



## JURISTIC VIEWPOINTS ON *BAY'AL-C'NAH* IN MALAYSIA: A SURVEY

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### ABSTRACT

In Malaysia, *Sharfah* scholars at the supervisory levels have advocated *bay' al-c'nah* as a mode of finance. Under the label of *al-bay'*, the contract of *al-bay' al-c'nah* contains interest-bearing features, such as earning a contractual return without the implication of risk and value-addition. Seeking a broader consensus on the permissibility of *bay' al-c'nah* is thus critical. This study shows that Malaysian *Sharfah* scholars outside the supervisory bodies do not fully support *al-bay' al-c'nah*. The survey indicates that *bay' al-c'nah* can be applied under a state of *dar'rah* or when the *maṣlaūah* of the Muslim people is under threat, which is not the case in Malaysia. Since *Sharfah* scholars in Middle-Eastern countries have condemned *bay' al-c'nah*, it is crucial that a diversification policy is pursued to invite greater participation of global Islamic funds in Malaysia.

JEL classification: G10, Z12

Key words: Islamic financing, *Bay' al-c'nah*, *ribḥ*

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### 1. PROBLEM STATEMENT

The application of *bay' al-c'nah* in Malaysian Islamic financial markets has been substantial.<sup>1</sup> The contract is considered valid (*ṣaūū*) by the *Sharfah* Board of Bank Negara Malaysia and the Securities

Commission. They argued that *bay' al-ġnah* is allowed by the Shāfi'ī school of *fiqh* (*madhhab*). Since the school of *fiqh* of Muslims in Malaysia is predominantly Shāfi'ī, it follows that the use of *bay' al-ġnah* as a mode of finance is permissible. Therefore, *bay' al-ġnah* is popular in many banking facilities such as personal financing, overdraft, and deposits. In the money market, Islamic treasury notes and the *Khazanah* benchmark bonds have intensively applied *bay' al-ġnah*. An even greater application is found in the Islamic capital market involving the issuance of Islamic private debt securities (IPDS) by large corporations.

Although it appears that a consensus on *bay' al-ġnah* has been made at the supervisory level, the views of *Sharġah* scholars outside of Bank Negara and the Securities Commission are not readily available. These views are crucial to further examine whether there is a consensus on the issues underlying *al-ġnah* contract among Malaysian *fuqahā'*. It is therefore, imperative to seek the views of *fuqahā'* in the academic, religious and legal worlds to ensure that the opinion of the *ulamā'* at the supervisory level is in congruence with the rest of the religious community in Malaysia.

This paper attempts to analyze these views by way of a survey conducted on a sample of sixty eight respondents, most of whom hold a university degree in *Sharġah*. Having an intimate knowledge of the *Sharġah* is essential, especially when the requirement for the product to be globally viable is no longer an option but a necessity for Malaysia. With traditional portfolio investments leaving the country, the reversal factor must come from global Islamic funds. It is worth mentioning that fund managers of international Islamic portfolios are generally advised by Middle-Eastern Muslim jurists (*fuqahā'*), most of whom belonging to the Mālikī, ḥanbalī and ḥanafī schools of *fiqh*. It is critical that Islamic financial instruments in Malaysia are designed to attract these investors as well. Insisting on a *Sharġah* standard based on one school of *fiqh* alone may not be in the interests of Malaysia as this may isolate the country from global Islamic finance.

## 2. BAY' AL-ġNAH (BI) AS A FINANCIAL INSTRUMENT

The contract of *bay' al-ġnah* (BI) is used to obtain cash, just as in a standard loan. Using *bay' bithaman ġjil* (BBA) can only end with the purchase and ownership of an asset, which the borrower will not be

interested in. It does not provide cash balances that people can use freely at their disposal. But obtaining cash is only possible through an interest-free loan, which is not commercially viable. As a business entity an Islamic bank seeks to maximize profit, so giving interest-free loan (*qarè al-úasan*) will not achieve this objective. Since banks are willing to fund a transaction at a price and customers are ever willing to pay this price, Islamic bankers have devised a product to help people who want cash to get it without the implication of *ribè*.

The *bay' al-c'nah* transaction is normally executed with relative ease. Suppose Mr. Salleh wants a \$10,000 loan for which he is willing to pay a price, but not one similar to the *ribè* in a loan. Here, the bank will sell asset X to Mr. Salleh at a credit price, say \$15,000, which he pays by installments. Then, at the same instant, Mr. Salleh, who now owns asset X, sells it back to the bank for \$10,000 payable on a cash basis.

In this manner, he gets the \$10,000 in cash, while the bank makes a \$5,000 profit over the period of financing. Each party gets what it wants without the implication of *ribè*. The product is based on two contracts of sale and purchase (*al-bay'*), namely: (a) *al-bay' bithaman Èjil* (deferred), and (b) *al-bay' al-mu'laq* (cash sale) with the credit sale executed following the cash sale. It is therefore pertinent to examine the views of Muslim jurists on transactions involving *bay' al-c'nah*. Juristic opinions on *bay' al-c'nah* can be divided into two categories, namely those represented by: (a) the  $\hat{\imath}$  anaf $\mathring{y}$ ,  $\hat{\imath}$  anbal $\mathring{y}$  and MÈlik $\mathring{y}$  schools of *fiqh*, and (b) the ShÈfi $\mathring{y}$  school of *fiqh*.

Corporate finance has applied *bay' al-c'nah* through bond issues on a large scale. Like any debt contract, corporate bonds give lenders legal claims on both capital and interest income. Through *bay' al-c'nah*, creditors are also given full capital protection and guaranteed profits. By issuing Islamic bonds (*sanad*), the safety, liquidity and risk-free features of conventional bonds are kept intact without explicitly implicating interest as *ribè*.

The actual application of *bay' al-c'nah* here is critical to claim *Shar'ah* legitimacy. The same process is applied as found in banking. Say, the issuer wants to raise \$500 million to finance project X. The issuer will identify its own assets worth \$500 million (e.g. plant and machinery, stocks, real estate, etc.) for the purpose of sale to investors. Upon the *bay' al-mu'laq* sale, the issuer gets the cash it wants. Repayment is made by way of *al-bay' bithaman Èjil* sale by the

investors to the issuer at a mark-up price. The margin consists of the annual profit investors want from the BBA sale multiplied by the installment period. For example, if the annual profit is 6 percent per annum with a 10 year tenure, the margin is equal to \$300 million (0.06 x \$500 million x 10).

