sayeed Sabiq Muhamad, Rifeat Fawji Abdul Mutalib and so on have rebuked the view of al-Tantawi and his followers (Qardawi, 1994). They contend that he was wrong due to the fact that the contemporary banking transactions are based on loan contract instead of the traditional Islamic deposit contract. They maintained that the laws that govern the banking transaction does not provide loan except for interest-based transaction, reported Qardawi (1994). The group cited Article 301 of Egyptian Commercial Law to buttress their argument. The law states that; "this agreement makes the bank the owner of the deposited money and gives it authority to use that sum as it deemed suitable to the nature of a bank. But, the bank must refund the deposited money to the depositor in the same amount, in accordance with the terms of the contract," (Shahatah, 2009). Although, this type of arrangement may be understood as a type of *muda'rabah* contract as far as the real aim of the depositor is to earn increase from his money. However, the intention of the bank is to invest the depositor's money in an interest based business from which the bank can gain maximum return (Atiyah, 2007). More so, the law is very explicit that the agreement is a loan contract. In summary, the disagreement is as a result of the differences in the understanding of the terminology 'interest'. It is clear from the intention of the law that was not referring to al-Muamalat contract (Olayemi, 2014).

Reasoning from this premise, it is believed that the adoption of the Ibn Qayyim's principle of "al-A'amal Bi al-Zawahir..." will go a long way in resolving the

challenges. The principle will be helpful to the judges, muftis and the shariah advisors in their decisions on the Islamic banking matter, and in the situation whereby the terms of a muamalat contract are not sufficiently clear to determine the intention of the parties in the contract. For example, if the intention in a contract or transaction is on the basis of usury, it ought to be regarded as a prohibited contract, especially, if the element of riba is very clear in the contract. In this situation, the nomenclature of the contract is irrelevant. Thus, Ibn Qayyim developed this principle primarily, as part of his contribution to the effort of resolving the challenges of intention to contracts under the Shafi'i school of law. The school of law does not regard the intention in contracts. What is only a matter of it is the implication of a muamalat contract. The intention of the parties is irrelevant to it. For that reason, Ibn Qayyim promptly resolved the contention in the scope of the application of the principle of 'Itibar al-alfaz bi al'Ma'ani in muamalat,' and the discussion on the matter with scholars of the Shafi'i School of law has been put to rest. However, some scholars of other schools of law argued for the opposite (al-Jawziyah, 1969).

### **The Principle of “Wa ala sahib al-Suq al-Mukil bi Maslahatihi an Yam-na'a al-Muamalat al-Manhiyaanha fi al-Aswaq”**

This principle means that “It is the duty of the market organizer to prevent prohibited transactions from the markets.” The principle is proposed for the possible effect of resolving the challenges that confront the Islamic financial institutions in respect of the laws and regulations of central banks. The term Sahib al'suq, that is 'market organizer,' can appropriately refer to the Central Banks which are the regulator of the banking institutions. This is because the Central Bank is one of the authoritative legal agencies responsible to regulate financial transactions in the market. More so, the word al-suq which means 'market' is inclusive of the Islamic banking institutions, given the fact it is a component of the financial markets. In essence, this principle requires banks to close their doors against suspicious transactions and forbidden mu'amalat (al-Amari, 1997). However, the Islamic banks do not have the power to carry out this obligation, it is the Central Bank, which is the body that vested with the power to regulate the business activities of the Islamic banks is directly responsible for the duty (Sha'shiyah, 2007). However, it has been argued if the lawmakers could amend the laws and regulations in favour of Islamic banks the obligation may rest on the institution. However, that will also be difficult except if the Islamic banks standardize their fatwa. Therefore, it is time for Islamic banks to concertedly produce a comprehensive standardized framework for their fatwa. The principle of “market organizer has to prevent prohibited transactions from markets”, can be adopted for the purpose of such standardization (Yaacob, 2014).

