MEDICAL INSURANCE

THE HALLUCINATION OF THE MUDHILLEEN (Deviators)

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THE FICTITIOUS BASIS OF THE LAWYER AND THE SHEIKH

A secular lawyer, Mr. Shuaib Omar, and a sheikh, Sheikh Taha Karaan, have imagined two fictitious basis for legitimizing medical insurance. They have raised the structure of their arguments on two separate figments of hallucination.

The lawyer's fiction

The lawyer has contended that the medical insurance company is a 'legal person' who we have termed 'legal donkey', who has its own independent existence apart from its human participants. This 'legal person' or donkey has all the contractual powers and abilities of a natural human being. According to the lawyer's conception, the 'legal' fictitious donkey is an *aaqil (an intelligent person)* and *baaligh (an adult person)* who can transact and contract, assume rights and obligations, and become owner and confer ownership on others. Thus, in his imagination, the medical scheme is like a human being who is the one party in the insurance contract between itself and its clients, the payers of the premiums.

The sheikh's fiction

The sheikh, equally bizarre with his hallucination, has imagined and conjectured that the medical insurance contract between the medical insurance scheme/company and the paying member is not a bilateral contract between two different parties. He has hallucinated that in the medical insurance contract, there is only one party, namely, the paying member.

The fellow who pays the premium, pays it to himself. He is both the medical scheme and the paying member. He has a duality which equals unity, similar to the Christian concept of trinity which equals unity. In his ludicrous view which makes a mockery of his own intelligence, the sheikh contends that the medical insurance contract is not a bilateral contract. There are no contracting parties.

This hallucination is truly bizarre and mind boggling. It illustrates the degree of mental derangement which is the effect of the

endeavour to legitimize *riba* and *qimaar* which are the two vital requisites of all types of insurance, including medical insurance.

Since the fundamental basis of the two gentlemen is pure fiction, the product of their hallucination, their entire argument rose on the basis of their respective concepts of imagination, are baseless and needs no further refutation. What is structured on *baatil* is likewise *baatil.*

Although logically there is no need to dissect the drivel which both the lawyer and the sheikh have fabricated, we have nevertheless deemed it appropriate to lay bare the drivel of their imagination so that the unwary and the ignorant are not misled.

In our treatise, we have lumped the two bedfellows together notwithstanding their different basis of imagination. Although they have different fictitious foundations, they arrive at the same conclusion, namely, medical insurance is permissible because in their imagination it comes within the Qur'aanic concept of *Tabarru'* (charity) – another bizarre figment of their hallucination.

Those who raise concepts on hallucinatory donkeys are as the Qur'aan Majeed states: *".....They are like a donkey which carries a load of books."*

MEDICAL INSURANCE – REFUTATION OF OMAR'S AND KARAAN'S OPINION

Sheikh Taha Karaan commenting on the medical insurance article prepared by one lawyer, Mr. Shuaib Omar, – who's article we had thoroughly refuted in our book, *Medical Insurance and the Shariah* – says:

"The fundamental aspect which he (Mr. Shuaib) has highlighted is that the insurance aid company is an independent non-profitable 'legal person' which utilizes the 'surplus' for the running expenses (of the medical scheme) and for providing (medical) benefits to the contributors."

Following the example of Mr. Shuaib, Sheikh Karaan also initiates a fallacious exposition on a false premises – a figment of the

imagination. While Mr. Omar's figment is the 'legal person', Sheikh Karaan's imagined fiction is that there is only one party in the bilateral contract between the medical insurance scheme and the clients. While Mr. Omar's fiction appears deceptively 'rational', Karaan's hypothesis is stupidly illogic. Denying all reality, he displays his irrationality by contending that the contract between the medical insurance scheme and the premium-paying members is not a bilateral contract. Compounding the confusion and incongruency, despite the two bedfellows having widely diverging grounds, both surface with the same conclusion of permissibility of insurance. Mr. Omar's 'legal person' whom we term a 'legal' donkey was spawned by the kuffaar capitalist system with the specific intention of defrauding creditors in the event of the legal donkey's insolvency. The fundamental purpose underlying the creation of the legal donkey fiction is to attract capital from the masses with the assurance that although they will be shareholders with the legal donkey and earn 'dividends' (riba in reality), they will not be held liable for the debts incurred in the name of the haraam fiction. While they may enjoy in the profits produced by the legal donkey, the burden of debts theoretically will settle on only the fictitious legal entity, and in reality on the creditors who stand to lose in the event of the insolvency of the legal donkey fiction whom the kuffaar capitalist have succeeded in convincing even so-called molvis and sheikhs, is like a real living *insaan* with contractual capacity who has obligations and rights. Licking up this spiritually impure spittle gorged out by the kuffaar capitalists, some molvis and sheikhs, emulating these kuffaar, follow them into the 'lizard's hole' as was predicted by Rasulullah (sallallahu alayhi wasallam).

Islam does not recognize this fraudulent legal donkey which is the primary basis on which Mr. Shuaib structures his fictitious effects of permissibility and imagined legality of the haraam medical insurance company. Without having proven the assumed Shar'i validity of the donkey concoction, the two gentlemen after arbitrarily proffering the legal donkey premises, proceed to structure their case in favour of medical insurance. Although Sheikh Karaan has presented another fictitious basis for permissibility, his ominous silence regarding Mr. Omar's legal donkey basis is to be understood as condonation. We

therefore lump him together with the concoction of the legal donkey entity hallucinated by Mr. Omar. By his silence he conveys the distinct impression that he too accepts the legal donkey concept as a valid Shar'i institution. If he does not, then he is guilty of *Kitmaanul Haqq* (concealing the truth) with his silence. As such he will come within the scope of the Hadith: *"He who is silent regarding the Haqq is a dumb shaitaan."* On the other hand, if he does accept the validity of the legal person fiction, then he aligns himself with Mr. Omar's basis notwithstanding his own independent fiction which irrationally denies the bilateralism of the medical insurance contract.

Since the primary basis of the whole argument and opinion of the two gentlemen are fictions or figments of their imagination, which have absolutely no validity in the Shariah, all consequential effects structured on the non-existent and invalid basis are likewise *baatil (fallacious and haraam)*.

According to the Shariah only a sane adult human being has contractual capacity. Only a sane adult *insaan* – a real human being – a person with body and celestial soul, not a fictitious donkey – can contract and transact. An imagined entity has no reality and no Fiqhi (juridical) validity in Islam. Thus, the Shariah does not recognize the medical insurance company as being a legal and fictitious donkey. All rights and obligations therefore devolve on the participants of the contract.

The participants are the contributors of the funds who have formed a *baatil* and *haraam* monetary relationship with the managers and directors of the medical insurance company, who are the real bosses. In *Uqood* (monetary transactions) the reality is of crucial importance, not the words. Thus, by calling the bosses 'managers and directors', does not alter the reality. The medical aid company is **NOT** a partnership between the contributors and those persons who had formed the company and who are 100% in control. The contributors merely pay insurance for future doubtful medical benefits. And this arrangement brings into existence the factor of *Qimaar* (gambling in terms of the Shariah).

The claim that the medical insurance company is a non-profitable company is bunkum and highly misleading. Those in charge of these medical 'aid' companies become millionaires and billionaires by

their skilful, cunning and fraudulent manipulation of the contributions paid by the dumb and stupid participants. These insurance companies do invest the monies they acquire from contributors. Such investments yield profits. Out of these profits a certain percentage is utilized for the administrative expenses of the company. A certain percentage is for meeting the liability of providing medical benefits, and a certain percentage (a massive slice) is for the pockets of the directors and managers regardless of what the law and the company's constitution states. They have their fraudulent methods and avenues for siphoning of the 'profits' acquired from investing the contributions paid by the members.

Devious votaries of this kuffaar riba system mislead the ignorant masses into the belief that medical insurance companies are 'non-profitable' ventures. An outstanding feature of any insurance company is its attribute of parasitism. Insurance companies are primarily and totally riba and qimaar ventures. The idea of such companies being non-profitable is an insult to the intelligence of even a person who suffers from intellectual density. A moron too understands that an insurance company is not a non-profitable enterprise.

The claim that a medical insurance company does not have profit as its aim is unacceptable drivel.

After baselessly, without the slightest Shar'i entitlement, accepting the arbitrary premises of the 'existence' and 'validity' of the donkey-fiction, concocted by the western capitalist system, the sheikh purports to 'examine' the type of relationship which exists between the contributors and the medical insurance legal donkey. The two gentlemen arbitrarily, without the slightest Shar'i as well as secular evidence claim that the relationship between the partners is *Tabarru'* (donar-donee relationship). The Shariah as well as the secular law and the constitution of the medical insurance scheme categorically reject the absurd claim of the relationship being one of *Tabarru'*.

The deception perpetrated by these two misguided purveyors of insurance is conspicuously manifest in their selective extraction from the capitalist system. What suits their whimsical opinions, they arbitrarily present as if it is a fact of the Shariah. However, in the

same system, they very conveniently and cunningly ignore the provisions which scuttle the entire structure which they raised on the basis of the legal donkey-fiction and the fallacious *'tabarru'* relationship. Thus, it will be seen that while they wholeheartedly accept the 'legal person' concept from their capitalist masters, they ignore the rights and obligations with which the system encumbers the legal donkey fiction.

While the gentleman sheikh mentions the government's Medical Schemes Act as if it is the holy writ to which the Shariah could be subordinated, and in terms of which they accept the legal donkey fiction, they maintain a deafening silence regarding the provision of the same Act which states that among the objects of the legal donkey is:

"To undertake liability, in respect of its members and their dependents ***in return for a contribution or premium."***

This provision knocks the bottom out of the *Tabarru'* fallacy as well as debunks the claim of the sheikh that medical insurance is not a bilateral contract. The number of other compulsory provisions which bind the contributor and the legal donkey, which have already been explained above, thoroughly debunk the *Tabarru'* relationship which the two votaries of medical insurance so ignorantly claim to exist.

PROFIT AND BENEFIT

The sheikh, in his endeavour to legitimize the haraam insurance by hook or by crook, presents the imagined *Tabarru'* relationship which is further convoluted with the imagination of there being no profit for the parties. First was the arbitrary acceptance of the legal donkey fiction as being a real insaan with full contractual power and ability, and the fiction of the contract not being bilateral. Second is the arbitrary presentation of a further two figments of imaginations, namely, the figment of *Tabarru'* and the figment of there being no profit. Yet, not a vestige of Shar'i evidence has been provided for the validity of any of these figments of imagination which the two gentlemen (one a sheikh and the other a secular lawyer) have hallucinated.

On the basis of the imagined non-profitable *Tabarru'* relationship, the sheikh differentiates between business insurance and medical insurance. In this regard the gentleman sheikh opined the following drivel:

There are fundamental differences between business and medical insurance with regard to:

- Relationship between the parties in the contract
- Ownership of the premiums
- Motive of the insurance.

The Relationship

Regarding the relationship issue, the sheikh avers that there is a total difference between the insurer and the insured. Both are different entities apart from one another whereas in medical aid insurance, the insurer and the insured miraculously fuse into an indistinguishable duality which then spawns a unity which in turn negates bilateralism, similar to the trinity concept of the Christian mushrikeen.

The entire stupid structure which the two misguided gentlemen (the sheikh and the lawyer) have raised to legalize haraam insurance is the product of imagination and hallucination, the effects of which are being presented as Shar'i facts. The sheikh has truly degenerated to a silly ebb in claiming that every insured person in the medical insurance scheme is part insurer and part insured.

This ludicrous concept is neither valid in the Shariah nor in the capitalist system from which the gentlemen have acquired their legal donkey fiction as the basis for legitimizing the haraam medical insurance. Even the government's medical schemes act does not condone the absurdity of duality of personages hallucinated by the errant sheikh. The sheikh has gone a step further than the lawyer in hallucinating absolute rubbish.

Whether it is business insurance or medical insurance, the contributors or payers of premiums have the same capacity. They are fundamentally and factually only contributors of premiums. Just as in business insurance one insured person has no relationship with another insured person, so too is the position of the contributors in medical insurance.

QIMAAR – THE PREMIUM-MEDICAL BENEFIT RELATIONSHIP

The contributors pay their premiums to gain future benefits in the event of any uncertain calamity which may occur. This principle of *qimaar* is applicable to both business and medical insurance. An insured person who has a fire policy pays regular monthly premiums in the hope of gaining benefit if the calamity of fire strikes. Precisely in the same way does the payer of premiums in medical insurance hope for benefit in the event of sickness afflicting him. The contributors of premiums in both types of insurance are paid on the express basis of benefits/profits ***in lieu*** of their premiums. The bilateral arrangement is more conspicuous than the dazzling sunlight. To deny this irrefutable fact which stares the misguided lawyer and the sheikh in the face with a blinding dazzle, is tantamount to denying that the sun shines only during the day.

Since these votaries of medical insurance have based their entire stupid case on the basis of the legal donkey fiction which they have acquired from their western capitalist masters, as well as the other fiction conjectured by the sheikh, it will be appropriate that they refer to the kuffaar experts of economics for an exposition and a better understanding of the relationship between the insurer and the insured in medical insurance. Perhaps if their kuffaar western capitalist masters explain to them this relationship, the haze of *jahl* which veils their eyes of understanding may begin to dissipate and allow them to perceive the reality of medical insurance.

The duality theory, i.e. the premium-payer is a two in one person in terms of the sheikh's hallucination, spun by sheikh Karaan, is a glaring and a downright stupid fallacy presented to deceive the unwary and the ignorant. Perhaps he himself is labouring in genuine deception in this regard. In medical insurance, there is absolutely no fusion of the contributors with one another. There is no duality in one person. There is no common money box or kitty from which the one aids the other in the event of calamity. Blood-suckers (the directors who are in fact the *owners* of the medical scheme practically and materially, regardless of the drivel of the concept of the legal

fictitious donkey), reluctantly pay benefits to contributors when calamity strikes them.

Every contributor is a distinct separate unit unrelated to any other contributor who happens to be a paying member of the scheme.

Ownership of the Premiums

Regarding ownership of the premiums paid by members, the misguided sheikh avers that since business insurance is such a two dimensional contract in which the insurer is independent of the insured, that is, both are separate entities in every aspect, ownership of the premiums is transferred to the insurer (the insurance company). The rationale according to the sheikh is that the transference of the premiums to the insurer is a true transference in view of the fact that each one of the partners of the insurance contract derive benefit independently.

However, regarding medical insurance, he advances an extremely stupid hypothesis devoid of any basis in either the Shariah or in the capitalist system. According to the sheikh's hypothesis, although a transference of premiums does occur in medical insurance, it nevertheless is not a true and a real transference of the funds from the paying members to the medical insurance company. It is a 'superficial' transference in outward form only. He justifies this concoction by saying that the paying members have a right in the premiums which they have paid.

We are sure that even the members among the laity who are contracted to medical insurance schemes will giggle at this absurd differentiation between business insurance and medical insurance presented by the sheikh who is either ignorant of the details of a medical scheme or is deliberately peddling falsehood in order to legitimize the haraam riba-qimaar medical insurance system.

The very same right which the premium-payer has in relationship to his premiums in business insurance, he has in medical insurance. In business insurance, the insurance company pays the insured person the contracted benefit in the event of the affliction of calamity in lieu of the premiums paid as is explicitly stipulated in the mutual contract. In exactly the same manner does the insurer in medical insurance pay

the insured member the contracted benefit in the event of the calamity of sickness ***in lieu*** of the premiums which were paid. The very same right which a premium-payer enjoys in business insurance, is enjoyed by the premium-payer in medical insurance.

The claim that there exists two dimensions between the insurer and the insured in business insurance and only one dimension between the insurer and the insured in medical insurance is palpable nonsense which the sheikh has tendered without any basis whatsoever. This stupid theory is devoid of Shar'i basis as well as of secular basis or a basis in terms of the capitalist system. The kuffaar capitalists are more frank and honest about their dealings than the misguided sheikh. They state clearly and simply that the benefits which the insurer pays the insured are in lieu of the premiums, and this they maintain is the position in *all* kinds of insurance, whether business or medical or any other type.

One Party

It is absolutely ludicrous to claim that in business insurance there are two contracting partners, while in medical insurance there are no two parties, and that only 'one' party is involved in the contract. Who is this one party? The legal donkey or the paying members? On what basis do the paying members merge into the legal donkey fiction in some form of concept akin to pantheism to become one entity, or the legal donkey fusing with the human paying members to miraculously become a human being thereby annihilating his fictitious existence?

The sheikh makes a mockery of his own intelligence by averring that in medical insurance there is only one party, namely, the paying members, and that the two parties are a phantom. Indeed this is another ghost of his imagination, worse than the original legal donkey fiction on which the miscreant lawyer has structured his baatil hypothesis to legitimize the haraam *riba-qimaar* insurance.

The independent distinct existences of two real parties in the medical insurance contract is a self-evident fact which debunks the absurdity proffered by the sheikh who has descended lower in stupidity than even the lawyer.

The sheikh claims that the premiums in commercial insurance becomes the property of the legal donkey fiction which he believes is a legal 'person'. The absurdity of this silly contention is self-evident. He compounds the absurdity with a contrary opinion regarding medical insurance. Although he commenced the exposition of his stupid hypothesis on the basis of the lawyer's contention that the medical insurance company is also a legal donkey like the commercial insurance company. He cunningly and deviously denies the legal donkey in medical insurance ownership of the premiums. Although the sheikh concedes the existence of legal donkeys with legal rights and obligations in both kinds of insurance, he arbitrarily, irrationally and without any basis whatsoever awards ownership of the premiums to one legal donkey (the commercial insurance company), while he denies the other legal donkey (the medical insurance company) whom ownership of the premiums paid to it. This unjustified discrimination is the effect of whimsical fancy and nafsaani opinion.

In the haze of the confusion and deception created by the ludicrous stupidities of the sheikh's contentions, he has lost sight of his lawyer friend's very initial contention regarding the contractual capacity of the legal donkey operating the medical insurance scheme. The lawyer, expounding the fraudulent capitalist concept of the legal person, unequivocally stated that the medical insurance company has the right to own and to grant ownership. Expounding his nonsense, the lawyer said:

"According to the Medical Schemes Act, the medical aid company is regarded as a legal person. Thus tamalluk (becoming owner), tamleek (granting ownership) and assuming independently financial obligations are established for it (the legal donkey). Among its obligations is payment of medical benefit (to premium-payers/ members) in accordance with the rules of the scheme (i.e. the legal donkey)."

This contention of the lawyer categorically affirms ownership for the medical aid legal donkey. In terms of the lawyer's exposition, the medical legal donkey becomes the owner of the premiums, and it also grants the members ownership of the medical benefits which it

supplies in lieu of the payment which the members regularly – without fail – make. Should they fail to make regular payments, they forfeit the monies which they have hitherto paid to the medical legal donkey fiction. The lawyer's contention scuttles the hypothesis of the sheikh who is at pains to convince unwary and stupid people that the paying member remains the owner of the money which he pays to the medical insurance company. Thus, the sheikh says: *"The right of the payer of the premiums is not totally extinguished from the money he paid. On the contrary there remains for him a right in it."*

The manner of argument of the sheikh manifests his incongruity and confusion. The first foundational pillar which the sheikh acquired from his lawyer friend is the legal person fiction. On the basis of this fiction and imagined legal donkey, the entire structure of imagined *tabarru'* and *ta-aawun* is constructed. This legal donkey fiction has been obtained from the kuffaar capitalist system. However, despite wholeheartedly and fully accepting the legal person entity, the sheikh denies the powers which the same capitalist system has created for the legal donkey. While the sheikh's capitalist masters unequivocally contend that *tamalluk* and *tamleek* are the essential powers of the legal donkey, and this has been explicitly affirmed by the lawyer, the sheikh conveniently and stupidly ignores these vital attributes of the legal donkey. He has resorted to this illogical selection from the capitalist system – accepting the legal donkey, but denying its contractual powers – for the sake of peddling his *tabarru'* and *ta-aawun* fallacy.

In contrast, the sheikh's lawyer colleague has displayed a degree of logic by not denying the *tamalluk* and *tamleek* powers of the legal donkey. After all, he (the lawyer) is a slave of his capitalist masters. Thus, he has not committed the same absurd blunder which the sheikh commits. While the lawyer contends that the legal donkey becomes the owner of the premiums, acquiring such ownership without any condition, the sheikh flabbily says that the premium-payer retains his right in the paid monies despite the 'outright gift' made to the legal donkey. The insured person (the member of the medical scheme), in the fallacy spun by the lawyer, simply makes a gift of money on a monthly basis to the legal donkey who forthwith

becomes the owner without any condition or encumbrance whatsoever.

The quagmire of confusion and deception worsens for the sheikh with the contradiction by the lawyer's exposition. Refuting his friend the sheikh, the lawyer states:

"The right of ownership (of the premiums) is eliminated and is transferred to the ownership of the medical aid company according to the (secular) law and the Shariah."

Thus, while the sheikh contends that the premium-payer retains his right in the monies he pays to the medical insurance, his friend, the lawyer unequivocally contends that:

- the ownership of the premium-payer is extinguished
- ownership of the money is transferred to the medical insurance company, that is, the legal donkey.

The sheikh has presented a thoroughly irrational postulate by claiming that the premium-payer's ownership is not extinguished and that his right remains established in the money, and that the transference of ownership to the medical insurance is merely an outward form devoid of reality. Since the whole exercise is structured on the fiction of a legal donkey and the fiction of an unilateral 'contract', every claim raised on this absurd and irrational basis is likewise absurd, ludicrous and utterly baseless.

Once the premium is paid, the payer's ownership is extinguished in terms of the legal person concept. He has no control over the money. In terms of the law, only the legal donkey controls the money it has acquired from members. The lawyer unequivocally contends that ownership is transferred totally to the medical insurance company which is a 'legal person' (more appropriately a legal donkey) according to the kuffaar capitalist system, which the sheikh and the lawyer have embraced in flagrant rejection of the principles of the Shariah which refutes the idea of even a real tangible donkey or a stone having the power to own, grant ownership and assume obligations and duties. The Shariah's rejection of an imaginary person having the rights and powers of a true and real *Insaan*, is

infinitely more emphatic than its rejection of a real physical donkey and stone having such powers.

The contention that the premium-payer remains the owner of the money and that no transference of ownership to the medical insurance donkey takes place is a palpable fallacy which even the lawyer refutes with his categorical assertion: *"The right of ownership is extinguished and ownership is transferred to the medical aid company….."*

The Motive for Insurance

The sheikh in his abortive endeavour to forge a difference between 'commercial' insurance and medical insurance asserts that the major difference is that while in commercial insurance the motive is the acquisition of gain, the motive in medical insurance is to provide aid at the time of calamity. He furthermore alleges that from the moral angle there is a great difference between the 'two' types of insurance, hence it will not be far-fetched to differentiate between these two types of insurance from the Shar'i viewpoint.

