BRILL

Arab Law Quarterly 25 (2011) 115-146

Arab Law Quarterly
brill.nl/alq

Qarḍ Ḥasan, *Wadīʾah/Amānah* and Bank Deposits: Applications and Misapplications of Some Concepts in Islamic Banking

Mohammad Omar Farooq*
Head, Center for Islamic Finance, Bahrain Institute of Banking and Finance, P.O. Box 20525, Manama, Kingdom of Bahrain

Abstract
Based on the categorical prohibition of *ribā* in the Qurʾān, presumably further reinforced by Ḥadīth, *qarḍ* (loan) is considered *ribawī*, i.e., only gratuitous monetary loans are considered permissible. Deposits (particularly, demand deposits) in Islamic banks are often structured as *qarḍ ḥasan*, or *wadīʾah/amānah* (trust). Based on the Qurʾān, Ḥadīth and earliest Islamic discourse, this article examines whether *qarḍ* is *ribawī* and whether the application of the concept of *qarḍ ḥasan* or *wadīʾah/amānah* is coherent in the context of Islamic finance.

Keywords
Islamic banking; Islamic finance; *qarḍ*; *qarḍ ḥasan*; *qarḍ al-ḥasanah*; *wadīʾah*; *amānah*; interest-free banking

1. Introduction

From the traditional viewpoint, *qarḍ* or loan is *ribawī*, meaning that *qarḍ* is subject to the prohibition of *ribā*. Therefore, the only valid *qarḍ* would be *qarḍ ḥasan* that does not accompany any 'stipulated' benefit to the lender. This renders *qarḍ* and *qarḍ ḥasan* (or *qarḍ al-ḥasanah*) synonymous.

* An earlier and expanded version of this article was presented as a paper at the Eighth Harvard Islamic Finance Forum, Harvard University, Cambridge, MA, 20-21 April 2008. This article also has benefited from the feedback of a number of scholars, including Dr. M. Shahid Ebrahim (University of Nottingham), Dr. M. Nejatullah Siddiqi (formerly at King Abdul Aziz University, Saudi Arabia), and Dr. Omar Afzal (formerly at Cornell University, Ithaca, NY, USA). E-mail: farooqm59@gmail.com. All emphasis is added, unless otherwise noted.

© Koninklijke Brill NV, Leiden, 2011
DOI: 10.1163/157302511X553985

Electronic copy available at: https://ssrn.com/abstract=1418202

Restricting *qarḍ* to only *qarḍ ḥasan* or interest-free charitable loans, contemporary Islamic finance has taken up the challenge to offer Islamic financial alternatives that are presumably interest-free and based on more equitable 'profit–loss sharing' (PLS) as well as risk-sharing. Notably, Islamic Financial Institutions (IFI) have employed the concept of *qarḍ* in devising some critical components of the financial structure.

How valid is the use of *qarḍ* in contemporary Islamic banking in a commercial setting? Are *qarḍ* and *qarḍ ḥasan* synonymous? Is *qarḍ ḥasan* applicable for non-charitable purposes as well? The issue has become critical as concepts such as *qarḍ ḥasan*, *wadīʾah* (safekeeping), *amānah* (trust), and so forth, are lent to shaping aspects of banking, such as demand deposits (or even deposits in general). Is there justification and textual evidence (*dalīl*) to consider demand deposits as *qarḍ ḥasan* to the IFIs? Is there Islamic evidence that *qarḍ ḥasan* is payable on demand by the lender? More importantly, is there basis to subject *qarḍ* to the blanket prohibition of *ribā* and categorize as well as define *qarḍ* or *qarḍ ḥasan* as an 'interest-free' loan?

Notably, some traditionally held views are not quite borne by the two primary sources of Islam: the Qurʾān and the Sunnah (Ḥadīth).[1] This article explores the pertinent material about *qarḍ* and *qarḍ ḥasan* to identify some misinterpretations and misunderstandings. Even though the primary focus of this article is *qarḍ ḥasan* and *qarḍ*, two other concepts, *wadīʾah* and *amānah*, will also be briefly discussed, as some IFIs define deposits in terms of *wadīʾah* or *amānah*.

By using these Islamically-nuanced terms, the Islamic Banking and Finance (IBF) movement has transcended the issue from polemical to practical. However, another important dimension should be noted at the outset. All interest-based loans lose Islamic legitimacy when *qarḍ* is equated with interest-free loans. Due to the legal implication that an Islamic society may enforce the ban on interest-based loans even at a personal level, people can be denied access to interest-based loans or loans with any 'stipulated excess' when they genuinely need it. When interest-free loans become unavailable, while they have been available throughout Muslim history,[2] those resorting to interest-based loans would thus, from the tradi-

[1] Sunnah and Ḥadīth are not synonymous. However, particularly since the time of Imām Shafiʿi [d. 204 AH], the founder of the Shafiʿī school of jurisprudence, there has been rather broad agreement that Ḥadīth must be the basis for authentication of any Sunnah. Therefore, the particular textual source for Sunnah is Ḥadīth.

[2] Nicholas D. Roy, "The Medieval Islamic System of Credit and Banking: Legal and Historical Considerations", *ALQ*, 12/1 (1997) 43-90. In this work, Roy documents that

Electronic copy available at: https://ssrn.com/abstract=1418202

tional viewpoint, commit a sin as well as violate the law. Thus, the issue is relevant at both an institutional and personal level.

For those who believe that the final words about *qarḍ* or *qarḍ ḥasan* have already been spoken from the Islamic perspective, this article might not be of interest. However, for other Muslims with an open mind and commitment to due diligence in learning about and understanding of issues of importance—instead of deferring such matters exclusively to venerable scholars, particularly from the past—what is presented here *might be* worthwhile.

It should be noted that usage of the key terms discussed in this article, especially in the context of the IBF industry, is often available primarily through online sources and, therefore, whenever appropriate, academic sources have been supplemented with the online sources involving relevant organizations or businesses.

2. The Pitfall of Sweeping Generalizations

Arguments, such as "Since *Ribā* is forbidden, any mention of *Qarḍ* in Ḥadīth automatically implies a *ribā*-free loan (i.e., *qarḍ al-ḥasanah*)", are illustrative of sweeping generalizations.[3] However, the word *ribā* should not be used so sweepingly, especially as part of a blanket *ribā*-interest equation.[4] Not all *ribā* (in the sense of 'excess') is prohibited in the Qurʾān. While asserting, "... nobody can correctly deny that interest on loans is the forbidden *Ribā an-Nasīʾah*", as quite capably and convincingly articulated by Mahmoud El-Gamal: "Not all interest is the prohibited *Ribā*, ... [and] Not all *Ribā* is interest."[5]

---

credit—any transfer of the ownership of a property and its risk of loss not against an immediately perceived countervalue, but against an obligation to provide such countervalue at a later time—"was used extensively in the medieval Near East, and that it formed a fundamental part of the existing economic system, on all levels, from producer, to merchant, to consumer." (44, 49).

[3] This observation, representing the traditional view, was made by the Director, Institute of Islamic Finance, Essex, England on IBFnet (Islamic Banking and Finance Network), message #5601, http://finance.groups.yahoo.com/group/ibfnet/message/5601.

[4] Mohammad Omar Farooq, "The *Riba*-Interest Equation and Islam: Reexamination of the Traditional Arguments", *Global J. Fin. Econ.*, 6/2 (2009a) 99-111.

[5] Mahmoud El-Gamal, "An Economic Explication of the Prohibition of *Riba* in Classical Islamic Jurisprudence", *Proc. 3rd Harvard Univ. Forum Islamic Fin.*, Harvard University, 2000, 31-44.

Electronic copy available at: https://ssrn.com/abstract=1418202

The Qurʾān categorically and unambiguously forbids *ribā* in a special sense. However, as it is widely acknowledged, the Qurʾān does not define it. For that Muslims turn to Ḥadīth.[6] Unfortunately, even with all the Ḥadīth about *ribā* combined, the definition is still not clear and that is why jurists and scholars have reached widely varied and often incongruous positions in applying the categorical prohibition and determining its scope.[7]

Also, since even some of the *ashāb* (companions of the Prophet Muḥammad) such as Ibn Abbas believed that *ribā* applied only to *nasīʾah* (deferment)—an implication that those companions did not regard *ribā al-fadl* as impermissible—any such sweeping claim that *ribā* is *ḥarām* is misleading, and it engenders confusion among the Muslim masses.

3. The Issue of *Qarḍ* and *Qarḍ Ḥasan*

As it is traditionally argued, *qarḍ* has to be *ribā*-free (implying, interest-free), because *ribā* is prohibited. However, the simplest problem with such an assertion is that if Allāh means *qarḍ* when he is using *qarḍ ḥasan*, why is this redundant expression *ḥasan*? Is not Allāh's communication on such matters of *ahkām* or laws supposed to be clear and unambiguous (*muḥkamāt*)?[8] Indeed, if *qarḍ* is *qarḍ ḥasan*, or vice versa, then Allāh simply used the latter expression without any special or useful meaning. In other words, we would not lose anything by eliminating the added qualifier, or disregarding it altogether. Is that what Muslims should conclude about Allāh's communication?

To acknowledge the traditional understanding of *qarḍ*, presented below are some of the rules and applications that are stated by various IFIs and other relevant sources, presumably in accordance with the approval of their Shariʾah advisors or advisory boards. Of course, beyond stating these rules, rarely do such sources and sites provide any proof (*dalīl*). Also, on most such issues at a detailed level, we should expect wide variations in opinion

---

[6] Abdulkader Thomas, "What is Riba?" in: Abdulkader Thomas (Ed.), *Interest in Islamic Economics* (London: Routledge, 2006), 125-134.

[7] Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and its Contemporary Interpretation* (New York: Brill, 1996), 36-39. Also, see Mohammad Omar Farooq. "*Riba*, Interest and Six Ḥadīths: Do We Have a Definition or a Conundrum?" *Rev. Islamic Econ.* 13/1 (2009b) 105-142.

