

A Critical Analysis of the Concept of Gharar in Islamic Financial Contracts: Different Perspective

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Gharar is one of the most strictly prohibited elements in Islamic financial contracts and transactions. With regards to financial and commercial contracts, *gharar* is treated as excessive risk, uncertainty, and speculation by most Muslim scholars. This paper will critically examine and explore whether this understanding of *gharar* is in line with the Qur'anic teachings. It also tries to examine a new understanding of *gharar* in against misrepresentation and fraud, which is fundamentally different from the conventional interpretation. This paper will try to introduce a new and modernized concept relying on Qur'anic understanding of *gharar* and new understanding of Arabic language contexts.

Introduction

Different definitions of *gharar* are provided by the Muslim scholars. *Gharar* defined as uncertainty means the non-existence of the contract's subject matter (Ali and Ahmad, 2007, p.54). (Al-Qarafi, 1998, p.275) provides a similar definition, and the *Hanafi* and *Shafi'i* doctrines also adopted this view (Al-Saati, 2003, p.6). In following this *gharar* meaning, Ali and Ahmad (2007, p.54) state that *gharar* is "deception, danger, and risk", and misrepresents one of the contract elements, such as price, quantity, and contract performance, to the other party so that they enter the contract under excessive risk (p.303). Interpreting *gharar* as risk or uncertainty established an opinion that minor *gharar* is allowed because it does not seriously affect the contract, which would remain valid. On the other hand, excessive *gharar* is prohibited because it causes conflict and problems between contracting parties. With this perception, it has been stated that *gharar* does not affect gratuitous or

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donation contracts (Al-Dareer, 1997). This paper tries to critically examine different views attempting to directly consult the *Qur'an* and linguistic understanding, as will be demonstrated in the following discussion.

***Gharar*, an unstable and confused concept**

As mentioned above, some of the Muslim scholars consider the contract valid if it involves minor *gharar*, because their concept of *gharar* is restricted to the level of risk or uncertainty. This means that they allow minor risk or uncertainty. It would not be the same situation if *gharar* was considered to mean misrepresentation, which is *haram* (prohibited) (Hayder, 1991, p.191). *Gharar* meaning misrepresentation is not classified into clear categories such as innocent, negligent, or fraudulent, as under English contract law. Islamic law does not deal with minor or excessive *gharar* as fraud or misrepresentation because it is considered to be a “serious moral wrong” (Rayner, 1991, p.206).

Discussing more definitions of *gharar* reveals serious levels of difference and confusion between the scholars. For example, it can be found that (Ayyash 2003, p.13) classifies *gharar* as an ambiguity, which is interpreted by others as *jahalah* (Ghuddah, 1985, p.39), but (Faruqi 2005, p.346) interpreted *jahalah* as ignorance. Al-Sanhuri defined *jahalah* as a lack of knowledge, implying that there is a point of distinction between *jahalah* and *gharar*. He suggested that *gharar* occurs when selling something with unknown existence, whereas *jahalah* occurs when selling something that already exists but with unspecified quantity. In fact, saying that the subject matter of a contract does not exist, as a meaning of *gharar*, would be different from saying that the subject matter does exist but with some uncertainty regarding the other elements of the contract. It is clear that many of the scholars confuse both terms, attributing the same meaning to them and using the words interchangeably (Al-Sanhuri, 1955, p.232), as is mentioned above. The concept of *gharar* and the differences between its definitions has attracted critical opinions with regards to the distinction between *jahalah* and *gharar*.