Thus, as explained in the above, the laws and the regulations of the Central Banks represent palpable challenges to the requirement of shariah compliance of the products and practices of the Islamic banks. However, the challenges vary from a

country to country depending on the level and type of the regulatory laws that are imposed on Islamic banking and finance (Abdullahi, 2012).

For instance, to the question of challenges of inconsistency of the regulatory laws with the practices of the Islamic banking, Mawhub Ammar Ahmed, the Director General of the Islamic Bank of the Republic of Niger emphasized that "Niger Republic is a signatory to the C.F.A monetary system agreement that regulates trade and finance throughout the Francophone countries in West Africa. The agreement does not give any consideration to the shariah law, and that affect the activities of the Islamic Bank." In addition, he remarked that, "the banking system operates in accordance with the laws of the West Africa Banking Authority." That in effect inhibits the Islamic banking transactions as to the requirement of total Shariah compliance. In short, the Central Banks of the C.F.A countries did not take the nature of Islamic banking operations into account when the law was drafted.

Moreover, the law requests banks to impose a minimum interest of 3.5 percent on bank deposits as if the amount of the deposit is below 5 million Francs (C.F.A), and that the banks and the consumers may thereafter negotiate a higher interest rate if there is a need for it. This is another challenge that militates against the Islamic banks in the Francophone West and the Central African countries. The said countries are Niger, Senegal, Mali, Benin, Burkina-Faso, Ivory Coast, Togo, Guinea-Bissau, Cameroon, Chad, and Gabon. The Islamic banks in all these countries are facing the legal challenges that were referred to, by the Director General Mawhub Ammar in his response to the question of the legal challenges of Islamic banks in Niger Republic.

All the Islamic financial institutions in the countries operate through a common single window in the Central Bank, and thus, making the development of a whole shariah compliant products impossible due to the requirement of interest that is imposed by the regulator. The interest rate requirement that is imposed on the banks is unavoidable as a bank may be penalized by the Central Bank for its violation. This posed a serious challenge to the Islamic banks because the elimination of interest 'riba' from their practices is not negotiable. It is the hallmark of the banks.

Thus, the adoption of the principle is necessary for the purpose of circumventing the legal and regulatory bodies that confront the Islamic Banking and Financial institutions in these countries. There is a need for diversion of alternative schemes for the offering of the halal products, notwithstanding that it will be of a low shariah compliant quality (Diyah, 2009). Since the Islamic banks are operating under a totally conventional system and regulations, they will be inserting the term shariah compliant in their contract as part of their agreement with their customer. This is a brilliant method for them to operate within the framework of the conventional banking system. An example of this method is that of the practice of the International Islamic Bank of Denmark, which suffers the same

fate of legal lacuna. However, the bank is able to carry out shariah compliant activities and settle their dispute in accordance with provisions of shariah law, under the country's civil court, by inserting the required terms in their agreement (Sha'shiyah, 2007).

Therefore, the adoption and the utilization of the principle of 'market organizer' in the Islamic banking activities will help in surmounting the challenges of legal disparity between the Islamic Banking Institutions and the Regulatory Authorities. It will in achieving the followings:

- I. It will assist in resolving the challenges of divergent fatwas as it will substitute the unavailable legal framework that is required to solve the setback in the unification of the various shariah rulings.
- II. Upon the unification of the fatwas, the Islamic banks and the regulator, that is, the market organizers will be able to agree on the areas of the amendment of the models of operations of the Islamic banking and finance to conform to the shariah compliant requirements.

In otherword, the adoption of the principle will resolve the face up in the standardization of the practices of Islamic banking in the Francophone West African countries, and it will represent the parameter for fatwas on the system (Rudahindwi, 2011).