[8] Qurʾān 3 (*al-Imrān*):7; trans. "of established meaning", A. Yusuf Ali, "clear revelations", Pickthall; "decisive", Shakir.

Electronic copy available at: https://ssrn.com/abstract=1418202

among Muslims, as most such details about Islamic finance and banking are merely fallible human interpretations.

(A) *Qarḍ ḥasan* is for the needy:

> *"Qarḍ al-ḥasana (beneficence loans)*. These are zero-return loans that the Qur'ān exhorts Muslims to *make available to those who need them*. Financial organizations that provide these loans are permitted to charge the borrower a service charge to cover the administrative costs of handling the loan as long as the charge is not related to the amount or the time period of the loan, and solely represents the costs of administering the loan. . . .
>
> The banking system has also been used as an instrument of income redistribution through provision of *qarḍ al-ḥasanah* (beneficent) loans for the needy, financing the building of low-income housing, and provision of financing for small scale agribusinesses and industrial cooperatives, often without stringent collateral requirements."[9]
>
> "*Qarḍ* (interest-free loan): a charitable act and not a business transaction."[10]
>
> *Qarḍ al-ḥasana* is: "An interest-free loan given *mainly for welfare purposes*. The borrower is only required to pay back the amount borrowed."[11]

Except when brought up in the context of Islamic banking and finance, *qarḍ ḥasan* is consistently described and understood as an act of benevolence towards those who are in need or in difficulty, but generally are expected to be able to pay it back. A person in qualified need, who is not expected to be able to pay back the loan, is deserving of either *zakāt* (mandatory alms for individuals with certain level of wealth or *nisab*) or *ṣadaqah* (charity).

(B) Borrower can pay extra if not stipulated by contract:

> A loan contract between two parties for social welfare or for short-term bridging finance. Repayment is for the same amount as the amount borrowed. The borrower can pay more than the amount borrowed *so long as it is not stated by contract*.

---

[9] Mohsin S. Khan and Abbas Mirakhor, "Islamic Banking: Experience in The Islamic Republic of Iran and in Pakistan", *Econ. Dev. Cultural Change* 38/2 (January l990), 353-376.

[10] Imran Ahsan Khan Nyazee, "Islamic Law of Persons Glossary", Retrieved 15 December 2007 from http://www.nyazee.org/islaw/personal/personal.html.

[11] WorldofIslam Portal, "A Glossary of Islamic Economic Terms", online at: http://islam.worldofislam.info/index.php?option=com_content&task=view&id=461&Itemid=62, retrieved 15 December 2007.

Electronic copy available at: https://ssrn.com/abstract=1418202

> Most Islamic banks provide interest-free loans to *customers who are in need*. The Islamic view of loans (*qarḍ*) is that there is a moral duty to give them to borrowers free of charge, as a person seeks a loan only if he is in need of it. Some Islamic banks give interest-free loans only to the holders of investment accounts with them; some extend them to all bank clients; some restrict them to needy students and other economically weaker sections of society; and some provide interest-free loans to small producers, farmers and entrepreneurs who cannot get finance from other sources.[12]

Notably, the issue of the traditional legitimacy or acceptability of extra payment revolves around whether the extra is stipulated in the original contract or not. If stipulated, it is regarded as *ribā*; if not, then it is regarded acceptable, as a gesture of gratitude from the borrower (but it must not be expected by the lender).

(C) Current accounts of IFIs are treated as *qarḍ ḥasan* or *qarḍ* (alternatively, as *wadīʾah*/*amānah*):

> *Qarḍ al-Ḥasanah*: "Deposits whose repayment in full on demand is guaranteed by the bank."[13]

> [In Iran] "The *qarḍ al-ḥasanah* deposits comprise current as well as savings account while differ in their operational rules. The holders of current and savings accounts are guaranteed the safety of their principal amounts and are not entitled to any contractual return. However, banks are permitted to provide incentives to depositors through: (i) grant of prizes in cash of kind, (ii) reductions in or exemptions from service charges or agents' fees payable to banks, and (iii) according priority in the use of banking finances."[14]

Before delving into the significance of differences in usage of the respective terms, it should be noted and taken into account that "often the same words are used by different banks and have different meanings."[15] Just as in most other cases, opinions differ in this regard as well. Those who consider

---

[12] "Glossary: Definition of major Islamic finance instruments", online at: http://www.islamicfinancetraining.com/glossary.php, retrieved 15 December 2007. The Board of Advisors of this organization includes, among others, Monzer Kahf, M. Nejatullah Siddiqi, Abdulkader Thomas, and so on.

[13] Ziauddin Ahmad, "Islamic Banking: The State of the Art", *IDB Prize Winners' Lecture Series*—No. 2, IDB-Islamic Research and Training Institute (Jeddah, Saudi Arabia, 1994); Munawar Iqbal and Philip Molyneux, *Thirty Years of Islamic Banking: History, Performance and Prospects* (Palgrave Macmillan, 2005), 41.

[14] Iqbal and Molyneux, *ibid.*, 41.

[15] Volker Nienhaus, "The Performance of Islamic Banks: Trends and Cases", in: Chibli Mallat (Ed.), *Islamic Law and Finance* (London: Graham & Trotman), pp. 129-170, 131.

Electronic copy available at: https://ssrn.com/abstract=1418202

demand deposit as *amānah* or *wadīʾah* (trust) often insist on 100% reserve requirement. Those who regard demand deposit as *qarḍ ḥasan* differ.

> It has been suggested that Islamic banks should draw a sharp distinction between money deposited as demand deposits and money deposited in *muḍārabah* accounts. Demand deposits should be backed by 100% reserve as they are of the nature of an *amānah* (safe keeping). This view is not shared by others who regard demand deposits as *qarḍ al-ḥasanah* deposits whose repayment in full on demand is guaranteed by the bank but these can be used by the bank in its financing operations.[16]

Mohammad Obaidullah considers the *amānah* approach to deposits as unacceptable, and argues that those should be treated as loans, not as *wadīʾah* or *qarḍ*, "since a bank invites and seeks deposits for its own interests."[17] According to Obaidullah, deposits cannot be treated as *amānah*, but those can be treated as *wadīʾah* or *qarḍ*.[18]

Amānah is frequently defined by IFIs as follows: "Something which is given by a person to another to keep for some reason such as safe custody. The keeper is under an obligation to return the goods in the same condition in which he received them. The keeper may also use the goods with the prior permission of the owner."[19] Notably, there is good reason why *amānah* may not be applied to demand deposit, as argued by Kamali, a renowned scholar of Islamic jurisprudence, that according to Islamic understanding of *amānah*: "…a trustee is not liable for the loss of the property in his custody unless he is at fault or negligent".[20] However, one need not be surprised that 'unilateral gift' has become customary to ensure customers' commitment to such *amānah*/*wadīʾah*.

> If Islamic banks routinely announce a return as a 'gift' for the account holder or offer other advantages in the form of services for attracting deposits, this would clearly permit entry of *ribā* through the back door. Unfortunately, many Islamic banks seem to be doing precisely the same as part of their marketing strategy to attract deposits.[21]

---

[16] Ahmad, *supra* note 13, 17.

[17] Mohammad Obaidullah, *Islamic Financial Services*, Islamic Research and Training Academy, Jeddah, 2005, p. 44.

[18] *Ibid.*, 44-45.

[19] Ausaf Ahmad, "Contemporary Practices of Islamic Financing Techniques", IDB Islamic Research and Training Institute, Research Paper #20, 1993.

[20] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge, UK: Islamic Texts Society, 3rd edn., 2003), 335.

[21] *Ibid.*, 45.

Electronic copy available at: https://ssrn.com/abstract=1418202

In many cases, *amānah* or *wadīʾah* are regarded interchangeably.

> A life insurance policy is similar to a contract of *al-wadīʾah* (deposit) whereby two parties in a financial transaction engage in an agreement that one party deposits money as an *amānah* (trust) to the other party to be kept for the purpose of safety.[22]
>
> *Amānah* = refers to deposits in trust; *Wadīʾah* = safekeeping.[23]

Then, others in the industry even distinguish different types of *wadīʾah*, where *wadīʾah* and *amānah* are mixed up. This is particularly poignant for IFIs in Malaysia.

> Safe custody. Originally safe custody is *Wadīʾah Yād Amānah*, i.e. trustee custody where according to the Shariʾah the trustee custodian has the duty to safeguard the property held in trust. *Wadīʾah Yād Amānah* changes to *Wadīʾah Yād Dhamanah* (guaranteed custody) when the trustee custodian violates the conditions to safeguard the property. He then has to guarantee the property.[24]

Because many of these notions are not discussed in the public domain with corroboration or basis, upon contacting Maulana Shamsud Doha, a Shariʾah expert with the Islami Bank Bangladesh Limited, provided the following.[25]

> One method of accepting deposit by some Islamic Banks is *al-wadīʾah*. It is an alternative to 'current account'. Under the *wadīʾah* method, any funds deposited in the current account must be made available by the bank for withdrawal on demand. . . . In Shariʾah terms, the main relevant feature in this context is returning the trust on demand. Thus, *wadīʾah* is *amānah* available on demand.

In regard to any explicit *dalīl* for such concepts to apply to modern banking concepts, Maulana Doha refers to a Ḥadīth:

---

[22] IBFnet. "Further Grounds for Justifying an Islamic Model of Life Insurance Policy", undated; http://islamic-finance.net/islamic-insurance/t-family/furthergrounds.html).

[23] Islamic Finance Training. *Glossary*, online at: http://www.islamicfinancetraining.com/glossary.php.

[24] Islamic Banking and Finance Institute Malaysia, *Glossary*, online at: http://www.ibfim.com/index.php?option=com_content&task=view&id=32&Itemid=48.

[25] The clarification was sent by Shah Abdul Hannan, the former Chairman of IBBL by e-mail on 11/14/2006.

Electronic copy available at: https://ssrn.com/abstract=1418202

> The concept of *wadīʾah* has been taken from Ḥadīth of the Prophet. Amr b. Shuʾaib reported his father to have said on the authority of his grandfather that the Messenger of Allāh said: "He who is entrusted with some trust is *not responsible* for that (in case of its loss or wastage)" [*Sunān Ibn Mājah*, *Bāb al-wadīʾah*, #2401].

