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# **The Reality of and a Ruling on Student loans in the United States of America**

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**A paper submitted to the 6<sup>th</sup> annual conference of The Assembly of Muslim Jurists of America  
(AMJA) held in Montreal, Canada, October 2009**

**Published in the Journal of Faculty of Languages and Translation- Al-Azhar University, 48th  
issue, July 2010**



## Introduction

All perfect praise be to Allah, Lord of the worlds, and peace and blessings of Allah be upon our Prophet Muhammad, his family, and all his Companions.

As the signs of an Islamic Awakening increase among the Muslim community living in the United States, questions are raised about rulings on student loans obtained for the purpose of completing university studies in the States. On the one hand, high tuition fees generally make such loans a necessity, even though a majority of them are Riba-based. On the other hand, all wise people agree on the need for a university education, particularly for those living in a country, like the United States, which occupies the first position in scientific and industrial advancement.

On the light of the aforesaid, questions are initially raised about the status of these loans in general, and secondly requesting a ruling in the case that there is no other alternative and the student's graduation is contingent on obtaining them. Further, if a fatwa permitting these loans was given, would they be unconditionally permissible even for postgraduate students? Or would the ruling apply only to a first degree, which is the essential one? All these questions and others led AMJA (Assembly of the Muslim Jurists of America) to pay special attention to this issue, as it is one of the new incidents of Fiqh affecting thousands of Muslims living outside Muslim jurisdictions. This paper is a modest attempt to shed light on the reality of these loans in the USA and explain the rulings of Islamic Sharee'ah on the topic. Allah is the Cherisher of Success and guides to the straight path! By: Dr. Main Khalid Al-Qudah

Houston – USA

27/9/2009



## Chapter One

### Statistics and data on the new situation

#### **General statistics:**

Statistics vary regarding the number of Muslims living in the US<sup>1</sup>, and these are estimates more than they are statistics issued by official authorities. Most such estimates show that the number of Muslims ranges from 6 to 7 million, with a 6% increase every year. We expect the number will reach 16 million Muslims by 2014 – Allah willing. 65% of the total Muslim population are under forty years, whereas 1.5 million at least are over eighteen. 50% of the Muslims in the USA finished their university education<sup>2</sup>. Other resources say that Muslim university graduates constitute 67% of the Muslim population, but did not specify whether these graduates received their education in the USA or from other countries. The above numbers, despite their simplicity, indicate that the segment of Muslims targeted by student loans topic reaches a minimum of one million individuals – approximately one third of the over-eighteen contingent.

If we included all Muslims under the age of forty (assuming they wished to continue their education and obtain higher degrees), the number would reach 4,000,000 at least. Based on the same calculations, there will be at least 10,000,000 Muslims interested in a university education by 2014. This sufficiently proves that university education concerns a wide sector and large number of Muslims, not a rare or individual case which needs an individual fatwa.

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<sup>1</sup> See some articles on the Internet, such as:

[http://www.adherents.com/largecom/com\\_islam\\_usa.html](http://www.adherents.com/largecom/com_islam_usa.html)

<http://www.islamicinformationcenter.org/interfaith-center/interfaith-center/census-statistics-for-muslims-in-america.html>

<sup>2</sup> These numbers are taken from a study titled “Muslim Americans, Middle class and mostly mainstream”, published on 22/5/2007 and prepared by the Pew Research Center. A copy may be downloaded from the following link:

<http://pewresearch.org/pubs/483/muslim-americans>



## **Second: Demand for student loans**

As for demand for student loans by university and college students in the US in general, the following numbers<sup>3</sup> give a clear picture of their interest in obtaining foreign financial support to continue their studies:

- 1- In 2004, 62.4% of graduates from public universities had student loans.
- 2- During the past decade, the average debt of the graduates reached \$19,200, a 108% increase from the previous decade, where the graduate's average debt did not exceed \$9,250.
- 3- Students' guardians often obtained loans to afford their children's education. 15.3% of guardians borrowed from the Federal Loan Program in 2004, with an average family loan of \$17,709.
- 4- In 2004, more than 75% of first-year university students started their study year carrying credit cards.
- 5- Private (non-federal) student loans have the highest interest rates and students do not resort to them unless they are unable to obtain federal student loans. Nevertheless, in 2005-2006 private student loans comprised 25% of the total student loans in the US<sup>4</sup>.
- 6- A study of the National Center for Education Statistics shows<sup>5</sup> that student loans are not given only to full-time students, but that 48% of the working students took out student loans for . The average loan amount per student was \$3,000, and 40% of these working students obtained study grants of about \$1,500 per student.
- 7- Companies offered their employees financial aid for the purpose of studying. Some 78% of major American companies offered such financial aid to their employees in 2005.

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<sup>3</sup> "Quick Facts about Student Debt": [http://projectonstudentdebt.org/files/File/Debt\\_Facts\\_and\\_Sources.pdf](http://projectonstudentdebt.org/files/File/Debt_Facts_and_Sources.pdf)

<sup>4</sup> The National Center for Education Statistics:  
[www.campusgrotto.com/student-debt-in-america.html](http://www.campusgrotto.com/student-debt-in-america.html)

<sup>5</sup> Ibid



The statistics above report a very important fact: the majority of students do not rely on self-support to continue their university education and resort to other resources, including taking out loans, to cover the fees of their study.

### **Third: Tuition Fees**

It is worth citing here some numbers which demonstrate university tuition fees in the US. Tuition fees in the US vary widely due to differences between various universities' academic levels. Likewise, the total fees a student pays for one year of study vary according to his living standard and the state he lives in. Whereas the tuition fees (not the total cost) in 2008 for Bates College hit \$43,950, the highest rate reported by statistics<sup>6</sup>, fees did not exceed \$7,706\$ at Houston University<sup>7</sup> in the same year. According to a study conducted by Houston University, the total cost per student is approx. \$23,242, distributed as follows:

- \$7,706 tuition fees
- \$8,964 accommodation + food
- \$1,100 books + study services
- \$2,448 transportation fees
- \$3,024 additional fees
- \$23,242 total cost

Supposing that the student pays Texas resident fees, as opposed to out-of-state or international rates, the average monthly outlay for a student is \$2,000, given that the study year is a minimum of nine months. The reason for the above supposition is that students coming from other states pay higher tuition fees

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<sup>6</sup> Ibid, an article titled "Top 100 Colleges by highest tuition"

[www.campusgrotto.com](http://www.campusgrotto.com)

<sup>7</sup> Houston University publications, a newsletter titled "Scholarships and Financial aid Guide 2008-2009."



than Texan residents, and these fees massively increase for international students, perhaps double or more. It should be noted that tuition fees increase more rapidly than the normal rise in prices and living expenses. Statistics reveal that tuition fees for state universities increased by 40% in the last five years, equivalent to a 57% increase when price inflation and loss of money's purchasing power are taken into account<sup>8</sup>. This dramatic rise in tuition fees, along with other reasons, kept 48% of qualified students from enrolling in universities granting bachelors' degrees and 22% from entering community colleges<sup>9</sup>. It is evident that studying at university is very expensive – a fact that forces most students to resort to financial aid. Therefore, it becomes necessary to talk about the available resources to fund university study in the US.

## Chapter Two

### Funding resources for university study

The University of Houston will be used as a sample in this study, taking into account that resources funding education at American universities are, if not identical, almost the same, particularly when the funding resource is managed by the state or the federal government. Thus, restricting the study to a single university is enough to give a clear picture of conditions in the rest of the universities. According to the University of Houston<sup>10</sup>, funding resources are as follows:

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<sup>8</sup> <http://projectonstudentdebt.org>

<sup>9</sup> Ibid

<sup>10</sup> Ibid, "Scholarships and Financial aid Guide 2008-2009."



## A. Scholarships

Scholarships provided for university students vary, including:

1) Scholarships funded by the University. To obtain this scholarship, a student must be a graduate of a high school recognized by the University, attend the university on a full-time basis, and be an American citizen or permanent residence, or at least a legal align . In addition, the academic load should not be less than 12 credit hours, and the student's GPA must be 3.0 or higher . The student's record should be free from violations, felonies and crimes. Once these conditions are met, the student is eligible for a scholarship for four years, or five years should the specialty require five years of study.

