E-Transaction: Issues and Challenges under Islamic Law

By

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Abstract

The rapid expansion of electronic transactions has transformed commercial practices across the globe, raising complex legal, ethical and jurisprudential questions within the framework of Islamic law. This is due to several issues and challenges encountered in the transactions. The paper therefore examines the permissibility or otherwise of e-transaction under Islamic Law. In order to achieve the aim and objectives of this research, the meaning of transactions, concept of e-, issues and challenges were briefly explained. The paper adopted a doctrinal method of research by conducting an in-depth analysis of primary and secondary sources of legal research. The paper critically examined and analyzed the arguments of contemporary scholars on the topic with a view to discovering whether or not e-transaction has a place under the Islamic Law. The paper revealed that Islamic Law is basically concerned with evidence i.e. proof and the satisfaction of the parties into a transaction. Regardless of the nature of transaction, there must be the two elements in operation. The absence of will erode and neutralise the Qur'anic requirements of two reliable eye witnesses before into transactional deals. It also revealed that such evidence and satisfaction of parties is sine quo-no that cannot be replaced or substituted, as clearly provided in the Qur'an and Sunnah. The writer's major finding is that Islamic law has yardstick to measure compliance of any format, style and financial policies to Islamic law principle which set out to eradication garar -gambling, haram- prohibited and ribah- interest in all ramifications. Arising from this, the paper recommended that e-transactions are a welcome trend under Islamic Law, provided they comply with norms and tenets, especially when no human intervention or interruption has tainted/affected the transaction.

Keywords**:** E-transaction, Electronic Commerce, Digital contract, Ijtihad, Shariah compliance.

1.0 INTRODUCTION

The development of Information Technology (IT) has brought the most essential revolution to our lives, which is, the transition to an Internet–based society[1]. One of the major areas that is significantly affected, is the way people conduct transactions, business and commerce in this new and competitive environment. The global availability of the Internet for the exchange of transactions between buyers and sellers has fueled the growth of what is known as E-Transactions (Electronic Commerce)[2]. Electronic Commerce/transactions or e-commerce, is the process of buying and selling goods and services electronically with computerized business transactions using the Internet, networks and other digital technologies. Even though e-commerce is spreading worldwide, many Muslims still did not know about the status of their transactions according to the Islamic perspective and Islamic business ethics as well as the Sharia[3].

From Islamic perspective, e-commerce denotes same connotation as of the conventional way of commerce. The former, therefore, must also conform to all requirements and principles of Islamic law of contract such as free from any element of usury (*Riba*), gambling (*Maysir*), uncertainty (*Gharar*) and coercion (*Ikrah*)[4]. These Sharia requirements aim at protecting interests and eliminating harms of parties involved in a transaction, thus promote justice, which is one of the main objectives of Sharia (*Maqasid Al-Sharia*)[5].

As e-commerce involves trading between buyers and sellers, it needs to fulfill essential requirements and conditions of Islamic law of contract, namely (i) offer and acceptance (form), (ii) buyer and seller (contracting parties) and (iii) object and price (subject matter), hence deems

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[1] Kenneth C. Laudon, Jane P. Laudon, (2004) 'Management Information Systems', sixth ed., Prentice Hall International, 2001. 292 N. Zainul et al. / Electronic Commerce Research and Applications 3 Pp. 280–293

[2] Abu Bakar Munir, (2003) 'E-commerce and The Law on Privacy, Thomson, Sweet and Maxwell, Asia, pp

[3] 2 Session Eight of Fiqh Academy of the Organization of Islamic Conference, Brunei Darussalam, BiÏÉqÉt al-I'timÉn, 1414H/1993A.D, Vol.2, pp.571-637.

[4] The Holy Quran: Yusuf Ali, English Translation 1 Session Seventh of Fiqh Academy of the Organization of Islamic Conference, Jeddah, Saudi Arabia, BiÏÉqÉt al-I'timÉn. 1412H/ 1992A.D, Vol.1,pp.353-382.

[5] 3 Session Tenth of Fiqh Academy of the Organization of Islamic Conference, Jeddah, Saudi Arabia. 1418 A.H / 1997 A.D

valid. The following section delineates each of these requirements and its conditions as well as issues pertaining to e-commerce in Islamic law of contract.

2.0 CONCEPTUAL FRAMEWORK OF E-TRANSACTION

Although its recent development is welcome, online Islamic banking poses many unprecedented sharia and legal dilemmas, warranting creative solutions. This highlights some of the relevant issues associated with e-banking and online banking practices, including principles of contract law and rights and liabilities. Issues include, inter alia, session of contract, various contract options, misrepresentation, fraud, and undue influence. Equal attention is given to modern methods of online payment, which can be problematic when purchasing equities, bonds, and certificates. Questions related to which law governs cross-border online Islamic banking transactions are also raised. Furthermore, actual and potential problems facing Islamic financial institutions are addressed.

