The Elements of *Qimar* (wagering) and *Gharar* (uncertainty) in the Contract of Insurance Revisited

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Abstract

There is no doubt and no disagreement whatsoever as far as the prohibition of the elements of *qimar* or *maysir* (gambling or wagering) and *gharar* (uncertainty) in a contractual agreement between the contracting parties according to the Islamic law of business *muamalat.* The questions though, do these elements really exist in a business contract and how are they involved? The differing views in answering these questions often lead to differing views regarding the legality of certain dubious business contracts. Top of the contracts list is the contract of modern insurance. There have been many consistent claims that the main problematic elements associated with modern insurance contracts are the elements of *qimar* and *gharar*. Nevertheless, few people have a clear idea of what *qimar* and *gharar* are and therefore, there is a need to re-examine the prevailing views that the operation of modern insurance contract is not free from these two prohibitive elements. This is the paramount objective of this article. In addition, it is argued that while the alleged element of *gharar* in the modern insurance contract is real and substantial, the involvement of the element of *qimar* is not legally proven.

1. Introduction

This paper seeks to shed some lights on the real meanings of *gharar* and *qimar* as understood by the Muslims jurists in the past and at present. A discussion on the comprehensive definitions of the terms are given at the beginning, followed by an examination of their positions in the modern insurance contracts as discussed widely over the years. It is hoped that this discussion can contribute to providing new understandings on both elements as well as on the position of modern insurance contracts in the eyes of the Islamic law of *muamalat.*

2. Definition of *Qimar* and *Gharar*

i- Qimar

Since the prohibition of *maysir* (The Quran 5:90-91) or *qimar*[2] is stated conspicuously in the Qur'an and the prophetic *hadith*, there have been many

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discussions among the Muslim scholars as to the exact meaning of the term. Although there are differences in the wordings used to define it, generally the definitions share the common fundamental elements of the term. Ibn al-^{c}Arabi for example describes the nature of *qimar,* wagering or gambling as a game where "each one of two contestants seeks to defeat his partner in an action or statement in order to take over property set aside for the winner".(Ibn al-'Arabi, 1934; Rosenthal, 1975) Al-Jurjani defines wagering as "taking one thing after the other from one's partner in a game" (*an ya'khuz min sahibih shay'an fa shay'an fi al-la^{c}b)* or, "every game with a condition that the winner out of two contestants gets something from the loser" (*kullu la^{c}b yushtarat fihi ghaliban min al-mutaghalibayn shay'un min al-maghlub*) (al-Jurjani, 1934). Al-Shawkani defines it as "a situation where there must be one of the player gains and another looses" (*ma la yakhlu ahad al-la'ibin fihi min ghanamin aw gharamin*)(al-Shawkani, 1357H). ^{c}Ali al-Sabuni insists that "every game which results in profit for one party and loss for the another is prohibited wagering" (*kullu la^{c}b yakun fihi ribh li fariq wa khasarat li akhar huwa min al-maysir al-muharram*).(al-Sabuni, n.d.). Generally, in modern applications, the act of gambling sometimes referred to batting on the occurrence of a future event.(Ahmad and Hassan, 2007)

In short, we can say that wagering, as it has been understood in Muslim scholarship, contains two important features as follows:

i) It is a kind of game without any serious purpose and benefit. This is of course comparable to the lack of any other interest than the stake which will be won or lost in the common law definition of wagering.

ii) It involves the element of betting where the participants put up their stake by which only one party will win the whole stake while the other will lose altogether.

The understanding of *qimar* or *maysir* within the circle of Muslim scholarship as discussed above does not differ much from the understanding of wagering or gambling in the common law. According to the common law: "a wagering contract is one by which two persons professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum or money or other stake; neither of the contracting parties having any other

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[2] Within the circle of Muslims scholarships, the words *qimar* and *maysir* are used interchangeably to denote the same thing. See for example the definitions of *qimar* and *maysir* by Fakhruddin al-Razi in his work *al-Tafsir al-Kabir / Mafatih al Ghaib*, (al-Razi, n.d.)

interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties".[3] The Wikipedia defines gambling as "the wagering of money or something of material value (referred to as "the stakes") on an event with an uncertain outcome with the primary intent of winning additional money and/or material goods. Typically, the outcome of the wager is evident within a short period". (Wikipedia, 9th December 2011)

ii- Gharar

According to Arab lexicographers, the word *"gharar"* derives from the root word *gharra,* has two literal meanings, i.e., *"khatr",* meaning danger, peril or risk which is hidden or concealed (Ibn Manzur,1300H) and *"khud^{c}ah",* meaning deception or cheatingal-Jawhari, 1956; al-Siddiqi, 1969; Firuzabadi, 1301H; al-Isfahani, 1972). Abu Zahrah states: "*al-gharar yarji^{c} ila al-jahalah, imma jahalat al-ma^{c}qud ^{c}alayh wa awsafih aw jahalat halih min al-wujud aw al-^{c}adam*", meaning "*gharar* is referred to the ignorance, whether ignorance about the characteristics of the subject matter, or ignorance about its existent or nonexistence".(Abu Zahrah, 1976) Further to the definitions of *gharar* by traditional jurists, W. al-Zuhayli provides his own definition on the term *gharar* sale which he gives as: "*bay^{c} ma la yu^{c}lam wujuduh wa ^{c}adamuh aw la tu^{c}lam qillatuh wa kathratuh aw la yaqdir ^{c}ala taslimih*", that is, "the sale of what is unknown in its existence or what is unknown in its quantity or what is incapable of delivery".(al-Zuhayli, 1989) According to Afzalur Rahman a *gharar* contract is un undertaking of anything blindly without sufficient knowledge or to risk oneself in a venture without knowing exactly what will be the outcome or to rush headlong into a peril without regard for the consequences. He concludes that every contract of an open-ended nature contains some elements of *gharar* (Rahman, 1979).

The above definitions of *gharar* provided by the modern jurists are in line with the views of the jurists in the past. For example, Malik has devoted a chapter in his book al-Muwatta' specifically to discuss the issue of *gharar* contracts. In this work he listed examples and circumstances surrounding business contracts which are considered invalid because of the involvement of elements of *gharar*. Among those examples are sale of a stray animal, sale of a fetus or a baby animal still in the mother's womb, sale of olive fruit for olive oil or sale of sesame for sesame oil or fat for ghee.(Anas, n.d.) Al-Sarakhsi defines *gharar as "ma yakun mastur al-^{c}aqibah"* that is "something which is concealed in its end result" such as the sale of milk in the udder of an animal or the sale of an unborn animal in its mother's womb.(al-Sarakhsi,

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[3] This definition was made in the case of *Carlill V Carbolic Smoke Ball Co.,* (1892). This definition was then used in several later cases such as *Weddle Beck and Co. V Hackett* (1929) and *Ellesmere V Wallace* (1929), *Tote Investors Ltd. V Smoker* (1968) (Treitel, 1983)

1906) In such cases, it is still uncertain whether the pregnancy is true or merely a false appearance of pregnancy. In the case of a true pregnancy, the gender of the fetus, characteristics and time of delivery are still uncertain. Al-Shirazi defines *gharar* as *"ma intawa ᶜanhu amr wa khafiya ᶜalayhi ᶜaqibatuh"* which means "something that is folded in its nature and concealed in its consequence".(al-Shirazi, n.d.) Al-Shirazi lists down twelve occasions where *gharar* can appear in a contract.

They are as follows:

i- Nonexistence of the subject matter.
ii- Non-ownership: of the subject matter.
iii- The subject matter is not in the possession of the vendor.
iv- Inability to deliver the subject matter.
v- The subject matter is unknown.
vi- The absence of the subject matter at the time of the contract.
vii- The measurement and amount of the subject matter are unknown.
viii- The characteristic of the subject matter is unknown.
ix- The character of the price is unknown.
x- The amount of the price is unknown.
xi- The date of delivery and payment are unknown.
xii- A condition of unknown future date.(al-Shirazi, n.d.; Buang, 1994)

A close examination of the nature of *gharar* contracts which are prohibited in the *Ahadith* of the Prophet, will show that these contracts contain one of the following features:-

i- Uncertainty over the acquisition or delivery of the subject matter and the price.
ii- Lack of knowledge about the nature and specification of the subject matter and the price.
iii- Ambiguity and lack of clarity in the *shurut,* conditions, attached to the contracts.

Therefore, of all these definitions, probably the most comprehensive is the definition given by al-Sarakhsi, that is "concealed in its results" (*mastur al-ᶜaqibah)*. This definition is precise but comprehensive and probably what contemporary scholar Afzalur Rahman means when he mentions "the contract with an open-ended nature".

