

# Islamic Law on Gambling and Some Modern Business Practices

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## Abstract

*Although the prohibition of gambling is very clear in Islam its concrete phrasal definition is not provided in any of its original sources. Hence Islamic scholars throughout the centuries have been formulating the definition based on their understanding of the textual evidence concerning gambling. Since the definitions provided by the past scholars directly correspond to certain activities existed in their days, it is crucial to analyze the definitions and apply it to some form of modern activities suspected to resemble gambling in one way or another. For this purpose, this paper will use descriptive content analysis methods by analyzing some views of the Islamic scholars regarding the definitions and elements of gambling as appeared in some of the Quranic commentaries and Islamic law treatises. The findings will then be applied to some current business activities such as insurance and speculation in stock and commodities markets. The study found that some of these activities do have some elements of gambling but they are not enough to turn these activities into gambling per se. In addition, there are several measures can be executed to prevent such activities turning into plain and pure gambling.*

**Keywords:** Islamic law, *Qimar*, Gambling, Insurance, Speculation.

## Introduction

There is no dispute that gambling is strictly forbidden by Islam. The main problem in this study though is the absence of a concrete phrasal definition of gambling given by two main sources of Islamic law namely the Qur'an and the prophetic hadith. The scholars of Islamic law in the past and at present duly play their role by formulating some definitions of gambling. Nevertheless, the definitions made by Islamic scholars on gambling were based on their understanding of the verses relating to gambling in the Qur'an and the hadith and the background of the socio-cultural realities of their time. This background is certainly different from one era to another and its resulted in the difference ways of understanding of gambling. Consequently, the understanding of gambling in contemporary societies is also quite different and this in turn influenced their analysis of the legal position of some of the current business activities from the perspective of Islamic law. More over, the previous literatures written on some of these modern business activities from Islamic law point of view were not specifically scrutinizing the involvement of the element of gambling. Based on this reality, the author thinks that there is a burning need to identify definitions, concepts and elements of gambling which are prohibited by Islam in a concrete and precise manner. Furthermore, there is also a need to analyze and

examine their existence in some contemporary business activities, especially insurance and speculative activities in the stock and commodities market. This is the expectation of this article.

### **Gambling in the Qur'an and Prophetic Traditions**

In the Qur'an the word *maysir* which refers to gambling appears three times at three different places namely in verse 219 of chapter 2, verse 90 and 91 of chapter 5 and whereas the word *qimar* which specifically means betting does not appear anywhere in the Qur'an. The prohibition of gambling in the Qur'an takes place in stages beginning with the verse 219 of chapter 2 followed by the verse 90 and 91 of chapter 5. When discussing the wisdom of the prohibition of gambling, a renowned classical Quranic commentator al-Razi (1981) explains that among the consequences of *maysir* and *qimar* are, hostility, cursing and disagreement among the participants, harmful to economic growth besides distracting people from remembering Allah and performing prayers. He added that betting in *qimar* and *maysir* also gave rise to the desire to try to win, especially after losing until all the property was finally used to gambling so much that he was able to neglect his wife and children. Surely the loser of this gambling will fall poorly. This will cause a lot of social malaise and destroy the socio-economic fabric of a society. In the prophetic hadith, the words *maysir* and *qimar* or its derivatives appear only a few times<sup>1</sup>. Besides the *hadith* which mention the words *maysir* or *qimar* specifically, there also some *hadith* which mention the prohibition of certain activities that bear the elements of *maysir* or *qimar*.

### **Gambling in the Islamic scholars perspective**

In Islamic terminology, gambling is referred to as *maysir* or *qimar* interchangeably which mean betting and wagering (Ibn Kathir 1410H). A notable classical Islamic law scholar Ibn al-'Arabi (1934) for example, describes the nature of *qimar*, wagering or gambling as a game where "each one of two contestants seeks to defeat his partner in an action or statement in order to take over property set aside for the winner" (Rosenthal 1975). Another reputable Islamic scholar al-Jurjani (n.d.) defines wagering as "taking one thing after the other from one's partner in a game" or, "every game with a condition that the winner out of two contestants gets something from the loser". al-Shawkani (2005) defines it as a situation where there must be one of the player gains and another loose. Although there are differences in the wording used to define it, generally the definitions share the common fundamental elements of the terms. A contemporary scholar of Islamic law al-Sabuni (1980) for example, summed them up as "every