2.3 Meaning of E-transaction

Electronic transaction means the exchange of information or data, the sale or purchase of goods or services, between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks. An electronic transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks. The goods and services are ordered over those networks, but the payment and the ultimate delivery of the good or service may be conducted on or off-line.

Delali (2010)[6] defined electronic transaction as a form of financial exchange that takes place between the buyer and seller facilitated by means of electronic communication. The value of electronic transaction goes way beyond the immediate convenience and safety of cards to a greater sphere of contributing to overall economic development. The term electronic transaction can be referred narrowly to e-commerce- a payment for buying and selling goods and services offered

[6]Delali K. (2010) “The challenges of implementing electronic payment system: the case of Ghana’s E-zwich payment system”.

through the internet, or broadly to any type of electronic funds transfer.[7]Ayodele (2007)[8] defined e-payment as electronic transfer of cash via online transactions for business-to business (B2B), business-to-consumer (B2C), person-to-person (P2P), and most recently administration-to consumer (A2C) purposes. A2C payment addresses the payment of taxes toward the government. Humphrey, Kim and Vale (2001)[9] defined e- transaction as cash and associated transactions implemented using electronic means. Typically, this involves the use of computer networks such as the internet and digital stored value system. This system allows bills to be paid directly from bank, and without the use of writing and mailing cheques. Guttman (2003)[10] defined e- transaction as credit card details, or some other electronic means, as opposed to payment by cheque and cash. It is also defined as a payer's transfer of monetary claim on a party acceptable to the beneficiary[11]. Electronic payment can also be defined as convenient, safe and secure methods for payment of bills and other transactions by electronic means such as card, telephone, the internet, EFT and etc. Electronic payment gives consumers an alternative to paying bills and debts by cash, cheque, money order etc. Its main purpose is to reduce cash and cheque transactions.

Electronic transactions are conducted by communicating digitalized information from one person to another. That digitalized information can be communicated and stored without the use of paper, and the basic language of electronic transactions is fully and inherently paperless. In fact, relying on paper for the memorialization of transactions and upon manual signatures for verifying them are most likely to impede electronic transactions, adding to their costs. And there is no benefit to any party to an electronic transaction, with very few exceptions, in requiring that they be memorialized on paper with signatures that are manual. The need to expand requirements in the law for writings and manual signatures so that electronic records and electronic signatures will satisfy those requirements is the one thing that is reasonably certain with respect to electronic transactions. Conventional banking on the other hand is simply a lending-based activity and thus, issues of sale, leases, and other related

[7]Massimo, C. &Gracia, J.A. (2008) "Measuring Payment System Development". The World Bank. p38.
[8]Ayodele, A. (2009). "Electronic Payment in Nigeria". 3:1 p. 24.
[9] Humphrey, D.B., Kim, M. & Vale, B. (2001) "Realizing The Gains From Electronic Payments, Cost, Pricing Choice". Journal of Money, Credit, and Banking, 33 (2), 216 – 234.
[10]Guttman, R. Cybercash; (2003) "The Coming Era Of Electronic Money". https://www.socialscience.international/robert-guttmann 1(2), p.8
[11]Worku,G.(2010) "Electronic Banking in Ethiopia- Practices, Opportunities and Challenges". Journal of Internet Banking & Commerce, 12 (2). Available at https://www.semanticscholar.org/paper/Electronic-Banking-in-Ethiopia-Practices%2C-and-Worku/7ec17ddcd7501ecb834b689a54e3c512b95f5506 accessed on 14/3/2023 see also T DABA and Ayo, W, (2009), Electronic -banking in Ethiopia: practices, opportunities and Challenges‟,. Journal of internet Banking and commerce, 15(2):2-9.

actions are not pertinent. This key difference renders the present discussion more relevant simply because online Islamic banking, to a large extent, provides sale and lease transactions via electronic mail. Online Islamic banking is not about advancing a loan to a customer via electronic mail. Instead, it involves a number of processes, the ultimate result being either a transfer of ownership or a usufruct, as the case may be. All of these actions are done via electronic mail.

In order to assist online Islamic banking providers and operators in managing their transactions to comply with sharia principles, this aims to address a number of relevant topics, such as the formulation of Web contracts, incorporation of certain terms, conditions and warranties, exclusion clauses, misrepresentation, and methods of payment. Discussion of these terms might even influence sharia perspectives on how contracts are concluded via the Web or the Internet.

2.5 Types of E-transaction

In Nigeria context, there are two types of e- transaction namely;

i. End to End processing: Here, all the processes from approvals to the receipt of value by the beneficiary are done electronically.

ii. Manual e-transaction or use of Mandate: It is the mixture of manual and electronic process where the available infrastructures cannot support the End to End processing. However, there are many forms of e- transaction these include cards, internet mobile payments, financial services kiosks, biometric payments, electronic payment networks.