3. Definition of Insurance

There are different definitions provided by prominent authorities on the law of insurance. G.E.Rajda[4] defines insurance as "the pooling of fortuitous losses by

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transfer of such risks to insurers who agree to indemnify insured for such losses to provide other pecuniary benefits on their occurrence or to render services connected with the risks".(Rajda, 1989) In this definition, it is clear that what is actually being transferred is the risk of losses. Since the risk[5] itself by its very nature is uncertain, therefore we could say that uncertainty is very central in a contract of insurance.

E.R.Hardy Ivamy[6] defines a contract of insurance as "a contract whereby one person, called the insurer, undertakes, in return for the agreed consideration, called the premium, to pay to another person, called the assured, a sum of money, or its equivalent, on the happening of a specified event".(Ivamy, 1993) Ivamy himself further explains that the specified event which is insured in an insurance contract must have some elements of uncertainty, either uncertainty as to whether or not the event will ever happen, or, if the event is one which is bound to happen at some time, there must be uncertainty as to the time at which it will happen.

According to John Birds[7], the contract of insurance is "any contract whereby one party assures the risk of an uncertain event which is not within his control, happening at a future time, in which event the other party has an interest, and under which contract the first party is bound to pay money or provide its equivalent if the uncertain event occurs".(Birds, 1993) Again, in this definition we understand that uncertainty is a necessary feature of the contract of commercial insurance. Furthermore, it is also evident from this definition that what is actually being transferred at the time of the contract is the risk of loss, which is uncertain.

It is clear from all these definitions that the insurance contract is a contract which is based on risk and uncertainty. Without risk and uncertainty, the contract of insurance would never take place at all.

4. An Analysis on the Elements of *Qimar* in Insurance

Since the element of uncertainty is so apparent in the contract of commercial insurance, many critics regard insurance as a kind of wagering.(Kasim, 2012; Noor, 2009)[8] While it is correct to point out that insurance and wagering share the common

[5] Risk in the science of insurance is generally defined as "uncertainty concerning the occurrence of a loss". (Rajda, 1989; Head, 1967; Crowe and Horn, 1967)

[6] E.R.Hardy Ivamy was a professor of law at the University of London.

[7] John Birds is currently a professor of commercial law at the University of Sheffield.

[8] A. Rahman, for example writes, "The entire basis of the insurance contract is on the happening of an uncertain event which may happen or may not happen at all. It is exactly like betting or lottery" and "insurance and gambling are on the same footing as far as risk element or danger is concerned", (Rahman, *1979)*; In Halsbury's Laws of England, it is stated that, "the whole deal of compensation in return for premium between the insurer and insured is

element of uncertainty, they differ from each other in many other important aspects to the extent that to put them in the same category would be seen as a mistake. The difference between insurance and wagering can be clearly seen in the definition of wagering itself.

Based on the above definition, we can easily point out at least two important elements of a wagering contract which do not exist in a conventional insurance contract. They are as follows:-

i) **One to lose, the other to win.**

It is a vital feature of the wagering contract that one of the contracting parties makes a gain at the expense of the other. A contract is not a wager if one party cannot win or if one party cannot lose.(Treitel, 1983) This feature of zero-sum-game does not exist in the insurance contract. If the insured event happens, neither party wins or loses and likewise, if the insured event does not happen, neither party loses or wins.

ii) **No other interest or no insurable interest.**

A contract is a wagering contract if both parties have no other interest in the contract than the stake which they will win or lose. If the event occurs, both parties will lose or win nothing more than this stake. On the other hand, a contract is not a wager if the party to whom the money is promised on the occurrence of an event has an interest in its non-occurrence.(Treitel, 1983) This is the feature of the insurance contract. It is a necessary condition in the insurance contract that the insured has an insurable interest in preventing the happening of the insured event. It means that if the insured event does occur, the insured will incur some losses. It is therefore agreed that while the insurance contract bears some serious purpose, the wagering contract is only a game or play. The principle of insurable interest specifies that the insured must have an interest in the preservation of the thing insured and he will suffer financially if a loss occurs, or must incur some other kind of harm if the loss takes place.(Cockerell, 1980) To be enforceable, all insurance contracts must be supported by an insurable interest, otherwise, the insured could collect the compensation even though the loss had not occurred. This would make it similar to gambling and would be contrary to the public interest. There are at least three fundamental reasons why insurable interest must exist in a contract of insurance.(Rajda, 1989; Patterson, 1957)

i- To prevent gambling. If an insurable interest were not required, the contract would be a gambling contract and would be against the public interest. For example, an insured could insure the property of another and hope for an early loss. He could also