Two notable points. First, this Ḥadīth is weak (*daʾif*), according to Ibn Mājah himself.[26] Second, according to this Ḥadīth, a trustee is not responsible for the trust. In other words, the trustee keeps the trust on the basis of good faith, or best effort. However, Islamic banks treat *wadīʾah* as a guaranteed deposit. So what is the basis for such a guarantee? The clarification continues:

> [S]ince Islamic banks accept *wadīʾah* or *amānah* with the permission to utilize the funds, the provision of *dhamanah* (guarantee) has been added. That is fair. Without the consent obtained by the Bank to use the fund, there is no need to accord guarantee to the depositors.
>
> . . . *wadīʾah* in Arabic is used interchangeably with *amānah*. In the Qurʾān there is clear guidance about *amānah* [Q2:283].

Noticeably, the clarification cites no *dalīl* for that guarantee. Rather, it suggests that it is 'fair'. The cited Qurʾānic verse on *amānah* neither states nor implies any guarantee based on legal injunction. Of course, Islam takes trust very seriously and warns us about the consequence from Allāh for breach of trust. However, if the Ḥadīth is used as a *dalīl* for *wadīʾah*, any law *requiring* the banks to guarantee the deposits would be contrary to the Ḥadīth. The implication of the Ḥadīth, even if the Ḥadīth is *daʾif*, is understandable. The context of the Ḥadīth is not where the trustee seeks out or solicits *amānah* or trusts from others. Rather, based on the trustee's trustworthiness and integrity, people seek such service as sort of a personal favour. Thus, motivated to help others, a trustee may accept such trusts. However, it is not possible for the trustee to guarantee, except that he is expected to make an honest and caring effort to take care of the trust. Barring any negligence or deliberate waste, such a trustee cannot be expected to offer any guarantee. The case of banks or financial intermediaries is different as they are in the business of finance. In addition, the existence of a bank means an open invitation or solicitation of such deposits. However, to be consistent with this Ḥadīth, the trustee cannot be imposed or required

[26] See the commentary to #2401 in *Sunān Ibn Mājah, Kitāb aṣ-Ṣadaqah, Bāb al-Wadīʾah*, Vol. 3, Muhammad Tufail, translator (New Delhi, India: Kitāb Bhavan, 2000), 421.

Electronic copy available at: https://ssrn.com/abstract=1418202

to offer such guarantee as part of any modern national banking system. The Ḥadīth makes no distinction whether the trustee accepts the trust with or without the consent of the depositor, to use the fund as the trustee wishes.

An argument can be made that since banks are commercial enterprises involved in financial intermediation and, as such, differ from the trustees mentioned in the Ḥadīth, could banks be not treated differently so that they could be required to guarantee? They definitely can and should be required, but the point is that such requirement cannot be justified based on the particular cited Ḥadīth or other textual evidence generally cited for this purpose.

It seems that the *wadī'ah* account is more popular with the IFIs than the *qarḍ ḥasan* account,[27] while the *qarḍ ḥasan* approach is also used in Islamic insurance, particularly in the profit-oriented *takāful* model.[28]

(D) *Qarḍ* must be paid back *on demand* by the creditor:

> *Qarḍ al-ḥasanah*: "Deposits whose *repayment in full on demand is guaranteed* by the bank."[29]

Of course, current account (or demand) deposits being payable on demand is a standard practice of a modern banking system. In this context, the bank and the depositors recognize the demand deposit as a liability of the bank. However, neither the banks nor the depositors view demand deposits as 'loans' by the depositors to the banks.[30]

Definition and understanding of demand deposit are quite uniform around the world, and rarely is any notion of 'loan' attached to demand deposit.[31] Thus, how can demand deposits be defined in terms of *qarḍ*

---

[27] *Supra* note 17, pp. 50, 128.

[28] *Ibid*., 128, 139.

[29] Islamic Bank of Britain, 'Glossary of Islamic Terms', online at: http://www.islamic-bank.com/islamicbanklive/IslamicTerms/1/Home/1/Home.jsp;jsessionid=6BF3AE25FFE790CA09F1473404E90C6A, retrieved 18 December 2007. *Also see* Ahmad, *supra* note 13.

[30] Canada Deposit Insurance Corporation, 'Glossary', online at: http://www.cdic.ca/?id=106&descid=39, retrieved 15 December 2007. *Also see* Federal Reserve Bank, Cleveland, OH, 'Glossary', online at: http://www.clevelandfed.org/Research/Glossary/demandep.htm, retrieved 15 December 2007; Ludwig Von Mises Institute, 'Mises Made Easier', from http://www.mises.org/easier/D.asp, retrieved 15 December 2007.

[31] For further examples, see TIAA-CREF, 'Investment Glossary', online at: http://www.tiaa-crefbrokerage.com/invest_glosry_DegDh.htm, retrieved 16 December 2007; Trinidad

Electronic copy available at: https://ssrn.com/abstract=1418202

ḥasan? Or, how can the definition of *qarḍ ḥasan* in general have 'payable on demand' feature, without any qualifier or exception? Do the depositors of IFIs realize that they are giving 'loans' to their banks? Of course, there are also significantly varied positions regarding the condition of 'payable on demand', as reflected in the provisions in Pakistan, with the flexibility that *qarḍ ḥasan* borrowers can repay "if and when . . . able".[32]

Such flexibility in repayment is only on the loan side of the bank, where a borrower (*qarḍ ḥasan* term) in difficulty might be offered some reprieve. However, there might not be too many pious Muslim depositors anxious to make deposits even to 'Islamic' banks, if they understood that their deposits are 'loans' to these IFIs and, based on the concept of *qarḍ ḥasan*, they may have to be flexible and generous for the sake of Allāh, if IFIs have difficulty with these deposits.

(E) Loans can be classified into *salaf* and *qarḍ*. *Salaf* cannot be called back before it is due, while *qarḍ* must be paid back on demand.[33]

While *salaf* is generally regarded as a loan for a fixed period, there are confusing variations in the usage of the term.[34] Thus, while a distinction between *qarḍ ḥasan* and *salaf* might seem simple to make, when *salaf* is used in the sense of *salam* (a forward transaction), however, it becomes merely a short-term loan. However according to the State Bank of Pakistan, *salaf*, includes "*short, intermediate and long-term loans*".[35] Others claim that *salaf* is not a loan at all; rather it is a trade-related contract.[36]

---

and Tobago Deposit Insurance Corporation, 'Deposit Insurance Glossary', online at: http://www.dictt.org/depositor_resources/index.php?pid=3005, retrieved 16 December 2007; FAO, 'Glossary of Terms for Agricultural Insurance and Rural Finance', online at: http://www.fao.org/ag/AGS/subjects/en/ruralfinance/pdf/glossary_e.pdf, retrieved 16 December 2007.

[32] Iqbal and Molyneux, *supra* note 13, 39.

[33] State Bank of Pakistan, "Glossary of Islamic Banking", in: Myhammad Ayub, "Islamic Banking and Finance: Theory and Practice", SBP (undated), online at: http://www.sbp.org.pk/departments/ibd/glossary.pdf, retrieved 15 December 2007.

[34] IMF, "Islamic Banking", Appendix to "Monetary and Financial Statistics Manual September 2000", from online at: http://www.imf.org/external/pubs/ft/mfs/manual/pdf/mmfsap2.pdf, retrieved 15 December 2007.

[35] *Supra* note 33.

[36] Ahmad, *supra* note 13, 6, 38. For definition of *salam*, see Arab Finance House, 'FAQ/Glossary', Retrieved 17 December 2007 from http://www.arabfinancehouse.com/faqgen/index.asp.

Electronic copy available at: https://ssrn.com/abstract=1418202

Notably, loan is not understood in terms of a trade or contract involving commodities.[37] Thus, loans being categorized into 'payable on demand' (*qarḍ ḥasan*) and *salaf*, and then also considering *salaf* as a synonym for *salam* is confusing indeed. The *fatwā* of Shaikh Al-Tantawi of al-Azhar that deposits are not loans can be better understood in this context.[38]

(F) Only one type of loan, *qarḍ ḥasan*, is permissible, which must not accrue any direct or indirect benefit to the lender.

> According to Islamic principles, only one type of loan, *Qarḍ al-Ḥasan* (lit. good or benevolent loan) is allowable. Under the concept of *Qarḍ al-Ḥasan*, the lender may not charge interest or any premium above the actual loan amount. Some Muslim jurists state that this restriction includes directly or indirectly any benefits associated with the loan: '… this prohibition applies to any advantage or benefits that a lender might secure out of the *qarḍ* (loan), such as riding the borrower's mule, eating at his table, or even taking advantage of the shade of his wall'.[39]

Of course, this position contradicts the one stated earlier in (B), i.e., that the borrower can pay an extra if not stipulated by contract.

(G) The lender can charge some service fee to cover the administrative and transaction costs.

> An Islamic bank… may make interest-free loans (*qarḍ ḥasan*) either as a charitable activity or as a favour to customers, lawfully charging for the actual costs of its services in providing such loans, but not for the opportunity cost of the money.[40]

---

[37] *Merriam-Webster Dictionary*, Retrieved 15 December 2007 from http://www.m-w.com/dictionary/loan; *Oxford Advance Learners Dictionary*, Retrieved 15 December 2007 from http://www.oup.com/oald-bin/web_getald7index1a.pl; 'Federal Student Aid', Retrieved 15 December 2007 from http://www.ed.gov/offices/OSFAP/DirectLoan/glos.html.

[38] Mahmoud El-Gamal quotes this in his presentation, "The recent Azhar *fatwā*: Its logic, and historical background", 2003, online at: http://www.lariba.com/knowledge-center/articles/pdf/LARIBA 2003—Elgamal Azhar Fatwa.pdf, retrieved 16 December 2007.

