

Insurance and the Sabbath Pond Test

Form versus Substance
in the Sale of Risk

A paper in the Sabbath Pond Test series

Muhammad Kashif Irshad

Correspondence: dev@irshados.com – Lahore, Pakistan

ORCID 0009-0008-9161-9875

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Contents

1. Abstract	4
2. Introduction.....	4
2.1. The stake on the table	4
2.2. What this paper does not claim, and what it adds	5
2.3. Methodology.....	6
2.4. Structure of the paper	6
3. Literature Review	6
3.1. Qur'an and Tafsir.....	7
3.2. Hadith and Sunnah.....	8
3.3. Juristic writings on gharar and maysir	8
3.4. Early Islamic fiscal practice	9
3.5. The law's own line: insurance and wagering in English and American law	10
3.6. The economics of risk	11
3.7. The contemporary Islamic rulings and the takaful debate	12
4. The Sabbath Pond Test as three questions	13
4.1. What the narrative tests	13
4.2. First question: was the thing exchanged known when the contract was made?.....	14
4.3. Second question: does the seller do anything to the risk, or only price it?	14
4.4. Third question: who gains from the event?.....	15
4.5. The three questions together	15
5. Analysis: Risk contracts under the three questions	16
5.1. The bet	16
5.2. Indemnity insurance sold by a stock company	16
5.3. The same contract sold by a mutual	17
5.4. Term life, whole life and investment-linked life insurance.....	17
5.5. Health insurance	17
5.6. Parametric and index cover; catastrophe bonds	18
5.7. Credit default swaps, life settlements and corporate-owned life insurance	18
5.8. Takaful under the wakālah-waqf model	19
5.9. The one who only receives: cover bought by an employer	20
5.10. The Ash'arī cloth, the 'āqilah and the treasury.....	21
5.11. The table	21
6. The fiqh's concession: takaful and the donation label	22
6.1. The structure of the modern ruling	22
6.2. The donation that is priced, conditional and returnable	23
6.3. What the label does and does not do	24
6.4. The 'āqilah analogy	24
6.5. Where the honest road leads	25

7. The substance that passes: the classical treasury and the kinship pool	25
7.1. The question the critics leave open	25
7.2. The Prophet's practice: the community gives first, the capital absorbs the rest	25
7.3. The Ash'arī cloth: pooling what is present for a present need.....	25
7.4. The 'āqilah: a duty of kinship, not a thing bought	26
7.5. The treasury: Khālid's covenant and 'Umar's orders	26
7.6. The shape that passes, stated.....	27
7.7. What of it can be built	27
8. Benefit and harm, weighed as the Qur'an weighs	28
8.1. Why this section is written without the lens	28
8.2. The harms, as any eye sees them	28
8.3. The benefits, fairly stated	31
8.4. Weighed as 2:219 weighs	31
9. Case study: Pakistan, the 2028 deadline and Sehat Card Plus	32
9.1. The date written into the Constitution	32
9.2. What conversion changes under the three questions.....	33
9.3. Sehat Card Plus: when the state buys the wager	34
9.4. What the date requires.....	34
10. Conclusion	35
11. Disclaimer	36
12. AI Assistance Disclosure	36
13. Bibliography.....	37

1. Abstract

This paper examines commercial insurance through the lens we applied earlier to Islamic banking: the "Sabbath Pond Test", drawn from the Qur'anic account (7:163–166) of a community that kept the letter of the Sabbath law while obtaining exactly what the law forbade. We ask whether a contract of insurance differs from a wager in substance or only in form. That the two share a structure is not a new observation: historians of probability (Daston, 1988; Clark, 1999), legal scholars (Kreitner, 2000; Law Commission, 2016), economists (Nyman, 2024) and the Islamic juristic bodies (Council of Senior Scholars, 1977; International Islamic Fiqh Academy, 1985) have each said so in their own idiom. What the literature lacks is a single stated test applied across the whole family of risk contracts, and an account of what passes it. We state the test as three questions that the classical sources on *gharar* and *maysir* already ask: was the thing exchanged known when the contract was made; does the seller do anything to the risk, or only price it; and who gains from the event. We run the questions against indemnity, life and health insurance, parametric cover, catastrophe bonds, credit default swaps, life settlements, cover bought by employers for their employees, mutual pools, *takaful* under the *wakalah*–*waqf* model, and the treasury of the early Islamic state as described in *Kitab al-Kharaj* and *Kitab al-Amwal*. We find that the gambler in an insurance contract sits in the seller's chair; that the law's doctrine of insurable interest guards only the buyer's chair; that *takaful*, as the Fiqh Academy's own resolutions concede, moves the label and not the chair; and that the classical fiscal sources describe a pooling of loss with no bettor at all. Pakistan's constitutional deadline of 1 January 2028 for the elimination of *riba*, which reaches the insurers, is taken as the test case, with the audited failure of the Sehat Card Plus scheme as its illustration.

Keywords: Insurance; Gambling; *Gharar*; *Maysir*; Sabbath Pond Test; Form vs. substance; *Takaful*; Insurable interest; *Kitab al-Kharaj*; *Kitab al-Amwal*; Islamic finance; Pakistan

2. Introduction

2.1. The stake on the table

Consider four contracts. In the first, two men agree that if Pakistan beats India at cricket one will pay the other a sum, and if India wins the payment runs the other way. In the second, the sum turns on whether it rains tomorrow. In the third, it turns on a tossed coin. In the fourth, a man pays a company a sum each year, and if he falls seriously ill the company pays his hospital; if he stays well, the company keeps what he paid. The first three are gambling under every legal system and under the *Sharī'ah*; the fourth is health insurance, licensed by every regulator in the world and held by the State Bank of Pakistan to be a pillar of financial stability (State Bank of Pakistan, 2026).

The four contracts have one shape. In each, two parties exchange a payment now for a payment later whose existence and size depend on an event that neither party controls. The economic literature writes the insurance contract in exactly this form, as a vector of incomes contingent on the state of the world (Rothschild & Stiglitz, 1976), and has proved that whether such a contract is "insurance" or "gambling" cannot be decided from its payoffs and probabilities alone (McGuire, Pratt & Zeckhauser, 1991). The law has known this since the eighteenth century. The English Life Assurance Act of 1774 opens by stating that assurance on lives in which the assured has no interest "hath introduced a mischievous kind of gaming" (Life Assurance Act, 1774, preamble), and Justice Holmes, in the leading American case, called a policy

without interest "a pure wager" (Grigsby v. Russell, 1911). The only difference the man in our fourth contract can point to is a word in the policy, "indemnity", and a licence on the company's wall. The question this paper asks is whether that word and that licence change what the contract is, or only what it is called.

The Qur'an gives a method for asking it. In Sūrah al-A'rāf the people of a town by the sea were forbidden to fish on the Sabbath; the fish came to them openly on that day and stayed away on the others; and the people, keeping the letter of the rule, dug channels and ponds so that the fish swam in on the forbidden day and were lifted out on the next (Qur'an 7:163–166; Ibn Kathīr on the verse). They did not fish on the Sabbath. They obtained, by a device, everything the rule had denied them. We called this the Sabbath Pond Test in our study of Islamic banking (Irshad, 2026a) and applied it since to court procedure, to the stated aims of a war, and to the conditions of a Sunnah (Irshad, 2026b; 2026c; 2026d). It asks of any arrangement one thing: does it obtain, by its form, what the rule by its purpose forbade?

2.2. What this paper does not claim, and what it adds

This paper does not claim to discover that insurance is a wager. The claim is older than the modern industry. The Prophet ﷺ forbade "the sale of the pebble and the sale of gharar" (Muslim 1513), and Ibn Taymiyya defined gharar as "that whose outcome is unknown", adding that "its sale is a species of maysir" (Ibn Taymiyya, al-Fatāwā al-Kubrā, vol. 4, p. 15). The Saudi Council of Senior Scholars ruled in 1977, and the International Islamic Fiqh Academy in 1985, that commercial insurance is prohibited because it contains gharar, qimār and ribā (Council of Senior Scholars, 1977; IIFA, 1985). Among the jurists, Abū Zahra and Ṣiddīqī argued it at length; al-Zarqā argued the other side (Shalim, 2016). In the Western academy the historians of probability found that the line between insurance and gambling was "not at all clear" to the people who drew it (Daston, 1987, p. 237, in translation), and that the English market in life policies before 1774 was a betting market on public lives (Clark, 1999); a legal historian concluded that "no analytic formula could distinguish gambling from risk allocation" (Kreitner, 2000); the English Law Commission found parametric cover "almost indistinguishable from a derivative contract, except for the requirement for an insurable interest at the outset," quoting a practitioner's submission that such contracts are "in theory ... very close to gambling" (Law Commission, 2016, paras 1.12, 1.14); and a health economist has lately proposed that insurance and gambling are one mechanism, money paid in for money paid out in a chosen state of the world (Nyman, 2024). On the Islamic side, El-Gamal (2006; 2016) and Nienhaus (2016) have said plainly that takaful and conventional insurance do not differ in substance.

A reader who knows that literature may ask what remains. Four things, in our view.

First, the literature sits in silos. The legal historians write of life policies; the derivatives lawyers of credit default swaps; the development economists of index insurance; the Islamic jurists of takaful. No work states one substance test and runs it across the whole family at once. We do.

Second, the existing tests are aimed at the buyer. "Insurable interest", "indemnity" and "existing versus created risk" (Willett, 1901) all ask what the insured had at stake. None asks what the insurer does. We make the seller's relation to the risk the central question: does the counterparty cause the risk, reduce it, or merely price it? The watchman, the physician and the flood wall pass that question. The insurer does not.

Third, the takaful literature, when it reaches for a classical precedent, stops at the pre-Islamic 'āqilah, the tribe's collective liability for blood-money. We go instead to the fiscal sources of the early state, Abū Yūsuf's Kitāb al-Kharāj and Abū 'Ubayd's Kitāb al-Amwāl, which describe in the ruler's own words a provision against old age, disability, ruin and bereavement that had no premium, no contract and no counterparty who gained from the event. No takaful study we have found cites them.

Fourth, Pakistan. The Twenty-sixth Constitutional Amendment of 2024 requires the elimination of ribā from the financial system by 1 January 2028, and the regulator's transition plan and the State Bank's training institute both place the insurers inside that date (Business Recorder, 2025; NIBAF, 2025). Nothing in the literature asks what that requires of an insurer beyond a change of name.

2.3. Methodology

The method is the one used in our earlier study (Irshad, 2026a). We read the primary texts first: the Qur'anic verses on maysir, gharar and the consumption of wealth without right; the ḥadīth on the sales the Prophet ﷺ forbade and on what he did when a believer was ruined by loss; the juristic definitions of gharar in Ibn Taymiyya and al-Ghazālī's treatment of means and reliance; and the fiscal narratives of Abū Yūsuf and Abū 'Ubayd. All are cited from the editions listed in the bibliography, and the Arabic of each quoted passage was checked against a clean text. From these we state the Sabbath Pond Test as three questions. We then read the insurance contract as the law and the economics describe it, from the statutes and cases that drew the line between assurance and wagering, and from the economic models of risk transfer, and we run the three questions against each kind of risk contract in turn, including the mutual pool, the takaful operator's model as the regulators describe it, and the treasury of the early state. We weigh the arrangement's benefit and harm with published figures, because the Qur'an itself weighs gambling that way, conceding "some benefit for people" before judging that "their sin is greater than their benefit" (2:219). The Pakistan case rests on the State Bank's Financial Stability Review, the Securities and Exchange Commission's diagnostic study of takaful, and the Auditor-General's reports on the Sehat Card Plus scheme.

Two cautions govern the reading. The test is of arrangements, not of persons: a contract may fail it while every party to it acted in good faith, as most do. And the test does not condemn ingenuity. The Ḥanafī jurists permitted many ḥiyal, and the Sabbath narrative is not a ban on devices but on devices that reach the forbidden thing. What the test condemns is the pond, not the digging.

2.4. Structure of the paper

Section 3 reviews the sources and the literatures in the order the argument needs them. Section 4 states the test as three questions. Section 5 runs the questions against the family of risk contracts and tabulates the result. Section 6 examines the contemporary rulings on takaful and the concession on which they rest. Section 7 sets out the classical alternative. Section 8 weighs benefit and harm. Section 9 takes Pakistan's 2028 deadline and the Sehat Card Plus audit as the case. Section 10 concludes. Nothing in the paper is a fatwā or financial advice; the disclaimer in Section 11 applies throughout. Section 12 discloses the AI assistance used, and Section 13 is the bibliography.

3. Literature Review

The sources are reviewed in the order the argument needs them: first the texts that state the prohibition and its purpose, then the jurists who defined its terms, then the early state's practice, and only then the Western legal, historical and economic literatures and the contemporary Islamic rulings against which this paper's contribution is measured.