Bond issues were made as if they constituted physical assets or property (*al-mal*). This is because in the *bay' al-'inah* process, the buy-back *al-bay' bithaman 'ajil* contract allows the issuer to take back possession and ownership of the assets. These assets are then securitized to make way for the bond issues as a mode of payment. Thus, Islamic asset securitization is only possible by applying the *'inah* sale, consisting of *bay' al-mu'laq* and *bay' bithaman 'ajil*. If this securitization process is not executed, the structure of Islamic bond issues would be identical to conventional bonds, thus implying *riba*.

It is thus critical to further examine the views of the *fuqah* on *bay' al-'inah* in order to see whether the disagreements are based on fundamentals (*uṣūl*) or merely subsidiary issues (*furu'*). It is generally known that the former is forbidden (*ḥarām*) while the latter which constitutes *ikhtilaf*, is allowed (*ḥalāl*).

### 3. FUQAH•VIEWS

The following discussion is on comparative *fiqh*, from which eight statements were formulated in order to explore the views of contemporary *Sharāh* degree holders who do not hold supervisory duties in Malaysian Islamic financial institutions. The statements are given in Table 1.

al-Shāfi' and Dawūd al-Üḥirī found the contract of *bay' al-'inah* to be valid, but abhorrent (*ṣaūū ma'a karāhah*). This is because the *'inah* contract has to satisfy all the requirement of a valid contract. In other words, the *'inah* sale is valid by the fulfillment of the external evidence required by all contracts of sale (*al-bay'*). The intention (*niyyah*) of the contracting parties has no effect on the validity of the sale. The intention is not considered since there is no means to know it,<sup>2</sup> unless the intention is expressed explicitly. In the Shāfi' and the Üḥirī schools of *fiqh* only the external intention of the contracting parties is considered.<sup>3</sup> Therefore, the *'inah* sale is valid on the basis of the verse: (*wa ūalla Allah al-bay'*).<sup>4</sup> They do not consider the succession of two contracts of sale as sufficient evidence to prove the

existence of a *ribaw* intention.<sup>5</sup> Abū Yūsuf, from the ḥanafite school, considered this sale as valid without abhorrence. Muḥammad ibn al-ḥasan al-Shaybānī had a slightly different view. He perceived this sale as valid with abhorrence.

On the other hand, the Mālikīs and ḥanbalīs regard this contract as void.<sup>6</sup> According to both schools of *fiqh*, the motive of the contracting parties determines the legality or illegality of the contracts. In the *ḥinah* sale under consideration the motive of the parties is illegal and therefore the sale is not valid because it constitutes a legal device (*uḥlah*) to secure a loan with interest. This despicable act should be averted at all costs if one desires to observe the *Sharī'ah* wholeheartedly.<sup>7</sup>

The above view is based on a report of an incident between Zayd ibn Arqam and Ḥ. 'ishah.<sup>8</sup> Jurists supporting the *ḥinah* sale also apply analogy (*qiyās*) on the means/expedients (*dhar'ī'ah*). But this is prohibited by the consensus (*ijmā'*) of the *fuqahā'*. In both cases, the unlawful intention constitutes the motive of the contract.<sup>9</sup> They concluded that the *ḥinah* sale is a mechanism to legalize *ribā*.<sup>10</sup> Anything that can be used as a means to commit a prohibited act is prohibited.<sup>11</sup>

The invalidity of *bay' al-ḥinah* is also evident in a *uḍḍiyyah* reported by Ibn 'Umar that the Prophet (pbuh) said: "Whenever you do business transactions by way of *bay' al-ḥinah*, and you follow your cattle and get engrossed with your agricultural pursuit (and because of that) you neglect your *jihad*, Allāh shall cause ignomy upon you and that it shall not cease until you return to your religion".<sup>12</sup> Abū ḥanīfah said that this contract is void (*bātil*) if it does not involve a third party, who either deals with the original seller or buyer. However, Abū ḥanīfah in this case appears to have changed his previous view in which he concluded the *ḥinah* sale is *ṣāliḥ*.<sup>13</sup>

Based on the above discussion, we can conclude that the objection on the validity of *bay' al-ḥinah* is based on the following reasons:

- a. It is a legal device (*uḥlah*).
- b. The presumed wrongful intention to commit *ribā* transaction. This is explained by the *uḍḍiyyah* which says, "all actions are judged by intention."<sup>14</sup>
- c. The reported opinion of Ḥ. 'ishah against Zayd ibn Arqam.
- d. The reported *ṣāliḥ uḍḍiyyah* narrated by Ibn 'Umar.

However, al-Shāfiʿī rejected the *uādʿ* regarding Zayd ibn Arqam and ʿĀʾishah, saying that the *uādʿ* is not established (*thābit*).<sup>15</sup> Even if it is authentic, al-Shāfiʿī denied it for the following reasons:<sup>16</sup>

- a. ʿĀʾishah's condemnation of the *ʿġnah* sale is based on the view that the payment on the sale is deferred into some unknown or unspecified period. Sale with deferment in payment is not valid.
- b. The incident involved two companions and if there are disagreements between the companions, Shāfiʿī methodology is to take the opinion of whom we can use analogy (*qiyās*) with. In this case it is on Zayd's side.<sup>17</sup> In other words, while it is clear that Zayd acted contrary to the meaning of the *uādʿ*, this does prove that the companions themselves were not of the same opinion. When this happens, analogy (*qiyās*) is applied.<sup>18</sup>

#### 4. THE EFFECT OF INTENTION ON THE VALIDITY OF CONTRACTS

Since *bayʿ al-ʿġnah* involves the intention (*qaṣd* or *niyyah*) of the contracting parties, it is pertinent to have a deeper look into this issue. In a nutshell, there are two views regarding intention in any kind of contract. The first one is the view of the ḥanafīs and Shāfiʿīs who consider only the external intention and not the internal motive. In other words, all contracts are considered valid if the external desire of the contracting parties is fulfilled. This view is based on the fact that if the internal desire or intention is taken into account, it will ruin the principle of stability or solidity of transaction (*istiqrār-al-tāʿīmul*). This is because internal desires are concealed or hidden such that it is impossible to know them. As desire differs from one person to another, the requirement to explicitly announce the *niyyah* in contractual obligations executed cannot be considered.<sup>19</sup>

As a result, the motive has no effect on a contract, unless it is stated explicitly. The *ʿġnah* contract is thus valid and effective since all aspects of the sale are fulfilled. Nevertheless, Shāfiʿīs asserted that when the intention or motive is unlawful, the contract is considered abominable or abhorrent (*makrūh*) and thus, by extension prohibited (*ūarḥm*), albeit technically valid.<sup>20</sup>