Other scholarships are offered by the University's department and funded by the departments themselves, not by the university administration. These scholarships have the same requirements as the university-funded scholarships in terms of the student's secondary school GPA. Moreover, applicants undergo general tests of academic talent, resulting in the selection of those students gaining top marks. All of these terms apply to the students accepted to the University of Houston and to students coming from other universities.

### 2) Scholarships for foreign students

If a student living outside the state of Texas wins a competitive scholarship from his department of study at the University of Houston that is based on his yearly academic excellence and estimated at \$1,000, he becomes eligible for another scholarship which exempts him from the enormous fees that foreign students usually pay. In such a case, the student would be required to pay only the fees that Texan students pay. This, in fact, spares the student thousands of dollars during his four-year course of study.



## **B. Grants**

Grants differ from scholarships in that grants are offered on the basis of the student's financial conditions, i.e. they are offered to needy students, whereas scholarships depend on the student's academic achievement and excellence. The University of Houston offers several grants that are funded by the federal government, by the state of Texas or by individuals and private institutions. These grants include:

### 1) The federal Pell Grants

This grant is awarded to bachelor level students, not postgraduate students, and the student is not required to be an American national, only a legal resident. The grant starts at \$400 yearly and the maximum amount changes every year.

### 2) The federal FSEOG Grant

With the same conditions stipulated for the Pell Grants, this ranges from \$100 to \$4,000 every year, based on the annual income of the student's family as well as on University of Houston policy.

### 3) The local LEAP Grant

This grant is exclusive to the state of Texas, and the applicant must be an American national with a study load of no less than 12 credit hours per semester. This grant is offered on a first come, first served basis, in addition to the student's financial need.





4) The University of Houston Grant

The grant ranges from \$400 to \$2,200 offered to bachelor level students. Whether or not being an American national is a necessity in order to receive the grant is not mentioned in the University resources.

5) The University of Houston Grant for postgraduate students

It is similar to the above grant, but the maximum amount reaches \$2,000 yearly.

6) The federal ACG and SMART Grants

In addition to being an American national, the applicant must be accepted into the Pell Grants program mentioned above, be a fulltime student, and his achievement and marks are not less than a certain point.

7) The University of Houston Supplementary Grant

The grant is awarded to fulltime and needy students at \$500 maximum every year.

8) The local TEPG Grant

The state of Texas funds and administers this grant, which is awarded equally to all undergraduate and postgraduate students from Texas or other states. Successful applicants for this grant receive cash money.

9) Texas local Grant

The Texas local Grant is similar to the TEPG, except that it pays the student's fees rather than giving him cash money.



#### 10) The federal Robert C. Byrad Grant

This grant is funded by the federal government and administered by the state. It is allocated for top students who did not complete their university education directly after secondary school. For the student to be eligible for this grant, he has to study on a fulltime basis and keep his GPA at or higher than 2 out of 4.

Dispite the number of available grants and scholarships, only a small number of international students receive scholarships and grants. The IIE (Institute of International Education) study<sup>11</sup> found that 7% of international undergraduate students received funding from the school and 5% from private organizations.

#### **C. Federal Labor Program**

This program allows the student to work part-time in or outside the university, so long as this work is somewhat related to the program of study. The work helps the student get some money to cover the costs of his program and gain experience to contribute to his professional future after graduation. No student is allowed to work more than 20 hours a week, and he can be paid an hourly rate equal or less than the minimum wage specified by the federal government.

#### **D. Summer Aid Program**

Students who were deemed eligible for financial aid before the summer session and did not use it benefit from this program on condition that they register at least one half of the study load.

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<sup>11</sup> [www.edupass.org/finaid/sources.phtml](http://www.edupass.org/finaid/sources.phtml)



### **E. Illegal Immigrants Aid Program**

Some illegal immigrant students in the US are deemed eligible for financial aid if they meet certain conditions, such as staying in the state of Texas for a certain period of time without absence and without obtaining the registration number of legal arrivals. The State passed this law in 2001 to allow students satisfying these conditions to benefit from the scholarships awarded by the State government only, not those of the federal government.

### **F. Student Loans**

The University of Houston offers a variety of student loans, forming nine types that vary in terms of the amount offered, length of prepayment, the funding body, and how Riba-based they are. Such a variety shows that the loans are not different from those offered by other universities, and that knowing the details of these University of Houston loans hence provides a clear idea about student loans throughout the US.

For our purposes, the length of prepayment of the loan and other details are not so important as knowing how usurious the loans are and how sufficient they are to fulfill the student's needs. Based on the previous criterion, student loans in America can be divided into two main categories:<sup>12</sup>

- 1- Loans subsidized by the federal government, which pays the interests thereon. The student takes out these loans according to his financial need and inability to meet the university's requirements. He shall be exempted from repaying the debt as long as he is in the school and keeps the minimum credit hours. After graduation, he is given a 6-month respite from interest,

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<sup>12</sup> Besides the newsletter of the University of Houston mentioned above, see the following link:  
[http://www.studentfinancedomain.com/student\\_loans/subsidized\\_vs\\_unsubsidized\\_loans.aspx](http://www.studentfinancedomain.com/student_loans/subsidized_vs_unsubsidized_loans.aspx)



during which he is required to pay the whole sum. If the student fails to do so, the loan becomes Riba-based, starting from the time it was granted, and the student incurs the interests and costs accumulated.

- 2- Loans unsubsidized by the government. These loans are given to students who want them regardless of their financial status or their annual income. A student is required to repay the debt and its interests in full, although he is exempted from repayment before graduation.

As for how sufficient these loans are for students' needs, the newsletter of the University of Houston showed the following:

First: an undergraduate student who financially relies on his parents can borrow from the basic type of loans, the Federal Stafford Loans, a maximum amount of \$23,000 subsidized by the state and \$8,000 unsubsidized.

Second: an undergraduate student who does not financially rely on his parents can borrow from the previous type of loans a maximum amount of \$23,000 subsidized by the state and \$34,000 unsubsidized, for a total of \$57,000.

Third: a working or postgraduate student can borrow a total amount of \$138,000\$, \$65,000 of which is subsidized.

Fourth: postgraduate students and guardians of students enrolled at the bachelor level can take out a federal loan, the Federal PLUS Loan, which covers the areas that any previous loan failed to satisfy, but it is not subsidized by the government and commands high interest rates, reaching 9%.



The numbers cited above indicate the ability of the government-subsidized loans to cover a large proportion of the university costs. The total fees at the bachelor level at the University of Houston are \$30,000 per student, and the subsidized loan is \$23,000. Thus, the loan covers 75% of the fees. The matter becomes easier in unsubsidized loans which can cover the study fees entirely, as stated above.

## Chapter Three

### Introduction to rulings on student loans

The purpose of this research is to explain the Sharee'ah rulings on these loans, but before we can do so we need a clear perception of the essence of these loans and their necessity in the light of the research conclusions and a set of facts about US Muslims. Surely, a man cannot judge something unless he forms a clear understanding of it. The following points set out the elements of this understanding:

**1)** University education is very important for hundreds of thousands of Muslims in the United States at the present time, and people living in this country badly need it. Therefore, university education is a public need, at least from a Fiqh point of view.

**2)** A university education in the United States is a very expensive proposition, and the tuition fees rise higher than the rate of inflation affecting the price of other things. Such increases in university fees have prevented 50% of qualified high school graduates from attending university in the States. Even 20% of high school graduates do not go to community colleges, despite their relatively low costs compared to universities.



**3)** Funding resources vary broadly, in a way that makes them compete with borrowing should a student be better served by them. Scholarships are not exclusive to American nationals, and being a legal resident is enough to make the student eligible for them. Moreover, scholarships are awarded based exclusively on the student's academic excellence and distinction. Some grants offered to students based on their financial need include citizens, residents, and international students in their eligibility criteria, and certain grants are sometimes awarded to illegal immigrants. These grants are sufficient to cover 50% of fees. The same thing applies to the university-introduced Labor program, which is considered a supplementary source of funding since the student earns some money through it.