3.1. Qur'an and Tafsir

The Qur'an names gambling (*maysir*) in three places and, unusually, states both its benefit and the reason for its prohibition. "They ask you about wine and gambling. Say: in them is great sin and some benefit for people, but their sin is greater than their benefit" (2:219). The verse concedes that gambling is useful to those who practise it before judging it; this paper adopts the same weighing in Section 8. The prohibition itself comes in 5:90, which couples gambling with the divining arrows (*azlām*). Al-Jaṣṣāṣ describes the *azlām* of 5:3 as the shafts the pre-Islamic Arabs drew before a journey, a raid or a trade, one marked "my Lord commands me," one "my Lord forbids me," one blank, and counts the practice among the *fisq* the verse names (al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, vol. 3, p. 305); the *maysir* of the Arabs was the drawing of marked shafts for shares of a slaughtered camel, a share of a real thing allotted by chance. On 2:219 he holds that the "benefit for people" the verse concedes is the worldly benefit every forbidden thing has for the one who commits it, and that it does not weigh against the harm (*ibid.*, vol. 1, p. 402). The purpose is given in the next verse: "Satan only wants to cause between you animosity and hatred through intoxicants and gambling, and to avert you from the remembrance of Allah" (5:91). The harm of *maysir*, in the Qur'an's own statement, is relational: it sets the winner and the loser against each other over an outcome neither produced. We return to this in Section 5, because it supplies the test's third question.

Two further verses frame the sale of the unknown. "Do not consume one another's wealth unjustly, but only in lawful trade by mutual consent" (4:29) makes consent necessary but not sufficient: the exchange must be *tijārah*, a trade of known things. And 2:188 adds that the unjust consumption is not cured by authority: "do not consume one another's wealth unjustly, or send it to the rulers so that they might aid you to consume a portion of the wealth of the people in sin, while you know." The classical exegetes read the verse as addressing bribery of judges, and Ibn Kathīr records Qatādah's gloss on it, "know, son of Adam, that the judge's decree does not make lawful for you what is unlawful" (Ibn Kathīr, *Tafsīr*, vol. 1, p. 520); its principle, that a licence from power does not change the nature of a transfer, is the one this paper applies to regulatory and Sharī'ah-board approval. The parallel to our banking study is exact: there, the defence of the disputed products was "trade is just like interest" (2:275); here, it is "insurance is just a service."

Against these stand the verses that describe what the Qur'an would have people do about the uncertainty of the future. "No soul perceives what it will earn tomorrow, and no soul perceives in what land it will die" (31:34) states the condition; "no disaster strikes except by permission of Allah" (64:11; 57:22–23) states the stance toward it. But the stance is not passivity. Yūsuf's counsel to Egypt, "you will plant for seven years... and what you harvest leave in its spikes... then will come seven difficult years which will consume what you saved" (12:47–49), is the Qur'an's own model of provision against a foreseen loss: storage by the community, under public direction, with no counterparty. The estate of a dead man owes his widow "maintenance for one year" (2:240); *zakāh* is owed, among others, to "those in debt" (9:60); and the creditor of a man in hardship is told to wait, or to forgive (2:280). These verses are the substance

that Section 7 sets beside the contract of insurance. Finally, the Sabbath narrative itself (7:163–166) supplies the method, as described in Section 2 and in our earlier work (Irshad, 2026a).

3.2. Hadith and Sunnah

The Prophet ﷺ "forbade the sale by the throwing of the pebble, and the sale of gharar" (Muslim 1513). The surrounding chapter of Ṣaḥīḥ Muslim lists the forms the prohibition took in the Medinan market: *mulāmasah* and *munābadhah*, sales concluded by touching or throwing a cloth before it was examined (Muslim 1511–1512); *ḥabal al-ḥabalah*, the pre-Islamic sale of the offspring of a she-camel's unborn offspring (Muslim 1514; Abū Dāwūd 3380); and the sale of fruit "until its good condition becomes clear and the danger of blight is no more" (Muslim 1534–1535). Abū Dāwūd preserves the reason for the last: the people had sold fruit on the tree, the buyers then pleaded that it had been "smitten by disease," and disputes multiplied, so the Prophet ﷺ forbade the sale until ripening and "commanded that unforeseen loss be remitted in respect of what is affected by blight" (Abū Dāwūd 3372, 3374). The pattern across these reports is a single one: where the subject of a contract is an event rather than a thing, the Prophet ﷺ did not permit the event to be priced; he removed it from the contract. Ḥakīm ibn Ḥizām was told "do not sell what you do not possess" (Abū Dāwūd 3503), and the report of ‘Abd Allāh ibn ‘Amr adds the maxim that governs this paper's second question: "nor profit arising from something which is not in one's charge" (*lā ribḥ mā lam yuḍman*; Abū Dāwūd 3504). Gain follows liability for a real thing.

Gambling itself appears in two reports: "if anyone says to his companion, come, I will gamble with you, let him give charity" (Muslim 1647), where even the invitation is expiated by a transfer in the opposite direction; and the dice-player likened to one who "dyed his hand in the flesh and blood of swine" (Muslim 2260).

A second group of reports shows what the Prophet ﷺ did when loss fell on a believer. When a man "suffered loss in fruits he had bought and his debt increased," the Prophet ﷺ told the people to give him charity; when that did not cover the debt he said to the creditors, "take what you find, you will have nothing but that" (Muslim 1556). The community gave first; the capital absorbed the rest. In the ḥadīth of Qabīṣah ibn Mukhāriq the Prophet ﷺ named three for whom asking is lawful, among them "a man whose property has been destroyed by a calamity, for whom it is lawful to ask until he obtains what will sustain him" (Muslim, *Kitāb al-Zakāh*, no. 1044). The Ash‘arīs, "when they run short of provisions on a campaign or of food for their children in Medina, collect whatever they have in one cloth and share it equally from one vessel; they are from me and I am from them" (Muslim 2500). And in the Ṣaḥīfah of Medina the Prophet ﷺ "made obligatory for every tribe the payment of blood-money" (Muslim 1507), the ‘āqilah, applied in the case of the two women of Hudhayl where the *diyah* was placed on the killer's paternal kin (Muslim 1681). Finally, "he who among you dies and leaves a debt, I am there to pay it; and he who leaves behind children, I am there to look after them" (Muslim 1619): the ruler as the last bearer of the survivors' risk. The *takaful* literature cites the Ash‘arī and ‘āqilah reports as its precedent (IAIS–IFSB, 2006; Billah, 1998); Section 7 reads them for what they contain.

3.3. Juristic writings on gharar and maysir

The jurists' task was to define *gharar*. Ibn Taymiyya's definition is the most useful for this paper because it joins the two prohibitions. "The Messenger of Allah ﷺ detailed what Allah had gathered in His Book:

he forbade the sale of gharar, as Muslim relates... Gharar is that whose outcome is unknown (al-majhūl al-‘āqibah), and its sale is a species of maysir. For when a slave has run away or a camel has strayed, its owner sells it only as a gamble (mukhāṭarah), and the buyer buys it for much less than its worth; if he obtains it, the seller says 'you gambled me out of my property for a small price,' and if he does not, the buyer says 'you gambled me out of the price for nothing.' So it leads to the corruption of maysir, which is the casting of enmity and hatred, together with the consuming of wealth" (Ibn Taymiyya, al-Fatāwā al-Kubrā, vol. 4, p. 15). Elsewhere he repeats that the Prophet ﷺ "forbade the sale of gharar, for it is a kind of maysir, and likewise the sale of fruit before it ripens and ḥabal al-ḥabalah" (ibid., vol. 5, p. 103). Three features of this definition carry the paper: the object of a gharar sale is an outcome, not a thing; the test of maysir is the enmity that follows the outcome; and the two prohibitions, gharar and maysir, are one prohibition seen from the contract and from its consequence.

Al-Ghazālī supplies the other boundary. In the Book of Reliance (Kitāb al-Tawḥīd wa-l-Tawakkul) of the lḥyā' he insists that reliance on God "is not diminished by locking the door of the house when going out, nor by hobbling the camel, for these are means whose working is known from the custom of God," citing the Prophet's words to the Bedouin, "hobble it and rely" (i'qilhā wa-tawakkal), and the verses commanding precaution in war (4:71; 8:60) (al-Ghazālī, lḥyā', vol. 4, p. 278). Taking means against a foreseen harm is commanded, not merely allowed. But in the same book he grades the believer's storing of provision (iddikhār): the highest takes his present need and gives the rest; one who "stores for a year or more is not of the relying at all"; forty days is disputed (ibid., vol. 4, p. 275). Self-provision is thus bounded by need and by giving. The contrast matters for Section 5: the policy is not a means against the harm, as the hobble is against straying; it leaves the harm exactly where it was and prices it. And it removes the bound Ghazālī placed on provision, offering not forty days but a lifetime, for a payment, from a stranger.

3.4. Early Islamic fiscal practice

Abū Yūsuf's Kitāb al-Kharāj, written for Hārūn al-Rashīd, preserves the covenant Khālīd ibn al-Walīd gave the people of al-Ḥīrah in the twelfth year of the Hijrah: "I have granted them that any old man who becomes too weak to work, or is struck by one of the afflictions, or who was rich and became poor so that his co-religionists give him charity: his jizyah is lifted, and he and his dependants are maintained from the treasury of the Muslims for as long as he resides in the abode of Islam" (Abū Yūsuf, Kitāb al-Kharāj, vol. 1, pp. 156–157). The same book records ‘Umar ibn al-Khaṭṭāb passing a door at which an old blind man begged, learning that he was a Jew driven to it "by the jizyah, by need and by age," taking him home, and sending to the keeper of the treasury: "look to this man and his like. By God, we have not dealt justly with him if we consumed his youth and then abandon him in his old age"; he then lifted the jizyah from him and from his like (ibid., Faṣl fī ahl al-dhimma; vol. 1, p. 138). Abū ‘Ubayd's Kitāb al-Amwāl retells the story and adds ‘Umar ibn ‘Abd al-‘Azīz's gloss that if a man's own slave "grew old and weak and could no longer earn, it would be his duty to feed him until death or manumission parted them," so much the more the state toward one who paid it in his youth (Abū ‘Ubayd, Kitāb al-Amwāl, nos. 108, 120; vol. 1, pp. 50, 56).

The same source describes the institutions. ‘Umar, when the revenue of Iraq and Syria came in, "decided to fix stipends for the people" and founded the Dīwān, beginning not with himself but with the Prophet's

house (*ibid.*, nos. 549–550; vol. 1, p. 285). He proclaimed, "do not hurry your children off the breast, for we fix a stipend for every child born in Islam," and wrote it to the provinces (*ibid.*, Bāb farḍ al-ʿaṭā'; vol. 1, pp. 302, 306). He fixed shares for the dependants of the fighting men; later rulers made them inheritable; 'Umar ibn 'Abd al-'Azīz cut the inheritance and extended the stipend to all dependants "of those not in the register": "I cut off the inheritance and make the stipend general" (*ibid.*). And when his governor in Iraq reported that money remained after the stipends were paid, 'Umar ibn 'Abd al-'Azīz wrote: "look to everyone who has fallen into debt without foolishness or extravagance, and pay it for him"; when money still remained, "look to every unmarried man without means who wishes to marry, and marry him and pay his dower"; and when money remained again, "look to whoever owes jizyah and is too weak to work his land, and lend him what will strengthen him to work it; we do not want them for a year or two" (*ibid.*, vol. 1, p. 319). These are the fiscal sources our banking study drew on for public finance by tax rather than debt (Irshad, 2026a, §6.3–6.4). Here they supply something the takaful literature has not used: a description, in the ruler's own orders, of provision against old age, disability, ruin, bereavement, debt from misfortune and the cost of a family, financed by revenue, owed as a duty, paid without a contract, and gained from by no one.

3.5. The law's own line: insurance and wagering in English and American law

The legal history is the strongest evidence that the identity this paper examines is real, because the law itself has said so at every turn and then chosen where to draw a line. English marine policies "interest or no interest" were banned in 1745 because ships were being "fraudulently lost and destroyed" by those who had wagered on them (Marine Insurance Act 1745; Kimball-Stanley, 2008, p. 259). The Life Assurance Act of 1774 opens with the finding that insurance on lives "wherein the assured shall have no interest hath introduced a mischievous kind of gaming," voids every policy made "by way of gaming or wagering," and limits recovery to "the amount or value of the interest" (14 Geo. III c. 48, preamble and ss. 1, 3). The Gaming Act of 1845 then voided all wagers (8 & 9 Vict. c. 109, s. 18), leaving insurance with interest as the carve-out, and the Marine Insurance Act of 1906 codified the rule that "every contract of marine insurance by way of gaming or wagering is void" (s. 4). Parliament, in other words, found no feature of the contract that separated assurance from a bet; it separated them by what the buyer had at stake before the contract.

The American courts said the same more plainly. In *Warnock v. Davis* the Supreme Court held that without an interest "the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event" (104 U.S. 775, 779 (1881)). Thirty years later Justice Holmes, in *Grigsby v. Russell*, called a no-interest policy "a pure wager that gives the insured a sinister counter interest in having the life come to an end," yet permitted a valid policy to be sold to a stranger with no interest at all, because life insurance "has become in our days one of the best recognized forms of investment and self-compelled saving," and "it is desirable to give to life policies the ordinary characteristics of property" (222 U.S. 149, 154–156 (1911)). The contract is thus a wager at inception and property afterwards; a century later New York's highest court held that a person may insure his own life "and immediately transfer it to one without an insurable interest in that life, even where the policy was obtained for just such a purpose" (*Kramer v. Phoenix Life*, 15 N.Y.3d 539, 549–552 (2010)), over a dissent that called such a policy "a wager by someone with no insurable interest" (*ibid.*, 554). Employers' policies on the lives of rank-and-file workers, the "dead peasant" policies, have

been argued to "lack a legitimate insurable interest" and to be "life-wagering" (Burns, 2014, pp. 563–568).