Saleh (1986, as cited in Hasanuzzaman, 1991, p.122) stated that *gharar* refers to the nature of the contract, but *jahalah* refers to the defective description of the contract. He added that when the contract involves

jahalah, it will be voidable, but if the contract involves *gharar*, it will be void. In the case of *gharar*, all the parties would be affected, but in the case of *jahalah* only one party would be affected. According to this perspective, *gharar* and *jahalah* are clearly not the same, and do not have either the same rules or concepts. This shows that *gharar* is different from *jahalah*. A worthy opinion to note with regards to ignorance suggests that *gharar* would be established when the contracting parties use deception to induce the other party into ignorance (Sarker, na, p.2), but ignorance itself would not be considered as *gharar*. (Obaidullah 2004, p.3) has another discretion related to the *jahalah* implication. He argues that a contract or transaction under Islamic law must be free from *jahalah*, which is considered as misrepresentation. In a different paper, though, (Obaidullah, 2001) suggests that a contract under Islamic law should be free from misrepresentation, which means lack of information disclosure, not *jahalah* (ignorance) as stated in his paper mentioned above. Furthermore, it has been found that Obaidullah considered *gharar* an excessive uncertainty, in line with other traditional interpretations of *gharar*, which shows how different opinions have been adopted by the same author. Obaidullah is one of the clear examples of contradictory interpretations of *gharar*, which calls for the different meanings to be unified and reformulated into one concept and term (Obaidullah, 2001).

Despite this argument, Nordin & Abdul Aziz, Et al, (2014) remarkably, argued that although *gharar* carries wider meaning than *jahalah* but the latter existence in transaction can establish *gharar*. That is to say in spite of the differences between *gharar* and *jahalah* but there is a relation between both terms as a cause and result. Namely if, in specific circumstances, *gharar* exists in the transactions this could be a result of *jahalah*.

***Gharar* and its linguistic origins**

One of the modern Muslim scholars suggests that *gharar* means risk, but entails delusion and deception (Addareer, 1990, p.27). This viewpoint fits with that of this research, and is clarified and supported by the Arabic-English translation, which translates *gharra* as “to mislead, to deceive” (Baalbaki, 2005, p.292). The verb *gharra* is the past tense of the noun *gharar*. As a result, *gharar* is translated as misleading or

deception (Ebrahim and Rahman, 2005, p.274). In general, the jurists define *gharar* in many different ways, resulting in contradictory concepts (El-Gamal, 2001, p.5). (Al-Saati, 2003, p.6). states that the verbal noun of *gharar* is *taghreer*, adding “it means deception or misrepresentation” In fact, this is what is literally found in the *Ottoman Journal of Equity* (Article 164) where *taghreer* is defined as “describing the sold item for the buyer contrary to its real description”

The *Ottoman Journal of Equity* defines *taghreer* as fraud (*khida'a*). Based on this, the defrauder is a misrepresenter (*mugharrir*) and the defrauded person is a misrepresentee (*maghroor*) (Hayder, 1991, p.264) or (*mogharrar bihi*). One of the modern Muslim scholars defines *taghreer* as when “one party deceives the other contractual party using fraudulent means to induce him to enter the contract that he would not enter without using these means” (Aljoufan, 2006).

***Gharar*, different words with the same meaning**

It is worth noting that, conceptually, misrepresentation is parallel to fraud and cheating under the Islamic legal term, and also that the Islamic definition of (*gharar*) is not consistent among either early or contemporary Muslim scholars. Papers produced by the Islamic Research & Training Institute³ reveal contradictory signals given by Muslim scholars' understanding of *gharar* (misrepresentation)⁴ and similar legal terms⁵. In one of the institute's papers, it has been found that the concept of *tadlees* was presented with three different meanings. The first meaning was that of fraud (Ali and Ahmad, 2007, p.53); the second, on the same page of the same paper, interpreted *tadlees* as misrepresentation, with fraud interpreted differently as *ghabn* (p.53); and the third in the paper glossary, translated *tadlees* as cheating (p.304). Finally, contradicting the previous interpretations, the same paper stated that *ghabn* was prohibited under Islamic contracts or transactions because it implied deception and misrepresentation or cheating (p.21, note 2).

³ This institution attracts and employs Muslim scholars from different Islamic and Arabic countries, with backgrounds in a variety of Islamic doctrines.

⁴ Misrepresentation as the meaning of *gharar* is adopted by the author of this paper.