[39] Takaful.com. "Origins and Operations of *Takāful* System", retrieved 15 December 2007 from http://www.takaful.com.sa/m1sub2.asp. This view is based on *fatwā* of the Shari'ah Advisory Board of al-Rajhi Bank, dated April 2001.

[40] Frank Vogel and Samuel Hayes, III, *Islamic Law and Finance: Religion, Risk, and Return* (London: Brill, 2006), 131; referring to cf. Decision 1, third session (1986), *Fiqh Academy Journal* (*fatwā* specifically for the Islamic Development Bank). Also see Moham-

Electronic copy available at: https://ssrn.com/abstract=1418202

If one wonders about any *dalīl* justifying such service fee to cover actual cost of extending *qarḍ ḥasan*, it seems that there is none, except the rule of permissibility (*ibāḥah*) in absence of an explicit prohibition. However, this provision for fees has allowed the Islamic banks to add on fees to bring the rate charged by them equivalent to the prevailing interest rate

(H) The lender may require collateral.[41]

There is nothing wrong from the Islamic viewpoint in requiring collateral in debt-based transactions. However, there is no *dalīl* for requiring collateral in case of *qarḍ ḥasan*. If *qarḍ* is synonymous to *qarḍ ḥasan* and it is a benevolent loan for the needy, the issue of collateral should not apply.

4. Anomalies and Incongruent Aspects of Contemporary Usage of the Terms

Discerning readers would readily recognize some major discrepancies in the above statements—anomalies that have not been satisfactorily addressed by those who regard *qarḍ ḥasan* as only gratuitous loan.

(1) If *qarḍ* is for the needy, making it essentially a charity, then how can current account deposits in the banking system be justified as *qarḍ ḥasan* from the depositors?
(2) According to some sources (E), no excess should accrue to the lender. Period! However, according to others (B), excess is acceptable (or even recommended) as long as it is not stipulated in the contract.
(3) According to (C), (D) and (F), *qarḍ* is 'payable on demand'. One cannot but wonder, if *qarḍ* (i.e., *qarḍ ḥasan*) is for the needy, then how is "payable on demand" commensurate with the goal of *qarḍ ḥasan*. Moreover, what is the *dalīl* from the Qurʾān and Sunnah that *qarḍ ḥasan is* payable on demand? Indeed, making *qarḍ* "payable on

mad Nejatullah Siddiqi. "Riba, Bank Interest, and the Rationale of its Prohibition," Jeddah: Islamic Development Bank, Visiting Scholars Research Series, 2004, 119.

[41] Omar Imady and Hans Dieter Seibel, "Principles and Products of Islamic Finance", University of Cologne Development Research Center, 2, online at: http://www.uni-koeln.de/ew-fak/aef/06-2006/2006-1 Principles and products of Islamic finance.pdf, retrieved 17 December 2007.

Electronic copy available at: https://ssrn.com/abstract=1418202

demand' actually favours the lenders, when such a condition is extended to demand deposits in the banking context.[42]

(4) Based on (D), there is a distinction between *salaf* and *qarḍ*; but according to (E), only one type of loan is allowed.

5. *Qarḍ* in *Ḥadīth*

Based on nine collections of Ḥadīth (Bukhārī, Muslim, Abū Dāwūd, Nasā'ī, Ibn Majāh, Tirmidhī, Muwatta, Musnād Aḥmad, and Darimi), in no Ḥadīth does the expression *qarḍ ḥasan* appear unlike it does in the Qur'ān. In Ḥadīth, *qarḍ* is referred to as *qarḍ*, without the addition of '*ḥasan*'.[43]

Muslim, Abū Dāwūd, Ibn Majāh, Tirmidhī, and Muwatta have no separate chapter on *qarḍ*. In some of these *collections, some minor and brief segments on qarḍ are included in either the Book of Buyū'* (*business* transactions) or Book of *Ṣadaqah* (alms/charity). However, the word *qarḍ* hardly appears in any of these segments. Bukhārī has a specific chapter on *qarḍ*. In Volume 3 of M. Muhsin Khan's *Arabic–English Bukhārī*, there is the Book of Loans, Payment of Loans,…[*Kitāb fī l-istiqrād wa ada' ad-duyūn*…], where the word *qarḍ* only appears several times, without any connotations that are traditionally attributed to *qarḍ* as *qarḍ ḥasan.* Furthermore, this is also not found in any Ḥadīth, but rather in the chapter description from Bukhārī himself and two juristic statements of Ibn Umar and Ata/Amr bin Dinar. These are not Ḥadīths.[44] There is also a one-Ḥadīth chapter with the title "To buy camels on credit", where the Arabic expression *istiqrād* is used.[45] Thus, *qarḍ* does not necessarily involve the

---

[42] Vogel and Hayes, III. *supra* note 40, 79-82.

[43] A.J. Wensinck, *Concordance et indices de la tradition musulmane*, Leiden, 1936-1969. This comprehensive concordance is in Arabic. A computerized search on a comprehensive database turned up a single report in *Musnāf of Ibn Abī Shaiba*, a lesser known source, where *qarḍ ḥasan* is mentioned. [#2245] However, it is also in a spiritual context and furthermore it is not a Ḥadīth, but *athār*. So, essentially the expression *qarḍ ḥasan* does not merely occur in nine Ḥadīth collections, but in reality it occurs in none at all.

[44] See Vol. 3, *Book of Loan*, Chapter 17, p. 346. Often under the Chapter title, Bukhārī shares verses from the Qur'ān that he deemed pertinent to the chapter. He also frequently shares juristic positions of eminent *sahaba*s under Chapter titles. However, such opinions are basically on the authority of Bukhārī himself. While each Ḥadīth is included with its *isnād* (chain) of narration, those juristic opinions are included without any chain.

[45] *Ibid.*, 338.

Electronic copy available at: https://ssrn.com/abstract=1418202

loaning of money, but it can also be a commodity loan. Essentially, it involves fungibles, where "one instrument is identical to and therefore interchangeable with another".[46]

According to one IBF training source, *dayn* and *qarḍ* are different, where *qarḍ* legally means "... to give anything having value in the ownership of the other by way of virtue so that the latter could avail of the same for his benefit with the condition that same or similar amount of that thing would be paid back on demand or at the settled time. It is a loan that a person gives to another as help, charity, or advance for a certain time".[47] The discrepancy in the above statement is obvious. While it is stating that *qarḍ* can "be paid back on demand or at the settled time", it also states that it is a loan as a help, charity or advance "for a certain time". If it is for a certain time, then it cannot be payable on demand. In contrast, Bukhārī, although not a jurist, views *qarḍ* and *dayn* interchangeably.[48]

Further anomalies are observed where *qarḍ* is understood as "the loan of fungibles (*qarḍ*) including money".[49] In such a case, any excess or profit on loans "is banned without regard to whether the fungible subject-matter of the loan is also *ribawī*, i.e., weighable or measurable (for the Ḥanafīs and Ḥanbalīs) or is food (for the Shafiʿis and Mālikīs). Thus, a fungible textile measured by the yard is not *ribawī* for either group, and yet cannot be loaned for consumption with excess".[50]

The issue of categorization of fungibles in defining *qarḍ* is relevant because it illustrates how the task of defining the underlying notion of *ribawī* and deducing the details at the level of application virtually falls apart in establishing any coherence.[51] Thus, the relevant question is why such incoherence and disagreement at the level of applied details on the subject of *ribā* and *qarḍ*? The answer may lie in the fundamental problem

---

[46] Online at: http://glossary.reuters.com/index.php/Fungible.

[47] Islamic Banking Courses, 'Glossary', online at: http://www.islamicbankingcourses.com/html/glossary.html, retrieved 18 December 2007.

[48] *Ṣaḥīḥ Bukhārī*, Arabic–English, translated by Muhammad Muhsin Khan, Islamic University, Madinah, Saudi Arabia (undated), Vol. 3, *Book of Loan*, Ch. 17, 346. Often under the Chapter title, Bukhārī shares verses from the Qurʾān that he deemed pertinent to the chapter. He also frequently shares juristic positions of eminent *sahaba*s under Chapter titles. However, such opinions are basically on the authority of Bukhārī himself. While each Ḥadīth is included with its *isnād* (chain) of narration, those juristic opinions are included without any chain.

[49] Vogel and Hayes, *supra* note 40, 71.

[50] *Ibid.*, 71.

[51] *Ibid.*, nos. 16, 71.

Electronic copy available at: https://ssrn.com/abstract=1418202

with the traditional way *ribā* or *qarḍ* is defined and then attempts are made to apply it at the level of details.

The question then remains as to why the Qurʾān does not use the word *qarḍ* except as *qarḍ ḥasan*, while Ḥadīth does not use the expression *qarḍ ḥasan* at all. The clue for this answer might lie in the Qurʾān, which we will explore next. However, let us identify another pertinent point first. Ignoring the *athārs* as well as juristic observations, not one of the few Ḥadīths that refer to *qarḍ* contains information pertaining to any extra or that such an extra is prohibited for a loan.[52]

6. *Qarḍ* in the Qurʾān

There is no Qurʾānic verse that refers to *qarḍ* without qualifying it as *qarḍ ḥasan.* The word *qarḍ* appears in six places in the Qurʾān (Q2:245, Q5:12, Q57:11, Q57:18, Q64:17, Q73:20). At each place, without exception, it is not just *qarḍ*, but *qarḍ ḥasan*, and this *qarḍ* is not to any human being, but to Allāh.

> So fear Allāh as much as you can; listen and obey and spend in charity [*anfiqu khairan*] for the benefit of your own soul…
>
> If you loan to Allāh, a beautiful loan [*tuqriḍu llāhā qarḍ ḥasan*], He will double it to your (credit), and He will grant you Forgiveness.…[53]

These verses are from a Meccan *sūrah*. Notice the transition from verse 16, which emphasizes charity, to verse 17, about *qarḍ ḥasan*. The mention of *qarḍ ḥasan* here is not as something newer than or different from the previous verse but merely a continuation, in restating spending in the path of Allāh with different words. According to Abdullah Yusuf Ali:

> Our charity or Love is called a loan to God, which not only increases our credit account manifold, but obtains for us the forgiveness of our sins, and the capacity for increased service in the future.[54]

---

[52] *Ṣaḥīḥ Bukhārī*, Vol. 3, p. 346. For more such juristic observations, see *Muwaṭṭa Imām Mālik*, Trans. by M. Rahimuddin, (Lahore, Pakistan: Sh. Muhammad Ashraf, 1985), 305. None of these refers to either the Qurʾān or any statement or action of the Prophet as reference.