Credit default swaps completed the pattern. They were made lawful in the United States in 2000 not by requiring interest but by a statute providing that federal law "shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops" (Commodity Futures Modernization Act, 7 U.S.C. § 27f(b); CRS, 2003, p. 9). When New York's insurance regulator announced in September 2008 that a swap bought by a party with "a material interest in the referenced obligation" would be regulated as insurance, the 1774 test for the twenty-first century, it withdrew the proposal within two months (New York Insurance Department, Circular Letter 19 of 2008 and First Supplement). The English Law Commissions, reviewing insurable interest in 2015–16, retained it because it "distinguish[es] insurance from gambling," and conceded that parametric policies, which pay on a trigger regardless of loss, are "in theory... very close to gambling," a submission the Commission quoted before giving its own view that such cover is "almost indistinguishable from a derivative contract, except for the requirement for an insurable interest at the outset" (Law Commission, 2015, para 1.8, p. 2; 2016, paras 1.12, 1.14). The textbook defence, which every later treatise repeats, was given by Willett in 1901: "Insurance involves the transfer of an existing risk from one person to another; gambling involves the creation of a new risk to which neither party to the transaction was exposed before the contract" (Willett, 1901, pp. 116–117). Ashton, three years earlier, had recorded the lay view the textbook was answering: insurance "theoretically... is gambling proper" (Ashton, 1898, p. 275).

Read together, the fifteen points of this history (Section 5 tabulates them) show that the law never found a feature of the contract that separates insurance from a wager. Every rule turns on something outside the contract: the buyer's prior exposure, the cap at the loss, or a declaration that a given market is not gaming. Where the exposure is absent or fictional, the courts and commissions say the thing is, or is "very close to," gambling, and then void it, tolerate it as property, or exempt it by statute. The historians have shown the same from the other side. Daston found that to the eighteenth century the distinction between insurance and gambling was "not at all clear" (the words are translated) and that it was manufactured, by statute and by the moralisation of the actuary's tables, between 1774 and the 1830s (Daston, 1987; 1988, ch. 3); Clark showed that English life insurance before 1774 was a betting market on public figures' lives (Clark, 1999); Zelizer showed that American life insurance passed from a "sacrilegious" bet on a life to a sacred family duty without a change in the contract (Zelizer, 1978); and Kreitner, surveying the American law of risk contracts, concluded that "no analytic formula could distinguish gambling from risk allocation" (Kreitner, 2000). Loshin and Davey have argued that insurable interest does no work the insurer's own underwriting does not already do, and survives on anti-gambling sentiment (Loshin, 2007; Davey, 2004). The present paper takes this literature as settled and builds on it.

3.6. The economics of risk

Economics defends insurance on grounds that do not deny its form. Arrow's statement is the canonical one: "the welfare case for insurance policies of all sorts is overwhelming," because risk-bearing can be treated as a commodity and shifted to those better able to bear it; the obstacle is "moral hazard," the insured's changed behaviour once covered (Arrow, 1963, pp. 961–962). Pauly reframed moral hazard as the rational response to a zero price rather than a moral failing (Pauly, 1968). Friedman and Savage,

confronting the fact that the same person buys both insurance and lottery tickets, explained it by a utility curve that is concave for small changes and convex for large ones, so that the buyer of insurance is risk-averse over the loss and the gambler risk-seeking over the prize (Friedman & Savage, 1948). Ehrlich and Becker distinguished market insurance, which neither reduces a loss nor its probability, from self-insurance and self-protection, which do (Ehrlich & Becker, 1972). Rothschild and Stiglitz wrote the contract as a vector of state-contingent incomes (Rothschild & Stiglitz, 1976, p. 630), and McGuire, Pratt and Zeckhauser proved that whether a payment to change one's odds is "gambling or insurance" is "unfortunately indeterminate" from payoffs and probabilities alone (McGuire, Pratt & Zeckhauser, 1991). Kahneman and Tversky's prospect theory predicts both behaviours from the over-weighting of small probabilities (Kahneman & Tversky, 1979).

Nyman has lately taken the last step. In *A Theory of Insurance and Gambling* he argues that risk preference does not separate the two: both are quid pro quo transfers of income into a state of the world chosen in advance: the sick state, where income is more valuable, in the one case, and the winning state, where additional income is had without work, in the other; one mechanism explains both (Nyman, 2024). This paper accepts Nyman's identity and asks a question his theory does not: not what the buyer does, but what the seller does. Ehrlich and Becker's distinction is the nearest the economics comes to our second question; Stout's distinction between hedging, which reduces an existing risk, and speculation, which does not, is the nearest the law comes (Stout, 1999). Neither applies the distinction to the insurer.

3.7. The contemporary Islamic rulings and the takaful debate

The modern fiqh of insurance is fully mapped (Kono, 2025; Shalim, 2016) and need only be summarised. The Council of Senior Scholars of Saudi Arabia ruled in 1977 that commercial insurance is prohibited for gharar, gambling and ribā, and that cooperative insurance is permitted because it is a donation contract whose members "do not aim for trade or profit from the money of others"; "ignorance of the contributors does not harm them, because they are donors, there is no risk, uncertainty or gambling" (Council of Senior Scholars, Decisions 51 and 55, 1397 AH). The Islamic Fiqh Council of the Muslim World League followed in 1978, and the OIC's International Islamic Fiqh Academy in 1985 resolved that the fixed-premium commercial contract "contains major gharar that voids the contract," and that cooperative insurance "founded on the basis of donation and cooperation" is the lawful alternative (IIFA, Resolution 9 (9/2), 1985). The Academy reaffirmed this in 2012, 2013 and 2015. Among the jurists, Abū Zahra held commercial and life insurance prohibited for maysir and gharar and rejected the analogy to the 'āqilah, since the insured "does not join the company" as a kinsman joins his tribe (Shalim, 2016, pp. 3, 11); al-Zarqā held it permissible if free of ribā, arguing that gharar in it is marginal, that insurance is cooperation against loss and not a game of luck, and that the thing sold is security (amān) (Hasanudin, 2018, pp. 9–13); Şiddīqī accepted it in substance once ribā was removed from the investment of the funds, on the ground that the peril pre-exists and the payout restores rather than enriches (Şiddīqī, 1985, pp. 27–38); and Taqī 'Uthmānī held it prohibited and designed the wakālah-waqf model of takaful under which Pakistan's operators work, in which a waqf gives the pool a legal personality so that the "donation" leaves the donor (SECP, 2025, pp. 9–10).

The critique of takaful's substance is also in print. El-Gamal argued that the gharar prohibition is about efficiency and exploitation rather than form, that the shareholder-owned "takaful company" is "Sharī'ah

arbitrage," a form-based approximation that keeps conventional substance, and that even mutual forms "can be arbitrated" (El-Gamal, 2006; 2016). Nienhaus concluded that commercial insurance and takaful "do not differ in substance," because the operator is a profit-seeking shareholder company and the regulators' requirement that it lend to the fund on deficit puts underwriting risk back on the operator (Nienhaus, 2016). Abozaid, from inside the industry's Sharī'ah supervision, conceded that a donation which is conditional, returnable as surplus and priced as a premium is not clearly a donation (Abozaid, 2016). The actuaries have said the same from their side: contributions are rated and reserved as premiums, "the actuary's dilemma" being that the Sharī'ah donor and the priced policyholder are one person (Zainal, 2013, pp. 1–3), and a reinsurer's study found that retakaful would need an agency fee near one hundred per cent to mirror conventional non-participating reinsurance (Frenz, 2014). A study in the *Jurnal Fiqh* found that takaful is "not analogical to 'āqilah but an alternative only," since the 'āqilah was an obligatory kinship liability and takaful a voluntary priced pool (Khalil, Ali & Abdullah, 2017, p. 2).

Most striking are the standard-setters' own admissions. Resolution 200 of 2013 concedes that cooperative and commercial insurance "are similar in consideration of the basic principles of insurance" (among them insurable interest, utmost good faith, proximate cause and indemnity), and rests the entire distinction on the proposition that the cooperative pool is not a commutative contract (*mu'āwadah*), so that "the degree of *gharar* it involves is forgivable"; the same resolution permits conventional reinsurance "to the extent of their real needs" (IIFA, Resolution 200, 2013, preamble points 1 and 12; Clause 10). Resolution 215 of 2015 records the infringements found in "international experiences": operators obliged in advance to lend on deficit, surplus shared with managers, non-disclosure, missing Sharī'ah boards (IIFA, Resolution 215, 2015). In Pakistan, twenty-seven of thirty-three takaful operators are windows of conventional insurers (SECP, 2025, p. 3). "Form versus substance" has itself become a named topic in Islamic finance, in Habib Ahmed's ladder of Sharī'ah-based, Sharī'ah-compliant and pseudo-Islamic products (Ahmed, 2011) and in the "substance gap" of Hamour and colleagues (Hamour et al., 2019), but takaful is not among the products those studies test; and the Sabbath narrative, which the classical anti-*ḥiyal* polemic and some modern essays use as the paradigm of keeping the letter while defeating the purpose (Zaheer, 2001; Rafique et al., 2021), has not been applied to insurance as an operational test outside our own work.

That is the literature. The identity of insurance and wager in form is established in history, law and economics; the Islamic rulings rest on it; and the substance critique of takaful has been made by its own standard-setters. What is not in the literature is a single test, stated in advance and applied to every member of the family of risk contracts on equal terms, and an account of what passes it. Sections 4 to 7 supply them.

4. The Sabbath Pond Test as three questions

4.1. What the narrative tests

The people of the town by the sea did not break the rule as written. They dug channels so that the fish entered their ponds on the Sabbath and were taken out on Sunday; no net was cast on the forbidden day. The Qur'an calls this "transgressing in the matter of the Sabbath" (7:163) and the exegetes agree that the sin lay in obtaining, by a device, what the rule existed to deny. Ibn Kathīr writes that they

"contrived a device to catch the fish on the Sabbath" (Ibn Kathīr, Tafsīr, vol. 3, p. 491; and on 2:65, vol. 1, p. 287). Al-Jaṣṣāṣ, who defends lawful ḥiyāl at length and is the last jurist who could be suspected of hostility to devices, concedes the Sabbath case in one line: since God said they transgressed on the Sabbath, "their confining of the fish on the Sabbath was itself forbidden to them" (al-Jaṣṣāṣ, Aḥkām al-Qur'ān, vol. 4, p. 392). The test the narrative supplies is therefore not "was the letter of the rule kept?" but "was the thing the rule forbade obtained?" Two cautions follow. First, the test is of arrangements, not of persons; the people of the town may have included many who thought the channels lawful. Second, the test does not condemn ingenuity. The Ḥanafī jurists permitted a great many ḥiyāl, and the Sabbath narrative is not a ban on devices but on devices that reach the forbidden thing (Irshad, 2026a, §3.3). What the test condemns is the pond, not the digging.

Applied to insurance the test asks: what did the prohibition of gharar and maysir forbid, and does the contract of insurance obtain it under another name? To answer that, the prohibition must first be stated as a set of questions precise enough to be put to any contract, and the sources of Section 3 allow exactly three.

4.2. First question: was the thing exchanged known when the contract was made?

A valid sale, in every legal system and in the fiqh, requires that both sides of the exchange be known at the moment of agreement: this buffalo for this price, this month of a watchman's service for this wage. The reports of Section 3.2 are all breaches of that requirement in one direction: the thing to be received depended on a future event. Which cloth the pebble would land on; whether the unborn camel would be born and bear; whether the fruit would ripen or blight. Ibn Taymiyya's definition generalises them: gharar is "that whose outcome is unknown" (Section 3.3). The Prophet's response in each case was the same: he did not permit the event to be priced; he removed it from the contract, and where the loss had already fallen he ordered it remitted (Abū Dāwūd 3374).

Put to an insurance contract the question is simple. The buyer's side is known: a premium of a fixed sum. The seller's side is not: whether anything will be paid, when, and how much, depend on an event that neither party controls and that may not occur. The economists' own description of the contract, a vector of incomes contingent on the state of the world (Rothschild & Stiglitz, 1976), is a description of a known payment exchanged for an unknown one. On this question the policy and the rain bet are the same contract.

The one serious reply to this, al-Zarqā's, is that the thing sold is known after all: it is security (amān) for the term of the policy, delivered in full on the day the cover begins, whether or not the event occurs, as a watchman's month is delivered whether or not a thief comes (Hasanudin, 2018, pp. 9–13). The reply is the strongest in the literature and the second question is the answer to it.