⁵ This organization is considered to be one of the best Islamic institutes, which is interested in improving and developing Islamic banking and finance, in addition to issuing many papers in this area researched by highly qualified academic staff and practitioners.

Still in the same paper, *gharar* is considered to mean deception, danger, or uncertainty (p.303, note 2). As can be seen, each word has different meanings. Obviously, we can come to two conclusions from the discussion above. First, Islamic jurisprudence does not differentiate between fraud, misrepresentation, cheating, or deception. In other words, in schools of Islamic jurisprudence *tadlees*, *gharar*, *ghabn*, and *ghish* are all words expressing the same meaning and connotation. It is worth noting that for some scholars '*taghrir*, *ghush*, *ghabn al-fahish*' and *tadlees* all reflect the meaning of fraud (Adil, Muhamad Et al 2010). This leads to consider that those terms may fall under the meaning of *gharar*. Their relation also can be understood in term of that *gharar* represents the general aspect and others would represent specific meaning. In this case more investigation has to be carried out in order to academically examine and define the relation between *gharar* and the other similar terms.

Second, the concept is understood differently, according to which school a scholar is loyal to. Admittedly, it is difficult to follow all Muslim schools in this regard, as there has been no thorough academic analysis explaining these possible differences. It is worth mentioning, though, that there is no dispute between the Muslim jurists about the importance of the legal position of *gharar*; but disputes do arise with regard to its practical implementation, relying on customary applications, which are different from place to place. It can be noted, for instance, that Imam Malik gave an explicit definition of the sale of *ghārār*, as a transaction depends on luck with uncertain outcome (Razali, 2008, p401). This leads to many controversial practical points (Saleh 1986, as cited in Hasanuzzaman, 1991, p.122), as discussed in this paper. As will be seen later on, discussing *gharar* will explain that the Islamic understanding of *gharar* that is derived from the *Qur'an* is linked to the concept of misrepresentation and similar meanings.

***Gharar*, the Qur'anic meaning**

Considering *gharar* as prohibited (*haram*) conduct from the believers' point of view comes with reference to the danger of fraud and deception, by alerting people who practise *gharar* to stop doing so, as it is against God (Allah). Allah describes those who defraud or deceive as people with diseased hearts, both ethically and behaviourally. Making this

point, the *Qur'an* considers deceit and fraud to be linked to the habit of lying. All the previous conducts and behaviours are described as corruption and people who practise them as corrupters (Qur'an 2:9,10,11). Furthermore, the *Qur'an* encourages people to avoid dealing with delusions (45:35), which means *khida'a*, *gharar*, and *tadlees* (Ba'albaki, 2006, p.259). Tracking the meaning of delusion here as *khida'a* or *tadlees*, indicated as being elements of *gharar* or *taghreer* in the Arabic-Arabic dictionary, *taghreer* is regarded as an action of *gharar* (Manthour, n.d., pp. 3232-3234).

It is noted that the *Qur'an* maintains the same line of argument, teaching the people and Muslims that they must avoid *gharar* or anything related to it, due to its connection with Satan's behaviours (4:120). In Islamic traditions, anything connected to or referring to Satan is not acceptable either religiously or ethically. This can be seen in the same connotation in a different verse (17:64). For more emphasis, the *Qur'an* warned the Prophet Muhammad not to be misrepresented by the non-believers (40:4). The Prophet emphasized on that and confirmed the prohibition of *gharar* in the Hadith (Ibn Majjah, n.d. hadith no. 2195). The Qur'anic teaching continues to encourage people not to rely on *gharar* in their life (57:14,20). For the sake of accuracy, all the verses refer to *gharar* using one of its verbs or nouns and expressions such as *gharrah*, *ghoor*, *yaghorranakah*, *gharrakah*, *gharrakum*. Following the translation from English to Arabic and vice versa, especially in the commercial/financial dictionary, the direct meaning of misrepresentation includes all the aforementioned words or expressions (Faruqi, 2005, p.460). This fits the definition of the verbal noun *gharar* when the *Ottoman Journal of Equity* (Article 164) stated that "*taghreer*: is describing the sold item for the buyer contrary to its real description"