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dependent on one uncertain occurrence and this amounts to wagering or gambling", (*Halsbury's Laws of England*, 1975) insure the life of another person and hope for an early death. These are clearly similar to gambling and against the public interest.

ii- To reduce moral hazard. If an insurable interest is not required, a dishonest person, for example, could purchase a property insurance contract on someone else's property and then deliberately cause a loss in order to receive the proceeds. However, if the insured stands to lose financially, nothing is gained by causing the loss. Thus, moral hazard is reduced.

iii- To measure the loss. An insurable interest could measure the amount of the insured's loss. In property insurance, for example, most contracts are contracts of indemnity. One measure of recovery is the insurable interest of the insured.

Based on the above analysis it is clear that the elements of *qimar,* wagering or gambling according to Islamic law do not exist in the conventional commercial insurance contract. Therefore, we can safely say that the charge made against the contract of insurance as similar to wagering or gambling is legally unfounded.

5. An Analysis on the Elements of *Gharar*, Uncertainty in Insurance

Risk and uncertainty are part and parcel of human life. In most activities, man faces many types of risks and uncertainties. Two of the most obvious kinds of risk are discussed below.(Siddiqi, 1985)

i- **Business risk and uncertainty.**

This kind of uncertainty exists in the form of the fear of loss and the hope of gain. This uncertainty or risk cannot be measured by any method. It is pure economic uncertainty which is the basis of the modern theory of profit. For example, in doing business, there is always uncertainty as to whether a businessman will gain a profit or incur a loss. Since this kind of risk is unmeasurable and it is part of the business activities, the concept of insurance is not applicable to it.

ii- Pure Risk or uncertainty.

In contrast to business uncertainty, this kind of uncertainty involves only fear of loss without any chance of gain. However, it is claimed that the incidence of such risk can be measured through the application of the principle known as the "law of large numbers" or the "law of averages". Insurance, practically, relies heavily on this principle.(Siddiqi, 1985) The basis of the law of large numbers is that, although one cannot predict the result of an experiment out of a number of possible results on the basis of just one experiment, the relative chances of that particular result can be determined from a large number of the same experiments. Thus, according to this principle, in a large group of similar populations, it is possible to estimate the normal frequency of common events such as deaths and accidents. Losses can be predicted with reasonable accuracy and this accuracy increases as the size of the group expands. Therefore, it is argued theoretically that it is possible to eliminate all pure risks if an infinitely large group is selected.

Both kinds of uncertainties as elaborated above are not closely related to the issue of *gharar* in a contractual agreement between the contracting parties as both are more concerned about the philosophy and the basic mathematic on how the idea of insurance came about. Therefore they will not be discussed further.

It is very clear that there are some elements that form the backbone of an insurance contract. The following paragraphs will discuss only the most important elements in the light of the present theme.

a- **The Premium.**

The premium is the price at which the insurer is prepared to take the risks and bear the burden of the possible loss involved in the contract of insurance. The premium usually takes the form of a sum of money which is adequate to the risk.(Preston and Colinvaux, 1961) However, the adequacy of it is purely the insurer's concern, based on the criteria mentioned above. On the basis of the law of averages, the insurer is supposed to find, through experience, a reasonable amount sufficient to cover his risk as well as other charges including his profit. The main factors which influence the determining of the premium are the claims, commission, expenses and profit. The size of profits from the investment of the accumulated funds of the insurance companies can also play an important part in determining the rate of premium.

