RECEIVING BOTH TAKAFUL COMPENSATION AND DAMAGES FOR PERSONAL INJURY IN TORT LITIGATION: AN ENGAGEMENT TO UNJUST ENRICHMENT?

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ABSTRACT

The rule against unjust enrichment has always been the governing rule for the Courts in awarding damages in any civil litigation, especially those claims made under the law of tort. The law of tort provides protection for members of society against harm by another members' wrongful or negligent act. It forms a mechanism by which an aggrieved or injured party may claim damages from the tortfeasor for the losses he suffered. This mechanism works through the compensation the Court orders the tortfeasor to pay to the injured party in the form of an award which is to restore the parties to their original position had the tort not occurred. This is applicable to every aggrieved party provided they have *locus standi* to commence the action. From a juristic point of view, the law of tort can be seen to offer sufficient protection for parties to reclaim whatever losses they had suffered and at the same time protect the tortfeasor from overly compensating the defendant and thus unfairly enriching him. Contention arises on this issue when the aggrieved party to whom damages had been awarded by the Courts, receive further compensation from a Takaful

policy. As such, this paper is to find justifications for the Takaful compensation and to address the question of whether such amounts to unjust enrichment of the injured party.

Introduction

Conceptually, Takaful (Islamic insurance) is a financial transaction of a mutual cooperation between two parties towards providing a financial security for one of them against an unexpected material risk.[1]

In a Takaful transaction, the party called the "participant" *(*insured*)*, pays a particular amount of money known as "contribution" (premium) to another, who is known as the "Takaful operator" (insurer) with a mutual agreement that, the operator is under a legal responsibility to provide the participant with financial security against unexpected loss or damage caused to the subject matter of the policy should such loss or damage occur within the agreed period of the policy.

Such a mutual co-operation between both parties is certainly in line with the *Qur'anic* doctrine of mutual co-operation as *Allah (swt)* commanded to the effect:

".....and co-operate you one another in righteousness and piety....."[2]

Under the Islamic teachings, the commandment to practice mutual co-operation is not an absolute. There is in other words, a limitation to it, as *Allah (swt)* has further prohibited mankind from co-operating among them in any manner, which involves sinful elements. *Allah (swt)* again says to the effect:

"..... and do not co-operate in sin and rancor....."[3]

Based on the above verse of the holy *Qur'an*, it is opined that the practice of Takaful contract and business will only become in harmony with the Islamic concept of mutual co-operation should the transaction be operated based on the principles of *al-Mudarabah*, which is permissible in the eyes of *Allah (swt)*, and is carried out based on the noble and sincere intention to ensure the participant is with financial security against unexpected future material risk. Hence, in order for a Takaful transaction to become valid and enforceable, it should be free from unlawful elements, like usury, fraud, and so on.[4]

In Malaysia, the common practice when an accident happens and results in personal injury, the "default recourse" of the parties (especially the injured party) is to sue the negligent party under the law of tort in order to claim for compensation.

This civil action of initiating claims under the law of tort involves court processes, and it is trite knowledge that court processes involve cost and it is time consuming whilst the matters aforesaid could be said to be 'urgent' and requires immediate measures to mitigate the losses (pre-trial medical treatment especially). As such, modern society nowadays have opted to purchase insurance policies and some resort to participate in Takaful schemes which is Shariah compliant in nature.

Nonetheless, the problem which arises in this study is whether receiving the compensation from Takaful on top of receiving compensatory damages in the claim under the law of tort is contrary to the rule against

unjust enrichment. This paper is to seek justification from the studies on various principles on how these two compensations can be made without breaching the rule against unjust enrichment.

Concept and Principle Applied in Takaful Compensation

General Principles In Takaful

Takaful is the Islamic counterpart of conventional insurance, and exists in both Family (or "Life") and General forms. Takāful is derived from an Arabic word that means "joint guarantee", whereby a group of participants agree among themselves to support one another jointly for the losses arising from specified risks.[5]

Generally, the scope of a Takaful policy is very wide and flexible. Such wide scope and flexibility are just for the purpose of, *inter alia*, ensuring a smooth life in society which is of course in line with the following sanction:

"..... Our Lord, give us happiness in this world and happiness in the hereafter....."[6]

In the management of Takaful contribution, Takaful operators divide the premium into two separate accounts, namely the participant's account and tabarru' account.[7] The participant's account belongs solely to the participant and the funds in this account will be put into investment by the Takaful operator so as to generate profits.