3.0 ORIGIN AND HISTORICAL DEVELOPMENT OF E-TRANSACTION

E-transaction are not new, they have existed since the early part of this century. Sometime before 1920, some large department stores began to issue "credit coins"[12]. These coins were a small piece of metal, which displayed the name of the merchant and a series of numbers identifying the customer's account. They were issued to good customers and allowed them to purchase merchandise on credit in the store. About the same time, oil companies began to issue charge plates (usually made of metal) to their customers for the purchase of gasoline, oil and the likes at the

[12] Tony Drury & Charles W Ferrier, (1984) "Credit Cards"Butterworth's, London, p.19.

companies' service stations.[13] All this development notwithstanding, the yield was relatively insignificant until 1950.

In 1950, the Diners' Club introduced the first independent credit card plan. This plan involved an agreement between the club and its members and between the club and the merchants. The members agreed to pay the club to obtain a card and then agreed to pay a monthly billing as it came in. The merchant agreed to honor the card and then forward his credit vouchers to Diners' Club for payment once a month. The members thereby were able to get service from many types of establishments by carrying only one card and were able to pay for it at the end of the month. The merchant, on the other hand, was relieved of having to have his own plan and was also likely to increase the volume of his business since card holding members would find it more convenient to deal with him than with a merchant who wouldn't honor his card[14]. The success of the Diners' Club plan was such that the American Express Company entered the field in 1958, while Hilton Credit Corporation initiated the "Carte Blanche" plan the following year[15].

In 1951, the First National Bank of Long Island became the first bank to offer its customers a credit card plan. This area was not very important, however, until the late 1950s when the Bank of America and the Chase Manhattan Bank issued their cards. In 1966, the Midwest Bank Card System was started[16]. With the advent of the bank credit card, the range of goods and services available on credit became staggering. They range from the normal expenditures of food and clothing, shelter, entertainment and travel[17]. By at least the beginnings of the 1970s, the personal (as well as the corporate) credit card had become a fixture in the nation's economy. Today more than 60 million credit card accounts exist in the United States, and seven out of ten households possess at least one credit card. By 1988 outstanding balances on credit card accounts total more than $80 billion[18].

[13] Lee Mei Pheng and DettaSamen, Banking Law (3rd ed, 2006), p.13
[14]Sloan, (2003)"The Law and Legislation of Credit Cards", available athttps://www.academia.edu/31539880/parties_in_credit_card_transactions p.3.accessed on 14/3/2023 on See also Frazer, Patrick, (1985) "Plastic and Electronic Money", Woodhead-Faullner Ltd, Cambridge, London, p.16.
[15]Ibid p.3.
[16]Ibid
[17]Ibid
[18] Ibid. p.4. See also see Mavis Fowler, (1995) "Credit Cards and The Law", Oceana Publications, Inc. New-York, p.4. see the view of MC Jasper · (2008), "Credit Cards and The Law", https://www.google.com/search?q=%E2%80%9CCredit+Cards+and+The+Lawaccessed on 17/3/2023

In the United Kingdom however, things did not start to happen until 1963 when American Express issued its first sterling American Express card. The first UK bank issuing credit card was Barclays Bank which issued Barclays card in 1965. Barclays had reached an agreement with Bank America (Visa) so that the Barclaycard could be used internationally. The Barclaycard was, and is, a full bank credit card. The other major clearing banks took no action, thinking that the Barclays Bank initiative would be nothing more than a very expensive folly. There were counter-moves in the form of a cheque guarantee card. Upon the presentation of a cheque with the card, the bank would give a collateral guarantee that the cheque would be met regardless of whether there were sufficient funds in the account or whether the customer had given instructions not to pay.

In 1970, National Westminster, Midland and Lloyds Banks realized that their individual cheque guarantee cards were not likely to withstand the competition from the Barclays' credit card. They were also worried of the situation that Barclaycard was recruiting their customers. At the end of that year, a joint Working Group was established as a consequence of which the three banks (later joined by Williams and Glyn's Bank and the Royal Bank of Scotland) formed the Joint Credit Card Company Limited to counter the market domination by Barclays, as the sole bank credit card issuer. In 1972 they launched the Access Credit Card Scheme (Access). The location selected for Access was Southend-On-Sea. By May 1972, 50,000 sales outlets had joined the scheme and Access was underway. By 1979, over 4 million cards had been issued[19].

The economic situation affected the growth of Access although turnover increased from 136 million in 1973 to 973 million in 1979. Cards issued increased from 302 million in 1975 to 4.05 million in 1979[20]. Faced with the need to match the international acceptability of Barclaycard, Access tried to join Interbank but negotiations foundered on the problem of reciprocal arrangements because Access did not have the data processing capability. For a time, it joined the Euro card System but agreement was reached in June 1974 and in April 1975 Access became part of Interbank (later MasterCard)[21].