**4)** The general availability of funding – borrowing aside – does not mean that it is always available, nor does it satisfy all needs. The reality and questions of students who are studying testify that even with funding, the need for borrowing remains pressing and that government-subsidized loans sometimes fall short to the extent that a student cannot find any alternative other than unsubsidized, Riba-based loans. This problem is particularly acute for students studying at high-priced private universities or those majoring in various medical specialties with astronomical fees that could bankrupt several families. For that reason, over 60% of university students in the US are forced to borrow. Not only do fulltime students resort to borrowing, but also 50% of part-time students do.

**5)** In general, borrowing in the United States is not always connected with need in the Fiqhi sense of this concept, because funding through taking loans and long-term settlement thereof have become part of the culture of the American people – including, of course, Muslims – and of a living style that both the needy and wealthy people resort to. In fact, it is an outcome of the capitalist system, which is built on Riba (usury) and borrowing. More than that, obtaining grants (which are offered to needy students only)



does not reflect need as conceived by Sharee‘ah. This is because living below the poverty line determined each year by the federal government is not necessarily correlated with poverty, and permitting begging or taking from the money of Zakaah is contingent on necessity. Another reason why living below the poverty line is not necessarily associated with need is that some people do not register their entire annual income when they fill out tax forms. Accordingly, they look needy and of low-income, but the reality is otherwise. The government determines the needy citizens based on the data recorded in the tax form that people themselves fill in, and the federal definition of the poverty line may therefore be faulty.

## Chapter Four

### Ruling on government-subsidized loans

After these introductory chapters, we will explain the ruling on subsidized loans.

**1)** The fact that the government declares that it pays the interests on behalf of the student when he borrows a subsidized loan means that the loan is not Riba-based at first. This is because the government plays the role of both the borrower and giver of Riba (interest). Supposing that the student deals with a single creditor having a legal personality, i.e. the federal government, declaring the existence of these interests is useless. The government refers to non-existent interest in order to cope with the capitalist economic system, in which loans are always associated with interest.



**2)** Riba enters this loan in another way, which is the obligation of paying all interests if the student fails to settle the entire debt before the six-month period after graduation elapses. This condition renders the loan a Riba-based one as of six months after graduation. In this case, however, the loan contract is not in itself prohibited, since it is possible that the student will manage to settle the debt during the six months. Thus, , to prohibit this contract would be to prohibit a means that might lead to a forbidden act, rather than the contract itself

**3)** What is prohibited in itself becomes permissible under necessity, whereas what is prohibited by virtue of others becomes permissible due to need or considerable benefit.<sup>13</sup> Based on this rule and the fact that education constitutes at least a need, it is permissible for a Muslim student to take a government-subsidized loan on condition that there is a genuine Sharee‘ah-approved need for it. In other words, neither the student nor his parents are able to cover his expenses; he did not receive a scholarship; he could not obtain enough grants to cover the full costs; and the money he earns from his work with the university is not sufficient. In such a case, he would be permitted to borrow what he needs, but no more, since one's need must be answered proportionately. Also, the student must be determined to settle the debt within the six months' grace period in order to avoid the paying of interest. This repayment must be accomplished as soon as possible after graduation and before the debt becomes due and interest begins accruing.

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<sup>13</sup> Al-Qaraafi, Al-Furooq, no. 58, Daar As-Salaam edition, 2008.





## Chapter Five

### Ruling on unsubsidized loans

If the aforesaid alternatives, including subsidized loans, prove insufficient and the student needs to borrow at interest in order to complete his course of study, what will the Sharee'ah ruling be?

Dealing in Riba (interest) is undoubtedly a major sin in the sight of Allah the Almighty; yet, to deprive Muslim students of the university education provided by the countries which dominate the fields of science, culture, and other specializations in the world of knowledge requires consideration. Generalizing the previous fatwa would bar thousands of observant Muslim students from continuing their university educations and keep them practicing mean professions and crafts. Considering the growing number of Muslims, thousands of Muslim students will be denied a university education in the near future. Is it possible that a religion [Islam] whose revelation began by inviting people to learn could be the same religion that deprives its followers of seeking knowledge and rules that a whole nation be left in ignorance and scientific backwardness?! Understanding the objectives and spirit of the Sharee'ah dictates answering the question in the negative. The facilitation and alleviation of hardship advocated by tolerant Islamic Sharee'ah affirm that the fatwa should not be generalized. However, Sharee'ah rulings of permissibility or prohibition are not issued on the basis of logic, emotions or human reasoning; they are issued on the account of precise texts, grasping their implications and knowing their causes, and clarifying and establishing their frame of reference.

Therefore, we will present and discuss a number of potential reasons for permitting these Riba-based loans, then give preponderance to the reason which forms a solid ground from which to permit borrowing at interest should it be the only way to continue a university education.



### **A. Prohibition of borrowing in interest by virtue of others is a prohibition of means**

I have never found an explicit text authentically attributed to recognized contemporary scholars stating that borrowing at interest is permissible for the purpose of studying since borrowing [at interest] is prohibited by virtue of others, a prohibition of means. But what has been mentioned is the implication of that saying (borrowing at interest is prohibited by virtue of others, a prohibition of means), and it is known among scholars that what is *implied* by a saying is not *in fact* a saying. The respected scholars of the European Council for Fatwa and Research are the ones who expressed that lending [at interest] is in itself prohibited, whereas borrowing [at interest] is prohibited by virtue of others. This statement was mentioned in one of the Council's Fatwas in which they permitted Muslims living in the West to borrow at interest in order to buy a house, subject to certain conditions and regulations. Here is the text of the fatwa:

The prime criterion for forbidding usury, according to a number of Quranic verses, revolves essentially around taking usury (not giving it). However, giving usury was forbidden only to obstruct pretext, i.e. ways leading to usury, which is termed by jurists as 'Sad Atharaa'i'. On similar grounds, notaries and witnessing usurious transactions was prohibited. They were made as such to check the means that lead to usury. While taking usurious loan is categorically forbidden, paying interest towards a loan is permitted if there is an urgent need as maintained by a number of jurists. It has also been maintained that taking a usurious loan is permitted if there is no other [lawful] way available.<sup>14</sup>

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<sup>14</sup> The fatwa was widely circulated on the internet. One of its reference is in the following link:  
<http://www.islamtoday.net/bchooth/artshow-32-5520.htm>



Considering what has been stated above, it is permissible for Muslim students to borrow at interest in order to continue his university studies if borrowing proves to be the only solution for doing so, based on the fact that university education is a need. There are some comments on this reasoning for permitting borrowing.

1) The Prophet, sallallaahu ‘alayhi wa sallam, is authentically reported to have cursed the taker and giver of Riba, as well as the notary and two witnesses of it. Authentic Hadiths are abundantly reported in this regard. For instance, Jaabir ibn Abdullaah (may Allah be pleased with him) said: "The Prophet, sallallaahu ‘alayhi wa sallam, cursed the taker of Riba, its giver, its notary, and its two witnesses. He said that they are equal in sin."<sup>15</sup> In his commentary on Muslim's Saheeh, Imam An-Nawawi said: "This is an explicit statement prohibiting writing down the document of the dealers of Riba and witnessing it. It implies the prohibition of cooperation on falsehood."<sup>16</sup> Had the creditor taken a ruling different from that of the borrower, the Prophet, sallallaahu ‘alayhi wa sallam, would not have kept silent on that, particularly when legislating and conveying from Allah the Almighty. The scholars would also not have kept silent on explaining the difference, especially with the dire need for this explanation and differentiation. On the contrary, the Prophet, sallallaahu ‘alayhi wa sallam, affirmed that both the taker and giver of Riba are equal in sin.

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<sup>15</sup> Muslim's Saheeh, book of Al-Musaaqaah, chapter of cursing the taker and giver of Riba, Hadith no. 2995

<sup>16</sup> An-Nawawi's commentary on Muslim's Saheeh with (11/26), Daar Ihyaa At-Turaath Al-'Arabi, Beirut, 2<sup>nd</sup> edition, 1492 A.H.