In a Takaful arrangement, each participant contributes a sum of money as a Tabarru' commitment into a common fund that will be used

mutually to assist the members against a specified type of loss or damage. The use of Tabarru' commitment as the basis of the contributions (premium payments) mitigates the element of Gharar (lack of certainty in a contract, which may vitiate the contract) in Takaful. In a Takaful scheme, it becomes clear that a Takaful participant becomes entitled to the benefit of the Takaful fund, because the other Takaful participants willingly agree, under the principle of mutual assistance, to donate the amount of his legitimate claim to him to relieve him from a loss suffered.

The utilisation of tabarru' contract makes the transaction permissible and valid according to Shariah law because when a contract is charity based and not exchange-based, the rule against uncertainty (*gharar*) cannot be strictly applied and the existence of gharar in this case can be tolerated.[8]

The underwriting in a Takaful is thus undertaken on a mutual basis, similar in some respects to conventional mutual insurance. A typical Takaful undertaking consists of a two-tier structure that is a hybrid of a mutual and a commercial form of company - which is the Takaful operator (TO) - although in principle it could be a pure mutual structure.

The concept of Ta'awun, or mutual assistance, is another core principle to the operation of Takaful, with participants agreeing to compensate each other mutually for the losses arising from specified risks. As Takaful has often been perceived as a form of cooperative or mutual insurance, the initial objective is not to gain profit but to assist one another mutually, under the principle of Ta'awun.[9] Even the word "Takaful" itself, in Arabic, means "solidarity". It is clearly stated in the Qur'an,

".....help one another in goodness and piety, and do not help one another in sin and aggression"[10]

The significance of Tabarru' and Ta'awun in a Takaful undertaking is tested in modern Takaful models when Takāful as a financial product is widely offered and operated through a proprietary business entity set up by shareholders.

In a Takaful undertaking, the underwriting needs to conform to the principle of mutuality - that is, the underwriting fund belongs to the Takaful participants, who share the risk, and not to the shareholders. Correspondingly, the shareholders do not take on any underwriting risk. It is the management of the underwriting, investment and administration that are performed by the TO as Mudharib or Wakil, or both.

Specific Principles Governing Compensation in Takaful

Principles of Contract ('Aqd)

An insurance policy binds the parties unilaterally by an offer and an acceptance upon reliance on the principles of contract. The fundamentals required in an insurance policy are the parties to the contract, legal capacities of the parties, offer and acceptance, consideration subject matter, insurable interest, and *Uberrimei fidei*, most of which are available in general practices of contract. For example, a contract is a promise by an offer and an acceptance and must be fulfilled as Allah (SWT) has commanded to the effect:

"....O ye who believe! Fulfill your agreement"[11]

Principle of Majority Age to be in legal capacity to enter into contract of Takaful

In the case of legal capacity, for the parties to the contract of Takaful the age of the parties shall be 18 and above to have a legal capacity.[12] The requirement of age of the parties in an insurance policy is the same as required in general practices of contract. Hence, the above principles, and other relevant principles relating to contract are basically applied in the formation of an insurance contract.

Principles of Liability

An insurance policy covers losses arising from the death, incident, disaster and other losses to the human life, property or business. The insurer (Takaful Operator) undertakes in the policy to compensate against the losses to the agreed subject matter.

Such undertaking is considered as vicarious liability. For instance, in the case of *'Aqila'* practiced in the ancient Arab tribes approved by the Holy Prophet (SAW) that, if a person was killed by another from a different tribe either mistakenly or negligently, this would bring a vicarious liability to the entire inhabitants on behalf of the killer from their own tribe to pay blood money to the heirs of the slain.[13]

Moreover, the rights and obligations in an insurance policy mainly arise from the law of contract and tort. For example, in a case of an accident involving a motorbike, the insurer (insurance company) is liable on behalf of the person who causes that accident (i.e. the insured) to pay

compensation to the victim. Here, the insurer is bound by the terms stipulated between the insurer and the insured to pay that compensation.