This sheikh labours under the misconception that any Tom, Dick and Harry's personal opinion could be elevated to Shar'i status or conversely, the Shariah may be subordinated to just any fellow's whimsical opinion. Besides making claims, the sheikh's arguments are bereft of evidence and basis of whatsoever kind. Neither is he able to substantiate his whimsical hypothesis with Shar'i evidence nor with any proof from his capitalist mentors and masters.

The difference claimed by the sheikh is another figment of his imagination. What is the basis for this arbitrary unsubstantiated claim? Apart from the Shar'i viewpoint, even from the capitalist and mundane viewpoint, the motive for joining a medical scheme is nothing but the acquisition of gain. The medical benefits are the gain which motivates people to acquire medical insurance. In view of the phenomenal medical costs, they buy medical insurance, the motive being absolutely nothing but gain – the acquisition of benefit/profit which the medical insurance is obliged to pay in lieu of the premiums paid by the insured members although the 'aid' bait is a massive

fraud and deception which the dumb masses and even the not so dumb people have been indoctrinated to believe in.

The idea of paying premiums to aid other unfortunate members is furthest from the mind of the payer. He acquires medical insurance only for himself and his dependents. He does not pay his premiums with the intention of assisting others. Similarly, the medical insurance scheme pays benefits to the member only on the basis of his premiums. The benefit is in lieu of the premiums. The medical benefits provided are not aid *(ta-aawun)* in the true sense of the word as contended by the miscreants.

There is absolutely no ideal of altruism in the motives of the member and the medical aid company. The contention of 'moral angle' is laughable, stupid and palpably false. There is no morality involved in medical insurance. Medical insurance is just as commercial as all other types of commercial insurance. In fact, due to its attribute of sadism, medical insurance is worse than commercial insurance which also lays claim to a concept of *ta-aawun* and *tabarru'*.

The sheikh has sucked the morality issue from his thumb. He knows not what he is saying, hence he speaks such drivel about there being a moral angle to medical insurance. The element of parasitism is just as fundamental in medical insurance as it is in all other types of insurance which the sheikh terms 'commercial insurance'. Medical insurance is commercial insurance at its worst. There is no difference in constitutional reality (haqeeqat). The difference is only in the different designations of the two types of insurance. Commercial insurance is less brutal than medical insurance.

While the sheikh opines that acceptance by the Shariah of this *riba-qimaar* medical insurance is not 'far-fetched', it is in fact haraam. He has put forward the idea of 'not being far-fetched' without providing a single *daleel* for his opinion. For every claim the sheikh has made, he has miserably failed to produce any evidence and basis from the Shariah to substantiate his contentions. He invents one fiction upon another. Purely on the basis of imagination does he proffer unsubstantiated claims.

Altruism does not legitimize haraam

The sheikh appears to be scandalously ignorant of the operation of the juridical principles of the Shariah. An act/deed/practice/institution/concept in the Shariah has its fundamentals and essential attributes. The *hukm* of the Shariah becomes applicable to the institution/act regardless of the underlying intention/motive. Selling liquor with a 'noble' intention, e.g. all proceeds will be for the fuqara and masaakeen, does not legitimize this haraam trade. Gambling with the intention to donate all the proceeds of gambling to charity or to patients suffering from chronic illness whom the so-called medical 'aid' companies refuse to assist, is never halaal. A riba transaction does not become lawful with a good intention.

Similarly, medical insurance, the reality and nature of which are *qimaar* and *riba*, is not transformed from haraam into halaal by virtue of the good motive which there allegedly exist in the medical 'aid' system. Even it is assumed that medical insurance is truly a boon and nothing but pure medical aid for the poor who are unable to afford the phenomenal medical bills which capitalism permits for the medical establishment, then too, the haraam *qimaar (gambling)* which is the fundamental basis of this system, does not become halaal.

While the sheikh and the lawyer diverge from the Shariah at an obscene tangent to fabricate their nafsaani baatil, they, in entirety ignore or are ignorant of the principles on which the *Ahkaam* of the Shariah are based. The argument presented by the miscreants to legalize the haraam *qimaar* of the medical insurance is tantamount to legitimizing the operation of a brothel on the basis of 'noble' motives such as to feed the starving and to aid the destitute. A noble intention does not abrogate a *hukm* of the Shariah.

The sheikh and his lawyer friend, approach the issue of medical insurance from a variety of fictitious angles. However, they ignore the fundamental factor of *qimaar* which is the primary basis of all types of insurance. Due to their lack of understanding of the principles of the Shariah and even of the definitions of the institutions of the Shariah, they have miserably failed to recognize

the *qimaar* basis of insurance. And, if they do recognize it, but deny it, then they are guilty of wholesale skulduggery and fabrication of *baatil* with their endeavour to legitimize the *qimaar* with their legal donkey fiction and the unilateral hallucination.

The sheikh's 'principle' of ta-aawun (aid)

Seeking to legitimize medical insurance from another angle, the sheikh presented several examples in which he claims the basis for permissibility is *ta-aawun.* He has cited *qardh, mudhaarabah, bay'ul wafa'* and *bay'ul araaya*. His rationale is that these transactions are lawful on account of two factors – *ta-aawun* and *tabarru'.*

Without even considering the validity of the sheikh's 'principle', and assuming that that all the aforementioned transactions are lawful, then it is necessary to examine whether medical insurance is an institution of *tabarru'* and *ta-aawun* so that the sheikh's fabricated principle could be applied.

We have already explained in detail that the contention of *tabarru'* is a palpable fallacy. We have already presented the arguments of the Shariah in refutation of the *tabarru'* hypothesis. Regarding *ta-aawun*, only fickle-minded persons and those bent on making *qimaar* and *riba* halaal, will dare venture to confer the attribute of *ta-aawun* to such a vile institution as medical insurance which is deceptively described 'medical aid'. This is the mask of deception to hoodwink the dumb laymen who are constrained to join these clubs of *qimaar* by their capitalist employers.

The following comments of a medical doctor who is fully apprised with the workings, deeds and misdeeds of medical insurance companies should be salutary for the sheikh:

"I have attached a small part of a Discovery Medical Aid's brochure, just to show that the member does not get out of a medical aid what he has put in. The vast majority of our patients are *forced* to be part of medical aid by the companies they work for. They do not have a choice despite not being able to afford it.

In the example below, this is Discovery Health's premiums vs benefits. Member pays R1,896 per month X 12 = R22,752 p.a. for classic comprehensive cover. He gets out R5,688 per annum only for day to day cover, i.e. doctors, dentists, pharmacists, etc.

If at any point in the year, he used up the R5,688, he has to then pay R6,000 from his own pocket for his medical expenses to reach the threshold, only then does Discovery kick in to start paying his further expenses.

Most people do not have an additional R6,000 to pay for medical expenses. Therefore, after using up the R5,688, they remain without cover until the new year.

One has to be hospitalized or suffer from a chronic illness to access the hospital and chronic funds."

So much for the *tabarru'* and *ta-aawun* hypothesis stupidly advanced by the sheikh who appears to be scandalously ignorant of the nature and attributes of medical insurance. The doctor's example vividly illustrates the sadist dimension of medical insurance. A member pays R22,752 in premiums in just one year, but he is not allowed to incur medical expenses in excess of R5,688. If the unfortunate member is afflicted by the calamity of such sickness which requires funds in excess of R5,688, the so-called *ta-aawun* legal donkey will not pay despite the member having a balance of about R17,000 in the coffers of the legal donkey. Is this the idea of *ta-aawun* which the misguided sheikh endeavours to peddle? Is this the Islamic concept of *ta-aawun?* Is this the legitimate effect of *tabarru'?*

If the sheikh musters up courage to be honest with himself, and thereafter scrutinizes medical insurances factually by consulting medical doctors, patients and actuaries, then he will not fail to discern the parasitism and villainy of medical insurance which he paints with the hues of altruism – *ta-aawun* and *tabarru'*. They are frauds and crooks who thrive on sucking the blood of the patients, the vast majority of whom have been compelled against their volitional will to be members of these evil legal fictitious donkeys so arduously defended by a sheikh who lacks understanding of the nature, attributes and reality of medical insurance, and by a lawyer who deviously trumpets the imagined 'aid' offered by this haraam institution. The only aid the haraam institution offers is spiritual AIDS.

Medical insurance schemes are anything but *ta-aawun* schemes. The designation, *medical aid*, does not transform the parasite institution into an institution of altruism which opens up its arm to offer *ta-aawun* to its suffering premium-payers. On the contrary, the

medical insurance company usurps the funds of the members. The vast majority of ordinary workers have an aversion for medical insurance. However, they are compelled to become members. The company bosses arbitrarily deduct the premiums from the wages of the workers who have no right to refuse.

The baseless arguments and examples of transactions which the sheikh presents laboriously, in no way legitimize medical insurance even on the basis of his assumed 'principle' of *ta-aawun.* There is just no *ta-aawun* in medical insurance.

Also, haraam *qimaar* cannot be legalized on the basis of *ta-aawun* even if we have to assume that this attribute is a true virtue of medical insurance. Neither is there a dire need for medical insurance to justify the invocation of the principle of *Haajat* (dire need), nor can a haraam institution be made halaal on the basis of exceptions to the general rule, especially when the so-called exceptions are in conflict with *Qiyaas*. Such exceptions cannot be presented as *mustadallaat* for deduction of *Ahkaam.* If the sheikh had possessed a proper understanding of the operation of Shar'i principles, he would not have so audaciously attempted the wholesale and blanket legalization on the basis of 'exceptions' and 'need' of an institution structured on the fundamental basis of *qimaar.*

The principle of the permissibility of prohibitions occasioned by dire need may not be invoked to legitimize *qimaar* medical insurance. Firstly, there is no such *haajat* to legalize consumption of the medical insurance 'pork'. It has been proven that the medical insurance schemes usurp, swallow and digest the greater part of the funds which members pay into their coffers. Members are unable to acquire medical benefit for the full amount they have paid as the aforementioned example illustrates. Cases when they are fully paid or even paid in excess due to prolonged hospitalization are rare, and exceptions. In this regard the sheikh requires gaining some basic education from an actuary.

There is no need to elaborate on the misrepresented examples the sheikh has presented. Since his *tabarru'* and *ta-aawun* principles have been negated, it will constitute a sheer waste of time and other resources to expand this treatise by another 100 pages to rebut the stupid analogies which he has drawn from the examples. Our book,

Islamic Finance, adequately refutes the *bay'ul wafa', tabarru'* and other aspects which the lawyer had presented in his bid to legalize the interest penalty on delayed payment of instalments. Those interested in this book, may write for a copy.

The Practice of the Ash'ariyyeen

The sheikh further compounds the absurdity of his fallacious theory by attempting to extravagate support for medical insurance from the following Hadith:

"When the food provisions of the Ash'ariyyeen become depleted during (jihad) campaigns, or the food of their families in Madinah become less, then they collect whatever they have in one cloth. Then they distribute it among themselves equally. They are from me, and I am from them."

Subjecting this Hadith to his whimsical opinion, the sheikh arrived at the following conclusion:

- That this Hadith is the best indication for the permissibility of cooperative insurance.
- This 'aid' (AIDS) insurance is not only permissible, but Mustahab of the ta-akkud (emphasised) category.

This ludicrous opinion of the sheikh is like saying that fornication is permissible, in fact an emphasised mustahab on the basis of the permissibility and exhortation of marriage. It is like saying liquor is permissible on the basis of date-juice being permissible. It is like saying riba is permissible on the basis of the permissibility of trade. It is like saying *qimaar* is permissible on the basis of the permissibility of distributing prizes (as mentioned in the Hadith).

In presenting this type of unprincipled, absurd deduction, the sheikh comes within the purview of the Qur'aanic stricture: *"Those who devour riba, do not stand except as stands one driven to insanity by the touch of shaitaan. That is because they say: 'Verily, trade is like riba.' However, Allah has made lawful trade and made riba haraam."*

The practice mentioned in the Hadith, and which is called *Nahd*, is simply a way of 'fund-raising' (food-raising to be exact) in times of scarcity of food, especially during jihad campaigns or other exigencies of need which develop. There is a shortage of food or the food of some members of the family, tribe or community has become depleted. Members of the community/tribe bring whatever grain, etc. they can afford. All the collected food is put together in exactly the same way as funds, etc. are collected from the community, then utilized for the specific purpose for which the collection was made.

The food, collected by way of donations/charity of the community, is then equally distributed to the members of the tribe/community. Commenting on this practice, Imaam Nawawi (rahmatullah alayh) says: *"In this Hadith is the significance of sacrificing and charity, and the significance of mixing provisions (of compatriots) along the journey, and the significance of gathering the collected food in a container in hadhr (i.e. when not on a journey); then to distribute it. The meaning of this distribution is not the (type of) distribution known (stated) in the kutub of Fiqh with its (the distribution's) conditions and its prohibitions in the items of riba, and stipulating with the condition of equality, etc. The meaning (of this distribution) is only mutual authorization (i.e. every member consenting to the distribution) and to charity with 'maujood' (i.e. with the collected food.)"*.

It has been clarified by Imaam Nawawi and by the Fuqaha in general that *Nahd* is not a commercial transaction. It is pure charity which the sheikh portrays with the hue of riba in an endeavour to acquire legitimacy for the haraam *qimaar-riba* medical insurance.

The sheikh has truly degenerated to an extremely low ebb, scraping the very bottom of the barrel in his bid to find some basis for medical insurance. One need not be a molvi or a sheikh to understand the gross impropriety of the analogy with *Nahd* which is a purely charitable practice while insurance, including medical insurance, is a blood-sucking institution of capitalism. Insurance has no charitable dimension. It perennially extorts money from members, promising to pay benefits in lieu of the premiums, be it medical insurance or any other kind of insurance. All kinds of insurances are

commercial. The sheikh's classification of *Tijaari insurance* and *Ta-aawuni insurance*, in addition to being misleading and deceptive, illustrates the sheikh's ignorance on this score. He displays colossal ignorance regarding the practicalities of insurance.

In *Nahd* no one pays monthly premiums *ad infinitum* to secure benefits. There are no conditions such as the dozens of baatil, faasid and haraam stipulations which encumber the medical insurance contract. There is no voluminous constitution with regulating haraam rules. In *Nahd* there is no application form which entraps the members into the snares of the callous insurance purveyors. There is no forfeiture of funds. There is no investment of funds to obtain interest. The *fasaad* which pervades insurance does not exist in *Nahd.*

In *Nahd,* it is basically a collection of foodstuff from members of the same tribe. The food is distributed to the members of the tribe. There is no *qimaar* which constitutes the fundamental basis of insurance. The benefit of eating the food collected in terms of the *Nahd* practice, i.e. gaining the benefit, is not suspended on a future uncertain event which is a vital constituent of the insurance contract. In *Nahd* the subject of distribution is the already-collected food while in insurance, the benefits are all related to the future and hinge on uncertain events. There is no certitude regarding the acquisition of future benefits.

In *Nahd,* every member of the family or tribe is included in the distribution even if there are many members who had nothing to contribute towards the family charitable fund. But, in insurance, even the premium payer has to struggle to acquire benefits. In fact, the reluctancy and callousness of the medical insurance companies to pay when the need arises, are well-known to all and sundry barring the miscreant sheikh and his lawyer comrade. The extreme reluctancy of the medical insurance companies to pay up, constrains the members and the doctors to scheme 'malpractices' to circumvent the *haraam* restrictions imposed by these evil institutions.

Nahd is a practice which is pure *ta-aawun* and *tabarru',* while medical insurance is a purely *haraam* commercial venture, the bedrock of which is *qimaar.* There is not a semblance of *qimaar* in *Nahd.* While the sheikh has stumbled on *Nahd,* he appears to be ludicrously ignorant of the nature of this simple practice basically

related to collection and distribution of essential foodstuff among members of a family/tribe in times of need.

The concept of *Nahd* is stated as *'al-aun', i.e. pure aid.*

Furthermore, the practice of *Nahd* applies to food, not to any monetary contracts which produce a plethora of binding *haraam* conditions and consequences. *Nahd* is a charitable practice whereas medical insurance is massive exploitation legitimized by mutual contract between the medical scheme bosses and the stupid member who pays the premiums. In *Nahd,* all the contributed food – 100% of it is immediately distributed *equally* to all the members of the tribe. But what takes place in medical insurance? The vast majority of the paying members are the losers. The question of equal distribution as in *Nahd* is not applicable in medical insurance. There is no distribution of funds or benefits in medical insurance. Every member pays far in excess of the benefits acquired.

In a small minority of cases, e.g. hospitalization, does the handful of members gain more medical benefits than what they had paid. But, to acquire such gains, they have to suffer chronic illness or break all the bones in their body to 'qualify' for hospitalization.

If members do not become sick, and innumerable in fact remain healthy, they lose. Thus, the Council of Medical Schemes explaining in its brochure how medical schemes operate, states: *"What you don't use, you lose."* In other words, if a member does not become sick, he loses what he has paid to the medical insurance donkey.

In *Nahd, every grain* of the collected food is immediately distributed to the family/tribe members. The collected food is not ploughed into any type of business venture to yield future gains (riba, etc.), the bulk of which will be siphoned off by the administrators of the fund (who are the real bosses of the medical insurance).

In *Nahd*, the food contributed by members of the tribe is not divided into two categories as are the funds of members in medical insurance. While in *Nahd*, all of the collected food is distributed equally to all members of the tribe, in medical insurance future medical benefits depending on the calamity of disease/sickness, are paid from only that portion of a members premiums which have been separated from the total sum which he pays. The medical benefits are granted ***"in lieu"*** of the premiums. No payments, no benefits. This is

the crisp ruling of the medical legal donkey. Neither is there equal distribution nor distribution of all the funds. In fact, the premium payers are denied the benefit of their own funds which are utilized to generate more funds in riba ventures.

While the rank and file of the members of the medical insurance scheme have to struggle along with inadequate provision of medical benefits, the bosses of the scheme become millionaires and billionaires by adroit and fraudulent manipulation of the vast resources acquired from members.

While in *Nahd* the charity and mutual aid are conspicuous, in medical insurance, the vast majority of members do not derive benefit from the funds/premiums contributed by other members. Every member is restricted to a portion of only his/her own premiums. Only in comparatively speaking rare cases of hospitalization or chronic illness do such members enjoy benefits which could be in excess of the total sum which they had contributed to the medical insurance.

In *Nahd* there is no *muaawadhah* contract compelling members to make regular monthly payments, which is the very fundamental basis of medical insurance. Whereas in *Nahd* there is no forfeiture and deprivation of any member of the tribe, in medical insurance even a member who has paid tens of thousands of rands is deprived of medical benefits if he has defaulted in his monthly payments. His membership is cancelled. He thus forfeits years of payments.

These are a few glaring differences between medical insurance and the charitable practice of *Nahd* (collecting foodstuff from the family members and distributing to the same family members). There are numerous other differences which could be gleaned from the medical insurance contract and constitution. An elaborate government Act, *The Medical Schemes Act*, a Constitution with dozens of un-Islamic clauses and Application forms cluttered with drivel and haraam provisions govern and regulate medical insurance. It is sheer *takhabbutush shaitaan* to analogize the haraam medical insurance *qimaar-riba* institution with the extremely simple charitable practice of collecting and distributing food known as *Nahd.*

The sheikh, in his article, is at pains to convince unwary and ignorant people that kuffaar capitalist medical insurance is *ta-aawun*, whereas any person with even a little intelligence having a basic understanding of the nature and operation of medical insurance knows that this capitalist practice is characterized by callousness, usurpation of funds, forgery, fraud, blood-sucking and all the evil which is concomitant with monetary lust gratified by whatever means are available. Thus, the attempt to analogize the haraam *qimaar* medical insurance with the altruism of *Nahd* is a conspicuous manifestation of the compound *jahaalat* of the proponent.

This sheikh lacks comprehension in the methodology of applying analogy in terms of the principles of Fiqh. Without applying his brains, he grabs in the dark just anything on which his hands fall, then presents it as his basis for legitimizing a haraam practice in whose *hurmat* (prohibition) there is no doubt. What sense may be spoken to a man who, inspite of claiming to be a sheikh, fails to see the glaring differences between *Nahd* and *haraam qimaar* medical insurance. His ignorance is akin to the *jahaalat* of a man who contends that marriage is like prostitution. Solely on the basis of the common factor of conjugality or the acquisition of sexual gratification does the *jaahil* liken marriage to prostitution, inferring on the basis of this commonality of factors the permissibility, in fact *Istihbaab-e-Ta-akkud*, of zina.

Just as every Muslim of sane mind will understand that the brains of this ignoramus have become satanically convoluted, so too will Muslims with healthy Imaan and sanity of intelligence understand that the brains of all these ‘duktoors’ and sheikhs who legalize *qimaar* and *riba* by means of *baatil ta’weel* (false and baseless interpretation) have become impregnated with Satanism of the kind mentioned in aayat 275 of Surah Baqarah.

Their *jahaalat* is absolutely shocking, revolting and lamentable. Imagine finding a basis for the kuffaar *qimaar* of medical insurance system of the riba-capitalists in the simple charitable practice of *Nahd* which is fundamentally related to collecting food in times of need and distributing the charity-food to members of the tribe! Intelligent discourse is possible with men of knowledge. But with modernists ‘sheikhs’ and ‘duktoors’ wallowing in a quagmire of *jahl-*

e-murakkab, it is an insult to intelligence and knowledge to even discuss. Although the Qur'aan Majeed commands us to say 'Salaam' to such incorrigible *juhala*, we have been constrained against our will and desire, to respond and refute the drivel with which the sheikh has messed up some sheets of paper. His discussion on the subject is nothing but the effluence of 'academic' sewerage matter.

This constraint on us is the concern that molvis of superficial textual knowledge will be awed by the sheikh's Arabic article with which he seeks to impress the blind. Was it not for this concern and the deviation which these *mudhilleen* propagate, it would have been haraam to squander the sacred amaanat of time to respond to drivel which is the product of the *jahl* of its propounders.

Qardh – the sheikh's weird 'logic'

Clutching at just any flimsy straw which sails into his mind in his desperation to seek a Shar'i basis for the *qimaar* of medical insurance, the sheikh applies his weird 'logic' to the act of *Qardh* (giving someone a loan). On the basis of *Qardh* he justifies medical insurance. In his style of convoluted logic and misapplication of brains, his argument is that in *Qardh* there is the element of *ta-aawun* (aiding someone), which gives rise to the attribute of *tabarru'* (charity). Both are superfluous and redundant conclusions. Every dumb person understands the *maqsad* (aim and objective) of *Qardh.* There is no need for an elaborate exposition to convey the purpose for which Allah Ta'ala has exhorted the virtues of *Qardh.* The elements of *tabarru'* and *ta-aawun* of *Qardh* are self-evident facts.