[19]Kamleitner, B. and Kirchler, E., (2007), "Consumer credit use: A process model and literature review", European Review of Applied Psychology, 57(4), pp.267-283.
[20]Ibid
[21]Ibid

In 1987, the first major debit card was issued in the UK. Once again, Barclays Bank was the bold trail- blazers. Their debit card is called "Connect". It can be used in the same way as any other Visa card. However, rather than the card holder's account being "overdrawn", the card holder must keep his account in credit and the card is used to access that account. Retailers resisted the introduction of the card as Barclays expected them to pay the same rate of service charge or discount as they would for a credit card transaction. If the transaction was for a reasonably large amount, the cost to the retailer could well exceed the amount that would have to be paid to clear a cheque.

4.0 E-TRANSACTION AND FINANCIAL CRIMES

In e-transaction, financial crime falls under category of financial abuse crime where the crime perpetrated is not violent in nature but result in loss of finances. Financial crime involves among others tax evasion, money laundering among others[22]. Financial crimes are continuously on the rise due to the ever evolving rise of technologies and new payment platforms such as mobile-money. Mobile -money transfer refers to use of virtual money in payment of services through mobile-money. These services have increased especially in developed countries where most of the people are under banked[23].

Anonymity, elusiveness, rapidity and lack of oversight are basically four ways in which mobile -money crime can be committed[24].

Anonymity – is done when a customer is unregistered or done when customer does not have the particulars to conduct mobile-money transaction. The perpetrator can also use unregistered SIM card.

Elusiveness – One single account can be used in a community through a single individual through pooling. Normally various recipients receive money through one account in a many-to -one type of transactions or, through a rich person delegating a subordinate to do transactions on behalf of

[22]Gombiro, C., Jantjies, M. and Mavetera, N., 2015. A conceptual framework for detecting financial crime in mobile money transactions. Journal of Governance and Regulation, 4(4), pp.727-734.
[23]Coppolino, L., D'Antonio, S., Formicola, V., Massei, C., Romano, L., (2015) "Use of the Dempster–Shafer theory to detect account takeovers in mobile money transfer services". J. Ambient Intell. Humaniz. Comput. pp.1–10.
[24]Chatain, P.L., Hernández-Coss, R., Borowik, K. and Zerzan, A., 2008. Integrity in Mobile Phone Financial Services. World Bank Working Paper, 146.

the boss. It is difficult to check such an account as the transactions can match with the profile of the rich boss.

Rapidity – M-money transactions can be done with speed, opening opportunities for layering hence a "would be criminal" can conduct several transactions in small amounts but to various recipients in a short space of time.

Lack of oversight – Happens when governing bodies are lax in the way they regulate M-money to such an extent that the platform is open for abuse through layering and transfer of money with no transaction cap[25].

Basing on the various methods and frameworks for detecting financial crime in M-money, the imaging challenge calls for a holistic approach to uncover hidden risks in M-money. Tackling financial crime is a challenge because a lot of internal control systems have serious control weaknesses. However, its key aspect is the ability for technology to maintain comprehensive logs of all performed activities and electronic transactions of fraudulent activity or heightened fraud risk[26].

Cyber criminals know that banking financial detection systems rarely monitor behavior of customers across multiple accounts, channels and systems and this weakness opens the door for cross channel financial crime. In this process, a fraudster gains access to customer information in one channel and uses that to commit fraud through another. Also, the anonymity of e-commerce makes it more difficult to uncover bogus communications and hidden relationships[27]

5.0 CONCEPT AND DEVELOPMENT OF ISLAMIC BANKING

In order to be Islamic, the banking system has to avoid interest. Consequently, much of the literature on the theory of Islamic banking has grown out of a concern as to how the monetary and banking system would function if interest were abolished by law. Another Islamic principle is that there should be no reward without risk-bearing. This principle is applicable to both labour and

[25]Chatain, P.L., Hernández-Coss, R., Borowik, K. and Zerzan, A., (2008), "Integrity in Mobile Phone Financial Services". World Bank Working Paper, p.146.
[26]Dzomira, S., (2014) "Digital Forensic Technologies As E-Fraud Risk Mitigation Tools In The Banking Industry: Evidence From Zimbabwe. Risk Gov. Control Finance". Mark. Inst. 4, p. 116.
[27] Joyner, E., (2011) "Detecting And Preventing Fraud In Financial Institutions" Banking, Financial Services and Insurance, p.1

capital. As no payment is allowed to labour unless it is applied to work, so no reward for capital should be allowed unless it is exposed to business risks.