In accordance with the viewpoint of this research, using the most common definitions of *gharar* as risk or uncertainty attracts a lot of argument and discussion among the scholars and jurists. The concept of *gharar* is very clear in the Qur'anic teachings and instructions. Based on that, *gharar* as misrepresentation includes fraud, deception, beguiling, and delusion. As shown earlier, all of these words or terms are found in the *Qur'an* as prohibited (*haram*) behaviours or conducts. It is clear that the *Qur'an* strongly emphasizes and insists that *gharar* and all its related concepts are not acceptable in Islamic law. This is evident because the *Qur'an* considers *gharar* as the badness of the devil, and describes

gharar as being the continuous and practised work of Satan. Based on this analytical view, it can be concluded that neither Muslims in general nor Muslim jurists or scholars in particular would disagree with treating *gharar* as impermissible in Islamic contracts, which fits with all the Qur'anic and Islamic law philosophies.

It is difficult to accept the idea that a certain amount of *gharar* can be permissible, and then move on to discuss how much *gharar* is permissible (Abdelwahab, 2007, p.99). Unfortunately, this discussion has developed without referring to what the *Qur'an* says in this regard, or what professional *Arab* linguists have said in this context. This has led to many contradictions and many controversial points, as mentioned above, and will be explained further later on. The concentration on the teachings of the *Qur'an* gives the reader or the researcher a clear understanding of the Islamic way of life. The first step to a deep understanding of the Qur'anic context is having a strong knowledge of the Arabic language. Based on that, this author finds it strange that most of the authors who have written about Islamic contract law, and realized how important it is for a contract to be free from *gharar*, still define *gharar* as risk or uncertainty, which is usually established in any commercial transaction around the world.

It is worth mentioning here that Islamic financial contracts in general, and *musharakah* and *mudarabah* contracts in particular, are built on risk-sharing (*mukhatarah*) between the contracting partners, relying on profit/loss-sharing principles. In addition, these contracts carry a level of risk (*mukhatarah*) with regard to the project results (see Khan, 1996) which some types of it is permissible (Al-Badani, 2014, p396). This suggests that risk-sharing in *musharakah* and *mudarabah* would not be considered as a meaning of *gharar*, which is prohibited in Islamic contracts, regards both these contracts and any other types as dealing with interest (*riba*) (Rosly, Sanusi and Yasin, 2009, p.3). Most authors who have written about *gharar* describe it as an unacceptable or excessive risk (gambling or *qimar*) undertaken by the contracting parties, where 'the risk of loss and the loss of one means gain for the other (Paldi, 2014, p254). They usually add that avoidance of *gharar* is an essential principle in all Islamic contracts or transactions that depend on Islamic financial or commercial rules. They also consider the importance of prohibiting *gharar* as a type of gambling (Richardson,

2006, p.127). It is strange to have *gharar* considered as gambling, as this concept is directly mentioned in the *Qur'an*, using a completely different term and meaning from that of *gharar*.⁶ Under the sub-topic “permissible *gharar*”, Al-Saati, a contemporary scholar, has quoted Shatibi’s opinion, a traditional Muslim scholar, that the *Hadith* (the Prophet Muhammad’s speech) that prohibited *gharar* was not intended to prohibit all categories or types of *gharar*. Based on this view, Muslim scholars have allowed some kinds of transactions such as selling unseen products still growing in the ground (onions, carrots, and radishes), and they have also permitted the sale of houses that have not yet had the foundations laid. He also argues that the *Hadith* only intended to prohibit *gharar* that led to conflict between the contracting parties, which cannot be tolerated in Islamic law (Al-Saati, 2003, p.10).