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<sup>1</sup> For example al-Bukhari and Muslim reported that the Prophet once said "When told to you let us bet, then let it give charity" (al-Bukhari, no. 4860; Muslim, no. 1647). In another work, al-Bukhari also reported that the Prophert said "Look out for these two dice, as indeed, both are of non-Arab gambling".( al-Bukhari, no.1270). Another hadith collector al-Bayhaqi reported that the Prophet said "Indeed God has forbidden wine, gambling, *kubah* (a game that uses boards, fruit and dice, also known as *tabo* or *nard*) and every intoxicant is illegal" (al-bayhaqi, 1414 AH)

game which results in profit for one party and loss for the another". Generally, in modern applications, the act of gambling sometimes referred to betting on the occurrence of a future event (Ahmad 2010). In short, we can say that wagering, as it has been understood in Muslim scholarship, contains two important features. First, it is a kind of game without any serious purpose and benefit and second, it involves the element of betting where the participants put up their stake by which only one party will win the whole stake while the other will lose altogether.

Another renown Quranic commentator of the past, al-Qurtubi (2006) in his work mentions that Malik, the founder of one of the four schools of Islamic law, divided the *maysir* into two types, namely, playful *qimar* or gambling which includes backgammon, chess and any form of game that lead to carelessness and *qimar* or gambling in the form of betting which includes anything that a man put his money or property as a stake to be lost or won. The views of Malik above assume that all forms of games that resulted in careless attitude as a form of gambling, although there is no element of betting. Based on the Malik's view, *maysir* is more general than *qimar* or betting.

al-Razi has quoted a different view from al-Shafi'i, the founder of the Shafi'i school of Islamic law that if the games do not involve betting, and does not lead to any form of sins, then it is not illegal and is not included in the meaning of *maysir* or gambling since prohibited gambling involves giving out or taking up money or property. (al Razi 1981) It means that according to al-Shafi'i's views gambling happen only when the exchange of property involves and if there is no exchange of property involve than there is no gambling although it may be prohibited because of different reasons. Therefore al-Mahalli (1956), a Shafi'i school jurist of 13<sup>th</sup> century says that the wagering or gambling that is prohibited is those that the participants are in the condition of between losing all or gaining all. After examining the view of the scholars' in interpreting the prohibition of gambling in the Qur'anic verses and prophetic traditions, it can be concluded that gambling which was debated by the Islamic scholars takes place in some form. First, gambling in the form of betting. This form involves three main elements namely, the participant either wins or loses, it involves property bets and the transfers of property through betting. Second, gambling in the form of a futile game that makes people neglect their responsibilities although it does not involve any property betting. Both these kinds of gambling are prohibited by Islam as agreed upon by the Islamic scholars. However, most of the scholars are of the view that games that are not involving any form of betting and not leading to the negligence from the responsibilities and hostilities among the people are not forbidden.

In short, we can say that among the Muslim scholarship what constitute prohibited gambling is of two situations. First, in the event of any bets issued by all participants. This bet is what will be rewarded for anyone who wins a match and second every participant in the competition will not miss out on two probabilities or risks namely either profit or loss. In explaining the two conditions above, it is worth noting that Islamic scholars have not distinguished between competitions that involve skill or which rely solely on fate. There is also no difference between

competition involving a big amount of money or property or small. In all cases, when any of the two features above are met, then it will be considered as prohibited gambling.

It seems that gambling is restricted to gaming activity with the elements of betting from all participants and the chance of winning or losing for both sides. This means that in serious and genuine business activity no gambling involves. However, if the business and investment implemented are no longer on the basis of actual business philosophy and rules but rather the game for easy profit without any real contribution to the economy, then the activity may also be named as gambling even though on the surface it looks like a business or investment. In reality, there are business transactions which are certainly gambling in nature but could not be included under the definition of 'games'. Furthermore, there are many kinds of gambling that are not based purely on chance such as betting on horse races, boxing or other sporting events, even though outcomes are unpredictable. The New Encyclopædia Britannica probably offers a more comprehensive description by stating that: "... gambling is the betting or staking of something of value, with the consciousness of risk and hope of gain, on the outcome of a game, a contest, or an uncertain event, the result of which may be determined by chance or accident or has an unexpected result by reason of the bettor's miscalculation" (Salamon et al. 2015). This definition excludes sophisticated but serious business transactions that, nevertheless embody elements of gambling such as the stock market and foreign exchange transactions. Here, at least two significant gambling elements were excluded from the definition offered namely the element of economic fundamentals and economic manipulation. Hence, a renewed definition of gambling is suggested here. It is the betting of something of value with unnecessary risk with the hope of gain based on elements of chance and uncertain events that may involve, to a certain extent, economic manipulation and, on occasion, loss of the contextual elements of economic reality.