The stupidity of the sheikh is conspicuously illustrated by this type of warped reasoning. His reasoning postulates that *Qardh* despite being a sort of a *muaawadhah* (contract of exchange) is superior in terms of the Hadith to even Sadqah. This superiority is by virtue of it being a charitable act stemming from the element of *ta-aawun.* This is the first premises in his convoluted and stupid syllogism.

On the basis of this postulate, the sheikh argues that since there is so much merit in *ta-aawun* that it has been able to elevate a hybrid *muaawadhah* contract to a level higher than even Sadqah, the

permissibility of medical insurance is axiomatic because of the common element of *ta-aawun.* His warped brains have understood that *Qardh* is permissible and meritorious because of the factor of *ta-aawun*, hence medical insurance too is permissible and superior by virtue of the element of *ta-aawun* which he has assumed is the fundamental basis of medical insurance.

We seek refuge with Allah Ta'ala from *dhalaal* and intellectual dementia which deprives one from understanding self-evident truths of the Shariah.

We have already explained that practices and institutions are not legitimate solely on the basis of *ta-aawun* and *tabarru'.* The objective of charity is insufficient for Shar'i legitimacy. Gambling of a variety of types, prostitution, banditry, etc, could all be perpetrated in Robin Hood style with the objective of serving the poor and suffering. The motive underlying the commission of these evils may be charitable – *ta-aawun* and *tabarru'*, but the Shariah rejects all these haraam institutions regardless of the motives of altruism.

Just as the Shariah elevates pure halaal *Qardh* to a pedestal loftier than Sadqah, it conversely, derogates the lofty *ta-aawun/tabarru'* act of Sadqah to an ebb akin to kufr, describing Sadqah given with haraam money being like washing clothes with urine. The Ahaadith categorically condemn *ta-aawun* or charity with haraam means. Charity with haraam is haraam. It invites the Wrath of Allah Ta'ala. However, the sheikh lacking in intellectual depth and proper comprehension of the operation of the principles of the Shariah, grabbed hold of the *ta-aawun* element while ignoring the fact that only such *ta-aawun* is permissible and commendable which is unencumbered with haraam elements such as pure charity given with haraam money.

This applies to pure charity such as feeding the poor with stolen money or money acquired from prostitution *muaawadhaat* contracts enacted with the sincere intention of serving the poor. Despite the *ta-aawun* and ideals of altruism, the perpetrator of such haraam is worse than one who indulges in these evils only to gratify his lustful proclivities. But the one who justifies haraam on the basis of *ta-aawun* should examine the state of his Imaan.

As far as medical insurance is concerned, the idea of *ta-aawun* is a massive deception propagated by the capitalists and disseminated by molvis and sheikhs who either are ignorant of the reality of medical insurance or if they are not, then they have some satanic agenda motivating their over-eagerness to extrapolate *jawaaz* (permissibility) for the *qimaar* of medical insurance. The element of *ta-aawun* is totally lacking in medical insurance in exactly the same way as it is non-existent in any other type of insurance. He who professes that medical insurance is an institution of *ta-aawun* should produce the proof. It is sheer stupidity to portray medical insurance as an institution of *ta-aawun* on the basis of the 'aid' designation attributed to this type of insurance.

We advise the sheikh to thoroughly research medical insurance with an attitude purified from the cobwebs of bias. He will not have a proper understanding of medical insurance as long as he offers obsequious taqleed to the suit and tie beardless modernist 'duktoors' whom he has dubbed 'fuqaha'. He will then not fail to discern the sadism and the parasitic nature of this callous institution.

Furthermore, *Qardh* is laudable because it is pure *ta-aawun* and *tabarru'*. There is not a vestige of *riba* or *qimaar* or any other haraam factor encumbering it. It is gross *jahaalat* to compare medical insurance with *Qardh.* Medical insurance is haraam on account of *qimaar* and *riba*. Only an act of *ta-aawun* uncontaminated with haraam elements is permissible and accepted by Allah Ta'ala.

Clasping at another straw like a drowning man, the sheikh misinterprets Imaam Shaafi's definition of *Qardh* to produce the conclusion that *'Qardh is neither pure muaawadhah nor pure tabarru'.* According to his theory, *Qardh* has two dimensions. It is partly *muaawadhah* and partly *tabarru'.* He has fabricated this theory in order to find a basis for medical insurance. In his convoluted understanding, medical insurance also is two dimensional – partly *muaawadhah* , and partly *tabarru',* hence the permissibility *hukm* of *Qardh* should be extended to medical insurance. This contention is plain drivel.

Qardh is *pure Tabarru'.* Badaaius Sanaa' states: *"Verily, Qardh is Tabarru'. Do you not see that it does not have an equivalent object of exchange?"* This is the clear ruling of the Fuqaha. The sheikh has

erroneously inferred from Imaam Shaafi's definition that *Qardh* is partly *muaawadhah* . According to the Shaafi' Fuqaha, the essential requisites for *Qardh* is *Ijaab* and *Qubool*. In fact, this is also the position of the Ahnaaf except that according to Imaam Abu Yusuf, the *Rukn* is only *Ijaab.*

Since *Ijaab* and *Qubool* are the *arkaan* of *Qardh*, the sheikh summarily avers that *Qardh* is partially *muaawadhah* in view of these requisites being *arkaan* of *muawadhaat* transactions such as sale, for example. However, he either conveniently overlooks or his defective research has not allowed him to understand that despite acceptance of these *arkaan* by even the Ahnaaf, they explicitly state that *Qardh* is pure *Tabarru'.* There is no hybrid concept of *Qardh* being partly *tabarru'* and partly *muaawadhah* . Despite resemblance with *Bay',* our Fuqaha have not accorded it any dimension of *muaawadhah* . In fact, even according to the Shaafi' Fuqaha, *Qardh* is pure *Tabarru'* notwithstanding *Ijaab* and *Qubool* being essential requisites. It is not a principle that whatever resembles *Bay'* becomes partly *muaawadhah* even if it is a purely *tabarru'* transaction.

The act of *Wadeeah* (amaanat left in someone's care) is also not *muaawadhah.* Nevertheless, *Ijaab* and *Qubool* are requisites for the validity of *Wadeeah.* An act does not become *muaawadhah* or partly *muaawadhah* merely by the requisite of *Qubool.* This is no basis for this contention.

The So-called Ta-aawun of Medical Insurance

Examine the following medical insurance scheme and decide for yourself if there is any element or even a semblance of charity *(ta-aawun)* in this accursed haraam institution presented as charity by the liberal modernist 'duktoors'.

Zaid has a wife and 4 children. He has joined a medical insurance scheme. The insurance premiums he has to pay monthly are: For himself R2,000, for his wife R2,000, and for each child R500. He thus pays a total sum of R6,000 per month to the insurance company. From the total of R6,000, approximately R1,800 is deposited in savings accounts. A saving account is opened in the name of each beneficiary by the medical insurance. Minus the R1800, the balance

of R4,200 is appropriated by the medical insurance. This family pays R72,000 per annum. Of this amount, R21,600 is held in savings account while the remainder of R50,400 is totally alienated and goes into the coffers of the medical insurance. The savings account is known as MSA. This is not a normal savings account. Members cannot withdraw any money from 'their' MSA. If a member requires medical benefits during the course of the year, such benefits are paid from the MSA.

These savings are 'invested' to gain interest, and this interest is added to the savings of members. The savings generate interest (which is acceptable in the *ta-aawun* hypothesis of the sheikh, the lawyer and the *mudhilleen* 'duktoors').

Each adult member is allowed only R6,000 medical benefits for the whole year which is the amount deducted from his/her premiums and deposited in his/her MSA (savings account). If he/she requires more medical treatment after having used up his/her own R6,000 which was held in the MSA, then he/she has to pay R6,000 before the medical insurance will allow further benefits despite the fact that he/she has paid R24,000 in premiums in one year. What type of *'ta-aawun'* and *'tabarru'* is this? The member is not allowed medical treatment although he has more than sufficient funds paid in the form of insurance premiums. Yet, the feeble-minded sheikh labours to convince the unwary and the ignorant that medical insurance is *ta-aawun!*

The story of the huge slice of R50,000 (explained above) is more bizarre and heartless. The R50,000 which Zaid pays for himself and his family is gone with the wind, having disappeared fraudulently into the pockets of the owners who operate the medical insurance scheme. The so-called 'administrators' of medical insurance schemes regard themselves as the true owners of the funds acquired by way of pure exploitation. The government's laws and the rules of the constitution of the scheme are all figments devoid of reality. These 'administrators' – the real bosses – control, use, abuse and invest the funds in haraam riba financial institutions to generate unadulterated riba. Contributors have absolutely no control and no say over the monies which make billionaires out of the bosses of these schemes.

The medical insurance pays 'unlimited' medical expenses only in the case of hospitalization or chronic illness, which their studies and research have conclusively established applies to a very small percentage of the membership. It is for this reason that a person over 55 years or those with chronic ailments are not accepted as members or if accepted, there will be added stringent conditions and much higher insurance premiums.

The heartless operators of the fraud of medical 'aid' are well aware that they will have to fork out considerable cash on a regular basis if they admit persons of 'high risk'.

The next scenario is termination of membership. Zaid remained a regular paying member for five years. After five years, due to financial straits, he could no longer afford the R6,000 monthly payments. As a consequence, his membership was terminated. In the five years he had paid R360,000, of which R108,000 was deposited in the MSA's of his family. During the course of the five year period he and his dependents had acquired medical benefits for the sum of R68,000. He is refunded R40,000 plus whatever interest has accrued in the account. He has lost R252,000 (R360,000 minus R108,000) on this confounded satanic *ta-aawuni'* insurance scheme.

This is the sheikh's conception of *ta-aawun.* Anyone who claims that medical insurance is *ta-aawun* and *tabarru'* needs to have his head examined for the specific disease of insanity mentioned in aayat 275 of Surah Baqarah , i.e. the disease called *Takhabbutush Shaitaan.*

Apart from the entire concoction of absurd arguments presented by the sheikh, the bottom of his theory is knocked out by just the fallacy of the *ta-aawun* and *tabarru'* basis which he has abortively laboured to establish. If some dimwit is deceived into accepting that *haraam qimaar* and other haraam practices become permissible and highly commendable and rewardable on the basis of *ta-aawun*, he (the dimwit) if appraised of the reality and nature of medical insurance, will recoil with aversion and outrightly reject this callous system of the riba capitalists. He will say: There is no *ta-aawun* here, hence no permissibility.

The sheikh needs to study the 'Benefits Structure', the Constitution and the Application forms of some of these medical insurance companies. If he has any respect for the truth, he will

swallow his false pride and concede the gross injustice he has committed in defending one of the worst and most callous systems of the kuffaar capitalists at the behest of the modernist 'duktoors' whose taqleed he has adopted. The medical insurance system is nothing but extortion and blood-sucking. But people are generally too dumb to understand the evil into which they become entangled.

Allaamah Kashmiri (rahmatullah alayh)

Arguing to establish the *ta-aawun* and *tabarru'* angles for medical insurance, the sheikh presents Allaamah Kashmiri's refutation of Ibn Bittaal who had viewed *Nahd* from the angle of *Muaawadhah.* Refuting Ibn Bittaal's argument, Allaamah Kashmiri (rahmatullah alayh) said: *'Verily, it is not from among the Muaawadhaat in which operates the act of mutual bargaining. Verily, it (Nahd) is from among Tasaamuh and Ta-aamul."*

The sheikh has introduced Allaamah Kashmiri's criticism of Ibn Bittaal only to extract capital from the word, *tasaamuh* which the Allaamah mentioned. Just as *Nahd* is permissible on the basis of *Tasaamuh (tolerance)* occasioned by *ta-aawun* and *tabarru'*, so too is medical insurance permissible on the basis of *Tasaamuh* on account of the elements of *tabarru'* and *ta-aawun* found in this haraam *riba-qimaar* capitalist scheme according to the sheikh.

This argument of the sheikh is another fallacious figment among the litany of his hallucinations which clutter his hypothesis. It should be recalled here that the sheikh has not excluded *Nahd* from *Muawadhaat.* It is therefore improper for him to seek assistance from the comment of Allaamah Kashmiri (rahmatullah) who unequivocally states in the very same comment: *"Verily, it (Nahd) is not from among the Muawadhaat…."* This conclusively eliminates the postulation of riba which the errant sheikh has predicated for *Nahd.* But the sheikh, true to form, is very selective in his extraction of dalaail process. Ignoring Allaamah Kashmiri's explicit rejection of *Nahd* being an *Aqd-e-Muaawadhah,* he latches onto the word, *'Tasaamuh'* mentioned by the Allaamah.

Regardless of any conflict which the sheikh may read into the comment of Allaamah Kashmiri (rahmatullah alayh) which may surface in view of the negation of *Muaawadhah* by the Allaamah, he is emphatic in this negation despite using the term *'Tasaamuh'.* In the light of this term, the sheikh has concluded permissibility by hallucinating that both practices (*Nahd and medical insurance)* have the elements of *tabarru'* and *ta-aawun.* This is another example of him clutching at straws.

While the prohibition of *qimaar* and *riba* is established on the basis of *Nusoos* of the highest degree, the sheikh seeks to override these prohibitions by a word of interpretation appearing in the comment of an Aalim more than thirteen centuries after Rasulullah (sallallahu alayhi wasallam) despite the fact that the Allaamah who used this word, explicitly negated *muaawadhah* from the practice of *Nahd.*

There is no need for us to reconcile any conflict which anyone may read into the comment of Allaamah Kashmiri (rahmatullah alayh). Assuming that there is a real conflict, it has absolutely no effect on the permissibility of *Nahd* and the prohibition of medical insurance structured on *qimaar* and *riba.*

The sheikh has laboured in a variety of ways to trade the idea that *Nahd* is partially an *Aqd Muaawadhah* , hence he has proffered a number of examples of monetary transactions into which he has hallucinated *riba,* but which the Shariah overlooks. He has furthermore introduced the element of riba in *Nahd,* thereby implying that it is a transaction of *muaawadhah* . He has adopted this line of reasoning in order to achieve a basis for medical insurance which despite being *muaawadhah* ought to be permissible in his system of hallucination notwithstanding the *riba* and *qimaar* dimensions, the hallucinated elements of *ta-aawun* and *tabarru'* overriding any Shar'i proscription.

However, Allaamah Kashmiri (rahmatullah alayh) from whose comment the sheikh attempts to extravagate 'proof' for his baatil, unequivocally refutes the idea of *Nahd* being from among the *Muawadhaat*. In the solitary term, *'Tasaamuh'* mentioned by Allaamah Kashmiri (rahmatullah alayh) there is no support for the baseless theory of the errant sheikh.

Another Weird Argument

Proffering another weird and fallacious argument in defence of medical insurance, the sheikh claims that the Hadith in which the episode of the charity of the tribe of Ash'ariyyoon is mentioned, indicates that the element of riba is overlooked (as an effect of *ta-aawun).* Earlier, we had already debunked the contention of the sheikh regarding his fallacious interpretation of this Hadith. The sheikh now presents the following syllogism:

Argument: The element of riba was involved in the *Nahd* practice of the tribe. Riba is among the gravest sins. Nevertheless, due to the *ta-aawun* factor, Rasulullah (sallallahu alayhi wasallam) tolerated the riba practised by the Ash'ariyyoon, permitting and encouraging it, i.e. *Nahd.*

His next premise in his baatil syllogism is that the element of *hurmat (prohibition)* in medical insurance is *gharar* (ambiguity/deception), and the evil of *gharar* is less than the evil of *riba*, hence medical insurance is 'more' halaal and more rewardable and commendable than the pure charitable practice of *Nahd* which Rasulullah (sallallahu alayhi wasallam) had approved of.

The sheikh has descended to a disgusting ebb in discharging his intellectual effluvium. Firstly, his claim of the existence of riba in *Nahd* is baseless. We have already explained the practice of *Nahd*. There is no riba in this practice. *Nahd* is a pure, unadulterated food-raising practice in the same way as funds are raised for any charitable purpose. If ten persons contribute different amounts, admix all their contributions, then distribute it equally among themselves, the element of riba is not involved. There is no *Aqd-e-Muaawadhah* contracted. Imaam Nawawi (rahmatullah alayh) and other authorities, including Allaamah Kashmiri (rahmatullah alayh) whom the errant sheikh quoted, have clarified this issue. In fact, a person of intelligence possessing a rudimentary knowledge of the Shariah understands that there is no riba involved in such pure acts of *tabarru'* and *ta-aawun.*

Riba is the product of a condition stipulated in the contract whether expressly or by implication or custom. Thus, if a debtor repays a loan, and as an expression of his gratitude he gives the

creditor an extra amount, such excess will not be riba in view of the fact that it was not stipulated at the time of the loan nor was it expected nor is it a norm to award creditors with gifts when repayment is made. However, if the extra has become customary, and the creditor expects an additional amount by implication, then undoubtedly, it will be riba.

In *Nahd* the collected grain is distributed to all members of the tribe, whether they had anything to contribute to the pool or not. The conditions accompanying *Muaawadhaat* (contracts of exchange) do not encumber the *Nahd* practice. The contention of riba is palpably *baatil*. Thus the claim of *ightifaarur riba* is a deception and a fallacy. *Nahd* is inceptionally permissible and commendable. It is a practice of pure *ta-aawun* and *tabarru'*. It is highly erroneous to read any *haraam* elements such as riba into this practice.

The sheikh has invented the riba figment of his imagination in order to legitimize medical insurance which according to him is afflicted by only the element of *gharar*. Although *Nahd* is bereft of riba, the miscreant sheikh reads riba into it. In contrast, while riba is fundamental to medical insurance, he and his 'duktoor' 'fuqaha' fallaciously deny its existence. They deny that the sun shines during the day.

Perhaps he is ignorant of the Shar'i definition of *qimaar* or perhaps he is aware, but has conveniently for the sake of promoting his agenda, ignored it, and settled for the lesser factor of *gharar*. Furthermore, his denial of the element of riba in medical insurance conspicuously illustrates his ignorance of the reality and nature of medical insurance. There are three dimensions of riba in medical insurance:

(1) The member's savings in his MSA generate interest which is used for his medical benefit.
(2) The medical insurance organization invests the funds in interest-paying financial institutions.
(3) On cancellation/termination of membership, the riba element is clearer than the sun when it is at its zenith.

On cancellation or termination of membership, the amount which is refunded to the member is substantially less than the total amount

which he had paid in the form of monthly premiums. Besides the *qimaar* element, the factor of riba is self-evident. If the member dies, the amount refunded to his heirs is similarly substantially less than what he had deposited into the medical insurance scheme. The riba is self-evident. It never happens that the refund is ever equal to the sum of the payments made by the member.

From the very beginning, the major slice (almost 70%) of the payments is alienated and appropriated by the medical insurance. No refund is effected with regard to this lion's share swallowed by the medical insurance. The refund operates in only a balance remaining in the MSA.

Secondly, the amount which is deposited in the savings account is invested to generate interest. This interest is utilized to pay for the medical benefits of the member. Furthermore, the whole structure of insurance, be it medical insurance, is riba-based. Riba is its life-blood and its breathing. The funds are utilized to generate riba. The claim of medical insurance being bereft of riba is utterly baseless. It illustrates the ignorance of the academy 'duktoors' who conduct themselves like rural village dwellers scandalously ignorant of the reality of the subject they purport to be researching.

The sheikh is ominously silent about the glaring element of *qimaar*. Added to the total lack of *ta-aawun* and *tabarru'*, are the elements of *qimaar* and *riba*. The analogy with *Nahd* and *Qardh* is ludicrous and fallacious. The sheikh's argument is devoid of any Shar'i substance.

Nahd - Another Figment

Presenting another fictitious argument, the sheikh presents an imagined objection supposedly raised by those who refute the permissibility of medical insurance. He states that the objectors differentiate between *Nahd* and medical insurance on the basis of the benefit in *Nahd* being immediate. While the benefit in medical insurance is related to the development of an affliction, and in some cases there is no benefit whatsoever if there is no calamity of sickness.

Answering this 'objection' he asserts that this difference has no effect and does not produce a difference between *Nahd* and medical insurance. Just as *Nahd* is permissible so too is medical insurance permissible. His rationale is that while immediate benefit in *Nahd* gives rise to the *soerat (outward form)* of riba, while the absence of immediate benefit in medical insurance does not produce riba. It produces only *gharar*. Hence, despite the difference, medical insurance is comparable with *Nahd* in permissibility.

This argument is likewise baseless because firstly there is absolutely no resemblance between medical insurance and *Nahd.* This has already been explained earlier. Secondly, riba is involved in medical insurance while the contention of riba in *Nahd* is baseless. In fact, even the sheikh plodding his baatil postulates, is constrained to say *'soeratur riba'.* This is an indirect concession that *Nahd* is devoid of riba.

Thirdly, *qimaar* (not merely *gharar)* is the fundamental element of medical insurance. And, the *qimar* in medical insurance is not *soeratul gharar* as the miscreant sheikh alleges. The *haqeeqat of qimaar* is found in medical insurance. There is no such element of *hurmat* in *Nahd* nor any other element of prohibition. The averment of the evil in medical insurance being of a lesser or lighter degree than the 'evil' in *Nahd* is a deception and *baatil*. While *Nahd* is free from evils, medical insurance is pregnant with evils.

Thus there is no substance to the response which the sheikh gives to the imagined objection. Medical insurance is haraam on the basis of the evil elements of *qimaar and riba*. The *ta-aawun* contention is nothing but pure deception, the product of the sheikh's hallucination.

The Opinions of the 'duktoors'

The sheikh in support of medical insurance proffers the opinions of his imams, the 'duktoors' of some Middle Eastern states, whom he terms 'fuqaha'. At the outset it should be clarified for those who may be deceived by the sheikh's 'fuqaha' appellation for his 'duktoor' imams, that these 'duktoors' in relation to those who are the true Fuqaha of Islam are like infants in a kindergarten outfit.

The Middle Eastern ‘duktoors’ are not Fuqaha by any stretch of Islamic imagination. Beardless ‘duktoors’, ‘duktoors’ with goatee beards, ‘duktoors’ with microscopic ‘beards’, suit and tie wearing ‘duktoors’, ‘duktoors’ who aptly qualify for the *fussaaq* description of the Shariah, are debarred from the field of Fatwa. The modernist liberal ‘duktoors’ are generally deficient in both worldly and Deeni knowledge. Their expertise in the Arabic language is shared by many labourers in the Arab World. Such expertise does not qualify a man as an Aalim of the Haqq. These ‘duktoors’ are generally subservient to the fussaaq, fujjaar and kuffaar government authorities at the helm in their countries. They are liberals who are over-awed by westernism.