4.3. Second question: does the seller do anything to the risk, or only price it?

The watchman reduces the probability of the theft; the physician reduces the probability or the size of the illness; the flood wall reduces the loss when the river rises. Each sells a service that acts on the risk, and each is paid whether or not the harm comes, because the service was rendered. Ehrlich and Becker called these self-protection and self-insurance and distinguished them from market insurance, which "neither reduces the probability of a loss nor its size" (Ehrlich & Becker, 1972). The fire is exactly as likely

with the policy as without it; the illness is no shorter. What, then, is the "security" the insurer delivered on the first day of cover? It consists of nothing but the promise of the contingent payment. Name the promise "a service" and the contract has the letter of a sale: a defined service for a defined price. Look at what the service is made of and it is the unknown payment of the first question, renamed. That is the pond.

The second question therefore asks of any counterparty: does it cause the risk, reduce it, or merely price it? The classical maxim states the rule from the other side: "no profit from what one is not liable for" (*lā ribh mā lam yuḍman*; Abū Dāwūd 3504), gain follows liability for a real thing in one's charge. The insurer's liability is for an event, not for a thing. Al-Ghazālī's boundary confirms the reading: hobbling the camel is a means against straying and is commanded; it acts on the risk. The policy does not act on the risk; it transfers the money consequence of the risk to a party who has no stake in the thing and does nothing to it (Section 3.3).

This question is the one the existing literature does not ask. "Insurable interest," "indemnity" and "existing versus created risk" (Willett, 1901) all look at the buyer. Stout's distinction between hedging and speculation looks at whether risk is reduced, but asks it of the party seeking cover, not of the party selling it (Stout, 1999). Ehrlich and Becker's distinction is the nearest in economics and was made for a different purpose. Asked of the seller, the question separates the physician from the insurer, the mutual from the stock company, and the treasury from both, and it does so without reference to any party's state of mind.

4.4. Third question: who gains from the event?

The Qur'an gives the purpose of the maysir prohibition in one sentence: the enmity and hatred it casts between people (5:91). Ibn Taymiyya explains why the sale of an unknown outcome produces the same enmity: after the event, each party believes the other "gambled" him, the seller because he was paid too little for a thing that turned out valuable, the buyer because he paid for nothing (Section 3.3). The third question operationalises this: in the arrangement under test, is there a party whose gain comes from the event itself, not from a thing delivered or a work done? Where there is, the event will divide the parties, and the contract will be defended, after the fact, with the words "you knew the terms."

A bet answers the question at once: the winner gains from the event. A sale of a buffalo does not: the buyer gains the buffalo and the seller the price, and the weather afterward divides no one. An insurance contract answers it in two halves. When the event does not occur, the seller gains the premium, a pure gain from the non-occurrence of an event it did nothing to prevent. When the event occurs, the buyer is paid, but a buyer with a real loss is at best restored, never enriched; he has the illness and the lost days and the premiums, and is poorer than if the event had not happened. The economists' and the law's defence of the buyer rests on exactly this: the insured's "winning" state lies below his starting point, the gambler's above it (Siddīqī, 1985; Willett, 1901; Nyman, 2024). The defence is sound as far as it goes. It goes only to one chair.

4.5. The three questions together

The test, then, is three questions put to any arrangement for dealing with a risk:

1. Was the thing exchanged known when the contract was made, or does one side of the exchange depend on an event?
2. Does the seller act on the risk, or only price it?
3. Does any party gain from the event itself?

An arrangement that answers "known," "acts," and "no one" is a sale of a service and passes. An arrangement that answers "unknown," "prices," and "the seller" is a wager in which the seller is the gambler, whatever its name. Arrangements that answer "unknown," "prices," and "the buyer as well" are wagers on both sides, and the law, as Section 3.5 showed, already knows them. Arrangements with no seller at all, in which those exposed to a loss pool what they have and no one gains from the event, answer the first question "unknown" and the other two "no one," and the reader will see in Section 7 that the early Islamic sources describe exactly these.

Three things should be said before the questions are applied. First, they do not ask whether the buyer is prudent, risk-averse or in need; a man may be all three and still be sold a wager, as the Ghana and Kenya trials of index insurance show (Section 8). Second, they do not ask whether a licence or a Shari'ah board approved the contract; 2:188 denies that a licence changes the nature of a transfer, and the English Law Commission's own words on parametric cover are that it is "almost indistinguishable from a derivative contract" save for interest at the outset, and the submission it quoted called it "very close to gambling" (Section 3.5). Third, the questions are answerable from the contract and the counterparty alone, without entering anyone's intention, which is what makes them a test rather than an accusation.

5. Analysis: Risk contracts under the three questions

This section puts the three questions of Section 4 to each member of the family of risk contracts in turn. For each, the arrangement is described as its own literature or regulator describes it, the three answers are given, and the verdict follows from the answers alone. The results are tabulated in 5.11.

5.1. The bet

A wager on a match, on rain, or on a coin is the reference case. The thing exchanged is unknown at the contract (which way the money will go); neither party acts on the event; and the winner gains from the event itself. Three answers against; a wager by every name, including its own. The law voids it (Gaming Act 1845, s. 18) and the Shari'ah forbids it (5:90). Nothing further need be said, except that the four features by which a bet is ordinarily recognised, the stake posted first, the sum fixed, the event outside both parties' hands, and the gain to one side on the outcome, are all present in the contracts that follow.

5.2. Indemnity insurance sold by a stock company

A householder pays a premium; if fire destroys the house within the year, the company pays the loss up to the sum insured; if not, it keeps the premium. This is the contract the 1774 and 1906 Acts had in view and the one Willett defended.

First question: unknown. The premium is fixed; the counter-payment depends on the fire. Second question: the company prices the risk and does nothing to it. The fire is no less likely for the policy. The reply that it sells "security" fails for the reason given in 4.3: the security consists of the promise of the

contingent payment and nothing else. (Insurers do sometimes act on risk, by inspection, by requiring sprinklers, by funding fire research; where they do, that part of the contract is a service and passes the question. The underwriting of the fire itself is not such a part.) Third question: the company gains from the non-occurrence of the event; the householder with a real loss is restored, not enriched, because of the indemnity cap (1774 Act, s. 3). Verdict: a wager in which the seller is the gambler and the buyer, by the indemnity rule, is not. The law's doctrine of insurable interest guards the buyer's chair and says nothing about the seller's. This is the paper's central finding, and the reader should note that it concedes the whole of the law's and the economists' defence of the buyer while leaving the seller exactly where the 1774 preamble found him.

5.3. The same contract sold by a mutual

A mutual insurer is owned by its policyholders; premiums above claims and expenses are returned as dividends or retained as the members' surplus; there is no outside shareholder. Friendly societies and the early fire mutuals were of this kind, and mutuals still write a substantial share of the world's premium.

First question: unknown, as in 5.2. Second question: the mutual, as such, does nothing to the risk either; its underwriting is the same arithmetic. Third question: no party gains from the event. Surplus belongs to the members who paid it; a year without fires leaves them, collectively, where they were. Verdict: fails the first question, passes the third, and the second does not bite because there is no seller distinct from the pool. The mutual is a pooling of loss among those exposed to it, with a priced contribution. It is not a wager, because there is no one on the other side of the table. The fiqh reaches this result by a different road, calling the contribution a donation; the third question reaches it directly, without the label, and the difference will matter in Section 6.

5.4. Term life, whole life and investment-linked life insurance

Term life pays a fixed sum on death within the term. The three answers are those of 5.2, with one addition: the sum insured is not an indemnity, since no money measure of a life exists, so the beneficiary's gain is not capped at a loss. The law addresses this by requiring interest at inception and then, as Holmes held, treating the policy as property (*Grigsby v. Russell*, 1911). Whole life and investment-linked contracts bundle the term cover with a savings or investment account; the savings part is a deposit or a fund and is tested as such (in a conventional insurer, lent at interest, Section 8); the cover part is 5.2. Verdict for the cover: as 5.2. Verdict for the bundle: a wager wrapped round a deposit, which is why the Islamic rulings addressed life insurance separately and why Ṣiddīqī's acceptance was conditioned on removing ribā from the fund (Section 3.7).

5.5. Health insurance

Health cover differs from fire cover in that the "event" is repeated, graded and partly within the insured's control, which is why the economics of moral hazard was written about it (Arrow, 1963; Pauly, 1968). The three answers are those of 5.2. Two features sharpen them. The second question bites harder: a health insurer not only does nothing to the illness, it typically pays the physician who does, and so stands between the patient and the one party in the arrangement who acts on the risk. And the third question is answered in practice by the claims data: an insurer whose gain depends on the non-payment of claims

denies them, and the enmity 5:91 predicts is measurable in denial and appeal rates (Section 8). Verdict: as 5.2, with the harm concentrated at the moment of loss.

5.6. Parametric and index cover; catastrophe bonds

A parametric policy pays a fixed sum when a measured trigger is crossed, rainfall below a threshold, wind above a speed, an earthquake above a magnitude, regardless of whether the buyer suffered any loss. Index insurance for farmers, the subject of the Ghana and Kenya trials (Section 8), is of this kind. A catastrophe bond is the same contract sold to investors: the sponsor pays a coupon, the investors post the principal in a vehicle, and if the trigger (indemnity, industry loss, or parametric) is crossed within the term the principal goes to the sponsor; if not, the investors keep coupon and principal (Artemis, 2026).

First question: unknown. Second question: the seller prices the index and does nothing to it; no one acts on rainfall. Third question: the seller gains when the index is not crossed; and the buyer, paid on the trigger whether or not he lost anything, gains from the event when it is. The indemnity cap, which protected the buyer's chair in 5.2, is absent by design. Verdict: a wager on both sides, and the law says so in its own words: parametric policies are "in theory... very close to gambling," as the submission the Law Commission quoted put it, and "almost indistinguishable from a derivative contract" save for interest at the outset, as the Commission itself put it (Law Commission, 2016, paras 1.12, 1.14). The catastrophe bond investor has no interest at all. That these contracts are useful to poor farmers (Section 8) is true and is not an answer to the question; a bet can be useful, as 2:219 concedes.

5.7. Credit default swaps, life settlements and corporate-owned life insurance

A credit default swap pays the protection buyer if a named borrower defaults; the buyer pays a periodic fee. Bought by a creditor of the borrower it is credit insurance in all but name; bought by a stranger ("naked") it is a bet on the borrower's failure (Kimball-Stanley, 2008; Stout, 1999). The three answers are those of 5.6 for the naked swap and of 5.2 for the covered one, with the second question answered identically in both: the seller does nothing to the borrower's solvency. AIG's financial products arm sold such protection on hundreds of billions of senior mortgage securities "for a stream of premium-like payments" without an insurer's reserves and was rescued by the state when the events it had priced occurred together (Financial Crisis Inquiry Commission, 2011, pp. 169 ff.). The United States made the contract lawful by pre-empting its gaming laws rather than by requiring interest (7 U.S.C. § 27f(b)); New York proposed the interest test and withdrew it (Section 3.5).

A life settlement is the sale of an existing life policy to an investor, who pays the premiums and collects on the insured's death; stranger-originated life insurance (STOLI) is the manufacture of such policies for sale. *Kramer v. Phoenix Life* permits the latter so long as the policy was valid at inception (Section 3.5). The investor answers all three questions as the naked swap buyer does: the thing bought is a death; he does nothing to it; he gains from it. Warnock's warning that such a holder "is directly interested in the early death of the assured" (104 U.S. at 779) is the third question in a judge's words. Corporate-owned life insurance on rank-and-file employees is the same contract held by an employer (Burns, 2014). Verdict for all three: wagers on both sides, which the law knows and has, by statute or by the two-step of inception and transfer, permitted.

5.8. Takaful under the wakālah–waqf model

Takaful, as Pakistan's regulator and operators describe it, works thus: participants pay contributions into a fund constituted as a waqf; the contribution is characterised as a donation (*tabarru'*); claims are paid from the fund; the operator, a shareholder company (in Pakistan, usually a window of a conventional insurer), manages the fund for a wakālah fee fixed as a percentage of contributions and an investment fee on the fund's assets; if the fund is in deficit the operator lends to it (*qard ḥasan*), to be recovered from future surplus; if the fund is in surplus the remainder is distributed to participants, retained, or in some models shared with the operator; and the fund buys retakaful, and where retakaful is insufficient conventional reinsurance "to the extent of their real needs" (SECP, 2025, pp. 9–12; EFU, c. 2020, pp. 3–4; IIFA, Resolution 200, 2013, cls. 4, 9, 10; IFSB-11, 2010, pp. 10–13).

The three questions must be asked of each relationship in turn, because the model has more than one.

Participant and fund. First question: unknown, as in 5.3. Second question: the fund does nothing to the risk. Third question: no participant gains from the event, and surplus returns to participants. On this relationship alone, takaful is a mutual (5.3) and passes the third question. The fiqh's characterisation of the contribution as a donation is not needed for this result and, as the actuaries note, sits uneasily with a contribution that is rated and reserved as a premium and returned as surplus (Zainal, 2013; Abozaid, 2016).

Participant and operator. The operator's income is a fixed share of contributions and of the fund. Its economics therefore track premium volume exactly as a stock insurer's do (AlNemer, 2013, pp. 8–15), and where surplus is shared or the fee is surplus-linked, which Resolution 215 records and rejects, the operator gains from the non-occurrence of events (IIFA, Resolution 215, 2015). Second question: the operator prices and administers; it does nothing to the risk. Third question: in the pure fee model, the operator gains from volume, not from the event; in the surplus-sharing model, it gains from the event's non-occurrence.