### **Gambling, Uncertainty (*Gharar*) and Business Risk**

It has been very clear that there is an essential element in gambling namely uncertainty or *gharar* as it is termed in Islamic law and this is the main problem with gambling in Islam. Technically uncertainty or *gharar* in business means anything that its consequences are hidden (ad-Darir 2012). When this definition is applied in a contract of sale, for example, it means that both contracting parties, the vendor and the purchaser do not certain the quantity or quality or classifications of the subject matter of sale. Although they both agree to conclude the contract, none could explain the subject matter precisely. Each of them is in a very serious but unnecessary risk of losing to another. If the subject matter turns to be more than what the purchaser hoping for than he/she would gain at the expend of the vendor and vice versa. If this practice occurs rampantly in a market it is certainly not good for social and business relationship between the two and not good either for business and economy as a whole. Therefore Islam prohibits unnecessary risk-taking or uncertainty or *gharar* in any activities especially those which involve the taking possession of other's property so that any potential disputes among the people and destructive element to the economy as a whole could be prevented from the beginning. Nevertheless one has to be very careful not to put business

uncertainty or business risk in the same bucket with *gharar* or more so with gambling. Business uncertainty or business risk is not avoidable even in genuine business undertakings. One never know the end result of the business undertaking which he or she undertakes whether gain or lose. This is part and parcel of business undertaking and to do business is to take risk and in order to gain one has to take risk (Adam 2003). Therefore Islam has no problem with that even there is a very important legal maxim in Islam which states that 'gain comes with risk-taking" (al-Zarqa 1993). Exactly for this particular reason, Islam prohibits interest or usury in loan contract as Islam consider the lender does not take any risk from this undertaking as the borrower is obliged to pay back to the lender no matter what. So the lender, in this case, has no right to a profit. Based on this, it is clear that taking risk is not entirely forbidden in Islam. In fact, it is commendable when it comes to serious and beneficial business undertaking.

Since uncertainty or *gharar* is the centre of gambling activities, many scholars see *gharar* and gambling are the same things. For example, Ibn Taymiyyah, a controversial medieval Islamic theologian, jurist-consult, logician, and reformer and his disciple Ibn al-Qayyim were of the view that gambling is more general than *gharar* which accordingly means that all *gharar* are gambling but not all gambling is *gharar*. This is because *gharar* only exist in business contracts when there is uncertainty in any aspect of the contract, whereas gambling can exist in any transaction when the intended result or the outcome of the transaction is uncertain such as in competition. (Ibn Taymiyyah 1422H) Based on this view there is a conclusion that gambling involves in both business contracts and also in non-business transaction. If it involves in business contracts it is called *gharar* but if it is in a non business transaction than it is called gambling. Although uncertainty or *gharar* is equally prohibited in Islam it is nevertheless not the same as gambling. Nevertheless, a contemporary scholar of Islamic law of business, al-Darir (2012) views betting and gambling is more specific than *gharar*. Betting and gambling certainly involves *gharar* but not all business contract involving elements of *gharar* can be referred to as betting or gambling. For example, if there are uncertainties in certain aspects of the sale contract, then this sale contract is a *gharar* contract but it is certainly not a gambling or betting. Therefore it is wrong to refer to any business contract which involve certain elements of *gharar* as gambling or betting unless if it includes some features of gambling or betting.

In al-Darir (2012) view *gharar* is very general covers business undertaking as well as gambling with no serious economic purpose. In business undertaking *gharar* exist when there are uncertainties regarding the availability, quantity, quality, times of delivery of the subject matter and price whereas in gambling, *gharar* exist because of the outcome of the undertaking, win or lose is uncertain. While echoing Ibn Taymiyyah that *gharar* in all business undertaking is prohibited, to put business undertaking with a large degree of *gharar* in the same meaning with gambling is a mistake. The outcome of the business undertaking is never certain. Therefore not all uncertain undertakings are gambling.

