



NILE UNIVERSITY LAW JOURNAL

ABUJA - NIGERIA

VOLUME 1 NUMBER 2, JUNE, 2019

TABLE OF CONTENT

1. EDITORIAL BOARD MEMBERS	- - - - -	- iii
2. EDITORIAL NOTE	- - - - -	- iv
3. THE DOCTRINE OF PACTA SUNT SERVANDA: ARGUMENTING THE BOOBYTRAP IN NEGOTIATING A TRANS-NATIONAL RESOURCES AGREEMENT. <i>Professor Shehu Abdullahi Zuru, Dr. Aisha Maikudi, Barr. Muh'd Ibrahim Mukhtar, Dr. Ngozi Anadi, Muntasir Dauda Sharif</i>	- - - - -	- 1
4. PLEA BARGAINING: A PANACEA FOR PRISON DECONGESTION IN NIGERIA <i>Dr (Mrs) Florence U. Masajuwa & Idemudia E. Oaihimire</i>	- - - - -	- 9
5. INSTITUTIONAL FRAMEWORK FOR DISASTER MANAGEMENT IN NIGERIA <i>Dr. Jane Nneka Oramunwa</i>	- - - - -	- 28
6. GLOBAL ENVIRONMENTAL POLITICS AND ENVIRONMENTAL LAW IN NIGERIA <i>Dr. Chukwudi Victor Odoeme</i>	- - - - -	- 44
7. LEGAL EXAMINATION OF THE EXTENT OF APPEALS IN WRONGFUL CONVICTIONS IN NIGERIA <i>Oniha, Osato Mabel</i>	- - - - -	- 60
8. NORMS AND ETHICS OF ISLAMIC BANKING SYSTEM: EXAMINING THE TRIBULATIONS OF RIBA VIS-À-VIS TEXTUAL PROVISIONS <i>Abdulraheem Taofeeq Abolaji</i>	- - - - -	- 72
9. THE REASONING CRIMINAL: A CRITICAL APPRAISAL OF THE RATIONAL CHOICE MODEL OF CRIMINAL DECISION-MAKING <i>Dr. Ngozi Obeta Anadi, Dr. Mohammed Hilal Adamu & Dr. Sylvanus Gbedazhi Barnabas</i>	- - - - -	- 82
10. THE EVOLUTION OF THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES (CBDR) AS A PRINCIPLE OF INTERNATIONAL CLIMATE CHANGE LAW AND POLICY - 1972 TO 2015 <i>Dr. Sylvanus Gbedazhi Barnabas & Dr. Ngozi Obeta Anadi</i>	- - - - -	- 92
11. THE VIABILITY OF THE STAMP DUTIES TAX IN THE NIGERIAN FISCAL SYSTEM <i>Mohammed Bashir Tanko</i>	- - - - -	- 112

12. LEGAL ISSUES AND CHALLENGES OF CORPORATE CRIMINAL LIABILITY OF OIL AND GAS COMPANIES; THE CHALLENGES. <i>Dr Zuhair Jibir</i>	- 125
13. DOES THE CRIME FIT THE PUNISHMENT? ANALYSING THE CONSEQUENCES OF SOME SELECTED CYBERCRIME CASES IN THE UNITED STATE OF AMERICA WITH REFERENCE TO NIGERIAN CYBERCRIME ACT 2015 <i>Dr. Mu'azu Abdullahi Saulawa</i>	- 136
14. CURRENT TRENDS IN STATEHOOD THEORY: COUNTER TERRORISM, THE SECURITY COUNCIL RESOLUTIONS AND EROSION OF SOVEREIGNTY <i>Chike B. Okosa, Ph.D.-</i>	- 147
15. THE COMMON LAW DOCTRINE OF RES GESTAE UNDER ENGLISH LAW AND NIGERIAN LAW OF EVIDENCE: AN EXPANSIVE EXPLORATION <i>Gwom S. Gwom and Jonathan Ndana</i>	- 164
16. MARINE POLLUTION IN NIGERIA: CASE STUDY- NIGER DELTA REGION <i>Dr. Arinze Abuah and Barr. Tom-Tukura Vera Ene</i>	- 178
17. VICTIM COMPENSATION IN NIGERIA CRIMINAL JUSTICE SYSTEM: MODELING THE ISLAMIC LAW PROVISION OF DIYYA. <i>Lanre Aladeitan and Abdulrasheed Lanre Suleman</i>	- 192
18. LAWS GOVERNING THE EXTRACTIVE INDUSTRY AND ECONOMIC DIVERSIFICATION IN NIGERIA <i>Dr. Umaru Tela and Baba Isa Sanda Benisheikh</i>	- 206
19. THE ATTRACTION OF THE WOULD BE OPPOSITE POLES OF MULTICULTURALISM AND ETHNOCENTRISM: AN INTRODUCTION TO POSTMODERN FEMINIST JURISPRUDENCE <i>Mohammed Enesi Etudaiye</i>	- 216
20. CONCEPT OF FINAL AND CONCLUSIVE TAX ASSESSMENT IN THE ADMINISTRATION OF INCOME TAX: THE NIGERIA EXPERIENCE <i>Dr. Okubor Cecil Nwachukwu</i>	- 238
21. AN ANALYSIS OF THE LEGAL FRAMEWORK FOR COMBATING HUMAN TRAFFICKING IN NIGERIA <i>Dr. A. A. Isiaka</i>	- 257
22. HUMAN RIGHTS AND RIGHT TO EDUCATION IN NIGERIA: A CRITICAL APPRAISAL <i>Dr Ahmed Mohammed Bachaka</i>	- 268