The contract of insurance becomes effective only when the premium is paid by the insured and received by the insurer. In the contract of life insurance, it is assumed that the policy continues and the parties remain bound to the contract until either the occurrence of the insured event, i.e. the death of the insured person, or the maturity of the policy, whichever comes first. At the time of the conclusion of the contract, the insured person does not know for how long he will be paying the premium or what the total amount will be. In most non-life insurance contracts, however, the insurance coverage is based on a yearly contract. In this case, the insured knows the amount of premium that he has to pay for that year, regardless of whether the insured event occurred or not, and of the time of its occurrence. The premiums are normally paid by a certain specified date each month. Both the amount of premium and the date of payment are clearly expressed in the policy. The policy remains in force during the period of its duration, unless allowed to lapse by non-payment of the subsequent installment of the premium. Once the premium is paid by the assured and risk is assumed by the insurer, it is not recoverable under a valid and legal policy.

b- **The Indemnity.**

Indemnity signifies protection against loss. It, therefore, reflects the intention of the insured to secure himself against such a loss without seeking any profit from it. In the law of the contract of insurance, indemnity is regarded as the subject matter of the contract and it normally takes the form of money. This is confirmed by L.J.Brett when he says, "In my judgment the subject matter of the contract of insurance is money and money only. The only result in the policy if an accident which is within the insurance happens, is a payment of money. It is true that under certain circumstances in a fire policy there may be an option to spend the money in rebuilding the premises, but that does not alter the fact that the only liability of the insurance company is to pay money".(Ivamy, 1993)

Basically, every contract of insurance is a contract of indemnity because it insures a compensation for loss to the insured and the insured is not allowed to make profit out of it. There is practically no limit to the amount of damages that may be claimed by the insured under the principle of indemnity. The principle of indemnity has two fundamental purposes as follows:-

i- To prevent the insured from profiting from insurance. The insured should not profit if a loss occurs, but he should be restored to approximately the same financial position as existed before the loss.

ii- To reduce moral hazard. If dishonest insured parties can profit from the loss, they may deliberately cause a loss with the intention of collecting the insurance. Thus, if the loss payment does not exceed the actual cash loss, moral hazard is reduced. (Rajda, 1989)

However, a contract of insurance with the valued policy, such as life and personal accident insurance, cannot be regarded as a contract of indemnity or else they violate the principle of indemnity. In these kinds of insurance, the insurer has to pay compensation on the happening of the event without any reference to loss. As a result, some insured parties receive more than their loss while others will receive less than the actual value of their loss.(Emanuel, 1931; Rahman, 1979) Legally though, it is held that the parties agree to the measure of indemnity at the inception of the contract, instead of waiting to assess the amount of pecuniary loss after the insured event has taken place. In this case, the insurance policy is only partially a contract of indemnity.

In the light of the Islamic prohibition of *gharar,* these two prominent elements of the contract of insurance are beset with problems.

When the premium is regarded as the price or consideration in the contract of insurance, then, according to Islamic law, it must be made clear among other things, as regards its amount. Failure to fulfill this requirement will result in the contract being invalid or null and void at the beginning because of *gharar.* This is where the problem lies with premiums in conventional business contracts of insurance, particularly in life insurance policies. The insured does not know how much and for how long he must pay because he never knows the date of the probable event, i.e. whether his death will or will not occur within the period of the cover. The insured event might occur after the insured has paid his very first premium, yet the insurance company will pay his inheritors the full amount of the insured money or indemnity, as agreed. However, on the other hand, the insured may pay his premium installment for years without the event happening and may get nothing in exchange for all the premium money paid.

In spite of tremendous improvements in the techniques and methods of calculation of the degree of risk, the element of *gharar* cannot be eliminated, though it might be slightly reduced. So long as risk and other variables remain indeterminate and merely probable, the amount of premium will contain the element of *gharar*. Catchpole says, "Insurance rating takes many forms, but however it is done, the insuree can never forget that insurance differs basically from industrial and ordinary commercial activities in one vital respect, that is, its cost (premium) is not known until after it has been sold. This is because insurance by its nature, cannot estimate costs in the same way as industrial product. To calculate an equitable rate of premium for an individual risk, the insurer has recourse to the pooled record of risks of the same class in his own portfolio. Having found the norm of the class concerned he can adjust the rate upwards or downwards for favorable or unfavorable features in the individual risk to arrive at what he considers a fair rate. In recent years, past records have at times proved an unreliable guide to future patterns of loss experience". (Catchpole, 1974; Rahman, 1979)

As regards the principle of indemnity, it is clear that indemnity which normally takes the form of money is the subject matter in the business contract of insurance. From the point of view of Islamic law, the subject matter of the contract of insurance, i.e., the indemnity, seems to violate almost all aspects of the Islamic prohibition of *gharar*. The following paragraphs will discuss this further.