## **Gambling in Some Form of Modern Business Practices**

### **i- Insurance contract**

There are different definitions provided by prominent authorities on the law of insurance. Rejda and Mcnamara (2017) defines insurance as "the pooling of fortuitous losses by transfer of such risks to insurers who agree to indemnify insured for such losses to provide other pecuniary benefits on their occurrence or to render services connected with the risks". In this definition, it is clear that what is actually being transferred is the risk of losses. Since the risk itself by its very nature is uncertain, therefore we could say that uncertainty is very central in a contract of insurance. Ivamy (1986) defines a contract of insurance as "a contract whereby one person, called the insurer, undertakes, in return for the agreed consideration, called the premium, to pay to another person, called the assured, a sum of money, or its equivalent, on the happening of a specified event". Ivamy (1986) himself further explains that the specified event which is insured in an insurance contract must have some elements of uncertainty, either uncertainty as to whether or not the event will ever happen, or, if the event is one which is bound to happen at some time, there must be uncertainty as to the time at which it will happen. According to Birds (1993) the contract of insurance is "any contract whereby one party assumes the risk of an uncertain event which is not within his control, happening at a future time, in which event the other party has an interest, and under which contract the first party is bound to pay money or provide its equivalent if the uncertain event occurs". Again, in this definition, we understand that uncertainty is a necessary feature of the contract of commercial insurance. Furthermore, it is also evident from this definition that what is actually being transferred at the time of the contract is the risk of loss, which is uncertain. It is clear from all these definitions that an insurance contract is a contract which is based on risk and uncertainty. Without risk and uncertainty, the contract of insurance would never take place at all.

Since the element of uncertainty is so apparent in the contract of commercial insurance, many critics regard insurance as a kind of wagering (Kasim 2012; Noor and Abdullah 2009). To be precise, the resemblance between insurance and gambling is alleged to exist in three places as mentioned below.

i- payment of premium is paid for the uncertain indemnity which based on the uncertain event in the future. This is similar to betting put forward by a gambler for the uncertain result of the gambling.

ii- if the insured event occurs on the insured, the insurance operator will lose and if it does not occur the customer will lose. This resembles zero-sum game in gambling.

iii- If the participant withdraws from the insurance contract, he may lose most of his premium money. This is said to be similar to gambling involving the risk of losing money.

Based on these grounds the National Fatwa Committee in 1979 has issued a fatwa (religious verdict) that "life insurance as operated by most insurance companies today is illegal and a defective contract because of its not in accordance with Islamic principles ie, contains *gharar*, gambling elements and interest.

While it is correct to point out that insurance and wagering share the common element of uncertainty, they differ from each other in many other important aspects to the extent that to put them in the same category would be seen as a mistake. The difference between insurance and wagering can be clearly seen in the definition of wagering itself. Based on the above definition, we can easily point out at least two important elements of a wagering contract which do not exist in a conventional insurance contract. They are as follows:- i) One to lose, the other to win. It is a vital feature of the wagering contract that one of the contracting parties makes a gain at the expense of the other. A contract is not a wager if one party cannot win or if one party cannot lose (Treitel 1983). This feature of zero-sum-game does not exist in the insurance contract. If the insured event happens, neither party wins or loses and likewise, if the insured event does not happen, neither party loses or wins. ii) No other interest or no insurable interest. A contract is a wagering contract if both parties have no other interest in the contract than the stake which they will win or lose. If the event occurs, both parties will lose or win nothing more than this stake. On the other hand, a contract is not a wager if the party to whom the money is promised on the occurrence of an event has an interest in its non-occurrence (Treitel 1983). This is the feature of the insurance contract. It is a necessary condition in the insurance contract that the insured has an insurable interest in preventing the happening of the insured event. It means that if the insured event does occur, the insured will incur some losses. It is therefore agreed that while the insurance contract bears some serious purpose, the wagering contract is only a game or play. The principle of insurable interest specifies that the insured must have an interest in the preservation of the thing insured and he will suffer financially if a loss occurs or must incur some other kind of harm if the loss takes place (Cockerell 1980). To be enforceable, all insurance contracts must be supported by an insurable interest, otherwise, the insured could collect the compensation even though the loss had not occurred. This would make it similar to gambling and would be contrary to the public interest. There are at least three fundamental reasons why insurable interest must exist in a contract of insurance (Rejda and Mcnamara 2017; Patterson 1957).