The *qard*. The operator is obliged, in Pakistan and under the IFSB solvency standard, to lend to a fund in deficit. Nienhaus's point is that in a competitive market the loan is not in practice recovered, so the operator bears underwriting risk by the back door and is the real insurer (Nienhaus, 2016). Where that is so, the operator answers the third question as the stock company in 5.2 does.

Retakaful and reinsurance. The fund cedes risk to a retakaful operator, tested as above, or to a conventional reinsurer, tested as 5.2. A reinsurer's study finds that retakaful must quote conventional net rates and would need an agency fee near one hundred per cent to mirror non-participating reinsurance (Frenz, 2014), which is to say that behind the waqf the arithmetic is that of 5.2.

Verdict: the participant–fund relationship is a mutual and passes the third question; every relationship added to it, the fee, the surplus share, the *qard* and the reinsurance, re-imports a party that prices the risk and gains from the event. The Fiqh Academy's own resolutions say as much: that cooperative and commercial insurance "are similar in consideration of the basic principles of insurance," and that the distinction rests on the pool not being a commutative contract, so that *gharar* is "forgivable" (IIFA, Resolution 200, 2013, preamble points 1 and 12). Under the three questions the label is doing no work; the structure does the work, and the structure, as practised, keeps the gambler's chair and renames it.

5.9. The one who only receives: cover bought by an employer

A large part of the world's health and life cover is not bought by the person covered. An employer buys a group policy on its employees, a parent on a child, a lender on its borrowers, a state on its citizens (Section 9.3). The question put to the paper is whether the employee who falls ill and is treated under a policy his employer bought takes part in the wager, and the three questions answer it.

The contract is between the employer and the insurer. The employee did not make it, cannot vary it, pays nothing to it and did not price it. On the first question he exchanged nothing; the unknown thing was bought by his employer. On the second he is not a seller. On the third he gains nothing from the event: when he falls ill he is treated, which restores him, and when he stays well he receives nothing and has lost nothing. He sits in neither chair. The prohibition in the ḥadīth is on the sale of gharar (Muslim 1513), and a sale binds those who make it; the employee is the subject of the contract, the risk on his body, not a party to it. What reaches him reaches him by a different cause: his employment. The employer owes him his wage, and the cover is a benefit in kind, given for goodwill or to keep him; from his side it is a gift.

The Shari'ah has a precedent for this, and it is exact. Meat was given to Barīrah as ṣadaqah; she gave some of it to the Prophet's ﷺ household, who may not consume ṣadaqah; and he said, "It is ṣadaqah for her and a gift for us" (Muslim 1074–1075, 1504). The legal character of a thing is fixed by the cause by which it reaches each hand, not by the cause by which it reached the hand before. Between the insurer and the employer, the insurer's payment to the hospital is the settlement of a wager; between the employer and the employee, it is a benefit of the employment, and that is the cause by which the employee takes it. And "no bearer of burdens will bear the burden of another" (6:164): if there is a fault in the contract, it is the contracting parties'. The muftīs who are asked the practical question answer it in these terms: where the company itself pays the premium and deducts nothing from the salary, the cover "shall be gift and aid from the company for its employees" and the employee may use it in illness (Darul Ifta Deoband, 1432 AH; 1435 AH).

Three limits follow from the same test. First, the finding is for the one who only receives. Where the employee pays a share of the premium by deduction from his salary, he is in the buyer's chair for that share, and the muftīs who permit the first case treat the second differently, allowing the contributing employee to recover no more than what he paid (Usmani, Fatāwā 'Uthmānī, vol. 3, p. 335, as cited by Darul Ifta Australia, n.d.). Second, the economists will object that the premium the employer pays is, in substance, the employee's wage: the incidence of an employer-paid or mandated benefit falls on wages (Summers, 1989). The paper's own method requires that objection to be met rather than waved away. It is met by the first and third questions: a wage the employee might otherwise have been paid is not a stake he laid, and he gains nothing from the event; the gift is a gift though the giver would otherwise have paid cash. What the incidence argument does show is that the employee bears the house edge of Section 8.2 in his wage, which is a harm done to him, not a wager made by him. Third, the employer. The employer sits in the buyer's chair of 5.2: it bought an unknown thing from a seller who prices the risk and gains from the event, and it is a party to the contract. Its position is the insured's of 5.2, not the employee's.

There is a form of the same provision that passes the test outright, and it is the commonest form in the largest market. Sixty-three per cent of covered workers in the United States, and 79 per cent in large

firms, are in plans the employer funds itself, paying the medical bills of its people from its own revenue through an administrator paid a fee, often with stop-loss cover above a threshold (KFF, 2024, §10). That is Khālid's covenant at the scale of a firm: the employer who has had the worker's labour keeps him in his sickness from the revenue that labour earned, by need, with no counterparty who gains from the event. The three questions find no wager in it except the stop-loss layer, which is 5.2 again. Between the employer who buys a policy and the employer who keeps its own people, the test prefers the second; the employee, who sits in neither chair in either case, may receive from both.

5.10. The Ash'arī cloth, the 'āqilah and the treasury

Three arrangements from the sources of Sections 3.2 and 3.4 remain. The Ash'arīs, short of food, "collect whatever they have in one cloth and share it equally from one vessel" (Muslim 2500). First question: there is no exchange; each puts in what he has. Second: no seller. Third: no one gains; each takes an equal share of a present need. The 'āqilah: the Prophet ﷺ "made obligatory for every tribe the payment of blood-money" (Muslim 1507), a liability placed by law on the killer's kin, not bought by anyone. First question: no contract. Second: no seller. Third: no one gains; the kin pay. The treasury of Khālid's covenant and 'Umar's orders: the old, the afflicted, the ruined, the orphan, the newborn and the debtor are provided for from revenue, as a duty (Section 3.4). First question: no contract; a duty. Second: no seller. Third: no one gains from the event. Verdict for all three: not wagers, and not for the reason the fiqh gives takaful (the donation), but because there is no counterparty who prices the risk and no party who gains from the event. These are the arrangements Section 7 proposes as the substance that passes.

5.11. The table

Two readings of the table close the section. Down the second column, every contract in the family fails the first question; the thing bought is an event, and the law's and the economists' own descriptions concede it. The question is therefore never whether a risk contract is a sale of a known thing; it is not. The question is who sits across the table and what he does. Down the third and fourth columns, the family divides into three. Where there is a seller who prices the risk and gains from the event, the arrangement is a wager in the seller's chair, however the buyer's chair is guarded; this is commercial insurance in all its forms, and takaful in every relationship but one. Where the buyer too gains from the event, the arrangement is a wager on both sides, and the law already calls it one and permits it; these are the parametric, the naked and the settled contracts. And where there is no seller and no one gains, the arrangement is a pooling of loss or a duty, and it is not a wager; this is the mutual, the cloth, the kin and the treasury. The employee who only receives sits in neither chair, and the employer who keeps its own people belongs with the last group. The last group is the subject of Section 7, after the fiqh's own handling of the second group has been examined in Section 6.

Arrangement	Q1 Known at contract?	Q2 Seller acts on the risk?	Q3 Who gains from the event?	Verdict
Bet on match, rain, coin	No	No one acts	The winner	Wager, both sides
Indemnity insurance, stock company (5.2)	No	Prices only	Seller gains on non-occurrence; buyer restored, not enriched	Wager; seller is the gambler
Same by a mutual (5.3)	No	No seller	No one; surplus is the members'	Pooling of loss; not a wager

Arrangement	Q1 Known at contract?	Q2 Seller acts on the risk?	Q3 Who gains from the event?	Verdict
Term life (5.4)	No	Prices only	Seller on survival; beneficiary's gain uncapped	Wager; seller; buyer's chair guarded by interest only
Whole life, investment-linked (5.4)	No	Prices only	As term life; plus a fund lent at interest	Wager wrapped round a deposit
Health (5.5)	No	Prices; stands between patient and physician	Seller on non-payment of claims	Wager; seller; enmity measurable
Parametric, index cover (5.6)	No	Prices an index	Seller on no trigger; buyer on trigger, loss or not	Wager, both sides; the law says so
Catastrophe bond (5.6)	No	Prices	Investor on no trigger; sponsor on trigger	Wager, both sides; investor has no interest
CDS with exposure (5.7)	No	Prices	Seller on no default; buyer restored	Wager; seller
CDS naked (5.7)	No	Prices	Both	Wager, both sides; lawful by pre-emption of gaming law
Life settlement, STOLI, COLI (5.7)	No	Prices	Investor on death	Wager, both sides; lawful by the inception two-step
Takaful: participant and fund (5.8)	No	No seller	No one	As mutual
Takaful: operator fee, surplus share, qarḍ, reinsurance (5.8)	No	Prices	Operator on volume, on non-occurrence where surplus-linked, on underwriting where qarḍ is not recovered; reinsurer as 5.2	The seller's chair re-imported under a label
Employer-bought group policy: the employee (5.9)	Not a party; receives by his employment	No seller	No one; the employee restored	Not in the wager; a gift ("ṣadaqah for her and a gift for us")
Employer self-funded plan (5.9)	No contract; a benefit of employment	No seller; administrator paid a fee	No one	Pooling by the employer; stop-loss layer as 5.2
Ash'arī cloth (5.10)	No exchange	No seller	No one	Pooling; not a wager
ʿĀqilah (5.10)	No contract; a duty	No seller	No one; the kin pay	Not a wager
Treasury of Khālīd's covenant and ʿUmar's orders (5.10)	No contract; a duty	No seller	No one	Not a wager

6. The fiqh's concession: takaful and the donation label

6.1. The structure of the modern ruling

The contemporary rulings on insurance, summarised in Section 3.7, have a single structure, and it is worth setting out plainly because the whole of takaful rests on it. The rulings begin from the correct observation that a commercial insurance contract is a mu'āwāḍah, a commutative exchange, in which one side is unknown; that this is gharar of the kind the Prophet ﷺ forbade; and that the contract is therefore void

(IIFA, Resolution 9, 1985). They then observe, also correctly, that gharar does not void a gratuitous transfer: a gift of unknown size, a bequest of what may be left, a donation to a fund whose use is not yet fixed, are all valid, because the donor has given up a thing and not bought one. The step from the first observation to the second is the step on which takaful is built: if the contribution is a donation, there is no exchange; if there is no exchange, the gharar is "forgivable" (IIFA, Resolution 200, 2013, preamble point 1); and the contract that was void becomes lawful.

The Council of Senior Scholars stated the reasoning in 1977 in words that deserve quoting, because they are the clearest statement of what the label is for: the members of a cooperative fund "do not aim for trade or profit from the money of others"; "ignorance of the contributors does not harm them, because they are donors; there is no risk, uncertainty or gambling, unlike commercial insurance, which is a financial exchange" (Council of Senior Scholars, Decision 51, 1397 AH). The ruling is not that the uncertainty has gone; it is that the uncertainty "does not harm" a party who has given rather than bought. That is a sound principle of the fiqh of gifts. The question is whether a contribution that is rated by an actuary, reserved as a premium, paid under compulsion as a condition of cover, and returned to the contributor as surplus when the year is good, is a gift.

6.2. The donation that is priced, conditional and returnable

Three features of the takaful contribution, each recorded by the industry's own standard-setters and practitioners, stand against the label.

It is priced as a premium. The contribution to a family takaful fund for a given participant is calculated from the same mortality tables, the same expense loadings and the same margins that a conventional actuary uses, and the fund is reserved on the same basis, because the solvency standard requires it (IFSB-11, 2010, pp. 10–13). Zainal, an actuary, describes the resulting position as "the actuary's dilemma": the Shari'ah sees a donor, the balance sheet sees a policyholder, and they are the same person (Zainal, 2013, pp. 1–3). A gift whose amount is set by the recipient according to the giver's probability of claiming it is, in every respect but its name, a price.

It is conditional on cover. No participant donates to the fund except in order to be covered by it; the "donation" is the consideration for the cover, and ceases when the cover ceases. Abozaid, writing from within the industry's Shari'ah supervision, concedes that a donation which is conditional on a return is not clearly a donation at all (Abozaid, 2016). The classical law of gifts knows the conditional gift and treats a gift given for a counter-performance as a sale (*hibat al-thawāb*), with the rules of sale: "a gift on condition of a counter-value is a donation at its inception and becomes a sale at its end" (*al-Kāsānī, Badā'i' al-Ṣanā'i'*, vol. 6, p. 118). The takaful literature does not apply that rule to itself.

It is returnable. When claims are fewer than contributions, the surplus is distributed to participants in proportion to their contributions, or retained for them, or in some models shared with the operator (UniSZA, c. 2023, pp. 3–5; IIFA, Resolution 215, 2015). A donor who receives back the unspent part of his gift, in proportion to what he gave, has not given; he has deposited. Resolution 215 itself rejects the sharing of surplus with managers as one of the "practical and jurisprudential obscurities" of international practice, which is to say that the Academy sees the difficulty and resolves it by forbidding the most visible form of it.