[53] Qurʾān 64 (*al-Tagabun*):16-17.

[54] Abdullah Yusuf Ali, *The Holy Qurʾān: Text, Translation and Commentary* (New York: Tahrike Tarsile Qurʾān, 1988), no. 5500, 1560.

Electronic copy available at: https://ssrn.com/abstract=1418202

About the pertinent verse in *Sūrah al-Ḥadīd*,[55] Muhammad Asad explains: "In the present instance the meaning is apparently wider, applying to all that man may do selflessly, for the sake of God alone".[56]

Qarḍ ḥasan appears again in *al-Mā'idah*, where *ṣalāt* (prayer) and paying *zakah* are juxtaposed with belief in the messengers. Such belief should be reflected in the honour Muslims show and assistance they offer to their cause.[57] Quite clearly, such spending is general in nature and is offered in the Path of Allāh, as once again *qarḍ ḥasan* is mentioned in *al-Baqarah*, a *Madanī sūrah*.[58]

These verses are significant in understanding the context of exhortation about *qarḍ ḥasan*. The term is mentioned in verse 245 of *al-Baqarah* in the context of fighting in the path of Allāh. The struggle in its comprehensiveness requires commitment of our life and resources. Whatever we offer to Allāh is graciously recognized and treated as loan, not a gift (and therefore, what we offer would be returned, doubled or even more).[59] The verses pertinent to *qarḍ ḥasan* are quite clear about the following points.

(1) *Qarḍ ḥasan* in the Qur'ān consistently refers to the symbolic transaction between Allāh and the believers, especially in terms of the latter's offering of worldly resources in the path of Allāh.
(2) *Qarḍ ḥasan* in the Qur'ān specifies no detail whatsoever in regard to conditions or limitations, including whether *qarḍ* or *qarḍ ḥasan* must be without excess. On the contrary, *qarḍ ḥasan*, as a contract with God, consistently specifies an excess, even in generous multiples, or at least doubled. Therefore, if *qarḍ ḥasan* is taken in the context of the pertinent verses in the Qur'ān, the presence of excess is consistently declared and thus specified or stipulated on the part of Allāh.

---

[55] Qur'ān 57 (*al-Ḥadīd*):10-11, 18.

[56] Commentary on Q57(*al-Ḥadīd*):11 by Muhammad Asad, *The Message of the Qur'ān* (Gibraltar: Dār Al-Andalus, 1980), 837, #11.

[57] Qur'ān 5 (*al-Mā'ida*):12. For relevant commentaries, see Azad, *The Tarjuman al-Qur'ān*, trans. by Syed Abdul Latif (New Delhi: Kitāb Bhavan, 1990), Vol. 2, 113; Sayyid Abul ʿAla Maududi, *Towards Understanding the Qur'ān* (Leicester: The Islamic Foundation, 1996), Vol. II, no. 33, 142.

[58] Qur'ān 2 (*al-Baqarah*) 244-245.

[59] Maududi, *supra* note 57, Vol. I, no. 267, 187; Ali, *supra* note 54, 275, 97; Asad, *supra* note 56, 54, no. 234; Irfan Ahmad Khan, *Reflections on the Qur'an*, Vol. I (Leicester: Islamic Foundation, 2005), 614.

Electronic copy available at: https://ssrn.com/abstract=1418202

(3) The pertinent verses in the Qurʾān do not seem to have anything to do with *qarḍ* in general as business transactions in this world. Indeed the way the Qurʾān presents it, *qarḍ ḥasan* involves 'excess' above and beyond the *qarḍ* (loan) and it is 'stipulated' in the sense that Allāh treats this as a contract and He declares or pre-announces that no one is more faithful to His covenant than Him.[60] Thus, even though the notion about Omnipotence in one sense entails that nothing is binding on God, at another level, that he is *al-Ḥaqq* (the Truth) and *al-ʿAdl* (the Just) means that a promise or contract made by God is binding on him. In that sense, it is a stipulation in the covenant between Allāh and his servants who offer Him the 'beautiful loan', framed by Allāh from His perspective as a trade contract:

> Allāh has purchased of the believers their persons and their goods….[61]

(4) There is nothing in Ḥadīth pertaining about *qarḍ* that a *qarḍ* must be understood as *qarḍ ḥasan*.
(5) Neither the verses about *ribā* in the Qurʾān nor the *ribā*-related Ḥadīths refer to *qarḍ* (loan) or *dayn* (debt). Abdullah Saeed discusses this point based on Muhammad Rashid Rida [d. 1935 AH], an eminent scholar and the disciple of Shaikh Muhammad Abduh (d. 1905 AH).[62]

In light of the above observations, how did *qarḍ* and *qarḍ ḥasan* become synonymous and while the Qurʾān consistently mentions *qarḍ ḥasan* as with promised excess for the "loan to Allah", did *qarḍ* become a charitable or benevolent loan, where there should neither be any excess nor any such excess should be stipulated?

7. Problems with the Traditional Position on *Qarḍ* as *Ribawī* Contract

First, the juristic treatment of *qarḍ* is not based on *qiyās* (analogical reasoning) from the Qurʾānic verses about *qarḍ ḥasan*, but actually from the analogy to sales transactions, where *qarḍ* is considered a transaction without

[60] Qurʾān 9 (*at-Taubah*) 111.
[61] *Ibid*.
[62] Saeed, *supra* note 7, 11, quoting Rashid Rida, *al-Ribā wa l-Muʾāmalāt fī l-Islām* (Cairo: Maktabāt al-Qahira, 1959).

Electronic copy available at: https://ssrn.com/abstract=1418202

any 'counter-value'. Secondly, *qarḍ ḥasan*, consistently stated in the Qur'ān as a loan to God, became subject to those verses about *ribā*, especially *ribā al-fadl*, about which even some leading *ashāb* disagreed.[63]

Thus, in traditional Islamic law, *qarḍ*, unless it is *qarḍ ḥasan*, is a *ribawī* transaction from two angles: (a) through the *qiyās* based on sales (*bai'*), and/or (b) through the prohibition of *ribā*, as per the verse: "But if you turn back, you shall have your capital sums: Deal not unjustly, and you shall not be dealt with unjustly".[64]

Qarḍ with excess, profit or benefit (i.e., interest), should clearly be covered by the prohibition of *ribā*, or so it seems. But then what is the relevance of or need for *qiyās* based on sale? The problems with applying the prohibition of *ribā* to *qarḍ* are manifold.

(A) As we have already demonstrated above *qarḍ ḥasan* or *qarḍ* as consistently used in the Qur'ān has nothing to do with worldly business transactions, as it implies both excess as well as promise of Allāh (as a form of specification or stipulation/pre-announcement). Also, *qarḍ* as it is used in Ḥadīth establishes no incontrovertible proof that interest on loan or excess/benefit/profit on currency exchanges is impermissible.

(B) Qur'ānic prohibition of *ribā* as in Q3:130 is known as *ribā al-jahiliyyah*. Classical exegetes have rather consistently maintained that this type of *ribā al-jahiliyyah* involved, not a stipulated excess at the time of initiating a loan, but increasing the principal at the time of maturity, when the loan is due.[65] Furthermore, the issue of *ẓulm* (injustice/exploitation) is an essential indicator of *ribā*, an issue regularly mentioned but practically ignored in connecting the pertinent prohibition with any identifiable *ẓulm*.

(C) As for approaching the issue of *qarḍ* as *ribawī* contract from the *ribā al-fadl* angle, it carries its own serious pitfall. First, leading companions, some regarded as the most respected jurists of their

[63] Farhad Nomani, "The Interpretative Debate of the Classical Islamic Jurists on *Ribā* (Usury)", *Proc. 22nd Annual Meeting MEEA*, Topics in Middle Eastern and North African Economies, electronic journal, Vol. 4, Middle East Economic Association and Loyola University Chicago, September, 2002. http://www.luc.edu/orgs/meea.

[64] Qur'ān 2 (*al-Baqara*): 279; Nabil A. Saleh. *Unlawful Gain and Legitimate Profit in Islamic Law: Ribā, Gharar and Islamic Banking* (Cambridge University Press, 1986), 35-36, referring to Sanhuri, *Masādir al-Ḥaqq*, Vol. III, 237.

[65] Mohammad Omar Farooq, "Stipulated Excess in Understanding and Misunderstanding *Ribā*: The Al-Jaṣṣāṣ Link", *ALQ*, 21/4 (2007), 285-316. Also see Saleh, *ibid.*, 27.

Electronic copy available at: https://ssrn.com/abstract=1418202

time, such as Ibn Abbas, did not regard *ribā al-fadl* as impermissible. Second, unlike *ribā al-jahiliyya*, which is based on the Qurʾān, *ribā al-fadl* is based purely on Ḥadīth. The jurists have failed to develop a reasonably uniform understanding and position about *ribā al-fadl*. Hence the variation and discrepancy when they tried to identify the effective cause or criteria (*ʿillah*) at the applied level are so great that what one school often considers *ḥarām* (prohibited) other schools of Islamic law may deem as *ḥalāl* (permissible), and vice versa.

