

When, in connection with the definition of "trust", Professor Maitland wrote in Equity (44), 'Where judges and text writers fear to tread, professors of law have to rush in', I, for want of any professorial or other standing or relevant qualification, must, by attempting this topic, submit myself to the normal "fools and angels" judgment.

For practical purposes it might be enough for financial advisers and some individuals, to search online for pension providers who offer Sharia compliant pension schemes. Other advisers and individuals might wish to know also something, however little and over-simplified, of the relevant principles of Sharia law.

One starting point is that money has no intrinsic value but is merely a medium of exchange, and therefore making money out of money is forbidden. From this there is a number of prohibitions.

usury The receipt and payment of interest on money lent is forbidden.

investment Investment in the alcohol, gambling, finance, tobacco, weapons and other "vice" sectors of the market is forbidden. Although there is some similarity between Sharia compliant investments and general "ethical" investments they are not the same as each other: an investment prohibited in one might be unexceptional the other.

speculation Contracts in which the ownership of goods depends on the occurrence of a predetermined but uncertain future event is forbidden.

uncertainty or ambiguity Transactions which involve excessive risk are forbidden, because of its propensity to give rise to disputes between the parties.

material finality Transaction such as derivative instruments options and futures, which are not directly linked to a real underlying economic transaction, are prohibited.

fairness etc An objective of transactions should include fairness, justice, equality, transparency, and the pursuit of social harmony.

examples

Some examples of the application of Sharia law to individual Muslim's questions about pensions can be gleaned from published fatwas. A fatwa is not law but is a non-binding legal opinion given by a scholar known as a mufti. The following are some extracts from fatwas issued in reply to individual questions posted on www.islamweb.net

Fatwa 88934 of 1 December 2004

The 401K pension plan (USA) in question is forbidden. 'The participant in such a plan does not know how much he will actually receive at the age of retirement. It could be that he would receive the same amount as he had paid, or more or less than that amount. So this is purely an undefined contract and this is not permissible in Islam. So in this case one should not participate in such a plan if it is optional, but if it is obligatory then it is permissible because of necessity and obligation. Therefore, when one receives the money at retirement he should get rid of the money that exceeds the amount that he had paid into it and pay Zakat only on the amount that he had paid.'

Zakat is a form of alms-giving, which is one of the five pillars of Islam.

fatwa 83252 of 9 September 2001

About insurance against accident or death. 'The insured may die (by accident) after just paying two instalments. As a result the insurer will have to pay what is stipulated in the contract. Similarly, the insured might pay all the instalments and yet never need the services of the insurer. On the other hand, the insurer does not know beforehand what he will have to pay for each insured as he cannot predict the kind of accidents the insured

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might face. Anyway, all this comes under the heading of high-risk dealing which is forbidden in Shariah. The Shariah also forbids all kinds of gambling.'

fatwa 89998 of 22 May 2005

May a retiree accept a pension? 'Pension is permissible if it is a gift from the government or from a cooperative insurance as in these cases it is purely a free gift for all participants, the purpose of which is to achieve equality and help in goodness. However, if the insurance is for compensation as it is the case in commercial insurance, then it is not permissible to participate in it in principle, as the participant in this case is either subjected to win or lose, and this is the gambling that Allaah has forbidden. But if this insurance is obligatory, then he should only take the exact amount that he contributed and should not take any excess money. In the first case mentioned above it is permissible for a person who did not voluntarily enrol in it to take this pension as it is considered a gift.'

an overall view

A very informative fatwa about UK pensions generally, including suggestions to regulators and providers, was issued on 26 December 2008 by the chair of the Al-Qalam Sharia Scholar Panel. An updated summary dated 1 June 2018 is on the page at this link, from which is a link to the original fatwa: <http://alqalam.org.uk/pensions-and-gross-uncertainty-an-overview-3/>.

The 2008 fatwa started by explaining that a contract of employment is a type of "lease of labour", which might be valid, void or defective.

'A valid contract is that which is legal in both its fundamental and ancillary components. A defective contract is that which is fundamentally legally sound but that has a forbidden characteristic, such as the absence of sufficient clarity, or an incongruous condition. A void contract is that which is illegal in its fundamental and ancillary characteristics, such as that which is contracted for a purpose that does not have legal sanction ...'

'One of the conditions for a valid contract is that the remuneration for the labour must be known property of value. ... Thus, an employment contract must clearly specify the amount of remuneration.'

'Most commutative contracts [which include employment contracts] involve some element of uncertainty; however, uncertainty *per se* is not prohibited. Rather, it is only excessive uncertainty characterised by the propensity to give rise to dispute that renders a commutative contract defective. Thus, minor uncertainty that is tolerated according to market norm is allowable.'

After other explanations and examples, the fatwa concluded that 'the entire employment contract [under which a final salary pension is given] is a defective contract and must necessarily be vitiated', because of uncertainty 'as the amount of return by way of pension payments is determined only by how long the policy holder lives after retirement.' Whilst 'The money purchase scheme ... does not suffer the element of gross uncertainty inherent in the final salary scheme ... the concept of "annuity" wherein a regular income is purchased for life in return for the pension fund is not compatible with *Shari'ah* for obvious reasons.'

However the conclusion about salary related pensions expressed in the 2008 fatwa does not necessarily apply now, as shown by the answer to a question 'Is the new NHS pension scheme shariah compliant?' asked on 25 April 2016. The answer was this.

'The Career Average Revalued Earnings (CARE) pension scheme, a defined income scheme, is permissible provided the job role for which the pension is earned is permissible. The previous position of the Al-Qalam was that defined income schemes were not permissible on account of the uncertainty they entailed. However, the position of the Al-Qalam panel has now changed with regards to such pensions. Further to discussions with one of my esteemed teachers, it is now the opinion of the Al-Qalam Panel that defined income pensions may be tolerated and deemed permissible as, despite the gross uncertainty they entail, the uncertainty does not lead to inordinate dispute between the pension holder and pension provider.'

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