### **The Principle of 'al-Qabid Ma layssa Lahu Shar'anThuma Arada Atakhalussa Minhu' and the Challenges of shariah Compliance**

The principle of "al-Qabid Ma layssa Lahu Shar'an Thuma Arada Atakhalussa Minhu" which simply translates as "the possessor of illegal property" is one of the principles that was introduced by Ibn Qayyim to Islamic jurisprudence. This principle means that "a person who possesses a property or money illegally, must return such property or money to the rightful owner in order to free himself of the liability." However, if it is impossible for him to return it to the rightful owner, he may pay the debt of the rightful owner with the property/money. If that is also not possible he should to return the property or money to the heirs of the owner. If that is equally impossible, he should give the unlawful money or property for an al-Sadaqah, that is, charity purposes."The objective of the principle is to free the illegal possessor from the liability. This illegal possession is referred to in Egyptian civil law as 'undue enrichment (Zaid, 2007). The relevance of this principle to current discussion is that, in the situation whereby an Islamic bank and its customer fail to comprehend the contract that governs their transaction, and finally end up in the civil court for a legal declaration, if one of the parties is unduly favoured, due to the inconformity of the law or ruling of a court, the principle of "al-Qabid Ma layssa Lahu Shar'ahThuma Arada Atakhalussa Minhu," may be invoked. The principle will be invoked to compel the party that is unduly favoured and enriched to return that which he was given by the judgement to



the oppressed party. This will be of assistance to both the banks and customers to avoid possessing illegal property.' It will enable them to return that which they illegal earned from court cases to the rightful owners.

The necessity of the adoption of this principle stems from the fact, that, despite all the effort of the jurists and practitioners to have disputes of the Islamic banking and finance settled in accordance with the rules of shariah law, the system still remains under the jurisdiction of civil court that lacks the competency in shariah law. This includes the Islamic banking cases in Saudi Arabia, where the adjudications fall under the jurisdiction of the Monetary Institution, which is a conventional body (Yaacob, 2014). The reality is that the civil court rules are antithetical to the objective and the spirits of Islamic banking practices (Olayemi, 2014). Another example of the jurisdiction of Islamic banking cases that falls under the jurisdiction of civil court is that of Nigeria (Fata, 2012) and England. For instance, in *Shamil Bank of Bahrain v Beximco Pharmaceuticals Limited and Others* (Shamil Bank of Bahrain v Beximco Pharmaceuticals Limited and Others, 2004) where the dispute arose as a result of default in the payment of al-Mura'baha agreement. The Appeal Court held that there could not be two separate systems of law governing Islamic banking contracts, based on the argument that the provisions of shariah law are not intended to be incorporated into the law of England (Yaacob, 2014). However, some countries have overcome these challenges to a certain extent. An example of such countries is Malaysia where disputes on the compliance of transaction to shariah are to be determined by the shariah Advisory Committee of the Central Bank and to be adopted by the court as its judgment (Yaacob, 2014).

Besides, it has been suggested that the insertion of arbitration clause in Islamic banking contracts could help in surmounting the challenges. This is due to the fact that arbitration award are enforceable by the endorsement of the civil court (Olayemi, 2014). Furthermore, the New York Convention, 1958 proposes that Muslims countries need to provide modality for the enforcement of arbitration awards without any recourse to any court (Rizwan, 2013). This is necessary for the resolving of the challenges of the dichotomy of the various laws that govern trade transaction (Zaid, 2014). However, some scholars maintained that arbitration on Shariah based transactions may not be enforceable in some civil courts' jurisdictions around the world. Nevertheless, it was concluded that only the standardization of the method of dispute resolution in the system can resolve the challenges (Yaacob, 2014).

In short, this study suggests that the adaptation of the principle of "Qabid Malayssa Lahu Shar'anThuma Arada Atakhalussa Minhu" into the system will go a long way in solving the challenges. Thus, in the situations whereby the Islamic banks are in dispute with their customers for failure of running their businesses in accordance with the rules of shariah law, such as a violation of the rule of

usury, exploitation, or other prohibited actions, this principle of Ibn Qayyim can be invoked to decide the matter particularly in the countries where courts do not pay special attention to Shariah rules which govern the Islamic banking contracts (Qardawi, 1987).