The waqf model used in Pakistan was designed to meet precisely this objection. By constituting the fund as a waqf with its own legal personality, the model ensures that the contribution leaves the donor's ownership on payment and that the surplus belongs to the waqf, not to the donor, so that any return to participants is a fresh grant from the waqf rather than a refund (SECP, 2025, pp. 9–10; Al-Oqaili et al., 2021). This is a real improvement in form. Under the three questions of Section 4 it changes nothing, because the questions do not ask who owns the fund; they ask whether a party prices the risk and gains from the event, and the operator's fee, the operator's loan and the reinsurer are outside the waqf.

6.3. What the label does and does not do

It is important to be exact about the claim of this section, because the fiqh of gifts is sound and the takaful jurists are not wrong about it. The claim is not that a donation-based pool cannot exist, or that the Ash'arī cloth was not one. The claim is that the label "donation" is being used to pass the first question of Section 4 (is the thing exchanged known?) by denying that there is an exchange, while the second and third questions, which the label cannot touch, are left unasked. Section 5.8 showed what happens when they are asked: the participant-and-fund relationship passes the third question on its own, without any label, because no one in a mutual gains from the event; and every other relationship in the model fails it.

The Fiqh Academy's Resolution 200 is, read carefully, an admission of this. Its twelfth point concedes that cooperative and commercial insurance "are similar in consideration of the basic principles of insurance," naming among them insurable interest, utmost good faith, proximate cause and indemnity; its eleven "essential differences" are all differences of ownership and label (who owns the fund, what the manager is called, where the surplus goes); and its ground for the whole distinction is that the cooperative pool is not a mu'āwadah so that gharar is "forgivable" (IIFA, Resolution 200, 2013). The resolution does not claim that the pool does anything to the risk, or that no one gains from the event; it claims that the gharar in it is excused. Under the Sabbath Pond Test that is the channel, not the sea. The rule against gharar existed to prevent the sale of an unknown outcome and the enmity that follows it; an arrangement that sells the same outcome at the same price with the same reinsurer behind it, and excuses the gharar by calling the price a gift, has kept the letter of the gift rules and obtained what the gharar rule forbade.

6.4. The 'āqilah analogy

The usual precedent offered for takaful is the 'āqilah, the collective liability of a killer's kin for the blood-money, confirmed by the Prophet ﷺ in the Ṣaḥīfah of Medina (Muslim 1507) and applied in the Hudhayl case (Muslim 1681); the IAIS–IFSB issues paper and much of the literature repeat it (IAIS–IFSB, 2006; Billah, 1998). Abū Zahra rejected the analogy sixty years ago on the ground that the insured "does not join the company" as a kinsman joins his tribe (Shalim, 2016, p. 11), and the Jurnal Fiqh study of 2017 concluded that takaful is "not analogical to 'āqilah but an alternative only" (Khalil, Ali & Abdullah, 2017, p. 2). The three questions make the reason exact. The 'āqilah is not a contract: no one buys into it, no one prices it, and no one gains from the death; it is a liability imposed by law on a group defined by kinship, for a loss that has already occurred, in order that the victim's family be paid and the killer not be ruined. It passes the second and third questions because there is no seller and no gainer. A priced pool run by a fee-earning operator with a reinsurer behind it shares with the 'āqilah only the fact that more than one person pays. The analogy proves the opposite of what it is offered for: that the Sharī'ah's own way of spreading a loss was a duty, not a product.

6.5. Where the honest road leads

The honest road is the one El-Gamal and Nienhaus have already pointed to and the fiqh's own 1977 reasoning implies: the only takaful that answers the three questions as the Ash'arī cloth does is a member-owned mutual, without an outside operator earning on volume, without a loan that makes the operator the real underwriter, and without conventional reinsurance behind it (El-Gamal, 2007; Nienhaus, 2016). That arrangement exists in the conventional world as the mutual and the friendly society; the question for the Islamic industry is why it has built, instead, shareholder companies and windows of conventional insurers, twenty-seven of Pakistan's thirty-three (SECP, 2025, p. 3), and called the result by the name of the cloth. The answer, as it was in our banking study, is that the form was chosen to resemble the thing it replaced, so that the same balance sheet, the same reinsurer and the same shareholder return could be kept. Section 7 asks what the substance would look like if that choice were reversed.

7. The substance that passes: the classical treasury and the kinship pool

7.1. The question the critics leave open

The critics of takaful's form, from Abū Zahra to Nienhaus, leave one question unanswered: what, then, should a Muslim society do about the old man who can no longer work, the family whose house has burned, the widow, the orphan and the farmer whose crop has failed? The sources reviewed in Sections 3.1, 3.2 and 3.4 answer it, and the answer has a shape that no premium-based product shares. It is the purpose of this section to describe that shape from the texts, to show that it passes the three questions, and to say what of it can be built today.

7.2. The Prophet's practice: the community gives first, the capital absorbs the rest

When a man of Medina "suffered loss in fruits he had bought and his debt increased," the Prophet ﷺ did not ask whether he had provided against the risk. He told the people to give him charity; when the charity did not cover the debt, he told the creditors, "take what you find, you will have nothing but that" (Muslim 1556). Two rules are in this report. The first is that a loss which is no one's fault is met first by the community's giving. The second is that what the giving does not cover falls on the capital that was exposed to the venture, the creditors who had financed the fruit, and not on the man who was struck. The hadith of Qabīṣah makes the first rule general: a man "whose property has been destroyed by a calamity" may ask "until he obtains what will sustain him" (Muslim 1044), and the Qur'an names "those in debt" among the eight recipients of zakāh (9:60). The remission of blighted fruit (Abū Dāwūd 3374) applies the second rule to the ordinary sale: the seller who has been paid for fruit that then perishes on the tree returns the price; the risk of the act of God stays with the one who owned the thing. Across these texts the loss is not priced and sold to a stranger; it is shared backward, to the community that gives and the capital that bore it.

Under the three questions: there is no contract (the first question does not arise); no one acts on the risk, but no one sells either; and no one gains from the event. The arrangement is a duty of giving and a rule of where loss falls. It passes.

7.3. The Ash'arī cloth: pooling what is present for a present need

The Ash'arīs, "when they run short of provisions on a campaign, or of food for their children in Medina, collect whatever they have in one cloth and then share it equally from one vessel; they are from me and I am from them" (Muslim 2500). The takaful literature cites this report as its precedent and the report deserves to be read exactly, because its substance is the opposite of a priced pool. Those who put into the cloth are those who face the shortage; they put in what they have, not a sum calculated from their probability of need; they share equally, not in proportion to contribution; the need is present, not future; and nothing is left over to distribute, because the cloth is emptied. No one prices the risk, no one is paid for managing the cloth, and no one is better off for the shortage. The Prophet's praise of them, "they are from me and I am from them," is praise of a people who did not sell their risk to each other but carried it together.

Under the three questions: no exchange; no seller; no gainer. It passes, and it passes for a reason the donation label does not reach: not because the contributions are called gifts but because there is no one across the table.

7.4. The 'āqilah: a duty of kinship, not a thing bought

The 'āqilah has been discussed in Section 6.4 and need only be placed here. The Prophet ﷺ "made obligatory for every tribe the payment of blood-money" (Muslim 1507); in the Hudhayl case he placed the diyah of the dead woman "on her relatives on the father's side" (Muslim 1681). The liability was imposed, not bought; it fell on a group defined by kinship, not by contract; it spread a loss that had already occurred; and it existed so that a victim's family would be compensated without the killer's family being destroyed. 'Umar later extended the same principle to the Dīwān, so that the stipend-register rather than the tribe bore the diyah of those enrolled (Abū 'Ubayd, Kitāb al-Amwāl, Bāb al-'aqd). The lesson for the present section is that the Sharī'ah's own instrument for spreading a catastrophic loss across many shoulders was a duty attached to membership, enforced by the ruler, with no one on the other side of a table.

7.5. The treasury: Khālīd's covenant and 'Umar's orders

The fullest description of the substance that passes is in the fiscal sources, and it is in the rulers' own words. Khālīd ibn al-Walīd's covenant with the people of al-Ḥīrah, in the twelfth year of the Hijrah, granted that "any old man who becomes too weak to work, or is struck by one of the afflictions, or who was rich and became poor so that his co-religionists give him charity: his jizyah is lifted, and he and his dependants are maintained from the treasury of the Muslims for as long as he resides in the abode of Islam" (Abū Yūsuf, Kitāb al-Kharāj, vol. 1, pp. 156–157). The covenant was made with non-Muslims, in the first years of the state, before any of the later institutions existed; its three contingencies, old age, affliction and impoverishment, are the three that the modern pension, disability and welfare systems address; and its mechanism is the treasury, financed by the revenue of those who can pay, owed as a duty to those who cannot, with no contract, no premium and no counterparty.

'Umar's encounter with the old blind Jew gives the principle that underlies the covenant: "By God, we have not dealt justly with him if we consumed his youth and then abandon him in his old age" (ibid., Faṣl fī ahl al-dhimma). This is the whole theory of the pension in one sentence, and it is stated as a matter of justice between the state and a man who paid it, not as a matter of what the man purchased. 'Umar

ibn 'Abd al-'Azīz extended it to the slave who grew old in service (Abū 'Ubayd, nos. 108, 120; vol. 1, pp. 50, 56). The Dīwān that 'Umar founded paid stipends by nearness to the Prophet ﷺ and then by service; the stipend for every newborn, proclaimed so that mothers would not wean early (ibid., Bāb farḍ al-'aṭā'; vol. 1, pp. 302, 306), is a universal child allowance; the dependants' shares, made general and non-heritable by 'Umar ibn 'Abd al-'Azīz ("I cut off the inheritance and make the stipend general," ibid.), are a survivors' benefit that followed need rather than lineage. And the surplus orders of 'Umar ibn 'Abd al-'Azīz to his governor in Iraq, when the stipends had been paid and money remained, set out an order of priority that any modern treasury would recognise: first, pay the debts of "everyone who has fallen into debt without foolishness or extravagance"; then, pay the dowers of "every unmarried man without means who wishes to marry"; then, lend without interest to "whoever owes jizyah and is too weak to work his land," for "we do not want them for a year or two" (ibid., vol. 1, p. 319). Debt from misfortune, the cost of founding a family, and working capital for the weak: these are the contingencies, and the treasury's answer to each is a grant or an interest-free loan, never a priced contract.

Under the three questions: there is no contract; the treasury does not sell; and no one gains from the event. Old age, sickness, ruin and bereavement are met as duties of the public purse. The arrangement passes all three questions, and it passes them more completely than the mutual, because the mutual still prices its contributions and the treasury does not: it taxes by capacity (65:7, "Allah does not charge a soul except according to what He has given it") and pays by need.

7.6. The shape that passes, stated

From the four arrangements of 7.2–7.5 the substance that passes the test can be stated as a set of features, each of which is the negation of a feature of the wager:

- The loss is met by those who share a bond with the one who is struck, kin, community or the state that taxed him, as a duty, not by a stranger who contracted to pay it.
- Contributions follow capacity, not the contributor's probability of claiming; no one is rated, and no one is refused for being a bad risk.
- Payment follows need, not a sum fixed in advance; the struck is restored "until he obtains what will sustain him," not paid the stake.
- No party prices the risk, and no party's income depends on the non-occurrence of the event; there is no operator, no shareholder, no reinsurer.
- What is not needed is not distributed as surplus; it remains the fund's for the next need, or is given.
- The arrangement is enforced by law or by the duty of giving, not by a contract whose exclusions are read out after the loss.

Every one of these features is visible in the Ḥīrah covenant and the 'Umar narratives, and every one is absent from the stock insurer. The mutual has the first, fourth and fifth; takāful as practised has the fifth, in the form of surplus retained by the waqf, and the first in name.

7.7. What of it can be built

It is a fair objection that a state of forty million souls with a treasury fed by conquest is not a state of two hundred and forty million with a revenue problem, and that the Ḥīrah covenant cannot simply be copied.

The objection is true and it does not touch the test. The modern world built, under other names, exactly the institutions the sources describe: the old-age pension, disability provision, survivors' benefit, child allowance and public health care, all financed by revenue and paid by need, are the treasury of 'Umar at national scale, and they pass the three questions for the same reason it did. They cover, in every country that has them, the contingencies that commercial insurance is sold against, and they cover the people commercial insurance refuses. Where a Muslim state has chosen instead to buy cover for its citizens from a company, as Pakistan did with the Sehat Card (Section 9), it has chosen the wager over the treasury, and the audited result is instructive.

Below the state, the mutual and the friendly society are the Ash'arī cloth at the scale of a town or a trade, and they existed in the Muslim world as the guild funds and the waqf hospitals long before the first takaful operator. The fiqh of the waqf is the fiqh of exactly this: a fund given once, owned by no one, administered for a purpose, with no shareholder and no surplus. The takaful industry has adopted the waqf as a legal shell for the fund (Section 6.2) while keeping a shareholder operator outside it; the honest road is to put the operator inside, as the waqf's salaried administrator, and to remove the shareholder, the surplus share, the operator's loan and the conventional reinsurer. What remains is a mutual constituted as a waqf, which is the one arrangement in the modern industry that answers the three questions as the cloth did.