Principles of Uberrimae Fidei

In an insurance contract for the enforcement of the policy, the parties involved in it should have good faith. Therefore, non-disclosure of material facts, involvement of a fraudulent act, misrepresentation or false statement are all the elements which could invalidate a policy of insurance. Allah (SWT) says to the effect:

> *"..... Do not misappropriate your property among yourselves in vanities but let there be amongst you traffic and trade by mutual good will....."*[14]

Principles of Al-Wakala (Agencies)

The appointment of the agent by the insurer and the broker by the insured are of utmost importance. In fact such appointments had been widely practised for the purpose of making the transaction and dealings between the insurer and the insured more effective. The governing principles of agents and broker however, are laid down in the *Mejelle* as follows:

> *"..... Is for someone to put business of his one another and to make him stand in his own place in respect of their business."*[15]

Principle of Daman (Guarantee)

In an insurance policy the insurer undertakes to guarantee a material protection for the insured against unexpected future loss, damage or risk.

The idea of such guarantee is justified by the general principles of *Daman* or guarantee.[16]

Principle of' Al-Mudharabah and Al-Musharakah

The operation of an insurance policy under the *Shari'ah* discipline is in fact, based on the principle of *'al-Mudharabah'* financing technique, which is an alternative to the interest based technique.[17]

In this technique, one person provides the capital while the other party contributes his own business skills in a joint-venture in which both parties mutually agree to share the profits accordingly.[18]

However, an insurance policy is a transaction wherein both parties agree that the insured pays regular premiums and the insurer will invest the cumulated premiums to a lawful business in which both the insured and the insurer will share the profits in an agreed portion.

At the same time, the insurer also undertakes to provide for the insured a compensation (in consideration of the paid premiums) against unexpected future loss occurring on the subject matter. That is how the principle of *al-Mudharabah* financing technique works in an insurance policy. Meanwhile, an insurance policy also operates on the basis of the principle of *al-Musharakah* as both the insurer and the insured are partners in the policy run by the company.[19]

Principles of Rights and Obligations

An insurance policy is based on the principles of rights and obligations arising from humanity and nature. For instance, it is logical and

natural for every person in the society to feel obliged to provide material security and protection as a right for themselves, their property, family, for the poor and helpless, widows, children against an unexpected peril and danger. Such natural obligations and rights could well be justified by the following tradition of the Holy Prophet (SAW).

He (SAW) said to the effect:

> *"..... Narrated by Saad bin Abi Waqqas (R)... the Holy Prophet (SAW) said ... it is better for you to leave your offspring wealth than to leave them poor asking others for help...."*[20]

The Holy Prophet (SAW) had also emphasized on the importance of providing a material security for widows and poor dependents in the following Tradition:

> *"Narrated by Safwan bin Salim (R), the Holy Prophet (SAW) said: The one who looks after, works for a widow and for a poor person, is like a warrior fighting for Allah's cause or like a person who fasts during the day and prays over the night...."*

Principles of Mutual Co-operation

In a policy both the insurer and the insured mutually agree to a lawful co-operation, in which the insured provides capital (through the payments of the premiums) to the insurer (insurance company), enabling the insurer to invest the premiums in a lawful business (based on *al-Mudharabah*) while the insurer, in return for the payment of the premiums mutually agrees to compensate the insured in the event of the occurrence of an

unexpected loss or damage or risk on the subject matter. Such mutual co-operation among the parties in an insurance policy has been clearly justified by the Divine principle of mutual co-operation, solidarity and brotherhood.[21]

The Rule Against Unjust Enrichment in Takaful

In spite of the wider scope and flexibility of the Takaful policy, there are certain limitations set by the *Shari'ah* in order to purify the transactions. For instance, Allah (SWT) prohibited any kind of accumulation of profits and wealth by way of unjust enrichment. He commanded to the effect:

> *"..... do not eat up your property among yourselves in vanities, but there be amongst traffic and business by mutual goodwill....."*[22]