### **The Principle of “Al-aslu fi Uqud al-Muamalat wa al-Shurut al-Sihah Ma Lan Yazhar Butlanihi.” - “Clauses of Transactions and Contracts are Valid If There Is No Justifiable Reason for the Invalidity” and Its Possible Adaptation**

This principle was developed by Ibn Qayyim to settle the challenges of difference of opinion in his time. That is in the situation whereby a jurist will rightfully decide a matter based on his personal view, although, in total disagreement with the other scholars who are actually wrong. For instance, if the majority of the scholars believed that the unfamiliar clauses of transactions and contract are that of the shariah law are null and void, whereas the rules of transaction says all contracts and transactions are permissible in shariah law except those that explicitly violate the fundamental rule or is based on forbidden practice.

Hence, the adoption of the principle becomes a necessity given the fact that the operation of the Islamic Banks as part of the international monetary system has been subjected to the regulations of many international laws and regulatory bodies that are not in conformity with the rules of shariah law. Some of such laws and regulatory bodies are; the Uniform Customs and Practices for Documentary Credits (UCP 600), the Uniform Rules for Collections (URC), the UNIDROIT Convention on International Factoring, the Ottawa Convention of 28 May 1988, the Uniform Rules for Demand Guarantees, UNCITRAL Convention on Independent Guarantees and Stand-by Letters of Credit and Article VIII (2) (b) of the Articles of Agreement of the IMF (currency exchange rule). The laws and bodies are believed to constitute an impediment in the face of total compliance of the operations and the products of the Islamic banks with shariah law (Yaacob, 2014). This is due to the fact that some of the clauses of contracts that are stipulated by the laws are unknown to the shariah law.

However, since the participation of the Islamic banking institution in the international markets is indispensable and it does not actually unfolded in prohibited businesses, based on the principle of ‘unfamiliar transaction and contract clauses’ that are binding on the Islamic banking institution and its dealings are considered to be valid. The clauses will have no effects so far the respective Islamic banking institution complies with the requirement of having shariah committee that is comprised of credible and capable shariah scholars that decide its affairs (Qardawi, 1987).

## The Principle of “Huriyat al-Ta’aqud” that is “Freedom of Contract” and the Proposal for its Adoption for the Standardization of Islamic Banking Accounting

The principle ‘freedom of contract’ was indicated by Ibn Qayyim as a clarification that the parties to a transaction are at liberty to enter into any contract and agree on any clauses so far such contract and clause do not involve any prohibited element such as interest or exploitation. The principle portends that the main object of the shariah law is the perpetuation of the ‘best interests of human being.’ However, the freedom of contract that is given by the principle is not absolute, due to the fact that all contracts must be equitable between the transacting parties who are the Islamic bank and its customer (Sharafu-Din, 1967). According to Ibn Qayyim the rationale behind the prohibition of riba, gambling, uncertain al-muamalat contracts and abuse use of uqudul idza’n, are to establish equity in the transactions (al-Jawziyah, 1969).

## CONCLUSION

To sum up, the foregoing is presentation of the principles that was developed by Ibn Qayyim to resolve the challenges of novelty in transactions and nascent contract in his time. The principles represented here are as a contribution to the scholastic efforts to resolve the myriad of shariah compliance challenges that confront the operations and products of the modern Islamic banking and finance. The principle can also be adopted to solve the challenges of divergences in fatwas among various shariah boards, committees and jurisdictions. Notwithstanding that divergence of opinions is acceptable in shariah law, nevertheless, the nature of the activities of banking and financial institutions requires standardization. The principles of Ibn Qayyim can be adapted to achieve this objective. Other serious issues that can be resolved by the adoption of the principles are conflict resolution, the international operations of Islamic banks within the non-shariah based international laws and the challenges of the disposition of illegal possession, as well as the practice of freedom of contracts.

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