Describing *gharar* as deceit, fraud, or misrepresentation in the *Qur'an* gives no option to discuss the permissibility and impermissibility of *gharar*. Therefore, there is no logic in suggesting that some *gharar* is permissible and other *gharar* is not. Prohibiting (*tahreem*) *gharar* is very clear by Qur’anic evidence, which prevents Muslims from making any transaction that involves fraud, deceit, or cheating. A contradiction can also be seen when *gharar* is defined as speculation; an example of “speculation” is when parties have formed their contract on lost goods, referring to the selling of lost commodities (Bakhshi, 2006, p.14), which is not a proper one. This is because, if someone sold lost goods, this is more likely to be *gharar* as a form of misrepresentation, not speculation.

***Gharar*, misrepresentation and fraud**

It is clear that *gharar* is more aligned with the concept of misrepresentation under English contract law, rather than any other similar concepts. Misrepresentation under English common law is considered to be a false statement or representation about fact that is made to induce the other party to enter a contract. This definition has a parallel definition in the context of fraud, which is defined as a false representation of fact, whether this misrepresentation is made intentionally (knowingly), without believing it to be true, or carelessly (Curzon, 2002, p.183). This suggests that fraud or deceit reflects the meaning of *gharar*, as well as cheating. The analytical approach of this

⁶ Further details will be discussed later on in this paper to explain gambling.

paper, using the Arabic-Arabic dictionaries, has found that the verb *gharra* means to misrepresent or to defraud, which puts misrepresentation and fraud in the same category or classification. This falls under the same purpose of the Prophet's Hadith when prohibited the sale of unborn animals and uncaptured birds (An-Nawawi, 1987, p156). As mentioned earlier in this paper, English-Arabic dictionaries translate misrepresentation using the words *khida'a*, *tadlees* (fraud), and *kathib* (lying), and they state that misrepresentation means the releasing of a false statement by the misrepresenter about fact to induce the other party to achieve the misrepresenter's desires (Faruqi, 2005, p.460). This meaning can be translated to mean "misleading" as well (Faruqi, 2005, p.459). It can be seen that the contradictory definitions of *gharar* among Muslim scholars are not based on the Qur'anic verses discussing *gharar*.

Defining *gharar* as risk or uncertainty raises some questions with regards to the applicability of Islamic contracts in non-Islamic courts. These questions arise if the contracting parties decide that the contracts are governed by Islamic law in non-Islamic courts. The problem starts if one of the parties claims against *gharar*, and asks the court to nullify the contract as result of *gharar*, considering it as risk, uncertainty, and speculation. It has been suggested, in an actual case, that the court would face some difficulties in making a decision due to the ambiguity of elements of *gharar*. In addition, the court could conclude that one of the reasons for *gharar* as speculation being prohibited under Islamic law is that only Allah can predict and know the future (Trumbull, 2006, pp.611,636). Accordingly, people cannot deal in risky transactions or trade, as they cannot predict or evaluate the level of risk, and the prohibition of *gharar* has been built to prevent people dealing with any business involving risk. Of course, according to this paper's view, this is not an acceptable reason to prohibit *gharar*, as many types of business, trade, or commerce involve or cannot avoid risk. Applying such an interpretation or understanding of *gharar* would stop a huge number of business transactions, and make them *haram* (prohibited).

The most important point is to establish whether *gharar* means risk and/or uncertainty. In emphasising the viewpoint of this research, there is no objection to recommending that some categories of risk, uncertainty, and speculation should be forbidden under Islamic law. The *Qur'an* mentions and clarifies that clearly, as have all the Islamic

schools, including their jurists or scholars, both early and contemporary. These categories are restricted to the meaning of gambling (*maysir* or *qimar*), which is clearly prohibited by Allah (God), who asks believers to avoid it as causing animosity and hatred between people (5:90,91). This also comes under the same understanding of the Prophet's Hadith which was narrated by Ahmad from Ibn Masoud.⁷ In this Hadith, the Prophet prohibited the purchase of the fish while still in the sea. (Al-Shawkani, ND, p230). This prohibition is linked with satanic behaviour. In other verses, gambling is described as a sinful and harmful activity (1:219). The translation of the word "gambling" from English to Arabic becomes excessive risk or speculation with a high level of uncertainty and with no guaranteed result (Ba'albaki, 2006, p.278).