There is no need for us to repeat our refutation of their opinions. We have already refuted their views. The sheikh has in fact presented the opinions of his ‘duktoor’ imams in a manner to convey the idea that what he has said on the issue of medical insurance is the product of his independent research whereas in reality it is the spittle of the ‘duktoors’ which he has lapped up and disgorged.

In all their resolutions *(qaraaraat)*, the ‘duktoors’ have displayed astonishing ignorance of the nature and reality of medical insurance. They monotonously sing the song of *‘ta’meen ta-aawuni’* (insurance which is aid) without understanding what exactly medical insurance is. Even secular persons having a rudimentary awareness of medical insurance schemes laugh at the astounding ignorance of this institution displayed by the Saudi academy ‘duktoors’. Their resolutions are a lot of hot air and meaningless, having no Shar’i basis. They merely trumpet claims without Shar’i *dalaa-il*. They show lamentable lack of understanding of the operation of the principles of Fiqh evolved by the Aimmah-e-Mujtahideen.

The ‘duktoors’ simply dig out a Hadith, subject it to their opinions disfigured by the western curse of liberalism, and blurt out just any nonsensical ‘fatwa’ that comes to their minds. Their ‘fatwas’ are designed for the incorporation into Islam of kuffaar establishment practices.

They flaunt principles such as *Ta-aamul* without understanding their true meaning and application. Even kuffaar practices of *riba* and *qimaar* which pervade Muslim society are legitimized on the basis of

their conception of *ta-aamul*. In their understanding of *ta-aamul*, prohibitions based on *Nusoos* can be overridden, even without valid Shar'i factors of need. Consider just this evil institution of medical insurance, and the stupidity of the duktoors becomes conspicuously manifest. While they ignorantly and intransigently believe that medical insurance is a charitable and an aid institution, they remain blind to the fact that this type of insurance is open to only the wealthy and the very wealthy who are not truly in need of charity. 90% of the masses are unable to afford medical insurance.

Ordinary labourers and workers cannot afford the high monthly premiums. The overwhelming majority of the nation is without medical insurance cover. Medical insurance is the preserve of the wealthy. In South Africa, for example, 87% of the population is without medical insurance. Medical insurance is a massive scam in which the only winners are the bosses of the fund and the very small percentage of wealthy persons who, to their eternal misfortune, are hospitalized with major and chronic suffering. The vast majority of the premium-payers are fleeced of their money. They invariably lose about 80% of the money they have paid over the years to the *riba-qimaar* medical insurance institution. In *Nahd*, no one loses anything. Every grain is distributed to the needy whether they had anything to contribute or not. 100% of the grain/dates collected is immediately handed over to every member of the tribe.

The ignorance of the Rabitatul Aalami 'duktoors' and the 'duktoors' of other similar organizations is so appalling that they brazenly deny the elements of *qimaar* and *riba* which constitute the fundamental basis of this capitalist institution. By claiming that these capitalist institutions of massive exploitation are *tabarru'* and *ta-aawun* institutions, the 'duktoors' have confirmed their total ignorance on this issue. It is an affirmation of their extremely deficient 'research' of medical insurance.

The very *Medical Schemes Act* of the government cited by the sheikh and his lawyer friend, debunks the *tabarru'* and *ta-aawun'* hypothesis. Section 1 of the Act declares:

"Business of a medical scheme means the business of undertaking liability for a premium or contribution". Although they cite the government's Act, accept the capitalists concept of the legal person

(the legal donkey), and structure their confounded *baatil* on the capitalist system of fraud, they conveniently conceal the aforementioned declaration of the Medical Schemes Act which unequivocally knocks out the bottom from the *tabarru'* and *ta-aawun* theory presented to legalize the haraam *qimaar* and *riba* of medical insurance. All their fatwas of corruption are devoid of Shar'i substance. The opinions and so-called consensus of the modernist 'duktoors' have no relationship with the Shariah.

The views of the modernist *mudhilleen* 'duktoors' are products of their personal opinion devoid of Shar'i basis. Their views consists of nothing but claims *(da'wah bila daleel)*, and these baseless opinions have already been answered, hence there is no need to deal with them individually.

The Two Bedfellows – the sheikh and the lawyer

The two bedfellows plodding their respective routes of *baatil* ultimately arrive at the same fallacious destination, namely, the permissibility of medical insurance. The sheikh has parted ways with his bedfellow by formulating a different route of *baatil*. He has parted ways in view of the glaring discrepancies in the lawyer's basis, which have absolutely no vindication in the Shariah. Thus, the sheikh says that the logical conclusion of the *Iltizaamut Tabarru'* basis of the lawyer is the permissibility of 'commercial' insurance as well. So far, the sheikh has not overtly stated the permissibility of such insurance which he describes as 'commercial' insurance. Although there is no commercial and non-commercial insurance, for the purposes of this discussion we shall entertain the two names: commercial and medical 'aid' insurance.

While for the present, the sheikh and some of his modernist 'duktoor' mentors maintain the impermissibility of 'commercial' insurance (i.e. insurance taken out for other purposes besides medical purposes), it will not be long when the chameleons will change colour and market even their so-called commercial insurance as permissible products.

As far as the lawyer's *Iltizaamut Tabarru'* basis in terms of the Maaliki Math-hab is concerned, we have discussed and refuted his baseless hypothesis in two booklets:
(1) *Penalty of Default and* (2) *Penalty on Late Payment is Interest.*

Whoever wishes, may write to us for copies of these booklets.

Now according to the sheikh if *Iltizaamut Tabarru'* is fixed as the basis for the permissibility of medical insurance, then the same ruling of permissibility will have to be logically extended to other forms of insurance (which he terms commercial insurance) as well. The lawyer had either overlooked this fact, or was ignorant of it. Or perhaps he does believe in the permissibility of all types of insurance. After all, he is a modernist secular lawyer whose mission it is to subvert the Shariah for subordination to western concepts and practices.

In our understanding of the lopsided reasoning of these bedfellows of baatil, it appears that the argument of the lawyer, despite its *butlaan,* is more logical than the crooked and highly damaged hypothesis of the sheikh. The lawyer having some expertise in secular knowledge is more acquainted with the nature and reality of insurance than the sheikh whose understanding and awareness of medical insurance are astonishingly decrepit bordering on total ignorance.

The secular lawyer who has some academic expertise has understood the nature of medical insurance while the sheikh has not. He therefore understood the irrationality of differentiating between medical and so-called commercial insurance. He does understand the drivel of the sheikh in claiming a substantive difference between what he has classified as commercial insurance and medical insurance. But since ignorance is bliss, the sheikh could afford to be audacious in displaying his *jahaalat* in this respect. On the other hand, the lawyer who understands the nature, reality and fundamentals of insurance could not afford to make a laughing stock of himself by contending substantive differences in the reality *(haqeeqat)* of insurance of any type.

Hitherto, the capitalists have produced only one kind of insurance. There is no substantive difference in the differently designated

insurance. For example, there is insurance cover for theft, fire, riot, accident, sickness, etc. Thus 'medical' insurance is cover in the event of sickness; fire insurance is cover in the event of fire; robbery insurance is cover in the event of robbery, and so on. The variegated covers do not indicate substantive difference or difference in the fundamental basis of insurance. All types of covers are plain insurance of the same fundamental basis. This has been understood by the lawyer while the sheikh is ignorant thereof, hence he has exposed his stupidity and the fallacy of the basis of his theory for the fabrication of permissibility of medical insurance.

Any person who has a proper understanding of insurance will know that it is illogic and irrational to read a substantive difference between fire insurance and medical insurance or between accident insurance and medical insurance. The fundamental basis which renders insurance haraam is *qimaar* (gambling) which bedevils every type of insurance manufactured by the capitalist system. In the abortive attempt to overcome this insurmountable problem, the lawyer borrowed the legal donkey concept (legal person) from the capitalists, conferring on the legal fictitious donkey all the powers, rights, duties and obligations which Islam has bestowed to a natural person – a real *Insaan.* He had no option other than to fabricate a 'real' partner for the validity of the insurance contract. Then he incorporated into his argument what he had understood of the Maaliki *mas'alal of Iltizaamut Tabarru'.* He at least understood what his bedfellow, the sheikh, does not understand, namely, that there is irrefutable bilateralism in the insurance contract, irrespective of the type of insurance. The medical insurance contract is a bilateral contract between two different parties.

Then to legitimize the haraam *qimaar* transaction between the premium-payers and the fictitious donkey, the lawyer hallucinated the element of *tabarru*, sucking it out from his thumb, and attempting to bestow to it Shar'i acceptability on a corrupt imagined 'principle' of *Iltizaamut Tabarru'* which he, in the context that he applies it, attributes falsely to the Maaliki Math-hab. Feeling satisfied with the product of this hotchpotch *(imtizaajul hamaaqati wal baatil)* logic, he states arbitrarily that the compulsorily premiums paid by the members are charity, and likewise, the compulsory medical benefits

supplied by the medical insurance, are charity. Is there any limit for *baatil?* Just imagine, hallucination cited as *daleel! Ahkaam* formulated on the basis of imagination and day-dreaming! Mirages regarded as reality!

This entire hypothesis of hallucination was found so absurd and stupid by the sheikh that he felt obliged to distance himself from his lawyer bedfellow. Furthermore, he felt constrained to apprize his lawyer friend that his hypothesis produces the inescapable conclusion that even the type of insurance which he (the sheikh) has classified as 'commercial insurance' acquires the licence of permissibility on this basis. The lawyer has discovered himself in a quagmire from which there is no way of extrication and salvation for him. The bone of *qimaar* which he had attempted to swallow with his hallucination remains stuck in his throat.

The sheikh, in his abortive attempt to overcome the problem of *qimaar* which besets insurance, refutes the bilateral contract (a contract in which there are two parties). But such refutation is a claim without basis *(da'wah bila daleel).* He only has his defective opinion for his contention. For a basis for his hypothesis that the medical insurance contract is not a bilateral contract, the sheikh also resorted to hallucination. He imagined the fiction of the solitary hybrid *(nagheel)* transactor in a contract which is part *muaawadhah* and part *tabarru'.* Since there is no Fiqhi justification for this fiction, the sheikh dug out the Hadith of Al-Ashariyyeen in which the *Nahd* practice is mentioned. We have already discussed *Nahd* and have explained that there is not the remotest similarity between insurance of any kind and *Nahd.*

The sheikh has realized that if he incorporates the legal donkey stratagem into his hypothesis, he will be in a hopeless quagmire from the Fiqhi angle. The lawyer had understood the quagmire from the secular angle, hence refrained from presenting the sheikh's irrational and absurd differentiation between 'commercial' and medical insurance which is an unsustainable postulate. But in maintaining his logical position in terms of the secular concept of insurance, he falls foul of the Shariah with his legal donkey fiction. On the other hand, the sheikh realizing the Fiqhi and intellectual irrationality of the legal donkey concept in which all contracts are bilateral, refrained from

incorporating it into his fiction. In adopting this stance, he falls foul of the true secular concept of insurance. Both bedfellows thus find themselves mired in the confusion of their hallucination.

However, he still required a basis for his *baatil*. Failing to discover any *daleel and ma'khaz* (proof and source) in the plethora of variegated principles of Fiqh evolved by the Aimmah-e-Mujtahideen, he exhumed the Hadith which mentions *Nahd*.

Viewing the *Nahd* practice with his oblique vision, he formulated his false basis for his insurance hypothesis. In so doing, he has demonstrated scandalous *jahaalat*. There is neither logical nor juridical (Fiqhi) justification for constructing a basis for *the insurance qimaar* from the practice of *Nahd.* While *Nahd* is pure *tabarru'* and *ta-aawun*, insurance, be it medical insurance, is pure exploitation based on *qimaar* and *riba*. The section of our discussion explaining *Nahd* will convince every intelligent unbiased searcher of the truth that the sheikh's contention of the permissibility of medical insurance on the basis of *Nahd* is a palpable fallacy.

We have mentioned that the sheikh and the lawyer are bedfellows in an unholy alliance of *baatil.* Both are attempting to legitimize an institution of *qimaar and riba,* albeit from different angles. However, the sheikh having been constrained by the ludicrousness of the lawyer's *'daleel'* to distance himself from his bedfellow, nevertheless, felt obliged to assuage the grief he has caused to his compatriot in *baatil* by having distanced himself from the lawyer's drivel *(hamaaqat)* '*daleel'.* Therefore, he obsequiously attempts to placate his comrade by expressing his infinite pleasure at the presence of the second element in the lawyer's *baatil* hypothesis. He expresses his profound relief by exclaiming that the lawyer had not confined his hypothesis to only the *Iltizaamut Tabarru'* drivel, but had also presented as a fundamental constituent of medical insurance the element of non-profitability on the basis of which the sheikh seeks to extravasate validity and permissibility for the lawyer's hypothesis despite the fact that the lawyer's theory has two fundamental requisites for permissibility – *Iltizaam* and *amadul istirbaah.* Added to this, is the lawyer's foundational principle of the 'legal person' who has contractual capacity.

By having extinguished the lawyer's most important fundamental, the sheikh has crippled the lawyer's *baatil* theory beyond resurrection. He has excised both the *Iltizaam* and *bilateralism* fundamentals on which the lawyer has raised the structure of his permissibility of medical insurance. In view of the sheikh's unprincipled methodology of argument, he fails to understand a basic reality, namely, the elimination of fundamental constituents from the very *maahiyat/jauhar (nature)* of an institution eliminates the institution. However, the sheikh seeks by hook or by crook to present a one-legged phantom after having eliminated the lawyer's most vital constituents imperative for sustaining the hypothesis of his imagination.

Despite thanking the lawyer profusely for having presented the *admut istirbaah* (non-profitability) element, the sheikh is forced to concede that this one element is inadequate for permissibility. Even his vindication of the lawyer's view consists of self-contradicting drivel. The sheikh has not been able to present one single Fiqhi *daleel* for permissibility other than misrepresentation of the Hadith of the Al-Ashariyeen practice of *Nahd.* As pointed out earlier in detail, there is no basis for medical insurance in *Nahd.*

Mufti Ibraahim's Criticism

The sheikh responding to the criticism of Mufti Ibraahim of Madrasah In'aamiyyah of Camperdown, presents his response from three angles, viz.

- The nature of the transaction
- The operation of hallucination
- Transference of the medical 'aid' insurance ruling to so-called 'commercial' insurance.

Mufti Ibraahim had written to Mufti Taqi Uthmaani Sahib querying his endorsement of the lawyer's corrupt hypothesis. The following is the text of Mufti Ibraahim's letter to Mufti Taqi Sahib:
"In terms of South African law, if a person had to subscribe for medical aid cover with Discovery Health for example, one would be entering into a bilateral contract. (Discovery Health is a large

medical aid provider in South Africa). One pays the subscription fee by virtue of a contract with the company, and one is entitled to the risk benefits by virtue of the contract.

*Hazrat's approval now suggests that we should **imagine** that the subscription fees are a voluntary gift to the company, and should **imagine** that the payment of benefits to the member is a voluntary offering in terms of its internal rules, and not a contractual obligation.*

Could Hazrat kindly explain how this imagination would work, for as a humble student I find it difficult to understand.

Furthermore, if it is acceptable to use such an imagination, then could a person enter into an insurance contract, and make the intention that his monthly contributions are a voluntary gift to the insurance company, and that the claim payout is a voluntary offering by the insurance company according to its internal rules?

I look forward to Hazrat's explanation of this important matter."

No explanation was forthcoming from Hazrat! Mufti Ibraahim Saheb had omitted asking Mufti Taqi Sahib if it would also be valid for a man who indulges in zina to imagine that the prostitute is his wife; or the liquor he is consuming is milk or honey, and if such imagination would exonerate the perpetrator from the sins he commits.

It is this letter of Mufti Ibraahim Sahib which the sheikh has attempted to rebut from three angles.

(1) Responding from his first angle, the sheikh mentions that Mufti Ibraahim has regarded medical insurance as a bilateral contract, and in so doing he (Mufti Ibraahim) has completely submitted and accepted the secular law. On the other hand, the sheikh professes that he does not fully accept the law in every detail. According to him, the correct view is to accept from the law whatever conforms with the Shariah, and with regard to issues which are in conflict with the Shariah, the rules of the Shariah will be applicable, not the secular law. Why did the sheikh not refute his friend, the lawyer's bilateral view as well? When the lawyer proffered the bilateral concept of medical insurance, the sheikh was subtly vindicating the lawyer. He did not take up issue with the lawyer for having contended that the

contract is bilateral. Yet, he takes up cudgels with Mufti Ibraahim for having stated what is a self-evident truth and incontrovertible reality.

Superficially, this stance appears correct. However, this statement of the sheikh is another deception presented in the attempt to substantiate his defective and baseless hypothesis of the permissibility of medical insurance. It is not a question of submitting to the secular law which is in conflict with the Shariah as the sheikh implies. The issue is simple. The factual position and the reality of the transaction are the issues. Whether the reality of the transaction is stated in the law or whether defined by the custom and the norm of society, it is the reality which is of importance for the application of a Shar'i *hukm.* If the secular law defines interest as dividend or rent or profit or by any other fanciful appellation, the reality of the transaction will be taken into consideration and scaled on the criteria of the Shariah. If the secular law correctly defines an institution or practice, such definition shall not be refuted simply for the sake of gaining Shar'i permissibility on the basis of the type of *baatil ta'weel* employed by the sheikh and the modernist 'duktoors'.

The exposition presented by the sheikh is misleading in that it conveys the notion that Mufti Ibraahim has surrendered the Shariah to secular law, and regardless of conflict with the Shariah, secular law is given precedence. However, it does not follow from acceptance of factual realities stated in secular law that this implies subservience of the Shariah to such law. The definitions of the secular law are accepted to the extent of establishing the true nature and reality of an act, contract, transaction or institution for the purposes of applying the ruling of the Shariah to it.

It is gross *jahl* to deny the reality and nature of a transaction of the capitalist system on the basis that its definition in law leads to a conflict with the Shariah. It is further compounded ignorance to submit the factual reality of a transaction which is in conflict with the Shariah, to interpretation for the acquisition of a ruling of permissibility, then deny the true definition stated in secular law.

In the case of medical or any other insurance, the secular law states the true position and the definition of this institution. The Shariah's ruling will be based on this definition. The definition is not in conflict with the Shariah. From the definition and reality of the

deal, we learn that the contract is in conflict with the Shariah. Hence it is the sheikh's stupidity which impels him to claim that the proper view is to discard such definition of law simply because the law has stated the factual position which is chagrin to the sheikh and which does not support his hallucinated hypothesis.

Resorting to the secular law for an exposition of a secular institution which is the invention and making of that secular law, is not submission to the secular law. From his essay, it is clear that the sheikh has a smattering of awareness of medical insurance. This smattering awareness, on his own admission, he acquired from the internet which disseminates the secular law version. Definitions which suit his imagined fiction, he readily accepts while he rejects other definitions which diametrically negate his *baatil* hypothesis.

While the sheikh has accused Mufti Ibraahim of having completely surrendered to secular law, implying thereby that he has made the Shariah subservient to such law, the factual position is that the Mufti Sahib has only sought the definition and reality of the institution for which a Shar'i ruling has to be issued. On the other hand, the errant sheikh has denied that the sun shines during the day. He has denied the irrefutable reality that insurance – all types of insurance, be it medical – is a binding bilateral contract. He denies the bilateralism of insurance contracts on the absurd basis that such is the definition of the secular law despite the fact that the stark reality of the bilateralism of all insurance contract mocks at the warped brains of the sheikh who appears to be suffering from the disease of *takhabbutush shaitaan* on account of his condonation and advocacy of riba which according to his conception is 'trade', and *qimaar* in his understanding comes within the scope of *Tasaamuh.* He has not advanced one iota of proof for this sophistry.

In his whimsical selection from the secular law to suit his desires, he cites the South African government's Medical Schemes Act in an extremely flabby, in fact fallacious attempt to read a difference between 'commercial' and medical insurance. He concludes without advancing any argument or facts from the Act, that the medical 'aid' scheme does not fully conform to the bilateral 'commercial' insurance contract. This is an arbitrary and a baseless assumption. There is no difference between the bilateralism of all types of

insurance. The nature of the contracts of all insurance are the same. Differences in rules in the details of the various contracts do not detract from the identical substantive nature of all types of insurance. The fundamental constituents of all insurance are *qimaar* and *riba.* While these elements which render all insurance including medical insurance haraam, cannot be wished away, we concede that in the hallucinatory concept of the sheikh and the lawyer, they could be imagined away.

While the sheikh cites the relevant government Act which he misinterprets to force a difference between medical insurance and what he terms 'commercial' insurance, he very very conveniently ignores, with the motive of concealing the Haqq, the categorical foundational declaration of the Act . Section 1 of the Medical Schemes Act states unequivocally: ***"Business of a medical scheme means the business of undertaking liability in return for a premium or contribution".***

Thus, the sheikh's and the lawyer's *ta-aawun* and *tabarru'* claims are nothing but humbug and skulduggery deliberately perpetrated to misguide the unwary and the ignorant, rendering them within the scope of Rasulullah's stricture: *"Verily, I fear for my Ummah the Aimmah Mudhilleen."*

The self-contradiction and inconsistency of the sheikh

The sheikh mentioning *The Medical Schemes Act 131 of 1998*, extracts a question and its answer from an elaborate list of questions and answers prepared by the Council of Medical Schemes which is a statutory body established to oversee medical schemes. He cites the following question and answer:

"Question 53: How do medical schemes function?
Answer: Contributions are pooled for the benefit of members. Schemes are not-for-profit organizations and belong to the members. Therefore, any surplus made remains in the scheme on the trust principle, for the benefit of members and their dependents."

The sheikh draws the following conclusion from this answer: "Although the scheme is a legal person, it belongs to the members." On the basis of this corrupt conclusion derived from the corrupt answer of the Council, the sheikh has forged the absolutely *baatil*, stupid and haraam concept of the relationship between the insured member and the insuring medical company being a relationship between the person (the member) and the whole group of whom this one person is a member. On the basis of this figment he opposes the real and true bilateral nature of the medical insurance contract which Mufti Ibraahim has pointed out.

We need to refute the sheikh's concoction and hallucination from several angles.