An-Nawawi expresses the same thought when he explains the Prophet's saying, "Gold for gold...both the taker and the giver are equal."<sup>17</sup> He said: "The payer and taker of the extra are disobedient usurers."<sup>18</sup>

Ibn Hajar Al-‘Asqalaani held the same view when explaining the Hadiths of Riba and Allah's Saying: "Those who consume Riba..." in his book *Fat-h Al-Baari*. Ibn Hajar quoted At-Tabaraani as saying: "Allah mentioned the taker of Riba in particular because people to whom these verses were revealed lived on Riba. Otherwise, the punishment is allocated for anyone dealing in Riba whether he lived on it or not."<sup>19</sup>

2) Proofs from the Sunnah include the saying of the Prophet, *sallallaahu ‘alayhi wa sallam*, "Do not sell one dinar for two dinars or one dirham for two dirhams; I fear you fall into Riba."<sup>20</sup> That is to distinguish between what is prohibited as prohibition of means and what is prohibited as prohibition of purpose. Thus, the Prophet, *sallallaahu ‘alayhi wa sallam*, forbade selling one dinar for two dinars in cash, which is Riba Al-Fadhl (excess usury), for fear of falling into Riba An-Nasee'ah (Delay usury).

Al-Al-Qayyim clarified this point, saying:

Riba is divided into two categories: apparent and hidden. The apparent category has become prohibited due to the great harm it entails, whereas the hidden one is prohibited because it is a pretext to the apparent category. It means that the first category is prohibited for its purpose and

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<sup>17</sup> Muslim's Saheeh, book of Al-Musaaqaah, chapter of exchange and selling gold for silver cash, Hadith no. 2971

<sup>18</sup> An-Nawawi's commentary on Muslim's Saheeh with (11/13)

<sup>19</sup> Ibn Hajar Al-‘Asqalaani, *Fat-h Al-Baari Sharh Saheeh Al-Bukhaari* (4/314), Daar Al-Ma‘rifah, Beirut – Edited by Muhibud-Deen Al-Khateeb

<sup>20</sup> Imam Ahmad's Musnad (2/109) Hadith no.5885, Mu'sasat Qurtubah, Egypt. Az-Zayla'I mentioned in *Nasb Ar-Raayah* (4/56) Daar Al-Hadith edition and he did not classify it as weak. In ‘Umar's Musnad, Ibn Jareer Ar-Tabarisaid: its chain of narration is sound.



the second is prohibited due to the result it leads to. The apparent category includes Riba An-Nasee'ah (delayed usury) that people in the pre-Islamic era used to practice. Riba An-Nasee'ah signifies that a borrower delays the payment of the debt in return for extra money, and the more the debt is delayed, the higher the money will be paid until one hundred becomes thousands.

Therefore, Allah The Most Merciful prohibited Riba and cursed its taker, giver, notary, and two witnesses. He prohibited it out of His Mercy, Wisdom, and Generosity to His slaves and informed the one who does not give it up of a war against him from Allah and His Messenger. Riba Al-Fadl (excess usury), however, is prohibited in order to block the means leading to the prohibition.<sup>21</sup>

3) Scholars concluded with certitude that Riba An-Nasee'ah is prohibited in itself and for its purpose, and recent scholars have followed the early ones in this respect. Fiqh academies that expressed this fact include the Islamic Research Academy in Cairo thirty years ago. They issued a statement in 1385 A.H. saying: "Lending money at interest is prohibited and neither need nor necessity legalizes it. Similarly, borrowing in interest is prohibited and the borrower becomes sinful except when forced to it by necessity. In this regard, a Muslim will be religiously accountable for proportioning one's necessity."<sup>22</sup> Contemporary Fiqh Academies unanimously agree with this ruling, but the context does not permit quoting their fatwas on the issue.

Based on what is stated above, borrowing at interest is not prohibited by virtue of others, a prohibition of means; it is prohibited in itself, a prohibition of purpose, exactly like lending at interest. Therefore, it is

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<sup>21</sup> Ibn Al-Qayyim, I'laam Al-Moowaqqi'een 'An Rab Al-'Aalameen (2/154-155), Daar Al-Kulliyat Al-Azhariyyah, Cairo, 1388 A.H.

<sup>22</sup> [http://www.garadawi.net/site/topics/article.asp?cu\\_no=2&item\\_no=2948&version=1&template\\_id=6&parent\\_id=1](http://www.garadawi.net/site/topics/article.asp?cu_no=2&item_no=2948&version=1&template_id=6&parent_id=1)



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incorrect to suggest that borrowing at interest for the purpose of study is permissible, on the pretext that education is a need that makes the prohibition by virtue of others lawful.

### **B. Treating need in equal terms with necessity in permitting the prohibition**

A group of contemporary scholars issued a fatwa that it is permissible to borrow at interest for the purpose of completing university studies, arguing that education is a need and sometimes this need cannot be satisfied except through borrowing at interest. If borrowing at interest proves to be the only alternative, they added, there would be no harm in it because need, like necessity, makes the prohibition permissible.

In a question submitted to senior judge Faisal Mawlawi (may Allah have mercy on his soul) titled: "Ruling on taking a Riba-based loan from the university to continue one's study," the questioner asked:

I am a Muslim living in Sweden and want to continue my university study, but I could not do that except by taking a Riba-based loan from the university. This is the only way to continue my study. Should I reject it and stop my education? Am I permitted to take the money considering my case a necessity? This is a problem that all Muslims in Europe generally encounter and that would enable non-Muslims only to study and prevent Muslims from effective participation in the West. All Muslims and the new Muslim generations face this problem since education is very important in the West. I do not mean that all Muslim students must take Riba, but I am just asking about those who are forced by necessity to take it. Please advise.

The answer of Sheikh Mawlawi was as follows:



It is known that Riba is one of the major sins, and both taking and giving it are in principle prohibited. However, they vary in the sense that taking Riba cannot be permissible under any circumstances or necessity, and were there any necessity, it would permit only the Riba contract. In such a case, a Muslim gives away the Riba he has taken or does not accept it from the beginning. That is because there could be no necessity for taking Riba or benefiting by it. Unlike giving Riba, i.e. borrowing at interest; there might be necessity for it, and thus scholars permit the Muslim to give Riba in such circumstances. Continuing of study may be considered necessity since seeking knowledge is an obligation, and if it is not necessity, it will unquestionably be a need that most Muslim jurists treat in equal terms with necessity. Therefore, if the Muslim student could not continue his study except by borrowing in interest, it would be permissible for him to borrow on condition he has tried his best to look for other lawful ways.<sup>23</sup>

The point in this fatwa is the sheikh's saying: "...and if it is not necessity, it will unquestionably be a need that most Muslim jurists treat in equal terms with necessity." He also states that continuation of study is a necessity, and this will be discussed in the next topic – Allah willing. The sheikh's fatwa is the same conclusion reached by the European Council for Fatwa and Research in its previous fatwa which permits buying houses through Riba-based loans under certain conditions. The ECFR affirmed that one of the reasons for permitting this is considering the need as a necessity in permitting the prohibited act. Here is part of the text of the fatwa, with slight modifications: "This fatwa is based on the following two major juristic considerations. First: The juristic rule which states that extreme necessities turn unlawful matters lawful. Moreover, Muslim jurists have established that need, whether for an individual or a

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<sup>23</sup> See fatwa of sheikh Faisal Mawlawi published in his website in the following link:

<http://www.mawlawi.net/Fatwa.asp?fid=154&mask=%D8%A7%D9%84%D8%B1%D8%A8%D8%A7>



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group, can be treated in equal terms with extreme necessity. Need is defined as those things which put the Muslim in difficulty if not fulfilled, even if he or she can do without..." This fatwa implies permissibility of borrowing at interest due to the need for education.