Consider two persons, one of whom has capital but no special skills in business, while the other has managerial skills but possesses no capital. They can co-operate in either of two ways:

i. Debt-financing (the western loan system). The businessman borrows the capital from the capital-owner and invests it in his trade. The capital-owner is to get back his principal and an additional amount on the basis of a fixed rate, called the interest rate, as his compensation for parting with liquidity for a fixed period. The claim of the lender for repayment of the principal plus the payment of the interest becomes viable only after the expiry of this period. This payment is due irrespective of whether the businessman has made a profit using the borrowed money. In the event of a loss, the borrower has to repay the principal amount of the loan, as well as the accrued interest, from his own resources, while the capital-owner loses nothing. Islam views this as an unjust transaction.

ii. Mudarabah (the Islamic way, or PLS). The two persons co-operate with each other on the basis of partnership, where the capital-owner provides the capital and the other party puts his management skills into the business. The capital-owner is not involved in the actual day-to-day operation of the business, but is free to stipulate certain conditions that he may deem necessary to ensure the best use of his funds. After the expiry of the period, which may be the termination of the contract or such time that returns are obtained from the business, the capital-owner gets back his principal amount together with a pre-agreed share of the profit.

The ratio in which the total profits of the enterprise are distributed between the capital-owner and the manager of the enterprise is determined and mutually agreed at the time of entering the contract, before the beginning of the project. In the event of loss, the capital-owner bears all the loss and the principal is reduced by the amount of the loss. It is the risk of loss that entitles the capital-owner to a share in the profits. The manager bears no financial loss, because he has lost his time and his work has been wasted. This is, in essence, the principle of mudarabah. There are at least three reasons for considering the mudarabah relationship to be more just than the creditor-debtor relationship:

(i) Both parties agree on the ratio in which profits will be shared between them.
(ii) The treatment of both parties is uniform in the event of loss, since if the provider of the capital

suffers a reduction of his principal, the manager is deprived of a reward for his labour, time and effort.

(iii) Both parties are treated equally if there is any violation of the agreement. If the manager violates anyone of the stipulated conditions, or if he does not work, or is instrumental in causing loss to the business by negligence or bad management, he will have to bear the responsibility for the safe return of the whole amount in question. If, on the other hand, the provider of the capital violates any of the stipulated conditions, for example, by withdrawing his funds before the stipulated time, or by not providing part or full funds at the promised time, etc., he will have to pay the manager a reward equivalent to what he would have earned in similar work.

Mudarabah is the basis of modern Islamic Banking on a two-tier Basis

1st tier: The depositors put their money into the bank's investment account and agree to share profits with it. In this case, the depositors are the providers of the capital and the bank functions as the manager of funds.

2nd tier: Entrepreneurs seek finance from the bank for their businesses on the condition that profits accruing from their business will be shared between them and the bank in a mutually agreed proportion, but that any loss will be borne by the bank only. In this case, the bank functions as the provider of capital and the entrepreneur functions as the manager.

The Shari'ah prohibits the payment of charges for the renting of money (riba, which in the definition of Islamic scholars covers any excess in financial dealings, usury or interest) for specific terms, as well as investing in businesses that provide goods or services considered contrary to its principles (Haram, forbidden). While these principles were used as the basis for a flourishing economy in earlier times, it is only in the late 20th century that a number of Islamic banks were formed to apply these principles to private or semi-private commercial institutions within the Muslim community. While a basic tenant of Islamic banking - the outlawing of riba, a term that encompasses not only the concept of usury, but also that of interest - has seldom been recognised as applicable beyond the Islamic world, many of its guiding principles have. The majority of these principles are based on simple morality and common sense, which form the bases of many religions, including Islam.

> The universal nature of these principles is immediately apparent even at a cursory glance of non-Muslim literature. Usury was prohibited in both the Old and New Testaments of the Bible, while Shakespeare and many other

> writers, particularly those writing in the 19th century, have attacked the barbarity of the practice. Much of the morality championed by Victorian writers such as Dickens - ranging from the equitable distribution of wealth through to man's fundamental right to work - is clearly present in modern Islamic society".
>
> "Although the western media frequently suggest that Islamic banking in its present form is a recent phenomenon, in fact, the basic practices and principles date back to the early part of the seventh century.[28]

Islam's Approach to Ethical Investment Given that many ethical funds have similar characteristics as Islamic funds, it is important for ethical investors attracted by the appeal of Islamic principles as well as the performance of Islamic investments to understand that there are additional prohibitions that must be applied on the products offered. These restrictions which are essentially self-imposed based on belief and conviction act a moral compass; the monitoring of the prohibitions by a Religious (Shari'ah) Supervisory Board may have prevented Islamic financial institutions to deviate from a faith-based system and absorb the shocks within the conventional financial system. The important principles for Islamic financial instruments for participation and investments that require strict adherence, while providing good returns, are:

i. Investments must be free of interest, speculation and gambling, all are considered as forms of exploitation
ii. Investments are made in permissible activities
iii. Investments must be separately approved by an independent Shari'ah supervisory board to ensure Shari'ah principles are strictly adhered to and deviations and wayward business practice penalized, for example in Islamic finance requires penalties to be paid to charity