Between the state and the mutual lies the creditor's forbearance, which 2:280 commands and which Muslim 1556 shows the Prophet ﷺ enforcing: the capital that financed a venture bears the loss of the act of God, rather than selling that risk forward to an insurer and pricing it into the loan. Our banking study found that the substance of Islamic finance was partnership, in which capital shares the loss (Irshad, 2026a, §6.1). The present study finds the same for insurance: the substance is a pooling in which no one sells the risk, and the test of any arrangement claiming the name is whether, when the event comes, there is anyone in the room who is glad.

8. Benefit and harm, weighed as the Qur'an weighs

8.1. Why this section is written without the lens

The argument of Sections 4 to 7 was made from texts. A reader who holds none of them sacred may fairly ask whether the finding that insurance is a wager in the seller's chair is anything more than a classification. This section answers that reader on his own ground. The harms of gambling can be seen without any scripture: the loser's ruin, the winner's appetite, the enmity between them, the house's unfailing edge. If insurance is in substance what Section 5 says it is, the same harms should be visible in it with the naked eye, in the industry's own figures and the regulators' own reports. They are. We set them out first, with no verse among them; we then state the benefits with the same honesty; and only then do we weigh the two as the Qur'an weighs gambling, "in them is great sin and some benefit for people, but their sin is greater than their benefit" (2:219). The verse's method is the ordinary one of weighing; the reader who declines the verse may still use the scales.

8.2. The harms, as any eye sees them

The house edge. A gambler who plays long enough loses the house's margin; a household that insures for a lifetime pays the insurer's. In the United States, administration consumed 34.2 per cent of national health spending in 2017, USD 812 billion, against 17.0 per cent in Canada's public system; insurers' own overhead was USD 274.5 billion, of which USD 229.5 billion was private insurers' overhead and profit (Himmelstein, Campbell & Woolhandler, 2020, pp. 134, 137–138). Health spending in that country reached USD 5.3 trillion, 18.0 per cent of its product, in 2024 (CMS, 2025, p. 1). The rake is paid by the player whether he wins or loses; it is paid by the sick and the well alike.

The counterparty is paid to not pay. A casino pays a winning number at once; its edge is in the odds, not in the payout. An insurer's edge is in both, because every claim refused is margin retained, and the incentive shows in the data. Insurers on the United States marketplace denied 20 per cent of in-network claims in 2023, 86 million of 436 million, the rate ranging from 1 to 54 per cent by company; fewer than 1 per cent of denials were appealed, and 56 per cent of appeals upheld the denial (KFF, 2025). One insurer's medical directors denied more than 300,000 claims in two months of 2022 at an average of 1.2 seconds each, without opening the file, in the expectation that only 5 per cent would appeal (ProPublica, 2023). In Florida, with 8.16 per cent of the country's homeowners claims, 76.45 per cent of its homeowners lawsuits were filed; suits followed 27.75 per cent of claims closed without payment, eight times the next state (Florida OIR, 2021, pp. 1–3). India's insurance ombudsmen received 52,575 complaints in 2023–24, 31,490 of them on health, repudiation the main grievance (CIO India, 2024, p. 34). This is the enmity of the wager made countable, and it arrives at the moment of loss.

The player's behaviour changes; the policy's does not. The bet changes nothing in the bettor's life; the policy changes the insured's conduct toward the very risk it covers. The RAND Health Insurance Experiment found that participants given free care spent 20 to 30 per cent more than those paying 25 or 95 per cent of the bill, with no measurable gain in average health (RAND, 2006, pp. 3–4); Oregon's Medicaid lottery raised annual spending by a quarter and emergency-department visits by 40 per cent (Einav & Finkelstein, 2017, pp. 11–12). The economists call it moral hazard; the fire underwriter calls it the reason for the deductible. Fraud is its criminal edge: USD 308.6 billion a year in the United States by the industry's estimate, USD 400 to 700 per family (CAIF, 2022, pp. 1, 14, 19); £1.16 billion of detected fraudulent claims in Britain in 2024 and 684,800 fraudulent applications blocked (ABI, 2025).

The bettor leaves when the odds turn. A gambler who sees the odds move against him leaves the table, and insurers do the same. Between 2018 and 2023, 1.9 million United States homeowners policies were not renewed, and the non-renewal rate doubled after 2020 (Senate Budget Committee hearing, 2024, Keys testimony); the Treasury found that the ZIP codes of highest climate risk paid 82 per cent more in premium and were 80 per cent more likely to be dropped (Treasury FIO, 2025, pp. 2–3). State Farm cancelled 72,000 California policies from July 2024 after halting new business in 2023; Allstate stopped writing homeowners cover there in 2022; seven of the twelve largest groups, 85 per cent of the market, restricted writing (note on the insurability crisis, 2024). Whoever most needs the cover, the old, the sick, the coastal, the pre-existing, is the one the seller least wants, and risk-based pricing is the instrument: the same clean-record driver pays USD 470 for state-mandated cover with excellent credit and USD 1,012 with poor credit (CFA, 2023, pp. 3, 8).

The promise can be worthless. The player knows the casino holds the pot. The insured does not know whether the insurer will be there. Six Florida property insurers failed in 2022 and a seventh, with 146,260 open claims, in February 2023; more than USD 1.2 billion of insolvency cost was charged back to every Florida policyholder through the guaranty fund (FIGA, 2024, pp. 2–4). AIG, the largest insurer in the world, sold protection on hundreds of billions of mortgage securities "for a stream of premium-like payments" without reserves and was rescued by the United States Treasury (FCIC, 2011, pp. 132, 140). Captive "shadow" reinsurance lowered measured capital by 53 points and multiplied ten-year default probability three and a half times for the life insurers that used it (Koiijen & Yogo, 2013, p. 4); 137 United States insurers with USD 704 billion of assets were owned by private-equity firms at the end of 2024, their number up by half since 2018 (NAIC, 2025b, p. 1), and the first such insurer in Europe, Eurovita, failed in 2023 with its policyholders' surrenders frozen for eight months (note on the *riba* link and systemic risk, 2023).

You cannot see what you bought. The gambler knows the rules of the game before the ball falls. The insured learns them when the claim is refused, from a document written by the stronger party, and the Law Commissions' review of insurable interest, the statutes' own definitions of what a policy is "by way of gaming," and the exclusions read out after the Florida hurricanes are all evidence of a contract whose content is not known at the time of agreement (Law Commission, 2015). Under Section 4's first question this is *gharar*; under any eye it is a product the buyer cannot inspect.

The interest in the event. The American court said that a policy without interest "has a tendency to create a desire for the event" (*Warnock v. Davis*, 1881, at 779). Arson for insurance, the manufacture of policies on strangers' lives for sale to investors, and employers' policies on the lives of their clerks are the documented results (Burns, 2014; *Kramer v. Phoenix Life*, 2010). The subsidised crop programmes show the same thing in the field: the United States programme cost about USD 90 billion in 2011–2021 with subsidies above 60 per cent of premium, one farm above the income limit drawing USD 1.2 million a year, and insurer compensation in 2016 "greatly exceeded payments to farmers" (GAO, 2023); India's auditor found Rs 32,607 crore of subsidy and claims paid over five years without any database of insured farmers, Rs 3,623 crore to private insurers unverified, 97 per cent of farmers under one scheme insured only for the amount of their loan, and the state insurer booking Rs 2,519 crore of premium over claims as "savings" (CAG India, 2017, pp. v–vii).

The help that was free is lost. In 1910 British friendly societies had 6.6 million members pooling wages against sickness and burial; the National Insurance Act of 1911 made them agents of the state and within a generation their ageing memberships were insolvent (Downing, 2015, ch. 5; Broten, 2010). American life insurance was resisted through the first half of the nineteenth century as a "sacrilegious" bet on a life, and by the 1870s had become a family duty without a change in the contract (Zelizer, 1978). The man with a policy does not go to his brother, and his brother does not come; the contract with a stranger who profits from not paying has replaced the duty of people who would have paid.

The stake is lent at interest while it waits. This harm is invisible to most eyes and is the one that matters most to the Islamic reader, so it is stated last among the secular harms and first in the weighing. Bonds were 60.4 per cent of United States insurers' USD 8.98 trillion of invested assets at the end of 2024, USD 5.4 trillion, and mortgage loans another 9.1 per cent; the figures at the end of 2025 were 59.8 per cent

of USD 9.6 trillion (NAIC, 2025a, pp. 1–3; NAIC, 2026, pp. 1–2). Worldwide, insurers hold about USD 40 trillion, more than half of it in fixed income, and are the largest patient lenders to governments and firms (IAIS, 2024, p. 10). The premium is not held in a drawer; it is lent, and the insurer's return on the lending is the second source of its profit after the underwriting. A policyholder who has never taken interest in his life has, through his premium, lent at interest every year he was covered.

8.3. The benefits, fairly stated

The weighing is not honest unless the other pan is loaded with the same care. The benefits of insurance are real, measured, and in some cases large.

Uninsured risk stops the poor from investing. When Ghanaian maize farmers were given rainfall insurance, they put more land and more inputs into cultivation; it was risk, not lack of capital, that had held them back, and at an actuarially fair price 40 to 50 per cent bought cover for more than 60 per cent of their acreage (Karlan et al., 2014, abstract and p. 4). Kenyan pastoralists who held index insurance were 96 percentage points less likely to sell animals and 49 points less likely to cut meals after the drought of 2011 (Janzen & Carter, 2013, pp. 3–4). In rural India, 89 per cent of households name rainfall as their main risk (Cole et al., 2009, pp. 2–5).

Cover from any source beats ruin. Recipients of public health cover in the United States value it at between half and 1.2 dollars per dollar of its resource cost, with much of the rest a transfer to the providers who would otherwise have gone unpaid (Finkelstein, Hendren & Luttmer, 2015, p. 7). Arrow's judgment that "the welfare case for insurance policies of all sorts is overwhelming" (Arrow, 1963, p. 961) was made for a reason: a family facing one catastrophic bill is better off with cover from a bettor than with no cover.

The gap is where the poor are. Global premiums were USD 4.65 trillion, 6.3 per cent of world product, in 2013, but emerging markets held 17 per cent of premium against 40 per cent of product (Geneva Association, 2014, p. 5); the natural-catastrophe protection gap exceeds USD 150 billion a year, and in low-income countries more than 95 per cent of losses are uninsured (Geneva Association, 2018, pp. 1–2); the global gap was USD 1.8 trillion premium-equivalent in 2022, with mortality and crop gaps of USD 406 billion and USD 113 billion (Swiss Re, 2023). Pakistan's penetration is 0.7 per cent of its product against an OECD average of 6.2 (State Bank of Pakistan, 2026, p. 123).

These figures establish two things, and the paper grants both. Protection against catastrophic loss has a large value to the protected; and the people who lack it are the people least able to bear the loss. What the figures do not establish is that the protection must be bought from a party that prices the risk and gains from the event. The Ghana and Kenya trials used index cover, which Section 5.6 showed to be a wager on both sides; their benefit is the benefit of a bet that happened to pay, as 2:219 says a bet can. And the valuation of public cover in the United States measures a treasury scheme, not a policy.

8.4. Weighed as 2:219 weighs

The Qur'an's verse on gambling does not deny its benefit; it concedes "some benefit for people" and then rules that the sin is greater. The method is a weighing of a benefit that is real against a harm that is structural. Applied here, the pans hold this.

In the pan of benefit: cover against ruin, which has a measured value, and which the poor lack most.

In the pan of harm: a margin paid by all whether or not they claim; an enmity at the moment of loss that is countable in denials, appeals and lawsuits; a change in the insured's own conduct toward the risk; abandonment of the insured when the risk rises; a promise that fails when most needed; a contract that cannot be read until it is refused; an interest in the event that the law itself warns of; the loss of the help that was free; and a premium pool lent at interest.

The first pan does not require the second. Every benefit in it, the farmer's willingness to invest, the family's protection against the one catastrophic bill, the closing of the gap where the poor are, can be obtained from a pool with no better in it: a mutual, a cooperative, a treasury scheme financed by revenue and paid by need. The second pan is the consequence of the better: the margin, the denial, the abandonment and the lending are what a seller who prices the risk and gains from the event does, and the mutual and the treasury do none of them. That is the finding of this section, and it is the same whether the reader holds the verse or not: the benefits of insurance are the benefits of pooling, and the harms of insurance are the harms of the wager that was wrapped round the pool.

9. Case study: Pakistan, the 2028 deadline and Sehat Card Plus

9.1. The date written into the Constitution

The Federal Shariat Court held on 28 April 2022 that ribā in every form is repugnant to the injunctions of Islam and gave the state five years to remove it from the financial system; the federal government, the State Bank and the National Bank withdrew their appeals; and the Twenty-sixth Constitutional Amendment of October 2024 wrote into the Constitution that ribā is to be eliminated by 1 January 2028 (Irshad, 2026a; Dawn, 2024; Express Tribune, 2024). Our banking study examined what that date requires of the banks. The insurers are inside the same date. The State Bank's training institute puts it thus in the brochure of its takaful course: "Pakistan's financial sector is transitioning toward full Shariah compliance by December 31, 2027. Consequently, all conventional insurance businesses are set to convert into Takaful operations" (NIBAF, 2025, p. 1). The Securities and Exchange Commission, which regulates the insurers, has published a strategic transition plan requiring each insurer to file a board-approved takaful adoption plan (Business Recorder, 2025), a diagnostic study of the sector's readiness (SECP, 2025), and a roundtable at which the industry's own association named limited retakaful capacity as the constraint (SECP, 2025b). The press reports that the insurers filed their plans with the regulator in December 2025; that conversion may come "possibly by 2029, subject to the readiness of the companies"; that the regulator has recognised that "some flexibility may be necessary for a period like five to 10 years"; and that, given the limited retakaful capacity, "allowing a reinsurer for a limited period" is among the transitional arrangements under consideration (The News, 2026, reporting a takaful operator's chief executive).