The Mālikīs, Ḥanbalīs, Ḥanafīs and the Shāfi'īs supported the second view. They take into consideration the internal intention or desire of the contracting parties. Consequently, they consider all contracts containing unlawful intentions as void, provided that the second party knows the intention of the first party.<sup>21</sup> The external evidence is discounted if the internal intention is found to conflict with the external evidence.<sup>22</sup> In this case, it is apparent that the buyer and seller in the *ḥinah sale* have both executed a contract of sale but only to serve as a legal device (*ūḥlah*) in order to legalize a *ribaw* contract. In fact, there is no intention by both buyer and seller alike to purchase the goods for genuine reasons such as consumption. Therefore, the contract is prohibited on the basis of blocking the means (*sadd al-dharar*).<sup>23</sup>

With regard to the Shāfi'ī and Ḥanafī view that the validity of a contract depends on the external form of the agreement, the opponents of *ḥinah sale* rejected this argument. This is because the external intention of the contracting parties is considered only if there is no presumption or indication that the intention is opposite to the external evidence. When there is clear evidence from customary practice that the real intention of the parties is in violation of the *Sharāh*, the contract is considered void.<sup>24</sup>

In short, the prohibition of *bay' al-ḥinah* – according to the second opinion – is based on the argument that the contract is a means for the taking of *ribā*.<sup>25</sup> Other jurists state that all kinds of *buy' al-ajal* are not permissible, since the real intention is not to realize the objective of the sale but to secure a *ribaw* credit facility. In this manner, the contract of sale or *al-bay'* is used merely for the purpose of lending and borrowing money via the *ūḥlah* mechanism.<sup>26</sup>

## 5. ḤALAL AND BACKDOOR TO RIBAW

In the *Qur'ān*, Allah says: (*wa aḥalla Allāh al-bay' wa ḥarrama al-ribā*).<sup>28</sup> Allāh prohibits *ribā* and He blocks the means that lead to *ribā*. Individuals indulging in *ribā* are compelled to use *ūḥlah*.<sup>29</sup> The best *ūḥlah* uses sale (*bay'*) since Allāh has permitted sale in the *Qur'ān*. It is used as a camouflage to hide the real intention of the contracting parties. Consequently, a number of *ūḥlah* on *ribā* are applied in the name of sale (*al-bay'*). One of these *ūḥlah* is *bay' al-ḥinah*. It is regretted that *bay' al-ḥinah* has been endorsed as a solution by the

*fuqah* in the Malaysian supervisory bodies.<sup>30</sup> In Islamic *fiqh*, *bay' al-<sup>c</sup>nah* is regarded as a typical *ūiyal ribaw*. Although *bay' al-<sup>c</sup>nah* has satisfied the basic requirement of trade and commerce (*al-bay'*), in essence it still resembles a contract of loan with interest.<sup>31</sup>

On this point it is worthy to look at the eminent jurist Ibn Taymiyyah who divided sales into three groups. These sales are executed according to the buyer's intentions, namely:

- a. that he purchases the goods in order to use or consume them, such as food, drink and the like, in which case this is sale, which God has permitted;
- b. that he purchases the goods in order to trade with them; then this is trade, which God has permitted;
- c. that the reason for purchasing the goods is neither the first nor the second, then the reason must be dirham (money) which he needs, and it was difficult for him to borrow, so he purchases the goods on credit (with an increased dirham) in order to sell it and take its price. This, then, is *nah* which is *uar* according to the most eminent of the jurists.<sup>32</sup>

The above statements can be further understood by setting them in a modern context. For example, a bank customer looking for a loan will purchase a fictitious asset from the bank with no intention of being a consumer. Instead he or she turns into a trader, which is not his or her profession. In this new role as a trader, the customer sells the fictitious asset back to the bank, which not only a trader but a financier. If the bank is a trader, it must have stocks of the fictitious asset for the purpose of sale, but regretfully it has only one, which will be used many more times to execute new *bay' al-<sup>c</sup>nah* sales.

Finally, the views held by the Malaysian *fuqah* representing both Bank Negara Malaysia and the Securities Commission are predominantly Shafi's. However, the *fuqah* who do not have supervisory duties may not share the same view. This may be possible even though Malaysian *fuqah* subscribe to the Shafi school of *fiqh*. The next section will provide an empirical finding concerning the views of the *fuqah* outside the supervisory bodies. The method applied attempts to explore new frontiers in determining juristic opinions, although no claim shall be made to consider this method authentic or binding in making legal rules (*aukEm shar'iyah*).



## 6. DATA AND ANALYSIS

The eight statements on *bay' al-ʿinah* were distributed both manually and electronically. Respondents include *muffihs*, members of *Sharʿah* Advisory Committee (outside Bank Negara and the Securities Commission), Islamic bank executives, lecturers and government officers. Sixty eight respondents participated in the survey. Since this study is exploratory in nature, the number of respondents is considered sufficient to give a valid result. Examining their knowledge on *bay' al-ʿinah* is done by way of defining their respective preferences on the Likert scale.

### 6.1 GENERAL CHARACTERISTICS OF THE SAMPLE

Most of the respondents are academics in Islamic studies, but they do not necessarily deal with *fiqh al-muʿamalat*. They include lecturers at both public and private universities, executives or officers in religious departments and students with diplomas in Islamic studies. All respondents have a basic knowledge on what constitutes *bay' al-ʿinah*. This is to guarantee that they understand the given statements and so make their responses valid. The authors feel that the composition of the respondents is quite representative of what a *fuqahāʿ* should be. The majority of the respondents hold at least a Master's degree, 16.2 percent hold Ph.Ds in Islamic studies, 20.9 percent of the respondents hold Bachelor degrees and the remainder have diplomas.

The eight statements in the questionnaire are in listed Table 1. This was to avoid misunderstanding of the given statements so as to provide clarity to the respondents. The questions were also distributed in the Malay language. However, some Arabic terms such as *bay' al-ʿinah*, *ūiyal*, etc., were not translated into Malay in order to preserve their originality since the meanings can be misleading when translation is made literally.