Although it is routinely claimed or assumed that based on Ḥadīth we can come up with a reasonably workable definition of *ribā*, especially *ribā al-fadl*, it is not true. Consider, for example, the criteria or rationale (*ʿillah*) of six commodities the Prophet presumably specified as *ribāwi*. When applying the issue of '*illah*' to delineate the scope of the prohibition of *ribā* based on *al-fadl*, the anomalies make it obvious that defining *ribā* by using Ḥadīth is more than just a daunting task.[66]

Thus, attempts to define *ribā* and equate interest with *ribā* in a blanket manner have remained unconvincing. More importantly, traditional rationales of prohibition of *ribā*—(1) *unfair exchange* (taking something from a party without giving something in return); (2) *economic argument*: idle class argument; (3) *moral argument*: undermining of charitable attitude among people; and (4) *social argument*—are easily understandable and demonstrable.[67] However, when extended to interest simplistically, the same rationales prove inadequate.[68]

8. The Crux of the Analysis

Ribā is generally defined as an excess over the principal.[69] Based on that indicator interest would fall under *ribā*. However, excess is not really the issue, even according to the traditional *fiqh* and the contemporary Shariʾah scholars. In numerous Ḥadīths that are generally regarded as *ṣaḥīḥ* (sound)

---

[66] Saeed, *supra* note 7, 36-39; also, see Farooq *supra* note 7.

[67] Yusuf Al-Qaradawi, *The Lawful and the Prohibited in Islam* (India: Hindustan Publ., undated), 265-266.

[68] Farooq, *supra* note 4.

[69] Farooq, *supra* note 65.

Electronic copy available at: https://ssrn.com/abstract=1418202

it is clear that excess is acceptable, if the borrower offers it voluntary when repaying.[70]

Permissibility of voluntary excess payment is the typical position. However, also common among some scholars is the tendency to have one's cake and eat it too. In the Historical Judgment, Muftī Muhammad Taqi Usmani defends the acceptability of the Ḥadīth: "*Every loan* which derives a benefit is a kind of *ribā*".[71] Usmani acknowledges that at best this is a disputed Ḥadīth.[72] Then, he invokes a common sophistry to explain that "Every loan…" is not every loan. He rationalizes that this Ḥadīth about "Every loan…" does not cover "any voluntary amount given by the debtor at the time of repayment…".[73] So, Usmani also concludes that the excess in itself is not really an indicator of *ribā*. Then, what is the indicator or criteria of *ribā*? It is if the excess is 'stipulated'. Another word for *ribā* is 'stipulated excess'.[74]

From commonly available or circulated material by Islamic banking industry, a reader might surmise that the 'stipulated excess' definition is based directly on the Qur'ān and/or Ḥadīth. In reality this is not so. The Qur'ānic exegetes almost consistently identify the Qur'ānic *ribā* as the *ribā al-jahiliyyah*, and there is no recognized proof of 'stipulation' in regard to the 'excess'. However, there is a fault-line in the consistency of explanation of *ribā al-jahiliyyah* in Qur'ānic exegeses. It occurs with Al-Jaṣṣāṣ' commentary of the Qur'ān, *Ahkām al-Qur'ān*. Al-Jaṣṣāṣ' work (d. 370 AH) is almost four centuries after the Prophet. He was the first to identify the 'stipulation' aspect of 'excess' and defined *ribā* in such a way that has been followed by others taking blanket approach to prohibition of *ribā*. "Almost

---

[70] *Ṣaḥīḥ Bukhārī*, Vol. 3, Book 41, no. 579; *Sunān Abū-Dāwūd*, translated by Ahmad Hasan (New Delhi, India: Kitāb Bhavan, 1990), Book 22, no. 3330; Imām Nawawi, *Riyadus Saleheen*, translated by S.M. Madni Abbasi (Karachi: International Islamic Publ., 1983), nos. 1375, 1374.

[71] Muftī Muhammad Taqi Usmani, "The Text of the Historic Judgment on Interest", 1999, Retrieved 19 December 2007 from http://www.albalagh.net/Islamic_economics/riba_judgement.shtml, section no. 101; referring to *Sunān al-Baihaqi* and *Musnād* of Harith Ibn Abi Usamah.

[72] *Ibid.*, Section 101.

[73] *Ibid.*, Section 105.

[74] Islami Bank Bangladesh Limited, 'Islamic Banking: Some Conceptual Issues', undated, Retrieved 19 December 2007 from http://www.islamibankbd.com/islamic_banking_some_conceptual_issues.php.

Electronic copy available at: https://ssrn.com/abstract=1418202

all jurists have quoted Al-Jaṣṣāṣ to say that the Arabs in the early days used to undertake loan transactions with interest."[75]

Interestingly, scholarly scrutiny of the evidence Al-Jaṣṣāṣ offered in his exegesis is rare. An evaluation of the evidence and argument he presented exposes vital problems in his claim that 'stipulation' is among the defining conditions of *ribā*.[76]

One other interesting and notable point. Let us revisit the following statement from Al-Bukhārī:

> Ibn Umar said concerning loans for a fixed time, 'There is not objection to it, even if the debtor gives more than he owes if the creditor gives more than he owes, if the creditor has not stipulated it.'[77]

Apart from the fact that these juristic observations are without any isnād, or in cases like those pertinent ones in Muwatta cited earlier that do not reach the Prophet, in none of these the jurists, such as Imām Mālik or, going further back, Umar or Ibn Umar refers to the verse about *ribā* (i.e., only principal sum is allowed). This is quite interesting since, according to the common Muslim understanding, *qarḍ ḥasan* must be excess-free because *ribā* is prohibited and *qarḍ ḥasan* must be interest-free because it is subject to the same prohibition. Indeed, generally our scholars and jurists, dating back to some companions, seem to subject *qarḍ* to the condition of no stipulated excess. However, quite curiously, as demonstrated already, *not a single juristic observation* about *qarḍ* in Ḥadīth collections pegs the prohibition of *ribā* as the basis for their opinions. They neither refer to any Prophetic statement in this regard, nor to the *ribā*-related verses in the Qur'ān. Why not? The obvious explanation might be that no companion must have considered the issue of excess in case of *qarḍ* related to the issue of *ribā.* For, if they did, they would simply have stated that *qarḍ* must not have any excess (or stipulated excess) because it is subject to the prohibition of *ribā*.

Indeed, in another powerful argument offered in the (in)famous *fatwā* of Sheikh Al-Tantawi of al-Azhar, pre-specified excess is not only regarded as acceptable, but also desirable for the protection of the deposits in an age of greater corruption and lower moral probity. In this regard, Tantawi also

---

[75] The translation, Excerpt on *Ribā* from *Ahkām al-Qur'ān*, online at: http://www.nyazee.com/islbanks/riba/riba.html, retrieved 23 July 2007.

[76] Farooq, *supra* note 65.

[77] *Bukhārī, supra* note 48.

Electronic copy available at: https://ssrn.com/abstract=1418202

refers to other major scholars in support of this argument.[78] Further comments from the renowned Islamic jurist of al-Azhar Abdel Wahab Khallaf are adduced, stating that there is no proof that fixed return percentage in any transaction, including loan, must not be pre-specified.[79]

Thus, those who claim pre-specification or stipulation of excess in financial transactions, even in *muḍārabah*, is unacceptable deem it less acceptable in *qarḍ*. However, as clarified above, compellingly contrasting views in this regard do exist; many might consider the view of Tantawi, Khallaf and many others to have greater merit from a broader Islamic perspective.

9. The *az-Zubair al-Awwām* Ḥadīth about *Salaf*

As previously mentioned, some IFIs regard bank deposits (current account deposit, to be specific) as *qarḍ ḥasan*, while others disagree. According to the former chairman of the Islami Bank Bangladesh: "these deposits are not considered as *Qarḍ al-Ḥasanah*, these accounts are called *wadīʾah* accounts. . . . Bank keeps these as safe deposits (Bank guarantees safety) with the condition that Bank is authorized to use these without any risk to depositors."[80]

One of the pioneers in the field of Islamic economics and finance, M. Nejatullah Siddiqi, clarified[81] that, even though the term of *qarḍ ḥasan* is not preferable in this context, it can still be treated as *qarḍ ḥasan*, because the depositors already know that such deposits are interest-free.

Muftī Barkatullah is a Shariʾah scholar based in the United Kingdom. He was broached two questions by this author: (a) How are current account deposits treated as *qarḍ ḥasan*, as some IFIs do? (b) What is Shariʾah proof (*dalīl*) that *qarḍ ḥasan* is payable on demand?[82]

According to him it is not *qarḍ ḥasan*, but merely trust (*wadīʾah*)—a safe custody contract between the depositor (customer) and the custodian (bank).[83] He further clarified that there is a cultural tendency in South

[78] Quoted by Mahmoud El-Gamal, *supra* note 38

[79] *Ibid*.

[80] Personal e-mail from Shah Abdul Hannan on 26 October 2006.

[81] Personal e-mail from M. Nejatullah Siddiqi, 15 January 2007.

[82] Conference call on 26 October 2006 with Muftī Barkatullah and Irfan Ahmad Khan, the author of a Qurʾānic commentary, *Reflections on the Qurʾān* (see *supra* note 59).

[83] Al-Buraq Financial Services, 'Glossary', online at: http://www.alburaq.co.uk/glossary.asp, retrieved 21 December 2007.

Electronic copy available at: https://ssrn.com/abstract=1418202

Asia, to call the same item *qarḍ ḥasan*. He also noted that *qarḍ ḥasan* is simply between a servant and Allāh. Then, in regard to *wadīʾah*, he referred to a Ḥadīth in *Ṣaḥīḥ al-Bukhārī*.[84]

This Ḥadīth about Abdullah bin Az-Zubair, a prominent companion of the Prophet, is quite interesting and illuminating, with a few aspects that are puzzling, as well. As Az-Zubair was considered highly trustworthy, people used to bring their money to him for safekeeping. However, one almost immediately notices Az-Zubair's anxiety: "My biggest worry is my debts [*daynī*]. Do you think, if we pay the debts, there will be something left for us from our money?"

One cannot but wonder why he would suffer such anxiety. Did he not keep records of the deposits and what was done with those? Accepting deposits as a very trustworthy person but lacking adequate record keeping seems impractical and unethical (assuming, of course, that the Ḥadīth is accurate). On the other hand his anxiety would seem unwarranted, if he had kept records. What might explain this anomaly?