23. CODIFICATION OF DIRECTORS' FIDUCIARY DUTIES TO STATUTORY LAW IN NIGERIA AND UK: COMPLEMENTARITY OR SUPPLANTATION? <i>Dr Sulaiman Abdussamad</i>	- 278
24. SAVANAH BANK V. AJILO: THE NEED FOR JUDICIAL REVIEW CONCERNING THE CONSENT PROVISIONS OF THE LAND USE ACT <i>Mary Jennifer Omachi</i>	- 290
25. CONSUMER PROTECTION IN E-COMMERCE: THE NIGERIAN PERSPECTIVE <i>Ahmad Aliyu, Lecturer II</i>	- 301
26. CUSTOMARY INHERITANCE IN ESAN LAND: A DISCRIMINATION AND DENIAL OF WOMEN'S RIGHTS. <i>Innocent Onohomhen Ebbih esq.</i>	- 312
27. THE EFFECT OF ARMED CONFLICT ON THE ENVIRONMENT: NIGERIA AS A CASE STUDY <i>Bar. Okpala-Akonobi Blessing Ozioma</i>	- 328
28. INVENTIONS FIRST BEFORE REGISTERED TRADEMARKS: SETTING THE RIGHT COURSE FOR DEVELOPING THE NIGERIAN TRADEMARK SYSTEM <i>G. S Gwom and H. T. Oloyede</i>	- 344
29. THE URGENT NEED FOR OTHER CORRECTIONAL MEASURES ASIDE THE PRISON IN NIGERIA <i>Ngozi Joy Maduafor</i>	- 356
30. EXAMINATION OF RIGHTS OF TRADE UNION MEMBERS UNDER TRADE UNION ACT 2004 (AS AMENDED). <i>Musa Muhammad Abdulkadir</i>	- 372
31. RESOURCE CONTROL UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999: CURRENT LIMITATIONS AND PROPOSALS FOR REFORM <i>Ayodeji Awobiye</i>	- 384
32. CRITICAL ANALYSIS OF STATUTORY POWERS OF APPOINTMENTS UNDER A PRESIDENTIAL CONSTITUTION: A CASE STUDY OF NIGERIA'S 1999 CONSTITUTION <i>Ahmad Haruna Danmaigauta</i>	- 399

NORMS AND ETHICS OF ISLAMIC BANKING SYSTEM: EXAMINING THE TRIBULATIONS OF RIBA VIS-À-VIS TEXTUAL PROVISIONS

BY

ABDULRAHEEM TAOFEEQ ABOLAJI¹
Ph.D LL.M, LL.B,

Department of Islamic Law, Faculty of Law, University of Ilorin.
Email: raheembi@yahoo.com. +2347033223341

ABSTRACT

Riba or interest has been the universal phenomenon not only in transactions among individual also in the banking industry and this has resulted into hardship. Therefore, this article traces the ills of Riba in Islamic context, from textual authorities and explores the contemporary evidence supporting its prohibition. The research is carried out through qualitative approach by using doctrinal method to analyse primary and secondary sources. It attempts to examine some hardship and illness cause by Riba (interest) to individual, nation and the world at large. It also shows with contemporary evidences that Riba was responsible for some economic crises of some nations.