> The ethical principles on which Islamic finance is based may bring banks closer to their clients and to the true spirit which should mark every financial service.[29]

6.0 THEORETICAL BASIS FOR ISLAMIC BANKING

A popular belief persists that Islamic banking is simply an interest-free financial structure. But, in fact, Islamic economics is a complete system of social and economic justice. It deals with property

[28]El Qorchi, M., (2005). "Islamic finance gears up. Finance and Development", 42(4), p.46.
[29] The Vatican's official newspaper Observatory Romano said in an article its latest March 2009 issue.

rights, the incentive system, the allocation of resources, economic freedom and decision-making and the proper role of government. Western bankers have said that savings and investments would soon dry up if interest were not paid. But this is due to identifying "rate of interest" and "rate of return". The Qur'an says: "God has permitted trade, but forbidden riba (interest)" (2:275)[30]. Therefore, it is only the fixed, or predetermined, return on savings or transactions that is forbidden, not an uncertain rate of return, such as the making of profit.

6.1 Modern Justifications for Interest

Modern economists have developed many arguments to justify interest. One argument is that interest is the reward for saving; a compensation that the creditor pays the debtor for the latter's temporary loss of the use of capital. Another is that interest is the payment for the loss in value of money due to inflation. The goods the saver wants will cost more in the future, so he is justified in charging a rent for the use of his loan.

John Maynard Keynes (1946)[31] argued that money is the most liquid of assets, that is to say, it is the asset most readily exchangeable for other forms of assets and that interest is the price paid for loss of liquidity. The theory that interest protects savings from inflation neither explain why the rate of interest is, nevertheless, always above the rate of inflation, nor does it question the proposition that inflation is the cause of interest. Nor do these theories answer the question as to why interest should be the market regulator for the supply and demand of money.

Rules of Permissibility

Muslims believe that all things have been provided by God, and the benefits derived from them, are essentially for man's use, and so are permissible except what is expressly prohibited in The Qur'an or Hadith. When guidance is not clearly given in the Qur'an there are several other sources of law. For example, guidance can be sought from Fiqh, which means 'understanding' and is the science of jurisprudence: the science of human intelligence, debate and discussion.

Other Key Prohibitions

Islam not only prohibits dealing in interest and investment in unlawful activities that Islam deems harmful to society, but also transactions involving excessive uncertainty (gharar) and all forms of

[30]Al-Qur'an al Kareem Surah Al-Baqarah verse 275

[31]Keynes, J.M., (1937), "The general theory of employment", The quarterly journal of economics, 51(2), pp.209-223.

gambling (maysir). Online banking is an integral element of electronic commerce (e-commerce). E-commerce is the umbrella term describing automated business-related transactions through largely paperless mechanisms and represents a broad range of technologies, processes, and practices. It typically involves information communicated via electronic mail. Conceptually, electronic transactions are similar to traditional paper-based commercial transactions. Under both approaches, vendors present their products, prices, and terms to prospective buyers. Buyers consider their options, negotiate prices and terms (where feasible), place orders, and make payment. Vendors deliver the purchased products. These processes apply to traditional as well as electronic commerce alike. E-commerce however poses new and interesting differences not only from modern legal perspectives but also from sharia perspectives.

Islamic banking activities are rooted primarily on trade, leases, and investments. Unlike conventional banking, they share a lot in common with e-commerce as they involve actual and bona-fide transactions. Conventional banking on the other hand is simply a lending-based activity and thus, issues of sale, leases, and other related actions are not pertinent. This key difference renders the present discussion more relevant simply because online Islamic banking, to a large extent, provides sale and lease transactions via electronic mail.

Online Islamic banking is not about advancing a loan to a customer via electronic mail. Instead, it involves a number of processes, the ultimate result being either a transfer of ownership or an usufruct, as the case may be. All of these actions are done via electronic mail. In order to assist online Islamic banking providers and operators in managing their transactions to comply with sharia principles, this aims to address a number of relevant topics, such as the formulation of Web contracts, incorporation of certain terms, conditions and warranties, exclusion clauses, misrepresentation, and methods of payment.

1. Islamic Prohibition of Interest (Riba):

1. Business in Islam:

The fundamental teachings of Islam derived from four sources; the Quran and the Sunnah (practices of the Holy Prophet), *Ijma'* (consensus of religious scholars), and Qiyaas (legal and judicial reasoning). The Quran, viewed the life of man as a continuous process. Man had to work for success and comforts not only for this world but also for the hereafter. Therefore, the Quran not only permitted and encouraged man to involve in all sorts of productive work (such as business), but also enjoined it as a duty upon Muslims.

In Islamic business concept, Muslims should be very faithful and God-fearing in any kind of business or trade. As stated in the Quran:

> *''... God has permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for God; but those who repeat the offence are Companions of the Fire: they will abide therein forever'' (2:275).*[32]

Hence, the Quran regarded business as lawful, good and beneficial for both the individual and the society. Fair trade and honest business are praised, recommended and strongly exhorted to by the Quran.