There are some comments on this argument that permits borrowing at interest due to a need:

1) Scholars cited the rule that "Need is treated in equal terms with necessity in permitting the prohibition" in the books of Fiqhi rules and Al-Ashbaah wan-Nadhaa'ir in order to prove that certain forms of dealings are endorsed in Sharee'ah by explicit texts. Since these forms of dealings were endorsed contrary to the analogy, Muslim jurists introduced a rule which would demonstrate the ease of Sharee'ah and how it alleviates hardship for people. In other words, Allah the Almighty permitted people to acquire what they need even if doing so violates the general rules and does not match the analogy. Perhaps the most often-quoted statement that contemporary scholars use for this rule is what As-Suyooti wrote in Al-Ashbaah wan-Nadhaa'ir, when explaining the rule "Need, whether for an individual or a group, can be treated in equal terms like necessity." He said: "Lease, Gi'aalah (Reward allocated for bringing back lost items), and Hiwaalah (Bill of exchange) and the like are with greater reason made permissible against the analogical deduction. For instance, coating a pot with silver is permissible because of the need."<sup>24</sup>

The text signifies that the saying which considers need a sufficient motive for alleviation is not unconditionally applicable. In other words, it is not permissible for a Muslim to approach an action that is textually prohibited because a normal hardship is involved. Rather, any concession must come from

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<sup>24</sup> As-Suyooti, Al-Ashbaah wan-Nadhaa'ir, pp. 62-63, edition of Mustafa Al-Baanbi Al-Halabi, Cairo, 1398 A.H.





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Sharee'ah itself, through a text or obvious analogy. Thus, the rule was introduced only in the context of grounding the rulings and demonstrating the harmony of Islamic legislation.<sup>25</sup>

2) In this regard, Al-Ghazaali (may Allah have mercy upon him) lays grounds for the rule "What has been established against analogical deduction cannot be extended to other cases", saying:

The second section refers to what is excluded from another rule when there is significance for its exclusion. This rule is extended to every issue revolving around the excluded act and all others partaking the of the issue causing exclusion For instance, The exclusion of Al-'Araaya; it was not legislated to abrogate or cancel the rule of Riba, but it was excluded due to people's need. So, we draw an analogy between the grapes and dates because we see them sharing the same sense. Otherwise, we dare not make this conjunction."<sup>26</sup>

Al-Ghazaali (may Allah have mercy upon him) affirms that allowances made due to stated needs should not be unconditionally extended to unstated needs, and stipulates that any exclusion must be significant, i.e. the presence of a common cause. Thus, he treats grapes like dates in the sense that it is permissible to sell grapes unequally for raisins due to a cause that he does not express. Perhaps the cause is storage or that the sold items are fruits. Ibn Hajar articulated this cause while explaining the Hadith of Al-'Araaya. He said: "The righteous predecessors differed on whether or not grapes could be conjugated with other items like dates in Al-'Araaya. Some scholars, like Dhaahiris, contested it, whereas some Shaafi'i scholars, like Al-Muhhib At-Tabari, approved it. Other scholars said that it is compounded with grapes only, and this is the dominant opinion of the Shaafi'i school of jurisprudence. Maaliki scholars said that

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<sup>25</sup> This passage and the following one were excerpted from a study "Ruling on working in the field of banking services in the US" by Dr. Main Al-Qudah, pp. 32-33, published in Journal of Saleh Kamil Center for Islamic Economics. Al-Azhar University. 40<sup>th</sup> Issue, January 2010.

<sup>26</sup> Al-Ghazaali, Al-Mustasfa, pp. 325-326, Daar Al-Kutub Al-'Ilmiyyah, Beirut, 1<sup>st</sup> edition, 1413 A.H.



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every item that can be stored is included, and Ash-Shaafi'i also said it is extended to every fruit."<sup>27</sup> Each cause suggested by Ibn Hajar could be deemed an obviously defined description that serves as a valid cause for the ruling, and it is obvious that here, need alone cannot be considered as a valid cause for the ruling.

Ibn Qudaamah came to the same conclusion when he talked about Al-Istislaah or Al-Masaalih Al-Mursalah (public interest) as one of principles of the Hanbali School of jurisprudence. After mentioning examples of needs and personal preferences, he said: "There is no disagreement that it is not permissible to adhere to these two categories without evidence. Had this been permissible, it would have been introducing to Sharee'ah by reason, and we would not have needed messengers. Also, the common Muslim would have been equal to the scholar since every person knows his personal interest."<sup>28</sup>

3) The quotations above make it clear that the rule "treating needs in equal terms with necessities" is an Usooli rule, not a Fiqhi rule.<sup>29</sup> This means it is not required that need be established for it to be lawful for individuals to deal with leases, Hiwaalah and Salam; rather, they are rulings and lawful transactions from the beginning, and Sharee'ah permitted them due to people's need for them. Thus, other cases should not be extended to them due to the absence of a legalizing text. Assuming otherwise would result in people's general needs becoming lawful grounds for all cases, whether or not a specific individual had that need, since need establishes a permanent ruling that is not linked to an individual case. To apply

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<sup>27</sup> Ibn Hajar Al-'Asqalaani, *Fat-h Al-Baari Sharh Saheeh Al-Bukhaari* (4/384), Daar Al-Ma'rifah, Beirut, 1379 A.H. He mentioned it while tracing the narratives of selling borrowed items, chapter "sale of Al-Muzabanah," (2073). Also, the Hadith of selling borrowed items was commonly reported in the two Saheehs with different narratives, signifying the permissibility of selling the ripe dates for dried dates without measuring them due to people's need for this sale.

<sup>28</sup> Ibn Qudaamah Al-Maqdisi, *Rawdat An-Naadhir*, (1/170), published by the Imam University, 1399 A.H.

<sup>29</sup> Sheikh Abdullaah ibn Beih seconded this opinion in his research "Difference between necessity and need" published in the ECFR Magazine, vol. 4-5.



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the rule to our issue, this would mean that borrowing at interest would be permissible for all students, regardless of their need, since need is treated as equivalent to necessity in permitting the prohibition! No scholar can say that. So, it is inevitable to conclude that the rule is an Usooli one, and that the need it mentions reflects a continuous needful matter on which the Sharee‘ah based certain rulings.

4) The necessity experienced by some individuals is the only exception to the above discussion. In such a case, they are permitted to violate the Sharee‘ah rule to the extent at which necessity and need are satisfied, and thus it could be said "need is treated in equal terms with necessity in permitting the prohibited ".Necessity must exist first in order for need to be considered.<sup>30</sup> Imam Al-Joowayni explained what a Muslim can take when the prohibited is unavoidable and the lawful is unavailable, saying: "In this subject, it is supposed that prohibition dominates and people of the area cannot leave their dwellings or move to other lawful locations...it must be limited to the extent needed, and things related to luxury and entertainment are forbidden. If this is impossible, then provided that they are a large population and that waiting for the times of necessity to pass would deprive them of their needs, then this ruling would apply to them as to all people, i.e. they should take only to the extent that they need, as detailed previously"<sup>31</sup>

To sum up, it is not valid to support the permissibility of borrowing at interest to continue university studies by the rule "Need is treated in equal terms with necessity in permitting the prohibited."

### **C. Considering education a necessity, not only a need**

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<sup>30</sup> Excerpted from a study "Ruling on working in the field of banking services in the US" by Dr.Main Al-Qudah, Ibid

<sup>31</sup> Abdul-Malik Al-Joowayni, Ghiyaath Al-Umam fi Iltyaath Adh-Dhulam, known as "Al-Ghiyaathi), pp. 486-488, Doha Press, 1400 A.H.



In the introduction to his book "Diraasah fi Maqaasid Ash-Sharee'ah", under the topic "Limiting the objectives to the main five fundamentals", Dr. Yoosuf Al-Qaradaawi said: "There are some commented on how scholars of Usool proved the existence of some necessities and fundamentals, such as supporting protection of one's mind by the prohibition of wine (alcoholic beverages) and punishing their consumer. I find that protecting one's mind in Islam is achieved through many methods and ways, which include making seeking knowledge obligatory for every Muslim man and woman as well as going on journeys to seek knowledge and continuing to seek knowledge from cradle to grave. Also, leaning every science

the Muslim Ummah needs in its religion and worldly life is a communal obligation."<sup>32</sup> This statement, though it does not explicitly consider a university education a necessity, clearly indicates that protecting the mind is one of the necessities which cannot be fulfilled in the current era except through the obligation of seeking knowledge. In the previous section, I quoted a fatwa of Sheikh Faisal Mawlawi, in which he said, "Continuation of study may be considered a necessity." It explicitly states the permissibility of borrowing at interest should it be the only available alternative.