Keyword: Islamic banking, Ills of Riba, ethics and norms

INTRODUCTION

The banking system is an important financial intermediary and a vital section in the economic structure of any society. However, within the contemporary world, the banking industry operates in two ways. The first way includes such functions as those connected with draft, pay order and cheques current account, saving account not bearing interest, money exchange all those functions are western banking system that is based on returns payment or capital borrowing. The second way is the non interest Islamic banking or variable returns system which based on the Islamic legal concept of partnership and profit and loss sharing. Therefore, Islamic banking is a system of banking that operates with Islamic law, also known as *Shari'ah*. The underlying principles governing Islamic banks are based on mutual risk, and profit/loss sharing between parties (investors and the bank), assurance of fairness for all and that transactions are based on an underlying business activity or assets²

The Central Bank of Nigeria (CBN) describes an Islamic bank as "a bank or other financial institutions (OFI) under the purview of Central bank of Nigeria (CBN) which transacts banking business, engages in trading, investment and commercial activities as well as the provision of financial products and services in accordance with *Shari'ah* principles and rules of Islamic commercial jurisprudence"² Islamic bank operates in accordance with the principles,

¹ Ph.D LL.M, LL.B, Department of Islamic Law, Faculty of Law, University of Ilorin. Email: raheembi@yahoo.com. +2347033223341
² Central Bank of Nigeria (2011). Framework for the Regulation and Supervision of Institutions offering Non-Interest Financial Services in Nigeria

rules and regulations of *Shari'ah*. In other words, the ethic of Islamic banking is nothing rather than the principles of *Shari'ah* that guides the banking transactions.

Islamic banking system makes economic simple, reduce costs of transactions and facilitate diversification for investors and managing a number of risks arising from the investor activities and risk associated with the banking operation, which contributed to the interest. It only deals with (*halal*), legally permissible activities and avoids (*haram*) unlawful activities³. Notwithstanding the laid down principles under the Shariah as regards to prohibition of *Riba* (interest). This paper therefore examines the concept of Islamic Banking, operation of Islamic Banking and the textual authorities on the prohibition of *Riba* interest with a view of projecting for the full implementation of *Shari'ah* in order to safe guard the social-economic life of the people in Nigeria and the whole world in general. The paper adopts qualitative approach and uses doctrinal method to carry out the research.

Concept of Islamic Banking

The idea that Islam is not only a religion but also a unique way of life distinct from all other religion and ideologies, naturally extends its tentacles to the economic life of Muslims. It was this idea that no doubt led to an important dimension of the Islamic resurgence in many Islamic world especially today in the area of Islamic banking and investment. Notwithstanding the importance of Islamic banking yet it has no universal and more comprehensive definition. However, Siddiq defines it as the business of financial intermediary mobilizing savings from the public on the basis of partnership and profit and advancing capital to the entrepreneurs on the same basis.⁴ To Iqbal, Islamic financial system (through a macrocosm of Islamic banking) is founded on the absolute prohibition of the payment or receipt of any predetermined, guaranteed rate of return.⁵ Thus, describing Islamic banking simply as "Interest free" cannot withstand the test of academic as it cannot picture or imagine good and proper what this concept stand for.⁶ This is because Islam provides for better alternative in place of *Riba* as it will be discussed in the later paragraph. However, the prohibition of interest continue to remain the necklace of the system supported by other principles of Islam as it will be discussed later. Islamic Banking therefore a financial intermediary established without the allowable degree by the pristine principle of *Shari'ah*.