i- To prevent gambling. If an insurable interest were not required, the contract would be a gambling contract and would be against the public interest. For example, an insured could ensure the property of another and hope for an early loss. He could also insure the life of another person and hope for an early death. These are clearly similar to gambling and against the public interest. ii- To reduce moral hazard. If an insurable interest is not required, a dishonest person, for example, could purchase a property insurance contract on someone else's property and then deliberately cause a loss in order to receive the proceeds. However, if the insured stands to lose financially, nothing is gained by causing the loss. Thus, moral hazard is reduced. iii- To measure the loss. An insurable interest could measure the amount of the insured's loss. In property insurance, for example, most contracts are contracts of indemnity. One measure of recovery is the insurable interest of the insured. Based on the above analysis it is clear that the elements of *qimar*, wagering or gambling according to Islamic law do not exist in the conventional commercial insurance contract. Therefore, we can safely say that the charge made against the contract of insurance as similar to wagering or gambling is legally unfounded.

However it must be noted here while refuting the existence of the element of gambling in insurance contract particular the element of zero-sum-game, yet the existence of the element of excessive uncertainty or *gharar* is so glaring. This element prevails at all levels of the business from the time of the signing of the contract to the time of paying of risk money to the insured who has suffered a calamity. The existence of uncertainty is the fundamental condition for the existence of insurance. It can be in the form of one of the following kinds of uncertainty:

i- Uncertainty as to whether the occurrence will actually happen.

ii- Uncertainty as regards the time of the occurrence if it occurs at all.

iii- Uncertainty as regards the seriousness of the occurrence.

Probably because of that, The International Conference on Islamic Economics in 1976 while decided that life insurance is illegal from Islamic law perspective, did not base their judgment on its resemblance with gambling but because of the elements of uncertainty or *gharar* and usury. Furthermore in its resolution 9(2/9) in 1985 The International Fiqh Council provides that the conventional insurance contract is prohibited because of the material *gharar* involve. It does not mention about the involvement of the element of gambling.

#### **ii- Speculation in Stock and Commodities Markets**

Speculation has been defined as "the practice of buying or selling with the motive of then selling and buying and thus making a profit. If prices have changed a speculator will hold the asset or liability, hoping that at the time the contract matures, events will have moved into his favour (El-Ashkar 1995). Harrison and Kreps define speculation as an exercise whereby an investor may buy the stock now, so as to sell it later for more than he/she thinks it is actually worth, thereby reaping capital gains'( Tag El-Din and Hassan 2007). This includes selling and buying stocks, land, property assets, commodities, match results or anything else that can generate exceptional profits based on risk. For example, speculators buy stocks at low prices and sell them when prices are high. This explains that speculation is closely linked to business and investment activities involving risks (Clarke and Dempsey 2001). In stock and commodities exchange market, speculation is said to be a fake reverse process of selling and buying not aiming at physically exchanging commodities as no actual "commodity" is desired for itself (Al-Masri 2007). In reality, it aims at benefiting from natural or artificial price differences and capital gains if the predictions of price changes in the short-term proved to be true. Speculators are therefore left to play with unpredictable residual patterns within the random walks of stock price movements through the adoption of different 'gambling' positions (Tag El-Din and Hassan 2007). In this sense, speculation is different from the investment. Investment is more long-term and less risky (Kunhibava 2011). Usually, investors buy shares and hold such shares for a certain period of time to earn dividends. There are also cases where investors sell their shares when necessary to capital gains. According to the American Bankers Association, capital gains are gains arising from the sale of assets by asset owners as a result of the difference in purchase prices and the selling price of such assets. This is different from speculators who buy stocks to sell it in the near future when prices rise. They take a high risk to get maximum profit in a short period of time. Based on the above explanation, speculation is an activity for profit in the short



term (Tickell 2000). Many observers regard speculation and gambling as synonymous terms or at best speculation contains elements of gambling. These elements are including a game of chance based on pure hope and luck, zero-sum game, exposure to unnecessary extreme risk and taking advantage of the other's weaknesses (Salamon et al. 2015).