Considering seeking knowledge necessity, I do make the following comments:

1) Necessity in the literature of Fiqh signifies a state in which man would inevitably or imminently die if he did not eat the prohibited.<sup>33</sup> This definition makes necessity exclusive to the matter of food and to circumstances where man may die. This exclusivity mostly relies on the association mentioned in the Quran between the permissibility of eating the meat of animals and necessity due to hunger. Allah the

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<sup>32</sup> Dr. Yoosuf Al-Qaradawi, *Diraasah fi Maqaasid Ash-Sharee'ah*, p. 29, Daar Ash-Shurooq, 2006

<sup>33</sup> As-Suyooti, *Al-Ashbaah wan-Nadhaa'ir* (1/85) Ibid. See also Az-Zarkashi, *Al-Manthor fil-Qawaa'id* (2/319) Kuwaiti Ministry of Al-Aqwaf Press, 2<sup>nd</sup> edition, 1405 A.H.



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Almighty Says, which means in English: {He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.}<sup>34</sup> This Quranic verse and others do not imply limiting the state of necessity to the two criteria, i.e. fear of dying of hunger and eating food to escape imminent death. Instead, the verse mentions this case as an example, not to show exclusivity. Commenting on this verse, Al-Qurtubi (may Allah have mercy upon him) said: "Necessity occurs either by coercion of a tyrant or by severe hunger.

The majority of Muslim jurists and scholars interpret this to mean the one who is baffled by sanctity or hunger, and this is the correct meaning. Other scholars said that it means the one who is forced and overpowered to eat these unlawful items. Mujaahid said it means the man who is forced to it, such as when the enemies take him and force him to eat pork or commit any act of disobedience to Allah the Almighty. Yet, coercion permits doing these things until the coercion is removed."<sup>35</sup> This discussion indicates that coercion is a strong reason under Sharee'ah to make the prohibited lawful. Although the verse did not say this explicitly, other texts consider the matter

Parallel to that, other texts consider lack of wealth, i.e. subsistence, as a necessity which permits eating the meat of dead animals. It was authentically narrated on the authority of Jaabir ibn Samurah (may Allah be pleased with him) that a man alighted at Al-Harrah with his wife and children. A man said (to him): "My she-camel has strayed; if you find it, detain it." He found it, but did not find its owner, and it fell ill. His wife said: "Slaughter it." But he refused and it died. She said: "Skin it so that we may dry its fat and flesh and then eat them." He said: "Let me ask the Messenger of Allah, sallallaahu 'alayhi wa sallam." So he came to the Prophet and asked him. The Prophet, sallallaahu 'alayhi wa sallam, said:

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<sup>34</sup> Surah Al-Baqarah (2:173)

<sup>35</sup> Al-Qurtubi, Al-Jaami' li Ahkaam Al-Quran (2/225), Daar Ash-Sha'b edition, Cairo. Considering coercion as necessity was formerly introduced by Ibn Al-'Arabi in Ahkaam Al-Quran (1/82), Daar Al-Fikr, Lebanon.



"Have you sufficient for your needs?" The man replied in the negative. He then said: "Then eat it."

Later, when the camel's owner came, the man told him the story. The owner said: "Why did you not slaughter it?" He replied: "I was ashamed (or afraid) of you."<sup>36</sup> The commentator on this Hadith explained the Prophet's saying "Have you sufficient for your needs?" to mean "Do you have enough food that makes you, your family and your children in no need of it?"<sup>37</sup> The Hadith proves that not only

the fear of dying from hunger makes eating the meat of dead animals lawful, but also lack of wealth and subsistence. The context of the Hadith indicates the length of time between finding the she-camel, its illness and its death, and the question of the Prophet, sallallahu 'alayhi wa sallam. Had the companion who found the she-camel been about to die, he would not have waited that long.

Most importantly, we draw from the famous Hadith of Al-'Araaya, which was narrated on the authority of Zayd ibn Thaabit (may Allah be pleased with him) that the Messenger of Allah, sallallahu 'alayhi wa sallam, permitted selling ripe fruits for dried dates in Al-'Araaya. Al-'Araaya takes various forms which were detailed by Ibn Hajar (may Allah have mercy upon him) as follows:

There are many forms of Al-'Ariyyah. For instance, a man tells the owner of a palm tree garden, "Sell me the fruits of particular palm trees for their estimated worth in dried dates." The owner of the garden will estimate it, sell the fruits, receive the dried dates, and give him access to the palm trees to benefit from its ripe dates. Another form is that the owner of the garden gifts certain palm trees to a man, then the owner is harmed by the the free access the man has to his property so he estimates the fruits and buys their ripe dates by dried dates paid in advance. A third form is that the owner of the garden gifts certain palm trees to a man, and the gifted suffers harm by his

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<sup>36</sup> Abu Daawood, book of "Foods", chapter "A man coerced to eat meat of dead animals" (3/358). Ash-Shawkaani said about this Hadith in *Nayl Al-Awtaar* (9/30): "The Hadith narrated on the authority of Jaabir ibn Samurah was reported by Abu Daawood and Al-Munthiri, and no scholar discredited its chain of narration."

<sup>37</sup> Muhammad Shams Al-Haqq Aabaadi, 'Awn Al-Ma'bood Sharh Sunan Abu Daawood (10/211), Daar Al-Kutub Al-'Ilmiyyah, Beirut, 1992



waiting for the ripe dates to become dried dates, provided he does not like to have ripe dates because he needs the dried dates. In this case the gifted estimates the ripe dates and sells them to the grantor or someone else for dried dates paid in advance. A fourth form is that a man sells the dates of his palm tree garden after the fruits become fresh and excludes certain palm trees for his and his children's use. The excluded dates constitute the part exempted from being estimated for Zakaah. These are called 'Araaya because they are exempted from estimation to be included in

Zakaah. Therefore, a dispensation was made for people in need who do not have money and own unwanted amounts of dates so that after estimation they could buy ripe dates with them<sup>38</sup>

Despite the variety of versions of Al-'Araaya, no scholar has stated that necessity or fear of imminent death was the motivating factor for permitting this sort of transaction. The point was that people's need for this sort of transaction and the harm entailed by banning it called the Prophet, sallallahu 'alayhi wa sallam, to permit it although some scholars hold that it involves Riba Al-Fadhl or Riba An-Nasee'ah. Ibn Hajar Al-'Asqalaani explained this Hadith, which was narrated by Al-Bukhaari,<sup>39</sup> and said: "According to Maalik, 'Ariyyah must not take place in this manner except when a gift is made, due to the harm the owner of the garden endures when others enter it, or to alleviate the harm caused by the other party when it is the owner of the palm trees that irrigates them and spends on them. Also, it is required to occur after the fruits become fresh and it has to be exchanged with dried dates paid in advance. Ash-Shaafi'i disagreed with Maalik in the last condition and stipulated immediate delivery." Stipulating advance payment – according to Maalik – is the essence of Riba An-Nasee'ah. Ibn Al-'Arabi Al-Maaliki

<sup>38</sup> Ibid

<sup>39</sup> See explanation of the Hadith of Al-'Araaya by Ibn Hajar Al-'Asqalaani in Fath Al-Baari (4/390-393)



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affirmed the opinion of Maalik, saying: "Considering the need to permit the banned resembles considering necessity in making the prohibited lawful. Examples for this include the Hadith of Al-'Araaya, selling the fruits on the pale trees for dried dates on the ground. This form of sale involves Riba in three ways: selling ripe dates for dried dates, relying on estimation or guesswork in valuing the two payments of Riba, and postponing delivery if we said it would be delivered at the time of picking the fruits."<sup>40</sup>

More than that, according to Maaliki scholars loans are in principle one form of Riba An-Nasee'ah but were made lawful as a preferable exception to the original rule. Ash-Shaatibi grounded for Istihsaan

(personal preference) advocated by the Maaliki scholars, saying: "It [Istihsaan] has many examples in the Sharee'ah, such as loan, which is in principle Riba. In loans a dirham is given for a dirham to be paid in a specific term, but it was made lawful because it provides gentleness and ease for the needful. Had the original rule banning this remained, it would have caused hardship for Muslims. Similarly, if Riba An-Nasee'ah had been removed from the loan, the principle of ease would have been canceled."<sup>41</sup>

Scholars know that it is established beyond any doubt that Riba An-Nasee'ah and eating the meat of dead animals are in themselves prohibited and cannot be lawful except on the grounds of necessity. Furthermore, the Prophet, sallallaahu 'alayhi wa sallam, permitted both of them to answer a need without death being imminently expected, and thus he made Riba An-Nasee'ah in Al-'Araaya and loans lawful. He also permitted eating the meat of dead animals for Muslims who do not have *enough* food, not only for those who have *no* food. Therefore, we must say that necessity resembles need in that neither requires the fear of imminent death nor is exclusive to food, because loans pertains to dealings.