## 7. MEAN AND STANDARD DEVIATION

This study utilizes a simple statistical approach. It seeks to gather a consensus among respondents by way of extracting their views on several issues related to *bay' al-ʿinah*. Any observation made is not binding, as the determination of legal values (*qiyam sharʿiyyah*) is

TABLE 1  
Description of Statements

Statement Number	Description
1	In doing any transaction, <i>niyyah</i> plays the most important role – more important than the <i>lafz</i> of the contract itself. <i>Niyyah</i> determines whether the contract is valid or not.
2	Contractual fixed return on loan is disallowed because it is <i>ribal</i> .
3	Charging a mark-up above the cost/capital in sale is permissible because it is profit.
4	<i>Bay' al-ʿinah</i> is a kind of sale which uses <i>uʿlah</i> to avoid the involvement in <i>ribaw</i> transaction.
5	<i>ʾiʿlah</i> is permissible on <i>maʾlaūah</i> basis.
6	<i>ʾiʿlah</i> is permissible on <i>ʿarʿrah</i> basis.
7	<i>Bay' al-ʿinah</i> is permissible because it enables consumers to obtain cash/capital without involving the <i>ribaw</i> contract of loans.
8	The authenticity of the <i>uadʿth</i> regarding the prohibition of <i>bay' al-ʿinah</i> (the story of Zayd ibn Arqam and <sup>C</sup> ʿishah) is dubious.

under the purview of *ijmāʿ* (juristic consensus) and *ijtihad* (juristic independent thinking).

In this study, a high mean with low standard deviation on the given statement would imply a consensus reached by the respondents. As generally acknowledged, a mean only pinpoints the center of the data. Thus, using the mean alone can be meaningful only if the dispersion is small. However, if the measure of dispersion is large, it indicates that the data is not clustered closely. Therefore, the mean is not reliable; that is, it is not representative of the data.

Thus, the degree of disagreement among the respondents, as measured by the standard deviation is a significant aspect of the study.

One cannot casually conclude that Muslim jurists have a common understanding on a specific issue by merely looking at the mean without paying equal attention to the dispersion around the mean.<sup>33</sup> It would be like walking across a lake with an average depth of 4 feet, but some portions are as deep as 400 feet. Thus, if a high mean gives a large standard deviation as well, it is pertinent to further explore why that is the case.

The next section describes the mean and standard deviation for each question with some insights on the preferences given by the respondents. A mean of between 4 and 5 would indicate a high level of agreement of the given statement, while a mean between 1 and 2 would imply the opposite. Likewise, a high standard deviation between 4 and 5 shows that the degree of disagreement is substantial.

A statement with a high mean (e.g. 4) and low standard deviation (e.g. 1) indicates that respondents have reached a strong consensus on the given statement. However, if the standard deviation is also high (e.g. 4), the mean of 4 implies that a strong consensus among respondents is not evident. The same is true for statements with low means but high standard deviations, where the disagreement among respondents is not substantial or conclusive enough to indicate that the decision is unanimous.

## 8. RESULTS AND ANALYSIS

In Table 2, each statement in the questionnaire is listed with its mean and standard deviation. The standard deviation is used to measure the extent of disagreement among the respondents on the issues forwarded. A high standard deviation simply means that the sample observations are not clustered closely around the mean. When this happens the dispersion of the opinions around the mean is considered high and thus expounds a greater amount of variability. It is therefore a crucial tool to further explore the opinions of *fuqahā* on *bay' al-<sup>c</sup>nah*, whether or not a nearly unanimous consensus was made.

Table 2 shows the mean scores and standard deviations. The means range from a high of 4.2727 for statement 2 to a low of 3.1818 for statement 8. The standard deviation ranges from a low of 0.6302 to a high of 1.3366. Statement 1 has the highest standard deviation (1.3366), while the lowest is for statement 8 (0.6302).

TABLE 2  
Initial Statistics of Statements

Statement	N		Mean	Std. Deviation
	Valid	Missing		
1	68	0	3.7206	1.3366
2	66	2	4.2727	0.9535
3	67	1	4.1940	0.8745
4	68	0	4.0441	0.7810
5	68	0	3.6029	0.9641
6	68	0	3.6912	0.9964
7	67	1	3.7612	0.9706
8	66	2	3.1818	0.6302

### 8.1 THE *NIYYAH* (INTENTION) FACTOR IN ECONOMIC BEHAVIOR

Statement 1 examines the role of intention (*niyyah*) in determining the validity of a contract. Statement 1 has the highest standard deviation compared to all other questions in the survey. From Table 3, the respondents seem to hold quite different views regarding this matter. This is not surprising since the traditional jurists themselves had some disagreement on the legal ruling of *bay' al-c'nah*.

There is a spectrum of views regarding the role of *niyyah* in determining the validity of a contract. Although it can be assumed that

TABLE 3  
Statement 1 - *Niyyah* is of the utmost importance

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid				
Totally Disagree	5	7.4	7.4	7.4
Disagree	13	19.1	19.1	26.5
Not Sure	3	4.4	4.4	30.9
Agree	22	32.4	32.4	63.2
Totally Agree	25	36.8	36.8	100.0
Total	68	100.0	100.0	

Std. Dev = 1.3366

Mean = 3.7206

the respondents adhere to the Shāfiʿī school of *fiqh* (*madhhab*), the mean for statement 1 is 3.706. It implies that in general, the respondents agreed with the view that *niyyah* indeed has influence over the validity of a contract. In Table 3, it is shown that the majority of the respondents (69.2 percent) tend to agree with the statement. It appears that there is some inconsistency between the assumptions that these Malaysian Muslims belong to the Shāfiʿī school of *fiqh* and the *fiqh* opinions they respectively hold. On the issue of *niyyah*, most respondents took the positions of the ḥanafī, Mālikī and ḥanbalī schools of *fiqh* instead of Shāfiʿī.

Considering the relatively low standard deviation associated with this statement, it is believed that a conclusion based solely on the mean score is adequate to measure the degree of agreement among the respondents. Some respondents did hold tightly to the Shāfiʿī school of *fiqh*. But the authors feel that the relevant authority cannot overlook the view supporting the importance of *niyyah* in determining the validity of a contract. The finding has shown that a minority (26 percent) of the respondents was supportive of the opinions forwarded by the scholars at the supervisory councils.

Therefore, we can conclude that a significant amount of disagreement on this matter does exist. Policy-makers should take notice of this finding and should see that the validity of *bay' al-ʿinah* has not actually received the general consensus of the *fuqahā* in the study. The high mean score apparently suggests that the *niyyah* factor does matter. To some extent this suggests that a large number of respondents may have subscribed to the Mālikī, ḥanbalī and ḥanafī schools of *fiqh* on this matter.

## 8.2 FIXED RETURN ON LOAN (*QARĒ*) IS *RIB*.

In Statement 2, there is a general consensus that a fixed return on a loan is not permissible in Islam. The mean is 4.2727 with a relatively low standard deviation of 0.9535. Four respondents did not agree with the statement. This might be attributed to a misunderstanding of the statement itself.