(1) Initiating his response to Mufti Ibraahim, the sheikh alleged that while the Mufti Sahib had fully surrendered to the secular law, accepting from it even what is in conflict with the Shariah, he (the sheikh) accepts only what is in conformity with the Shariah. We have already pointed out that his conclusion in this regard is highly erroneous. Mufti Ibraahim has not adopted the practice which the sheikh has attributed to him.

(2) The sheikh himself is guilty of adopting the method which he has attributed to Mufti Ibraahim. In having extracted question 53, and structuring his basis for his contention of the non-existence of a bilateral contract on the answer which was furnished to the question, the sheikh has stupidly attempted to formulate a Shar'i hukm on a basis which the Shariah does not accept. In fact on a basis which is non-existent even in terms of the very Medical Schemes Act which he has cited.

The Medical Schemes Act refutes the idea of the absence of bilateralism. According to the Medical Schemes Act, the scheme is a legal person apart from its members in exactly the way the lawyer friend of the sheikh has explained. The answer to question 53 scrounged from the internet is not the factual and true position. It is merely to facilitate the understanding of laymen who are not versant with legal and technical intricacies. The contention that the medical scheme, that is, its assets belong to the contributing members, is not

only incorrect, it is a massive lie – a fraud – dished out to stupid people to beguile them.

What is somewhat astonishing is that the sheikh who has cited *The Medical Schemes Act 131 of 1998* professes gross ignorance of the plethora of clauses and stipulations which do not permit the slightest scope for acceptance of the fiction that:

- The members are the owners of the medical scheme's or trust's assets
- The relationship is not a bilateral one

The Medical Schemes Act together with the latest amendments is more than a 100 page document. Either the sheikh did not study the Act, or he studied it without understanding what he read, or he understood it, but has opted for *Kitmaanul Haq* (concealing the truth). In order to illustrate the sheikh's *jahaalat* or his *Kitmaanul Haq*, it is necessary to present and discuss some salient features of the Medical Schemes Act. This will demonstrate the fiction, falsehood and bunkum which the sheikh is peddling for the sake of hoisting the baatil of permissibility of medical insurance.

The Medical Scheme

Section 25 of the *Medical Schemes Act* states that the medical scheme shall:

(a) become a body corporate capable of suing and being sued and of doing or causing to be done all such things as may be necessary for the exercise of its powers or the performance of its functions.
(b) assume liability for and guarantee the benefits offered to its members and their dependants……

It is clear that the Act does not regard the medical scheme and its members as a single entity. While the members are real living human beings, the medical scheme is a fictitious legal donkey which is responsible for its own liabilities. The members are regarded as being entirely apart from the legal donkey fiction and have absolutely no share in either the liabilities or the assets of the medical scheme. In this regard, provision 2 of Section 26 states: "***No person shall have***

any claim on the assets or rights or be responsible for any liabilities or obligations of a medical scheme…..”

Provision 3 of Section 26 reads: *“The Assets, rights liabilities and obligations of a medical scheme, including any assets held in trust for the medical scheme by any person, as existing immediately prior to its registration,* ***shall vest in and devolve upon the medical scheme….”***

The sheikh wishes to mislead the ignorant and the unwary to believe that the contributing members – those who pay the insurance premiums – are the owners of the scheme, i.e. of its assets, and that in reality no transfer of their paid-in monies takes place to anyone. This is plain chicanery and deception. Prior to entering into a bilateral contract with paying members, the medical scheme is already established. It first comes into existence, is registered and given its ‘existence’ by the government. Thus, even prior to entering into any contracts, it is an existing entity, distinct and apart from any other person with whom it shall be contracting in the future.

The existence of the medical scheme as a separate and independent entity is not reliant on membership. It is a legal entity apart from its members. The members later pay their premiums and join in to acquire future benefits in the event of the calamity of sickness *in lieu* of the money they pay timeously every month.

Added to the law’s alienation of the ownership of the paid contributions by membership, and its mandatory transference to the legal donkey entity, is the factual position and the reality of the contract and concomitant transactions. If the members are the owners of the premiums they pay monthly, then what are the consequences and effects of ownership? Inhibited use and control of the wealth/property are among the imperative consequences of ownership. But, do the members have such rights?

The document from which the sheikh had extracted question 53 consists of 59 questions. While he has cited question 53, he very conveniently ignores other important questions which clearly explain the nature of a medical scheme, and which negate his corrupt fiction of the scheme not having a bilateral relationship with its members, or that its members are apart and separate from it. Question 57 reads:

"Q57, As members of a group, may we leave the medical scheme to which we belong and claim our pro rata portion of the reserves? Answer: No, in terms of the Act, such reserves ***are the assets of that scheme and all moneys and assets belonging to a scheme must be kept by that scheme."***

The ownership of members is categorically extinguished when they make payments except in that portion known as MSA (Member's Savings Account).

The premiums which members pay are divided into two classes. A maximum amount of 25% of the premium is held in trust on behalf of the members. A savings account, paying interest, is opened in the name of every paying member. 75% of the premiums are totally alienated and the ownership of the members is completely extinguished. They have absolutely no rights over the lion's share (75%) of their contributions. The only time that a member benefits from a certain portion of the general pool of funds is when he suffers. He has to break bones in his body or be overwhelmed by grave physical afflictions which hospitalizes him.

In the case of hospitalization, the medical company is supposed to pay all the medical expenses. But, only a small percentage of the total membership is hospitalized. The medical scheme gains hundreds of millions of rands annually from the insurance racket they are operating.

The position of the MSA (savings account) is not the same as a savings account in a conventional bank over which the depositor has full control. He may withdraw money at will. The money in the MSA is used to pay for day-to-day medical expenses of the member after he has exhausted the supply of benefits acquirable from the minimum prescribed amount which the medical insurance is obliged to fork out by virtue of the bilateral contract, and which amount is stipulated at the time of the deal. In most cases, these savings are depleted. When the savings in the MSA are exhausted, the medical insurance company ***will not*** pay any further medical expenses regardless of the 75% which it has usurped from the member.

Earlier on we have already provided examples of this exploitation which in the convoluted hypothesis of the sheikh and the 'duktoors' is *tabarru' and ta-aawun.* The member loses 75% of his premiums

which in all likelihood will not be compensated with any medical benefits in view of the fact that medical expenses beyond the reach of the MSA is securely hinged to the *qimaar* of such calamity which hospitalizes a person. But by the grace of Allah Ta'ala, the overwhelming majority of the stupid members are saved from such calamities. Nevertheless, the lesser of the two evils for members is to lose the 75% of their contributions rather than break their necks and get hospitalized.

The medical insurance representatives inform you quite candidly that the 75% is paid for 'your peace of mind'. In other words, should you break your neck necessitating hospitalization, then you have 'peace of mind' knowing that you will have a hospital bed and medical treatment.

As far as MSA credit balance is concerned, question 44 in the document from which the sheikh had extracted question 53, reads:
"Q44: May credit balances in my personal savings account be withdrawn in cash?
A: Only when you terminate your membership of the scheme or a benefit option, without joining another medical scheme or benefit option with a savings component."

The effect of this law is that if a member terminates his membership and does not join another medical scheme, only then will the credit balance in his savings account be refunded to him in cash. However, if he joins another medical scheme, the balance will be transferred into his new MSA account. This again effectively prevents him from utilizing even that portion of the premium which the medical donkey scheme acknowledges belongs to the member.

The consequence on termination of membership in any way whatsoever, whether by the voluntary cancellation by the member, or by his inability to continue paying the premiums, or perhaps by having committed an act which is deemed 'fraudulent' in terms of the law, but not according to the Shariah, e.g. he bought AMC pots or spectacles or nappies or powder for his baby with his medical card, or whether termination is the result of the members' death, is that he loses every cent of the 75% of his contributions.

The following example illustrates the evil of the medical scheme corruption. Zaid has four dependants – wife and three children. The

sum of his monthly payments is R8,000. The legal fictitious donkey, after allocating R2,000 (25%) to the saving accounts (MSA) of Zaid and his dependents, digests the remaining R6,000 (75%). After ten years, Zaid could no longer afford paying this exorbitant insurance premium. The medical insurance scheme therefore terminated his membership.

A total sum of R36,000 including interest, was the credit balance in the MSAs. This was refunded to Zaid. The 75% of his premiums usurped by the medical scheme in ten years was R720,000. Over the years, Zaid and his dependants received medical benefits for R100,000. Neither Zaid nor any of his dependents was hospitalized. Zaid has thus effectively lost an amount of R620,000.

This is the glorious *Tabarru' and Ta-aawun qimaar-riba* system which the sheikh and his 'duktoor' mentors promote. Medical insurance is a massive fraud.

Some other questions

The sheikh has very conveniently selected only one question from the 59 questions which the Medical Council answers via the internet. His agenda obviously does not permit mentioning all the questions which severely prejudice his hypothesis. Let us examine some of these questions and answers which will throw more light on the notoriety of medical insurance.

Q5. "What is a co-payment?
A. It is a portion of the cost for which you are responsible."
(Despite the usurpation of 75% of the premiums, the medical insurance scheme still requires the member to pay a portion of certain types of medical benefits. This supplementary payment is termed 'co-payment'.)

This is the nature of insurance. Those wallowing in this form of *riba* and *qimaar* are afflicted by the disease of *Takhabbutush Shaitaan,* hence the process is to suck from the exploited dumb member wherever the law has left a loophole or permitted exploitation. Imagine, that despite 75% of the premiums being swallowed by the legal donkey, there still remains a demand for 'co-

payment'. The sheikh's idea of *Tabarru'* and *Ta-aawun* provides a licence for mandatory 'co-payments'.

Q15. "What role does my employer play in my relationship with my scheme?
A. The employer may determine whether or not the employees are entitled to belong to one or more schemes or whether the employees have total freedom of choice of scheme. The employer also determines……what level of subsidies will apply to different categories of employees. Therefore, employers are not admitted to membership but they play an important role in collecting contributions and ensure payment thereof to the scheme concerned."

Many companies compel their employees to join medical insurance schemes. Employees have no choice. The scheme is compulsorily imposed on them even against their volition. Deductions are summarily made from their wages without the consent of the employees. This is another example of the type of *tabarru'* and *ta-aawun* which characterizes medical insurance. *Zulm* is interpreted as *tabarru'* and *ta-aawun.*

Q18. "May pensioners' contributions be less than that of others?
A. No, contributions to a medical scheme may only be based upon a member's income and/or number of dependants."
Is this *Tabarru'* and *Ta-aawun?* In *Nahd* does this element of *zulm* exist?

Q21. "If I do not claim from my medical scheme, may I receive a no-claim bonus or rebate?
A. No, the Act prohibits the payment of bonuses, rebates or re-funding of any portion of contributions other than in respect of savings accounts in certain circumstances."

The 'certain circumstances' refer to termination of membership in any way whatsoever. This answer re-enforces the claim that members are not the owners of the scheme as the errant sheikh wishes people to believe.

Q22. "On what basis may contributions vary?

A. Only in respect of the cover provided. Different benefit options/plans are priced differently depending on the levels of cover afforded."

Cover has to be 'purchased'. The medical insurance charges different prices for different levels of cover. The monthly premiums vary in relation to the level of cover which the different medical plans provide. The higher the premium, the more the cover. There is not the slightest semblance of *Ta-aawun* and *Tabarru'* here. What price is paid for what cover in *Nahd?*

Q31. "What does a waiting period mean?
A. A period during which contributions are payable without the member being entitled to benefits."

Q30. "What are the types of waiting periods?
A. There are two kinds of waiting periods i.e. (1) General waiting period of up to three months. (2) Condition-specific waiting period of up to 12 months."

The medical insurance so-called *tabarru'* and *ta-aawun'* scheme, despite receiving payments denies members medical benefits, and this period of denial is up to 12 months. So much for the sheikh's fallacy of *'tabarru'* and *'ta-aawun'.* In *Nahd* do tribe members have to timeously contribute grain/dates for twelve months before they could get a couple of kilograms to feed their stricken families?

Q34. "What is a late joiner penalty?
A. It is a penalty by way of additional contributions, imposed on persons joining a scheme late in life, i.e. an applicant who is 35 years of age or older who was not a member of one or more medical schemes as from a date preceding 01 April 2001……"

If a person joins a medical insurance scheme after the age of 35 years, the scheme imposes regular monthly penalties on him/her in the form of increased contributions which may be up to 75% of the 'normal' insurance premium. We do not know if the sheikh's *'ijtihaad'* has already discovered a *ma'khaz* in *Nahd* for this *riba* extortion penalty which could of course always be interpreted as

'charity' in the *tabarru'-ta-aawun* conception of the sheikh and the *duktoors*.

Q35. "What restrictions may a medical scheme impose on an applicant?
A. (1) Late joiner penalty. (2) Waiting periods."

In *Nahd*, the sheikh has not as yet clarified the restrictions imposed on anyone who is supposed to be awarded a portion of the collected food. Perhaps a *Nahd* contributor brought his dates a few hours after all the tribe members had made their respective contributions. The sheikh has not mentioned how many bushels of dates does the *Nahd* penalty consists of in the event of 'late-joining'.

The sheikh has also yet to clarify if *Nahd* too imposes any late joiner penalties or any waiting period before allowing any *Nahd member* the benefit of some dates. Furthermore, the sheikh should seek his 'duktoor' mentor's assistance to clarify if non-contributors in *Nahd* are also deprived of benefits as is the case in medical schemes.

Q36. "Can a medical scheme impose a condition-specific waiting period on pregnancy?
A. Yes, in those instances where the person was a beneficiary of a medical scheme for up to 24 months."

This is the type of *ta-aawun-tabarru'* concept which brains smitten by the affliction of *Takhabbutush Shaitaan* advocate and label as more meritorious than even pure Sadqah.

Are there any punishment waiting-periods in *Nahd* before any hungry member of the tribe could obtain some Sadqah from the pooled dates of the tribe?

Q44. "May credit balances in my personal savings account be withdrawn in cash?
A. Only when you terminate your membership of the scheme or a benefit option without joining another medical scheme or benefit option with a savings component."

Is there any such provision in *Nahd?* Does any contributor of dates/wheat have any credit balance which could be withdrawn if he decides not to participate in any future *Nahd* collection scheme?

Q45. "May contributions be paid out of my savings account?

A. No, except on termination of membership. Funds in the MSA may be used by the scheme to offset any debt owed by the member which would include contributions."

Does any contributor of dates/wheat in the *Nahd* practice have a savings account?

Q46. "Can co-payments in respect of PMB benefits be paid out of my MSA?

A. No, the Act specifically prohibits it."

In *Nahd* does a contributor have to supplement his contribution with a co-payment of dates/wheat?

Monthly premiums constitute the vital and imperative constituent of medical, and of all other kinds of insurance. Although the member may have cash in his savings account, the contributions, etc. may not be paid there from. These savings will be utilized by the medical insurance scheme to pay for medical benefits in the event of the member exceeding the minimum benefit threshold. We are unable to fathom how this fits into the *Nahd* practice. The sheikh may be able to conjecture a response with his methodology of hallucination which provides for the transformation of riba into 'profit', qimaar into tabarru' and illicit sex into marital sex on the basis of pure imagination.

A digression

The MSA brings us to the question of Zakaat. Do members of medical schemes have to pay Zakaat on the monies they have paid to a medical insurance company?

According to the sheikh and the 'duktoors', members are the owners of the assets of the medical scheme. According to the lawyer, they are not the owners in view of the fact that the legal fictitious donkey is the owner. On the basis of the sheikh's idea of medical insurance, each member has to annually determine his pro rata share

of the cash assets in the coffers of the scheme. He thus has to pay Zakaat every year on his share of the cash reserves. Consider Zaid who pays R8,000 monthly to his medical insurance scheme. After 12 months, he has paid R96,000. During the course of the year R16,000 worth of medical benefits were supplied by the scheme. He therefore, has a cash balance of R80,000. He has to pay Zakaat on R80,000 in terms of the sheikh's concept. He remains the owner in this concept, hence Zakaat being Waajib on him is the logical conclusion according to the sheikh's fallacious hypothesis.

In addition to the incumbency of Zakaat in terms of the sheikh's hallucinatory concept, the members should include in their wills and testaments that the medical insurance company is holding their pro rata share of the assets which should be transferred to the heirs of the members.

The true position in terms of the Shariah is that Zakaat is payable every year on the credit balance in the MSA. The medical scheme acknowledges that the money in the MSA belongs to the member, hence it gets refunded to him on termination of membership.

According to the Shariah, Zakaat is not payable on the 75% which has been alienated from the ownership of the member. He has lost the 75%, hence Zakaat is not payable on that amount. The medical insurance company has usurped the 75%, extinguishing Zaid's ownership. This is the real and factual position; hence there is no Zakaat on it.

Q59. "When may my scheme terminate or suspend my membership?
A. Only on grounds of failure to pay membership fees timeously or other debts owing to the scheme, submission of fraudulent claims, committing other fraudulent acts, or the non-disclosure of material information."

It is only dense minds who persist in the fallacy of the premiums and benefits being the effects of *tabarru'* and *ta-aawun* of members and the medical insurance scheme respectively. If a member fails to pay his premiums 'timeously', his membership is cancelled. All benefits are cancelled, and he forfeits all his money usurped by the legal donkey. This is the *ta-aawun* and *tabarru'* concept of the sheikh and his 'duktoor' mentors.

Do any of these corrupt and baatil provisions feature in *Nahd?*

These are a few questions selected randomly from the document from which the sheikh had extracted only question 53 since in his defective understanding the answer to this question supports his notion of the members being the owners of the assets and that there is no bilateral contract between a member and the medical scheme he joins. The fallacy of the sheikh's concept is self-evident.

The assets of a medical insurance scheme/company

Explicitly negating the idea of the ownership of members of a medical scheme, the government's *Medical Schemes Act* states: *"Any balance in a member's personal saving account shall be excluded from the calculation of the mandatory nett assets of the medical scheme."*

Only the amount in the MSA belongs to the member, hence it may not be included in the calculation of the assets of the medical scheme. Now regardless of the fact that despite the validity of the legal donkey's 'ownership' in terms of the law, the Shariah does not consider it to be the owner on account of its non-existence. Its existence is merely a figment in the corrupt brains of its propounders. The effect of this is that the money has been usurped from the member, albeit with his consent. He has entered into a haraam *qimaar-riba* deal with the bosses of the scheme. So while the administrators of the scheme are not the bosses and owners in terms of the law of the land, they are the *de fac'to* owners in terms of the Shariah. They have acquired wealth by haraam means in the same way as a robber or a man who takes bribes or a devourer of riba or one who has won money by gambling or a prostitute who has enriched herself by means of her immoral 'trade'. If the bosses happen to be Muslims – and there is not a single Muslim medical insurance company -- the Shariah will order them to eliminate all the haraam money in their possession. If the true owners (the paying members) or their heirs are traceable, all their premiums will have to

be refunded. If untraceable, the money will have to be compulsorily diverted to charity without niyyat of thawaab.

However, in the case of these kuffaar medical insurance outfits, these Shar'i injunctions cannot be applied. The nett consequence in so far as the Muslim premium-payers are concerned, is that their ownership is extinguished in the monies which have been transferred in a haraam manner into the ownership of the medical insurance bosses, hence they have no say and no control over 75% of their payments nor can they reclaim it even if on termination of membership they had not been hospitalized nor acquired medical benefits for the amount they had paid to the insurance company. They have lost their money in the same way as they lose their money which a government extracts and extorts from them by way of haraam taxation. The principle of *Isti'laa-e-kaafir* will be applicable.

The owners of the medical insurance company enter into contracts with members who pay for future cover. Sight should not be lost of the fact that the medical insurance scheme is in existence prior to members joining. It is not *Nahd* which is a pure date/wheat collecting practice. The medical insurance scheme is apart from its members. After it comes into existence, it begins its operation of entering into bilateral contracts with whomever wishes to join and pay for future benefits which will accrue to them in the event of the affliction of health-calamities.

By agreement with the medical insurance, a portion of the member's payment is set aside as savings, while the major slice is by agreement given to the medical insurance bosses in a haraam *riba-qimaar* contract for the commodity of 'peace of mind', that is, the assurance that if the member in the future suffers such injury or disease which requires hospitalization, then the scheme will pay the expenses. Only a brain deranged with the disease of *Takhabbutush Shaitaan* will fail to see the *qimaar* conspicuously glaring him in the face.

The bilateral contract is an irrefutable reality. If the sheikh is an honest man, then the only reason for his corrupt fatwa is deficiency in research and deficiency in knowledge. If he is other than honest, then the motivation is *nafsaani* and mundane as was the practice of the Ulama-e-Soo' of Bani Israaeel.

The government's Act and the constitution of the medical insurance scheme explicitly declare that medical benefits are the liability of the scheme ***in lieu of the payments made by members.*** The member enters into a bilateral contract consciously and fully understanding that he is paying for future benefits should the calamity of sickness strike him. There is not a semblance of doubt in the incontrovertible fact and reality that there is a bilateral contract between the member and the scheme's owners.

The plethora of conditions, stipulations and regulations imposed on the parties of the contract, the alienation of the monies from the ownership of the payers, forfeiture of money as well as of benefits in the event of failing to pay contributions timeously, etc., etc., all debunk the stupid theory of the sheikh, and affirm the bilateralism of the contract between the parties.

A broker selling medical insurance meets Zaid and offers him the various medical insurance plans to cover future medical expenses in the event of the calamity of sickness. Remember that Zaid is not a member of the medical insurance scheme represented by the broker. Zaid is a complete outsider. He agrees to buy the plan. Now negotiations take place between Zaid and the broker who is the agent of the medical insurance scheme. He fills in the application form and pays his premium. He contracts with the broker and understands that he has to pay monthly premiums timeously in order to derive the benefits offered by the insurance plan.

On what basis is the contract between Zaid and the medical insurance scheme not a bilateral contract? Did Zaid enter into a contract with himself? Did he pay money to himself? Did he contract with some phantom or ghost? The sheikh could endeavour to sell his *'taa-wun* and *tabarru'* bunkum to dumb and stupid rustics and ask them to believe that Zaid did not enter into a bilateral *qimaar* contract with anyone.

HALLUCINATION – THE FUNDAMENTAL BASIS OF THE DEVIATES

In response to Mufti Ibraahim's query regarding the viability of imagination/hallucination, the sheikh presents the Fiqhi principle: *"Cognizance is in terms of the meanings, not the words."* On the basis of this principle, the sheikh contends the validity of transformation of one reality to another reality by means of imagination. He presents a few examples to bolster this implied concoction. For example, he mentions that a person dons Ihraam for Hajj when it is not the Hajj season. His Ihraam automatically becomes the Ihraam of Umrah. A person during Ramadhaan makes intention of keeping a fast other than the Saum of Ramadhaan. Despite his intention, the fast remains that of the current Ramadhaan. A *hibah* (gift) with a *shart* (condition) *of exchange* becomes *bay'* (sale).