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<sup>40</sup> Ibn Al-'Arabi Al-Maaliki, Al-Qabas Sharh Moowatta' Maalik ibn Anas (2/790), Daar Al-Gharb Al-Islaami, Beirut, 1992

<sup>41</sup> Ash-Shaatibi, Al-Moowaafaqat (4/207)





Since necessity – or need, according to the aforesaid opinion – permits the protection of life and property without any difference between them and the rest of the five fundamentals, i.e. protection of one's religion, mind, and honor, the conclusion would be that everything Muslims need to protect their religion, life, mind, property, and honor are to be considered necessities, which permit things intrinsically prohibited.

Dr. Wahbah Az-Zuhayli (may Allah preserve him), after exploring some definitions that jurists suggested for necessity, said:

It seems that all these definitions define necessity in the context of food only, so they are neither sufficient nor inclusive of the full sense of the term which represents a principle or a

theory by virtue of which the prohibition becomes lawful or the obligation not required. Thus, I suggest the following definition: "Necessity occurs when man undergoes a state of danger or severe hardship under which he fears imminent harm to his life, honor, mind, property, or their affiliates. In such a state, it is permissible to commit the prohibition or leave the obligation or delay it to ward off harm that will most probably afflict him within the limits of the Sharee'ah."<sup>42</sup>

2) Jurists commonly build their distinction between necessity and need on the extent of the hardship involved. To clarify, necessity occurs when a person undergoes a situation in which he would surely or most probably die if he did not commit a prohibited act. Need, however, is a situation where the man requires the easing and alleviation of a harm which usually leads to hardship and difficulty.<sup>43</sup> As proved earlier, it is not valid to distinguish between them on the basis that necessity refers only to what the Muslim genuinely needs. Nevertheless, it is essential to find a criterion for distinguishing between

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<sup>42</sup> Dr. Wahbah Az-Zuhayli, *Nadhariyyat Ad-Daroorah, Daar Al-Fikr Al-Mu'aasir*, 1997

<sup>43</sup> Ash-Shaatibi, *Al-Moowaafaqaat* (2/10)



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necessity and need in order for Sharee'ah rulings to be harmonious, as well as to make both become well-defined. Need has to be distinguished too from the preferable or supplementary matters because each has its own rulings and concessions.

The suggested criterion for distinguishing between necessity and need is "availability of an alternative". Hence, unlawful things that people need at first to protect the four fundamentals fall under necessity as long as nothing can substitute for them. Once an alternative is available, it will be considered only as a need. Al-'Araaya and eating the meat of dead animals are made permissible by Sharee'ah texts, and according to scholars advocating it, permitting loans based on Istihsaan is considered a necessity due to

the absence of any alternative and the existence of people's need for it. Other unlawful things that people need and that have lawful alternatives constitute a need.

The famous example that jurists draw upon as evidence on the need is the Prophet's use of silver to maintain his broken cup. It is narrated on the authority of Anas ibn Maalik (may Allah be pleased with him) that when the cup of Allah's Messenger, sallallaahu 'alayhi wa sallam, was broken, he fixed it with a silver wire at the crack.<sup>44</sup> Ash-Shiraaazi said: "Chapter on Items coated with gold and silver: It is prohibited to coat the items with gold. Shaafi'i scholars differed about the ruling on the items coated in silver. Some of them held that little of it would not be disliked based on the narration of Anas..."<sup>45</sup> and he cited the full Hadith.

The above criterion for distinguishing between necessity and need was mentioned by Ibn Qudaamah in Al-Mughni. He said:

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<sup>44</sup> Saheeh Al-Bukhaari, book of "Fardh Al-Khums", chapter "Armor and sword of the Prophet, sallallaahu 'alayhi wa sallam"

<sup>45</sup> Abu Ishaq Ash-Shiraaazi, Al-Muhaththab (1/12) Daar Al-Fikr, Beirut.



It is permissible to use silver in utensils or the like to fulfill a need, which means that one benefits by the silver in this aspect even if other alternatives exist. Al-Bukhaari narrated on the authority of Anas that when the cup of the Prophet, sallallahu 'alayhi wa sallam, was...etc. Gold, however, is allowable but only in the amount that necessity calls for, such as making a false nose for a Muslim whose nose is chopped off. It was narrated on the authority of Abdur-Rahmaan ibn Tarfah that when the nose of his grandfather 'Arfagah ibn Sa'd was cut off on the day of the battle of Al-Kulaab, he got a silver nose but it developed a stench, so the Prophet, sallallahu 'alayhi wa sallam, ordered him to get a gold nose.<sup>46</sup>

The quotation clearly shows that necessity refers to a matter that cannot be substituted, even if not explicitly expressed by Ibn Qudaamah, because 'Arfagah did not get a gold nose except when the silver one could not do the job.

Contemporary scholars who held the same position include Dr. Sa'd Ash-Shitri (may Allah preserve him). He said:

Necessity means what entails harm on the person when he abandons it provided no other alternatives can replace it. Some Muslim jurists say that necessity refers to something the lack of which causes death or destroys an organ, but this is not correct. Unlike a need; it is something that, when abandoned, brings about harm for the Muslim, yet other alternatives may replace it. An example of necessity is when man is under necessity and does not find any food except a dead animal. In this case he would suffer harm if he did not eat from the dead animal and there is no alternative to it. An example of need is the Hadith in which the Prophet's cup was broken.

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<sup>46</sup> Ibn Qudaamah, Al-Mughni (2/325), Daar Al-Fikr, Beirut, 1405 A.H.



This is a need since it was possible to bethe cup was welded by iron or brass or any other welding material.<sup>47</sup>

3) Saying that in the literature of Fiqh, necessity means "what entails harm on the person when he abandons it provided other alternatives cannot replace it" is very plausible and is supported by evidence, as detailed above. It is more appropriate and closer to the objectives of Sharee'ah and the alleviation of hardship. An example for this in our time is that if water or electricity is cut off from a Muslim's house and he can find no way to have it supplied again other than borrowing at interest, he will be permitted to do so even though the lack of electricity or of a water supply does not certainly or probably lead to

death. Were it required that necessity be established, i.e. that the man would suffer death or probably die if he did not borrow, it would not have been permissible for him to borrow at interest in this case. No scholar can hold this stance.

4) Necessities change from place to place and from era to era. Electricity has become one of the necessities of life, whereas it was not so in the past. Similarly, obtaining a university degree has become necessary to verify the education a student has received, and in most cases one cannot continue to study or get a job without a degree. In recent years, Internet access has become indispensable for almost all people in the developed world. And so on.