Second, he was concerned his estate might not cover his liabilities; he explained to his sons how he pleaded with Allāh to help him in regard to the debts. He said: "By Allāh, whenever I had any difficulty regarding his debts [*mā waqaʾtu fī kurbatin min daynihī*], I would say, 'Master of Az-Zubair! Pay his debts on his behalf [*aqdaʿanhu daynahu*]' and Allāh would (help me to) pay it". What kind of trust did he develop, while he seems to be in such disarray in regard to his liabilities?

Third, as per his own prognosis, he was martyred leaving no liquidity. But does this make sense? If the deposits with him are to be regarded as the basis for IFIs' bank deposits, then how could he possibly have no liquidity and all his assets were in real estate, an asset category of relatively low liquidity? Even if one assumes that depositors seldom withdrew from him or only with advance notice, would it seem sensible to have such high level of deposits with little if any liquidity?

Fourth, the Ḥadīth explains that people used to bring money to him to *deposit as trust* [*yastaudiyuhu*], from which one can derive the connection of "*wadīʾah*"—a safe custody contract between the depositor (customer) and the custodian (bank). "In fact, the source of the debt which he owed was, that if somebody brought some money to deposit with him [*anna r-rajula kāna yaʾtihi bīl māl fa yastaudyuhu iyyahu*]. Az-Zubair would say,

[84] *Ṣaḥīḥ Bukhārī*, Vol. 4, Book 53, no. 358.

Electronic copy available at: https://ssrn.com/abstract=1418202

'No, (I will not keep it as a trust), but I take it as a debt [*lakinnahu salaf*], for I am afraid it might be lost'."

Curiously, he was reluctant to receive the deposit as *wadī'ah* (trust). Thus, it contradicts the explanation provided by Muftī Barkatullah. Az-Zubair wanted to accept those deposits as debt or liability, instead, which also implied he could utilize the deposits at his discretion. It is interesting that he was concerned he might lose the deposits (taken as trust). Yet, he was willing to accept the deposit and invest at his discretion, which involves risk—potentially much greater risk (of course, along with potential for return). Using this Ḥadīth as a basis for bank deposits in IFIs' *wadī'ah* would mean that banks would consider the deposits liabilities while reserving complete discretion, including investment with significant potential for profit or loss.

Fifth, the Ḥadīth does not use the word *qarḍ*, but *salaf*. According to the State Bank of Pakistan (SBP), the latter is defined as following: "*Salaf* or Loan/Debt: it includes *loans for specified periods*, i.e. short, intermediate and long-term loans. . . . Amount given as *Salaf* cannot be called back, unlike *Qarḍ*, before it is due."[85]

The above definition, on which no universal agreement exists, distinguishes *salaf* from *qarḍ*. The former is for specific periods of varying duration and it cannot be called before it is due. Thus, this Ḥadīth cannot be the basis for bank deposits, especially the demand deposit, payable on demand to the depositors. Quite interestingly, SBP defines *qarḍ* as "a particular kind of *Salaf*. Loans under Islamic law can be classified into *Salaf* and *Qarḍ*, the former being loan for fixed time and the latter *payable on demand*".

Once again, SBP defines *qarḍ* as 'payable on demand', but Az-Zubair's arrangement for the deposits was on the basis of *salaf*, which cannot be called back 'before it is due'. So, where is the Shari'ī proof that (a) bank deposits can be categorized as '*qarḍ ḥasan*' and (b) *qarḍ ḥasan* is payable on demand?

Sixth, when the son of Az-Zubair kept actual debt levels a 'secret'—and some may deem it a misrepresentation—some close friends of Az-Zubair offered to help.

[85] State Bank of Pakistan, 'Glossary of Islamic Banking', *supra* note 33.

Electronic copy available at: https://ssrn.com/abstract=1418202

> Hakim bin Hizam met Abdullah bin Zubair and asked, 'O my nephew! How much is the debt of my brother?' Abdullah kept it as a secret [*fa katamahu*] and said, 'One hundred thousand'.

Of course, Az-Zubair's estate needed no help and offers to discount, forgive or reschedule the loan were declined by Az-Zubair's designated son. One has to conclude these offers were Islamically valid. Otherwise, the Ḥadīth would have indicated their unacceptability. Ultimately, the debts were covered by liquidation of a portion of Az-Zubair's estate. However, can we accept bank deposits to be handled on the basis of the depositor's generosity or graciousness? Once again, this part of the Ḥadīth and the specific circumstances do not apply to modern banking arrangements.

Lastly, upon payment of the specific debts, Ibn Az-Zubair held the estate from inheritance distribution and decided to publicly inquire during hajj if there was still anyone that had deposits with Az-Zubair. Unquestionably, this step was a reflection of the highest integrity and God-consciousness on the part of Ibn Az-Zubair. However, could all these deposits be based on oral communication alone, especially where the Qurʾān explicitly requires that such transactions be recorded (even involving an independent third party)?[86] Obviously, either there was no record, or he kept inadequate record. Otherwise, why the necessity of public inquiries as well as withholding of the inheritance distribution for such a long time period? Thus, even though his son's effort to ensure that all creditors were repaid was most noble and praiseworthy, it still left unanswered the question how so many people felt comfortable entrusting their deposits with Az-Zubair as well as his accepting of those, without adequate (or even no) record-keeping?

The bottom line is that this Ḥadīth leaves more questions than answers and cannot be used as a basis for any of the Islamic nuanced terms—namely, *qarḍ ḥasan*, *wadīʾah* or *amānah*—being used for current or demand deposit in a bank. Based on significant incoherence, it would not be far-fetched to think that there is a serious problem with the narrative of this Ḥadīth.

[86] Qurʾān 2 (*al-Baqarah*): 262.

Electronic copy available at: https://ssrn.com/abstract=1418202

10. Banking Practices Regarding *Qarḍ Ḥasan*

While *qarḍ ḥasan* is for the needy, one should not presume any needy person can approach an Islamic bank seeking *qarḍ ḥasan*. The practices vary widely among banks. Sudin Haron describes the wide variations across Muslim-majority countries of the model of their respective deposit structure. "There is no standardised Shari'a principle used by all Islamic banks in delivering deposit facilities."[87]

One may wonder why so much variation and when all these are presented as Shari'ah-compliant, what is the *dalil* from the primary sources in Islam about such matters. Only when such questions are raised, one notices the paucity of concrete or solid grounding of these matters in the foundational sources of Islam. Contrary to the claim that IFIs are distinctively based on Islam, as Haron acknowledges: "In most cases, the operational aspects and practices of these deposit facilities are similar to practices of conventional bank deposit facilities".[88]

Banking practice also varies whether *qarḍ ḥasan* type loans are treated as payable on demand or payable as feasible by the borrower. Also, some banks require recovery of administrative cost of *qarḍ ḥasan* through service charge, while others do not.[89] Some banks, as in Iran, categorize all deposits, demand and savings, as *qarḍ ḥasan*, while others treat only demand deposit as *qarḍ ḥasan*.[90]

Legally defining and structuring current deposits as *qarḍ ḥasan* or *wadī'ah* is common. Neither of these should bear any stipulated return. However, many IFIs regularly come up with alternative ways to reward the depositors. Iran, a country with system-wide ban on interest, as well as many IFIs, including HSBC, treat deposits as *qarḍ ḥasan* and regularly offer gifts and benefits that are publicly disclosed. It is not demanded by the depositor on a contractual basis, and thus it is technically not *ribā*, but it is nothing but a form of *ḥiyal* (legal stratagems or artifices to circumvent the spirit of the Islamic commandments or guidance).[91]

If it is assumed that the borrower can pay extra voluntarily, then treating deposits as *qarḍ ḥasan* allows the banks (as the borrowers) to pay extra to

---

[87] Sudin Haron, "A Comparative Study of Islamic Banking Practices", *King Abdul Aziz Univ. J. Islamic Econ.*, 10 (1998) 23-52.

[88] *Ibid.*

[89] Ahmad, *supra* note 13, 35.

[90] *Ibid.*, 37.

[91] Obaidullah, *supra* note 17, 54-55.

Electronic copy available at: https://ssrn.com/abstract=1418202

the depositors (lenders).[92] If this extra is essentially comparable to the rate of return earned on fixed deposits, then this is nothing but *ḥiyal* to get around the prohibition. The traditionalists generally do not approach these matters from the perspective that the understanding of the prohibition might be problematic.

A major problem with applying *qarḍ ḥasan* approach to bank deposits or loans is that in case of loans under this rubric, the Qurʾān specifically commands that if the borrower faces difficulty in repayment, the lender must be charitable (for the sake of Allāh) to reschedule the debt or even forgive it in part or whole.[93] Thus, as clearly specified in the Qurʾān, the *qarḍ ḥasan* concept is not consistent with any guarantee. That means that if the IFIs took in deposits or extended loans as *qarḍ ḥasan*, and either side defaulted, in light of the Qurʾānic guidance, the lender (i.e., the depositors, in this context) has to be generous and lenient.[94] By the way, in the Qurʾānic verse that deals with leniency toward debtors in difficulty, the term used is not *qarḍ*, but debt in general.[95]

However, the IFIs can neither expect the depositors to deposit nor can they offer loans to the customers (or others) as *qarḍ ḥasan* without some form of guarantee, especially when they are also competing with conventional banks. So, regardless of the clear Qurʾānic verse, they guarantee the deposit.[96]

A fundamental problem in assessing these terminologies is that banks in Islamic finance are not like banks elsewhere, and, similarly, commonly used terms, such as deposit, are not used in the same sense either.[97]

11. Conclusions

The purpose of this article was to explore the topic of *qarḍ ḥasan* and some widespread misinterpretations and misunderstandings about it. According

[92] Sudin Haron, "The effects of management policy on the performance of Islamic banks", *Asia Pacific J. Manag.*, Singapore, 13/2 (October 1996) 63-76.

[93] Qurʾān 2 (*al-Baqarah*): 280.

