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ABSTRACT

This study attempts to place new stipulations in financial contracts within the context of Islamic jurisprudential principles. No doubt, the rules governing and guiding these stipulations are so complex that if man is left to his whims and caprices in relation to those stipulations and conditions he would most likely deviate from the basis of *Sharī'ah*. We have observed some problems in the instances of the stipulations in financial contracts in the contemporary time. These problems include non availability of direct evidence from the source to validate the stipulation and the need for the stipulation to satisfy the objective of *Sharī'ah*. Thus, in examining these stipulations vis-à-vis the identified problems, the study adopts the comparative analytical methods by which the researcher collects analysis of the *Qur'ān* and *Ḥadīth* texts and compare the views of scholar on the subject.

The study concludes with several results some of which are as follows:

- The views of Muslim Jurists (*Uṣūliyyīn*) on terminologies of stipulation is concise and logically legislative, while views of the Islamic scholars (*Fuqāḥa*) is clear and simpler to understand. This is because stipulation in the works of the Jurists (*Uṣūliyyīn*) reliably associated with reason (*Sabab*) especially in *Māliki* school.
- The New stipulations are the stipulations that are new in the financial contracts or which apply to contracts in general. And the past jurists have not discussed them in their period. They are called new stipulations because the available works of jurists do not contain any adequate explanation about them, but some of these stipulations occurred in old contracts, as in the new ones. Among these are: stipulation of retention of ownership in deferment Sale and maintenance in lease contract/hired purchase; stipulation of non-competition in *Muḍārabah* company; and penalty of damages in *Murābaḥa*, *Salam* and *al-wadī'ah* contracts amongst others. All these contracts known in their different types and complex new conditions require a thorough scrutinisation before finding appropriate *Sharī'ah* rules for them.

APPROVAL PAGE

This thesis of Abdussalam Ismail Onagun has been examined and is approved by the following:

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

Name: Abdussalam Ismail Onagun

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