Such changes in the definition and estimation of necessities have been approved by the Fiqh Academies. For instance, Al-Azhar's Islamic Research Academy released a statement in 1385 A.H., 1956 A.D., about the issue of Riba interests. It reads: "Lending at interest is prohibited, and neither need nor

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<sup>47</sup> Dr. Sa'd Ash-Shitri, member of Senior Sholars Committee, KSA. This quotation was a script written from the sheikh when he was explaining Nadhm Al-Qawaa'id Al-Fiqhiyyah by Ibn Sa'di (may Allah have mercy upon him). See the following link: <http://www.afaqattaiseer.com/vb/showthread.php?t=360>



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necessity makes it lawful. Also, borrowing at interest is prohibited and its sin is not removed except under necessity. In this regard, every person will be religiously accountable to determine his necessity."<sup>48</sup> Contemporary scholars adopt the same stance in their fatwa. Dr. Wahbah Az-Zuhayli (may Allah preserve him) explained the condition of necessity which makes prohibitions lawful, saying: "Under the public necessity, the Muslim governor has to ascertain the presence of unbearable oppression, obvious harm, severe hardship, or public interest in a way that might expose the state to danger should it not work according to what necessity requires. On this basis, some Muslim jurists tolerated matters involving the country's foreign affairs or international trade and hence they permitted the state to deal with foreign countries and pay annual taxes to fend off the enemies' danger or maintaining the stability of the state. Some jurists also permitted paying Riba interests for foreign loans that the public interest of the state direly needed." <sup>49</sup>

5) It has been established that necessity refers to a matter that would entail harm to the Muslim if forgone and for which there is no other alternative, and that necessity changes according to time and place. It has also been proved that a university education is very important, even in some cases essential, for Muslims living in America, and furthermore that sometimes it cannot be achieved except by borrowing at interest. Therefore, borrowing at interest for the purpose of continuing university studies is permissible if it is the only option available for doing so. In other words, when a Muslim student who cannot afford his education on his own or with the help of his family has first expended his efforts on finding a lawful source of funding such as grants, aid, scholarships, or work through the university, and has then, if eligible, resorted to the subsidized loan (with the firm intention of repaying it within the six-

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<sup>48</sup> This is one of the wide-spread fatwas on the internet. See the following like:  
[www.sharea.com/index.php?records/view/action/view/id/1021/](http://www.sharea.com/index.php?records/view/action/view/id/1021/)

<sup>49</sup> Dr. Wahbah Az-Zuhayli, Nadhariyyat Ad-Daroorah



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month grace period), but these do not satisfy his basic needs, then, provided that he has tried, in vain, to move to another place or country where he could afford to continue his studies, and provided that his graduation has become contingent on his taking a Riba-based loan, he would be permitted to borrow at interest. This conclusion is not an unprecedented position; it has been adopted in fatwa in the past. Regardless of whether Muslim jurists have considered this situation one of necessity or need, they – to the best of my knowledge – have been in agreement that Muslims are allowed to obtain through this prohibited means the amount they require to strengthen their position and maintain their affairs as necessary.

Al-Joowayini (may Allah have mercy upon him), a Muslim scholar from the fifth century of Hijrah, said:

In brief, when the prohibition dominates the time, and people cannot find any lawful alternative, they will be allowed to take throughout the prohibition means only the amount needed. It is not required to reach the state of necessity that makes eating meat of the dead animals lawful for individuals. Here people's collective need is treated in equal terms with necessity for the coerced individual. The cases we have contested and proved so far show that people can take the amount that, if abandoned, will inflict harm in the present and the future, and the harm we have already talked about refers to the thing which is expected to spoil the structure, weaken the authority, or destabilize the affairs of living.<sup>50</sup>

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<sup>50</sup> Al-Joowayni, Gheeyaath Al-Umam (1/344-346)



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Al-'Izz ibn Abdus-Salaam (may Allah have mercy upon him), a Muslim scholar from the seventh century of Hijrah, said:

When the prohibition spreads on earth to the extent that the lawful no longer exists, it will be permissible to use an amount of the prohibition that the need calls for. This is not confined to the necessities because such a limitation would weaken the country and encourage the unbelievers and tyrants to control the Muslim lands. Also, people will quit their profession, manufacturing and the means which help accomplish people's interests."<sup>51</sup>

I wish I knew whether there is any harm afflicting Muslims in America greater than that of depriving them of a university education and obliging them to remain academically retarded or work in mean professions and crafts in a country to which people travel to seek knowledge. Nonetheless, it must be clear that the fact that education is a necessity does not mean that people should unconditionally engage in borrowing at interest or that the fatwa permitting it is applicable in all cases. Rather, every student must ask for a fatwa from a scholar whom he trusts for his knowledge and religiosity whether or not he should borrow at interest. A student, to be discharged from liability and guard his religion, should not borrow at interest on the first days of his university study, but must first resort to the lawful sources of funding, and continue his study till all lawful means are blocked and borrowing at interest becomes the only way to continue his studies. In this case, things which were not tolerable at the beginning become tolerable due to altered circumstances. Neither should a student borrow large amounts of money; he should borrow only an amount that fulfills his basic need. Surely, necessity must be answered proportionately. Allah is the Most High and All Omniscient!

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<sup>51</sup> Al-'Izz ibn Abdus-Salaam ('Izzud-Deen As-Sulami), *Qawaa'id Al-Ahkaam fi Masaalih Al-Anaam* (2/159-160), Daar Al-Kutub Al-'Ilmiyyah, Beirut.



This is what Allah has helped me to compile on the topic of Student Loans. Allah is the Cherisher of success. May peace and blessings of Allah be upon our Prophet Muhammad, his family and all his Companions!

## **AMJA Decision**

As it was mentioned in the beginning, this research was submitted to AMJA annual conference. After long discussion and debate, its suggested ruling of (the permissibility of having unsubsidized loan as needed) was approved as is. From that time on, this ruling became the official AMJA stand, and not a personal Fatwa of this author anymore, Alhamdu Lillah!

Below is AMJA declaration:

*"All praise is due to Allah, and may peace and blessings be upon the messenger of Allah, his family, companions, and those loyal to him. Proceeding:*





*During the period of the 9th – 13th days of the month of Dhul Qi'dah 1430, which coincide with the 28th – 31st days of the month of October, 2009, the 6th annual conference of the Assembly of Muslim Jurists of America commenced in Montreal, Canada, under the title of: "Contemporary Challenges that Arose Outside the Lands of Islam."*

*Throughout the four consecutive days, detailed and elaborate discussions took place around the topics presented to the esteemed members of the assembly and its experts which pertain to Muslims in America particularly and emigrant Muslims at large. Due to the absence of some of the esteemed members of the assembly from attendance because of inability to acquire visas, the assembly came out with certain decisions that were decided by the head panel of the assembly that were to be mailed to the rest of the assembly's members for their scrutiny/inspection by the 20th of December. Then it is to come back to the head panel to be investigated once more before being finalized upon the head panel's approval. This period was extended to the end of December as per the suggestion of some of the esteemed members. The assembly received and considered some suggestions during this period, then transferred them over to the head panel for approval, concluding with this treatise. And Allah is The Grantor of success.....*

*"..... Decisions Regarding Contemporary Economic Challenges*

*Firstly: Student Loans*

*The default is the forbiddance of interest-based loans regardless of whether these loans are for students or otherwise due to it falling under the clear interest that the scholars unanimously agreed, past and present, on its impermissibility. It is incumbent that all efforts are spent in finding permissible alternatives before leaping to the justification of urgency or need.*

*In the world of Western Universities, academic scholarships are granted for the outstanding students and unable to afford, alongside work-study opportunities that allow for combining*



*between studying and earning, by which one can avoid falling into these loans. Also, there may be subsidized loans that the nation pays its interest if the student is able to repay all he owes within six months of his graduation. In addition, there are grants provided by some companions and institutions in exchange for employment contracts with it after graduation. It is incumbent that one spends his efforts in trying all this.*

*If all of these are inexistent, and the interest-based loans are the only way to facilitate the beginning or continuation of a university education, or the only way to secure the Muslim communities need for what cannot be done without of professions and expertise, then this is considered an urgent necessity that removes the sin even though the ruling of impermissibility remains. This is upon the condition that the one forced to this isn't an aggressor nor transgressor, and this is by giving the urgent need its proper estimate, and by continuing to search for a permissible alternative and breaking free of these interest-based loans when one is first able to do so in order to minimize the interest amount paid as much as possible. We*

*emphasize the need to return to the people of Fatwa (i.e. qualified to passed a juristic opinion on Islamic Law) to estimate these needs and urgencies. It is not correct that for just anyone to assume the responsibility to do this or to measure his need on the need of others"*



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