For example, the Prophet (pbuh) encouraged debtors to pay their debt well. It is a virtuous act to pay more than the principle loan, but Islam only allows this practice on payments made on maturity, i.e., at

TABLE 4  
Statement 2 - Fixed return on loan is disallowed

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Totally Disagree	1	1.5	1.5	1.5
	Disagree	3	4.4	4.5	6.1
	Not Sure	8	11.8	12.1	18.2
	Agree	19	27.9	28.8	47.0
	Totally Agree	35	51.5	53.0	100.0
	Total respondent	66	97.1	100.0	
	Missing value	2	2.9		
	Total	68	100.0		

Std. Dev. = 0.9535  
Mean = 4.2727

the time of repayment with no fixed interest rate. Some respondents may relate this *úadhth* to Statement 2. However, the statement is a straightforward one, which Muslim scholars with *Sharfah* expertise are expected to respond well to. The fact that the mean score is above 4 proves that the level of understanding of the respondents on the concept of Islamic loan (*qarè al-úasan*) is high. In fact, this statement has the highest degree of agreement compared to the rest of the statements in this survey. With the exception of statements 3 and 4, this is the only statement that gains a mean score of more than 4.

### 8.3 FIXED RETURN FROM SALE (*AL-BAY<sup>c</sup>*) IS NOT *RIB*•

Statement 3, that charging a mark-up above the cost or capital in sale is permissible because it constitutes profit, received almost the same responses as Statement 2. The standard deviation is 0.8745 and the mean is 4.1940. The responses to this statement are given in Table 5.

In Malaysia, this issue is considered to be a basic one which should be known to every Muslim. Since the respondents are generally knowledgeable in the *Sharfah*, it is assumed that they are fairly familiar with this issue, which the figures do indicate. However, using *al-bay<sup>c</sup>* as an alternative to *ribÈ* may prove distasteful when *úiyal* is applied under the label of trade and commerce (*al-bay<sup>c</sup>*). Indirectly, it provides a license to use *al-bay<sup>c</sup>* to legitimize *ribÈ* by way of the *çnah* sale.

TABLE 5  
Statement 3 - Fixed return on sale is permissible

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Totally Disagree	1	1.5	1.5	1.5
	Disagree	2	2.9	3.0	4.5
	Not Sure	8	11.8	11.9	16.4
	Agree	28	41.2	41.8	58.2
	Totally Agree	28	41.2	41.8	100.0
	Total responded	67	98.5	100.0	
	Missing value	1	1.5		
	Total	68	100.0		
Std. Dev. = 0.8745					
Mean = 4.1940					

Similarly when profits are made from *bay' al-mu'ajjal* or *bay' bithaman 'ajil* by way of time value rather than risk and effort (*'iwa'è*), its legitimacy is also suspect.<sup>34</sup>

#### 8.4 BAY' AL-CINAH IS A LEGAL DEVICE TO BYPASS THE QU'R•MC PROHIBITION OF RIB•

Table 6 shows the responses for Statement 4, which states that “*Bay' al-cinah* is one type of sale that uses *u'lah* to avoid the involvement in *rib'è* transactions”. Controversy regarding the application of *u'lah* has existed since the beginning of *fiqh*. In essence, *bay' al-cinah* is a *u'lah* device whose aim is to facilitate the conduct of business covered by *Shar'ah* prohibitions but which can be evaded by way of legal tricks.

The implementation of *bay' al-cinah* gives the contractual parties some room to obtain cash or capital without involving themselves in explicit *rib'è* transactions. The respondents tend to agree with the statement's proposal. In other words, they have unanimously agreed that *bay' al-cinah* is a legal device made to by pass *rib'è*. The high mean score associated with this statement proves this point. Statement 4 has a mean of 4.0441, with a low standard deviation of 0.7810. The level of disagreement is therefore among the lowest in the survey.

TABLE 6  
Statement 4 - *Bay' al-'inah* is *ū#lah*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Totally Disagree	2	2.9	2.9	2.9
	Not Sure	7	10.3	10.3	13.2
	Agree	43	63.2	63.2	76.5
	Totally Agree	16	23.5	23.5	100.0
	Total	68	100.0	100.0	

Std. Dev. = 0.7810  
Mean = 4.0441

About 86.7 percent of the respondents agreed with the statement while only 2.9 percent totally disagreed and 10.5 percent were not sure about the statement.

#### 8.5 FULFILLING PUBLIC INTEREST (*MA'LA' AH*) MAKES WAY FOR THE PERMISSIBILITY OF *ī jLAH* (LEGAL DEVICE)

Statements 5 and 6 examine the subject of the permissibility of *ū#lah*, which is associated with *bay' al-'inah*. In Statement 5, the respondents were presented with the proposal that *ma#la'uah* is the basis of the permissibility of *ū#lah*. The standard deviation for this statement is 0.9641 and the mean is 3.6029.

TABLE 7  
Statement 5 - *ī #ah* is Permissible on *Ma#la'uah* Basis

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Totally Disagree	3	4.4	4.4	4.4
	Disagree	6	8.8	8.8	13.2
	Not Sure	14	20.6	20.6	33.8
	Agree	37	54.4	54.4	88.2
	Totally Agree	8	11.8	11.8	100.0
	Total	68	100.0	100.0	

Std. Dev. = 0.9641  
Mean = 3.6029



In Table 7, it is shown that more than 50 percent of respondents agreed with the statement. It is interesting to observe that 20.6 percent of respondents were unsure about the validity of the given statement while 13.2 percent disagreed. This may be explained by the grave nature of *maṣlaʿah*. ḡmḡm Shḡḡibḡ defines *maṣlaʿah* as “that which concerns the subsistence of human life, the completion of man’s livelihood, and the acquisition of what his emotional and intellectual qualities require of him, in the absolute sense”.<sup>35</sup> He further says that the primary objective of the Lawgiver is the *maṣlaʿah* of the people. The obligation of *Sharʿah* concerns the protection of the *maqḡḡid* of the *Sharʿah*, which in turn aims to protect the *maṣḡḡliʿ* of the people.<sup>36</sup> Such a definition of *maṣlaʿah* may not give legitimacy to *bay' al-ʿinah* when its facilities are not meant to fulfill the subsistence of human life but to meet in some cases the interests of rich corporations and individuals, whose unprecedented appetite for fixed income instruments has been the norm. This is true in the Islamic public debt securities (IPDS) business when companies are compelled to issue fixed rate coupon bonds such as *murEbaʿah* notes issuance facility (MuNif) rather than ones with variable rates of return such as *ṣukʿk al-ijErah*.