Operation of Islamic Banking System

In an Islamic banking system any transaction that Islamic banking may participate must be free from (*haram*) prohibitions. Leaving (*haram*) impermissible and looking for (*halal*) is act of ☐ *ibadat* (worship) therefore banking activities is related to our daily life and anything happen to Islamic banking system directly or indirectly will affects the *Ummah* of Islamic

³ Kassim, S. H., Abd. Majid, M.S. and Mohd Yusof, R. (2009). Impact of monetary policy shocks on the conventional and Islamic banks in a dual banking system. Evidence from Malaysia. *Journal of*

⁴ Siddiq M.N. (1983) *Issues in Islamic Banking*. The Islamic Foundation. p.24

⁵ Iqbal, Z. (1998) "Islamic Financial System" in *Finance and Development*. p.56

⁶ Alanarhu, S.K. "The Place of Islamic Banking in the Development of Nigeria Economy." (A paper presented at the 16th National annual conference on the study of religions and education (NASRED) held at Lagos State College of primary Education, Nofonja, Epe, 21st -25 October, 2003.).

community⁷ Islamic banking is able to maintain its activities by way of using various Islamic financing concepts of *Al-Ijarah* (leasing) such as *Al-Ijarah Thumma Al-bayn*, (Lease Contract and Sale Contract), *Al-Ijarah-wa-Iqtin'EN* (Lease to own Model of Islamic Finance) and *Al-Ijarah Muntahiyat Bi'l-Tamlik*. (Lease of Releasing the Ownership to Lessee) as well as *Mudharabah* (profit sharing) and *Musharakah* (partnership) and the rest.⁸

Islamic banks offer all the required banking services to the society. Just like any other conventional bank, the banks offer banking services like opening of accounts which, inter alia, include savings accounts (*al-wadiah*), deposit account and other general purposes or investment accounts. The banks also offer monthly statements of accounts to update their customers on the status of the various accounts they hold. Others include easy withdrawal by using either cheque books or transfer of cheques, online payment of bills, phone banking and internet banking services, both at local and international levels. Among the services are: deposit and withdrawal slips, processing trade bills, clearing operations, automated teller machine (ATM), business and professional advice, local and international transfers, mobile and online banking and opening of mutual documentary credit, introduction of working systems and consultations and organizing training workshops. In addition to various electronic banking transactions and all correspondent operations are set up in a manner that does not violate *Shari'ah* because the professional experts in the field of Islamic banking and finance are involved.⁹

In addition to the above, Islamic banking products are more of investment in which the bank liaises with its customer for a particular investment for profit making. It is pertinent to reiterate that the cardinal difference between Islamic banking system and the conventional or traditional banking system is basically centered on two things. First is the prohibition of *Riba* which is a subject of this paper and the second difference is in respect of investment; while Islamic banking system insists on those investments that only tally with the rules of *Shariah* in terms of their nature (ethical investments)¹⁰ to conventional banking system, all investments are ethical in as much as it would yield some substantial profits to the investor at the end of the day. Another difference which is closely related to this, is while the conventional banking centers its operation on loan transactions, Islamic banking system encourages direct investment in project execution through investment financing, trade financing and free lending.

One other major difference between the Islamic and conventional banks lies in the zero tolerance of Islamic mode of banking for gambling related activities and excessive uncertainty in trade otherwise known as "*gharar*".

Textual Evidence on the Tribulations of Riba (Usury)

It has been the principles of *Shari'ah* that whatever is halal permitted is due to its prevailing benefit and whatever prohibited is due to its prevailing harm. Meanwhile, the negative

⁷Dogarawa A. B. (2013). Critique of the Non- Interest Banking Framework in Nigeria. ISRA International Shar'ENah Research Academy for Islamic Finance, Malaysia, 5 (1), 115-134.

⁸Aliyu S.U.R., Ishaq M.A., B.T.Jibril. 2013 *Reading in Islamic Economic*, "Principles of Islamic Investment" Publisher IIB pp 94-106.

⁹El-Gawady Z. (2013) possibility of cooperation between Islamic banks and conventional banks. Retrieved on August 29, 2013 from www.must.edu.eg/Publications/Business

¹⁰Bello Nabil Said (2013) *Reading in Islamic banking and finance* "Principles of Islamic Investment" Kano Nigeria IIBF Publisher. Kano Nigeria pp 130-139.

consequences and the social vices of *riba* are given by the holy *Qura'n* and the Prophetic Hadith.¹¹ Literally, *Riba* means excess, but in the terminology of Islamic law, it means an addition, however slight, over and above the principal of a loan or debt.¹² The modern debate on the prohibition of *Riba* started in the year 1890s.