A contract of Takaful should not involve a single element of *'Riba'* in its investment activities or any other activities organised by the Takaful operator. This is because besides it being totally forbidden in Islam, it *inter alia*, creates a sense of selfishness, miserliness, greed, and malevolence at the individual level and hence the institution of *'Riba'* could lead to a miserable, unstable society.[23] Allah (SWT) warns the believers against involving *'Riba'* in their transactions:

> "*...O ye who believe! Do not involve with usury, double and multiple.....*"[24]

Therefore, it is submitted that Takaful transactions operate against unjust enrichment where others would be unfairly deprived. The principle against unjust enrichment can be seen from the interpretation of its

practical aspect in which Islam already crystalizes such rules in its substance while enforcement gives effect to deter unjust enrichment.

The Concept and Principle of Compensation Under the Law of Tort

General Principles in Assessing Damages

When ascertaining damages that are awarded for personal injuries and death under the law of tort in Malaysia, the law is mainly statute based. Much case law has nevertheless developed locally based on these statutes as well as in cases from foreign jurisdictions where it is allowed and appropriate. A study of damages which is the compensation to the injured party in this country will therefore involve applications of statutory provisions as well the appraisal of case law, both local and foreign. The main statute concerned for compensation made via damages under tort is the Civil Law Act 1956 and the Civil Law (Amendment) Act 1984.

In practice, when the Court relies on foreign authorities it should take judicial notice of the currency disparity, a commensurate increase in quantum must invariably be given.[25] Caution must be applied however, when relying on cases as authorities as they may stand for principles on one hand and on the other for the quantum that was awarded. Although the principles may be easily relied upon or incorporated, when appropriate, heavy reliance cannot be placed in relation to the quantum of damages, as these change with time and circumstances, both economical and geographical.

The general objective of damages awarded to the injured party is to compensate him for the losses he had suffered due to the personal injuries

inflicted or caused by the negligent or wrongful act of the defendant. This was aptly applied by *Syed Agil Barakbah FJ* in the case of *Ong Ah Long v. Dr S. Underwood*[26] when his lordship said that:

> *"…..it must be borne in mind that damages for personal injuries are not punitive and still less a reward. They are simply compensation that will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so as far as money can compensate….."*

In line with the objective therefore, certain rules have developed both at common law and through statutory intervention for the purpose of assessing damages in personal injuries cases that would result in a fair and appropriate award.

It is of utmost importance to remember that the purpose of damages is to try so far as humanly possible to put the victim back to the position he would have been in but for the accident. The damages awarded by the Courts must be fair, adequate, and not excessive as per *Raja Azlan Shah CJ* in the case of *Yang Salbiah & Anor v. Jamil Bin Harun*.[27]

Classification of Damages for Personal Injuries

Damages that are claimable by a particular plaintiff can be classified as special damages and general damages. It must be noted that so long as the plaintiff is able to prove that he has suffered losses, he will be able to claim both special as well as general damages. *Mohamed Azmi J* in delivering the judgment of the court in the case of *Sam Wun Hoong v. Kader Ibramshah* said that:

> "In an action for personal injuries, there are two classes of damages which have to be considered - special damages which has to be specially pleaded and general damages which need not be specifically pleaded. In both cases of damages, the burden of proof based on a balance of probabilities in the evidence, lies on the plaintiff…"

Special Damages

Special damages represent the plaintiff's actual pecuniary loss between the date of the accident and the date of award or settlement. The nature of special damages was explained by Syed Agil Barakbah FJ in the *Ong Ah Long v. Dr S. Underwood,*[28] where his Lordship held that:

> *"It is a well established principle that special damages in contrast to general damages, have to be specifically pleaded and strictly proved. They are recoverable only where they can be included in the proper measure of damages and are not too remote… that in our view is the cardinal principle adopted by all courts both in England and this country… the reason that special damages have to be specifically pleaded is to comply with its object which is to crystalize the issue and to enable both parties to prepare for trial… the purpose is to put the defendant on their guard and tell them what they have to meet when the case comes to trial."*

Reference can also be made to the case of *Sam Wun Hoong v. Kader Ibramshah* where *Mohamed Azmi J* described special damages as being:-

".....out of pocket expenses, such as hospital bills and actual loss of earnings during period of total incapacity, and is generally capable of substantially exact calculation..."