#### 8.6 PERMISSIBILITY OF ʿILAH ON THE BASIS OF ʿARḡRAH

This is an important component of the survey since arguments made to legitimize *bay' al-ʿinah* on the basis of ʿar ʿrḡ are common. It is thus critical to examine what ʿar ʿrḡ really means. The ʿar ʿrḡ category consists of five: *dḡn* (religion), *nafs* (self), *nasl* (family), *mal* (property) and *ʿaql* (intellect). Following al-Shḡḡibḡ’s definition, ʿar ʿrḡ (necessity) is a legal objective which is indispensable for sustaining religious and worldly interests, neglect of which may disrupt the worldly interests or may corrupt, impede or destroy life in this world and salvation and rewards in the hereafter.<sup>37</sup> It is one component of the *maqḡḡid*, the other two being *ʿujḡḡ* (needed) and *taʿḡsinḡ* (commendable). Without the *maṣḡḡliʿ ʿar ʿriyyah*, the *maṣḡḡliʿ* of the *dḡn* and *dunya* is disrupted. In other words, inability to sustain the *maṣḡḡliʿ* of the *dḡn* means disrupting the *maṣḡḡliʿ* of the world. The disruption of the *maṣḡḡliʿ ʿar ʿriyyah* results in the destruction and termination of life in this world. In the hereafter, it means losing salvation and blessings.

TABLE 8  
Statement 6 - *ĥlah* is Permissible on *ĕar'rah* Basis

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Totally Disagree	4	5.9	5.9	5.9
Disagree	2	2.9	2.9	8.8
Not Sure	17	25.0	25.0	33.8
Agree	33	48.5	48.5	82.4
Totally Agree	12	17.6	17.6	100.0
Total	68	100.0	100.0	

Std. Dev. = 0.9964  
Mean = 3.6912

Statement 6 lays down *ĕar'rah* as the reason for the permissibility of *ĥlah*. The result is almost the same as the previous one. The mean score is 3.6912 for this statement compared to 3.6029 for the former statement and the standard deviation is 0.9964. Our findings indicate that generally, most respondents agreed with the statement, namely 66.1 and 8.8 percent agreed and disagreed, respectively. The problem at hand is to assess whether Islamic banking will cease to operate without using *bay' al-ĥnah*. In the *ĕar'rah* argument, without *bay' al-ĥnah*, it follows that the *maš'liú* of the Muslims is set to disappear. However, this has been the case since Islamic finance has not fully exploited all the available classical financial contracts such as *salam*, *istisnâ*, *qirâ* and *mushĕarakah* to achieve the same business objectives. Resorting to *bay' al-ĥnah* only reflects the inability to alter financing behavior in line with *Qur'ĕnic* norms.

#### 8.7 OVERALL CONSENSUS ON THE PERMISSIBILITY OF *BAY' AL-ĥNAH*

Statement 7 says that "*Bay' al-ĥnah* is permissible since it enables consumers to obtain cash or capital without involving *ribaw* contract of loan". Here the standard deviation is 0.9706, which is nearly 1. It is not surprising to see that there are some respondents who did not agree with the statement. Since the statement itself is one of the main areas of disagreement between Malaysian supervisory jurists and the Middle-Eastern, it is expected to see some of the respondents sharing similar

views with the Middle-Eastern jurists, especially those who studied in the Middle-Eastern universities.

TABLE 9  
Statement 7 - *Bay' al-ʿinah* is permissible

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Totally Disagree	2	2.9	3.0	3.0
	Disagree	7	10.3	10.4	13.4
	Not Sure	8	11.8	11.9	25.4
	Agree	38	55.9	56.7	82.1
	Totally Agree	12	17.6	17.9	100.0
	Total responded	67	98.5	100.0	-
	Missing value	1	1.5		
	Total	68	100.0		

Std. Dev. = 0.9706  
Mean = 3.7612

One of the respondents gave his comments in which he stated that: the *jumhūr* or the majority of Middle-Eastern *fuqahāʿ* especially those in the International *Fiqh* Committee in Jeddah do not support this contract. The opinion of the *Shāfiʿīs* in the permissibility of this contract is based on the fact that the implicit intention or *niyyah* cannot be used to invalidate the contract. It is therefore permissible to sell grapes to a wine-maker as long as the intention is not known. However some jurists do not permit this kind of sale to a buyer whose work is already known (as a wine-maker). But in the modern-day business transactions, the intention is no longer implicitly hidden. It is very obvious that the intention of the buyer and seller is to obtain cash money at a price.

However, the majority of the respondents agreed to some extent that *bay' al-ʿinah* is permissible based on the stated motive and other reasons as well. The mean score for this statement is 3.7612, i.e., with 73.5 percent supporting the statement. But our finding saw that the agreement is not unanimous since the mean score is less than 4.

The last statement on *bay' al-ʿinah* looks at the authenticity of the *uḍḍiyyah*, which is used as the main basis for the prohibition of *bay' al-ʿinah*. The *uḍḍiyyah* is the incident concerning the dispute between Zayd ibn Arqam and ʿAbū ʿĪshāh.<sup>38</sup> In this *uḍḍiyyah*, the wife of Zayd ibn Arqam

said to C. 'ishah: "I have sold a slave to Zayd ibn Arqam for eight hundred dirhams to be paid in the future. I then bought him (the slave) back at a price of six hundred dirhams – in cash." C. 'ishah said: "Vile indeed was your selling and vile indeed was your buying. Tell Zayd that he had forfeited God's blessing of his *jihad* with the Prophet unless Zayd repented."

TABLE 10  
Statement 8 - *adulth* Authenticity is Dubious

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Disagree	6	8.8	9.1	9.1
	Not Sure	44	64.7	66.7	75.8
	Agree	14	20.6	21.2	97.0
	Totally Agree	2	2.9	3.0	100.0
	Total	66	97.1	100.0	-
	responded				
	Missing value	2	2.9		
	Total	68	100.0		

Std. Dev. = 0.6302  
Mean = 3.1818

Statement 8 has the lowest standard deviation of 0.6302 while its mean is slightly above 3 (which means respondents were not sure), i.e., 3.1818. It is interesting to note that a large number of the respondents (66.7 percent) are not sure about the statement, which is not surprising. The authors do not assume that respondents have detailed evidence (*dali*) on the permissibility or prohibition of *bay' al-'inah*. It is possible that some of the respondents may not have enough time to study the *adulth* or spend more time reading about the debate concerning it.