Speculation cannot be seen as a mere game of chance, hope and luck. Decisions based on speculation are not the result of cards or dice. Conversely, speculators make decisions based on the vast data analysis of many related variables such as economic condition, financial position, political situation, personal management profiles and job enforcement status at national and international levels (El-Ashkar 1995). All of these processes require work commitment, knowledge and expertise as well as the high capability to read the discovered results and make the decision. This demonstrates that speculative activity requires qualification and efficiency rather than merely fate. This is in contrast to gambling activities that depend on fate only. Speculation based on research and analysis known as rationale speculation can benefit economic development. This is because speculation of this type will generate capital accumulation at the national level because the investment of every investor is to see the achievement of a company (Salamon et al. 2015).

But there is no doubt that there are also speculators who only want immediate profit without researching the company they want to invest in first. Such activities are categorized as blind speculation (Khan 1988; Salamon et al. 2015). Speculators in this category are simply examining the trend of price movements and market sentiment. Even sometimes they make decisions based on rumors spread in the market. However blind speculation itself is quite difficult to be equated to gambling. Although it has a reputation like gambling in terms of the final result of the loss, regret and harmful for the individual involves, companies and economy but it is still within the ambit of business activity. Obviously, though it is a business that is detrimental, unprofitable and destructive. Hope and luck inescapably arise when exercising speculative judgment in any business transaction and Islam frankly views both as matters that do not contradict its teachings. Nevertheless, Islam holds a very clear position in that hope and luck must be associated with tireless work before a decision is exercised. Moreover, as the implementation of these elements must accord with the teaching and spirit of Islam, their more correct involvement in speculative judgment, as elements in any business venture (including the stock exchange), is fundamentally acceptable. This position remains valid as long as the understanding and spirit of Islam regarding both are correctly appreciated (Saeed, et al. 2001).

The second contentious issue in speculative activities is it is a kind of zero-sum game which the winner of one of the competitors is the loss of another. Since speculators inject surplus income in the market based on imaginative factors such as rumors and price trends, the element of forbidden betting is palpably present. In reality, speculation based on information and research on the movement of the price of an asset in the future and the act of buying or selling of an asset with the aim of realizing capital gains indicates that there is no combative element among speculators such as those in the zero-sum game. The profit gained by the speculators whose

the price movement moves in their way is not by way of taking the rights of the other speculators in a combative undertaking. Similarly, the loss suffered by some speculators is not by being deprived of his right by other speculators. The profit gained or the loss suffered is as a result of valid and pure business venture involved into by both sides of speculators. This is of course with assumption that all the requirements for the business undertakings are duly fulfilled according to Islamic law. In addition, even in the stock or commodities exchange, the losers not necessarily lose all as in the case of gambling because they still own the stock or commodities that have been bought previously with a higher price.

Speculation is also associated with gambling in the sense that speculation exposes related parties to a high degree of risk and what more the risk itself does not contribute anything to the economy. Among the features seen in the activity of the gambling is the exposure to high risk because of the possibility of a loss is greater than the possibility of profit. Risk by itself is not something evil in business even in Islamic law perspective as elaborated above. Islamic law prohibits risk-taking activities which are not beneficial for the economy and in many circumstances proven to be harmful and destructive like risk taking in gambling and excessive speculative activities in stock and commodities exchange to distort the price unjustifiably. Obviously speculations which are not so excessive and destructive are not only permissible but necessary. In fact, in business and investment, risks such as business risk, market risk, price risk, liquidity risk and other risks are inherent in the industry. These risks need to be borne by certain parties to ensure the continuity of a business. This role is played by speculators who act as agents who are willing to bear the risk of providing liquidity (Bacha 2007). Without them, traders are in difficult to transfer a risk. However, speculation in the derivative market seeks to profit and not to facilitate actual business transactions or activities because the underlying asset submission is rare. In fact, speculators have no assets. Speculators only pay the difference in price for profit. In such transactions, asset purchases do not apply in real terms. Hence, there is no value added in economic activity. While the involvement of assets in a transaction will benefit the community in which it creates many job opportunities as in the storage, transportation and packing sectors, the price manipulation activity of the professional speculators will harm the economy (Khan 1988).

