

# **Islamic Banking**

**Prepared By: Dr Hurriyah El Islamy**

## **Introduction**

- Islam ~> Salima = “safety, peace and submission and obedience”
- “... Truly the religion with Allah is Islam.” Al Imran: 19
- Full submission to Allah and Acceptance of Islam as the way of life
- “Nay,-whoever submits his whole self to Allah and is a doer of good,- he will get his reward with his Lord; on such shall be no fear, nor shall they grieve.” Al Baqarah: 112

## Introduction

- Our lives in the world are but a small fraction - as we have eternal existence in the Hereafter
- “the world is the cultivation field from the Hereafter/ al dunya mazra’at al-akhirat”
- Islam offers directions on righteous way of living so that we can attain happiness both in this world and the Hereafter.
- Thus, Islam covers the relationship between human and God and among humans (hablum minaLlah and hablum minannas) as well as the relationship between humans and other creatures, the nature and environment ~> way of life

## Introduction

- Islam covers three major aspects: Aqidah (faith); Shari’a (Law) and Akhlak/precepts (ethics)
- Aqidah shows the truth of Islam; Shari’a shows the justice of Islam; Akhlak shows the beauty of Islam
- Shari’a - Fiqh: Ibadat and Muamalat
- Hukm - wajib; mandub; haram; makruh; mubah
- Adiwarmam A Karim at page 14: “In ushul fiqh, there is a principle stipulating that maa laa yatimm al-wajib illa bihi fa huwa wajib...” to make a living is obligatory, economic activities in the modern time may not work well without the existence of banking institutions. Hence, to bring them to existence is obligatory...”

# Introduction

- Ibadat: the origin of the matter is prohibited unless provided otherwise
- Muamalat: the origin of the matter is allowed unless expressly forbidden (directly or indirectly)
- Prohibited transactions:
  - As a subject (itself);
  - Due to external factor;
  - Invalidity of/insufficiency in the contract

# Introduction

## Prohibition of the subject matter

- Some transactions are unlawful because the prohibition arises from the subject matter of the transaction itself
- Examples: transaction which subject matter is pork, alcoholic drinks, etc

# Introduction

## Prohibition due to external factor

- Tadlis (concealing) either in term of quantity, quality, price or delivery time – because a transaction has to be based on mutual willingness (ridha/taradhi)
- Taghrir (gharar) either in term of quantity, quality, price or delivery time – because the prohibition of evil “ta tazhlimuna wa la tuzhlamun
- Tadlis – not known to 1 party;
- Taghrir – not known to both parties

# Introduction

## Prohibition due to external factor

- Ikhtikar (Market frauds affecting the supply side) with the following characters: attempt to create product-scarcity; selling the product at higher price; (concealing) either in term of quantity, quality, price or delivery time – because a transaction has to be based on mutual willingness (ridha/taradhi)
- Bai' Najasy (Market Frauds affecting the demand side) i.e, by creating bogus demand for a product to suggest a high demand that in turns is expected to trigger a higher selling price. e.g, by spreading rumors, faking purchase orders, etc.

# Introduction

## Prohibition due to external factor

- Riba (Usury) – either Fadl, Nasi'ah or Jahiliya
- Maysir (Gambling) – see Al Maidah: 90
- Risywah (Bribery)

# Introduction

## Prohibition due invalidity/insufficiency

- Non fulfillment of Rukun & Syarat
- Occurrence of Ta'alluq (ba'i al-'Inah, i.e, the occurrence of a contract is the condition for the other contract)
- Occurrence of two transactions in one (shafqatain fi al-shafqah). Conditions: same object, same parties, same period. e.g., Lease-Purchase.
- See pages 43-46 of Karim, Islamic Banking, 3<sup>rd</sup> edition

# **Introduction**

- Source: Adiwarman A. Karim, Islamic Banking: Fiqh and Financial Analysis, 3<sup>rd</sup> edition, 2005.