In fact, all these examples affirm the validity of Mufti Ibraahim's objection. It is clear from these examples that imagination does not transform a haraam reality into a permissible reality. The examples prove that by imagining the compulsory insurance premiums and the medical benefits to be *tabarru'*, the transformation does not take place. The imagination does not change the reality of the insurance *qimaar* into *tabarru'*.

Firstly, the Fiqhi principle *(The determinant is with meanings, not with words),* mentioned by the sheikh is not comprehensive and all embracing. While it is applicable to monetary transactions, it does not operate in Talaaq for example. If a man utters *Sareeh Talaaq* to his wife, it will remain as such and have the effects of such a Talaaq regardless of his intention and what he had imagined at the time of issuing the Talaaq or what he imagines of it after having administered it. No amount of mental gymnastics and application of the Fiqhi principle will alter the ruling.

Similarly, if a man, after issuing Talaaq Baa-in, says that he had imagined thereby Talaaq Sareeh, his claim will not be accepted even if he is truthful. A man has no intention of marrying a woman. As a prank, he and the woman, jokingly utters *Ijaab* and *Qubool* in the

presence of witnesses. The words will be decisive and the Nikah will be valid regardless of their being no intention to marry.

A person utters an explicit statement of kufr without the intention of kufr. His Imaan is effaced and he has to renew his Imaan as well as Nikah. The words are the determinants here, and cannot be negated by the Fiqhi principle proffered by the sheikh.

Secondly, the example of *Ihraam* has no relevance whatsoever to medical insurance nor to the principle cited by the sheikh. In this matter there is no imagination by the *muhrim.* He makes a firm intention, be it proper or improper. The Shariah then issues its ruling pertaining to the specific act. While it is Makrooh to adopt Hajj Ihraam before the months of Hajj, it is nevertheless, valid. There is no automatic transformation of the Hajj Ihraam into Umrah Ihraam as contended by the sheikh. The Hajj Ihraam remains valid even if adopted prior to the months of Hajj.

Similarly, the example of Ramadhaan cited has no relevance to medical insurance. The invalidity of any intention other than the fast of Ramadhaan during this month is from another angle, namely, the whole of Ramadhaan is the *zarf* (the substratum, or in simple terms, the container) for the fasts of this month. The purpose of niyyat is *Ta'yeen*, i.e. to fix a specific dimension. In view of the all-embracing *Zarf*, the issue of *Ta'yeen* does not develop.

Regarding the corrupt *Bay'ul Wafa'* example, the principle as applicable in *Uqood* is acknowledged. Mufti Ibraahim's query pertaining to transformation by imagination was not presented in negation of the principle nor on account of him being ignorant of the principle.

The example of *Hibah bish shartil I'wadh*, also has no relevance to the discussion. Again the principle in *Uqood* is acknowledged. *Hibah bishartil I'wadh* is *Aqd-e-Bay'* in which the principle operates. It cannot be presented in repudiation of the query pertaining to transformation by imagination as will soon be explained further, Insha'Allah.

Thirdly, The principle, *Al-ibratu bil-Ma-aani…,* rebounds on the sheikh. He latched onto some meaningless words (the words he extracted from the answer to question 53 by the Medical Council), and on the basis of words which are in conflict with the *Ma-aani* and

Haqeeqat of medical insurance, as well as in conflict with the *nusoos* of the contract and the law which describes in detail the reality of the medical insurance contract, he applied the stupid *hukm* of the absence of a bilateral contract. The principle explicitly states that the reality of the transaction should be taken into consideration and the ruling will be on the reality, not on words which portray a meaning other than the reality of the contract. But, the sheikh, while citing this principle, applies the ruling to words which do not portray the reality of the medical insurance contract.

The government's Act, the constitution of the medical scheme, the explicit statements of the Medical Council in the very same questionnaire from which the sheikh has extracted question 53, the understanding of the contracting parties (the medical scheme bosses and the paying members), and the objective of the contract, viz., payments in lieu of future cover in the event of calamity, all explicitly bear out the bilateral nature of the contract. The only persons who claim that the medical insurance contract is not bilateral is the sheikh and his 'duktoor' mentors. Even his lawyer friend and Mufti Taqi are constrained to concede the bilateral nature of the medical insurance contract.

The sheikh's lack of understanding of the nature of the contract due to either deficient research or superficial Fiqhi knowledge or an ulterior agenda, or a conglomeration of all these elements are the basis for his absurd conclusion. That the medical insurance contract is bilateral, there is not a vestige of doubt.

The fiqhi principle mentioned by the sheikh refutes his theory, and affirms the fatwa on the reality of the contract, namely, that the medical insurance is a bilateral contract despite the words stated in answer to question 53. Since the words in the answer to question 53 have been intended for the understanding of laymen who do not understand the technicalities and legalities surrounding the legal fictitious donkey, the true nature of the medical insurance contract should be acquired from the law, the constitution of the medical scheme, the verdicts of the capitalist experts, and the understanding of the parties to the contract. Thus, the principle cited by the sheikh while it repudiates his baseless theory, confirms the validity of the bilateral contention.

Fourthly, the examples which the sheikh has proffered support the validity of Mufti Ibraahim's objection, namely, imagination is not a basis for transformation of a reality for the purpose of extracting a verdict to conform to the imagination. In the example of intending during Ramadhaan that one is fasting the qadha of the previous year or that one is keeping Nafl fasts, the reality of the Fardh fasts of the current Ramadhaan is not changed. No matter how much one may imagine that one is keeping Nafl fasts, the imagination will not transform the reality of the Ramadhaan Saum into the reality of Nafl Saum.

Similarly, if one imagines that *Hibah bi shartil I'waz* is pure *Hibah*, such imagination will not detract from the reality that the transaction is *Bay'*. Likewise if one dons *Ihraam* before the entry of the months of Hajj, and imagines that one is performing Hajj, such imagination will not be valid despite the validity of the *Ihraam*. In precisely the same manner, imagining that the medical insurance premium is *tabarru',* will not transform the *qimaar-riba* payment into *tabarru'*. The reality of the contract will be taken into account.

Fifthly, the sheikh has lost sight of the fact that Mufti Ibraahim had directed his query to Mufti Taqi who had endorsed the hypothesis presented by the lawyer, Mr. Omar. Mufti Taqi had not endorsed the conflicting hypothesis of the sheikh. In fact, the sheikh has produced a number of arguments in contradiction and refutation of the lawyer's arguments notwithstanding the identical conclusions of the two bedfellows. Mufti Taqi had accepted the legal donkey fiction offered by the lawyer. In fact, he subscribes to the 'reality' of this legal fiction. Our book, *The Concept of Limited Liability – Untenable in the Shariah*, discusses and refutes Mufti Taqi's fallacious theory regarding the legal fictitious donkey. Whoever is interested in this book, may write for a copy.

In endorsing the view of the lawyer, Mufti Taqi accepted the *bilateral* position of the medical insurance contract which the lawyer had propounded. He had conceded that there are two distinct parties contracting. Despite acknowledging complete transference of ownership of the funds from the paying members to the legal donkey, they irrationally maintain that the premiums are pure *tabarru' and ta-aawun*. It was on the basis of this absurdity and weird logic and

irrationality of the lawyer and Mufti Taqi that Mufti Ibraahim was constrained to ask if the compulsory payments and compulsory medical benefits could be accepted as being *tabarru'* by the self-deceptive trick of imagination.

They have mired themselves in confusion and incongruity. Their view leads to the inescapable and logical conclusions that when a man indulges in adultery, then on the basis of imagination the woman automatically becomes his wife, legitimizing his haraam sexual indulgence; when he wins in gambling, he could legitimize the proceeds by imagining that it is a lawful prize; when he receives interest on a loan, he could legalize the interest by imagining that it is profit; when he consumes liquor, he could imagine that it is fruit juice; and so on *ad infinitum.*

The lawyer and Mufti Taqi have legitimized the payments and medical benefits in a medical scheme which they acknowledge enters into bilateral contracts with paying members by averring that these are *tabarru',* and they believe that they have achieved this feat on the basis of imagination. The entire structure of their medical insurance hypothesis is the product of hallucination, the one figment giving rise to another figment of imagination. Their hallucination is so bizarre that despite there being no semblance of *tabarru'* and *ta-aawun* in medical insurance, they irrationally and monotonously profess this imagination.

The weirdness of their logic is further compounded by the fact that they have failed to understand that even genuine *tabarru'* and *ta-aawun* do not legitimize Shar'i prohibitions. Thus, despite the complete absence of *tabarru'* and the confirmed existence of *riba* and *qimaar*, they intransigently persist in contending on the basis of imagination that the compulsory premiums and medical benefits are acts of *tabarru'.*

The sheikh has simply complicated the quagmire for the lawyer and Mufti Taqi with his attempt to answer Mufti Ibraahim's query which is directed to those who concede the bilateralism of the contract whereas the sheikh answers from the angle of there being no contract since in his hallucination there are no two distinct parties despite the existence of a contract. Just as imagination cannot transform zina into lawful marital sex, so too can it not transform

qimaar and *riba* into *tabarru'* and *ta-aawun* as the sheikh has hallucinated.

The sheikh's silly arguments presented in response to Mufti Ibraahim's objection/query have placed his lawyer friend and Mufti Taqi into an unenviable situation. There are now two fallacies – the fallacy of the lawyer and Mufti Taqi, and the fallacy of the sheikh. These fallacies will be discussed further in the ensuing pages, Insha'Allah.

Cognizance is on the basis of the reality, not on the basis of the words *(Al-ibratu bil ma-aani laa bil alfaaz)*

In terms of the concept of the lawyer and Mufti Taqi, imagining the premiums and medical benefits to be *tabarru'* is sufficient for cloaking the imagination with reality. In other words, by imagination, the compulsory premiums of the insured person and the medical benefits paid by the insurance company become acts of charity. Mufti Ibraahim Sahib had queried this imaginary 'principle' of imagination. But there has been no response from Mufti Taqi Sahib.

The sheikh, springing to the rescue of his bedfellow, the lawyer, has attempted to answer with corrupt arguments. In so doing, he has further compounded the confusion stemming from imagination. The sheikh has attempted to vindicate the imagined validity of transformation into reality by imagination. The examples which he has proffered in defence of his friend's hallucination reveal the confusion in the sheikh's mind. The Fiqhi examples he has presented are realities of the Shariah. There is no imagination involved. Transformation does not take place by whimsical imagination or hallucination.

The Shariah issues its directives on the masaa-il with which the sheikh has abortively analogized his friend's hallucination pertaining to the premiums and medical insurance benefits.

Consider the example of a man's Hajj Ihram adopted before the Hajj months. It is not yet the Hajj season. A man makes niyyat of Hajj Ihraam. The sheikh contends that this man's Ihraam is transformed into Umrah Ihraam by imagination. Firstly, this is incorrect. The Hajj Ihraam before *Ash-hur-e-Hajj* despite being Makrooh, is valid. Secondly, the man has not been imagining anything. He made a firm intention to don the Ihraam of Hajj. He did

not hallucinate. There is no hallucination or imagination involved here. The sheikh has thus very stupidly tendered this example in his confused bid to vindicate the transformation of insurance premiums into *tabarru'* by mere imagination. In other words, the premium payer should merely imagine to himself that he is giving the medical insurance company a voluntary monthly charity contribution. Similarly, the kaafir medical insurance company should imagine that it is making a charity contribution to the member when it makes a medical benefit payment to him.

In so far as the imagined Maaliki principle of *Iltizaam* is concerned, the lawyer's concept allows for the the *hukm* of *Iltizaam* to apply to kuffaar in the same way as it applies to Muslims.

There is absolutely no commonality between the Hajj Ihraam mas'alah and the transformation by imagination in medical insurance.

In the mas'alah of *hibah bi shartil I'waz* (a gift given on condition of receiving something in exchange), there is no imagination here. In this transaction, the requisites of a valid sale exist, hence the transaction is a sale transaction irrespective of the word, 'hibah' having been used. It is a real sale. Hence the relevant Fiqhi principle applies. It did not become a sale by imagination. For example, if Zaid owes you some money and you imagine that the amount he owes you is your Zakaat payment, then such imagination is invalid. It has no effect. The reality cannot be transformed into another reality by imagination.

In the *hibah* mas'alah, the reality of *bay'* is not the effect of imagination. Since the very transaction is a sale, the Shariah simply directs that it is a sale. A minor performed Hajj. During adulthood, he cannot transform that Hajj into his Fardh Hajj by imagination.

A man, upon whom Hajj is not Fardh, performs Nafl Hajj. Thereafter he imagines that this is his Fardh Hajj. Such imagination does not absolve him of his Fardh Hajj. If he acquires wealth, Hajj will be Fardh on him.

Someone performed four raka'ts Nafl Salaat. Thereafter, in his imagination he cancels the Nafl niyyat, and imagines that the Salaat which he had performed is his Zuhr Fardh. Such imagination does not transform Nafl into Fardh.

Imagination has no role in the formulation of the *Ahkaam* of the Shariah. The sheikh's vindication of *I'maalul khiyaal* is bunkum spawned by his mental condition of *Takhabbutush Shaitaan.* A change in classification is not by imagination. It is by directive of the Shariah. If one imagines that the Dumm-e-Tamattu' is one's Waajib Qur'baani, the object of one's imagination is not achieved. It will not become the Waajib Qur'baani.

A man performed tawaaf before Subh Saadiq on the tenth, and imagined that this is his Tawaaf-e-Ziyaarat. Such imagination does not achieve his aim. Imagination is *baatil.* But if he performs a Tawaaf after expiry of the correct time, then Tawaaf-e-Ziyaarat will be valid. This is not achieved by imagination. It is by the order of the Shariah.

If prior to the months of Hajj, someone donned Ihraam of Hajj, performed Tawaaf-e-Qudoom and followed it with Sa-ee, the Tawaaf-e-Qudoom is valid notwith-standing the *Karaahat.* This validity is not on the basis of imagination. It is by directive of the Shariah. But if someone performs Fardh Salaat before its valid time, the Fardh will not be valid. *I'maalul Khiyaal* has no role here. The Shariah's ruling is invalidity.

Someone performed Tawaaf-e-Ziyaarat without wudhu during the Days of Nahr. Thereafter he performed his Tawaaf-e-Wida with wudhu also during the Days of Nahr. This Tawaaf-e-Wida' is transformed into Tawaaf-e-Ziyaarat, not by imagination, but by order of the Shariah.

There are numerous such example which change from one state to another. But such transformation is not by the individual's imagination. It is by the directive of the Shariah. Imagination has no role in this sphere. In the matter of *Uqood*, the reality of the contract is taken into account. If the essentials of the contract are found, then the Fiqhi principle of *'Al ibratu…* will apply regardless of the terms of expression used. There is no imagination whatsoever operating anywhere.

Imagination as perpetrated by the two bedfellows is the effect of *Takhabbutus Shaitaan.* Only minds deranged by the touch of shaitaan can imagine that a woman with whom fornication is committed is one's wife; or the money paid to a prostitute is *mehr*; or waiving a

poor man's debt is Zakaat; or liquor is medicine, etc., etc., etc. The field for imagination is boundless. A *niyyat* formed within the confines of the Shariah, is valid. Such niyyat is not *I'maalul khiyaal.* There is no such drivel as *I'maalul khiyaal* in the Shariah. Such bunkum exists in the imagination of the deviates.

The aforementioned examples adequately illustrate that the contention of the compulsory insurance payments and the compulsory medical payment by the insurance company being transformed into *tabarru'*, are the effects of the mental disease known as *Takhabbutush Shaitaan.*

The Fallacy that Medical Insurance is Medical Aid

The lawyer, the sheikh and the other 'duktoors' in their eagerness to legalize medical insurance, have portrayed this *riba-qimaar* contract as an institution of charity and aid. But this contention is in conflict with reality.

In South Africa there are 124 medical schemes with a total membership of just a little over 7 million. Of the 124 medical insurance companies/schemes, 41 are open schemes and 83 closed. Open schemes are open for all and sundry, whoever can afford the exorbitant monthly premiums. Closed schemes are employer-based schemes and membership is restricted to the employees.

The 41 open medical schemes have a total membership of just over 5 million while the 83 closed medical schemes have a total membership of just over 2 million. From these figures the following facts transpire:

- Only about 15% of the total population has medical cover.
- 85% of the population is without medical cover, and there is no so-called medical *aid* scheme which provides aid to the poor masses who have no medical cover,
- The more than 5 million members of the open medical schemes are all affluent (wealthy and extremely wealthy) members of society. Only those who can afford the exorbitantly high monthly premiums can afford to join a

medical scheme. The monthly payment is approximately R2,000 per adult. It is for this reason that 85% of the population are without medical cover.

- Only 2 million of the workforce of the whole country have medical cover. This has been made possible by employers who pay about half the premium while the other half is deducted from the employee's wages.

A scheme which requires a person to pay R2,000 monthly, and which is affordable by only the wealthy, cannever be described as an institution of charity and aid *(tabarru'* and *Ta-aawub)* which have been hallucinated by the lawyer and the sheikh.

"You follow nothing but conjecture. Verily, you do nothing but hallucinate." (Surah An'aam, aayat 148)

"They do not have any knowledge in this regard. They do nothing, but hallucinate." (Surah Zuhruf, aayat 20)

"May the hallucinators be destroyed – those who are lost in their ignorance." (Surah Thaariyaat, aayat 10)

The sheikh's third angle

In an absurd and convoluted style of reasoning, the sheikh offers an explanation in an abortive attempt to differentiate between medical insurance and what he dubs as 'commercial' insurance. His interpretation warrants and justifies ridicule. Everyone who has understanding of insurance will laugh and mock at the silly explanation offered by the sheikh in his argument for differentiation in the nature and reality of different types of insurance. It is abundantly clear that this sheikh is blissfully ignorant of the nature of insurance and of its fundamental constituents, hence he fails to realize the absurdity he is peddling by contending that while 'commercial' insurance is a bilateral contract, medical insurance is not.

In his convoluted interpretation, in medical insurance the insured members who pay premiums are in fact the insurers. They pay premiums to themselves, yet expect another entity to pay them medical benefits. He justifies this interpretation on the basis of his fallacious idea that the objective of the bosses of the scheme is the *ta-aawun* which the Qur'aan Majeed commands in the aayat: *"And aid one another in birr and taqwa."*

In his opinion this hallucinated idea of *ta-aawun* is the determinant which differentiates between medical and 'commercial' insurance. This imagined *'ta-aawun'* effaces the bilateral nature of the contract between the members and the medical insurance company. While the sheikh has adopted a route which differs from the argument-route of the lawyer and Mufti Taqi, he (the sheikh) too is victim of his imagination. On the basis of his imagination he introduces the figment of *tabarru* and *ta-aawun*, and on this non-existing basis he contends the non-existence of bilateralism to hallucinate his idea of permissibility. This is the fallacy of the sheikh.

Justifying medical *qimaar-riba* insurance with the Qur'aanic aayat is the effect of the malady known as *takhabbutush shaitaan* which Allah Ta'ala mentions in aayat 275 of Surah Baqarah. This malady is the effect of believing that riba is like trade. This mental disease (the affliction of shaitaan) befalls those who seek ways of legalizing riba, qimaar and whatever Allah Ta'ala has made haraam.

The numerous callous conditions, the very nature of the contract and the real effects of the medical insurance contract vehemently repudiate the nonsense which the sheikh is peddling. We have already explained in detail the affirmation of bilateralism of the contract. But if anyone fails to understand this simple self-evident fact, then we understand the satanic mental affliction which has smitten the brains of the ignoramus who denies the presence of the sun during the daytime. We have clearly illustrated with clauses from the Act and Constitution of medical schemes, as well as with examples that there is no *ta-aawun* whatsoever in medical insurance. The *'ta-aawun'* is hallucinatory. The overwhelming majority of the members lose their money in medical insurance.

While the sheikh contends that the members represent themselves; that they contract with themselves, and that there is no transference

of ownership of their premiums, in real practical life the factual position is that they contract with bosses who are not members of the medical scheme. They are 'administrators' who gain the lion's share of the money paid in by members. It is total *jahaalat* to believe that the members are 'contracting' with themselves and that no transference of ownership takes place.

A man has to apply to another party – the scheme's bosses – by filling in an elaborate application form, to join the scheme. Acceptance of his membership is dependent on the bosses of the scheme. When his membership is accepted, he is informed that 25% of his payments will be held in trust for him while 75% is alienated from his ownership. He has no ownership and no control over this 75%. The contract is encumbered by a myriad of haraam conditions. His continued membership is possible only if he enduringly and timeously pays his monthly premiums. If he defaults in the payments, his membership is cancelled while he forfeits whatever he has paid in.

The bosses of every medical scheme existing today are kuffaar, yet the sheikh brings them within the scope of the Qur'aanic aayat which commands *birr* and *taqwa.* The idea of *ta-aawun* is furthest from the minds of the riba capitalists whose only motive is monetary gain by squeezing and sucking. A cursory glance – a superficial study – of the law and constitution of these schemes will convince every unbiased person that a medical scheme is anything but a scheme of *ta-aawun. Qimaar, riba,* exploitation, extortion and usurpation are its features and constituents. It devolves on the errant sheikh to demonstrate with real examples how exactly medical insurance is *ta-aawun* and *tabarru'.*

In his third response, the sheikh has attempted to answer Mufti Ibraahim's query pertaining to other classes of insurance. If medical insurance is permissible on the basis of imagination, then all forms of insurance would likewise be permissible on the basis of hallucination since there is absolutely no difference in the nature and fundamentals of all kinds of insurance. All insurance is based on *qimaar* and *riba.* The sheikh has miserably failed to show any difference between medical insurance and what he terms 'commercial' insurance. He has only put forth his irrational and baseless claim of *ta-aawun* as his

sole ground for negating bilateralism without tendering a shred of evidence for his *ta-aawun* contention. He has not presented even one Shar'i or secular law *daleel* for his arbitrary contention. His repeated contention of *ta-aawun* is not a *daleel* from any angle, be it Shar'i or secular.

Even if the element of *'ta-aawun'* is momentarily conceded, this element does not legitimize haraam *qimaar* and *riba.* His third angle is thus bunkum just as all his angles are bunkum, the products of his hallucination.

The Ash'ariyyoon basis

The sheikh's bankruptcy in the sphere of Shar'i *dalaa-il* in the abortive attempt to justify the *riba-qimaar* medical insurance, has constrained him to cite the Hadith of the Ash'ariyyoon tribe. Their practice of food distribution in times of need and when on a journey, and known as *Nahd,* has already been explained and discussed.