Salamon (2015) also raises the issue of taking advantage by professional speculators at the expense of small, new and unprofessionally informed speculators as according to him, greedy professionals knowingly, wantonly and selfishly victimize all those in the market who lack inside knowledge or basic forecasting ability and those who merely act on the basis of rumors and impulse. However, taking advantage of the ignorance and weakness of others not only exists in speculative activity but it can also exist in all other business activities. It is therefore not logical to equate speculation with gambling and forbid speculation because there is an element of taking advantage of the others. The best thing to do is to establish a market regulatory mechanism that can prevent the existence of this element in all business undertakings. In fact, if someone commits into an investment or a business undertaking due to his lack of knowledge or mistake in predicting the price trend or mistake in the analysis of the market in the future,

the counter-party is not obliged to guide and correct him. In Islamic law, the undertaking that they committed into is absolutely valid and lawful as long as the conditions for a valid contract such as the legal capacity of the contracting parties and mutual consent of both of them are there.

A genuine speculation needs a great deal of knowledge and skills especially regarding the fundamentals of the companies, their future, business performance or the future price of the commodities and others. The result of the analysis of these items will influence the speculators to decide his movement whether to buy or to sell or vice-versa. Therefore at its rudimentary form, speculation cannot be equated with gambling. Hence, to say that speculation is a prohibited activity because of its similarity to gambling is inaccurate. In fact taking advantage of price differences either in the short-term or long-term is not prohibited in Islam. For example, if a person purchases a house in an area of high-value property with the expectation that the house price will rise in the next month or two, then the buyer has speculated the value of the new property he purchased. This sale is absolutely permissible from Islamic law point of view provided that all the terms and conditions of sale are met. If the buyer sells the house after one month owns it because of taking advantage of the increased property price, the sale and purchase are considered valid and lawful. Hence, it is clear that speculation is permissible as long as there is no element of fraud, manipulation and price distortions in the market. Regulatory measures such as daily trading limits and some other methods will help to mitigate the existence of negative elements in speculative activity as this speculative activity cannot be eliminated completely in financial markets for the sake of market smoothness.

The argument that speculation in business is not synonymous to gambling does not necessarily mean that it is permissible to involve in speculative activities in all its form and purposes. This paper argues against the idea of putting speculation in the same bucket with gambling regardless of its form and purposes. The practice of speculation in stock and commodities exchange for the sake of pushing the price upward or pulling its downward merely for the purpose of making quick profit without any real changes in the fundamentals of the companies or commodities prices is undeniably possess harm and danger not only to the individual speculators but also to the companies and economy as a whole. These harmful and destructive activities have certainly no place in Islamic law of *muamalat* and thus strictly forbidden.

### **Conclusion**

Although the authoritative sources of Islam did not unambiguously mention the definitions of the gambling but based on the activities that are prohibited by the person of the prophet, the Islamic legal scholars have inferred the elements of gambling and eventually came up with concrete phrasal definitions. Despite of differences in the wording it is clear that gambling which is prohibited in Islam contains some elements such as zero-sum-game, excessive uncertainty without any serious purposes and detrimental to the economic well being of society. Although a certain degree of these elements does exist in certain modern business activities under question, yet to regard them as gambling is not correct. In case of insurance for

example, although it contains an excessive degree of uncertainty or *gharar* which is prohibited by Islam it is certainly not a gambling as it has some serious purposes and does not fall under the zero-sum-game category. As for speculative activities, while it is true that speculation for the sake of distorting the price of stock and commodities without any change to the fundamental is detrimental to economy thus prohibited in Islamic law but again it does not fall under the ambit of gambling.