The previous discussion concerning the concept of gambling and its prohibition gives the clear view that interpreting *gharar* as risk, speculation, and uncertainty does not provide the correct perspective with which to express the meaning of the term. It would be expected that the courts would be confused in interpreting *gharar* as uncertainty or risk, which is difficult to be defined in an absolute sense. This confusion would not arise if the word *gharar* was used as it is in the *Qur'an*, that is, meaning misrepresentation or fraud, which is not acceptable under any legal system.

Gharar "has been translated as 'trading in risk,' or 'risk-taking.' Also used in context of being ignorant about the elements of the transaction, such as existence of the subject matter, deliverability, terms, and timing of payment" (Shah, 2007, p.10). It can be seen that almost every explanation raises some contradictions, because some writers refer to the prohibition of *gharar* as coming from the Prophet Muhammad (Arabi, 1999, p.29), which is correct, as he understood the *Qur'an* in the most proper way, but very few Muslim scholars understand his point with regard to the prohibition of *gharar*. This can be concluded from the Prophet's Hadith as he stated "do not sell what you do not own" as a firm statement to prohibit *gharar*. (An-Nawawi, 1987, p156). Very few of the Muslim scholars refer to this prohibition in the *Qur'an* in completely the wrong way, as some do not mention at all what the *Qur'an* says about *gharar*, while some claim that there is no Qur'anic

⁷ He is one of the closest companions to the Prophet Muhammad and he narrated many of the Hadiths (traditions) stated or exercised by the Prophet.

verses prohibiting *gharar* (Al-Saati, 2003, p.6). Of course, this gives the impression that most of the scholars who have discussed *gharar* did not focus their attention on what the *Qur'an* says about this concept, or they did not understand it properly.

***Gharar*, scholars' debates and controversies**

(Al-Suwailem, 2000) has summarized part of the controversies between the authors in relation to *gharar*, showing how some Muslim jurists are very much involved in causing confusion in this topic. He argues that despite the well-established legal characteristics of *gharar* under Islamic contract law, authors who are interested in Islamic finance find problems or "dilemmas" in the way of defining *gharar* to give specific meaning to this concept. In order to prove this point, he states that Zaki Badawi suggested that a specific meaning for *gharar* is uncertain, adding that *gharar* is not given a definite meaning in the Islamic law literature. This drives Muslim scholars to deal with every case separately, thereby generating different meanings for the term *gharar*. Frank Vogel expressed the same opinion; he argued that Islamic jurisprudence cannot provide a precise concept for *gharar*, which demands deeper study and articulation for the purpose of its definition (Al-Suwailem, 2000, p.61).

It is noted that some authors include the deception element as part of their definition of *gharar* (Islamic Capital Market Task Force, 2004, 7). Some others tread a closer line to the *Qur'an*, and the logical construction of *gharar*, when they include uncertainty as well as deceit as an element of *gharar*, so that the term does not only mean uncertainty (Anon, 2006, p.49). This leads to another result: *gharar* is not uncertainty or risk or ambiguity, but rather, *gharar* by its action, *taghreer*, can induce people into an unknown excessive risk or an excessive uncertainty, thus causing loss and damage to the contracting parties. This was evident when in his Hadith, the Prophet prohibited the sale of Muzabanah (exchanging dates with raisin) as sort of *gharar* (Al-Bukhari, 1987, p839). Uncertainty is not evidently established here but this transaction could be involved with some uncertainty, as well as risk. This also might be sort of a relation between *gharar* as a general term and risk, uncertainty being specific elements of it. The prohibition of this kind of sale would be related directly to any kind of misleading or defrauding the counter values of the articles sold. As can be seen in this

paper, risk itself is not impermissible. Risk is strongly accepted and expected under Islamic law within financial and commercial transactions, for the purpose of motivating people to act productively, thereby adding new value to economic activities. As mentioned earlier in this paper, a *mudarabah* contract is a very clear and desirable example that has an acceptable level of risk associated with it (Al-Suwailem, 2000, p.64).