When the Cairo branch of Barclays Bank was opened with a view to processing the financial transactions for the construction of Suez Canal, being the first commercial bank understood to be established in the Muslim world, Barclays bank faced a lot of critiques from the majority of the Muslim scholars in respect to the operations of the bank and the clear prohibition of interest in the holy Quran and the Sunnah of the Holy Prophet (peace be upon him)

In Islam, prohibition of *riba* was done in peace-meal in which the holy Quran used its evolutionary method or style in achieving the final revolutionary result. It was done as follows:

In the period of Makkah, Allah The Most Exalted says in Surah Ar-Room:

*And that which you give in riba (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other people's property, has no increase with Allah.*¹³

What this verse did was only to condemn the practice of the people of Mecca in embarking on transactions involving *riba*. Then after the Holy Prophet (S.A.W) and the companions have migrated from Mecca to Medina, interest was explicitly prohibited in *Surah Al-Imran*. The Quran says in a prohibitive language:

*"O you who believe! Eat not riba (usury) doubled and multiplied, but fear Allah that you may be successful!"*¹⁴

The above two verses were followed by a series of verses in *Surah al Baqara* reiterating the prohibition, condemning the practice and even mentioning the repercussion of the act of taking, giving or witnessing any transaction involving *riba*. The verses are as follows:

Those who devour usury will not stand except as stand one whom the-Evil one by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury.

Those who after receiving direction from their

*Lord, desist, shall be pardoned for the past; their case is for (Allah to judge); but those who repeat the offence are companions of the fire: They will abide therein (forever).*¹⁵

¹¹Aliyu et al.(2014) 'Ills of Riba; Jurisprudential and Contemporary Evidences' *Proceeding of 1st International Institute of Islamic Banking and Finance*, Bayero University Kano

¹² See The Role of Regulators in the Development of Islamic Finance Industry: The Nigerian Case. P. 3. A paper presented by Dr. Bashir Aliyu (Adviser to the Governor of the Central Bank of Nigeria on Non-interest Banking), at the first Public Lecture organized by the International Institute of Islamic Banking and Finance, Bayero University, Kano on Thursday, the 7th day of January, 2013.

¹³ See Quran 30:39.

¹⁴ Quran 3:130.

Almighty Allah has decreed that those devouring *Riba* would stand on the Day of Judgment as someone touched by the Evil, leading him to madness. The commentators of the holy *Qur'an*, while explaining the cause of the state of madness mentioned in the Hadith reported by Abu Hurairah that, the Prophet said that when he was on the special journey on *Isra* and *Miraj* (His journey from Makkah, Jerusalem and subsequently to the Heaven respectively) I saw some people whose stomachs were as big as the sizes of big houses, and inside the stomach, there are snakes seen from outside their stomachs and when enquired from Angel Jibril "who are these people? He replied that, these are people who used to eat *riba*".¹⁶

The subsequent verses provide:

"Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loveth not creatures ungrateful and wicked."¹⁵

In the above verse Allah clearly mentioned that He removes blessing (*barakah*) from *riba* and blesses what was given as charity (*Sadakah*)

"Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their lord: on them shall be no fear, nor shall they grieve."¹⁷

"O ye who believe! Fear Allah and give up what remains of your demand for usury, if ye are indeed believers."¹⁸

"And if you do not do it, then take a notice of war from Allah and His messenger but if you repent, you shall have your capital sums. Deal not unjustly (by asking more than your capital sums), and you shall not be dealt with unjustly (by receiving less than your capital sums)."¹⁹

Moreover, it is apparent that Allah has declared war against anyone who refuses to desist from taking interest, meanwhile nobody can stand war with Almighty Allah.

The above verses of *Surah al-Baqarah*, do not only give an unequivocal prohibition of *riba* but set a yardstick on how to determine whether a particular transaction involves *riba*.²⁰

Prophetic Position (Hadith) on the Tribulation of Riba.

There are several hadith pertaining to ills of *riba* most of which express an admonition towards being involved in a *riba* activity or transaction. Of these sayings, various traditions were authoritatively reported where the Holy Prophet Muhammad (peace be upon him) made certain declarations on the clear and unambiguous prohibition of *riba*, it denoted and severity of sin.