The industry to be converted is this. At September 2025 it held Rs 4,028.7 billion of assets, of which life insurance held Rs 3,371.4 billion (83.7 per cent), non-life Rs 498.9 billion (12.4 per cent), family takaful Rs 67.4 billion (1.7 per cent) and general takaful Rs 9.4 billion (0.2 per cent); gross premium for the first nine months of 2025 was Rs 509.6 billion and net claims Rs 323.7 billion (State Bank of Pakistan, 2026, Table 6.3.1, p. 123). Family takaful was 12 per cent of life premium and general takaful 11 per cent of non-life

premium in 2023, and twenty-seven of the thirty-three takaful operators, seven family and twenty general, are windows of conventional insurers (SECP, 2025, pp. 3, 8). Penetration is 0.7 per cent of the product (State Bank of Pakistan, 2026, p. 123). The conversion is therefore of a book that is five-sixths life insurance, held by companies that are overwhelmingly conventional, into a form that at present covers under 2 per cent of the sector's assets.

9.2. What conversion changes under the three questions

Section 5.8 ran the wakālah–waqf model through the three questions relationship by relationship. Applied to the conversion, the result is this.

The participant-and-fund relationship, after conversion, is a mutual constituted as a waqf, and it passes the third question: no participant gains from the event. That is a real change for the one relationship, and the paper does not belittle it.

The operator is, in twenty-seven cases of thirty-three, the conventional insurer itself, converted or windowed, earning a wakālah fee on contributions and an investment fee on the fund. Its income tracks premium volume as before; where any part of its remuneration is surplus-linked, it gains from the non-occurrence of events as before (Section 6.2). Nothing in the conversion changes the second question's answer: the operator prices the risk and does nothing to it.

The qarḍ obligation, which Pakistan's rules and the IFSB solvency standard impose, puts underwriting risk back on the operator where the loan is not in practice recovered (Nienhaus, 2016); the converted insurer is then the real insurer, as before.

The reinsurance is the decisive point. A life book of Rs 3.4 trillion cannot be reinsured in a retakaful market that does not exist at that scale; the industry has told the regulator so, and a conventional reinsurer "for a limited period" is the transitional arrangement under discussion, within a transition for which the regulator is reported to allow five to ten years (SECP, 2025b; The News, 2026). The reinsurer answers all three questions exactly as the stock company of Section 5.2 does, and the reinsurer's own study shows that retakaful, where it exists, must quote conventional net rates (Frenz, 2014). Behind the waqf, for as long as that period runs, the arithmetic and the counterparty are those of 2027.

The investment of the fund is the ribā question proper, and here the conversion does change something, because a takaful fund may not hold interest-bearing bonds. What it holds instead, in a market where the government's own sukūk are the main Shari'ah-compliant paper, is the subject of our banking study (Irshad, 2026a, §4.4 and §6.4), and the Sabbath Pond Test applies to the sukūk as it applied to the murābahah: whether the instrument changes the substance of the lending or only its form. The present paper notes only that a Rs 3.4 trillion life book converted to sukūk is the largest single test the sukūk market in Pakistan will ever face.

The finding is therefore that conversion by 2028, as planned, changes the label of the fund and the ownership of the surplus, and leaves the seller's chair occupied by the same company earning on the same volume, with the same reinsurer behind it and a sukūk portfolio whose substance the earlier study already questioned. Under the test, that is the channel dug beside the sea. It is not said in blame; the operators are doing what the rules require. It is said so that the rules may be seen for what they do.

9.3. Sehat Card Plus: when the state buys the wager

The clearest illustration of the difference between the treasury and the policy comes from the state's own purchase of cover for its citizens. The Sehat Sahulat programme, and in Khyber Pakhtunkhwa the Sehat Card Plus, provided free inpatient treatment to every family of the province through a card; the province did not run the hospitals' reimbursement itself but bought a health insurance policy from the State Life Insurance Corporation, paying a premium per family, and the insurer paid the empanelled hospitals. The scheme was, in its design, the treasury of 'Umar: financed by revenue, owed to all, paid by need. In its execution it was a policy, and the audit shows what a policy does.

The Auditor-General of Pakistan's performance audit of the province's health initiatives for 2017–22 found that Khyber Pakhtunkhwa owed State Life Rs 18.4 billion of Rs 62.7 billion of premium for three years, and that "due to this nonpayment, State Life had suspended Sehat Card Plus Programme on 23.04.2023" (Auditor-General of Pakistan, 2025, p. 24); the press counted the suspension of August 2023 as "the fourth time in the last seven months" (Dawn, 2023). The audit found that 17 of 48 empanelled hospitals checked in ten districts were not registered with the provincial healthcare commission, two of them having received Rs 1,028.5 million (pp. 29–30); and that of Rs 19.8 billion paid by the insurer to government hospitals, 55 per cent was allocated for distribution among the hospitals' staff "as an additional benefit for the already paid services," which the audit held unjustified since "the treatment was provided during the staff's duty time" (pp. 8–9). The press put the irregularities found across the whole audit, the card scheme and the other health projects together, at Rs 28.61 billion (The News, 2025). The Auditor-General's separate special study of State Life's life and health policies for 2015–17 records weak internal controls in premium collection, irregular early-death claim payments and premium rates not updated since inception (Auditor-General of Pakistan, n.d., executive summary).

Under the three questions the case reads thus. The province bought an unknown thing: how many of its families would fall ill and what the hospitals would charge were the insurer's risk and the province's premium. The insurer did nothing to the illness, and its margin lay between the premium and the claims. And when the premium went unpaid, the insurer did what a counterparty does and what a treasury cannot: it stopped paying, four times, and the sick of the province were the stake. Meanwhile the hospitals, paid per case by a counterparty with no interest in the care, billed as the crop insurers of India billed, and the money went to bonuses. Had the province run the scheme as a treasury, paying hospitals from revenue by audited need, the unpaid premium would have been an unpaid bill to a hospital, not a suspension of every family's cover at once; the unregistered hospitals would have been the province's own failure to inspect, not a counterparty's indifference; and the 55 per cent would have been visible in the province's own accounts the first year. The scheme failed where the policy was, not where the treasury was. That is the case for Section 7's finding, in the province's own audited figures.

9.4. What the date requires

If the Constitution's date is to mean in insurance what it means in banking, the test of Section 4 gives the measure. Conversion passes when, and only when, the party across the table from the insured no longer prices the risk and gains from the event: a member-owned fund with a salaried administrator, no surplus share, no operator's loan that makes the operator the underwriter, no conventional reinsurer, and an investment of the fund whose substance is partnership rather than lending. For the contingencies the

state itself undertakes, old age, sickness, bereavement and the catastrophic loss, the measure is simpler and older, and it is in Abū Yūsuf: a treasury that pays by need from revenue raised by capacity, and that does not buy its citizens' cover from a bettor. Nothing in the present rules requires either. The paper's finding is that without them the date will be met in form and missed in substance, and that the Sehat Card has already shown what the missing looks like.

10. Conclusion

This paper set out to ask whether a contract of insurance differs from a wager in substance or only in form, and to ask it with a test stated in advance and applied to every member of the family of risk contracts on the same terms. The findings can be stated briefly.

The identity of form is not in dispute. A premium paid now for a payment later that depends on an event neither party controls is the structure of the policy and of the bet, and the law, the economics and the Islamic rulings have each said so in their own words for two and a half centuries. The paper claims no credit for the observation and has cited those who made it.

The Sabbath Pond Test, stated as three questions, separates the family where the form does not. Was the thing exchanged known at the contract? Does the seller act on the risk, or only price it? Who gains from the event? Every risk contract fails the first question; that is what a risk contract is. The second and third questions divide the family into three. Where a seller prices the risk and gains from the event, the arrangement is a wager in the seller's chair, whatever guards the buyer's: this is commercial insurance in every form, and the doctrine of insurable interest, which protects the buyer, says nothing about it. Where the buyer too gains from the event, the arrangement is a wager on both sides; the law names these, parametric cover, naked swaps, settled and stranger-originated policies, and permits them by statute, by pre-emption or by the two-step of inception and transfer. Where there is no seller and no one gains, the arrangement is a pooling of loss or a duty, and it is not a wager: the mutual, the Ash'arī cloth, the 'āqilah and the treasury of the early state.

Takaful, tested relationship by relationship, is a mutual in the one relationship between participant and fund and a wager in every relationship added to it: the operator's fee on volume, the surplus share, the operator's loan that makes it the real underwriter, and the conventional reinsurer behind the waqf. The Fiqh Academy's own resolutions concede that cooperative and commercial insurance are "similar in consideration of the basic principles of insurance" and rest the distinction on the gharar being "forgivable" in a donation; the three questions show that the donation label passes the first question by denying an exchange and leaves the second and third unasked. That is the channel beside the sea.

The one who only receives, the employee treated under a policy his employer bought, sits in neither chair: the contract's character belongs to those who made it, and what reaches him reaches him as a benefit of his employment, "ṣadaqah for her and a gift for us"; the employer who funds its people's care from its own revenue has, without knowing it, built Khālīd's covenant at the scale of a firm.

The classical fiscal sources describe the substance that passes, in the rulers' own orders: Khālīd's covenant that the old, the afflicted and the ruined of al-Ḥīrah be kept from the treasury; 'Umar's "we have not dealt justly with him if we consumed his youth and then abandon him in his old age"; the stipend for every newborn; the survivors' shares made general; and 'Umar ibn 'Abd al-'Azīz's order of priority for a

surplus, debts from misfortune first. Contributions by capacity, payment by need, no price for the risk, no one glad at the event. The modern state built the same institutions under other names, and they pass the test for the same reason.

Weighed without any scripture, the harms of insurance are the harms of the wager that was wrapped round the pool: the margin paid by all, the enmity at the moment of loss measured in denials and lawsuits, the changed conduct of the insured, the abandonment of the insured when the risk rises, the failed promise, the unreadable contract, the interest in the event, the lost help of kin, and the premium lent at interest while it waits. The benefits are real and they are the benefits of pooling, obtainable from a pool with no better in it.

Pakistan's constitutional date of 1 January 2028 reaches the insurers, and the planned conversion changes the label of the fund and the ownership of the surplus while leaving the seller's chair occupied by the same companies, with the same reinsurers behind them for the transition. The Sehat Card, in which the state bought its citizens' cover from an insurer rather than running a treasury, has shown in audited figures what the difference is: the cover suspended four times when the premium went unpaid, and the sick of the province the stake.

The contribution of the paper is therefore not the conclusion that insurance is gambling, which is old, but the test that shows where the gambler sits, the breadth of its application, the classical alternative that has no gambler in it, and the measure it gives Pakistan's deadline. Three questions, answerable from the contract and the counterparty alone, without entering anyone's intention: what was known, what the seller does, and who is glad when the event comes.

11. Disclaimer

Nota bene: This paper is a scholarly examination and is not a fatwā or a final religious verdict, and it is not financial advice. The analyses offered here are an academic attempt to correlate classical Islamic jurisprudence, the history and economics of risk contracts, and contemporary practice. Insurance and takaful contracts are complex, and their Shari'ah compliance may turn on details not captured above. Readers are cautioned not to judge the validity of any contract they hold, or to cancel or decline any cover, on the strength of this paper, and to consult qualified Shari'ah scholars and licensed advisers who can assess their own circumstances. The test proposed here is a test of arrangements, not of persons; nothing in it imputes bad faith to any insurer, operator, regulator, scholar or policyholder, and the cases and reports cited are cited as published. The opinions expressed are subject to scholarly debate and critique, in the tradition of Islamic scholarship that welcomes consultation (shūrā) and differing juristic views (ikhtilāf). Constructive criticism from experts in Islamic law, insurance, economics and public finance is welcome, so that any gap between form and substance may be bridged by collective effort. Any goodness or accuracy in this work is from Allah, and any mistakes are the author's own.

12. AI Assistance Disclosure

In compliance with the transparency guidelines issued by the Committee on Publication Ethics (COPE, 2024) and adopted by the major scholarly publishers, the author discloses the following use of AI-based tools in the preparation of this manuscript.

Tool used: Claude (developed by Anthropic PBC), through the Claude Code environment.

Purposes for which AI assistance was used: retrieval and extraction of passages from the Qur'an, ḥadīth and classical Arabic texts held in the author's research library, with the Arabic of each quoted passage checked against a clean text; search of the legal, economic, historical and fiqh literature and of the regulators' and auditors' reports, and the assembly of a knowledge base from them; tabulation of the arrangements in Section 5; drafting of prose under the author's direction and review, including the rendering into English of the Arabic passages quoted; checking of ḥadīth numbering against sunnah.com and of quotations against their sources; and the building of the document from the manuscript.

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Contemporary Islamic rulings, standards and regulators

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