Based on previous analysis, a similar approach can be seen when some authors interpret *gharar* to mean probable or certain deception (Ebrahim, 2007, p.6). This approach fits with the viewpoint of this paper, partly emphasising that *gharar* is prohibited, not because of risk or uncertainty, but because it contains the meaning of deception. This leads to a further point of note. The interpretation of *gharar* as uncertainty could be understood to mean uncertainty about the existence of deception in the contract. In other words, the prohibition of *gharar* as being probable deception means that *gharar* is considered to be misrepresentation, because misrepresentation and deception have the same concepts in the Islamic-Arabic term. Under Islamic contract law, parties are encouraged to avoid entering a contract if they have doubts about the existence of misrepresentation. To simplify the discussion, understanding the logic of Islamic economics leads one to say that it is impossible to banish all types of risk, as no business or human activity is without risk, including the issue of making a profit. This issue can be associated with the expectation from some contracting parties of disappointing results, as the issues of gain and loss are key elements in commerce. The significant changes in prices of some goods from one day to another are a good example of this (Abdelwahab, 2007, p.97).

It has to be noted that the most direct and clear definition of *gharar* as translated from Arabic to English states that “*gharar* is deceptive misrepresentation and usage of misleading means” (Abdul-Rahman, 2007, p.1). This is what would be found in the *Hasah* sale which was also prohibited by the Prophet’s Hadith as sort of *gharar* (Al-Tirmidhi, ND, p532). In this sale one party throws a stone towards items and the one touched by the stone will be the item sold and the buyer has to accept it in the pre-agreed price. This is more likely to contain uncertainty and some kind of risk when intending to establish a deal or transaction. It is useful to know that one of the reasons for misunderstanding *gharar*, and many other Islamic terms or concepts, is

due to incorrect translation from Arabic to English by authors who write about Islamic legal and financial terms. This issue becomes more serious when this is caused by renowned Muslim scholars who do not understand the Arabic language fluently, which results in altered meanings of concepts from their original and intended purposes (Ebrahim, 2007, p.3).

As a result, a lack of knowledge of the Arabic language and its context has caused clear and serious misunderstandings with regards to the impermissibility of *gharar* in the *Qur'an*. The *Qur'an* deals clearly and directly with the concept of *gharar*, its derivative terms and verbs, and clarifies how important it is to be avoided. Based on this analysis, it is much easier for people to understand and appreciate why *gharar* is absolutely not allowed under Islamic contract law, as one of the most moral and ethical demands of all transactions between people.

It should be remembered that a large part of early trade and commerce between Muslims and other nations was continental trade. The situations and conditions of this trade held risks, which included uncertain results. Therefore, it would not be possible or imaginable that the *Qur'an* and the Prophet would prevent Muslims from practising trade across the desert because it is was risky or uncertain. Otherwise, early Muslims would have had to stop work, because most of their economic and financial system was built on trade. As mentioned earlier, considering *gharar* to mean risk or uncertainty would contradict one of the most famous Islamic contracts (*mudarabah*), which is mentioned in the *Qur'an* as a type of work that involves travel comprising of risk and uncertainty (73:20).

It can be imagined the level of risk that the early Muslim traders experienced at that time, without the modern facilities now available. Some may wonder if all categories or types of risk, speculation, and uncertainty are forbidden under Islamic law, or whether some are allowed. The answer is found in what has already been discussed; issues such as excessive risk, speculation, and uncertainty are dealt with under the concept of gambling (*maysir*), which is the way for some people to make money easily, without any effort, at no risk, and is also the way for others to lose money without working, and through excessive risk. Doing business in this way would contradict the concept of productivity,

which is one of the most important factors to keep an economy healthy. Risk, speculation, and uncertainty are acceptable as they are far away from gambling, which is an extreme level of risk and uncertainty.