¹⁵ Quran 2:275.

¹⁶ Sunnah Ibn Majah, 2273.

¹⁷ Quran 2:276.

¹⁸ Quran 2:277.

¹⁹ Quran 2:278.

²⁰ Quran 2:279.

These traditions are simply reiterating and emphasizing, with a view of shading more light, on what the holy Quran has provided. The traditions include among others:

1. Narrated Jabir (RA): Allah's Messenger cursed the one who accepts usury, the one who gives it, the one who records it and the two witnesses to it, saying, they are all the same.²¹
2. Seventy-three categories, the least one in sin is as that of a man who marries his mother, and the very essence of usury is the violation of the honor of a male Muslim.²²
3. Narrated Ubada bin As-Samit (R.A): The Prophet (peace be upon him) said:
*Gold is to be paid for with gold, silver with silver, wheat with wheat, and barley with barley, dates with dates, and salt with salt, same quantity with same quantity and equal for equal payment being made on the spot. If these classes differ, sell as you will if payment is made on the spot.*²³

Relying on the fact that *ribawas* out rightly prohibited after embracing Islam. Arguments ensued and the matter was placed before the then Governor of Makkah who was *Attaab ibn Aseed* (RA). *Banu Thaqif* were of the considered opinion that under the treaty they were entitled to the payment of the due interest as initially agreed under the initial contract and that the religious prohibition notwithstanding

Finally, *Attaab ibn Aseed* (RA) referred the matter to the holy Prophet (peace be upon him) for prophetic determination upon which the following verses of *Surah al-Baqara* were accordingly revealed to take care of the situation:

"O those who believe, fear Allah and give up what still remains of the *Riba* if you are believers. But if you do not do so, then listen to the declaration of war from Allah and His Messenger. And if you repent, yours is your principal. Neither you wrong, nor be wronged."

As a result of that *Banu Thaqif* surrendered and said that they had no power to wage war against Allah and His Messenger.

²¹ See the decision of the Supreme Court of Pakistan especially the judgment of Sheikh Justice Taqi Usmani where he vividly explained the reason for the revelation of the Quran 2 verses 278 and 279. He explained that after the conquest of Mecca by the Holy Prophet (SAW) and his companions (RA), the Messenger of Allah declared as void all the amounts of *Riba* that were due at that time. The decision taken was followed by a series of issues which, inter alia, include a condition that nobody should claim any interest on any loan advanced by him. Then the Holy Prophet (SAW) proceeded to Taaif, which could not be conquered, but later the inhabitants of the Taaif, who belonged mostly to the tribe of Thaqif came to the Prophet SAW and accepted Islam and entered into a treaty with him. A particular covenant provided that Banu Thaqif would not forego the amount of interest due on their debtors but their creditors will forego the amounts of interest. The holy Prophet before signing the treaty ordered that a particular sentence be inserted to the effect that Banu Thaqif will have the same rights as other Muslims have. On the premise of the treaty, Banu Thaqif claimed the amounts of interest from another tribe Banu Amr Ibn al-Mughira who, in return, declined to pay interest. See the Shariah Appellate Bench, 2000. Justice Taqi Usmani's part of judgement, paras 23, 24 pp. 528, 529; quoting from Ibn Jarir, Jami-al-Bayan, 3: 107; Al-Wahidi, Al-Wasit, 1:397 and Wahidi, Asbab-al-Nuzool, Riyadh, 1984, p.87 and as quoted by Ayub, M., *supra*, note 24 at 45.

²² Reported by Muslim. See Ibn Hajar Al-Asqalani, A., Bulugh Al-Maram (Attainment of the Objective according to the Evidence of the Ordinances) (Riyadh: Dar-us-Salam Publications, 1996), p. 290. Imam Bukari also reported a similar hadith

²³ Ibid, at p. 291. It was also reported by Ibn Majah in a short form and Al-Hakim in a complete one who graded it as sahih (sound).