## 9. CONCLUSION

Based on the above findings, there seems to be a general agreement among respondents that *bay' al-'inah* is not desirable but remains acceptable when it is proven that society is living in a state of *dar'rah*. Our findings also show that using *bay' al-'inah* is permissible when the *maslahah* of the people is under threat. But the general feeling

among respondents has been non-supportive of *bay' al-c'nah* when the *niyyah* factor is invoked. In this way, the majority view is in line with the Mālikī, Ḥanafī and Ḥanbalī schools of *fiqh* although they also belong to the Shāfi'ī school of *fiqh*. This study shows that the application of *bay' al-c'nah* is tolerated only under restrictive conditions such as *ḥar'rah* and protecting public interest (*maṣla'ah al-ḥimmah*). But as Islamic banking and finance in Malaysia is not under these threats, rationalizing *bay' al-c'nah* has been an inaccurate policy option. There are many more alternatives open to Islamic financial practitioners in promoting genuine and *ūyah*-free products such as *salam*, *istisnā'*, *mu'ārah* and *mushārah*. Indeed, the survey confirms Imam Shāfi'ī's view that *bay' al-c'nah* can only be practiced on a limited scale. Unfortunately, his view has been reinterpreted by the *fuqahā'* at the supervisory level to imply a general theory, which unfortunately leads to its wholesale application in the Malaysian Islamic financial market. There is, therefore, an urgency to look at this issue more seriously at the policy level if one desires to attract more Middle-Eastern funds into the Malaysian shores. Moreover, exploiting *ribā'* under the disguise of *al-bay'* will smear the sense of justice that Islam desires to promote in economic life. Using *bay' al-c'nah* in Islamic banking and finance will force the system to inherit the diseases of capitalism and the injustices it brought to mankind.

## ENDNOTES

1. See Saiful Azhar Rosly and Mahmood Sanusi (2001).
2. al-Zuhaylī, vol. 4 (1989), 468.
3. Ibid., 470.
4. Meaning: But Allah hath permitted trade (*al-Qur'ān*, 2: 275).
5. al-Miṣrī, (1991), 174.
6. Wafī, (1984), 41; Wizārah al-Awqāf wa al-Shu'ūn al-Islāmiyyah (1989). Interestingly, the majority of writers, traditional and contemporary, discuss *bay' al-c'nah* in the category known as *al-buy' al-fasīdah*, which literally means deficient or irregular sales. This is according to the categorization

made by the *î anaf*s. They classify contracts into *ṣāḥih* (valid), *fīṣid* (deficient) and *bāṭil* (null and void). Deficient contract is such a contract which fulfills its pillars but misses one or more of the conditions of validity (*shurḥ al-ṣihhah*) – see al-Zuhaylī, vol. 4 (1989), 423-5; Māsī (1994), 280; Wafī, (1984).

7. Ibn Taymiyyah, (1997), 334.

8.

#F9'DJ) (F\* #JA9B'D\*—: /D\* H#F' #E HD/ 2J/ (F #1BE H'E1#\*G 9DI9'&4) 16J 'DDG 9FG' AB'D\* #E HD/ 2J/ (F #1BE—: %FJ (9\* :D'E' EF 2J/ (F #1BE (+E'FE'&)/1GE %DI 'D97'! +E '4\*1JG EFG— (3'E'&)/1GE -#J-'DQ) - AB'D\*9'&4)—: (&3E' 41J\* H(&3E' '4\*1J\* #(D:J 2J/' #FG B/ #(7D,G'/GE 9 13HD 'DDG 5DI 'DDG 9DJG H3DE %FDEJ\*(—.

*Meaning: The wife of Zayd ibn Arqam said to C' 'ishah: I have sold a slave to Zayd ibn Arqam by eight hundred dirhams to be paid in the future. I then bought him (the slave) back at a price of six hundred dirhams – in cash. C' 'ishah said: Vile indeed was your selling and vile indeed was your buying. Tell Zayd that he had forfeited God's blessing of his jihād with the Prophet unless Zayd repented. (al-Zuhaylī, vol. 4, 1989, 469).*

9. In this case, C' 'ishah opined that the sale of the slave by the wife of Zayd ibn Arqam to her husband, Zayd by way of *bay' al-c'nah* is *ribā* and because of that Zayd shall forfeit God's blessing of his *jihād* with the Prophet unless Zayd repented. (al-Zuhaylī, vol. 4, 1989, 469).

10. Ibid.

11. Ibn C'bidin (1979), 326; al-ī aḥḥ (1978), 391; ibn Qudḥmah (1984), 256-7.

12.

9F '(F9E1 B'D—: 3E9\* 13HD 'DDG 5DI 'DDG 9DJG H3DE JBHD—: %0' \*(J9'E ('D9JF) H#.0\*E #0F' ('D(B1 H16J\*E ('D219 H\*1C\*E 'D,G'/ 3D7 'DDG 9DJCE 0D'QK D' JF29G -\*I \*1,9H' %DI/JFCE—.

There are other *āḥḥ* related to the prohibition of *bay' al-c'nah* such as,

9F 'D#H2'9I 9F 'DF(J 5DI 'DDG 9DJG H3DE #FG B'D—: DJ#\*JF 9DI 'DF'3 2E'F J3\*-DHF 'D1(' ('D(J9 H(JFGE' -IJ1)—.

*Meaning: There will be a time where the people deem ribā as permissible with sale using al-c'nah. (al-Shawḥīnī, 1995, 233-4).*

13. al-Zuhaylī, vol. 4 (1989), 468; *Wizārah al-Awqāf wa al-Shu'ar al-Islāmiyyah* (1989), 96.
14. %FE' 'D#9E'D ('DFJ'\*— (al-Bukhārī, 1981).
15. al-Zuhaylī, vol. 4 (1989), 469.
16. Wafī (1984), 42-3.
17. al-Shāfi'ī (1993), 95; al-Khinn (1998), 534.
18. al-Zuhaylī, vol. 4 (1989), 469.
19. al-Zuhaylī, vol. 9 (1989), 152; and Khawjah (1992), p. 85.
20. al-Zuhaylī, Vol. 9 (1989), 152.
21. Ibid., 153.
22. Khawjah, (1992), 85.
23. al-Zuhaylī, (1989), 154.
24. al-Zuhaylī, Vol. 4 (1989), 470; There is a legal maxim which says, “The crucial factors (the ones that are considered) in contracts are the intentions and not the terms or names” (Ḥāḍirah al-Ḥukm al-Ḥaqīqī al-Ḥaqīqī al-Ḥaqīqī al-Ḥaqīqī). However this maxim is not adopted by the Shāfi'īs. See al-Suyūṭī, (1998), 204-5.
25. Wafī, (1984), 43.
26. Ḥammad, (1995), 104.
27. *Ḥalah* can be defined as presenting an external permissible deed to avoid a legal rule (*ḥukm shar'ī*) or using a permissible deed to achieve an unpermissible one. It is translated as stratagem. See Ji Qal'ajī (1986); and Ḥammad Ḥafīdī Qanībī (1988), 189.
28. Meaning: But Allah hath permitted trade and forbidden usury (al-Qur'ān 2: 275).