Items Frequently Claimed as Special Damages

1. Personal effects[29]
2. Pre-trial medical expenses[30]
3. Future medical treatment and expenses[31]
4. Traditional treatment[32]
5. Pre-trial cost of care[33]
6. Cost of substitute for the plaintiff[34]
7. Other miscellaneous expenses[35]

General Damages

General damages represent that loss to the plaintiff that cannot be precisely quantified. They are therefore awarded for all the plaintiffs' non-pecuniary damage or loss, whether pre-trial or post-trial and also for the pecuniary loss which the plaintiff will continue to suffer after the date of the trial.

The latter category of loss, which is compensable by an award of general damages, is often referred to as the plaintiff's future or post-trial pecuniary losses.

Reconciling Principles in Compensation Under Takaful and Damages Under Tort Law

Substantively, it should be noted that Takaful compensation arises from the "contract" between the participant and the Takaful operator. The contract that is based on the abovementioned principles compensate the "victim" or the injured party *inter alia* based on the principle of indemnity.

Here, the question of unjust enrichment is most important because one of the guidelines that the Takaful operator is to have regard to is to ensure that the injured party is not over compensated. This is in line with the rule against unjust enrichment which has been practiced by the judges in awarding damages under a tortious claim, that is; the parties are to be compensated not in a punitive sense based on the "party at fault", but to restore the injured parties to the position had the accident never occurred. On this premise, reference is made to the judgment of *Lord Scarman* where his Lordship explained:-

> *"the principle of law is that compensation should as nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong".* [36]

Therefore, the principles or the basis of how each compensation (Takaful compensation and compensatory damages under tort) is made are by very different applications, reasoning and methods, however the objective to avoid unjust enrichment are both upheld together. Even though the winning party in the litigation of tort cases, and for this purpose; personal injury cases, is awarded with a sufficient amount of damages to

restore him to his original position had the accident not occurred, one should consider that before the award is pronounced by the Court, the injured party has to dig in his own pocket to cover all expenses pending the decision of the Court on that matter. Thus, it gives rise to the urgency of "needing money" and thus the Takaful compensation plays its role to pay the necessary cost in a very emergency situation. This is the unavoidable situation faced by the injured parties in waiting for justice to be served, and in this situation, Takaful compensation has filled the gap which tort law did not cover. Therefore, Takaful compensation is not contradictory to the role of tort law in restoring parties to their original position, complementing the lacunae which the operation of laws could not provide for based on the rigid legal framework in which substantial time is taken for the litigation process to be completed.

It should be noted that whatever the Takaful operator compensated or compensates the injured party, the court should not deduct from the overall damages pursuant to S. 28A(1) of Civil Law Act 1956[37] as amended which states:-

> *"In assessing damages recoverable in respect of personal injury which does not result in death, there shall not be taken into account:*
>
> *(a) any sum paid or payable in respect of personal injury under* ***any contract of assurance*** *or insurance, whether made before or after the coming into force of this Act;*
>
> *(b) any pension or gratuity, which has been or will or may be paid as a result of the personal injury; or*

(c) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever in respect of the personal injury"

The application of this statute can be seen in the case of *Ward v. MAS*[38] where the plaintiff's damages for head injury and consequential loss of earnings was assessed at RM310,250.00. He had also received RM300,000.00 from a contract of assurance under a general accident policy taken out by the defendant for the benefit of the plaintiff and his co-employees under the terms of their contract of service. The Supreme Court of Malaysia held that the insurance compensation which is a contractual benefit analogous to a lump sum pension or gratuity, was not deductible both under the common law and S. 28A (1)(a) of the Civil Law Act 1956.