2. E-Commerce in Islamic perspective:

As far as Muslims' welfare is concerned, Islam accords a paramount importance to the Trading sector as a major source of wealth and gale force wheel of the economy. In this respect, the holy Quran abounds with many references to the trade and commercial activities. For example, the Quranic verses that support this statement are:

> *''Woe to Al-Mutaffifin [those who give less in measure and weight (decrease the rights of others)*[33]

> *''O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you''*[34].

What is more striking for a Prophetic authority dated backward to as long as fourteen centuries ago, is that Islamic teachings had been even aware of what is conventionally known as ''Trading Data Management''? This is justified by the fact that the religion of Islam is broken into four major legalistic sections, among which is

(a) ''Islamic Business Transactions'' (*Fiqh al-Mu'amalat*). Needless to speak about the very ample provisions set by Islamic laws in regard to the efficient treatment of wealth.

However, this research drew on the means of the smooth functioning of business transactions and commercial activities from the Islamic prospect. More particularly, what does Islam cater for the

[32] Nobble Quran MuflihunSurah Al-Baqarah2:275
[33]Al-Qur'an al-kareem Surah Al-Mutaffifin 83:1
[34]Al-Qur'an al-kareem Surah Al-Nisa 4:29

''E-Commerce''? Rights from the very outset, our eminent Sunnah (act of Prophet SAW), in some aspects, preached for the same quality-values offered by ''E-Commerce'', particularly, accuracy and veracity, flexibility, convenience, contract standardization, speed, cost effectiveness, and others. In this connection, our Prophet (SAW) said:

> *''Allah showers his mercy and compassion upon the one who is tolerantly flexible, both when buying and selling''.*[35]

Nonetheless, there are a number of serious legal drawbacks that are likely to arise in the field of E-Commerce, particularly, short selling, and absence of concrete (hand to hand) delivery, uncertainty (Gharar), juridical authentication's problems, and much more.

Islam accepted the conduct of E-Commerce as a new way or technology to facilitate economic transactions. This is based on the Sharia (Islamic Law) legal values, namely the obligatory (Wajib), recommended (Mandub), permissible (Mubah), reprehensible (Makruh), and forbidden (Haram). In an interview with Ustaz Mustafa Omar, he also mentioned that Islam is not against E-commerce; instead, Islam basically encouraged Ecommerce as one of the new way of conducting business. He further explained that traditionally, business was conducted verbally face to face but today the two contracting parties are connected together via computer.

However, added that what is much of a consent in conducting E-Commerce is the moral perspectives that lead to a more accountable and responsible trader. As such, a few Sharia issues may be referenced while discussing some matters related to the ethical principles in Islamic business.

3. Legality of E-Commerce:

Based on earlier discussion, it is clear that Quran (Holy book) not only permitted but also encouraged the Muslims to engage in an honest and mutually beneficial trade. Related to commerce, Quran revealed two prerequisites for the validity of any given transaction; namely, permissibility and harmlessness. Permissibility means that the commodity and service in question must be permissible by the Sharia (Islamic Law); while harmless means that the commodity or the service must not be harmful for the contracting parties or the general public. Hence, regardless of whether the transaction is conducted in the traditional commerce or electronically, the above prerequisites must be fulfilled by all Muslim businessmen. Since E-Commerce is conducted using

[35] Abdul-Jelil, (2018) "ThaqafaIslamic Regulations for E-commerce-The Sunnah path",p.23

computers and networks, there are certain conditions that must be observed to ensure the legality of Ecommerce in Islam.

> First, there should be clarity in the communication and the products offered must be clearly defined, for example, the pictures of the products must be clearly displayed on the screen, give detailed specifications, the prices, the mode of delivery and the mode of payment must be clIndented early stated. Second, both contracting parties must receive the message in order to achieve conformity in the agreement (concluding the contract). Third, there must be continuity in the communication, whether in the transmission of message or in consulting between one another via e-mail.[36]

4. Islamic business ethics in E-Commerce:

Truthfulness, sincerity and honesty are basic ethical value of Islam. A businessman has to be honest, truthful and straightforward in all his business dealings. There is no scope of cheating, speaking lies, swearing too much and false advertising in Islamic framework of business. Even in the Hadith, the Prophet said:

> He who has reinforced the truth with his tongue, his reward will continue growing until the Day of Resurrection where Allah will pay him his full reward[37]

While effort put to persuade people to buy their products, advertisers are prone to exploit ambiguity, conceal facts, exaggerate and use psychological approach to persuade customers to buy according to their emotional needs, not to reasons. These tricks are especially effective and put the customers in more vulnerable position under the E-Commerce environment, as customers only rely on Web information to make purchasing decision. Thus, confidence of customers played an important role in the advancement of any business concern. As stated in the Quran:

> Allah do command you to render back your trust to those to whom they are due; and when you judge between man and man, that you judge with justice... (4:58).