The sheikh has absolutely no *daleel*, neither from the Usool of Fiqh nor from any of the Furoo-aat of Fiqh. He has miserably failed to argue his case on the basis of the *Usool* of the Aimmah-e-Mujtahideen. He therefore acted in an unprincipled manner by digging out a Hadith which mentions a pure, holy, Sadqah practice which has absolutely no resemblance with medical insurance. A scholar of the Shariah discusses an issue on the basis of the principles and particulars of Fiqh. This sheikh who labours under the colossal misconception of him being a mujtahid, therefore, resorted to the Hadith.

Finding no substantiation in Fiqh for medical insurance, he dug out the Hadith pertaining to the *Nahd* practice. He contends that medical insurance and *Nahd* are the same, hence *Nahd* is the basis for the permissibility of medical insurance. His utter bankruptcy in the sphere of Shar'i dalaa-il induced him to say that medical insurance is classified among the *Mansoos Ahkaam.* Is there any limit for compound ignorance. And, what is the medical insurance '*Nass'* which legitimizes this *qimaar-riba* institution of the kuffaar capitalists? According to the sheikh it is *Nahd.* Even if it should be momentarily assumed that *Nass* is a *ma'khaz* (a source of extraction

or a basis) for medical insurance, then too, it is colossal ignorance to aver that this 20th century development of medical insurance is among the *Mansoos Ahkaam.* The *hukm* for it is the product of *Istidlaal* (logical deduction in terms of a Shar'i logical process of reasoning).

But there is a difference of heaven and earth between *Nahd* and medical insurance. The entire reality and nature of *Nahd* is explained in a few lines, less than a quarter of a page. In contrast, a government Act of 70 pages and a constitution of 50 pages present an elaborate exegis of medical insurance. The nature, reality and effects of *Nahd* and medical insurance are as different as Jannat and Jahannum.

Only a man whose brains have become convoluted by the malady of *takhabbutush shaitaan* will see a similarity between *Nahd* and medical insurance. It will be salutary for searchers of the truth to obtain from the internet the government's Act on Medical Schemes, model constitutions of medical schemes, and samples of different covers offered by medical schemes. There is also considerable other literature available on the internet regarding medical schemes. An intelligent study of this literature by unbiased minds will dispel all the claptrap and bunkum with which the sheikh has clouded medical insurance. He has further obscured an institution which is obscure to most persons even the *duktoors* who purport to have made 'research' on this subject.

The second fallacy is the view of the lawyer and Mufti Taqi. The logical conclusion of the sheikh's denial of the bilateralism of the medical insurance contract is the refutation of the lawyer's and Mufti Taqi's view. However, dishonesty has proscribed the sheikh from proclaiming the erroneous conclusion of the lawyer. The erroneous conclusion stems from the fact that the lawyer and Mufti Taqi concede that medical insurance is a bilateral contract. Despite the unity of the conclusion between the two baatil arguments in favour of medical insurance, the sheikh denies the existence of bilateralism while the lawyer and Mufti Taqi affirm bilateralism. The conclusions should logically be opposite views. However, they achieve unity in conclusion with their trick of imagination. Both parties have hallucinated *ta-aawun* and *tabaurru,* hence they conclude the permissibility of medical insurance without even understanding that

even if the *ta-aawun* contention is genuine, it does not legitimize *haraam qimaar* and *riba.*

If the sheikh had respect for the Haqq and if his mission was the Haqq, he would have stated with clarity that the conclusion of the lawyer and Mufti Taqi is *baatil.* At one stage in his argument, he was forced to concede that in terms of the lawyer's 'daleel', even 'commercial' insurance is permissible. He was compelled to concede that the lawyer's explanation and classification of medical insurance lead to the same conclusion of permissibility of 'commercial' insurance. Despite this admission, the sheikh, struggles to wriggle out of this quagmire with his attempt of bolstering the baseless conclusion of the lawyer from the *ta-aawun' angle.*

Islamically and logically, and even in terms of the sheikh's own understanding, the permissibility of 'commercial' insurance is the logical conclusion of the lawyer's '*daleel'.* Yet, the sheikh descended into the dregs of dishonesty in his bid to shield his bedfellow by attempting to sustain the illogical conclusion of 'impermissibility' of 'commercial' insurance with the *ta-aawun* stupidity, although he (the sheikh) does understand that it is irrational for the lawyer to maintain this view since he has conceded bilateralism in medical as well as 'commercial' insurance. The two fallacies which have fabricated the permissibility view are manifestly self-evident to anyone who has a little understanding of the issues which are being discussed.

Medical Insurance is a Bilateral Contract

To deny the irrefutable fact of medical insurance being a *Bilateral Contract* is to deny reality, and to deny that the sun shines during the day. This denial is termed sophistry. Every reality is non-existent for the sophists. In a bilateral contract there are two distinct parties. In the bilateral medical insurance contract the two separate parties are the medical scheme and the member who purchases the medical insurance plan.

A medical scheme comes into existence prior to selling medical insurance plans. It gains its distinct independent existence – separate and independent of the future purchasers (members) of insurance without those who will purchase insurance plans from it in the future.

The manner in which it is born and acquires its separate identity is clearly explained in the *Medical Schemes Act No.131 of 1988.* The history of its formation is as follows:
(a) An application for the establishment and registration of a medical scheme has to be made to the relevant registrar by the person applying for registration of the medical scheme.
(b) In his application the applicant has to furnish the name of the medical scheme, the date on which the proposed medical scheme is to come into operation, the physical and postal address of the medical scheme, copies of the rules of the medical scheme, the name and address of the person who will administer the scheme, the guarantees which the registrar requires, a detailed statement of the services which will be provided by the medical scheme, a detailed business plan, R6,000 registration fees, as well as much other information. *Has all this any resemblance with Nahd?*

After the approval by the registrar, the medical scheme is established and comes formally into existence. It is now ready for trading in medical insurance. Note that it has not enlisted as yet a single paying member. After its birth as an entity (the legal donkey), the administrator representing the legal donkey will begin trading operations, selling the wares of the medical scheme.

The medical scheme after its registration has the right and power to sell medical insurance. It now searches for clients to sell its wares. The medical insurance company's representative meets Zaid and offers the wares of the medical insurance for sale. Zaid is a complete outsider. He has absolutely no relationship with the medical insurance scheme. He is the purchaser of an insurance plan offered to him. The plan is sold to him on the agreement of him paying monthly premiums.

The plan specifies the products (medical benefit) which are being sold by the medical insurance scheme. Zaid selects a product (one of the insurance plans) and begins to pay his instalments. Zaid understands that he buys future medical benefits which will be bestowed to him if he is struck by the calamity of sickness/hospitalization.

Zaid has purchased an insurance product from an existing party who is distinct and apart from himself. He becomes a client of the medical scheme only after he purchases a medical insurance plan. If Zaid refuses to buy any of the insurance products, the medical scheme remains existing as a separate party, not dependent on purchasers (members) for its existence. The administrators of the medical scheme are constantly in the search for buyers who are parties totally apart from the medical insurance company.

There is absolutely no difference between any other insurance company and a medical insurance entity. The medical insurance company sells insurance policies to other parties in exactly the same way that other insurance companies sell their variety of insurance policies. It is absolutely absurd and bizarre to contend that the person who purchases insurance from an insurance entity, be it medical insurance, is representing the insurance entity, and that he is one of the owners. He is entitled to only future medical benefits if the calamity of sickness afflicts him, and such medical benefits are in lieu of the monthly premiums he timeously and enduringly pays.

In this scenario there is a *Baai' (seller),* who is the medical insurance scheme, a *Mushtari (a buyer),* who is the person who buys medical insurance, and *Ma'qood Alayh (the product which is the subject of the transaction).* This product is the specific insurance cover he purchases.

Thus, medical insurance is exactly the same as 'commercial' insurance, and it is totally different from *Nahd.* The comparison with *Nahd* is sheer madness of the *Takhabbutush Shaitaan* classification *(takyeef)* because the contender says that *riba* and *qimaar* are like *Tabarru', Ta-aawun* and *Sadqah.*

The nature of a medical insurance scheme is exactly the same as any other trading company. The company (the legal donkey) is first established and comes into 'existence' as a separate, independent legal 'person' by legal skulduggery, totally apart from the clients who will be purchasing the products it will put up for sale. Thus, when Zaid buys a loaf of bread from a supermarket owned by a legal fictitious donkey, or he buys a vehicle from a garage owned by a legal fictitious donkey (the company), then he is not transacting with

himself. He remains a distinct person apart from the company. He buys from a legal 'person' represented by a real person.

Regardless of the Shar'i implications of this baatil, hallucinatory concept and legal donkey, the irrefutable fact is that the buyer is apart from the company which is represented by a real human being irrespective of his relationship with the legal fiction.

There is no doubt in the bilateral nature of the medical insurance contract. There is a seller, a buyer and a product which is sold. The seller and the buyer are totally different and independent parties.

Nahd

In the practice of *Nahd* there is no seller and no buyer. There are no products put up for sale. There are no monthly premiums to pay, year in and year out. Money is not paid for anything. Members of the tribe simply bring dates, wheat, etc. (all foodstuff) from their homes and pile it altogether. Then they sit together, each one eating as much as he is able to. The eating together occurs when this practice is adopted by travelling companions on a journey. At home, the chief or whoever is in charge divides the accumulated wheat/dates equally to all the members of the tribe, including to those who had nothing to contribute. After the distribution, the matter ends. The whole affair is over.

No share of the wheat/dates is invested in any type of business. No one is excluded. The *ta-aawun* is for all the members of the tribe. But in medical insurance, the medical benefits are restricted to only those who have purchased medical insurance. Furthermore, the value of the medical benefits provided is far less than the amount which the buyer of the insurance paid in a bilateral contract confined to only the two participants in the transaction.

The benefit gained from *Nahd* in addition to being immediate, is not hinged on any future calamity whereas in medical insurance, the benefit is inextricably tied to future sickness and hospitalization. In *Nahd* ***all*** the collected food is distributed equally, and even those who were unable to contribute anything, benefit equally. Nothing remains. In medical insurance, there is no equal distribution. In fact, there is

absolutely no distribution. A specific member is supplied medical benefit only if he breaks his neck.

A substantial amount of the money is set aside as 'un-distributable reserves' whereas not a single date or grain of wheat is held back when the *Nahd* distribution is affected. The medical scheme has to compulsorily 'maintain accumulated funds'. But *Nahd* is pure charity. Everything is immediately distributed to the needy, not so in medical insurance.

The medical scheme is obliged to deal in haraam debentures and shares, and other enterprises. But *Nahd* is not an institution which dabbles in trade, even halaal trade. It is simply an accumulation of dates and grain and immediately distributed to the needy. The medical insurance scheme deals in almost every conceivable type of haraam business activity. All types of share dealing on the stock exchange are indulged in. What resemblance is there with *Nahd?*

The medical insurance scheme is encumbered by haraam policies. One such policy is known as the 'linked policy'. Defining this creature, the Medical Schemes Act cited by the sheikh, states: *"Linked Policy" means a long-term policy in relation to which the liabilities of the long-term insurer are linked liabilities as defined in the long-term insurance Act, 1998 (Act No. 52 of 1998)."*

All the investment dealings of the medical insurance scheme are riba transactions and investment in haraam ventures. Yet the sheikh hallucinates that medical insurance and *Nahd* are identical twins. Medical insurance is an elaborate *haraam* business-racket with a myriad of conditions, stipulations and provisions which are intolerable to the Shariah. But in the hallucinatory concept of the 'duktoors', it is as simple as *Nahd.*

The Medical Insurance scheme has to pay considerable fees to ensure its existence. Among such fees are:

- An application and registration fee of R5,000
- The registration of a medical scheme, R1,000
- To change the name of the medical scheme, R500
- Application for approval as an administrator of a medical scheme, R10,000
- Application for accreditation, R1,000

- Fees for an Appeal, R2,000

There are other fees and penalties as well encumbering this whole haraam legal fictitious donkey which the sheikh claims is the identical twin of *Nahd* which Rasulullah (sallallahu alayhi wasallam) had glowingly praised.

For failures committed by the medical scheme in terms of the Act, there is a daily penalty of R1000. How does all this haraam drivel fit in with *Nahd?*

The grievous error of the sheikh and the 'duktoors'

When a new development requires a Shar'i ruling, the 'duktoors' invariably adopt an erratic methodology. Their argument is cluttered with loose ends. They vacillate from one incongruity to another. They do not argue in a principled manner. Their rulings are therefore basically the figments of opinion for which they lack basis and substantiation in the *Usool* of the Aimmah-e-Mujtahideen.

It is imperative to view a new development in the light of the *Usool* of the Aimmah-e-Mujtahideen if a precise *juz'i* is unavailable. But every mediocre sheikh and 'duktoor', believes that he is capable of entering the sphere of *Ijtihad*. We thus find them digging in the Qur'aan and Ahaadith for just any aayat and hadith which their hallucination deems an appropriate basis for structuring a ruling.

Generally, the 'duktoors' are deficient in Fiqh – in both its *Usool* and *Furu-aat.* They find considerable leeway in the Hadith with their personal opinion which vacillates wildly between extremes. Consider the example of medical insurance. Instead of scaling it on the *Usool* of the Fuqaha, they search for an answer in the Ahaadith. This illustrates their *jahaalat* The Usool of Fiqh are not redundant. They have to be applied until the Last Day to formulate rulings for new developments.

Medical insurance is an *Aqd* (contract). It is a self-evident reality. It has to be viewed and classified in the light of the *Uqood* of the Shariah. It has to be necessarily researched in the light of *Uqood*. The principles of Fiqh have to be applied and the ruling acquired. It is

gross *jahaalat* to bypass the *Usool of Fiqh*, and to search for a ruling in the Hadith. Failing miserably to obtain a ruling on the basis of the *Usool*, the sheikh falls into the quagmire of submitting an isolated, unrelated Hadith to his whimsical opinion. Hence, he has been constrained to resort to imagination, hallucination and *ta'weel baatil* to fabricate *jawaaz* (permissibility) for the *haraam riba-qimaar* medical insurance. He stupidly asserts *tabarru'* and *ta-aawun* as his basis for legitimizing *riba and qimaar.* On his own admission, his *only* basis is the Hadith of Ash'ariyyoon. A man of Ilm, will be able to present a ruling based on clear principles of Fiqh aided by relevant *juziyaat*. But this sheikh displays bankruptcy in both fields.

When he presents a principle of Fiqh he contorts and misdirects it as it has been seen in his citation of the principle, *Al-ibratu lil Ma-aani……* Yet this very principle refutes his contentions. While he has cited this principle, he misdirects it and does not apply it to the reality of the medical insurance contract. He lapses into the hallucination of *tabarru'* and *ta-aawun* when in actual fact there is absolutely no *tabarru'* and *ta-aawun* in medical insurance, and if it be assumed that there is, then too he plods nothing but *baatil* because *ta-aawun* cannot legitimize *riba* and *qimaar.* His *ilmi* bankruptcy as well as extremely deficient secular research of medical insurance, are confirmed by his total inability of structuring a case on the basis of *only* the *Usool* and *Juziyaat* of the Aimmah-e-Mujtahideen and the illustrious Fuqaha who are the Final Word and the limit for all Ulama until the Last Day.

It is not permissible to attempt a journey beyond the Limit of the Aimmah-e-Mujtahideen. Formulating *ahkaam* directly from the Qur'aan and Hadith is a closed and sealed avenue.

The deficiency in their knowledge is displayed by their unprincipled methodology in their reasoning. For example, when they resort to *Qiyaas*, they either ignore or are ignorant of the *shuroot* (conditions) of valid *Shar'i Qiyaas.* Hence, we find them presenting as a *ma'khaz* even a *hukm* which is in conflict with *Qiyaas.* Ignoring the Shar'i classification of *Uqood*, the poor sheikh diverges at a wild tangent. He digs out the Ash'ariyyoon hadith and stupidly fixes it as the *ma'khaz* for medical insurance, then has the audacity to claim that

medical insurance is among the *mansoos ahkaam* which does not require *Istidlaal.*

Imaam Ghazaali (rahmatullah alayh) said that oblique vision, the effect of squint eyes, is worse than total blindness. These 'duktoors' view issues with their squint-eyed vision, hence they fabricate ridiculous concoctions which are in total conflict with the Shariah. Just imagine the stupidity of the view that medical insurance is not a bilateral contract.

The stupid methodology of the 'duktoors' implies that the Shariah was left imperfect by the Aimmah-e-Mujtahideen and that the *Usool* which they had evolved from the Qur'aan and Ahaadith are inadequate for the developing needs of the Ummah. The *Usool* of the Aimmah-e-Mujtahideen fetter unbridled reasoning, The *nafs* is severely curtailed in its expression. Corrupt motives cannot be given full expression if the argument is confined to the principles of the Aimmah. Since principled reasoning within the scope of the *Usool* and *Juziyaat* of the Fuqaha does not permit intellectual miscegenation for the production of whimsical opinions, the modernist 'duktoors' feel constrained to venture beyond these sacred confines. They arrogate to themselves the mantle of ijtihad which just does not fit them. Then they commit intellectual abortion and fabricate the corrupt products of their nafs.

Thus, we find someone claiming interest 'halaal' by hallucinating that it is some form of *tabarru'*; some other miscreant avers that *riba and qimaar* are 'halaal', also as figments of his hallucination. Another modernist deviate imagines some 'principle' of the Maaliki Math-hab; miscegnates it and fosters illegitimate rulings on its basis. Someone will proclaim pictures of animate objects 'halaal' by hallucinating that these pictures are not pictures, but are reflections like mirror images. Some misguided modernists find deceptive names to pave the way for legitimizing liquor.

This type of haraam gratification is possible by denuding oneself of the sacred and glorious Raiments of Taqleed of the Aimmah-e-Mujtahideen. While many 'duktoors' in this age have removed the mask of deception by overtly acknowledging their divorce from Taqleed, we still have numeous hybrid molvi-sheikh specimens who, due to social constraints and nafsaani motives, do not remove their

deceptive masks of 'taqleed' in order to conceal their true colours of *admut taqleed*. In their arguments, they will deceptively refer to the Aimmah while in reality they operate with unbridled opinion, hence they seek to formulate *ahkaam* directly from the Qur'aan and Hadith. But they are not qualified for this. The age for such formulation had terminated with the Aimmah-e-Mujtahideen.

These modernist 'duktoors' and hybrid molvi-sheikhs are the *mudhilleen* about whom Rasulullah (sallallahu alayhi wasallam) expressed his fears:

"Verily, I fear for my Ummah the Aimmah Mudhilleen."

THE FALLACY OF THE ONE-PARTY CONTRACT

Sheikh Karaan in his utterly baseless endeavour to prove the permissibility of medical insurance, sunk to the depths of ignorance and ludicrousness by tendering the stupid argument that medical insurance is a one-party contract. Pursuing this absurd hypothesis, he claims that in an insurance contract with a medical insurance scheme:

(1) Every insured person is part insurer, part insured. The premium-payer is the insurer as well as the insured.

(2) There is no true transference of ownership of the paid premiums. The insured person remains the owner, and the transference of his money is artificial. It is an outward façade or a charade. In reality no transference of ownership of the premiums takes place.

This is the basis on which the misguided sheikh erects his structure of permissibility of medical insurance. Both the aforementioned claims are absolutely baseless. There is no substantiation for this drivel either in the Shariah or in the capitalist system whose medical insurance structure the misguided sheikh has endeavoured to legitimize with his hallucinatory 'proofs' arbitrarily tendered.

His claims defy reason and are in stark conflict with reality, the Shariah and even the kuffaar capitalist system. There is no system which recognizes that a contract is a one-party act. Monetary dealings between two different parties are realities which cannot be wished

away or denied on the basis of imagination. A transaction/contract is a bilateral enactment regardless of whether it is lawful or unlawful – halaal or haraam. A transaction between two parties is either valid (Saheeh) or invalid (Baatil) according to the Shariah. A contract/transaction is not transformed into a 'one-party contract' if such contract is baatil. There are consequences of legal transactions and unlawful/baatil transactions. But they remain bilateral contracts.

The claim that in medical insurance there are no two distinct independent contracting parties strains credulity. It is preposterous and the claimant makes a mockery of his own intelligence by contending that in medical insurance there is only one party. The client who purchases medical insurance clearly enters into a bilateral contract with the medical insurance company or legal donkey which is a party distinct and apart from the client This donkey is entirely apart from the client who pays monthly premiums.

Regardless of the invalidity and illegality of this contract in terms of the Shariah, the fact remains that it is a real bilateral contract which cannot be imagined away. It is just as real as a contract between a prostitute and her client. In the contract of prostitution which is a haraam and baatil contract, the reality cannot be imagined away. The fee paid to the prostitute by the fornicator is a real occurrence. The money changes hands and despite the fact that in terms of the Shariah her ownership is not established, she gains defacto possession and treats the money as her own. The fornicator understands and believes that his ownership has been extinguished and he does not claim the fee from the prostitute after the immoral services have been supplied.

That the prostitute does not become the owner of the money does not detract from the fact that she gains defacto possession of the money by way of a bilateral contract. Similarly, when a person loses money or wins money by gambling at a casino or on the racecourse, it is by way of a bilateral contract. Transference of ownership does take place by means of a haraam contract and in reality the ownership of the true owner of the money is severed even if not extinguished. But, in terms of the bilateral contract the gamblers and the parties to illicit zina honour the terms of the contract.

Similarly, if a Muslim purchases liquor, he does so in a bilateral contract regardless of the Shar'i consequences of the unlawful and baatil contracts. The bilaterism of haraam contracts cannot be denied.

While the miscreant sheikh contends that the medical insurance contract is a one-party 'contract' – a contract in which there are no two separate parties contracting – he has not presented the slightest evidence even from the kuffaar capitalist system whose legal donkey he is riding, to show how this bilateral contract has become a one-man 'contract'. He stupidly claims that the premium-payer has a right in the money he has paid to the medical insurance. This statement just adds to the incongruity of the absurd contention of the sheikh. If there is no contract as he asserts, then the premium-payer retains full ownership of the money he has handed to 'himself' in this hallucinated one-man 'contract. To say that he retains 'a' right in his 'own' money in terms of a non-existing contract and in the money which he has handed to some donkey for safe-keeping in an 'imagined' common 'sandooq' (money box) is to stretch credulity to the limits of insanity – that insanity which Allah Ta'ala mentions in aayat 275 of Surah Baqarah.