The presiding judge of the case, *Mohamed Azmi SCJ* (as he then was) held:-

"To put the issue of deductability beyond doubt in the present appeal, our Parliament has fortunately for the appellant, introduced S. 28A (1)(a) of the Civil Law Act 1956…the plain meaning of the words used in that section should be adopted for the purpose of interpretation. Adopting the strict rule of interpretation our Parliament in its wisdom had made it crystal clear that any sum payable in respect of personal injury which does not result in death "under any contract of assurance or insurance" shall not be taken into account. By providing no exception, the effect would be to eliminate altogether deductibility even in border line situations although the injured person has not directly contributed to the insurance scheme."

From the ratio of the case, it is "crystal clear" that in Malaysia, in the process of awarding damages under a civil claim, it shall not take into account the entitlement of the injured party to the deduction of damages awarded. Therefore, the compensation of insurance or contract assurance (which applications extends to Takaful), is indirectly recognized to be "lawful" and "legitimate" so even the Court shall not question such entitlement. Parliament in introducing the amended s. 28A, recognizes the lawfulness of payments under a contract of assurance or insurance and that the payment does not at all overlap with the award made by the Court in civil litigation especially under tort. It gives regard that the compensatory nature of insurance as well as Takaful are based of a different nature which the Court should not take into consideration, what more to deduct such amount from the total damages awarded to the parties.

Whilst a claim under tort is pursuant to "fault-based" liability wherein the compensating party is the party who caused the damage, in Takaful, the compensation is made by the Takaful operator on the principle of contribution in which the money from the Tabarru' account is used to compensate the victim. Under Takaful, it is very different from the concept applied in tort because the participants in signing the contracts in Takaful agreed to assist each other by contributions they make called "premium" in conventional insurance. Nonetheless, the agreement is between the participants and Takaful operator in which the participants agree to their contribution being used to assist the other participants who are in need in darurah circumstances. The Takaful operator also have their guidelines in compensating the victims and to say that such compensation may amount to unjust enrichment is rather misleading as both the compensation in tort

and under Takaful uphold the rule against over compensating parties and thus both are against unjust enrichment!

The differences between Takaful and tort are the basis of how the compensation is made and the rationale and principles behind that. It should be noted that whilst a tortious action is available to everyone who has been injured by the negligence of another party, provided they have *locus standi* in the eyes of the law, Takaful compensation is not available to everyone involved in the accident. Only those who have participated in the scheme are entitled to the compensation and such compensation is not to be made applicable as a blanket rule, since those who participate are actually engaged in various contracts under Takaful. *Ipso facto*, the obligation of the Takaful operator to compensate the unfortunate participants who are involved in the accident and suffer personal injury arises based on the contractual obligation. From a contractual point of view, the contributions they had made forms the consideration of the contract which, if the participants fulfill the criteria or terms which they had agreed to, then only are they entitled to the benefits under the covenant of the Takaful operator to compensate them accordingly. In tort, no such consideration is needed. As long as the injured party can identify the negligent party, a claim against them can be made.

Further, the rationale that Takaful compensation, which is considered "benevolence" of the other participants of that Tabarru' contribution, is not conflicting with the Court's award made under tort was explained by *Lord Reid* in the case of *Perry v. Clever*[39] where his Lordship stated:-

> *"It would be revolting to the ordinary man's sense of justice, and therefore contrary to public policy, that the sufferer should have his damages reduced so that he would gain nothing from the benevolence of his friends or relations or of the public at large, and that the only gainer would be the wrongdoer."*

From this point of view, it could be stated even the law of tort recognizes that Takaful compensation is not overly compensating the injured parties. It is an additional benefit that that plaintiff may enjoy from the contribution he had made earlier to protect his own interest and the benevolence of others (in Takaful context, the fellow contributors). This notion is in line with the Tabarru concept that forms the substratum of the Takaful product.

Conclusion

The reformulation of principle under Takaful compensation and damages under tort law which does restore the injured parties to their original position should be revised in order to determine whether it is conflicting with each other or indeed it is complementing each other.

From the careful scrutiny of various principles laid down under Takaful compensation as well as the principle in awarding damages under tort, it can be seen that each of them do not to cross over each other's role. For example, *s. 28A(1) of the Civil Law Act 1956* has made it clear that the Court shall not take into consideration any payment made under Takaful, in which it could be interpreted that Parliament intended the law of tort to give recognition to the compensation made under Takaful and other

assurance contracts which is to say each of them are made on different grounds, reasoning, principles and methodology.