The *Ottoman Journal of Equity* organizes the rules of *taghreer* in the context of fraud (*khida'a*) in relation to trade contracts (selling and buying) (Manthour, n.d., p.3211). As explained earlier, *taghreer* is the action of *gharar*, which is misrepresentation. There is another perspective that supports the meaning of *taghreer* as misrepresentation and misrepresentation as fraud (*tadlees*, *khida'a*). This possibility comes under the title of *khiyar al-tadlees* or *khiyar al-taghreer*, as a fraud option where “the disappointed party” would have the right to rescind the contract if they can prove that they entered into that contract on the basis of “deceit or intentional misrepresentation by the other contracting party” (Hasan, 1994, p.59). This supports the idea that *taghreer* (*gharar*), *tadlees*, deceit, and misrepresentation bear the same meaning under Islamic contract law, as demonstrated in this paper.

Conclusion

As has been seen, the Arabic-Arabic translation does not distinguish between misrepresentation and fraud and similar words such as cheating, deceit, lying, and so on. In this context, *gharar* cannot be merely considered as risk or uncertainty, although they are both part of its elements. It should be noted that *gharar* will be applicable when one of the contracting parties tries to change facts, or does not give correct information (or give false information) related to the risk or uncertainty involved, convincing the other party that there is no uncertainty or the level of risk is very low, when in reality it is very high or excessive. Based on that, if a party induced the other to enter into a contract by providing a misleading evaluation, this would be considered *gharar* (misrepresentation, fraud or any parallel term). The legal effects of *gharar* would depend on the facts of the case, and these could make a contract void or voidable. This is because *gharar* is connected to fraud, or at least involved in fraud, which is one of the main reasons behind its prohibition. The reference to fraud here is based on the understanding that the contract involves fraud, involves an attempt to obtain property or money from another without having the legal right to do so (Hasan, 1994, p.41) which is strictly prohibited (*haram*) under Islamic law. This issue requires further research by contemporary Muslim scholars in

order to properly classify the categories of *gharar*, and their legal effects with regards to contracts.

Under Islamic contract rules, *gharar* carries the meaning of misrepresentation, fraud, deceit, and similar terms. This, of course, contradicts most of Islamic jurisprudence and scholars' writings, which deal with *gharar* in a way far from the Qur'anic context. The mission of the jurists or scholars should be to derive and organize rules of *gharar* as misrepresentation, fraud, uncertainty, *jahalah*, *ghabn*, *tadlis* and so on, in order to draw a clear line between *gharar* and its similarities with other terms and introduce a unified understanding to the concept of *gharar*. This is also the case when it comes to redefine the relation between *gharar* as a wide general concept and other terms as specific and elements of *gharar*. The same applies to the English-Arabic translation and vice versa. This is very much needed, in order to bring an end to the confusion and contradictions with and between the non-Arabic speakers who are interested in Islamic contract law. It is also needed urgently, due to the notable emergence of Islamic financial contracts at an international level. A modernized understanding of the concepts underlying contracts is needed, in order to meet contemporary commercial demands while still complying with the Qur'anic teachings.

Gharar attracts a lot of interest and instigates wide-ranging discussions by writers on Islamic financial and commercial contracts. It is noted, however, that most of these writers have not paid enough attention to the general meanings derived from the *Qur'an*. Very few of them, when they did so, did not go directly to the verses that explain *gharar* and its derivative terms. It is also worth noting that those who have written about this subject, did not investigate the practical Arabic meaning of *gharar*, following respected Arabic linguistics and dictionaries. However, scholars and writers have to do so, as this would help to enhance and strengthen the knowledge and understanding of the realistic Islamic approach to Qur'anic teachings. Finally, *gharar* could be comparable to the concept of misrepresentation, fraud, or fraudulent misrepresentation under English contract law, but not limited to it. It can also be understood that *gharar* is a wide meaning that affect the transactions or contracts with uncertainty or risk being part of its elements.

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