Yes, it is correct to say that the premium payer retains his total right of ownership in the money which he has given in a haraam contract to the medical insurance in exactly the same way that he gives his money to a prostitute in a haraam zina contract with her. There is absolutely no difference between the two contracts and with their respective consequences. Both contracts, i.e. the contract of prostitution and the contract of medical insurance are haraam and baatil. The prostitute and the legal donkey do not become the owners of the wealth over which their evil partners in the contract agreed to give them de facto control. Nevertheless, the factual position is a reality. Islam does not subscribe to sophistry. Hence, despite the fact that neither the prostitute nor the medical insurance donkey acquires ownership of the money in terms of the Shariah, the payer of the prostitute's fees and the payer of the haraam qimaar (gambling) fees to the medical insurance, do not have to pay Zakaat on the money which they have awarded to their respective partners for zina and qimaar.

Thus while the payer of the fees of prostitution and the qimaar fees remains the owner of the monies paid to their respective contracting partners in bilateral contracts of reality notwithstanding the *butlaan* (nullity) of the contract, the Shariah does not order these miscreants to pay Zakaat on such wealth because they have lost de facto possession and control of it. This applies to all haraam and baatil bilateral contracts such as gambling contracts, murder contracts (hiring an assassin), robbery contract, forgery contracts and insurance contracts.

The misguided sheikh has illustrated his gross ignorance of the nature and details of medical insurance, hence he has audaciously proffered a claim which makes a mockery of his brains. The medical insurance contract clearly states the terms of the contract. There is no ambiguity in the contract. Both the contracting partners are aware of what exactly they are entering into. The rules of medical insurance explicitly and emphatically state that:

- The medical insurance donkey assumes the liability of providing future medical benefits in the event of the misfortune of sickness *in lieu* of regular and timeous monthly payments.
- Up to a maximum of 25% of the premium amount will be held in a savings account on trust for the insured person.
- The balance of 75% is acquired by the legal donkey (the medical insurance scam-scheme company). The premium-payer's ownership is completely alienated from 75% of his payments. Thus if he does not break his neck nor is overtaken by chronic ailments to hositalize him, he has to say 'goodbye' to 75% of his money. There is absolutely nothing in return for the 75% if he does not succeed in breaking his neck . He has to incumbently break his neck and bones to a degree of almost beyond repair before the medical donkey will cough up funds to sustain the medical bill.
- In the event of termination of the contract, the credit balance in the savings account, if any, will be paid to the insured premium-payer.

The question of his 'right' in the 75% which is alienated immediately he makes payment, does not arise at all. Legally the insured may not claim anything of the 75% of his money which the medical legal donkey swallowed although he (the insured person) had derived no benefit or comparatively speaking, extremely little benefit from the 75% of his funds. Now what has happened to his 'right' which he retains in the payments as the sheikh contended? The very same thing that happens to his money when he hands it to a prostitute as payment in a bilateral contract with her, happens to his money when he hands it to the legal medical insurance donkey. In both cases he loses his money. Just as the prostitute provides 'benefit' in terms of the haraam contract, so too does the medical insurance provide 'benefit' in terms of a haraam bilateral contract.

The errant sheikh has made arbitrary claims based on his hallucination. He has not furnished a single proof from either the Shariah or the capitalist system for his silly and irrational hypothesis, viz. the medical insurance contract is not a contract consisting of two separate parties, but is a one-man 'contract'. The absurdity is self manifest.

Both systems – the Islamic system and the capitalist system – regard the medical insurance contract as a bilateral contract in which there are two distinct parties. The only difference between the two systems is that while the insurance contract is valid according to the capitalist system, it is baatil and haraam according to the Shariah.

Imagination cannot eliminate reality. There is no concept in any system of the insurer being also the insured. On the contrary, the insured person pays regular and timeous monthly premiums to the insurer to ensure that he is covered for future medical benefits if the calamity of sickness befalls him. The sheikh has shown huge ignorance regarding medical insurance, hence he has been able to stupidly claim that the medical insurance contract between two totally separate parties is not a bilateral contract and that this evil qimaar insurance is like a Zakaat and Lillah fund.

What makes a supposedly learned man degenerate in ignorance to a depth which borders on mental derangement? The answer for this question is stated in aayat 275 of Surah Baqarah. Allah Ta'ala states in this aayat:

"Those who devour riba do not stand except as a person who has been driven to madness by the touch of shaitaan. That is because they say: 'Verily, trade is like riba', while Allah has made lawful trade, and made haraam riba."

When a man of the Deen legitimizes riba and qimaar, the fundamental basis of insurance – all types of insurance – then shaitaan afflicts his brains with his satanic touch. The supposed 'scholar' then blurts out such drivel and rubbish which boggles the mind of straight-thinking people, whether they happen to be Muslims or non-Muslims. Even the experts of capitalism, in fact, even ordinary non-Muslims of understanding will scoff at the idea that medical insurance is not a bilateral contract, and that it is a one party 'contract'.

TA-AAWUN AND TABARRU'

Another extremely preposterous claim made by the miscreant sheikh is that medical insurance is a philanthropic instution which offers 'aid' to the distressed people who are unable to afford medical treatment. Based on this massive misconception, he concluded that the premiums and the medical benefits are acts of *Tabarru'* (charity/donation).

Again, in tendering this absurd claim, the sheikh has demonstrated colossal ignorance of medical insurance. It is necessary that he explains exactly in which manner does the medical insurance scam-scheme provide aid to distressed persons. It devolves on him to define *Ta-aawun* and *Tabarru'*, then to scale the premiums and the medical benefits on the basis of the Islamic concepts of *Ta-aawun* (aid) and *Tabarru'*.

He has to necessarily explain just how the medical benefits provided by the capitalist medical insurance scam-scheme in lieu of compulsory monthly payments are *Ta-aawun* and *Tabarru'*.

The Islamic concept of *Ta-aawun* is succinctly explained in the following Qur'aanic aayat: *"They (the Mu'mineen) feed food for the sake of Allah's Love to the poor, orphan and the captive. (And they say): 'Verily, we feed you for the Pleasure of Allah. We do not seek*

from you any compensation or any thanks." (Surah Dahr, aayats 7 & 8)

Charity in Islam is not encumbered by a host of conditions, stipulations, clauses, rules and regulations. Charity is not incumbently imposed on anyone as binding monthly payments. Charity is not binding monthly payments. Charity is given for the Pleasure of Allah Ta'ala and Thawaab in the Aakhirah, not for anticipated material benefits in the event of future calamities. Charity is not invested in interest and other haraam financial institutions to gain more haraam income. Charity is not burdened with forfeiture and denial of aid in the event the donor is unable to continue with binding and timeous monthly payments. Charities (Lillah, Zakaat and Sadqaat in general) are not utilized for sustaining the luxurious lifestyles, mansions, vehicles, holidays, etc., etc. of kuffaar administrators of the medical insurance legal donkey. Charity is not utilized for the needs of the affluent and the extremely affluent to the total exclusion of the poor and needy who are in the fact the only repositories of charity expenditure.

In medical insurance, only the rich are allowed to participate because only they can afford the exorbitant monthly payments of thousands of rands. The medical benefits provided in this edifice of qimaar (gambling) and riba (interest) are reserved for only the affluent who have paid their monthly premiums timeously. And, sometimes even the affluent are denied medical benefits for which they have slogged to pay. If an affluent falls from the bracket of affluence and is no longer able to pay his monthly binding instalments, he forfeits everything – the huge sums he had paid as well as the future medical benefits. Then, even if he breaks his neck and lays prostrate in the street, the satanic medical insurance scam-scheme will ride past him, not lifting a finger to aid the distressed member who had supported this haraam institution.

This then is the miscreant sheikh's concept of *Ta-aawun* and *Tabarru'.* The disease of satanic influence over the brains *(Takhabbutush Shaitaan)* mentioned in aayat 275 of Surah Baqarah is conspicuously displayed by the sheikh who can so absurdly define medical insurance as an institution of *Lillah, Zakaat and Sadqah Aid and Help Institution.*

The disease of *Takhabbutush Shaitaan* has made him blind to the fact that *all* medical insurance scam-schemes without any exception are kuffaar-owned and operated, and subject 100% to kuffaar government legislation. Yet, he has the audacity to proclaim these insurance scam-schemes as institutions of *Tabarru'* and *Ta-aawun*, the objective of which is Allah's Pleasure. If these schemes were pure charitable organizations, the term 'aid' would have been befitting. But, they all are bereft of the slightest vestige of aid. The misguided sheikh has erected his *'ta-aawun'* concept solely on the highly misleading and deceptive term 'aid'. He has described medical insurance as institutions of 'aid' merely because he saw the word 'aid' incorporated into the designation of this type of insurance.

He should understand that the reality is the determinant, not misleading nomenclature. If he persists in the 'aid' (ta-aawun) label, it devolves upon him as an imperative necessity to explain with specific examples and the structure of the insurance institution in which way may these scam-schemes could be rationally designated aid institutions.

The sheikh has resorted to much skulduggery and *jahaalat* in his abortive and haraam endeavour to legitimize medical insurance from the angle of *Tabarru'* and *Ta-aawun.*

SUMMARY OF OUR REFUTATION

(1) A secular lawyer, Mr. S. Omar, had prepared an essay in which he opined that medical insurance is permissible on the following basis:
* That the medical scheme is a 'legal person', separate and apart from the clients who purchase insurance from it. He wholeheartedly subscribes to the capitalist idea of the legal fictitious 'person' who has all the powers and abilities which a true human being has. Hence, the scheme/company can contract in its own right.
* That the compulsory premiums which the insured clients pay, and the medical benefits which the insurance company has to incumbently pay by virtue of the contract between itself and its clients, are all *Tabarru'* (pure charitable gifts and acts of great thawaab).

We have discussed and refuted the abovementioned *baatil* in this treatise as well as in our undermentioned publications:

(a) Penalty of Default
(b) Penalty on Late Payment is Interest
(c) The Concept of Limited Liability – Untenable in the Shariah
(d) Islamic Finance (Refutation of the Baatil Concepts of Capitalism)
(e) Medical Insurance and the Shariah

These publications are available from us.

(2) The modernist sheikh, Taha Karaan, compounded the *baatil* of Mr. Omar with his own intellectual flotsam and effluvium. While he disagrees with the primary basis on which Mr. Omar has imagined the permissibility of medical insurance, the sheikh nevertheless irrationally unites with him in his conclusion. The sheikh's basis for permissibility of the *qimaar-riba* medical insurance product is the denial that the medical insurance contract is a bilateral contract between two separate parties. He has produced no basis whatsoever for this denial other than his hallucinatory figments.

He has no basis in Fiqh, hence on his own admission his only basis is the *Nahd* charitable practice of the Ash'ariyyoon tribe. There

is absolutely no resemblance between *Nahd* and the *riba-qimaar* insurance of the kuffaar capitalist system which the 'duktoors' and the hybrid molvi-sheikhs are promoting.

We have, Alhamdulillah, explained the fallacy of his drivel. His arguments are devoid of Shar'i substance, hence his conclusions are untenable in the Shariah. We have conclusively shown that medical insurance is a *faasid* and *baatil* bilateral monetary contract, the fundamental constituents of which are *qimaar* and *riba.* Besides these primary elements of prohibition, the contract is encumbered by other numerous factors of *fasaad* (corruption).

(3) The primary constituent in the reasoning methodology of Mr. Omar, Sheikh Taha and Mufti Taqi is imagination. They employ the gimmick of imagination to transform realities. Thus the reality of *qimaar and riba* are transformed into *tabarru' and ta-aawun'* solely by hallucination. You simply have to imagine that the premiums you are paying the insurance company are voluntary acts of donation/charity. Worse than this stupid imagination is that you, O Muslim participant in medical insurance, have to imagine on behalf of the kuffaar medical insurance scheme as well. Since all medical insurance schemes are kuffaar, the imagined Maaliki principle of *Iltizaamut tabarru'* is incongruous nonsense to them. They refuse to behave like madmen imagining that the medical benefits which they pay *in lieu* of the compulsory monthly premiums, are acts of *thawaab*. In view of the kuffaar being the other partners in the bilateral contract, the Muslim client has to do the hallucinating on their behalf.

Therefore, in addition to imagining that his payment is pure charity given to the kaafir medical insurance company for thawaab in the Aakhirah, the Muslim client has to hallucinate that the medical benefits he receives are also acts of charity bestowed to him by the insurance scheme. Thus, there is a double hallucination which the Muslim client has to give effect to because the kaafir medical insurance scheme is not prepared to hallucinate for the sake of fostering the production of a fatwa of *jawaaz.*

(4) There is no conundrum in the medical insurance contract. It is a pure bilateral contract, with two separate parties involved. The one party (the medical insurance scheme representative by human beings) sells medical cover of different kinds. The price for such cover is exorbitant monthly premiums. The other party is the client who purchases the insurance cover plan. The benefits are paid only during calamities of sickness. No sickness, no payment of medical benefit. Hence, the experts in this field have coined the adage: *"What you don't use, you lose."* The 'unfortunate' reality is that you can only use a certain portion of your paid money if and when you become sick or are hospitalized.

(5) Medical insurance and all other kinds of insurance are haraam. There is no scope for its permissibility in the Shariah.

"AND UPON US IS BUT ONLY THE
DELIVERY OF THE CLEAR MESSAGE"
(Qur'aan)

As for those who parade themselves as 'ulama', but who perversely subvert the Shariah, their similitude is like the ulama of the Yahood. In condemnation of these miscreant and mudhilleen ulama of the Yahood, the Qur'aan Majeed states:

"The similitude of those upon whom the Tauraah was loaded, then they did not bear it, is the likeness of a donkey which has been loaded with asfaar (books of knowledge)." (Qur'aan)

This is a clear message of warning for those who subscribe to the concept of the 'legal donkey'. They behave just like real donkeys loaded with academical books without understanding the contents of the *Asfaar*.

DISCOVERING THE ILLUSION

By Dr. Ron Kemper (Medical Chronicle February 2008)

(The following is an article written by a non-Muslim medical doctor on the medical aid illusion. It will benefit the sheikh and the lawyer to make an in-depth study of this Illusion. If they do so with sincerity, we are sure that the haze of confusion which has constrained them to utter drivel and bunkum will be dispelled, and they will then not fail to see the reality of the medical 'aid' myth. – Mujlisul Ulama)

A business is a fragile entity, especially when it is based on a lie. Take the pyramid schemes. At the height of their popularity, they seem so real. A name that everyone recognises; a CEO who drives a big flashy car; 'investors' who are earning big money and splashing it around; visible assets, tangible wealth. Then something happens, and overnight it all just disappears and you never hear about it again.

A business entity, unless it possesses hard assets, such as a mine or a factory, is just a legal shell surrounded by temporarily associated people such as employees. 'Medical aid' as a business is almost an illusion. The schemes have no hard assets to speak of and they produce no goods. All they provide, in essence, is promises – 'we promise to pay your medical bills if you subscribe to us', 'we promise to pay you if you provide services to our members'. Administrators are much the same: 'we promise to run your medical scheme efficiently for you', 'we promise to save money by managing costs', 'we promise to pay your accounts if you agree to our tariff'. They don't actually have to deliver on that, do they? In truth, not all the
promises are kept.

If a medical scheme goes out of business, it does not stop us, as doctors, from rendering services to patients and it does not stop patients from receiving treatment. So, a medical scheme is not an essential, is it? All that happens when the medical scheme is taken out of the equation is that costs drop.

Yet, medical schemes have created the convenient and false illusion that they are central to our lives and our industry. And because they are always in our face and interfering, we fall into the

trap of endowing them with a credence they do not deserve. In truth, it's all just a lot of hot air and empty promises created to enable some businessmen to make a living at our expense.

So, why do we get our knickers in such a knot in making decisions that relate to medical schemes? As a business, a medical scheme is just a shell, a 'person' that exists only by virtue of a legal definition. Does it make sense to sell our services to a 'person' who does not exist, and then expect that 'person' to honour our bills? Can you expect that 'person' to display human decency, fairness and morality?

The answer to all those questions is a resounding NO. When 'he/she' goes bankrupt, 'he/she' quite simply just disappears. Like an illusion terminated. Whoever was running the business moves on. As far as he/she is concerned, the slate is clean.

Doctors need to remember that we, as a profession, will still be around and providing our services for many years to come.

MEDICAL INSURANCE FRAUD

Have health insurers been systematically cheating patients and doctors of fair reimbursement for medical services? That is the disturbing possibility raised by an investigation of the industry's arcane procedures for calculating "reasonable and customary" rates.

The investigation, by the New York State attorney general, Andrew Cuomo, and his staff, suggests that these procedures – used by major insurance companies to determine what they will pay when patients visit a doctor who is not in the company's network – may be rigged to shortchange the beneficiaries.

When patients visit an out-of-network doctor, insurers typically agree to pay 80 percent of the reasonable and customary rate charged by doctors in the same geographic area. The patient is stuck with the rest, and as any patient knows, that rate always seems to fall short of what their own doctor is charging. If the attorney general's investigators are right, we can understand why.

The numbers are mainly compiled by an obscure company known as Ingenix, which – as it turns out – is owned by UnitedHealth Group, one of the nation's largest health insurers.

Ingenix collects billing information from UnitedHealth and other health care payers to compile a database that is then used by the insurers to determine out-of-network reimbursement rates.

This system is an invitation for abuse. UnitedHealth owns the company whose database will affect its costs and profitability, so both have a strong financial interest in keeping reimbursement rates low. Even Ingenix seems unwilling to stand behind its numbers. In licensing its database to insurers, it stresses that the data is "for informational purposes only" and does not imply anything about "reasonable and customary" charges. Yet that is precisely what the health insurers use the data for, as Ingenix knows, according to investigators.

Mr. Cuomo and the American Medical Association, which has a long-standing suit filed against Ingenix and various UnitedHealth companies, claim that the data is manipulated. They claim that health insurers and Ingenix disproportionately eliminate high charges, thus skewing the numbers for customary charges downward.

Mr. Cuomo also says that Ingenix pools the charges for services performed by low-paid nurses and physician assistants with those performed by high-paid doctors. And he says the company fails to account for the patient's condition and type of facility where the service was provided - factors that can drive up costs. He also contends that Ingenix uses outdated information, which would guarantee that reimbursement rates will always lag behind medical inflation.

The A.M.A.'s more detailed legal complaint also charges that the database dilutes prices in high-cost locations by combining them with low-cost areas, and includes prices that reflect in-network discounts.

The attorney general's investigators did their own survey and concluded that $200 is the fair market rate in New York City and Nassau County for a 15-minute consultation with a doctor for an illness of low to moderate severity. Ingenix, the investigators said, calculated the rate as $77, of which United would pay $62, leaving the patient to pay $138. UnitedHealth disputes those numbers, so the

attorney general will need to offer a fuller explanation of how they were derived.

Mr. Cuomo has announced his intention to sue UnitedHealth, Ingenix and three other subsidiaries, and has subpoenaed data from 16 other health insurers. Whatever that investigation unearths, it is already clear that the system for calculating "reasonable and customary" charges ought to be reformed by making it truly independent and objective. No consumer can reasonably trust numbers generated by a company whose loyalties and financial interests lie with the health insurers.

MEDICAL INSURANCE IN A NUTSHELL

(1) Medical insurance is a contract between two parties, namely, the medical insurance entity and the buyer of medical insurance, who pays monthly premiums.

(2) The monthly premium for an adult is approximately R2,000.

(3) 25% of the premium, i.e. R500 is deposited in a special savings account called MSA (Medical Savings Account) which is opened in the name of the premium-payer. Although the premium-payer cannot draw cash from his savings account, he nevertheless is the owner of the credit balance which there may be in his MSA.

(4) 75% of the premium, i.e. R1500 is acquired by the medical insurance scheme for its expenses which consist of * Solvency Build * Claims of patients *Administration costs * Broker fees *Bad debts * Etcetera (The latitude of this 'etcetera' is extremely wide. The few at the helm only know the actual meaning of this 'etcetera').

(5) The medical scheme by virtue of the insurance contract is obliged to provide a minimum of medical benefits (PMB – Prescribed Minimum Benefit). After it has provided the PMB,

if more medical benefit is required by the patient, the medical scheme will pay for it from the member's savings account (MSA). If the savings too are exhausted, medical benefit terminates. The medical insurance will then not provide further medical benefit until the next year or until the member pays a substantial cash amount of a few thousand Rands into his MSA. In most cases, the MSA savings are used up during the course of the year.

(6) If a member remains healthy, then he loses everything. While most members lose 75% minus the prescribed minimum benefit, the healthy member loses a full 75% of his premiums. The medical fraternity has coined an 'adage' in this regard: *"What you don't use, you lose."* However, the problem which a healthy person faces is that if he is desirous of using his money, he will have to break the bones in his body to enable himself to be hospitalized. This will qualify him to recoup some of the money he has earmarked for loss within the haraam deal.

(7) The medical insurance entity levies a penalty for 'late-joiners'. A person who joins at the age of 35 and over, is penalised up to a 75% increase in the monthly premium. This means the premium could be as high as R3500 per month.

(8) The medical insurance also prescribes a waiting period before paying medical benefit to a patient. This is a period of up to 12 months in which the member has to pay regular monthly premiums without being entitled to benefits.

(9) Despite being a regular payer of premiums, the medical insurance also requires members to make a co-payment which is a portion of the cost of the medical benefits. The member has to incumbently pay the 'co-payment' from his pocket despite the fact that he has a credit balance in his MSA. He is not allowed to pay it from his own money in the MSA.

(10) If a member defaults in his monthly payments he forfeits even years of payments, and he loses all entitlement to medical benefit.

(11) Medical insurance besides being haraam, is available to only the wealthy. A man with his wife and 3 minor children have to pay R6000 per month. Who other than the wealthy can afford this excessive and exploitive sum?

(12) The term 'medical aid' is a misnomer and highly deceptive. Medical insurance does not provide any aid. The vast majority of members lose the greater portion of their premiums. A very few who suffer chronic diseases generally benefit.

(13) Sheikh/Molvi/Mr. Karaan and Mr.Shuaib Omar seeing the term 'medical aid' have attempted to bamboozle the ignorant public into believing that medical insurance is a scheme with altruistic ideals. People are tricked into the belief that medical insurance provides medical aid. This wild claim is furthest from the truth. Either the two gentlemen are shockingly ignorant of medical insurance due to their extremely defective research or they have endeavoured to deliberately pull wool over the eyes of the people who have no understanding of the exploitive measures and haraam methods employed by medical insurance schemes.

(14) Approximately 80% of the population of the country is without medical insurance cover.

(15) Medical insurance is Haraam. The elements of prohibition in terms of the Shariah are *Qimaar* (gambling), *Riba* (interest) and a plethora of *faasid* (corrupt and invalid) stipulations which render the medical insurance contract totally null and haraam.

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Printed by: As Saadiqeen Islamic Centre
Email: assaadiqeen@gmail.com
Web:www.asic-sa.co.za