In a legal sense, these two compensations fall under different areas of substantive law where one follows the contractual obligations which govern the law of contracts whilst the other is within the realm of the law of tort. It is different substantive law altogether in which any compensation made within the 'compartmental sets of law" are legitimate and do not contradict each other.

The results of the studies on the principles in these two types of compensation reveals that both uphold the principle not to over compensate the injured parties. Thus the problem question centered in this paper is *ipso facto* answered in the negative. Therefore, receiving both Takaful compensation together with the damages awarded by the Court in a claim made under tort does not amount to engagement to unjust enrichment.

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Endnotes:

[1] Prof. Dr. Mohd. Ma'sum Billah in "*Development & Application of Islamic Insurance (Takaful)"*

[2] *Al-Qur'an*, 5:3.

[3] Al Quran. Surah al-Maidah 2

[4] Prof. Dr. Mohd. Ma'sum Billah in "*Life Insurance? An Islamic View"*

[5] Islamic Financial Services Board - *Guiding Principles On Governance For Takāful (Islamic Insurance) Undertakings*

[6] *Al-Quran*, at 2:201.

[7] Engku Rabiah & P.Odierno, 2008

[8] Saiful & Wan Marhaini, 2003, Engku Rabiah & P.Odierno, 2008

[9] Islamic Financial Services Board - *Guiding Principles On Governance For Takāful (Islamic Insurance) Undertakings*

[10] Surah Al Maidah (verse 2)

[11] *Al-Quran*, at 5:1.

[12] Islamic Financial Services Act 2013

[13] Uddin M. Musleh, *Concept of Civil Liability in Islam and the Law of Torts*

[14] *Al-Quran*, at 4:29

[15] *Mejelle al-Ahkam al-Adliya* (English Translated)

[16] I. Doi, Abdur Rahman

[17] Shafi, Mawlana Mufti Muhammad

[18] Niazi Liaqat Ali Khan, *Islamic Law of Contract*

[19] *Mudharabah* in Niazi *Islamic Law of Contract*

[20] *Sahih al-Bukhari*

[21] Islamic Financial Services Act 2013

[22] *Al-Quran*, at 4:29.

[23] Shamsuddin, Haji Azlan Khalili Hj,.*Banking and Public Finance in Islam*, Dewan Pustaka Fajar, Kuala Lumpur, 1988

[24] *Al-Quran*, at 3:130.

[25] Abdul Malik Ishak J, in the case of *Chu Kim Sing & Another v. Abdul Razak Amin* [1999] 4 CLJ 448

[26] [1983] 2 MLJ 324

[27] [1981] 1 MLJ 292

[28] [1983] 2 MLJ 324

[29] *Parvathy & others v. Liew Yoke Khoon* [1981] 1 MLJ 295, *Zainab Ahmad v. Keretapi Tanah Melayu* [2000] 2 CLJ 123

[30] *Rajaletchumy & Another v. Angela Son Oon Lay* [1971] 1 MLJ 129

[31] *Khoo Ih Chu v. Jeremy Chong Hoe Siong* [1990] 1 MLJ 1

[32] *Seah Yit Chen v. Singapore Bus Service* [1990] 3 MLJ 144

[33] *Liong Thoo v. Sawiyah & Others* [1982] 1 MLJ 286

[34] *Raja Zam Zam v. Vaithiyanathan* [1965] 2 MLJ 252

[35] *Kasrini bin Kasmani v. The Official Administrator & Anor* [1991] 3 CLJ 2498; *Thrimmalai & Anor v. Mohamed Masry bin Tukimin* [1987] 1 MLJ 153; *Dr. Yussof bin Hj Mansur v. Changkat Jering Sdn Bhd & Anor* [1997] 5 MLJ 530

[36] *Lim v. Camden & Islington Area Health Authority* [1980] AC 174 and 187

[37] Civil Law Act 1956

[38] [1991] 1 CLJ Rep 117

[39] [1970] AC 1