29. There were many jurists who condemned the use of *ú#lah* in any means. Ibn Taymiyyah regarded the use of *ú#lah* as cheating Alléh and insulting His verses (Ibn Taymiyyah, 2000).
30. al-Mi#r#, (1991), 172.
31. Ibid., 174.
32. Ibn Taymiyyah, (1997), 431.
33. See Mason, and Lind, (1996), 114-22.
34. See Saiful Azhar Rosly, (2001).
35. Masud, (2000), 151.
36. Ibid., 151.
37. Ibid., 276.
38. The *úad#th* is given in footnote 8.

## REFERENCES

- al-Bukh#r#, Muáammad ibn Ism#l. *Saú#ú al-Bukh#r#*. 2nd ed. Beirut: D#r lúy# al-Tur#th al-<sup>c</sup>Arab#, 1981.
- á amm#d, Naz#h. *Mu#jam al-Mu#alaú#t al-Iqti#Ediyyah f# Lughah al-Fuqah#*. 3rd ed. Virginia: The International Institute of Islamic Thought, 1995.
- al-á a#b, Muáammad ibn <sup>c</sup>Abd al-Raú#n. *Maw#hib al-Jal#*. Vol. 4. 2nd ed. Beirut: D#r al-Fikr, 1978.
- Ibn <sup>c</sup>bid#n, Muáammad Am#. *á #shiyah al-Radd al-Mukht#r al# al-Durr al-Mukht#r*. Vol. 2. Beirut: D#r al-Fikr, 1979.
- Ibn Qud#mah, Muwaffaq al-D#n <sup>c</sup>Abdull#h ibn Aúmad ibn Muáammad. *al-Mughn# ma#a al-Sharú al-Kab#r*. Vol. 4. Beirut: D#r al-Fikr, 1984.
- Ibn Taymiyyah, Taq# al-D#n Aúmad ibn <sup>c</sup>Abd al-á al#m. *Majm #t al-Fat#w#*. Vol. 29. Cairo: D#r al-Waf#, 1997.
- \_\_\_\_\_. “Kit#b Iq#m#h al-Dal#l al# Ib#l al-Taú#l – al-#ar#q al-Awwal: Bu#l#n al-á iyal wa Adillah al-Taúr#m.” *al-Fat#w# al-Kubr#*. (Internet edition. <http://feqh.al-islam.com>), 5 December, 2000.



- \_\_\_\_\_, and ʾImīd ʿAlīdiq Qaḥnībī. *Muḥjam Luḡḡah al-Fuḡḡah*. <sup>ḥ</sup>Arabī – *Injīlīzī. Maʿa Kashshaf Injīlīzī – ḥArabī bi al-Muḡḡalah ʿal-Wʿridah fī al-Muḥjam*. 2nd ed. Beirut: Dār al-Nafīʿis, 1988.
- Khawjah, ʿIzz al-Dīn Muʿammad. *Naḡariyyat al-ʿAqd fī al-Fiqh al-Islīmi*. Jeddah: Majmʿah Dallah al-Barakah, 1992.
- al-Khinn, Muḡḡafī Sʿid. *Athar al-Ikhtilaf fī al-Qawʿid al-Uḡʿliyyah fī Ikhtilaf al-Fuḡḡah*. 7th ed. Beirut: al-Risālah Publishers, 1998.
- Mason, R.D., and D.A. Lind. *Statistical Techniques in Business and Economics*, Irwin, 1996.
- Masud, Muʿammad Khalid. *Shāʿibī's Philosophy of Islamic Law*, Kuala Lumpur: Islamic Book Trust, 2000.
- al-Miḡrī, Rafīq Yʿnus. *al-Jʿmīʿ fī Uḡʿl al-Ribī*. Damascus: Dār al-Qalam, 1991.
- Mʿsī, Kʿmil. *Aḡkām al-Muʿʿmalat*. 2nd ed. Beirut: Muʿassasah al-Risālah, 1994.
- al-Qalaʿī, Muʿammad Rawwʿs. *Mawsʿah Fiqhiyyah ʿAbdullīh Ibn ʿUmar. ʿAḡruhu wa ʾayātuhu*. Beirut: Dār al-Nafīʿis, 1986.
- Saiful Azhar Rosly. “*ʿIwāʿ as a requirement of Lawful Sale: A Critical Analysis.*” *IJUM Journal of Economics and Management* 9, no. 2 (2001): 187-201.
- \_\_\_\_\_, and Mahmood Sanusi. “*Bayʿ al-ḥ*nah in Malaysian Islamic Banking.” *Arab Law Quarterly*, September (2001).
- al-Shāʿfī, Abʿ ʿAbdullīh Muʿammad ibn Idrīs. 1993. *al-Umm*. Vol. 3. Beirut: Dār al-ʿIlmiyyah, 1993.
- al-Sharbī, Aʿmad. *al-Muḥjam al-Iqtīḡīdī al-Islīmi*. n.p.: Dār al-Jayl, 1981.
- al-Shawḡnī, Muʿammad ibn ʿAlī ibn Muʿammad. *Nayl al-Awtār Sharū Muntaqā al-Akhbar*. Vol. 5. Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995.
- al-Suyūḡī, Jalīl al-Dīn ʿAbd al-Raʿmān ibn Abʿ Bakr. *al-Ashbāh wa al-Naḡīʿir fī Qawʿid wa Furʿ Fiqh al-Shāʿfīyyah*, 4th ed., edited by Muʿammad al-Muʿḡaḡim bi Allīh al-Baḡhdīdī, Beirut: Dār al-Kitāb al-ʿArabī, 1998.
- Wafī, Muʿammad. *Abraz ʿuwar al-Buyʿ al-Fʿsidah*. Egypt, 1984.
- Wizārah al-Awqāf wa al-Shuʿn al-Islīmiyyah. *al-Mawsʿat al-Fiqhiyyah*. Vol. 9. Kuwait: Wizārah al-Awqāf wa al-Shuʿn al-Islīmiyyah, 1989.
- al-Zuhaylī, Wahbah. *al-Fiqh al-Islāmī wa Adillatuh*. Vol. 4 & 9. 3rd ed. Damascus: Dār al-Fikr, 1989.