4. From Anas ibn Malik (R.A.):
The Prophet (S.A.W) said: 'When one of you grants a loan and the Borrower offers him a dish, he should not accept it; and if the borrower offers a ride on an animal, he should not ride, unless the two of them have been previously accustomed to exchanging such favors mutually.'²⁴

5. Zaid B. Aslam reported that interest in pagan times was of this nature:
The Holy Prophet replied: "Do not do so. Sell (the lower quality dates) for dirhams and then use the dirhams to buy better quality dates. When dates are exchanged in dates) they should be equal in weight. "This hadith was also reported by Muslim in *Kitab al-Musaqat*, chapter on Riba. Still on this point, if the items are similar in terms of judgment (measurement like wheat and wheat) but different in type for instance, selling barley for wheat, then it is prohibited to delay payment, it must be made on the spot. But it should be noted that permissibility is granted here to sell one type of the commodity for more of the other.

The authority for this position is the hadith reported by Muslim and Abu Dawud where the Holy Prophet (peace be upon him) was reported saying "...if these classes differ, then sell as you wish if payment is made hand to hand. " Here the phrase hand to hand connotes that payment must be made on the spot before the parties separate.

But in an event where the commodities happen to be when person owed money to another man for a certain period and the period expired, the creditor would ask: 'you pay me the money or pay the extra'. If he paid the amount, it was well and good; otherwise the creditor increased the loan amount and extended the period for payment again.²⁵

6. The Holy Prophet (peace be upon him) announced the prohibition of Riba in express terms at the occasion of his last Hajj, which was the most attended gathering of his companions. The Prophet said: "Every form of Riba is cancelled; capital indeed is yours which you shall have; wrong not and you shall not be wronged. Allah has given His commandment totally prohibiting Riba, I start with the amount of Riba which people owe to my uncle Abbas and declare it all cancelled". He then, on behalf of his uncle, cancelled the total amount of Riba due on his loan capital from his debtors.²⁶

Issues relating to prohibition of interest in loan and other financial transactions involving money or money worth have been extensively discussed not only in Islam but in the teaching of other religions. According to Muhammad Ayub, "the majority of ancient philosophers and Greek and Roman thinkers forbade interest in their days. The Old and the New Testaments similarly prohibited it."²⁷

²⁴ The hadith was reported by Muslim. And according to a greater hadith scholar and commentator of Bulugh al-Maram

²⁵ Imam Baihaqi, 1344 A.H *Kitab al-Buyu'*. Bab kulli qardin jarra manfa'atan fa huwa riban as rightly quoted by Muhammad Ayub, supra, note 1

²⁶ 1985 chapter on Riba fiddayn (No. 418). Tradition No. 1362, p. 427 and as rightly quoted by Muhammada Ayub, supra, note 1.

²⁷ Malik

Based on the above Quranic authorities and the traditions of the Holy Prophet (peace be upon him), Islamic jurists have classified *riba* into either *Riban-Nasi'ah* (delay usury) or *Ribal-Fadl* (excess usury).²⁸

- a. Increasing the Debt in the Insolvent Person. This is the main origin of the concept of *Riba* during the jahiliyya period (the period of ignorance). It applies where a creditor and a debtor entered into a loan transaction on an agreement that payment would be made on a specific date and in the event of default, another agreement will be reached to the effect that the debtor will be liable in payment of an interest over and above the principal amount.²⁹ It should be noted that the interest to be made here is for the additional time given to the debtor as a result of his default.
- b. Here, the presence of *Riba* is in respect of selling goods of the same type but in excess with the date of delivery delayed, be it for both or one of the items and this is the reason for the revelation of Qur'an. Where Allah Exalted be says: "...And if someone is in hardship, then [let there be] postponement until [a time of] ease..³⁰ "According to Dr Al-Fawzan, ibid:

The verse signifies that if the time of payment is due and the debtor is unable to fulfill his debt, it is impermissible for the creditor to increase debt; rather the creditor should give the debtor a grace period. On the other hand, if the debtor is wealthy, he is to pay his due debt. Hence, no increase on the debt (by-way of interest/ usury) should be made -whether the debtor is insolvent or not.

It could be seen that the verse is conveying a categorical prohibition of *riban-nasiah* in the sense that a creditor is not allowed to make any increment simply because the debtor becomes insolvent, hence, unable to settle the debt. The creditor is required to exercise patience pending when the debtor will become solvent. There is also a legal requirement mandating the debtor to settle the liability as when due provided he is financially buoyant

(*Riba al-nasi'a*), even citing a Prophetic tradition to that effect: "There is no *riba* except with deferment."³¹

While responding to the above proposition, jurists, have argued that Islam as a complete religion does not and cannot accommodate any kind of interest (*riba*) because of its deteriorating nature to the economic system and the entire human life.