The concept of trust is very important because without trust, development of E-Commerce could not reach its potential.

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[36]Zainul, N., Osman, F. and Mazlan, S.H., (2004). 'E-Commerce from an Islamic perspective'. Electronic Commerce Research and Applications, 3(3), pp.280-293.

[37]Bahaldin, S.A.S., (2005),'Alternative Quality Management Standards lslamic Perspective'. Utusan Publications, Pp 34-35.

5. Legitimacy of E-Commerce contract:

Islam defined contract as an agreement of both parties to the fulfillment of a certain things rising from the agreement and the concurrence of the offer and acceptance, according to Mahmood Sanussi. As stated in the Quran:

> *''O you who believe! Fulfill (all) obligations...'' (5:1).*

According to most Muslim scholars, there are four pillars of contract that must be fulfilled, which are:

(a) offer (ijab) and acceptance (qabul),two contracting parties, subject matter and the mode of expression (sigha) [Ustaz Mustafa Omar]. First, the offer is made by the first party to the contract. Then, it gave and confirmed the freedom of acceptance from the second party. The offer and acceptance must be clear to both parties, confirmed by both parties and there must be continuity from the offer to the acceptance (there is a connection between offer and acceptance).

(b) Second, the capacity of the two contracting parties to enter into a valid contract is majority, the age of puberty and has a sound mind.

(c) the subject matter is the object of the sale and it must be beneficial, lawful in Islam (halal), valuable, under possession, in existence and deliverable.

(d) the mode of expression is the utterance of both contracting parties expressing their wills and it could be through words (act) or in writing, but it should be clear to both parties. In Quran mentioned:

> O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you. Let not the scribe refuse to write as Allah has taught him, so let him write. Let him (the debtor) who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes. But if the debtor is of poor understanding, or weak, or is unable himself to dictate, then let his guardian dictate in justice. And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse when they are called on (for evidence). You should not become weary to write it (your contract), whether it be small or big, for its fixed term, that is more just

> with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves, save when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial contract. Let neither scribe nor witness suffer any harm, but if you do (such harm); it would be wickedness in you. So be afraid of Allah; and Allah teaches you. And Allah is the All-Knower of each and everything.[38]

Based on the Sharia, contract in E-Commerce is legitimate because all the four pillars of Islamic contracts are fulfilled.

7.0 CONCLUSION AND RECOMMENDATIONS

The study has shown that the emergence of electronic transactions represent both an opportunity and a challenge of the application of Islamic law in contemporary commerce. Electronic transactions have been around for quite some time in the form of Electronic Data Interchange or EDI. EDI requires each supplier and customer to set up a dedicated data link (between them), where ecommerce provides a cost-effective method for companies to set up multiple, ad-hoc links. Electronic commerce has also led to the development of electronic marketplaces where suppliers and potential customers are brought together to conduct mutually beneficial trade. The road to creating a successful online store can be a difficult if unaware of ecommerce principles and what ecommerce is supposed to do for your online business. Researching and understanding the guidelines required to properly implement an e-business plan is a crucial part to becoming successful with online store building.

While foundational principles of Shariah such as mutual consent (*taraadi*), transparency, justice and the prohibition of *riba*, *gharar*, and fraud remain constant, their application within the digital environment requires careful reinterpretation and adaptation. The analysis reveals that e-transaction are not inconsistence with Islamic law, rather, the challenges lie in ensuring compliance, through proper verification of parties, clarity of contractual terms and the prevention of exploitation and cyber-related risks. Issues such as anonymity, data insecurity, and regulatory gaps pose significant concerns that must be addressed to maintain the integrity of transaction. Importantly, the flexibility of Islamic jurisprudence, particularly through *ijtihad*, provides a viable

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[38]Surah A-Baqarah 2:282

pathway for harmonizing classical legal doctrines with modern technological realities. However, this requires proactive engagement from scholars, legal practitioners and regulatory authorities.
The sustainability and legitimacy of e-transaction under Islamic law depends on the development of robust regulatory frameworks, ethical digital practices, and continuous juristic engagement. By aligning technological innovation with Shariah objectives (*maqasidshariah*) Islamic law can effectively govern modern commercial activities while preserving justice, trust and economic fairness in the digital age

The paper recommends among other issues as follows that:

i. the concept of Islamic law on transaction and common law be properly annexed to give a working better result in the world economy
ii. more Islamic law experts be employed to monitor and examine shariah compliance in e-transaction and other related financial issues in different jurisdictions.
iii. the awareness of Islamic option duly publicized to all stakeholders of financial industry
iv. the concept of e-transaction is permissible under the Islamic norms and tenet of Islamic law.
v. The local and orthodous scholars should endeavour to modernize financial operation before giving verdict on e-transaction and other financial related issue