[94] V.K. Arasan, "Rise of of Islamic Banking—Problems and Prospect", paper presented at the European Association of University Teachers in Banking and Finance, University of Siena, Italy, undated, online at: http://www.unisi.it/ricerca/dip/dir_eco/wolpert/papers/arasan.doc, retrieved 20 December 2007.

[95] Qurʾān 2 (*al-Baqarah*): 280.

[96] Haron, *supra* note 88,

[97] Nienhaus, *supra* note 15, 130-131.

Electronic copy available at: https://ssrn.com/abstract=1418202

to the Qurʾān, *qarḍ ḥasan* is essentially any offering or sacrifice in the path of Allāh. It may also cover a charitable or benevolent loan which the lender offers without any intention or desire to benefit, except blessing in this world and hereafter from Allāh. However, even though the Qurʾān does not associate the concept of the *qarḍ ḥasan* with any business transaction, in traditional Islamic law all kinds of *qarḍ* (loans) were equated with *qarḍ ḥasan*. Similarly, even though Ḥadīth does not use the term *qarḍ ḥasan* at all and the Qurʾānic prohibition of *ribā* is linked with the issue of injustice and exploitation, in absolutist legalism, *ribā* has been defined in terms of any 'stipulated excess' delinking it from the Qurʾānic *maqāṣid* (intent). Thus, the Qurʾānic verses could not be used as the basis for a blanket prohibition of interest, and consequently, Ḥadīth was used to come up with *ribā al-fadl*. Curiously, nowhere in Ḥadīth was *ribā al-fadl* discussed in the context of loan. Instead, it involves barter, trade or sale.

As explained in this article, the 'excess' in loan is not in contention. According to traditional Islamic law not any 'excess' but only 'stipulated excess' is prohibited. However, there is nothing in the Qurʾān or in Ḥadīth (in words of the Prophet or in actual events involving the Prophet) that supplies the evidence that 'stipulation' makes a loan transaction prohibited. Thus, the issue of excess (*al-fadl*) and its stipulation were projected back to *qarḍ ḥasan*, equating with *qarḍ*, available only on a charitable basis, and describing it as 'interest-free' loan.

This misinterpretation, on the one hand, constrained or handicapped the IFIs to categorize demand deposits from Islamic viewpoint. At the same time, the same misinterpretation provided an opening for the IFIs to categorize demand deposits as *qarḍ ḥasan*, which is acknowledged as a rather unique usage of the term.

> . . . the term '*Qarḍ al-ḥasanah deposit*' is used to denote demand deposits. *This use of the term is unique* and permits the banks to utilize these deposits as if they were the banks' own resources.[98]

From the Islamic viewpoint, how can they justify receiving deposits without paying any return and also being able to appeal to the depositors to feel Islamically inclined to use the service of IFIs? Thus, some IFIs categorize demand deposits as *qarḍ ḥasan* (or as interest-free loan) to the bank, payable on demand. This actually may expose the IFI depositors to relatively

[98] Khan and Mirakhor, *supra* note 9, 353-376.

Electronic copy available at: https://ssrn.com/abstract=1418202

greater risk, as argued by an IFI expert, Munawar Iqbal, Chief of the Islamic Banking and Finance Division of the Islamic Development Bank.[99]

As Chapra and Khan clarify, even with a guarantee of demand deposit there might be additional risk, if there are major underlying conditions that unfold as a crisis.[100]

Thus, it is not surprising that the IFIs' need for maintaining depositor confidence through better protection and guarantee of deposits in general and demand deposit in particular, is now being confronted and measures similar to the conventional banking system are being instituted. Many of these measures have nothing to do with or are well beyond the scope or parameters of the traditional understanding of *qarḍ* or *qarḍ ḥasan*. Some recommendations for capital adequacy of IFIs which are already adopted by some banks and under consideration by others, are: "Giving a share of profits to demand depositors; paying a rate of return that is closely related to LIBOR; relying excessively on sales-based modes; and free entry and exit of depositors".[101]

However, do the depositors know about such risks? Also, do the depositors know or feel that by depositing their money they are actually offering *qarḍ ḥasan* to the banks? Where is the charitable aspect or "need" of the borrower? Just as injustice or exploitation aspect as the intent (*maqāṣid*) has been delinked from *ribā* in equating it to interest in a blanket manner, treating demand deposit as *qarḍ ḥasan* is another glaring illustration of delinking a guidance of Islam from its *maqāṣid*. Also, where is the *dalil* that *qarḍ ḥasan* is payable on demand?

Other IFIs have categorized demand deposits as *wadīʾah*, a guaranteed deposit, where the Ḥadīth of Az-Zubair is quoted by some Shariʾah scholars as the *dalil*.[102] However, as illuminated above, that Ḥadīth, even though from *Ṣaḥīḥ Bukhārī*, is full of anomalies and it explicitly mentions that Az-Zubair was reluctant to accept the deposits as 'trust'. Instead, he wanted to accept the deposits as 'debt' and then have complete discretion about their use. Moreover, his transactions were based on *salaf*, fixed duration loans, while demand deposits, according to IFIs, are payable on demand.

[99] Iqbal and Molyneux. *supra* note 13, 121.

[100] M. Umer Chapra and Tariqullah Khan, "Regulation and Supervision of Islamic Banks", IDB Islamic Research and Training Institute, Occasional Paper No. 3 (Jeddah, Saudi Arabia, 2000), 13.

[101] *Ibid.*, 49, no. 52.

[102] S*ee supra* note 70.

Electronic copy available at: https://ssrn.com/abstract=1418202

None of these aspects corresponds to bank deposits as understood and practiced by the banking institutions, conventional or Islamic. Also, the only way the concept of *qarḍ ḥasan* (or *qarḍ*) can be related to the case of Az-Zubair is by delinking the charitable/need aspect of *qarḍ ḥasan*.

As explored in this article, equating *qarḍ ḥasan* with *qarḍ* is based on the definition of *ribā* as 'stipulated excess', where the prohibition is then extended backward to interest on loans. However, since problems exist with the *ribā*-interest equation and reductionism, such projecting back of the notion of interest-free loan to *qarḍ* or *qarḍ ḥasan* begs serious questions, the most important of which are:

(a) What is the Islamic evidence that *qarḍ ḥasan* is necessarily payable on demand?
(b) Where is the evidence that 'stipulation' of excess renders a loan contract un-Islamic or prohibited?
(c) What is the evidence that loan (*qarḍ*) should be classified as *ribawī*?

The answer to the first question is there seems to be no evidence. The answer to the second is that analysis of all the evidence offered in this regard seems insufficient to support the claim that 'stipulation' of excess renders a loan contract un-Islamic or prohibited. As for the third question, I hope this article has adequately shown that there is a serious problem with the position that *qarḍ* or loan is *ribawī*.

Lest it be misunderstood, raising the question about whether *qarḍ* or loan in general is *ribawī* or not should not be construed as advancing a position that all loans, interest-free or interest-bearing, are non-*ribawī*. Quite the contrary, any loan transaction or contract that would involve *ẓulm* or injustice/exploitation of one party by the other would be regarded as *ribawī*. Thus, for examples, loan-sharking—sometimes at an astronomical rate of 99+%;[103] credit-card lending at high or variable interest rates, which is often targeted toward less creditworthy borrowers;[104] zero-interest

[103] "Report: Cash Call", *Ripoff Report*, 31 May 2007, online at: http://ripoffreport.com/reports/0/251/RipOff0251427.htm.

[104] "High-Fee, Low-Credit Predatory Credit Cards Prey Upon the Poor", *Forbes*, 1 November 2007, online at: http://www.forbes.com/businesswire/feeds/businesswire/2007/11/01/businesswire20071101006136r1.html, retrieved 20 December 2007. Also, referring to his paper, *supra* note 5; Mahmoud El-Gamal, Chair of Islamic Economics at Rice University, states: "My meager efforts to define *ribā* have come up with the definition:

Electronic copy available at: https://ssrn.com/abstract=1418202

financing with predatory fine prints;[105] sub-prime mortgage lending especially at adjustable rates to vulnerable groups[106] would be regarded as *ribawī*, requiring legal protection for potentially vulnerable groups. However, as discussed here, there is not sufficient basis for considering or religiously prohibiting all interest-bearing loans as *ribawī*.

Money loans generally have been subject to various kinds of restrictions throughout history. Indeed, historically it has been one of the supervised markets.[107] Therefore, the issue is not whether money loans should still belong to supervised markets. Rather, the issue is whether loans should be considered *ribawī*, meaning that it must be only a charitable transaction, without having any place in commerce. As demonstrated in this article, denying any commercial role for loan or *qarḍ* has created an environment where the Islamic finance industry has to devise alternatives that are substitutes to conventional finance mostly in label, but not in substance. The issue of whether *qarḍ* is to be considered completely *ribawī* merits further research and also open-minded considerations from Muslim scholars. However, one of the fundamental implications of what is presented here is that if *qarḍ* is not equated with *qarḍ ḥasan*—and there is no sufficient Islamic basis to do so—then there might be room for accommodating *qarḍ* as part of commercial Islamic finance; of course, in a supervised or regulated context of the competitive environment for financially capable borrowers.

'the unbundled sale of credit', which will cover running credit card debt (*ribā al-jahiliyya*) as well as unsecured interest-bearing loans (as *ribā l-nasīʾah*)". [message posted on IBFnet: #7047, 3 June 2007, accessed at http://finance.groups.yahoo.com/group/ibfnet/message/7047,25 December 2007.

[105] Attorney General's office of State of North Dakota, "Scams, Shams and Flimflams", http://www.ag.nd.gov/CPAT/ScamsShamsFlimFlams.pdf.

[106] Board of Governors of the Federal Reserve System, "Statement on Subprime Mortgage Lending", 24 July 2007, online at: http://www.federalreserve.gov/boarddocs/srletters/2007/SR0712.htm.

[107] Rolf Nugent and Leon Henderson, "Installment selling and the consumer: A brief for regulation", in: John Brainder (Ed.), *The Ultimate Consumer: A Study in Economic Illiteracy* (Ayer Publ., 1976), 93-103.

Electronic copy available at: https://ssrn.com/abstract=1418202