Part of their argument is that the interest charged by conventional banks today is more killing to the economy than the one charged by the people of the *jahiliyya* period because the later practice only hinged on the insolvency of the debtor unlike the former. In addition to the position of *Shari'ah* on the prohibition of *Riba*, certain International Instruments on the provisions and protection of the so-called modern human rights are not silent on the issue. "Usury and any other form of exploitation of man by man shall be prohibited by law."³²

²⁸ Al-khazin, 1995, 1, p.301 and as rightly quoted by Muhammada Ayub, supra, note 1.

²⁹ Supra, note 1 at p. 53.

³⁰ A-I Fawzan, S., A Summary of Islamic Jurisprudence (Vol. 2)(Riyadh: Al-Maiman Publishing House, 11613 A.H), P. 39-40

³¹ The Arabic word "nasi'ah" simply connotes "delay". Ibid, at 39.

³² Ibid

Apart from the prohibition of *Riba* as a cardinal feature, Islamic banking system does not allow for any transaction which contradicts the principles of *Shariah*. The target here is to protect the parties involved in the particular transaction and the entire Muslim community at large. Rules of *Shari'ah* insist on equal bargaining power as against "unequal bargaining power."³³ Equal opportunity must be given to all contracting parties to maintain fair play. On this premise, Islamic law prohibits any transaction involving uncertainty and gambling (*Gharar* and *Maisar*).

Contemporary Evidences on the Ills of Riba

The global financial system today has been dominated by *Riba* interest both at private and local set up business and at International levels as well as government institutions³⁴. The evidence on the high or compound interest charged by conventional banks and the World's leading financial institutions could be traced to the statement of the President Olusegun Obasanjo (the former Nigeria head of state) "All that we had borrowed up to 1985 was around \$5 billion, and we have paid about \$ 16 billion; yet we are still being told that we owe about \$28 billion. That \$28 billion came about because of injustice in the foreign creditors' interest rates. If you ask me what the worst thing in the world is, I will say it is compound interest".³⁵

The conventional bank interest usually charged in high increase and the rate can be varied without informing the customer. Initially, on the transaction the conventional bank might charge 10% simple interest annually same can be double every $7\frac{1}{4}$ Years, multiplies 117 times every 50 years and by more than 1.6 million times every 150 years. That is why world economies are living beyond their means. In other words meaning that their debt to gross domestic product ratios are in excess of 100%, because of interest and the poor becoming poorer.³⁶

Riposte to the Tribulations of Riba

The interest-based economic system was presumed to be superior to the interest-free system. Meanwhile, interest-free system is the concept of *Shari'ah* doctrines. More, so the criterion of socio-economic justice and equity.³⁷ The failure of the interest-based system to cut back the global economic and financial crisis has further described to be uncertain about its superiority even in terms of efficiency. It is the time to call for broadly reform of the financial system globally.³⁸ Therefore there is a need for an equity, profit/loss sharing system that will portrays more socio-economic justice in the society. As stated by Rogoff a Professor of Economics in Harvard University "In an ideal word, equity lending and direct investment would play a much bigger role," He further asserts that: "With a better balance between debt and equity, risk-sharing would be greatly enhanced and financial crises sharply muted".³⁹

³³ Ibid, at 39

³⁴ Quran 2:280

³⁵ Muhammad Ayub supra, note 1, pp. 49-50

³⁶ Aliyu et al.(2014) 'Ills of Riba; Jurisprudential and Contemporary Evidences' *Proceeding of 1st International Institute of Islamic Banking and Finance*, Bayero University Kano

³⁷ Ibid

³⁸ Chapra M.U. (2007) *The Case Against Interest Is It Compelling?* Thunderbird International Business Review. Vol.49(2), PP 161-186

³⁹ Quoted by Aliyu et al.(2014) 'Ills of Riba; Jurisprudential and Contemporary Evidences' *Proceeding of 1st International Institute of Islamic Banking and Finance*, Bayero University Kano