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### **References**

- Adam, J. (2003). *Managing Business Risk: A Practical Guide to Protecting Your Business*, London: Kogan Page.
- Ahmad, A.U.F. (2010). *Developments in Islamic Banking Practice*, Florida: Universal Publishers.
- Birds, J. (1993). *Birds' Modern Insurance Law*, 9<sup>th</sup> edition, London: Sweet and Maxwell.
- Clarke R. and Dempsey G. (2001). The Feasibility of Regulating Gambling on the Internet, *Managerial and Decision Economics*, 22(1/3), 125-132.
- Cockerell, H.A.L. (1980). *Insurance (Teach Yourself)*, London: Book Barns International.
- Ad-Darir, S.M.A. (2012). *Gharar: Impact on Contract in Islamic Fiqh*, Bahrain: al-Baraka Banking Group
- El-Ashkar, A.A.F. (1995). Towards An Islamic Stock Exchange In A Transitional Stage, *IRTI Journal*, 3(1), 79-112.
- Ibn al- Arabiyy, A.B. (1934). *'Aridat al-Ahwazi*, vol. VII, al-Qahirah: Dar al-Kutub al-Ilmiyyah.
- Ibn Kathir, I.U. (1410AH). *Tafsir al-Qur'an al-Azim*, vol.II, Beirut: Dar al-Fikr
- Al-Jurjaniyy, A.I.M. (n.d.). *Mu'jam al-Ta'rifat*, al-Qahirah: Dar al-Fadilah
- Ibn Taymiyyah, A. (1422AH). *al-Qawa'id al-Nuraniyyah al-Fiqhiyyah*, Jeddah: Dar Ibn al-Jawziyy
- Ivamy, E.R.H. (1986). *General Principles of Insurance Law*, 5<sup>th</sup> edition, London: Butterworth
- Kasim, N.A.A. (2012). Disclosure of Shariah Compliance by Malaysian Takaful Companies, *Journal of Islamic Accounting and Business Research*, 3(1), 20-39.
- Khan, M.A. (1988). Commodity Exchange and Stock Exchange in an Islamic Economy, *The American Journal of Islamic Social Sciences*, 1(2), 91-114.
- Kunhibava, S. (2011). Reasons on the Similarity of Objections with Regards to Gambling and Speculation in Islamic Finance and Conventional Finance, *Journal of Gambling Studies*, 27(1), 1-13.

- Al-Mahalli, J.M. (1956). *Sharh al-Minhaj bi hamish Hashiyatan*, vol.iv, al-Qahirah: Mustafa al-Babi al-Halabiyy
- Al-Masri, R.Y. (2007). Speculation between Proponents and Opponents, *J.KAU:Islamic Econ*, 20(1), 43-52.
- Noor, A.M. and Abdullah, M.A. (2009). Takaful(Islamic Insurance) Benefit: Ownership and Distribution Issues in Malaysia, *Journal of Islamic Economic, Banking and Finance*, 5(3), 35-48.
- Patterson, E.W. (1957). *Essentials of Insurance Law*, 2nd edition, Columbus: Mc Graw Hill Education
- Al-Qurtubiyy, M.A. (2006). *al-Jami' li Ahkam al-Qur'an*, vol.III, Beirut: Mu'assasah al-Risalah
- Al-Razi, F.M. (1981). *al-Tafsir al-Kabir aw Mafatih al Ghaib*, vol. vi, Dimasyq: Dar al-Fikr
- Rejda, G.E. and Mcnamara, M.J., (2017). *Principles of Risk Management and Insurance*, 13th edition, London: Pearsons
- Rosenthal, F. (1975). *Gambling in Islam*, Leiden: E.J.Brill
- Al-Sabuni, M.A. (1980). *al-Bayan Tafsir Ayat al-Ahkam min al-Qur'an*, vol.1, Dimashq: Maktabah al-Ghazaliyy
- Saeed, A.M., Ahmed, Z.U., Mukhtar, S.M. (2001). International Marketing Ethics from an Islamic Perspective: A Value-Maximization Approach. *Journal of Business Ethics*, 32(2), 127-142.
- Salamon, H., Ebrahimi, M., Kamaruzaman, Y. (2015). Speculation: The Islamic Perspective; A Study on al-Maisr(Gambling), *Mediterranean Journal of Social Sciences*, 6(1), 371-378.
- Al-Shawkani, M.A. (2005). *Nayl al Awtar*, vol. x, al-Riyad: Dar Ibn al-Qayyim
- Tag El-Din, S. and Hassan,M.K. (2007). Islam and speculation in the stock exchange, *Handbook of Islamic Banking*, ed. by Kabir Hassan Cheltenham: Edward Elgar
- Tickell, A., (2000). Dangerous derivatives: Controlling and creating risks in international money, *Geoforum*, 31(1), 87-99.
- Treitel G.E. (1983). *The Law of Contract*, 6<sup>th</sup> edition, London, Sweet and Maxwell
- Al-Zarqa, A.M. (1993). *Sharh al-Qawa'id al-Fiqhiyyah*, Dimashq:Dar al-Qalam