i. ***Gharar* in the availability of the subject matter.**

The insured in the business contract of insurance never knows whether he will or will not get the subject matter of the contract, i.e., the indemnity, which he is paying for. This is because the availability of the indemnity depends on the occurrence of loss or peril. In other words, if the loss occurs, he will get the indemnity; otherwise he will not get it. The probability of the occurrence of the peril is totally beyond the control of both parties in the contract. Uncertainty as regards the availability of the subject matter is the most damaging kind of *gharar* in the Islamic law. It is the consensus of the Muslim jurists that in this case the contract will be considered as *batil,* null and void *ab initio.*

ii. ***Gharar* in the amount of the subject matter.**

In the case of the unvalued insurance policies, such as most insurance against liability and most insurance on property, both parties, insurer and insured, do not know the amount of indemnity at the time of the conclusion of contract. This is because, in this kind of policy, the amount of indemnity which will be received by the insured is not fixed by the policy. It will be left to be ascertained after the loss has been incurred. In the valued insurance policies, such as personal accident policies and certain policies of insurance on property, the amount received by the insured on the occurrence of the insured events is fixed by the policy. However, in the event of partial loss, the fixed valuation has no effect. Again, the amount of indemnity which will be received by the insured depends on the value of the loss. This means that even in the valued policy, the amount of the subject matter is not certain at the time of the conclusion of the contract.

All these uncertainties clearly contravene the principle of the prohibition of *gharar* in Islamic law. In the *Hanafi* school of law, uncertainty as regards the amount of the subject matter makes the contract *fasid,* invalid. It means that the contract is legally regarded as concluded but it is *haram* and both sides are obliged to revoke the contract. In the other school of law, though, it is *batil,* null and void altogether.

iii. ***Gharar* at the Time of Delivery.**

At the time of the conclusion of the contract, none of the parties in the contract of insurance knows when the subject matter of the contract, i.e., the indemnity, will be paid. The loss might occur just after the conclusion of the contract and after the first premium is paid; in this case the subject matter will be paid accordingly. It might also occur years after the conclusion of the contract and after the premium has been paid many times. There may also be the case where the loss never occur at all, thus the subject matter is never delivered, as in the case of non-life insurance policies. This is of course a kind of uncertainty about the time of delivery of the subject matter. This uncertainty makes the contract either *fasid,* invalid in the *Hanafi* school of law or totally void according to the majority view.(al-Najjar, 1989)

Furthermore, despite uncertainty as regards the subject matter of the contract, the element of *gharar* could also arise from uncertainty about the behavior of both parties in the contract. The payment of indemnity depends upon the payment of premium money. If the insured regularly pays his premium installments, he may get his indemnity when disaster occurs, but if he stops paying his installments or pays irregularly, he may not get any compensation. This dubious behavior on the part of the insured adds an element of *gharar* to the payment of compensation by the insurer. Thus, *gharar* will always be part of indemnity.

6. Conclusion

Finally, it may be concluded that while it is correct to point out that insurance and wagering share the common element of uncertainty, they differ from each other in many other important aspects to the extent that to put them in the same category seems to be superficial. It is argued in this paper that both important elements of wagering or gambling, namely zero-sum game and lack of insurable interest, are practically nonexistent in the contract of modern insurance. Therefore, it is reiterated here that the charge made against the contract of insurance as similar to wagering or gambling is legally unproven.

As far as the element of *gharar* is concerned, it has been argued that the element of *gharar* is unavoidable in insurance contracts and it prevails at all levels of the business from the time of signing of the contract to the time of paying of risk money to the insured who has suffered a calamity. The existence of uncertainty is the fundamental condition for the existence of insurance. It can be in the form of one of the following kinds of uncertainty:

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

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

iii- Uncertainty as regards the seriousness of the occurrence.

It may be argued that the application of the law of large numbers may help in measuring the probability or risk. Yet, this law does not in any way change the nature of that probability for the insured. The existence of statistical tables, past records, knowledge and the experience of the experts may help in forecasting better and more accurate probable occurrences of peril in general but cannot accurately forecast either the amount of total eventual claims against total losses or claims of the individual insured. The large group of insured may affect the degree of probability to some extent, from the insurer's point of view, but it does not change the nature of risk probability for each individual insured. After all, in reality, there is an individual contract between the insurer with each individual insured and there is no such thing as a contract with a group of the insured. Therefore, probability and uncertainty still remain as indeterminate elements for each individual insured. This clearly contravenes the rule of the prohibition of *gharar* in Islamic law.

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